

EXECUTIVE SUMMARY

During the September 2020 visit, the CPT's delegation examined the treatment and conditions of detention of men and women held in several prisons and in the two penitentiary psychiatric hospitals of Alicante and Seville, as well as in a detention centre for juveniles in Algeciras. Further, the treatment and safeguards offered to persons deprived of their liberty by the police were also examined.

The CPT's visit took place during the COVID-19 pandemic. The restrictions imposed on persons deprived of their liberty and the measures taken in places of detention for public health protection had largely succeeded in restricting the propagation of the Sars-Cov-2 virus. The CPT recalls the importance of ensuring that staff in prisons wear face masks and that prisoners in quarantine are offered daily outdoor exercise but is otherwise positive of the approach taken by the Spanish authorities in difficult circumstances.

The cooperation received by the CPT's delegation during the visit was excellent.

Law enforcement establishments

Although most persons stated that they had been treated correctly by law enforcement officials, the CPT's delegation received a significant number of allegations of ill-treatment, including of juveniles, which mainly concerned the *Policia Nacional*. The ill-treatment was purportedly inflicted as a means to force the suspects to provide information or to confess to particular crimes or to punish them for the alleged crime committed. In addition, the delegation heard some allegations of verbal abuse by police officers towards detained persons, in particular foreign nationals, and of excessively tight handcuffing. The report references a number of cases of ill-treatment by way of illustration.

Concerted action is required to tackle the problem of ill-treatment by law enforcement officials. This should include a clear message by the Minister of the Interior and police leaders that such behaviour is illegal and unprofessional, and that it will be sanctioned accordingly. Further, the CPT reiterates the importance of proper oversight and training of law enforcement officers, and of the need to carry out effective investigations into allegations of ill-treatment. It also emphasises the importance of CCTV recordings being stored for a minimum of 30 days at all law enforcement facilities.

As regards the practical operation of safeguards related to the deprivation of liberty by law enforcement agencies, steps should be taken to ensure that Article 520 of the Code of Criminal Procedure is fully implemented. This applies notably to information on rights, access to a lawyer and to a doctor and to ensuring custody records are accurately and comprehensively filled out. The CPT also recommends that the electronic recording of all police interviews be introduced.

As regards material conditions in police stations, poor ventilation, inadequate artificial lighting and no access to natural light remain the primary deficiencies. A couple of establishments were also in a poor state of disrepair and the cells overcrowded.

Prisons establishments

The CPT notes positively the continued reduction in the overall prison population rate from 133 to 117 per 100,000 inhabitants between 2016 and 2020, primarily due to the increase in non-custodial sanctions and the reduction in the length of sentences for certain criminal offences.

Prison establishments for men (Castellón II, Madrid V and VII, Seville II and Valencia Picassent)

The majority of prisoners interviewed by the CPT's delegation in the course of the 2020 periodic visit did not allege any ill-treatment by staff. However, in all the prisons visited prisoners referred to a number of officers who would seek to provoke conflict or who would use any pretext to demonstrate their power over inmates. The CPT's delegation received a large number of consistent and credible allegations of recent physical ill-treatment by staff. In most instances, the alleged ill-treatment consisted of slaps to the head and body but, in a number of cases, it consisted of punches, kicks and blows with batons and even of *falaka (bastinado)*.

In a few cases, the allegations of ill-treatment were supported by injuries observed by the delegation or noted down in medical records. The report includes a sample of cases by way of illustration. Overall, the findings demonstrate that a pattern still exists of physical ill-treatment inflicted by prison officers as a disproportionate and punitive reaction to recalcitrant behaviour by prisoners. The widespread nature of the allegations of ill-treatment in the prisons visited is of serious concern to the Committee. The CPT sets out a series of measures that the Spanish authorities should take to tackle the alleged ill-treatment, including better oversight by management, enhanced training of staff in the use of control and restraint and de-escalation techniques, more rigorous documentation of all injuries, immediate and systematic reporting of allegations of ill-treatment to the competent prosecutorial authorities and the carrying out of effective investigations. Further, steps should be taken to ensure that CCTV systems in all prisons are fully operational as they offer a valuable additional safeguard for both prisoners and staff.

The material conditions in the prisons visited could be considered adequate in the ordinary regime modules and good in the "respect" modules. In terms of regime, the COVID-19 pandemic had resulted in most activities being curtailed, requiring greater efforts to be made to organise activities within each module. Steps should also be taken to better orient the individual treatment plans (PIT) towards prisoners' needs and to involve them in the process.

As regards prisoners placed in a closed regime module, the CPT's delegation found that they were not offered an adequate range of activities or sufficiently supported to assist them in integrating into an ordinary regime module. It also found that the 1st degree classification review process needed to be improved.

The CPT again examined the application of mechanical fixation to a bed of inmates for regime purposes (*sujeción mecánica regimental*). It noted the considerable progress in the reduction of the application of the measure and in its duration. Nevertheless, the CPT continues to view the measure as one that is open to abuse and requiring even stricter safeguards. These include reducing its duration still further, improving the supervision and recording of the measure, ending its application to mentally ill prisoners and to those prisoners who self-harm, and ending the forced medication of fixated prisoners. In the CPT's view, the longer-term goal should remain its abolition.

The findings of the 2020 visit reinforced the CPT's view that the Spanish authorities should proceed immediately with the preparation of the transfer of prison health care to the national health service as envisaged by Law 16/2003. Transfer would *inter alia* reinforce through-care with the community and guarantee the independence of health care staff. Although the provision of health-care services in the prisons visited were on the whole of an acceptable standard, there remain a series of challenges which need to be addressed such as a lack of nursing staff, shortfall in doctors (GPs), an insufficient psychiatric and clinical psychologist presence, poor working conditions and dual-loyalty conflicts.

The treatment of mentally ill prisoners at Castellón II and Valencia (Picassent) Prisons was totally inadequate, and steps should be taken to ensure that the specialized modules for the treatment of inmates with mental disorders (PAIEMs) are properly resourced to care for and treat such prisoners. On a positive note, the CPT found that prisoners with learning disabilities held in the specialised care department at Madrid VII Prison were well-supported.

As regards the disciplinary procedure, the formal safeguards appear to operate satisfactorily but the CPT considers that three areas warrant examination and remedial action. One, the length of time that may pass between the infraction and the date when the disciplinary sanction is actually served, especially when prisoners are transferred to another establishment. Two, the continued application of a measure of solitary confinement for a period in excess of 14 days without any proper respite. Three, the practice of prisoners continuing to be disciplined, including being placed in solitary confinement, for an act of self-harm.

The CPT again has concerns over the effectiveness of the supervisory judges in the prisons visited in exercising their independent and impartial supervisory functions. This matter should be addressed by the State Judicial Council (*Consejo General del Poder Judicial*).

Prison establishments for women (Ávila and Modules 9 and 10 at Madrid VII Prison)

The CPT sets out the importance of developing a specific prison policy oriented toward women's particular biological and gender-specific needs and vulnerabilities. The Spanish authorities should take active steps to develop a gender specific approach towards women prisoners. When developing new approaches to gender sensitive risk assessment and the classification of prisoners, account should be taken of the fact that women generally pose a lower security risk than men.

Further, the CPT recalls that women prisoners have a higher prevalence than men of mental illness, drug dependency and self-harm, and that many are victims of sexual and other gender-based violence. Hence, the rules regulating the admission process should contain gender specific provisions for women and screening upon admission should identify any vulnerabilities. The Spanish authorities should introduce such an approach at prisons accommodating women.

The vast majority of women prisoners met stated that they were treated correctly by prison staff, notably at Ávila Women's Prison, although a couple of allegations of ill-treatment and of verbal abuse were received.

The material conditions of detention were generally of a satisfactory standard. However, more needs to be done to develop the range of non-gender stereo-typed activities on offer to women prisoners which will assist their reintegration into the community.

Health care services at Ávila Women's Prison were generally good but suffered from the uncertainty of whether the provision of GP services by a private clinic would continue. Further, there is a need to develop the admission procedures to take into account gender-specific needs, including screening for sexual gender-based violence. In addition, there is a need to adopt a policy on preventing and reducing instances of self-harm of women prisoners and to ensure that women who do self-harm or who are at risk of self-harming are always dealt with from a therapeutic standpoint and not a punitive one. Such a policy must include specific training for staff. The CPT also considers that prisoners should no longer be tasked to act as permanent observers of other women prisoners at risk of committing an act of self-harm or suicide.

In relation to staffing, the CPT considers that all custodial staff working with women prisoners should receive gender-specific training. Further, it considers that the overall ratio of female prison officers to male prison officers working in women's prisons and detention units, and notably the number of female prison officer managers (*Jefe de servicios*), should predominate.

Contacts with the outside world need to be improved for women prisoners, given that they are often located at a great distance from their families and that they are far more likely than male prisoners to be the primary carers for any children they might have. The CPT considers that the prison administration should modernise their approach to this issue, including by examining the possibility for prisoners, notably foreign nationals, to maintain contact with their families through using Voice over Internet Protocol (VoIP).

Prison Psychiatric Hospitals of Alicante and Sevilla

At the outset, the CPT wishes to state that forensic psychiatric establishments such as the Prison Psychiatric Hospitals (PPHs) should enjoy full institutional and functional separation from the prison service given the different ethos and staffing profile which characterise them. Therefore, in the CPT's view, these hospitals should be under the responsibility of the national health-care system (*Sistema Nacional de Salud*) which is better placed to provide the support required by both patients and staff. In this respect, it should also be noted that there is an urgent need to increase the presence of psychiatrists, psychologists and occupational therapists at both hospitals.

Patients met by the delegation at both PPHs generally spoke positively of the way in which they were being treated by staff. However, a few allegations of physical ill-treatment consisting of blows with rubber batons and of painful and improper mechanical fixation were received at both establishments. In particular, the CPT's delegation uncovered one case of ill-treatment of a patient at Sevilla PPH through the examination of the relevant CCTV recording of his mechanical fixation.

In terms of living conditions, the CPT is critical of the carceral design and austere setting of the PPHs, with cells and communal facilities also lacking personal lockable space and an absence of decoration as well as noisy and cramped communal facilities. The CPT concludes that such a setting is not conducive to a truly therapeutic approach and that the plans of the Spanish authorities to transfer the PPHs to more adequate facilities should be accelerated.

The treatment provided to forensic psychiatric patients at both PPHs consisted mainly of pharmacotherapy. This did not come as a surprise given the lack of psychiatrists, psychologists, nurses and occupational therapists present at both establishments. It meant that there was little in the way of individualised treatment for patients. Further, certain patients affected by resistance schizophrenia appeared to be over-medicated. The CPT is also critical of the finding that in several instances the consent of patients to accept the prescribed treatment appeared to have been coerced by staff. In sum, the Spanish authorities should consider introducing a much-needed paradigm shift in the treatment of forensic patients based upon the principles set out in the report. In addition, they should review the pharmacological treatment of certain patients as well as reinforce the legal safeguards surrounding the involuntary treatment of patients.

As regards means of restraint such as seclusion and mechanical fixation, the CPT is critical of the practice at Sevilla PPH, in particular, of prolonged restrictions of liberty imposed on patients for as long as four months without appropriate legal safeguards and inadequate judicial review. The Committee also found that the prolonged mechanical fixation at Sevilla PPH contained punitive elements which, when coupled with the infliction of physical ill-treatment of patients, forced medication and denial of access to a toilet, may amount to inhuman and degrading treatment.

Further, once again the CPT noted that supervisory judges appeared to be rubber-stamping the decisions of the management in respect of the resort to means of restraint of patients. More needs to be done to ensure that supervisory judges exercise an impartial and independent control over the work of PPHs.

As regards the legal safeguards surrounding the placement, discharge and involuntary treatment of forensic psychiatric patients at the two PPHs, the CPT recommends that patients are heard in person by the competent judicial authorities at the time of the review of their security measure. Further, the provisions of the Law on Patients No. 41/2002 concerning patient rights in respect of the provision of medication without their consent should be fully applied. As regards legally incapacitated patients, the consent of guardians should always be systematically sought. Steps should also be taken to draw up an information brochure for patient and their families covering all aspects of the facility and patients' rights.

Juvenile Detention Centre “La Marchenilla” in Algeciras

The CPT gained a positive impression of the caring attitude of staff at the establishment and of their commitment towards restorative justice. That said, several juveniles who were deemed to have disrupted the good order of the centre complained about the rough behaviour of the security staff in their restraint and tight handcuffing. A clear message on the use of minimum force only should be delivered to security staff, combined with adequate training on de-escalation and restraint measures.

In terms of material conditions, the centre was in a good state of repair and hygiene. However, the overall carceral environment and design in the residential modules (horizontal metal bars on the windows, reinforced metal doors and barred sliding gates) is not appropriate for a rehabilitative centre for juveniles. Such elements should be removed and adequately replaced to render the centre less carceral.

The CPT gained a very positive impression of the regime and the range of activities on offer to juveniles at the centre, and of the commitment of staff in proposing individual therapeutic and rehabilitation plans for each resident.

The CPT again examined the resort to means of restraint and mechanical fixation of juveniles, having recommended that the measure be abolished for juveniles in its report on the Committee's 2016 visit to Spain. At the time of the visit, the Andalusian regional authorities had recently adopted a new Instruction 02/2019 to surround the measure of fixation with additional safeguards. Nevertheless, the CPT concluded that, although staff was in principle showing a professional attitude in the restraint of juveniles and was engaging constructively in dialogue towards de-escalation, there remained problematic issues. These included, prolonged periods of fixation, forcible injections of fixated juveniles and the rough restraining methods and tight handcuffing by security staff. The CPT again calls upon the Spanish authorities to abolish reduced and prolonged mechanical fixation of juveniles.

Finally, the CPT recommends that the resort to solitary confinement of juveniles for up to seven days for disciplinary purposes should be ended in the light of the generally recognised international standards, notably the recently adopted updated European Prison Rules. It also recommends that the current practice used when carrying out strip-searches, which are invasive and potentially degrading, be brought into line with the CPT's precepts.