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## **Report**

**to the Spanish Government  
on the visit to Spain  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 27 September to 10 October 2016**

The Spanish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2017) 35.

Strasbourg, 16 November 2017

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**Copy of the letter transmitting the CPT's report**

Mr Carlos Abella y de Arístegui  
Director General for International Relations and  
Migration  
State Secretariat for Security  
Ministry of Internal Affairs  
C/Amador de los Ríos 8, 5<sup>a</sup>, Despacho 501  
E – 28071 Madrid

Strasbourg, 6 April 2017

Dear Mr Abella y de Arístegui,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Spanish Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Spain from 27 September to 10 October 2016. The report was adopted by the CPT at its 92<sup>nd</sup> meeting, held from 6 to 10 March 2017.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, of the Convention, the Committee requests the Spanish authorities to provide within **six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Spanish authorities to provide, in the above-mentioned response, reactions to the comments and requests for information formulated in this report.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Mykola Gnatovskyy  
President of the European Committee for the  
Prevention of Torture and Inhuman or  
Degrading Treatment or Punishment

## EXECUTIVE SUMMARY

In the course of the 2016 visit, the CPT's delegation reviewed the treatment of persons detained by various police services. Particular attention was paid to the practical operation of safeguards against ill-treatment and the changes in the legislative framework of incommunicado detention. The delegation also reviewed the treatment of inmates in several prisons focussing, in particular, on the application of mechanical restraint for regime purposes. The delegation also reviewed the treatment of juveniles deprived of their liberty under criminal legislation in two different establishments.

On the whole, the delegation received excellent co-operation during the visit, both at national level and in the establishments visited.

### Law enforcement establishments

The vast majority of persons met by the delegation stated that they had been treated correctly by law enforcement officials. However, the delegation did receive some credible allegations of excessive use of force upon apprehension and of detained persons being physically ill-treated by police officers upon arrival at a police establishment. In addition, the delegation heard a few allegations of disrespectful behaviour by police officers towards detained persons and of excessively tight handcuffing.

The practical operation of safeguards related to the deprivation of liberty by law enforcement agencies did not pose a major difficulty. More specifically, virtually all persons interviewed by the delegation confirmed that they had been given an opportunity to contact a family member shortly after apprehension, that they had been asked by the police whether they wanted the assistance of a lawyer and that they could meet with the lawyer in private before the first questioning by the police. Further, persons held in police custody who requested to see a doctor or who had a medical problem (e.g. a visible injury) were promptly seen by a doctor. However, foreign nationals held by the police were not able to contact family members if they lived abroad (even if they had no one to contact within Spain); in addition to addressing this issue, the CPT makes recommendations to ensure that all persons detained by the law enforcement agencies are fully informed of their fundamental rights as from the very outset of their deprivation of liberty.

As regards material conditions, poor ventilation remains a problem in most establishments visited, artificial lighting was dim in some cells and none of the cells seen by the delegation had access to natural light, which is contrary to the CPT's standards. Further, several cells did not provide sufficient space for the number of persons held; the CPT emphasises that cells measuring less than 5m<sup>2</sup> should not be used for overnight accommodation and that it would be desirable for single-occupancy police custody cells used as overnight accommodation to measure 7m<sup>2</sup>.

The CPT takes note of recent legislative developments which limit the scope of application of the incommunicado detention regime and differentiate the use of the individual restrictions that may be imposed on detained persons. It is a positive development that the number of judicial decisions of incommunicado detention has decreased over the past few years and that no incommunicado detention regime was ordered in 2015 and 2016. However, the Committee stresses that the incommunicado detention regime continues to retain a potentially significant limitation of fundamental safeguards. The Committee considers that, as a matter of principle, the possibility to impose the incommunicado detention regime should be removed altogether from the Spanish legislation.

## Prisons establishments

The CPT notes positively the considerable efforts invested by the Spanish authorities to eradicate prison overcrowding which in recent years has yielded significant results, in particular through the increase in non-custodial sanctions and legislative reforms reducing the duration of sentences for certain criminal offences.

The vast majority of inmates in ordinary regime modules (including the so-called “respect modules”) interviewed by the CPT’s delegation did not allege physical ill-treatment by staff. However, a significant number of allegations of physical ill-treatment, supported by medical documentation, were received from inmates accommodated in closed regime modules and special departments. These consisted of slaps, punches, kicks and blows with batons mainly inflicted as an informal punishment following instances of disobedient behaviour by prisoners, inter-prisoner violence or acts of self-harm. It was also alleged that some of the above-mentioned physical ill-treatment took place while the prisoner in question was subjected to mechanical fixation (*sujeción mecanica*). The CPT has serious concerns about the gravity of its findings and recommendations are put forward in order to increase the supervision of staff by prison managers and to ensure that complaints by inmates are effectively investigated. Further, the CPT recalls that health-care staff has a duty to record accurately injuries observed on inmates which are indicative of physical ill-treatment by staff and to report them to the competent judicial authorities.

The prison establishments visited offered generally good material conditions of detention to inmates accommodated in ordinary regime modules. However, some deficiencies were observed in the closed regime modules and special departments.

In terms of regime, a wide range of purposeful activities (including remunerated work) was on offer to inmates from ordinary regime modules at all the prison establishments visited. Indeed, the range of organised activities was impressive. The situation was, however, less favourable in those ordinary regime modules accommodating more problematic prisoners. Further, closed regime and special departments offered inmates an impoverished regime, consisting generally of only three to four hours of outdoor exercise per day. Little was done in order to promote the re-integration of inmates into an ordinary regime module despite recommendations made by the CPT in its previous reports. In addition, the delegation once again met a number of inmates who showed clear signs of mental health disorder, whose condition was exacerbated by the restrictive regime in force at closed regime modules and special departments. The CPT recommends that the Spanish authorities develop a purposeful regime for inmates in the closed regime modules and special departments (including first degree inmates at Puerto I Prison) by implementing fully SGIP’s Instruction 12/2011.

The resort to and the application of mechanical fixation of inmates for regime purposes (*sujeción mecanica regimental*) remains a serious concern of the Committee. Previous recommendations by the CPT to regulate properly the recourse to fixation have not been implemented. Once again, the CPT’s delegation found that the fixation of inmates was still resorted to for prolonged periods (days and hours rather than minutes) without adequate supervision and recording. Further, the reasons for the application of the measure appeared in some cases to be clearly punitive (e.g. in case of passive resistance to an order from staff) and some of the modalities of its application (such as the fact that inmates were not allowed to comply with needs of nature) an attack on their dignity. Further, the measure was also often applied to inmates suffering from a mental health disorder. The CPT

considers that attempts to regulate mechanical fixation have failed and that the measure is abused in all the establishments visited by the Committee. In the CPT's assessment, the measure of mechanical fixation could amount in many instances to inhuman and degrading treatment. The report calls upon the Spanish authorities to stop resorting to mechanical fixation for regime purposes in prisons.

The health-care services in the prisons visited were on the whole of an acceptable standard and staffing levels generally sufficient. That said, access to psychiatric care remained problematic due to the paucity of resources and infrequent visits by external psychiatrists and the Spanish authorities should remedy this situation. The delegation also reviewed the treatment of prisoners suffering from drug addiction at different establishments and found that the approaches and quality of interventions by staff in the so called therapeutic units (UTEs) varied considerably across the country. Recommendations are put forward to improve the operation of the UTEs as well as the care for the treatment of inmates affected by hepatitis C (HCV), and to introduce more rigorous safeguards surrounding the fixation of inmates in a medical setting and as concerns various aspects of medical ethics in prison.

The CPT found that at different prison establishments sequential periods (up to 14 days each) of solitary confinement for disciplinary purposes were imposed, interrupted only for one day. The CPT reiterates its recommendation that no prisoner be held continuously in solitary confinement as a punishment for longer than 14 days. The report addresses the situation of prison staff, transgender prisoners, the resort to and conduct of personal searches of inmates (*cacheos*) and the effectiveness of the complaints system, making recommendations for action where appropriate.

In terms of judicial supervision of the penitentiary system, the CPT observed once again that supervisory judges acted mainly as a "rubber stamping authority" for the decisions of the prison administration rather than as an independent and impartial supervisory institution. A specific recommendation addressed to the State Judicial Council is formulated to tackle this issue.

### **Detention centres for juvenile offenders**

The vast majority of juveniles with whom the delegation spoke at Sograndio and Tierras de Oria Juvenile Institutions made no complaints against staff. On the contrary, several of them stated explicitly that they were treated correctly and made positive remarks about various categories of staff. However, a few credible allegations of deliberate physical ill-treatment of inmates by staff were received at both establishments.

Material conditions of detention were generally good in both establishments. However, at Tierras de Oria several rooms measuring 6m<sup>2</sup> accommodated two inmates, offering a mere 3m<sup>2</sup> of living space to each juvenile. In addition, the sanitary annexes in these rooms were only partially partitioned (if at all) from the rest of the room and provided no privacy. The CPT welcomes the rapid reaction of the Spanish authorities following the visit to end the double-occupancy use of these rooms.

More generally, the CPT notes that the design of the accommodation areas at Tierras de Oria was far too carceral for the holding of juveniles and it invites the Spanish authorities to consider how it might be improved.

On the whole, the situation as regards the regime was satisfactory at both establishments, and the majority of juveniles spent most of their days engaged in purposeful activities. However, at Tierras de Oria, the CPT encourages the Spanish authorities to broaden the range of activities offered to juveniles suffering from a mental disorder.

The application of mechanical restraint to juveniles is a matter of particular concern to the Committee. At Sograndio, juveniles were handcuffed to fixed objects in an isolation room and, at Tierras de Oria, they were fixated to a bed face down, with their wrists and ankles (and sometimes the torso) attached to the sides of the bed with straps. At the latter establishment, juveniles were not allowed to use the toilet while fixated (despite requests) and in some cases had to urinate on themselves. The CPT considers that the use of means of restraint as described in the report may amount to inhuman and degrading treatment and recommends that the authorities put an end to it.

Another matter of serious concern to the CPT is the imposition of disciplinary solitary confinement on juveniles. The maximum length of solitary confinement of seven days for a juvenile, as provided for in the Spanish legislation, is already excessive. Moreover, the CPT's delegation came across instances of juveniles being placed in solitary confinement as a disciplinary sanction for three consecutive periods of seven days. The Committee highlights that there is an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction in respect of juveniles and it recommends that the Spanish authorities end the use of solitary confinement as a disciplinary punishment for juveniles and amend the relevant legislation accordingly.

On a positive note, the CPT considers that arrangements concerning juveniles' contact with the outside world (phone calls, visits, correspondence) and arrangements for making complaints were satisfactory.

## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Spain from 27 September to 10 October 2016. The visit formed part of the CPT’s programme of periodic visits for 2016 and was the Committee’s seventh periodic visit to Spain.<sup>1</sup>

2. The visit was carried out by the following members of the CPT:

- Mykola Gnatovskyy, President of the CPT and Head of the delegation
- Vassilis Karydis
- Therese Rytter
- Ivona Todorovska
- Olivera Vulić
- Hans Wolff.

They were supported by Petr Hnátk and Christian Loda of the CPT's Secretariat, and assisted by Mauro Palma, Head of the Italian NPM and former President of the CPT (expert).

### B. Establishments visited

3. The delegation visited the following places of detention:

#### Establishments under the Ministry of the Interior of Spain

##### **National Police**

- National Police Station, La Coruña (Calle Médico Devesa Núñez)
- National Police Station, Cádiz
- National Police Station, Madrid (Calle de Leganitos)
- National Police Station, Madrid (Ronda de Toledo)
- National Police Station, Oviedo (Calle General Yagüe)
- National Police Station, Oviedo (Avenida Buenavista)
- National Police Station, San Fernando
- National Police Station, Sevilla (Avenida Blas Infante)

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<sup>1</sup> The reports on previous CPT visits to Spain and related Government responses are available on the Committee’s website: <http://www.coe.int/en/web/cpt/spain>

### **Prison establishments**

- León Prison
- Puerto I Prison
- Puerto III Prison
- Sevilla II Prison
- Teixeiro Prison
- Villabona Prison

In addition, the delegation carried out targeted visits to Madrid V Prison (Soto del Real) and Puerto II Prison to interview newly arrived remand prisoners.

### **Establishments under the authority of the autonomous communities**

- Tierras de Oria Juvenile Institution
- Sograndio Juvenile Institution.

### **C. Consultations held by the delegation and co-operation encountered**

4. In the course of the visit, the CPT's delegation held consultations with Francisco Martínez Vázquez, State Secretary for Security at the Ministry of the Interior, Ángel Yuste Castillejo, Secretary General of the Penitentiary Administration, and Carlos Abella y de Arístegui, Director General for International Relations and Migration of the Ministry of the Interior. It also met with other senior officials of the Ministry of the Interior, the Ministry of Justice and the Ministry of Health, Social Services and Equality.

The delegation also met with Soledad Becerril, Ombudsman (*Defensor del Pueblo*), who is designated as the national preventive mechanism (NPM). Further, it held discussions with representatives of non-governmental organisations active in areas of concern to the CPT.

A list of the national authorities and organisations met by the delegation is set out in the Appendix to this report.

5. On the whole, the delegation received excellent co-operation during the visit, both at national level and in the establishments visited. The delegation enjoyed access to all the establishments it wished to visit (including those which had not been notified in advance), was able to interview in private persons deprived of their liberty and was provided with the information it needed to accomplish its task.

The CPT would like to express its appreciation for the assistance provided before and during the visit by the CPT's liaison officer, Iñigo Gaya Van Stijn.

#### D. National preventive mechanism

6. Spain ratified the Optional Protocol to the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment (OPCAT) in April 2006 and, as of 5 November 2009, designated the National Ombudsman (*Defensor del Pueblo*) as the National Preventive Mechanism (NPM).<sup>2</sup>

Within the Ombudsman's Office, the NPM function is carried out by a specific unit with a separate budget.<sup>3</sup> In addition to its head, the unit comprises seven staff members (including two administrative personnel). When carrying out visits, NPM staff may be assisted by staff from other units of the Ombudsman's office and external experts, such as psychiatrists, psychologists and forensic medical doctors. The mandate of the NPM covers all places of deprivation of liberty throughout Spain, including those under the authority of autonomous governments and local administrations.

In June 2013, the Advisory Council of the NPM was created as "a body of technical and legal co-operation" in the exercise of the functions of the NPM. The Advisory Council is composed of the Ombudsman, two deputy Ombudsmen and a maximum of ten additional members (three designated by various professional organisations (e.g. the General Council of Spanish Lawyers), two from institutions with whom the Ombudsman signed contracts of collaboration, and five members to be appointed through a call for nominations in their personal capacity or on behalf of organisations or associations to represent civil society). The Advisory Council meets twice a year and may, for example, propose visits and improvements in the methodology of the work of the NPM. In addition, its members may participate in the visits carried out by the NPM.

Between 2010 and 2015, the Spanish NPM carried out 543 visits to various places of deprivation of liberty, and it planned to visit more than 100 places in 2016.

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<sup>2</sup> To this end, Organic Law 3/1981, on the National Ombudsman, has been amended by Organic Law 1/2009 of 3 November 2009.

<sup>3</sup> In 2015, the budget of the NPM unit amounted to some EUR 750 000.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Law enforcement agencies

#### 1. Ordinary custody by law enforcement agencies

##### a. preliminary remarks

7. As regards the basic legal framework governing the deprivation of liberty by law enforcement agencies, important changes have been introduced by Organic Law 13/2015 which amended certain provisions of the Code of Criminal Procedure (CCP).<sup>4</sup> The aim of the amendments was to transpose several EU directives<sup>5</sup> into the Spanish legislation and to strengthen procedural safeguards offered to persons subject to criminal proceedings (for more details, see section c. below). Significant changes have also been introduced to the legal framework of the incommunicado detention regime (see paragraph 30).

The time limits for deprivation of liberty by law enforcement agencies, however, have remained unchanged. Criminal suspects may be held in custody by law enforcement agencies for up to 72 hours and this custody may be extended by judicial decision for a further 48 hours in respect of offences referred to in Article 384 *bis* of the CCP, i.e. “membership or relationship with armed groups or terrorist or rebellious individuals”.

The examination of custody registers in the police establishments visited and the information gathered through interviews with persons who were, or who recently had been, in police custody revealed that the time limit for deprivation of liberty by the police was respected in practice and that police detainees appeared in person before a judge to be remanded in custody.

##### b. ill-treatment

8. It is positive that the vast majority of persons met by the delegation who were or had recently been in police custody stated that they had been treated correctly by law enforcement officials.

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<sup>4</sup> The amendments entered into force on 1 November and 6 December 2015.

<sup>5</sup> Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

However, the delegation did receive some credible allegations of excessive use of force upon apprehension after the person concerned had been brought under control (such as slaps, punches and kicks to the face and ankles, as well as baton blows) and of detained persons being slapped, punched, kicked and hit with a baton by police officers upon arrival at a police establishment. One person met by the delegation also alleged that he had been forced to kneel in a police station and that a police officer had stepped on his legs. In addition, the delegation heard a few allegations of disrespectful behaviour by police officers towards detained persons<sup>6</sup> and of excessively tight handcuffing. In some cases, the delegation met detained persons who still displayed parallel linear-shaped red marks and slight swelling on their wrists which were consistent with such allegations.

**The CPT reiterates its recommendation that the Spanish authorities remain vigilant in their efforts to combat ill-treatment by law enforcement officials. In this context, a clear message should be sent to all law enforcement officials that all forms of ill-treatment, including disrespectful behaviour vis-à-vis detained persons, is not acceptable and will be punished accordingly. In particular, law enforcement officials should be reminded that no more force than is strictly necessary is to be used when carrying out an apprehension and, once apprehended persons have been brought under control, there can be no justification for striking them. In addition, where it is deemed necessary to handcuff a person at the time of apprehension or during the period of custody, the handcuffs should under no circumstances be excessively tight<sup>7</sup> and should be applied only for as long as is strictly necessary.**

9. In the inspectors' offices used for interrogation of suspects of the National Police Station on Calle de Leganitos in Madrid, the CPT's delegation found several objects such as sticks, baseball bats, a whip and a rope/noose. Apart from inviting speculation about improper conduct on the part of police officers, objects of this kind are a potential source of danger to staff and criminal suspects alike. Consequently, **any non-standard issue objects capable of being used for inflicting ill-treatment should be immediately removed from all police premises where persons may be held or questioned.**

c. safeguards against ill-treatment

i. *introduction*

10. The findings of the 2016 visit indicate that the practical operation of safeguards related to the deprivation of liberty by law enforcement agencies (i.e. the right of access to a lawyer and to a doctor and the right to have the fact of one's detention notified to a third person) does not pose a major difficulty.<sup>8</sup> Moreover, the CPT notes positively the strengthening of certain safeguards offered to detained persons as a result of the 2015 amendments (see paragraph 7).

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<sup>6</sup> It is interesting to note in this context that a female police officer in one of the police stations visited complained to the delegation about sexist remarks by her male colleagues.

<sup>7</sup> It should be noted that excessively tight handcuffing, as well as causing local lesions, can have serious medical consequences (for example, sometimes causing a severe and/or permanent impairment of the hand(s), such as sensory loss and/or vascular and motor damage).

<sup>8</sup> As regards the situation of persons held under the incomunicado detention regime, see paragraphs 33 to 35.

*ii. notification of custody*

11. Following the aforementioned amendments, the right to notify the family or a third person of the fact of one's detention (and the place of detention) has been strengthened; Article 520(2)(e) of the CCP now stipulates that such notification should take place "without unjustifiable delay". In addition, Article 520(2)(f) now gives detained persons the right to communicate by telephone, in the presence of a police officer, with a third person of their choice.

Virtually all persons interviewed by the delegation during the visit confirmed that they had been given the opportunity to contact a family member (or another person) shortly after apprehension. The CPT welcomes this state of affairs.

12. Foreign nationals in police custody have the right to contact the consulate of their country and the findings of the visit indicate that this right was respected in practice.

However, several foreign nationals met by the delegation claimed that they had not been given the opportunity to inform their family if the family lived abroad; police officers confirmed to the delegation that phone calls were only authorised within Spain.

By letter of 9 January 2017, the Spanish authorities informed the CPT that international phone calls had not generally been possible from police stations. However, it was expected that international phone calls would soon be activated from telephones that might be used for the exercise of the right of an arrested person to contact a chosen person.

**The CPT welcomes this development and would like to receive confirmation that it is now possible for foreign nationals (and indeed any other person) in police custody to notify the fact of their detention to their family or a third person of their choice if these persons live abroad (e.g. by making a free-of-charge phone call).**

*iii. access to a lawyer*

13. Under the terms of Articles 118 and 520 of the CCP, all persons in police custody have the right to choose a lawyer (or request that an *ex officio* lawyer be appointed) and request his/her presence during police questioning. Following the 2015 amendments of the CCP, access to a lawyer now also entails the detained person's right to be assisted by the lawyer "without unjustified delay" and to consult with him/her in private before a statement is given to the police. In addition, the CCP now explicitly provides that any communication between the detained person and his/her lawyer is confidential. The CPT welcomes these developments.

The findings of the visit indicate that these provisions were generally respected in practice. In particular, virtually all the persons interviewed by the delegation confirmed that they had been asked by the police whether they wanted the assistance of a lawyer and that they could meet with him/her in private before the first questioning by the police.

*iv. access to a doctor*

14. The information gathered during the visit indicates that persons held in police custody who requested to see a doctor or who had a medical problem (e.g. a visible injury) were promptly seen by a doctor, either in the police establishment or in a medical facility.

However, not all persons were apparently informed of their right to be examined by a forensic doctor (or his/her substitute), guaranteed by Article 520(2)(i) of the CCP. Reference is made in this connection to paragraph 17).

15. Moreover, it is regrettable that the introduction of the amendments to the CCP was not used as an occasion to guarantee in law a detained person's right of access to a doctor of their own choice.

In the CPT's opinion, allowing detained persons to consult a doctor of their own choice is important regarding continuity of care and can provide an additional safeguard against ill-treatment.<sup>9</sup> **The CPT reiterates its recommendation that such a right be guaranteed by the national legislation.**

*v. information on rights*

16. All detained persons should be immediately informed of their rights, including the rights of access to a lawyer and doctor, as well as to notify a third person of the fact of their detention (Article 520 of the CCP). Moreover, the amended Articles 118 and 520 of the CCP now explicitly require that the information be provided in writing, in a language the person understands and in a simple and accessible form, and that detained persons be allowed to keep a copy of the information sheet throughout the period of police custody.

17. Many persons interviewed by the delegation confirmed that they had been informed of their rights verbally upon apprehension and in writing after arrival at a police facility.

However, several detained persons said that no information was provided to them verbally upon apprehension. Other detained persons alleged that verbal information was only provided upon arrival at a police station but they were not aware of having been informed of their rights in writing. It is noteworthy in this context that none of the persons held in police custody with whom the delegation spoke during the visit possessed a copy of an information sheet on his/her rights; no information sheets were on display in the police custody cells seen by the delegation.

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<sup>9</sup> It being understood that an examination by a doctor of the detained person's own choice may be carried out at his/her own expense.

**The CPT recommends that the Spanish authorities ensure that all persons detained by the law enforcement agencies are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon their arrival at police premises) by provision of a written form setting out their rights in a straightforward manner.**

**Further, law enforcement officials should be reminded that detained persons ought to be allowed to keep a copy of the information sheet on their rights throughout the period of police custody, in line with the relevant national legislation.**

18. It was positive that information sheets were available electronically in some 20 languages in all police establishments visited and could be readily printed out.

*vi. custody records*

19. Custody records examined by the delegation in the police establishments visited were generally well-kept and contained information on date and time of arrest, time of arrival at the police station and date and hour of release, as well as the signature of the responsible police officer.

However, in a few cases, the time of release was not recorded. **Steps should be taken to ensure that all custody records are diligently filled out.**

20. The individual files of detained persons contained the original copy of the information sheet on detainees' rights signed by the detained person and a form indicating the time when the person was informed of his/her rights and whether a lawyer was appointed and his/her family contacted (including the phone number). That said, the time of such appointments and contacts was not recorded. **The CPT recommends that the time of appointment of a lawyer and contact with family or a third person of the detained persons' choice be recorded in the individual files of detained persons maintained in law enforcement establishments.**

d. conditions of detention

21. As regards material conditions,<sup>10</sup> the police custody cells seen by the delegation were generally in an acceptable state of repair and were equipped with a plinth, a mattress and a blanket.

However, as was the case in the past, poor ventilation remains a problem in most establishments visited and artificial lighting was dim in some cells (in particular at Madrid (Calle de Leganitos and Ronda de Toledo) and Sevilla Police Stations).

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<sup>10</sup> Detention areas of Oviedo (Avenida Buenavista) and Cádiz Police Stations were out of use due to an ongoing refurbishment at the time of the visit.

None of the cells seen by the delegation had access to natural light,<sup>11</sup> which is true even for the newly constructed police establishment in San Fernando. Moreover, it is a matter of concern to the CPT that in the context of the refurbishment of one of the police establishments in Oviedo (Avenida Buenavista), the opportunity to ensure access to natural light and fresh air in the refurbished cells has not been taken.

By letter of 9 January 2017, the Spanish authorities informed the CPT that Instruction 11/2015 of the State Secretary for Security,<sup>12</sup> which regulated the design and construction of detention areas, only required access to natural light and fresh air “in all areas and rooms for non-exclusive use by the individuals under custody in which this is feasible for security reasons [...]. As regards the police establishment in San Fernando, the authorities added that the detention area was located in the basement which made it impossible to ensure access to natural light. This arrangement, according to the authorities, ensured the most appropriate access to the building for individuals in police custody from the point of view of security, which was the priority.

The CPT notes the arguments advanced by the Spanish authorities. However, **the Committee reiterates its recommendation that all cells constructed or reconstructed in the future should enjoy access to natural light; this requirement should already be borne in mind at the design stage of any future premises of law enforcement agencies. The Committee believes that a satisfactory solution can be found to ensure access to natural light and adequate ventilation in custody cells of law enforcement agencies, while meeting security concerns.**

**Further, all premises, including custody cells in law enforcement establishments, should be properly ventilated and have adequate lighting.**

22. Moreover, none of the cells seen by the CPT’s delegation had a call bell and detained persons had to bang on the door or shout to attract the attention of police officers carrying out custodial duties (see also paragraph 28). By letter of 9 January 2017, the Spanish authorities informed the CPT that it was planned to equip all detention areas of law enforcement agencies with call bells, subject to available funds. **The Committee would like to be updated on the implementation of these plans.**

23. La Coruña and Madrid (Calle de Leganitos and Ronda de Toledo) Police Stations were equipped with custody cells which measured between 6 and 8m<sup>2</sup>.

However, at the time of the visit, four persons were held overnight in one of the custody cells at Madrid (Calle de Leganitos) Police Station (while several other custody cells were empty). Moreover, the cells at this police station were in a poor state of cleanliness. **The CPT recommends that custody cells at Madrid (Calle de Leganitos) Police Station measuring 8m<sup>2</sup>, and where applicable also at other law enforcement establishments in Spain, never be used for overnight accommodation of more than two persons and that all cells in this establishment be maintained in an appropriate state of cleanliness.**

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<sup>11</sup> It should be added that some of these cells are used for the detention of juveniles.

<sup>12</sup> *Instrucción 11/2015, de 1 de octubre, de la Secretaría de Estado de Seguridad, por la que se aprueba la “Instrucción técnica para el diseño y construcción de áreas de detención”.*

24. At Oviedo (Calle General Yagüe) Police Station, several smaller cells measured 4.8m<sup>2</sup>; other cells in this establishment measured between 6 and 9m<sup>2</sup>. In the CPT's view, cells measuring less than 5m<sup>2</sup> should not be used for overnight accommodation. In fact, the Committee considers that it would be desirable for single-occupancy police custody cells used as overnight accommodation to measure 7m<sup>2</sup>. **The CPT recommends that the cells measuring less than 5m<sup>2</sup> at Oviedo (Calle General Yagüe) Police Station not be used for overnight accommodation.**

25. The Blas Infante Police Station in Sevilla was equipped with 36 cells which measured at least six square metres; the delegation was informed that all the cells were used for single-occupancy.

However, the cell used for the detention of minors (12m<sup>2</sup>) offered appalling conditions of detention: it lacked access to natural light, had no artificial lighting in the cell<sup>13</sup> and emitted a foul stench as the floors, walls and ceiling were covered with remains of vomit, urine and faeces. The delegation found that a number of juveniles had been detained overnight in this cell in recent months. During the end-of-visit talks with the Spanish authorities, the CPT's delegation requested that this cell be taken out of service immediately.

By letter of 9 January 2017, the Spanish authorities informed the CPT that general cleaning and disinfection of cells was carried out twice a day. Thus, the situation observed by the Committee's delegation was remedied once the cleaning took place. As regards artificial lighting, the authorities state that a request to re-establish the usual artificial light intensity inside the cell was pending. **The CPT trusts that the cell in question has been thoroughly cleaned and is now kept in a good state of cleanliness and hygiene. Further, the Committee would like to receive confirmation that the cell is now adequately lit.**

26. In the majority of police stations visited, there was a waiting room (so called "pre-calabozo") which was used for the placement of persons who were brought in by police officers and who were waiting for questioning (or other investigative activities). Several persons met by the delegation who were or had recently been in police custody alleged that while being placed in such a waiting room, they were handcuffed to a chair or a bench. At Calle de Leganitos Police Station in Madrid, the delegation observed that parts of the metal bench in the waiting room were scratched which was apparently caused by metal handcuffs.

In the CPT's opinion, persons should not be handcuffed to fixed objects in police establishments, in particular in addition to their placement in an already secure environment.

**The CPT recommends that the Spanish authorities take effective measures to end the practice of persons held by the police being attached to fixed objects. Every police facility where persons may be deprived of their liberty should be equipped with one or more rooms designated for detention purposes and offering appropriate security arrangements.**

**In the event of a person in custody acting in a violent manner, the use of handcuffs may be justified. However, the person concerned should not be shackled to fixed objects but instead be kept under close supervision in a secure setting and, if necessary, medical assistance should be sought.**

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<sup>13</sup> Very dim artificial light entered the cell through bars from the corridor.

27. As was the case in the past, in none of the establishments visited were there facilities for outdoor exercise. **The CPT reiterates its recommendation that arrangements be made so that persons detained by law enforcement agencies for 24 hours or more can be offered outdoor exercise every day. This requirement should already be borne in mind at the design stage of law enforcement detention facilities.**

28. The majority of police custody cells seen by the delegation were not equipped with an in-cell toilet. While this arrangement in itself would not be a cause of major concern to the CPT, a few complaints were received during the visit that requests by detained persons to use out-of-cell sanitary facilities were met with delays by police officers carrying out custodial duties. **The CPT recommends that the Spanish authorities ensure that persons held in police custody have a ready access to toilet at all times.**

## 2. Incommunicado detention

29. The situation of persons in police custody/remand prison to whom the incommunicado detention regime is applied, including the safeguards offered to such persons, has been the subject of a dialogue between the CPT and the Spanish authorities ever since the Committee's first visit to Spain in 1991. In the past, the CPT repeatedly examined this issue in detail and formulated several recommendations with a view to strengthening the legal safeguards offered to such persons.<sup>14</sup>

30. It should be recalled that in the past, persons detained under the incommunicado regime did not have certain rights, in particular the right to have the fact and place of their detention notified to a person of their choice (or, for foreign nationals, to inform the Consular Representation of their country), to appoint a lawyer of their own choice, or to meet in private with the duty lawyer appointed to assist them, even after the formal statement to the law enforcement officials has been made. Nor did they have the right to meet with a doctor of their own choice. All these restrictions were automatically applied to any detained person upon whom the incommunicado regime had been imposed.

With the entry into force on 1 November 2015 of amendments introduced to the CCP by Organic Law 13/2015 (see also paragraph 7), the legal framework of the incommunicado detention regime (Articles 509, 510, 520 *bis* and 527 of the CCP) underwent major changes.

31. It remains the case that incommunicado detention is an exceptional measure which may be imposed by the investigative judge, at the request of the law enforcement agencies and by means of a reasoned decision. The incommunicado regime applies as soon as it is requested, and the judge must respond within 24 hours of the request.

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<sup>14</sup> It is noteworthy in this context that in the recent cases of *Etxebarria Caballero v. Spain*, no. 74016/12, 7 October 2014, *Ataùn Rojo v. Spain*, no. 3344/13, 7 October 2014, and *Arratibel Garciandia v. Spain*, no. 58488/13, 5 May 2015, the European Court of Human Rights found a violation of Article 3 of the European Convention on Human Rights (prohibition of inhuman or degrading treatment) in cases of persons held under the incommunicado detention regime, on account of the lack of an effective investigation into their allegations of ill-treatment (violation of the procedural limb of Article 3).

However, the grounds on which the incommunicado detention regime may be imposed have been limited to two: the urgent need to prevent serious consequences which may place the life, liberty or physical integrity of a person in danger, or the urgent need for immediate action by the investigative judge in order to prevent serious harm to criminal procedure.<sup>15</sup>

The incommunicado detention regime may only last for as long as strictly necessary but, as a general rule, no longer than five days. If the detained person is suspected of having committed a criminal offence referred to in Article 384 *bis* of the CCP (i.e. “membership or relationship with armed groups or terrorist or rebellious individuals”) or other criminal offences committed concertedly and in an organised manner by two or more persons, the regime may be extended by another five days.<sup>16</sup>

32. Unlike in the past, a decision to impose the incommunicado regime does not now automatically entail the application of the full range of possible restrictions on the detainees’ rights. Instead, the judge, by way of a reasoned decision, must determine which restrictions, among those provided for by law, will apply to a particular detainee, and define the extent of these restrictions (Article 527 of the CCP). Any restriction may only be imposed if justified by the circumstances of the particular case and to the extent necessary.

33. Regrettably, despite the amendments, the right of access to a lawyer remains virtually unchanged.

In the 2011 visit report, the CPT noted that persons held under the incommunicado detention regime did not have access to a lawyer of their own choice. Instead, an *ex officio* lawyer was appointed for any such detained person. However, the latter did not have the right to speak with the lawyer (even once the declaration to the law enforcement officials had been made) or consult with him/her in private prior to a hearing before the investigating judge. Moreover, the *ex officio* lawyer was required to remain silent when the detained person made his formal statement to the law enforcement officials. The CPT considered that there could be no reasonable justification for not allowing a person to speak with a duty lawyer in private, as from the outset of police custody and thereafter as required, including prior to the hearing by the investigating judge.

The amended Article 527 of the CCP still allows that the right of access to a lawyer of one’s own choice be restricted. Further, detained persons may still be prohibited from meeting their lawyer (whether their own or appointed *ex officio*) in private.

34. During the 2011 visit, the CPT observed a practice whereby persons under the incommunicado regime were visited by a forensic doctor, usually twice a day. This practice is now explicitly guaranteed by Article 527(3) of the CCP which requires that a person whose rights to communicate with any person have been restricted (see paragraph 32) must be medically examined at least twice every 24 hours.

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<sup>15</sup> The following four grounds had existed for incommunicado detention before the 2015 amendments: the risk that the detained person will (i) avoid the investigation, (ii) act against the interest of victims, (iii) hide, alter or destroy evidence or (iv) commit new crimes.

<sup>16</sup> Before the 2015 amendments, the incommunicado detention regime may have lasted up to 13 days, in police custody and in prison, depending on the nature of the offence.

35. Concerning the possibility to notify a third person of one's detention, the amended legislation retained the possibility to restrict the right of the detained person to communicate with any of the persons with whom he/she would otherwise have the right to communicate.<sup>17</sup>

36. In the previous visit reports, the CPT noted that the incommunicado detention regime could be imposed on minors (although this appeared to be rare in practice) and recommended that the relevant legislation be amended to prohibit this possibility.

Under the amended CCP (Article 509(4)), the possibility to impose an incommunicado regime on minors is now limited to persons who have reached the age of 16.

37. At the beginning of the 2016 visit, the Spanish authorities informed the CPT's delegation that no incommunicado detention regime had been ordered in 2015 and 2016.<sup>18</sup>

38. The CPT takes note of these legislative developments which limit the scope of application of the incommunicado detention regime and distinguish among the individual restrictions which may be imposed on detained persons. It is a positive development that the number of judicial decisions of incommunicado detention has decreased over the past few years and that no incommunicado detention regime was ordered in 2015 and 2016.

At the time of the 2016 visit, it was too early to fully assess the practical impact of these developments although they certainly go in the right direction in terms of circumscribing the harshness of the measure. However, the Committee wishes to stress that the incommunicado detention regime indeed continues to retain a potentially significant limitation of fundamental safeguards which should be offered to all detained persons; this in turn opens the door to ill-treatment and (possibly false) allegations thereof. The CPT understands the historical reasons for the introduction of the incommunicado detention regime in Spanish legislation. However, **the Committee considers that, as a matter of principle, the possibility to impose the incommunicado detention regime should be removed altogether from the Spanish legislation.**

In the meantime, **the CPT reiterates its recommendations that the application of the incommunicado regime to all persons under the age of 18 be prohibited.**

Further, **the Committee reiterates its position that all detained persons should be allowed to meet a lawyer in private, from the outset of their detention and thereafter as required.**

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<sup>17</sup> This restriction, however, does not concern communication with the judge, prosecutor or forensic doctor.

<sup>18</sup> Between 2011 and 2014, incommunicado detention was imposed on 12, 19, 9 and 11 persons, respectively.

## B. Prison establishments

### 1. Preliminary remarks

39. The considerable efforts invested by the Spanish authorities to tackle the phenomenon of prison overcrowding have yielded significant results. At the time of the CPT's 2016 visit, the prison population in the country (including Catalonia<sup>19</sup>) stood at 60,309 for an overall capacity of 75,965 (i.e. an occupancy level of 80 per cent).<sup>20</sup> This represents a significant improvement as compared to the situation observed in 2011 and 2007 when the occupancy level stood at 112 and 142 per cent respectively.<sup>21</sup> At the outset of the visit the CPT's delegation was informed by the Spanish authorities that the decrease in the prison population was related to the targeted efforts invested in the increase of non-custodial measures such as community sanctions and electronic surveillance as well as legislative reforms which have reduced the duration of sentences for a number of criminal offences.<sup>22</sup> Further, it is important to note that the decrease in the prison population concerned important categories of inmates such as remand prisoners and foreign nationals.<sup>23</sup>

**The CPT welcomes the successful measures taken by the Spanish authorities to substantially reduce the prison population and to put an end to prison overcrowding. The CPT encourages the authorities to remain vigilant in maintaining the prison population below the capacity of the prison estate.**

40. As regards relevant legislative developments, the 2015 amendments to the Criminal Code introduced life imprisonment subject to a review (*prisión permanente revisable*) for a number of serious crimes.<sup>24</sup> One of the catalysts for the introduction of this reform was the European Court of Human Rights (ECtHR) judgment *Del Rio Prada v. Spain* which found, inter alia, a violation of Article 5 of the Convention in relation to the so-called Parot doctrine.<sup>25</sup> The new sentence of life imprisonment subject to a review stipulates that the prison sentence be reviewed by a court every two years after 25 years of its execution. Further, persons sentenced to life imprisonment are eligible to be classified as third degree inmates (i.e. open regime) after having served 15 years of their sentence.

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<sup>19</sup> Since 1984 the Department of Justice of the Autonomous Regional Government of Catalonia (*Generalitat de Catalunya*) has been assigned the responsibility in the penitentiary field.

<sup>20</sup> 16 prison establishments out of 93 under the responsibility of the Ministry of the Interior were operating beyond their official capacity.

At the time of the CPT's 2011 visit, the prison population was 73,157 inmates for an official capacity of 65,077 places, and at the time of the 2007 visit, 66,405 inmates for an official capacity of 46,493 places.

<sup>22</sup> In particular, the 2009 amendments to the Criminal Code and Law on Road Safety which have reduced the sentences for charges related to drug trafficking.

<sup>23</sup> The proportion of remand prisoners decreased from 16 to 12 percent and that of foreign nationals from 32 to 29 percent between 2012 and 2016.

<sup>24</sup> Such as genocide, regicide, murder of vulnerable persons, multiple murders, organised crime related murders.

<sup>25</sup> The 'Parot doctrine' was first adopted by Spain's Supreme Court in 2006 to restrict ETA prisoners' entitlement to early release and other benefits. It ensures that remission of sentence is deducted from the total sentence rather than the 30-year limit under Spanish law. The total sentence in the case of Mr Parot amounts to 4,797 years of imprisonment. In the *Del Rio Prada v. Spain* case the ECtHR found, inter alia, that Ms Del Rio Prada had served a longer term of imprisonment than she should have served under the Spanish legal system in operation at the time of her conviction, taking into account the remissions of sentence she had already been granted in conformity with the law.

41. In the course of the visit, the CPT's delegation visited León, Puerto I, Puerto III, Sevilla II, Teixeiro and Villabona Prisons. It also carried out targeted visits to Madrid V (Soto de Real) and Puerto II Prisons in order to interview newly arrived prisoners and to examine the use of means of restraint. The CPT's delegation did not visit any prison establishments under the responsibility of the Department of Justice of the Autonomous Regional Government of Catalonia (*Generalitat de Catalunya*).

42. León, Puerto III, Sevilla II and Teixeiro Prisons follow the architectural design of the majority of recently constructed prison establishments in Spain. They are rectangular in shape including 14 two-storey modules each containing 72 cells and an outdoor yard, a separate isolation Module (i.e. closed regime Module or special department<sup>26</sup> see paragraph 58) and a socio-cultural centre (see paragraph 54) at the centre of the establishment.

**León Prison**, located around 25 kilometres south-east of the city of León, started operating on a full scale in 2002. The establishment had a capacity of 1,782 places and accommodated 1,069 inmates of whom 991 were sentenced, 75 on remand and three forensic psychiatric patients; 86 of the prisoners were women. The establishment consists of 15 modules within the walled perimeter and a Centre for Social Reintegration (*Centro de Inserción Social - CIS*) which was located outside the walled perimeter. The 15 modules were classified as follows: seven respect modules (i.e. *modulos de respeto* see paragraph 57), four ordinary detention modules, one closed-regime module, one special department and two modules being temporarily closed pending their refurbishment.

**Puerto I Prison**, near Puerto Santa María, constitutes together with the adjacent Puerto II and Puerto III Prisons the biggest prison complex in Spain. The prison establishment, inaugurated in 1981, consisted of a semi-panopticon structure which inter-connected four separate two-storey modules each possessing a dedicated courtyard. A fifth isolation module was located on the top of the central observation structure. The establishment accommodated 205 male prisoners classified as first degree (i.e. closed regime) for a capacity of 270 places. Puerto I is the only prison establishment in Spain accommodating exclusively first degree prisoners.

**Puerto III Prison**, part of the above-mentioned Puerto de Santa María prison complex, accommodated 1,304 prisoners (of whom 117 were females and two forensic psychiatric patients) for a capacity of 1,650 places. The establishment consisted of eight ordinary detention modules, three respect modules, one therapeutic and educational unit (UTE) for the rehabilitation of inmates suffering from drug addiction, one module for the treatment of inmates with a mental disorder in prison (PAIEM<sup>27</sup>), two female modules and one special department. The establishment also accommodated 90 remand prisoners.<sup>28</sup>

**Sevilla II Prison**, located 70 kilometres east of Sevilla in the Municipality of Morón de la Frontera, was inaugurated in 2011. The establishment accommodated 1,119 male prisoners of whom 117 were on remand and four forensic psychiatric patients for a capacity of 1,650 places. It included eight ordinary modules, four respect modules, one UTE, one PAIEM Module and one special department.

<sup>26</sup> Pursuant to Article 10 of the Organic Penitentiary Law and Article 90 of the Prison Regulation, the closed detention regime is to be executed in closed-regime modules (i.e. inmates un-adapted to ordinary regime) or special departments (i.e. extremely dangerous prisoners) within prison establishments in separation with the prison population.

<sup>27</sup> PAIEM is an acronym for *Programa de Atención Integral a Enfermos Mentales en Centros Penitenciarios*.

<sup>28</sup> These are prisoners who could not be accommodated at Puerto II Prison for reasons of security or incompatibility.

**Teixeiro Prison**, located around 60 kilometres south-east of the city of La Coruña Galicia, was inaugurated in 1998. The establishment, with an official capacity of 1,650 places, accommodated 1,228 inmates of whom 144 were on remand detention and two forensic psychiatric patients; 85 of the prisoners were women. Teixeiro Prison included six ordinary modules, seven respect modules, one UTE, one PAIEM Module, one closed-regime Module and one special department.

**Villabona Prison**, located around 20 kilometres north of Oviedo Asturias, was inaugurated in 1993. The establishment, with an official capacity of 1,811 places, accommodated 1,190 prisoners including 92 prisoners on remand detention, 92 female prisoners and two forensic psychiatric patients. The establishment is characterised by its two UTE Modules which are the largest in Spain. It also included three ordinary regime modules, three *modulos de respeto*, one closed-regime Module and a Centre for Social Reintegration (CIS) located outside the perimeter of the prison.

## 2. Ill-treatment

43. The majority of prisoners interviewed by the delegation in the course of the 2016 periodic visit did not allege any ill-treatment by staff. Allegations of ill-treatment of prisoners by staff were rare in the so-called “respect modules”.

However, the delegation received a significant number of allegations of recent physical ill-treatment by prison officers in the other modules, notably in the closed-regime modules and special departments at all the establishments visited. The alleged ill-treatment consisted of slaps, punches, kicks and blows with batons. In most cases, the alleged ill-treatment was applied as an informal punishment following instances of disobedient behaviour by prisoners or cases of inter-prisoner violence or self-harm. Some of the allegations were supported by injuries observed by the delegation or noted down in medical records. It is a matter of particular concern for the CPT that some of the beatings allegedly took place while the prisoner in question was fixated to a bed both in a medical and non-medical context. Further, allegations of verbal abuse consisting of insults of a racial and religious nature were also frequent at all visited establishments and were raised in particular by foreign as well as Roma (i.e. Gitanos) inmates.

44. The following represent a sample of the credible allegations of ill-treatment of inmates by prison officers received by the CPT's delegation in each of the establishments visited:

- i) an inmate from León Prison alleged that on 3 August 2016 following an incident of a disciplinary nature he was punched repeatedly by a group of four prison officers and after falling to the floor was also kicked and subjected to rubber baton blows. When examined by the prison doctor after the incident, a fracture of the VII and VIII ribs was diagnosed and an entry included in his medical file without a mention of the origin of the injury;

- ii) an inmate from Puerto I Prison alleged that on 23 September 2016, after refusing to obey an order, he was extracted from his cell in Module 1 by a group of prison officers, handcuffed and brought to the isolation Module 5 in order to be subjected to a measure of mechanical fixation to a bed. The inmate in question alleged that he was kicked, punched and received rubber baton blows to various parts of his body on the stairs leading to Module 5. Once brought to the cell equipped for mechanical fixation, a prison officer used his knee to apply pressure to the inmate's chest in order to enable the fixation straps to be applied. He was fixated for 24 hours non-stop and was not untied to go to the toilet as a result of which he urinated in his clothes several times. At the time of the CPT's visit (i.e. 2 October 2016), the inmate still displayed hematomas on his wrists, excoriation on his knees and complained about pain in his jaw;
- iii) an inmate from Puerto III Prison, who suffered from a mild form of mental disability, alleged that on 31 August 2016, following an episode of self-harming with an improvised knife, a group of prison officers extracted him from his cell in Module 6 delivering several baton blows to his hands and back in order to apply handcuffs. Further, on the way to Module 15, he allegedly received several baton blows to various parts of his body. Subsequently, he was fixated face down and his shoes were removed. While being mechanically fixated, he was hit several times with a truncheon on his back and on the soles of his feet by prison officers. During the eight-hour period of mechanical fixation, a nurse brought him his prescribed therapy which he had to swallow directly from a plate. When examined by the prison doctor after the cessation of the measure, the inmate requested that the visible injuries be recorded in a relevant report which the doctor refused to do, referring to the seriousness of his behaviour and the justified reaction of the prison officers;
- iv) an inmate met by the delegation at Puerto III Prison alleged that on 10 May 2016 during his detention in the isolation Module 13 of Sevilla II Prison, he complained verbally to prison officers about his classification by the treatment board (*junta de tratamiento*). As he resisted being handcuffed, a group of prison officers started hitting him with batons on his wrists in order to obtain compliance with the handcuffing. He was subsequently fixated face down and allegedly left naked for a period of 23 hours. In the course of the fixation, three guards came into the cell and subjected him to baton blows on his back and on the soles of his feet. The doctor who examined him one hour after the cessation of the measure recorded the following entry in his medical file: "in the context of mechanical fixation after being involved in a fight with another prisoner the inmate displays the following injuries: contusion of the wrist, six linear hematomas on the right dorsal zone, three linear hematomas of the left dorsal zone, multiple hematomas with excoriation in the medium dorsal region, spread pigmentation of the dorsal region";
- v) an inmate from Teixeiro Prison alleged that on 9 August 2016, following a verbal altercation with prison officers in the course of a search of his cell, the search group of prison officers left the cell and went into the yard from where they sprayed his cell with pepper spray. Subsequently, they took him to an empty cell where they punched him and delivered baton blows all over his body. He was then fixated for around 36 hours face down and naked without being given access to a toilet for the entire period of the measure. Obviously, he soiled himself. Further, he received no food during the period of mechanical fixation;

- vi) an inmate from Villabona Prison alleged that on 14 September 2016, following an altercation he had with another inmate in the courtyard of the closed regime department, a group of four prison officers intervened holding him around the neck and delivering punches and baton blows to various parts of his body for several minutes. At the time of the CPT's visit (i.e. 30 September 2016) the inmate still displayed a blue hematoma on the left side of his dorsal region.

45. The CPT's delegation also received a number of credible allegations of physical ill-treatment of inmates by prison staff, some of which were supported by medical documentation consistent with the allegations made, concerning prison establishments which it had not visited. For example, an inmate met by the delegation at Puerto III Prison alleged that on 14 January 2016 during his detention at Huelva Prison after having complained verbally to a social worker that some cleaning activities he had performed in the common areas of his module had not been taken into account in the process of his periodic evaluation, a group of five prison officers intervened, twisted his arms and started hitting him with rubber batons on his wrists, shoulders, knees and thighs. Further, while he was lying on the floor the prison officers, after pulling down his trousers allegedly stepped several times on his genitals and tried to insert a rubber baton into his anus. Subsequently, a prison officer, known by inmates as a martial arts instructor, came to the cell of the special department (i.e. Module 15) where he had been temporarily isolated and twisted his arms around the inmate's neck leaving him with a sensation of being asphyxiated. The inmate alleged that he had requested to be examined by the prison doctor in order to draw an injury report on the very same day but reportedly her reply was that she "*would not do anything that would create problems to her colleagues*". The inmate's complaint to the supervisory judge about the ill-treatment he had been subjected to and the lack of medical assistance and adequate recording of the injuries was dismissed. In his reasoning, the judge stated that based on the report he had received from Huelva Prison adequate medical care had been provided to the inmate in the form of anti-inflammatory therapy and that a more thorough examination by the doctor was not possible due to his aggressive behaviour.

46. **The CPT has serious concerns about the gravity of its findings which suggest that a pattern exists of physical ill-treatment inflicted by prison officers as a disproportionate and punitive reaction to the recalcitrant behaviour of inmates. This can raise an issue under Article 3 of the European Convention on Human Rights.**

**The CPT recommends that the Spanish authorities reiterate to custodial staff the clear message that physical ill-treatment, excessive use of force and verbal abuse of inmates are not acceptable and will be dealt with accordingly. The management in each prison should demonstrate increased vigilance in this area, by ensuring the regular presence of prison managers in the detention areas, their direct contact with prisoners, the investigation of complaints made by prisoners, and improved prison staff training.**

**In particular, the CPT recommends that appropriate measures be taken to upgrade the skills of prison staff in handling high-risk situations without using unnecessary force, in particular by providing training in ways of averting crises and defusing tension and in the use of safe methods of control and restraint. Further, prison staff should be placed under closer supervision by the management and receive special training in control and restraint techniques of inmates with suicidal and/or self-harming tendencies.**

47. In the CPT's view, the contribution that prison health-care services can make to the prevention of ill-treatment of prisoners, through the systematic recording of injuries and, when appropriate, the reporting of information to the relevant judicial authorities, cannot be overemphasised. In particular, in the Spanish context, the system of recording and reporting of injuries on inmates observed at admission or during their detention is regulated *inter alia* by Instruction 14/1999 of the Secretary General of Penitentiary Institutions (SGIP) which provides that injury reports (*parte de lesiones*) be drawn up in four copies to be forwarded to the director, judge (*Juzgado de Guardia*), the inmate in question and his/her personal medical file. Further, the provisions of Article 262 of the CCP oblige a doctor to report to the competent judicial authority information on a criminal offence that would come to their knowledge in the exercise of their profession.<sup>29</sup>

However, the findings of the CPT's delegation clearly illustrate the lack of recording and reporting of injuries at all establishments visited. Prison doctors demonstrated in general a reluctant attitude towards the recording and reporting of episodes of alleged ill-treatment. For example, one prison doctor told the delegation that there was little use in filling in injury reports in relation to episodes concerning alleged physical ill-treatment of inmates as the prison officers concerned would file counterclaims.

Even in the event that a prison doctor would compile an injury report, the document would rarely mention the possible origin of the injury and its compatibility with the inmates' allegations. For example, at León and Sevilla II Prisons, the CPT delegation's doctor had the possibility to examine several injury reports of inmates describing injuries which were potentially consistent with physical ill-treatment (such as parallel linear hematomas on the back and hematomas of the gluteal region) with no reference to their origin or to the concrete allegations of the inmate in question.<sup>30</sup>

The poor recording of injuries was highlighted in the 2014 NPM thematic report entitled "Injury Reports of People Deprived of their Liberty",<sup>31</sup> which included specific recommendations to the SGIP to task all relevant prison health-care services to ensure that injury reports are filled in whenever there is a case of alleged ill-treatment. Further, the report stressed that certain minimum standards should be complied with, such as the compatibility of findings with the alleged events, the confidentiality of medical examinations of victims and the duty of the doctor to report their findings and assessment to the relevant judicial authorities directly in a sealed envelope.

**The CPT recalls that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons, through the systematic recording of injuries and, when appropriate, the provision of information to the relevant authorities. The CPT recommends once again that the Spanish authorities ensure that all prison health care personnel are aware of their obligation to record and report allegations of ill-treatment they receive. Further, the Committee reiterates that the record drawn up after the medical screening should contain:**

- i) **an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment),**

<sup>29</sup> The failure to comply with the obligation to report might be sanctioned with a prison sentence of six months to two years of detention in accordance with Article 408 of the Criminal Code.

<sup>30</sup> It is to be recalled that the injury report form (*parte de lesiones*) introduced by the Instruction 14/1999 of the SGIP specifically provides space for the description of the inmate's allegations.

<sup>31</sup> See the report "Study of the Injury Reports on People Deprived of their Liberty", *Defensor del Pueblo* 2014. The report also includes photographic evidence of scant and incomplete injury reports observed during its monitoring of prison establishments.

- ii) a full account of objective medical findings based on a thorough examination, and
- iii) the health-care professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.

The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

Further, the Committee recommends that procedures be in place to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent judicial authorities, regardless of the wishes of the person concerned. The results of the examination should also be made available to the prisoner concerned and his or her lawyer. Health-care professionals (and the inmates concerned) should not be exposed to any form of undue pressure or reprisals from management staff when they fulfil that duty.

48. As regards the criminal investigation of allegations of ill-treatment by prison officers, the CPT's delegation received information from the SGIP on the statistics concerning the judicial proceedings initiated against prison staff in relation to cases of alleged ill-treatment at the national level for the years 2014, 2015 and for the first nine months of 2016. These amounted to 37 judicial investigations (of which 29 had been dismissed and eight were pending), none of which has so far resulted in the indictment of a member of the custodial staff.

The CPT is particularly concerned to note that, given the widespread incidence and frequency of physical ill-treatment in Spanish prisons, not a single criminal case reached the final stage of investigative proceedings between 2014 and 2016. However, this does not come as a complete surprise since a number of different elements contribute to this phenomenon of impunity, such as the absence or poor quality of medical records, the lack of adequate reporting of suspected cases of physical ill-treatment, the transfer of inmates to a different prison establishment following a serious incident, the filing of counterclaims by custodial staff and the inmates' lack of trust in the effectiveness and impartiality of the complaints system. **The CPT would like to receive the comments of the Spanish authorities on this issue.**

49. A total of 219 disciplinary inspections carried out by the Sub-Directorate of Penitentiary Inspections of the SGIP concerning episodes of alleged ill-treatment for the years 2014, 2015 and for the first nine months of 2016 resulted in seven disciplinary proceedings against prison staff. The CPT's delegation had the possibility to analyse some of the reports of the inspections carried out by SGIP's Sub-Directorate of Penitentiary Inspections to Puerto III Prison which had resulted in the temporary suspension of three prison officers. The inspections in question had been initiated by the prison management of Puerto III Prison following complaints by inmates to the judicial authorities and in one case to media outlets.

That said, at Puerto I and Teixeiro Prisons, the CPT's delegation had been informed by the respective directors that no inspections had been carried out by the relevant Sub-Directorate of the SGIP to the establishments and no administrative and judicial investigations were pending in regard to prison staff for alleged ill-treatment. In contrast to these affirmations, the information provided to the CPT's delegation by the SGIP indicated that since 2014 at least 11 inspection visits had been carried out in these two establishments (seven at Puerto I and four at Teixeiro Prisons). **The CPT would like to receive the comments of the Spanish authorities on the above-mentioned contradictory information provided to its delegation at Puerto I and Teixeiro Prisons.**

50. Episodes of inter-prisoner violence were recurrent at some of the establishments visited in particular at the ordinary regime modules of Puerto III (Modules 1 and 2), Sevilla II (Modules 1 and 5), Puerto I (Module 1), León (Module 15) and Teixeiro Prisons (Modules 2, 5 and 10). In general, it appeared that prison staff intervened relatively promptly when such incidents occurred.

The CPT wishes to emphasise that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The prison authorities must act in a proactive manner to prevent violence by inmates against other inmates.

Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Both initial and on-going training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

**The CPT recommends that an effective strategy to tackle inter-prisoner violence be put in place in the prison establishments visited, taking into account the above remarks.**

### **3. Conditions of detention in ordinary regime**

#### **a. introduction**

51. The Spanish legislation (Articles 74, 100 to 109 of the 1996 Prison Regulation) provides for three categories of regime: closed (corresponding to a first degree classification see paragraph 58), ordinary (second degree) and open (third degree). In practice, the vast majority of prisoners entering the prison system are usually categorised as second degree inmates and placed in an ordinary regime module. The classification process of an inmate is based upon a proposal by the prison treatment board (*Junta de Tratamiento*) and endorsed by the SGIP. The classification is reviewed every six months<sup>32</sup> and the relevant decisions can be appealed before the supervisory judge.

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<sup>32</sup> In respect of inmates classified under first degree the review takes place every three months (see also paragraph 59).

Progression to third degree usually resulted in an inmate being placed in an open regime unit such as a Centre for Social Reintegration (CIS).<sup>33</sup>

However, Article 100, paragraph 2, of the Prison Regulation provides for the possibility of adopting elements of different regimes to specific inmates, with the approval of a supervisory judge.<sup>34</sup>

b. material conditions

52. The ordinary detention regime modules at León, Puerto III, Sevilla II and Teixeiro Prisons shared the same architectural design, each containing 72 cells, and were in general suitably equipped and in an acceptable state of repair and good hygienic conditions (in particular the *modulos de respeto*). All modules possessed a yard for outdoor activities, a medical room, a classroom, a shop, a canteen, communal toilets and workshops. That said, in some modules of Puerto III (Modules 1 and 2) and Sevilla II Prisons (Module 1 and 5) the communal toilets and workshops were showing signs of wear and tear and were certainly in need of refurbishment. Further, the communal areas of the modules of all prisons visited lacked individual lockable cupboards in which inmates could store their belongings (i.e. books, documents, etc.) during the 11-hour compulsory out-of-cell time when the cells are locked.<sup>35</sup>

The standard cell at all the visited prison establishments, designed for single occupancy, measured some 10m<sup>2</sup> and possessed a bunk-bed, shelving unit, table and chair, intercom system and a sanitary annexe including a toilet, shower and washbasin which was separated from the rest of the cell. Access to natural light and ventilation were satisfactory.

On the whole, the cells at all the prison establishments visited provided good conditions when used as single-occupancy accommodation but in order to be suitable for double-occupancy the sanitary annexe should be fully partitioned.

**The CPT recommends that the cells for ordinary regime detention at León, Puerto III, Sevilla II and Teixeiro Prisons only be used for single occupancy as long as the sanitary annexe has not been fully partitioned. Further, personal locking space should be provided to inmates in communal areas in order to store their belongings during the day. Finally the communal toilets and workshops at Modules 1 and 2 of Puerto III Prison and Module 1 and 5 of Sevilla II Prisons should be refurbished.**

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<sup>33</sup> According to Article 81 of the Prison Regulation, the open regime is characterised by the absence of rigid security controls such as marching in formation, personal searches, control of correspondence etc.

<sup>34</sup> In such a case the treatment board (*junta de tratamiento*) must justify the specific circumstances of the inmate's situation as well as the modalities for the implementation of the individual treatment plan of the inmate in question.

<sup>35</sup> See in particular paragraph 53.

c. regime

53. As mentioned above, the vast majority of prisoners were classified as second degree and followed an ordinary regime. These prisoners spent most of the day (i.e. from 8 a.m. to 2.30 p.m. and from 4.30 p.m. to 9.00 p.m.) outside their cells, either in the common areas of their respective modules or engaged in an organised activity. During the day, the cells are locked and prisoners are not allowed access to them.

54. The architectural layout of the prison establishments visited provides a socio-cultural centre at the heart of the establishment. This consists of a two-storey building including a theatre, a library, various classrooms, a sports centre (consisting of a gym and multi-function indoor arena) and at Puerto III and Sevilla II Prisons also a swimming pool. The socio-cultural centre is attended by inmates from all modules on a daily basis. In particular, the range of activities on offer at the six prison establishments visited was as follows:

- at León Prison 156 inmates were offered a remunerated activity (general maintenance services, library and metal, plastic, carpet and bag production workshops). Further, a wide range of vocational courses were on offer to inmates on a permanent basis both within and outside the establishment (fork lift driving, professional cleaning of large surfaces, food packaging, gardening and furniture production). A total of 178 inmates were attending educational courses (i.e. primary and secondary education, English and Spanish language courses and distance university courses offered by the National Distance Education University (UNED);<sup>36</sup>
- at Puerto III Prison, 234 inmates were offered a remunerated activity (general maintenance services, library, industrial packaging, production of mattresses and bakery) and 925 were regularly taking part in a sports activity (physical fitness, aerobic dancing, football, volleyball and basketball). Further the socio-cultural centre offered a wide range of educational and recreational activities (such as English and Spanish language courses, UNED distance university courses, origami, painting, computer technology, reading, radio and journalism workshops);
- at Sevilla II Prison, 206 were being offered remunerated work (maintenance services, kitchen, food distribution, gardening, laundry and infirmary) and 107 were involved in various workshops. Further, 143 inmates were attending vocational courses for mechanics, woodwork and recycling techniques. At the socio-cultural centre a wide range of educational and recreational activities (such as English and Spanish language courses, UNED distance university courses, origami, painting, computer technology, reading) were also offered as well as various sport activities (physical exercise, football and basketball);

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<sup>36</sup> The UNED was offering courses on a wide range of subjects in all visited establishments based on a protocol of co-operation it had signed with the Ministry of Education, Culture and Sports, the Ministry of the Interior and the SGIP. Tutors and teachers from the UNED were in general offering courses and support courses on a weekly basis.

- at Teixeiro Prison some 250 inmates were offered a remunerated activity (maintenance services, kitchen, food distribution, gardening, laundry and infirmary) and some 120 were attending the vocational courses on offer (gardening, computer technology, production of blankets, cleaning of large surfaces and fork lift driving). Further, 205 inmates were actively participating in the educational courses on offer (Spanish, Galician, English language courses, as well as primary, secondary and UNED distance university courses). Finally, several production workshops were also offered at the level of the different modules (such as sewing, carpentry, leather manufacturing, woodwork);
- at Villabona Prison, 421 inmates had remunerated work (laundry, infirmary, library, gardening, food distribution, cleaning and cookery). Further, a total of 536 inmates were taking part in occupational (handicrafts, greenhouse planting, leatherwork), recreational (drama, reading, choir), educational (Spanish and English courses, primary and secondary education) and sports activities (physical exercise, football and basketball) at the socio-cultural centre.

The CPT's delegation was impressed by the range of organised activities offered to prisoners at the socio-cultural centres of the establishments visited.

55. The situation as regards inmates from modules accommodating "conflict-prone" prisoners<sup>37</sup> was, however, found once again to be problematic. Inmates at León (Modules 2 and 14) Puerto III (Modules 1 and 2), Sevilla I (Modules 1, 2 and 5), Teixeiro (Modules 2,3 and 4) and Villabona Prisons (Module 7) complained to the delegation that they were not offered any purposeful activities; some alleged that their applications to attend educational courses had been denied. The CPT's delegation gained the impression that the prison management of Puerto III and Sevilla II Prisons were in fact resorting to an informal and parallel classification system by applying different regimes to a prison population sharing the same classification (i.e. second degree). This is in contradiction with the spirit of Article 76, paragraph 2, of the Prison Regulation which stipulates that inmates in ordinary regime must be separated only in relation to the necessity of their treatment and the general conditions of the prison.<sup>38</sup> In addition, such an informal classification deprives those inmates of the possibility to legally challenge the placements in so-called "conflict-prone" modules.

**The CPT recommends once again that the Spanish authorities take action to ensure that the so-called "conflict-prone" prisoners at León, Puerto III, Sevilla II, Teixeiro and Villabona Prisons are offered a full range of activities commensurate with their second degree classification.**

56. Further, it is regrettable that the swimming pools of Puerto III and Sevilla II Prisons, although adequately maintained by remunerated inmates, were not in use, apparently due to an internal instruction of the SGIP. **The CPT would appreciate the comments of the Spanish authorities on this matter.**

<sup>37</sup> This was the expression used by staff at both prison establishments in order to identify the modules in question although the prisoners accommodated therein were all classified as second degree (i.e. ordinary regime).

<sup>38</sup> The individual treatment plans of inmates placed in the so-called "conflict-prone" modules consulted by the delegation did not make reference to the necessity of their separation from inmates subject to ordinary regime.

d. respect modules (*modulos de respeto*)

57. The CPT's delegation visited a number of respect modules in the course of its 2016 periodic visit. The respect modules were introduced in 2006 as separate units within a prison to which inmates are freely admitted as long as they commit to abide by a set of rules (in the sphere of personal hygiene, hygiene of the cell, good inter-personal relations with staff and inmates as well as participation in daily and weekly activities) in exchange for a degree of self-management with less staff supervision and the possibility of gaining easier access to permits and benefits. The respect modules are organised in thematic groups (on admission, conflict resolution and legal assistance) and inmates are evaluated periodically by staff in relation to their behaviour through a points system.

The CPT's delegation gained a generally positive impression of the respect modules it visited: cells and communal spaces were in a good state of repair and hygiene, and facilities were well decorated and personalised. The regime was visibly less tense than in the ordinary modules. The majority of inmates were positive in stressing the advantages of being accommodated in a less carceral environment. That said, some of the inmates interviewed by the delegation stated that they felt uncomfortable with the fact that they had to give up their right to individualised treatment and that the potential for conflicts between inmates on trivial issues was high. Further, at Puerto III Prison, the CPT's delegation was surprised to observe that inmates did not have the right to speak to each other during their meal times in the canteen, were forced to walk in one direction around the perimeter of the yard and were not allowed to wear sleeveless shirts in the summer or to hang their clothes in front of the windows of their cells. Such restrictions appeared to be petty and undermined the ethos of the respect modules. **The CPT recommends that the Spanish authorities review the necessity for such restrictions.**

#### 4. Closed Regime

58. In the course of the 2016 visit, the CPT examined once again the situation of those sentenced and remand<sup>39</sup> prisoners who are classified as first degree upon their admission to prison or during their imprisonment based upon their criminological profile or inadaptability to an ordinary prison regime.<sup>40</sup> First-degree prisoners are placed under a closed regime (*regimen cerrado*) in closed-regime modules or special departments of ordinary prisons<sup>41</sup> or in special penitentiary establishments of a closed regime such as Puerto I Prison.

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<sup>39</sup> Remand prisoners may be placed under a closed regime on the basis of the specific nature of the crime with which they are charged, notably for belonging to an armed organisation pursuant to Article 10 of the Organic Law.

<sup>40</sup> According to the SGIP around two percent of inmates of the total prison population in Spain are classified as first degree.

<sup>41</sup> Closed-regime modules generally accommodate inmates classified under Article 91, paragraph 2, of the Prison Regulation in light of their inadaptability to an ordinary regime. Special departments usually accommodate inmates considered as extremely dangerous and classified under Article 91, paragraph 3 of the Prison Regulation. Further, closed-regime modules may also accommodate prisoners subjected to a disciplinary sanction (Articles 243 and 254 of the Prison Rules), to temporary isolation (Article 72.1), to a measure of security and good order due to the personal attitude of the prisoner (Article 75.1) or to a measure of protection from other prisoners or from self-harm (Article 75.2).

The decision to classify an inmate or remand prisoner as first degree is taken by the SGIP upon the proposal of the treatment board (*junta de tratamiento*) and is subject to a quarterly review. The decision on classification can be appealed to a supervisory judge. Further, there is no limit to the duration of the first degree classification although Instruction 9/2007 of the SGIP stresses the characteristics of exceptionality, temporary nature and subsidiarity of the closed regime.<sup>42</sup> In light of their profile, first-degree inmates are further sub-categorised according to Article 91, paragraph 2, (i.e. in light of their inadaptability to ordinary regime) or paragraph 3 (i.e. for having caused serious disturbances of the regime such as physical aggression against staff or other prisoners) of the Prison Regulation.<sup>43</sup>

59. In terms of review and assessment of the first degree classification decision, the amendments to the Prison Regulation (Royal Decree 419/2011 of 25 March 2011) and the related Instruction 17/2011 of the SGIP established multidisciplinary technical teams<sup>44</sup> which should review the progress, if any, of inmates placed under closed regime based on an individualised approach. The technical team should provide three-monthly assessments to the treatment board which is responsible for reviewing a prisoner's classification.

60. The CPT's delegation had the opportunity to assess the conditions of detention of first degree inmates accommodated at the closed regime modules and special departments of León, Puerto III, Sevilla II, Teixeiro and Villabona Prisons. Further, it also visited Puerto I Prison which is the only prison establishment in Spain which exclusively accommodates male inmates classified as first degree.

The closed regime modules and special departments of León, Puerto III, Sevilla II, Teixeiro Prisons, shared the same design and consisted of five wings of 14 cells and two cells for the purpose of mechanical fixation of inmates. The closed regime module of Villabona Prison consisted of a two-storey building. At the time of the visit these modules accommodated 59 inmates at León Prison, 48 at Puerto III Prison, 51 at Teixeiro Prison<sup>45</sup>, 42 at Sevilla II Prison and 22 at Villabona Prison. Each cell measured some 10m<sup>2</sup>, was suitably equipped with a metal bed, built-in concrete table and shelving unit, one chair and a semi-partitioned sanitary annexe (including a metal washbasin, toilet and shower); access to natural light was adequate and ventilation satisfactory. Each gallery also possessed a common room equipped with tables and chairs, and magazines, books and board games were at the disposal of inmates. Further, each module also included a small gym (equipped with exercise equipment such as abdominal bars and exercise bikes), a classroom and several consultation rooms. The five exercise yards of various sizes each linked to the gallery were equipped with benches and toilets and were surrounded by a five-meter high concrete wall and covered with a metal grille. All yards offered a bleak environment due to the lack of visual stimuli in terms of colour, decoration and vegetation, as well as a total absence of any horizontal view beyond the 10-meter length of the yards.

<sup>42</sup> See in particular Instruction 9/2007 of the SGIP.

<sup>43</sup> Article 91, paragraphs 2 and 3 of the Prison Regulation read as follows: "2. Inmates classified under first degree who show a manifest incompatibility with the ordinary regime will be accommodated in closed regime centres or modules; 3. Inmates classified as first degree who have been protagonists or inducers of serious perturbations of the prison regime which have put in danger the life or integrity of prison staff, authorities, other persons or inmates, both inside and outside the prison establishment and who show an extreme dangerousness will be assigned to a special department."

<sup>44</sup> The team should be composed by one member of the security staff, psychologist, jurist, educator, social worker, teacher, nurse, sports monitor and occupational monitor.

<sup>45</sup> 16 inmates classified under Article 91, paragraph 3 of the Prison Regulation were accommodated in Module 15 (special department) while 35 inmates classified under Article 91, paragraph 2 were accommodated in Module 13 (closed regime) of the same prison.

**The CPT recommends that the metal grilles covering the courtyards of Modules 15 and 11 of León Prison, Module 15 of Puerto III Prison, Module 13 of Sevilla II Prison and Modules 13 and 15 of Teixeiro Prison be removed, and that these courtyards be rendered more pleasant and welcoming.**

61. The conditions of detention at Puerto I Prisons, accommodating 205 inmates in four different modules (Modules 1-4) and an isolation department (Module 5) were adequate in terms of state of repair and level of hygiene. Individual cells measured 8m<sup>2</sup>, including a semi-partitioned sanitary annexe (including a toilet and washbasin) and were equipped with a bed fixed to the floor and built-in shelf, table and chair. However, the dedicated courtyard of the isolation Module 5 measuring some 150 m<sup>2</sup>, placed on the roof of the central building, did not offer any horizontal view, did not possess any means of rest and was covered by a thick metal grille. **The CPT recommends that the metal grille covering the courtyard of Module 5 of Puerto I Prison be removed and that the courtyard be equipped with a means of rest such as benches.**

62. The regime on offer to inmates placed in special departments of all the establishments visited is regulated by Articles 93 and 94 of the Prison Regulation and consists of three to four hours of outdoor exercise in one of the yards in groups of two to four inmates depending on the classification of the inmate. Further, inmates placed in closed-regime/special departments may enjoy up to three additional hours out-of-cell on a daily basis for a set of arranged activities established by the treatment board. With the exception of Villabona Prison, where inmates who had subscribed to a treatment programme were engaged in purposeful activities (such as pet-therapy sessions and courses on the acquisition of a healthy lifestyle), in the rest of the establishments visited i.e. León, Puerto III, Teixeiro and Sevilla II Prisons, inmates spent their daily three-hour entitlement to communal life in separate rooms in which they could read newspapers, play board games and compose puzzles.

Further, in Modules 11 and 15 of León, Module 15 of Puerto III, Module 13 of Sevilla II and Modules 13 and 15 of Teixeiro Prisons, apart from access to a gym once a week, no regular organised activities were offered to inmates and little support was provided to assist them to re-integrate into an ordinary regime module. Indeed, the impact of the multi-disciplinary technical teams envisaged by Instruction 12/2011 of the SGIP<sup>46</sup> as a tool to progressively integrate first-degree inmates back into the ordinary regime (see paragraph 53), was hardly visible in any of the prisons visited in 2016. For example, several inmates complained to the delegation that they only had rare contacts with the staff of the technical team (i.e. educator, social worker and psychologist) and the sporadic meetings usually took place behind bars. Further, the individual treatment plans of inmates accommodated in Module 15 of Puerto III and Module 13 of Sevilla II Prisons contained redundant objectives and entries were scant, repetitive<sup>47</sup> and often unrelated to the situation of the inmate in question.<sup>48</sup> Consequently, it is not surprising that the quarterly reviews of the

<sup>46</sup> The programme provides that a dedicated technical team be assigned to each closed-regime department with the aim at developing individualised treatment interventions consisting of purposeful activities of a cultural, recreational and vocational nature with each inmate, with a view to their re-integration into the ordinary regime. For this purpose, special individual treatment plan forms, as well as assessment scales, have been developed for the periodic evaluation of inmates.

<sup>47</sup> Objectives such as “enhancing self-esteem”, “minimizing feelings of isolation”, “promoting social skills”, “controlling anxiety and aggressiveness” were appearing systematically in individual treatment plans of inmates examined by the CPT’s delegation without proposing any specific activity in order to achieve these objectives.

<sup>48</sup> For example, an inmate accommodated at Module 13 of Sevilla II Prison, classified under Article 91, paragraph 3, of the Prison Regulation who was systematically handcuffed when out of his cell had the following objective highlighted in his individual treatment plan: “minimize the sense of isolation”.

classification of inmates by the treatment board were leading to automatic extensions of their classification and thus the prisoners concerned were being accommodated in closed regime modules and special departments for years on end. For example, one inmate met by the delegation who was, classified under Article 91, paragraph 2, of the Prison Regulation had been continuously accommodated at Module 15 of Puerto III Prison since 2012. Further, inmates from the closed-regime Module of Villabona Prison complained that their requests to meet with the supervisory judge in order to discuss the review of their classification were not satisfied.

63. At Puerto I Prison, the regime in force was of a progressive nature, starting from Module 1 where inmates were offered only the statutory four hours of outdoor exercise per day, to Module 2 where educational courses were on offer and access to the gym was allowed on a weekly basis, and Modules 3 and 4, in which more consistent purposeful activities were offered on a daily basis (workshops, educational courses, gym and cinema). Further, only inmates from Modules 3 and 4 were allowed to eat in the canteen whereas in Modules 1 and 2, inmates were eating their meals in their cells (although there was an equipped canteen in every Module). Inmates would normally spend one to two months in Module 1 for observation purposes and, in case of a positive assessment by the treatment board, they would progress to Module 2. That said, several inmates met by the delegation at Module 1 had spent more than one year at the module due to their disciplinary record.

64. The CPT considers that the paucity of the activities on offer at the special departments and closed-regime modules is not a suitable way to respond to disruptive behaviour in prison, to allow safe progress towards release and to reduce the risk of re-offending after release. The objective should be to seek to compensate for these effects in a positive and proactive way. It is crucial that prisoners held under a closed regime are provided with tailored activity programmes of purposeful activities of a varied nature (including work, education, association and targeted rehabilitation programmes) as set out in Instruction 12/2011 of the SGIP. Further, the quality of relations between staff and prisoners considered to be “un-adapted to an ordinary prison regime” or “dangerous” is another source of concern to the CPT. In the interests of the humane and decent treatment of prisoners, relations between staff and prisoners should be based on a spirit of communication and assistance, without neglecting the implementation of supervisory and staff safety measures.

**The CPT recommends that the Spanish authorities take action to implement the spirit and letter of Instruction 12/2011 of the SGIP by developing a purposeful regime for inmates placed in closed regime modules and special departments of León, Puerto III, Sevilla II, Teixeiro and Villabona Prisons, first-degree inmates of Puerto I Prison as well as other prison establishments at the national level with a view to promote their reintegration into the ordinary regime. Further, the CPT recommends that the Spanish authorities take all necessary measures to encourage, as far as possible, direct contact (without screens or bars) between prisoners and the different categories of staff who have dealings with them, such as the members of the technical team.**

**Finally, the equipped canteens of Module 1 and 2 of Puerto I Prison should be put into regular service.**

65. The CPT's delegation was particularly concerned by the situation of a female remand prisoner accommodated at Module 15 of Puerto III Prison who had been kept in conditions akin to solitary confinement since June 2015. The inmate in question could only associate with other female prisoners on an irregular basis, whenever one female prisoner from an ordinary module had to serve a disciplinary sanction of solitary confinement in Module 15. Further, the regime applied to the female inmate in question at the time of the delegation's visit was the one provided for by Article 91, paragraph 3, of the Prison Regulation despite the fact that she had been classified by the SGIP under Article 91, paragraph 2.<sup>49</sup> In reaction to the delegation's immediate request on the spot, the prison management of Puerto III transferred the prisoner to a different gallery where she would have access to a bigger yard and increased her out-of-cell entitlements in accordance with her classification. That said, she continued to associate with other female prisoners only when they had to serve a disciplinary sanction.

**The CPT recommends that the Spanish authorities put in place urgent measures in order to allow the female remand prisoner accommodated at Module 15 of Puerto III Prison to associate on a regular basis with other inmates as provided for by her classification.**

66. A number of inmates met by the delegation at Module 15 of Puerto III and Module 13 of Sevilla II Prisons who showed clear signs of mental disorders, exacerbated by the restrictive regime, were not receiving adequate psychiatric care (see paragraph 82). For example, at Sevilla II Prison one inmate met by the delegation who had been accommodated at Module 13 lacked any perception of time, his speech was incoherent and his clothing inappropriate.

**The CPT recommends that the Spanish authorities take the necessary steps to ensure that vulnerable inmates placed in closed-regime modules and special departments of Puerto III and Sevilla II Prisons are provided with proper care and treatment, and that prisoners with a mental disorder are transferred to an appropriate medical facility.**

67. An additional classification concerning inmates of a specific profile is the one provided by the FIES (*Fichero de Internos de Especial Seguimiento*) a special registry first created by the SGIP in 1991 which is considered as an instrument to ensure better control of inmates with a specific profile for the purpose of "guaranteeing the security and the good order of the establishment as well as the physical integrity of the same inmates".<sup>50</sup> The Spanish authorities have repeatedly stressed that the inclusion of an inmate in the FIES does not determine a different regime than the one assigned to the inmate under his/her ordinary classification. Inmates classified under the FIES registry cannot appeal the decision to the supervisory judge.<sup>51</sup>

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<sup>49</sup> In practical terms, she enjoyed three hours of outdoor exercise instead of four in a smaller patio which was not equipped with a telephone booth thus forcing her to conduct her telephone conversations (including with her lawyer) in front of prison staff.

<sup>50</sup> The FIES registry was formally incorporated in the Prison Regulation through the adoption of the Royal Decree 419/2011. In particular, according to Article 6 of the Prison Regulation, the SGIP is entitled to create special registries of inmates in order to guarantee the security and good order of the establishment, as well as the integrity of inmates. Instruction 12/2011 of the SGIP stresses that the FIES has an administrative character and inmates included therein in light of the criminal, trial and penitentiary profile. The specific categories are as follows: FIES 1 (direct control) includes inmates that have been involved in dangerous perturbation of the prison regime; FIES 2 (organised crime) includes inmates sentenced or suspected of criminal offences related to the affiliation to organised crime; FIES 3 (armed terrorist organisations) includes inmates who still belong or have belonged to a terrorist organisation; FIES 4 (security forces) concern inmates who previously belonged to security forces of the State; FIES 5 (special characteristics) refers to inmates classified in accordance with their specific criminological profile such as sex offenders, Islamic terrorists, war criminals, etc..

<sup>51</sup> See in particular Section 140 of the Spanish Government response to the CPT's report on its 2007 visit to Spain CPT/Inf (2011) 12.

In each of the prisons visited there were 25 to 50 inmates placed in the FIES registry.

The CPT's delegation took positive note of the fact that, unlike during previous visits, the placement of an inmate on the FIES registry did not automatically imply his/her accommodation in a special department as was the case in those prisons visited during the CPT's 2011 visit. For example, at Puerto III and Villabona Prisons, several inmates classified under the FIES registry were accommodated in ordinary modules while still being subject to elements of the first-degree regime (i.e. four hours of outdoor exercise per day).

That said, the CPT's delegation continued to observe elements indicating that the FIES classification was also affecting important aspects of the prison regime.<sup>52</sup> For example, first-degree inmates classified as FIES 5 (due to the suspicion that they belonged to "Islamic terrorist organisations") were not permitted to have contacts with an imam and were only allowed to pray in their cells. This was particularly surprising in light of the recently issued Instruction 02/2016 of the SGIP<sup>53</sup> on the execution in the Spanish penitentiary system of the "Guidelines for prison and probation services regarding radicalisation and violent extremism" adopted by the Committee of Ministers of the Council of Europe in March 2016.

The CPT welcomes the more flexible and well-adapted approach of the SGIP in distributing inmates classified under the FIES registry in ordinary regime modules. **The CPT would like to receive the comments of the Spanish authorities on the alleged regime limitations imposed on inmates suspected of terrorism in the exercise of their religious rights and its justification in the light of the recent Instruction 2/2016 of the SGIP.**

68. Further, in the course of the visit, the CPT's delegation also became aware of a recent instruction issued by the SGIP which stipulated that all inmates classified under Article 91, paragraph 3, of the Prison Regulation and belonging to the FIES 1 (*control directo*) registry should be systematically handcuffed during every transfer out of cell. This apparently resulted from an incident which had occurred on 21 July 2016 in Puerto III Prison (see paragraph 70). The CPT's delegation was able to observe that this instruction was implemented in respect of several inmates at Modules 15 of Puerto III and Teixeiro Prisons, as well as at Module 13 of Sevilla II Prison.

**The Committee would like to receive a copy of the relevant instruction of the SGIP on the systematic handcuffing of inmates classified under Article 91, paragraph 3, of the Prison Regulation observed at the special departments of Puerto III, Sevilla II and Teixeiro Prisons.**

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<sup>52</sup> See also the decision of the *Audiencia Provincial* of Madrid (*Secc.5a, 92/1999*) which stipulates that the inclusion of an inmate in the FIES registry constitutes de facto a different regime with additional limitations and restrictions than those applied to inmates of the same classification.

<sup>53</sup> The Instruction 02/2016 provides, *inter alia* for a special protocol of co-operation between the SGIP and the Spanish Islamic Commission on the provision of religious services to inmates embracing the Islamic religion.

## 5. Means of restraint

69. The resort to means of restraint and in particular the application of mechanical fixation of inmates for regime purposes (*sujeción mecánica regimental*) was again an important focus of the CPT's visit. The legal framework surrounding the use of means of restraint has remained unchanged since the 2011 CPT's visit and is governed by Article 45 of the General Penitentiary Organic Law<sup>54</sup> and Article 72 of the Prison Regulation.<sup>55</sup> More specifically, Instruction 03/2010 of the SGIP specifies the difference between fixation for regime purposes and due to a medical condition (see paragraph 87) as well as the modality of its application. As to the procedure for the application of mechanical fixation, Instruction 03/2010 states that only cloth straps (*correas*) be used for the prolonged fixation of inmates and a doctor must assess the compatibility of the fixation with the state of health of the inmate as from the start of the measure. Further, prison officers should supervise the inmate subjected to fixation at least once every hour.

The CPT's delegation had the opportunity to review the application of mechanical fixation for regime purposes at León, Puerto I, Puerto II, Puerto III, Sevilla II, Teixeiro and Villabona Prisons. The findings of the 2016 visit indicate that its previous recommendations put forward in its reports on the 2007 and 2011 visit reports have still not been fully implemented. In particular, fixation is still resorted to for prolonged periods without exhausting alternative means to achieve the desired outcome, and without adequate supervision and recording of its application. Further, in several instances, the reason for the application of the measure appeared to be punitive as it was applied following episodes of verbal threats and passive resistance by inmates. Finally, the way in which mechanical fixation was applied could in some cases amount to degrading treatment as inmates were not allowed to comply with the needs of nature. It was also applied to inmates who displayed symptoms of a mental disorder.

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<sup>54</sup> Article 45, of the General Penitentiary Organic Law stipulates that means of restraint are applicable in order to prevent the evasion of inmates and/or violence among prisoners; to avoid harm to inmates and to other persons or property; to counter the active or passive resistance posed by inmates against orders by prison staff. The application of means of restraint should be aimed exclusively at the re-establishment of the normality and should last for as short time as possible.

<sup>55</sup> According to Article 72 of the Prison Regulation, the following means of restraint can be applied in the Spanish penitentiary context: i) provisional isolation; ii) physical force; iii) rubber truncheon; iv) pepper spray; v) handcuffs. The Instruction 3/2010 of the SGIP establishes that mechanical fixation can be regarded as the use of handcuffs in the spirit of the Prison Regulation.

70. The below cases represent a sample of those credible cases found by the CPT's delegation at the different prison establishments visited:

- i) an inmate met by the CPT's delegation had been subject to mechanical fixation at Module 15 of Puerto III Prison at 9.45 a.m. on 21 July 2016 for having physically assaulted a group of prison officers with a sharp object; he remained fixated until 8.00 a.m. on 25 July (i.e. for 84 hours and 15 minutes). According to the records, the doctor had seen no contra-indications to the application of the measure although the inmate had presented several injuries,<sup>56</sup> the inmate was never untied even when he complained that he could not breathe and was compelled to urinate and defecate several times in his clothes. He had also received at least three forced injections during the fixation period and the prison officers were recommending the continuation of the measure in light of the fact that the inmate was "*staring at them in a defiant manner*".<sup>57</sup> The CPT's delegation also met with the supervisory judge who had certified the legality of the measure throughout its duration. Astonishingly, the judge did not consider that the measure was disproportionate although she acknowledged that she was unaware of the modality of its application as well as the fact that the inmate was forced to urinate and defecate while tied up. **In the CPT's view, the treatment of this prisoner could well be seen to amount to inhuman and degrading treatment;**
- ii) an inmate from Puerto I Prison was subjected to mechanical restraint on 5 July 2016 for a period of 23 hours for having started to self-harm after a request for a particular medicine was denied by the doctor. The doctor assessed that the inmate was fit for the measure of mechanical fixation although his wounds had just been treated. This measure is clearly punitive;
- iii) an inmate from Puerto I Prison was subjected to mechanical restraint for 31 hours on 16 September 2016<sup>58</sup> allegedly for having asked a prison officer to address him in a gentler manner. The relevant register included the following entry as the reason for mechanical fixation: "the inmate does not listen to orders and displays passive resistance". This measure is clearly punitive;
- iv) an inmate from Sevilla II Prison was subjected to mechanical fixation on 6 April 2016 for two hours after having swallowed pieces of glass as well as a fragment of a lighter in the course of a cell search conducted by prison staff. An x-ray had been performed at the infirmary which led to the identification of a third object in his body. The supervisory judge considered the application of the measure lawful without looking at the issue of proportionality or whether the inmate required care and medical support rather than punishment.

<sup>56</sup> The following injuries had been recorded in the injury report drawn up by the prison doctors on 21 July at 11.00 a.m.: "*3-4 cm long contusion of the frontal-parietal region, 3-4 cm long contusion of the occipital region, one cm long contusion of the right hand and hematoma on the left shoulder*".

<sup>57</sup> This was recorded in the relevant register on use of means of restraint which was consulted by the CPT's delegation at Puerto III Prison.

<sup>58</sup> I.e. from 13.30 a.m. of 16 September 2016 to 8.30 p.m. of 17 September 2017.

71. As regards the method of fixation, prisoners were usually fixated by their wrists and ankles to a bed with cloth straps, either face up or face down. Further, prison staff told the delegation that an additional strap on the thorax of the inmate could also be applied. Finally, inmates were not untyed in order to comply with the needs of nature.

72. The measure was generally applied in equipped cells in the closed-regime modules and special departments (i.e. Module 15 of León, Puerto III, Teixeiro Prisons, Module 13 of Sevilla II Prison, closed-regime Module of Villabona Prison and Module 5 of Puerto I Prison). Further, equipped cells for fixation for regime purposes were also present at the admission modules of Puerto I, Sevilla II, Teixeiro and Villabona Prisons.<sup>59</sup> All cells measured between 9 and 10 m<sup>2</sup> and were equipped with a bed attached to the floor as well as a semi-partitioned sanitary annexe. Further, with the exception of one cell of Module 15 of Puerto III Prison, no other cell at any of the establishments visited was equipped with a CCTV system.

73. Instruction 03/2010 describes the procedure for the supervision<sup>60</sup> of inmates subjected to fixation for regime purposes, as well as for the provisional cessation of the measure. Prison officers should check on a fixated inmate every hour and the head duty officer (*Jefe de Servicio*) may authorise the interruption of the fixation measure and should, according to the Instruction, take the necessary precautions such as reinforcing the number of prison officers present and ensuring the temporary application of metal handcuffs during the removal of the cloth straps.

However, it appeared that supervision was purely formalistic, with prison officers performing only brief visual checks once an hour. Moreover, at Villabona Prison, fellow inmates (*internos de apoyo*) were requested to assist in the supervision of the measure when an inmate was fixated.

Further, in its conversation with the supervisory judge of the Cadiz Supervisory Court (*Juzgado de vigilancia*) in charge of the control of the legality of the application of the measure of mechanical fixation at Puerto III Prison, the CPT's delegation gained the impression that she did not have a clear understanding of the legal grounds or the modality of the application of the measure..

74. As regards the recording of the measure and the notification to the supervisory judge, the CPT's delegation was able to ascertain that the requirements of Instruction 03/2010 were for the most part being complied with (i.e. the opening of a dedicated register, the notification of the supervisory judge for the legality of the measure and of the SGIP). That said, at Villabona Prison, no dedicated register to record the use of mechanical fixation was in place.

75. In terms of frequency of the resort to the measure of mechanical fixation during the first nine months of 2016, with the exception of Villabona (five cases) and León Prisons (nine cases) the recourse to this measure remained a rather frequent occurrence at Puerto III (32 cases), Puerto I (55 cases) and Sevilla II (52 cases) and Teixeiro (26 cases) Prisons.

<sup>59</sup> At Villabona Prison an additional equipped cell for mechanical fixation was also present in Module 10 accommodating female prisoners.

<sup>60</sup> In the case of fixation for regime purposes, a doctor has to assess the compatibility of the fixation with the state of health of the inmate as from the moment of its application. In the case of a positive assessment by the doctor, prison officers should supervise the inmate subjected to fixation at least once every hour.

The Spanish NPM had addressed a report in May 2015 to the management of Sevilla II Prison with a list of 19 specific recommendations criticising in particular the routine resort to mechanical fixation by its prison staff, the incorrect assessment and application of the measure to inmates suffering from mental disorders and/or prone to self-harm. The Sub-Directorate of Inspections of the SGIP also came to similar conclusions after it conducted a thematic inspection of Sevilla II Prison in May 2016 for the same purpose. In its report, dated 5 June 2016, it recommended that the management of Sevilla II Prison only use the measure of mechanical fixation as a last resort in the spirit of Article 72 of the Prison Regulation<sup>61</sup> and acknowledged that the measure had been incorrectly applied to inmates suffering from mental disorders.

76. **The CPT recognises that in every prison system there are certain inmates who pose a serious danger to themselves and/or to others and in respect of whom it is necessary on occasion to resort to means of restraint in a prison setting. In the reports on its 2007 and 2011 visits,<sup>62</sup> the CPT made several recommendations to the Spanish authorities on the necessity to adopt far stricter rules and proposed minimum standards governing the measure of mechanical fixation of inmates for regime purposes in prisons. In particular, the Committee stressed that fixation should only be used as a last resort for the shortest possible time in order to prevent the risk of harm to the individual or others and only when all other reasonable options failed to satisfactorily contain those risks. Further, the Committee recommended that the resort to fixation of an inmate should never be used as a punishment.**

That said, the above-mentioned findings indicate that the CPT's recommendations to the Spanish authorities remain to a great extent unimplemented in practice. In particular the following elements are a cause of grave concern for the Committee:

- the resort to mechanical fixation for regime purposes in the prisons visited retains clear punitive elements and the measure still does not comply with the relevant Spanish legal provisions (i.e. in conformity with the principles of legality, subsidiarity and proportionality set out in Article 72 of the Prison Regulation);
- the application of the measure is often coupled with the infliction of physical ill-treatment of inmates while fixated and prolonged periods of fixation with denial by staff of an inmate's need to use a toilet which may well amount to inhuman and degrading treatment;
- the inadequate supervision of the application of the measure and its improper recording are also reasons of concern for the Committee and remain contrary to the requirements of Instruction 03/2010 of the SGIP.

Consequently, the CPT calls upon the Spanish authorities to end the current practice of resort to regimental mechanical fixation of inmates in all prison establishments.

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<sup>61</sup> Article 72 of the Prison Regulation stipulates that means of restraint must be applied to inmates respecting the principles of legality, proportionality and subsidiarity.

<sup>62</sup> See in particular paragraph 91 of the report on the CPT's 2007 visit to Spain CPT/Inf (2011) 11 and paragraphs 58-62 of the report on the 2011 visit to Spain CPT/Inf (2013) 6.

**In the CPT's view, an agitated inmate who poses a serious danger to himself/herself or to others could be temporarily isolated in a calming down cell until he/she restores behavioural control (i.e. under Article 72 of the Prison Regulation) only as a last resort when all other reasonable options (such as talking to the inmate in question) have failed to satisfactorily contain these risks. Further, the inmate concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of provisional isolation. This discussion should always involve a senior member of the health-care staff or another senior member of staff with appropriate training.**

77. At Sevilla II Prison, an observation cell in the admission department equipped with a special toilet<sup>63</sup> was used for segregating inmates who were suspected of having secreted illicit objects in their bodies following their return from leave or after a family visit. The measure would normally be applied under Article 72 of the Prison Regulation as temporary isolation. That said, no medical supervision was ensured, with only sporadic checks being performed by prison staff, and the cell possessed no call bell or CCTV. An inmate who had been recently placed in the cell on the ground of suspicion of having introduced drugs into his body after a family visit, told the delegation that he had committed an act of self-harm by burning his skin with a lighter and had had to be urgently transferred to the infirmary of the prison. Further, the CPT recalls that body-packs may cause intestinal obstruction or perforation of the packaging of the substance resulting in acute poisoning.

**The CPT recommends that the Spanish authorities ensure that the measure of provisional isolation for the purpose of monitoring the expulsion of body-packs of inmates be implemented only in the infirmary under the supervision of a member of the health-care staff who performs regular and frequent checks.**

## **6. Health-care services**

78. In Spain (apart from Catalonia), the responsibility for the provision of prison health-care services is shared with primary health-care coming under the responsibility of the prison administration and specialised care being provided by the national health-care authorities, normally under the competence of the autonomous communities. In this respect, several co-operation protocols have been concluded between the national health-care service and the prison administration.

79. The health-care services in the prisons visited were on the whole of an acceptable standard and health-care staffing levels generally sufficient. In particular:

- at León Prison, there were seven general practitioners assisted by 11 nurses and seven assistant nurses working on a full-time basis for 1,070 inmates;
- at Puerto III Prison, 11 general practitioners (two vacant posts) were assisted by 12 nurses (including one supervisory nurse) and 14 auxiliary nurses. Further, one full-time dentist and one assistant dentist were also present for some 1,300 inmates;

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<sup>63</sup> The cell was an ordinary one and the toilet was connected to a filter in the floor below which could be emptied by security staff.

- at Puerto I Prison, two general practitioners ensured health-care coverage by being constantly on call, they were assisted by four nurses and two assistant nurses for 205 inmates;
- at Sevilla II Prison, eight general practitioners (three vacant posts) were assisted by 11 nurses and the same number of assistant nurses for 1,119 inmates;
- at Teixeiro Prison, the health-care staffing team was composed of five general practitioners (two vacant posts), 11 nurses (two vacant posts) and eight auxiliary nurses for 1,228 inmates;
- at Villabona Prison, nine general practitioners including the head doctor were assisted by 12 nurses and nine auxiliary nurses for 1,190 inmates.

At all the establishments visited, prisoners could access a range of specialised services either within the prison or at a local hospital. Medical facilities in these establishments were suitably equipped.

80. As regards access to a doctor, the CPT's delegation received several complaints at all establishments visited that requests for consultation with a doctor were met with consistent delays. This was in particular due to the fact that oral and written requests were administered by prison officers and no alternative systems were in place such as sealed envelopes, letter boxes or the possibility to address their requests to the nurse distributing the medicines.

**The CPT recommends that steps be taken at León, Puerto III, Puerto I, Sevilla II, Teixeiro and Villabona Prisons to enable prisoners to contact the health-care service on a confidential basis, for example, by means of a message in a sealed envelope and in dedicated boxes exclusively managed by health-care staff. Further, prison officers should not seek to screen requests to consult a doctor.**

81. The medical examination carried out upon admission of an inmate continued to be performed within 24 hours (and in practice after a few hours) in all establishments visited and included a series of systematic biochemical tests with a particular focus on syphilis, HIV and hepatitis B and C.

In the event of inmates presenting injuries upon admission to the establishments, the delegation was able to observe that a specific form (*parte de asistencia de lesiones Modelo Sanitario 17*) was drawn up and a copy subsequently forwarded to the director and supervisory judge and placed in the personal file of the inmate.<sup>64</sup> That said, injuries observed on newly arrived inmates were often described in a cursory manner and no reference was made to the circumstances in which the injuries might have occurred. The CPT's delegation was in fact disappointed by the indifferent attitude of health-care staff who seemed to consider the task of recording injuries sustained by inmates prior to their imprisonment as a matter that did not concern them. For example, a member of the health-care staff at Madrid V Prison told the CPT's delegation that since injured inmates would be examined at a hospital prior to their admission to prison, he saw little use in producing an injury report.

Further, contrary to the situation observed by the CPT in 2011, there were no registers of injuries recorded by a doctor upon admission and during detention within the prison establishments visited.

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<sup>64</sup> As provided for by Instruction 05/99 of the SGIP.

**The recommendation in paragraph 47 on the meticulous recording and reporting of injuries by members of the health-care staff applies equally to medical staff examining inmates upon entry to prison. Further, the CPT recommends that dedicated registers on traumatic injuries sustained by inmates prior their imprisonment or during detention should be introduced at all prisons visited and other establishments at the national level.**

82. As had been the case during the 2011 visit, access to psychiatric care for inmates remained inadequate at the establishments visited, with the exception of Villabona Prison. In particular, at León Prison one psychiatrist visited the establishment for four hours per week and yet 25 percent of the prison population had been diagnosed with a personality disorder and ten percent suffered from psychotic disorders. At Sevilla II Prison, the management of the establishment had invested additional funds to ensure that the psychiatrist would visit the establishment on a weekly instead of a monthly basis (according to the relevant protocol of co-operation with the national health service) in order to care for the 131 inmates diagnosed with a mental disorder, but this remained insufficient. Further, one psychiatrist would visit, only once a month, the prison complex of Puerto I, II, III Prisons (accommodating more than 2,000 inmates) spending a few hours at each prison establishment. The worst situation observed by the CPT's delegation was at Teixeiro Prison where no psychiatrist had paid a visit to the establishment since 2011 and yet six percent of the prison population were receiving anti-psychotic medication and 60 percent benzodiazepines. Finally, there was no clinical psychologist providing assistance to inmates at any of the establishments visited. This is unacceptable.

**The CPT recommends that the Spanish authorities take the necessary measures in order to ensure the presence of a full-time psychiatrist and a full-time clinical psychologist at León, Puerto III, Sevilla II and Teixeiro Prisons.**

83. In an effort to ensure better care to inmates suffering from mental disorders, the SGIP had introduced since 2009 a dedicated programme for the comprehensive care of inmates suffering from a mental disorder in prison (PAIEM). Inmates included in the PAIEM programme were in general accommodated in separate modules where they were assisted by a multidisciplinary team composed of a general practitioner, psychologist, educator, social worker, jurist and occupational monitor. The CPT's delegation visited PAIEM Modules at Puerto III Sevilla II and Teixeiro Prisons<sup>65</sup> where an open cell regime was in place and inmates were involved in various workshops and rehabilitative activities (such as animal-assisted therapy, decoration workshops etc.) with the assistance of fellow inmates. That said, although the efforts to ensure a differentiated regime were positive, the CPT's delegation gained the impression that the therapeutic path offered to inmates accommodated in PAIEM Modules remained insufficient. In particular, they did not receive the assistance of a psychiatrist and the psychologists did not perform clinical work. Further, some inmates complained about episodes of intimidation by fellow inmates.

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At Puerto I and Villabona Prisons inmates included in the PAIEM programme continued to be accommodated in their respective modules and they received the assistance of the multidisciplinary team in general on a weekly basis.

The CPT takes note of the efforts of the Spanish authorities to accommodate inmates affected with a mental disorder in separate modules where they could receive a more suitable attention to their mental disorder. However, in order to provide for a more suitable environment than ordinary prisons for inmates suffering from mental disorders, the involvement of several categories of health-care professionals (such as psychiatrists and therapists) and specific training for custodial staff for working with patients suffering from mental disorders is necessary. **The CPT recommends that the Spanish authorities review the implementation of the PAIEM programme at the national level in the light of the above remarks.**

84. The CPT's delegation met a number of forensic psychiatric patients under a court imposed security measure<sup>66</sup> who were accommodated at León (three), Puerto III (two), Teixeiro (two), Sevilla II (four) and Villabona Prisons (two). They were in principle accommodated in the infirmary or in the PAIEM Module if their mental health condition so permitted. Their treatment was based exclusively on pharmacotherapy and they received infrequent visits by a psychiatrist; in case of need they were referred to a civil hospital. The CPT's delegation was informed by one prison director that the reason for the placement of these patients in a prison establishment was due to the fact that the only two forensic psychiatric institutions in the country (located in Sevilla and Alicante) were overcrowded and could not accept more patients.

The Committee considers that forensic psychiatric patients under a court imposed security measure should be accommodated in a specialised health-care facility where they can receive a much broader range of therapeutic, rehabilitative and recreational measures suitable for their specific needs.

**The CPT recommends that the Spanish authorities take appropriate measures in order to transfer the forensic psychiatric patients met by the delegation at Leon, Puerto III, Sevilla II, Teixeiro and Villabona Prisons to an adequate health-care facility where they are able to receive more appropriate treatment for their mental disorders.**

85. Concerning the treatment of inmates suffering from drug addiction, the Spanish prison authorities continued to allow for the possibility of inmates to initiate drug-substitution therapy during incarceration. At León Prison, 60 prisoners were under methadone substitution therapy, while numbers at the other establishments visited were 115 at Villabona Prison, 147 at Teixeiro Prison, 22 at Puerto I Prison, 128 at Puerto III Prison and 141 at Sevilla II Prison.

Harm reduction measures such as needle exchange continued to be implemented at the establishments visited with the exception of Puerto I, II, III and Sevilla II Prisons, due to the lack of support by the regional health authorities of Andalusia.

**The CPT recommends that the Spanish authorities take the appropriate measures in order to harmonise the approach to the provision of harm reduction measures to inmates affected by drug addiction nationwide.**

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<sup>66</sup> Most of the patients in question had been found criminally irresponsible by a Court in accordance with Article 20 of the Criminal Code and a security measure of internment in a psychiatric institution had been imposed on them pursuant to Article 101, paragraph 1, of the Criminal Code. In some cases the relevant Court had applied mitigating factors diminishing the criminal responsibility of the patients (pursuant to Article 21, paragraph 1, of the Criminal Code) and ordered the execution of a security measure in a psychiatric section of a penitentiary institution pursuant to Article 104 of the Criminal Code.

In this context, the CPT's delegation had the opportunity to assess the conditions and therapeutic approaches on offer at various specialised modules for the treatment of inmates with drug-related problems such as the Therapeutic and Educational Unit (UTE) of Villabona Prison as well as the UTEs of Puerto III, Sevilla II and Teixeiro Prisons. Further, at León Prison, the delegation visited Modules 3, 6 which were respect modules for the treatment of drug-addicted prisoners.<sup>67</sup>

The CPT's delegation gained a generally positive impression of the holistic and multi-disciplinary treatment on offer to inmates at Modules III and VI of León Prison. A wide range of workshops, remunerated activities (phone-centre), individual and group therapy activities were on offer, the atmosphere was relaxed, inmates were satisfied with the regime and staff (psychologists, educators, tutors) were dedicated to their work.

A similar situation was observed at the UTE I and UTE II of Villabona Prison which were accommodating 197 and 187 inmates respectively. The treatment on offer to inmates was holistic and multidisciplinary (group and individual therapy, various workshops) and staff appeared to be professional and fully dedicated to their work. That said, several inmates met by the delegation complained that although they had signed a therapeutic commitment to join the UTE, they had not done so of their own free will but mainly due to pressure from prison staff. Staff of the UTE confirmed to the delegation that over the preceding two years there had been an increase in episodes of violence and intimidation between inmates and that drugs were often introduced into the unit in particular because many prisoners were in reality not committed to drug detoxification.

The UTEs of Puerto III and Sevilla II Prisons, which were accommodating 69 and 47 inmates respectively, were offering a relaxed open-cell regime to inmates, as well as some workshops (origami and woodwork) and group therapy sessions. That said, the multidisciplinary staff of the UTE (doctor, psychologist, educator, social worker) were not permanently affiliated to the modules and inmates complained about their difficulty in accessing them. Further, the workshops on offer and activities (small gym) did not appear to attract the interest of inmates and were poorly equipped.

**The CPT recommends that the Spanish authorities fundamentally review the admission procedure to the UTE I and UTE II at Villabona Prison in particular by verifying the motivation and commitment of inmates to undergo a therapeutic programme. Further, additional efforts should be made to ensure a more adequate presence of the technical team at the UTEs of Puerto III, Sevilla II and Teixeiro Prisons and explore possibilities to increase the range of purposeful activities on offer by providing *inter alia* better equipment in the dedicated workshops and gyms of the UTEs of Puerto III, Sevilla II and Teixeiro Prisons.**

86. As to the treatment of transmissible diseases, the Spanish prison population continues to have a high prevalence of HIV infection. At the prisons visited, the prevalence of inmates affected by HIV ranged from four to five per cent of the inmate population and they were regularly receiving anti-retroviral medication.

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<sup>67</sup> Module 3 was focused on detoxification and Module 6 on the rehabilitation of inmates with drug-related problems.

For hepatitis C infections, the prevalence ranged from 15 percent of the inmate population at León Prison to 40 percent at Villabona Prison and was at 21 percent at Puerto III and Sevilla Prisons and 25 percent at Teixeiro Prison. Only a very limited number of inmates were regularly receiving the latest anti-retroviral treatment for hepatitis C which was normally available in the community as provided by the Spanish National Health Service. For example, at Sevilla II Prison, only two inmates out of the 240 affected by hepatitis C were receiving the latest anti-retroviral medication. The CPT's delegation was informed at the prison establishments visited that only inmates at an advanced stage of liver fibrosis (i.e. at stage F3, instead of F2 for the general community) would receive anti-retroviral medication.

**The CPT recommends that the Spanish authorities ensure the respect of the principle of equivalence of care by providing the same access to anti-retroviral treatment to inmates diagnosed with hepatitis C as in the general community.**

87. Inmates may be fixated due to a medical condition to a bed in the infirmary of the respective prison establishment. The procedure, regulated by Instruction 03/10, provides that a member of the health-care staff may order such a measure and assess the best position of fixation which must be carried out using cloth straps. Further, according to the above-mentioned instruction, the measure has to be subjected to periodic controls by a doctor (every eight hours) and by a nurse every two hours. The person subjected to the measure must be in a serious psychomotor agitation of a mental or organic origin or in an agitated state which impedes any therapeutic intervention.

The CPT delegation observed that the measure of fixation due to a medical condition was generally executed in equipped cells of the infirmaries in respect of patients suffering from a mental disorder in the case of over-agitation and risk of self-harm. In general, inmates would remain fixated for a few hours and would be released once behaviour control had been restored. That said, the supervision of the measure was not permanent and consisted of checks by the doctor every eight hours and by nurses every fifteen minutes during the first few hours of fixation and thereafter every two hours. Further, at Villabona Prison, the monitoring of the measure was ensured by a fellow inmate through a screen glass in an adjacent cell. None of the cells was equipped with CCTV.

Further, in terms of recording, the CPT's delegation did not find any dedicated logbook on the use of the measure of fixation due to a medical condition at Sevilla II and Puerto III Prisons.

**The CPT recommends that the Spanish authorities take the necessary steps in order to review the application of the measure of fixation due to a medical condition of inmates in the light of the following remarks:**

- inmates fixated due to a medical condition should be under the permanent supervision of a health-care professional and fellow inmates should be excluded from this task;
- the necessity to continue the measure should be reviewed by a doctor at short intervals;
- inmates should never be fixated in the prone position (i.e. face down);
- a specific register containing the presence sheet of health-care staff should be kept at the infirmaries where the measure of medical fixation of inmates is applied.

88. In terms of medical ethics, doctors at several prison establishments expressed their discomfort to the delegation about the fact that they were requested to issue fit-for-punishment certificates for prisoners who had to serve a disciplinary sanction of solitary confinement as well as a certificate of the absence of contra-indications for the application of mechanical fixation for regime purposes. Further, the delegation noted that nursing staff at Puerto I, Puerto III and Sevilla II Prisons were regularly involved in the drug testing of inmates for security reasons and upon the request of prison officers.

The health-care staff in any prison are potentially at risk of dual-loyalty conflicts. This risk is higher in those systems where health-care staff work under the authority of the prison management. Their duty to care for their patients (sick prisoners) may often enter into conflict with considerations of prison management and security. This can give rise to difficult ethical questions and choices. Prison doctors act as a patient's personal doctor. Consequently, in the interests of safeguarding the doctor/patient relationship, they should not be asked to certify that a prisoner is fit to undergo punishment and be subject to a measure of mechanical fixation. Further, the Committee is concerned about the role played by health-care staff in respect of drug testing of inmates. It is of the opinion that this essentially non-medical task can affect the therapeutic relationship between health-care staff and patients. Medical staff working at all prison establishments visited and, if relevant, nationwide, should therefore not be involved in the collection and testing of urine samples for repressive purposes (i.e. drug abuse).

**The CPT recommends that the Spanish authorities comply with these principles and promote their implementation in all prison establishments. Further, the Committee invites the Spanish authorities to consider the transfer of stewardship for prison health care under the responsibility of the National Health Service in accordance inter alia with the 2003 Law on the Cohesion and Quality of the National Health System.<sup>68</sup>**

## 7. Other issues

### a. discipline

89. An examination of disciplinary procedures in the prisons visited revealed that prisoners were in principle able to benefit from the formal safeguards set out by Articles 240-250 of the Prison Regulation (notably, the requirement that proceedings be served on prisoners in writing; the possibility to be assisted by a third party, including a lawyer; the possibility to present evidence and the requirement that a decision declaring evidence inadmissible be motivated; and the possibility to appeal).

90. The recourse of prison management to disciplinary sanctions at the prisons visited appeared to be high; for example, for the period of the first nine months of 2016 at Puerto III Prison, 1,362 disciplinary sanctions<sup>69</sup> had been imposed on a population of 1,304 inmates and 824 sanctions for a population of 1,228 inmates at Teixeiro Prison.

<sup>68</sup> In particular the Final Provision no. 16 of the 2003 Law on the Cohesion and Quality of the National Health System stipulated that within 18 months since its adoption (i.e. 28 May 2003) the responsibility for prison health care be transferred nationwide to the national health service.

<sup>69</sup> The breakdown was as follows: 370 sanctions were imposed for very serious disciplinary offences, 905 for serious offences and 87 for light ones.

91. Pursuant to Article 236 of the Prison Regulation, a sanction of solitary confinement for a very serious infringement<sup>70</sup> may not exceed fourteen days for a single offence or forty-two days if imposed for concurrent disciplinary offences. The supervisory judge must approve any period of solitary confinement in excess of 14 days.

In practice, prison establishments were applying sequential periods (up to 14 days each) of solitary confinement of inmates with an interruption of only one day, with that single day usually spent alone in their own cell under a measure of provisional isolation.<sup>71</sup> For example, at Puerto III Prison, six inmates had served periods of solitary confinement for a continued total of 29 to 49 days with one day of interruption after each 14-day period. Similarly, at Puerto I Prison, seventeen prisoners had served consecutive periods of solitary confinement, with a one-day interval, for a total of 49, 43, 42, 33 and 29 days. At Teixeiro Prison, one prisoner had served 29 days continuously in solitary confinement and two others periods of 45 and 29 days, with a one-day interval every fourteenth day. The CPT considers such periods of solitary confinement far too long and potentially harmful to the individual.<sup>72</sup> The periods of interval after 14 days of solitary confinement should be longer (i.e. at least two days and preferably several days) and include the possibility for the inmate to associate with other prisoners and participate in activities.

Given the potentially very damaging effects of solitary confinement,<sup>73</sup> the CPT considers that the maximum period for solitary confinement as a punishment should be no more than 14 days for a given offence, and preferably lower.<sup>74</sup> Further, there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system. If a prisoner has been sentenced to disciplinary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement at the 14-day stage.

**The Committee reiterates its recommendation that urgent steps be taken to ensure that no prisoner is held continuously in solitary confinement as a punishment for longer than 14 days. If the prisoner has been sentenced to solitary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the solitary confinement at the 14-day stage.**

**The CPT also considers that it would be preferable to lower the maximum possible period of solitary confinement as a punishment for a given disciplinary offence.**

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<sup>70</sup> Pursuant to Article 108 of the Prison Regulation, very serious infringements are, for example, mutiny, internal riots, physical aggression towards another person, active resistance to an order, and escape.

<sup>71</sup> Pursuant to Article 72 of the Prison Regulation.

<sup>72</sup> See in particular Rules 43 and 44 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

<sup>73</sup> See for example, Shalev, S., *A Sourcebook on Solitary Confinement*, Mannheim Centre for Criminology, London 2008 (available electronically at [www.solitaryconfinement.org](http://www.solitaryconfinement.org)).

<sup>74</sup> See the 21<sup>st</sup> General Report of the CPT (CPT/Inf (2011) 28), paragraph 56.

92. One of the most frequently imposed disciplinary sanctions consisted of a deprivation of walks and communal activities which pursuant to Article 233 of the Prison Regulation can be imposed for a maximum of 30 days for a serious disciplinary violation.<sup>75</sup> That said, at Teixeiro Prison, three inmates had been deprived of walks and communal activities for continuous periods of 111, 90 and 44 days respectively. Further, the CPT's delegation found several instances in which inmates had been deprived of walks and communal activities for up to thirty days with just a one-day interruption. For example, at Puerto I Prison, three inmates had been deprived of walks and communal activities for a total of 88, 72, 60 days respectively with a one-day break every 30 days. Further, inmates at Puerto III Prisons had been deprived of walks and communal activities for up to 60 days (with one day of interruption) for disciplinary infringements (such as "taking prolonged showers" or "using improper colloquial expressions") which had been assessed as serious by the disciplinary commission in a disproportionate manner.

**In the CPT's opinion such a sanction is clearly disproportionate. Moreover, the imposition of consecutive 30-day periods of deprivation of walks and communal activities should be ended. The CPT recommends that for all disciplinary punishments the principle of proportionality should be respected.**

b. staff<sup>76</sup>

93. The number of prison staff in the prison establishments visited appeared to be adequate in relation to their occupational levels and the regime in force. For example, at Puerto I Prison 128 custodial officers were responsible for the supervision of 207 first degree inmates, at Sevilla II Prison 493 custodial officers supervised 1,119 inmates, at Villabona Prison 468 staff members were responsible for the supervision of 1,190 inmates. That said, at Puerto III Prison a rate of absenteeism of up to 11 per cent per month was recorded in the course of 2016 for medical or institutional reasons in respect of the 347 prison officers who were tasked with the supervision of 1,304 prisoners.

Further, the CPT's delegation had been informed at several prison establishments of a moratorium on recruitment of new prison staff which had apparently been imposed by the Ministry of the Interior in the context of financial austerity measures. For example, at León Prison 11 prison officers were supposed to retire in the months following the CPT's visit and there were no plans to replace them.

**The CPT invites the Spanish authorities to take appropriate measures to investigate the causes of the phenomenon of absenteeism of custodial staff at Puerto III Prison in order to adequately redress it. Further, it would like to receive information on the above-mentioned austerity measures and their impact on the recruitment of staff at the national level.**

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<sup>75</sup> Pursuant to Article 190 of the Prison Regulation the following violations are to be considered as serious: verbal offences and disobedience to an order, instigation of mutinies and riots, introduction of illicit objects into the prison establishment.

<sup>76</sup> See also paragraphs 48 and 49 in relation to disciplinary proceedings against staff in relation to alleged physical ill-treatment of inmates.

c. contact with the outside world

94. The CPT's delegation found that the favourable situation of promoting contact with the outside world, observed during previous visits, persisted. Prisoners were entitled to two 20-minute visits per week, with a maximum of four visitors; prison management may authorise that these two weekly visits, which take place in closed visiting booths, be accumulated.<sup>77</sup> Prisoners may receive two monthly open visits, lasting between one and three hours each, one of them being an intimate (so-called *vis-à-vis*) visit, the other from close relations. Further, association visits, lasting a maximum of six hours, from the spouse or partner and children of up to ten years of age, may also be authorised on a quarterly basis for inmates who are not eligible to weekend leave.

In addition, prisoners are entitled to receive and send letters and to make five telephone calls of five minutes each per week.<sup>78</sup> That said, several foreign inmates complained to the delegation that they could not afford the costs of the phone calls in order to communicate with their families abroad.

**The CPT recommends that the Spanish authorities allow all visits to take place as a rule in open conditions and that visits in closed booths be restricted to those cases when it is justified for security-related reasons. Further, the Spanish authorities should explore possibilities to allow foreign inmates to conduct conversations with family members through Voice over Internet Protocol.**

d. transgender prisoners

95. In the course of the 2016 visit, the delegation met a number of inmates who had been identified as transgender persons,<sup>79</sup> notably seven at León Prison, one at Puerto III Prison, two at Sevilla II Prison and one at Villabona Prison. The CPT's delegation gained the impression that the prison management in those establishments and in particular at León Prison recognised the specific vulnerability of this category of inmates and were acting to meet their needs. In principle, decisions on the accommodation of transgender prisoners were taken on a case by case basis by the prison management and the inmates concerned were requested about their preference in terms of which module to be placed in. Further, there were no impediments for transgender prisoners to continue or initiate hormonal therapy at the expense of the prison authorities following their incarceration, upon the assessment of an endocrinologist.

That said, a male to female transgender prisoner from Villabona Prison who had passed a gender identification programme at the Treatment Unit for the Gender Identity of the Principality of Asturias<sup>80</sup> prior to her incarceration, was accommodated for one full year in a male module, despite her explicit request to be transferred to a female unit of the prison. During this period of time, prison officers apparently verbally abused her several times and insisted on her wearing men's clothes.

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<sup>77</sup> Pursuant to Article 42, paragraph 3, of the Prison Regulation. Further, the prison director retains the possibility to restrict the number and duration of visits and telephone calls of inmates for security reasons. The restriction in question must be the object of a written, individual and reasoned decision which is subject to the scrutiny of the supervisory judge.

<sup>78</sup> In accordance with Instruction 4/2005 of the SGIP.

<sup>79</sup> All of them were male to female transgender with the exception of one female to male transgender accommodated at León Prison.

<sup>80</sup> "Unidad de Tratamiento de Identidad de Género del Principado de Asturias" (UTIGPA).

The CPT considers that transgender persons should either be accommodated in the prison section corresponding to their gender identity or, if exceptionally necessary for security or other reasons, in a separate section which will best ensure their safety. If accommodated in a separate section, they should be offered activities and association time with the other prisoners of the gender with which they self-identify.

**The CPT recommends that the prison management of Villabona Prison comply with the above-mentioned precepts. Custodial staff should be reminded of their duty to respect the specific gender identity of transgender prisoners, in particular in terms of accommodation, clothing and by addressing them with their chosen name.**

e. searches (*cacheos*)

96. Article 68, paragraph 2, of the Prison Regulation provides that the duty head of service (*Jefe de servicio*) may authorise intimate strip-searches of inmates (*cacheo con desnudo integral*) on the grounds that he/she might introduce into the establishment an object or substance which might cause harm to the health of persons or alter the security and the good order of the establishment. The reason for the measure must be justified in a report to the prison director and the supervisory judge should be notified.

In the course of the 2016 visit, the delegation received numerous allegations concerning the abusive way in which strip-searches were carried out.

Further, the modality of the intimate strip-searches conducted in particular at León, Puerto III and Sevilla II Prison displayed elements of potentially degrading treatment. For example, inmates complained that they had to perform push-ups while naked, and had to lift up their testicles and retract the foreskin of their penis in front of prison officers.

**The CPT takes the view that a high frequency of thorough searches – involving systematic stripping – of a prisoner entails a high risk of degrading treatment.<sup>81</sup> The CPT recommends that the Spanish authorities ensure that the criteria of expediency and proportionality for strip-searches be reviewed, with the aim of ensuring respect for personal dignity. Detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and put the clothes back on before removing further clothing.**

f. complaints and inspection procedures

97. Spanish inmates are entitled to file requests (*peticiones*) in relation to the application of one of their rights or benefits and to lodge complaints (*quejas*) when they feel that their rights have been infringed by the prison administration. Several Articles of the Prison Regulation oblige the prison authorities to accept and process requests and complaints filed by inmates. Further, inmates can lodge second instance complaints against the decision of the SGIP to the supervisory judge.<sup>82</sup>

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<sup>81</sup> See also judgment of the European Court of Human Rights, dated 4 March 2003, in the case of *Van der Ven v. the Netherlands*, and the decision in the case of *Frerot v. France*, declaring admissible the applicant's complaint about full-body searches.

<sup>82</sup> There is no time limit for the supervisory judge to process a complaint lodged by an inmate. However, in the case of delay, inmates may file a complaint directly to the Inspectorate of the State Judicial Council for excessive delay in the processing of their requests and complaints.

In the course of its 2016 periodic visit, the CPT's delegation observed that requests and complaints were in general registered and processed in good time by the competent authorities. All prison establishments possessed a centralised register (including of an electronic format) for the recording of requests and complaints and all entries were duly recorded. That said, at León Prison some inmates who had raised allegations of physical ill-treatment with the CPT's delegation said that they had not lodged any complaint due to the fact that prison staff had intimidated them by threats of reprisals for doing so.

**The CPT recommends that prison staff at León Prison receive the clear message that any kind of threats or intimidating action against a prisoner who has complained of ill-treatment, or attempts to prevent complaints or requests from reaching the relevant supervisory bodies, will not be tolerated and will be punished accordingly.**

98. As regards the role of supervisory judges in monitoring the implementation of custodial sentences and safeguarding prisoners' rights, as regulated by Article 76 of the General Organic Penitentiary Law, the CPT's delegation noted once again that judges were still not visiting prisoners in the accommodation units or even the special departments or segregation units of the prisons visited. In general, supervisory judges were meeting inmates at their request in a designated office in the socio-cultural centre or via video-conference. Further, some inmates complained that prison officers were present in the room during their video-conference with the supervisory judge.

In terms of their control of the legality of the application of means of restraint and of the application of prolonged periods of solitary confinement, the CPT's delegation gained the impression that the role played by the supervisory judges remained merely one of certifying the decisions of the prison administration and there appeared to be no examination of the proportionality and appropriateness of the measures by the supervisory judges. Not surprisingly, a number of prisoners told the delegation that they had no trust in the independence of the supervisory judge in handling their complaints; they considered such judges to be an "extension" of the prison administration.

The CPT attaches particular importance to regular visits to all prison establishments by a supervisory judge with authority to receive - and, if necessary, take action on - prisoners' complaints and to visit the premises. During such visits, the judges concerned should make themselves "visible" to both the prison authorities and staff and the prisoners. They should not limit their activities to seeing prisoners who have expressly requested to meet them, but should take the initiative by visiting the establishments' detention areas and entering into contact with inmates. It is particularly important that the supervisory judge should examine closely the use of means of restraint and the disciplinary process. This implies not only a post-facto examination of the relevant documentation but regular visits to the units where such measures are carried out and direct contact with the prisoners and prison staff concerned. Further, video-conferences between a supervisory judge and inmates should take place in a dedicated room without the presence of prison staff in order to preserve its confidentiality.

The CPT recommends that the Spanish authorities reiterate to supervisory judges the importance of their role as an impartial and independent control of prison practices and not a rubber-stamping authority. In particular, the Committee requests that the Spanish governmental authorities transmit this recommendation through appropriate channels to the Inspection Services of the State Judicial Council (*Consejo de Poder Judicial*). Further, meetings between inmates and the competent supervisory judge should always take place in private.

99. Further, as mentioned in paragraph 6 the Spanish NPM (*Defensor del Pueblo*), as well as the Sub-Directorate of Inspections of the SGIP, were regularly conducting on-site visits to prison establishments in order to review issues such as the applications of means of restraint to inmates.

## C. Detention centres for juvenile offenders

### 1. Preliminary remarks

100. The basic legal framework for the juvenile justice system is laid down by Organic Law 5/2000, on criminal responsibility of juveniles (LCRJ). Juvenile justice is administered by specialised juvenile judges (Article 2(1)); the implementation of the measures imposed on juveniles falls under the authority of autonomous communities/cities (Article 45(1)).

The LCRJ applies to juveniles between the age of 14 and 18 who are suspected of having committed a criminal offence provided for in the Spanish Criminal Code (or other special penal laws).<sup>83</sup> As regards the *pre-trial stage of the proceedings*, the LCRJ provides for several measures that may be applied, including remand detention,<sup>84</sup> probation or living in another family. Remand detention may be imposed for a maximum of six months and may be extended for another three months (Article 28).

For *sentenced juveniles*, Article 7 of the LCRJ proposes a series of custodial and non-custodial measures (such as probation, community services, ambulatory treatment, placement under a therapeutic measure<sup>85</sup> and placement in a detention centre under an open, semi-open or closed regime).<sup>86</sup> The placement under the closed regime may be imposed if other measures are deemed insufficient because of the seriousness of the offence, if violence/intimidation vis-à-vis others was used by the perpetrator and a serious danger to life or physical integrity was caused, or if the offender acted as a member of an organised group (Article 9). Therapeutic measures are imposed on juveniles who suffer from a mental disorder, including substance-related disorders, and are served under a closed, semi-open or open regime.

As a general rule, the maximum length of a placement in a detention centre is three years for juveniles aged 14 and 15 and six years for those aged 16 and 17. However, for some very serious offences or for persons who have committed multiple offences, the length may be extended up to six years for juveniles aged 14 and 15 and up to 10 years for those aged 16 and 17.

Under the terms of Article 54 of the LCRJ, measures imposed on juveniles that entail deprivation of liberty are served in specific detention centres for juvenile offenders.

101. *Sograndio Juvenile Institution*, located some 10 km west of Oviedo (Asturias), was opened in 1925 and underwent a major refurbishment in 1974; a therapeutic unit for the execution of therapeutic custody was established in 2006. With an official capacity of 68 places, it was holding 30 juveniles (26 boys and four girls) at the time of the visit; four of the juveniles were detained on remand, 23 were sentenced and three were held under a therapeutic measure.

<sup>83</sup> Young persons below the age of 14 may not be held criminally liable; however, by virtue of civil legislation, educational measures may be imposed upon them.

<sup>84</sup> *La medida cautelar de internamiento*.

<sup>85</sup> *Internamiento terapéutico*.

<sup>86</sup> Depending on the regime, juveniles could follow some or all of their activities (education, vocational training, work and leisure activities) outside the institution (see Article 7 of the LCRJ and Article 23 of Royal Decree 1774/2004 (which implements certain provisions of the LCRJ)). As a minimum, juveniles in the open regime must in principle spend the night in the juvenile detention centre. However, at the time of the visit, none of the juveniles in either of the establishments visited was held under the open regime. Further, the choice of regime had an influence on the availability of weekend leave from the institution.

*Tierras de Oria Juvenile Institution*, located in the town of Oria (Andalusia), was opened in 2002 and enlarged in 2004. At the time of the visit, it had an official capacity of 130 places and was holding 117 male juveniles: 25 on remand, 55 sentenced and 37 under a therapeutic measure.

As a general rule, both institutions hold juveniles between the ages of 14 and 18. However, they may also accommodate young adults until the age of 28 if the criminal offence has been committed before the person concerned reaches the age of 18.

## 2. Ill-treatment

102. The vast majority of juveniles with whom the delegation spoke in both establishments visited made no complaints against staff. On the contrary, several of them stated explicitly that they were treated correctly and made positive remarks about staff of various categories.

However, a few credible allegations of deliberate physical ill-treatment of inmates by staff were received in both establishments. The alleged ill-treatment consisted of slaps and punches and was said to have taken place when the juvenile concerned became agitated and/or did not follow the rules. In addition, a few allegations were heard of staff threatening juveniles with physical violence and of staff displaying discourteous behaviour towards inmates.

It is a matter of concern in this context that, at least in one case at Sograndio, certain other members of staff had apparently been informed by juveniles who had witnessed a case of physical ill-treatment but had taken no action.

**The CPT recommends that the Spanish authorities ensure that a clear message is delivered to all staff at Sograndio and Tierras de Oria Juvenile Institutions that physical ill-treatment, threats thereof and verbal abuse are not acceptable and will be punished accordingly. It should also be made clear that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows, or should know, that ill-treatment is occurring and fails to act to prevent or report it.**

103. The findings of the visit indicate that instances of inter-juvenile violence were not very frequent and staff generally intervened adequately.

## 3. Conditions of detention

### a. material conditions

104. The main residential building at *Sograndio Juvenile Institution* consisted of the ground floor which contained, for example, a kitchen and dining rooms, and four floors each of which constituted an accommodation module; juveniles were assigned to the modules according to their age and sex (one module for female juveniles (4<sup>th</sup> floor), one for older boys, one for younger boys and one for male juveniles who had difficulties abiding by the rules of the institution (1<sup>st</sup> floor)). A therapeutic module was located in a separate building.

Juveniles were accommodated in single-occupancy rooms which were of an acceptable size (between 7 and 9m<sup>2</sup>), were adequately equipped (a bed with a mattress and bedding, a table and a chair, as well as a wardrobe or shelves)<sup>87</sup> and had good access to natural light; artificial lighting was sufficient. Some of the rooms in the therapeutic unit were equipped with an in-room sanitary annexe (a toilet, a shower and a basin) but the majority of juveniles used communal sanitary facilities located on each floor. It should be noted that the juveniles interviewed confirmed to the delegation that they had ready access to the facilities during the time they were locked in their rooms (see paragraph 109). All rooms and other premises seen by the delegation were generally in a good state of repair and cleanliness.

That said, some of the walls between showers and rooms/corridors in the residential buildings were damp and peeling; according to staff, this was caused by water leakage from pipes, which was a recurrent problem. Moreover, rooms for the accommodation of juveniles (in which inmates were locked during the night) were not equipped with a call bell. **The CPT recommends that these deficiencies be remedied.**

105. Juveniles at *Tierras de Oria* were allocated to one of the nine modules, depending on their profile and/or the educational activities in which they were participating (modules for drug addicts, for sex offenders, for those engaged in different kinds of workshops, etc.). All the premises seen by the delegation were in a very good state of repair and cleanliness and juveniles' rooms had sufficient access to natural light/artificial lighting and ventilation, and were equipped with a bed, a table and a chair, shelves and a call bell).

Juveniles' rooms in the different modules varied in size but generally measured between 6 and 10m<sup>2</sup> (excluding the in-room toilets). All these rooms, regardless of their size, could be used either for single or double occupancy. Thus, at the time of the visit, several rooms measuring 6m<sup>2</sup> accommodated two inmates, offering a mere 3m<sup>2</sup> of living space to each juvenile. In addition, the sanitary annexes in these rooms, consisting of a toilet and a washbasin, were only partially partitioned (if at all) from the rest of the room and provided no privacy for the person using it.

During the end-of-visit talks with the Spanish authorities, the CPT's delegation indicated that the rooms measuring approximately 6m<sup>2</sup> and all rooms fitted with toilets that are not fully partitioned from the rest of the room should only be used for single occupancy.

By letter of 9 January 2017, the Spanish authorities informed the CPT that the rooms had been used for double-occupancy only in specific cases (e.g. for classification of juveniles or because of their participation in specific treatment programmes). In any case, however, double-occupancy use had ceased. The CPT welcomes the rapid reaction of the Spanish authorities.

106. More generally, the design of the accommodation areas at *Tierras de Oria* was far too carceral considering that the institution was intended for the holding of juveniles; in principle, it followed the design and layout of prison establishments for adults, bars were omnipresent, and juveniles' rooms were fitted with reinforced metal doors and windows with metal bars.

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<sup>87</sup> Some of the rooms also had a balcony.

This was particularly true for module 2 which consisted of four single-occupancy rooms and was holding four juveniles at the time of the visit. Two of the juveniles placed in this module were serving solitary confinement as a disciplinary punishment; however, the other two were placed there, for up to three months, on the basis of a discretionary decision by staff, i.e. outside the framework of the formal disciplinary system (see also paragraph 136). This module provided an austere environment and, unlike other residential parts of the institution, was not equipped with sofas, walls were not painted with colours and the juveniles were not allowed to have a television or to decorate their rooms (e.g. with posters).

By letter of 9 January 2017, the Spanish authorities underlined that following the entry into force of the LCRJ, juvenile offenders over the age of 16 had been transferred to this institution from juvenile modules of Spanish prisons and the structural and organisational characteristics of the institution are adapted to the high dangerousness and extensive criminal history presented by the juveniles that are placed in this institution.

The CPT takes note of these remarks. However, it considers that detained juveniles should be held in centres specifically designed for this age, offering a non-prison like environment. This will enable the creation of a secure educative and socio-therapeutic environment which will facilitate the process of social reintegration of juveniles, in line with the principle of the best interests of the child. Consequently, **the Committee invites the Spanish authorities to consider how the design of the accommodation areas at Tierras de Oria Juvenile Institution might be improved to render them less carceral, for example by removing the bars from the windows of the juveniles' rooms. Particular attention should be paid in this respect to module 2; inmates placed in this module should also be allowed to decorate their rooms.**

107. In both establishments visited, several spacious outdoor exercise yards were available to juveniles. At *Sograndio*, the yards contained sports grounds and were equipped with goalposts, basketball hoops, table tennis tables, table football and horizontal bars. They also had benches and shelters against inclement weather.

At *Tierras de Oria*, the yards were, as a general rule, fitted with some sports equipment (goals, basketball hoops) and benches, as well as shelters against inclement weather.

However, the outdoor yard of module 2 lacked any equipment. **The CPT recommends that outdoor exercise facilities at Tierras de Oria Juvenile Institution be adequately equipped to allow juveniles to exert themselves physically. The yards should also be equipped with a means of rest and a shelter from inclement weather.**

b. regime

108. On the whole, the situation as regards the regime of activities offered to juveniles was satisfactory at both establishments visited, and the majority of juveniles spent most of the day engaged in purposeful activities.<sup>88</sup> Every juvenile had an individual sentence plan drawn up by a multi-disciplinary team and approved by a juvenile judge. The plans were reviewed every three months.<sup>89</sup> Participation in organised activities was obligatory for juveniles.<sup>90</sup>

<sup>88</sup> As regards therapeutic activities offered to juveniles with a mental disorder, reference is made to paragraphs 116 and 122.

<sup>89</sup> See also Articles 10 and 13 of Royal Decree 1774/2004.

109. At *Sograndio*,<sup>91</sup> education and/or vocational training (e.g. welding, bricklaying, carpentry, car maintenance) was offered every working day for five hours (10 a.m. to 1 p.m. and 3 p.m. to 5 p.m.). In addition, juveniles benefited from various socio-educational activities and courses (computer courses, development of social skills, sex education, prevention of gender-based violence, debates on current affairs, etc.). Leisure activities, including sport, were also organised on weekends.

The situation was somewhat less positive as regards juveniles accommodated on the 1<sup>st</sup> floor of the main accommodation building (so called “isolation module”) who had difficulties abiding by the rules in the institution or refused to participate in education and/or other activities. As a general rule, they did not associate with juveniles from other modules during organised activities and leisure time and they also attended school/participated in vocational training separately from the others and for some two hours less every day. Consequently, they spent more time locked in their rooms, without organised activities.

The CPT acknowledges that juveniles accommodated on the first floor pose a particular challenge to the staff of the institution. However, **the Committee encourages the Spanish authorities to make efforts to progressively engage those juveniles in purposeful activities together with the other juveniles accommodated in the establishment.**

110. Sports activities were offered to all juveniles (i.e. including those accommodated on the 1<sup>st</sup> floor) three times a week for a minimum of one hour, either in a well-equipped gym or in one of the outdoor exercise yards. The gym was also accessible to juveniles, on a voluntary basis, for one hour every evening.

In addition, access to the outdoor yards was possible, as a leisure activity, for between 75 minutes and three hours every day.

111. At *Tierras de Oria*, the regime of activities comprised education (every working day for some five hours), vocational training (light mechanics, house painting, gardening, ecological agriculture, artistic pottery and digital printing) and voluntary tutoring (according to the interest and the needs of juveniles). Further activities offered to juveniles included workshops on growing bonsai, artistic painting, modelling, theatre, household chores and personal autonomy, pet care and participation in internal radio broadcasting, as well as lectures organised by health-care staff on safe sex, dental care and personal hygiene.

Each module had a sports class at least three times a week in a gym and additional sports activities were organised outdoors, including in a swimming pool during the summer months. The juveniles also had some access to outdoor exercise yards during their recreation time.

However, several of the juveniles met by the delegation stated that they would appreciate more frequent access to fresh air. **The CPT encourages the Spanish authorities to consider how to fully utilise the potential of the outdoor yards which are available at *Tierras de Oria Juvenile Institution*.**

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<sup>90</sup> The participation in activities did not differ depending on whether the juvenile was detained on remand or placed in the detention centre as a sanction or whether he/she was held under the semi-open or closed regime.

<sup>91</sup> Juveniles were locked in their rooms between 10 p.m. and 8 a.m. (and obliged to switch off the lights at midnight) and during the day whenever they were not engaged in activities.

112. Moreover, juveniles suffering from a mental disorder (see also paragraph 122) only participated in regime activities with other juveniles if their mental state so allowed, which was often not the case. Consequently, their daily regime lacked a sufficient range of activities. For example, a juvenile met by the delegation only had school classes in the morning and one hour of outdoor exercise and one hour of a bonsai workshop in the afternoon. **The CPT encourages the Spanish authorities to broaden the range of activities offered to juveniles who suffer from a mental disorder and who cannot participate in activities with other juveniles, or to consider placing these juveniles in a more suitable environment.** Reference is made to the remarks and recommendation set out in paragraph 119.

113. The CPT's delegation noted that, in line with the internal regulations of the establishment, very strict rules were applied to juveniles as regards the norms of everyday life and every breach could be followed by a disciplinary sanction. For example, juveniles were not allowed to talk to security staff and to each other when they were in the gym, in the swimming pool or during workshops. While this is understandable for school classes, the CPT has certain reservations whether such limitations on social interaction are proportionate and in the interest of the social rehabilitation of juveniles. **The CPT would like to receive the comments of the Spanish authorities on this issue.**

#### **4. Health-care services**

114. As regards the health-care team, a general practitioner visited *Sograndio* once a week and was on call for the rest of the time. One nurse was employed full-time and was present on working days from 9 a.m. to 3 p.m. and an external nurse was present in the establishment every evening from 8 p.m. to 9.30 p.m. and on weekends (her main task was the distribution of medication to juveniles). In addition, there was one psychiatrist and one clinical psychologist, both working full-time and present every weekday from 9 a.m. to 3 p.m.

The CPT's delegation heard no complaints from the juveniles as regards access to health care.

115. All newly-arrived juveniles were examined by a nurse reporting to the GP within 24 hours of admission. If requested by the health-care staff, a psychiatric assessment was carried out by the psychiatrist.

However, the information gathered during the visit indicates that juveniles who escaped and were brought back to the establishment, usually by the police, did not undergo a medical examination. The CPT considers that all juveniles returned to a detention centre after an escape should undergo a medical examination. In this way it will be possible to verify the state of health of the juvenile concerned and, if necessary, establish a certificate attesting any injuries. Such a measure could also protect the police and staff of the juvenile centre against unfounded allegations.

**The CPT recommends that the Spanish authorities ensure that whenever juveniles are returned to Sograndio Juvenile Centre after an escape, they undergo a medical examination upon their return.**

116. An individual treatment plan was prepared for juveniles placed in the establishment under a therapeutic measure (see paragraph 100) by a multidisciplinary team which involved the psychologist and the psychiatrist. The juveniles concerned enjoyed a structured treatment programme which included a range of therapeutic activities, such as regular contacts with a psychologist and a psychiatrist, anger management and prevention of re-offending.

At the time of the visit, six juveniles were receiving psychotropic medication; the dosage seemed appropriate and the delegation did not observe any signs of overmedication.

117. However, it was brought to the attention of the delegation during the visit that several of the juveniles who were placed outside the therapeutic unit in the “ordinary” modules and upon whom no therapeutic measure had been imposed by the court, suffered from a mental disorder. Although these juveniles participated in organised activities with other juveniles, they would have benefited from a tailored therapeutic programme. **The CPT would like to receive the comments of the Spanish authorities on this issue.**

118. Moreover, at the time of the visit, two of the five juveniles accommodated in the therapeutic module were not being held under a therapeutic measure; they had been placed in this module for their own protection as they were regarded as vulnerable. Consequently, unlike the three juveniles under a therapeutic measure, they did not follow any specific therapeutic programme.

The CPT appreciates the attention paid by the staff of the establishment to the problem of bullying and inter-juvenile intimidation and violence (see paragraph 103). However, the information gathered during the visit indicates that common accommodation in the therapeutic module of these two dissimilar groups led to frictions among the juveniles and had a negative influence on the group dynamics and therapeutic treatment of juveniles under a therapeutic measure. **The CPT would like to receive the comments of the Spanish authorities on this issue.**

119. Further, in the therapeutic unit, the CPT’s delegation met one juvenile who was being held under a therapeutic measure in a closed regime. The juvenile concerned displayed obvious signs of a psychosis and, according to the staff, had been declared criminally irresponsible and had his disability legally recognised. He was neither able to comply with the rules of the establishment, nor to follow the therapeutic programme proposed, despite considerable efforts made by staff and the attention paid to his situation. Reportedly, requests by the establishment to lift the closed regime had been rejected by the juvenile judge. According to the management of the juvenile centre, the state of health of the juvenile had significantly improved since his placement in the establishment, medication had been progressively reduced and it was expected that in future, he could be placed in protective housing outside the detention centre.

The CPT considers that inmates suffering from severe mental disorders should be cared for and treated in a hospital environment which is suitably equipped and with sufficient qualified staff to provide juvenile inmates with the necessary assistance. Consequently, **the CPT recommends that the Spanish authorities ensure that the situation of the juvenile concerned is re-assessed with a view to transferring him to a more suitable environment. The Committee would like to receive information on the steps taken and the current situation of the juvenile concerned.**

120. At *Tierras de Oria*, the health-care team consisted of a GP who worked half-time at the establishment and was present every day from 3 p.m. to 6 p.m. and two nurses, each covering half a post. In addition, there was one psychiatrist (0.5 FTE) and three psychologists, including one fully qualified clinical psychologist. The establishment was visited once every two months by an ophthalmologist; other specialised care was provided to juveniles by a hospital in Almeria. No complaints were heard from the juveniles as regards access to health care.

121. Upon admission, all juveniles were medically examined and systematically screened for hepatitis A, B, and C, as well as for HIV, syphilis and TB. Further, individual vaccination plans were set up for each juvenile.

As regards medical confidentiality, security staff were not present during medical examinations of the juveniles.

122. At the time of the visit, 35 per cent of juveniles were taking psychotropic medication; the delegation did not observe any sign of overmedication of the juveniles.

Juveniles suffering from a mental disorder were offered a range of psychiatric treatment programmes, including individual sessions with a psychologist and a psychiatrist, group therapeutic activities on intra-family violence, on dependence on modern technologies and pet therapy.

## 5. Staff

123. As regards staffing levels, at *Sograndio*, there were 23 educators<sup>92</sup> and six auxiliary educators<sup>93</sup> who worked from Monday to Friday, either morning or afternoon shifts, six educators and 18 auxiliary educators who worked either the morning or afternoon shift on weekends and 14 auxiliary educators who worked night shifts (seven of them on each shift). In addition, the establishment employed two teachers, five workshop instructors and a part-time IT teacher. The security team (30 members) was provided by a private company.

At *Tierras de Oria*, staff included 109 educators, eight workshop instructors and 46 members of security staff employed by a private security company. At any given time, there were 13 members of the security team present.

124. According to the information gathered during the visit, the only training that was provided to security staff was a basic course on the functioning of the juvenile centres. At *Sograndio*, the training was provided by the private security company; at *Tierras de Oria*, a 10-hour training course on surveillance in juvenile centres was organised for 35 members of the security staff.

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<sup>92</sup> Staff with a university degree, usually either in education or psychology.

<sup>93</sup> Staff with secondary-level education.

The CPT considers that the custody and care of juveniles deprived of their liberty is a particularly challenging task. All staff, including those with purely security duties, should receive professional training, both during induction and on an ongoing basis, and benefit from appropriate external support and supervision in the exercise of their duties. Particular emphasis in such training should be placed on the management of violent incidents, such as the use of verbal techniques for reducing tension and manual physical restraint techniques (see also paragraph 131). **The CPT recommends that the Spanish authorities ensure that these precepts are effectively implemented in practice.**

125. At Sograndio, the CPT's delegation observed that security staff openly carried truncheons in the accommodation modules as a matter of routine. This is all the more surprising given that this practice was not observed by the delegation in prisons which were holding adult inmates. In both establishments visited, security staff wore uniforms.

According to the management of Sograndio, the wearing of uniforms, together with truncheons and handcuffs, was a requirement set by the relevant regulations.

The CPT considers that carrying truncheons openly by security staff who come into direct contact with juveniles is not conducive to fostering positive relations between staff and inmates. Moreover, the wearing of uniforms and truncheons contributes to a prison-like environment in juvenile institutions (see also paragraph 106).

**The CPT recommends that the Spanish authorities ensure that security staff in juvenile detention centres working in direct contact with juveniles do not carry truncheons.**

## 6. Use of means of restraint

126. In the course of the visit to the two establishments, the CPT's delegation paid particular attention to the application of mechanical restraint to juveniles. It should be stated already at the outset that the findings of the visit are a matter of serious concern to the Committee.

127. As regards the legal framework, Article 60 (2) of the LCRJ and Article 55 of Royal Decree 1774/2004 authorise mechanical restraint<sup>94</sup> of juveniles (as well as the use of physical force, rubber truncheons and temporary isolation) in the following circumstances: (i) to prevent acts of violence or injury of juveniles to themselves or others, (ii) to prevent escapes, (iii) to prevent damage to the facilities and (iv) to counter active or passive resistance to instructions given by staff. Means of restraint may only be applied if there is no other, less intrusive, way to achieve the same purpose, for the shortest time possible and the use must be proportionate to the intended purpose. They may not be used as a "concealed punishment".

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*Sujeción mecánica.*

128. As for the situation at *Sograndio*, the information gathered through interviews with juveniles and confirmed by staff indicates that agitated juveniles were brought to one of the isolation rooms which was equipped with a table and a chair fixed to the wall and floor. The juvenile concerned was handcuffed with metal handcuffs behind his/her back to a metal bar connecting the table and the chair or to one of the legs of the chair on which he/she was seated. According to the restraint register maintained in the establishment, instances of such mechanical restraint lasted for up to 115 minutes. However, several allegations were heard that the episodes of fixation may last for periods of several hours. During the period of restraint, the juvenile concerned was repeatedly checked by a member of staff through the hatch in the door of the cell; however, no staff member was continuously present in the room where the juvenile was restrained.

The practice at *Tierras de Oria* differed significantly. The establishment had a dedicated room for mechanical restraint which was equipped with a bed (not fixed to the floor) fitted with three pairs of handles along its edge to attach straps. Juveniles were fixated to the bed face down, with their wrists and ankles (and sometimes the torso) attached to the bed with straps and their legs wide open. The fixated juvenile was repeatedly checked by a member of staff through a barred window but there was no staff member continuously present in the room. The examination of the restraint register revealed that such fixation was used 24 times between January and September 2016 and that the measure usually lasted between one and two hours. Fixated juveniles were not allowed to use the toilet (despite requests) and in some cases urinated on themselves. Further, some juveniles alleged that they had been fixated even though they had not been at all agitated and perceived the fixation as a punishment for their misbehaviour. Allegations were also heard that juveniles were threatened that they would be fixated as a punishment if they did not comply with the rules of the establishment. Moreover, the fixation was repeatedly used in respect of juveniles who visibly suffered from breathing difficulties.

129. During the end-of-visit talks with the Spanish authorities, the CPT's delegation expressed its concerns about the use of mechanical restraint in both establishments visited and requested that the practice of mechanically fixating juveniles to a bed for prolonged periods be ended forthwith.

By letter of 9 January 2017, the Spanish authorities refer to the above-described national legislation which authorises the use of mechanical restraint and underline the subsidiary nature of such measures. As regards the situation at *Tierras de Oria* Juvenile Institution, the authorities add that in February 2016, the regional authorities of Andalusia<sup>95</sup> established a protocol which defined additional safeguards accompanying the application of prolonged mechanical restraint. In particular, the restrained juvenile must be visited immediately by a member of the health-care staff who must certify in writing that there are no clinical contra-indications for the restraint, must thereafter be visited every 30 minutes by health-care staff who evaluate his/her state, and must be under the continuous supervision of a member of staff, either by technical means or, preferably, in person. Further, according to the protocol, staff applying mechanical restraint must have specific training and, if possible, the restraint bed should be anchored to the floor. Every use of means of restraint should be recorded in a dedicated register.

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<sup>95</sup> Department for Justice and the Interior (General Directorate of Juvenile Justice and Co-operation) of the Regional Government of Andalusia.

130. The CPT considers that fixating juveniles to a bed or handcuffing them to fixed objects in an isolation cell is a disproportionate use of force and a measure which is incompatible with the philosophy of an educational centre which should focus on the education and social re-integration of the juveniles. The Committee's objections are all the stronger when the restraint is applied to juveniles as young as 14 years' old or suffering from a mental disorder, when the period of restraint lasts for several hours and when the person under restraint is not continuously and directly monitored by a trained member of staff who can offer immediate human contact to the restrained person, reduce his/her anxiety, communicate with the individual and rapidly provide assistance (e.g. escorting the juvenile to the toilet). Clearly, video-surveillance cannot replace such a continuous staff presence.

In the CPT's opinion, the use of means of restraint under these circumstances may amount to inhuman and degrading treatment.

131. In educational centres, the use of fixation as a means of restraint and handcuffing of violent and/or agitated juveniles to fixed objects until they have calmed down should be ended forthwith. Instead, alternative methods of managing violent incidents and of restraint, such as verbal de-escalation techniques and manual control, should be employed; this will require staff, especially security officers, to be properly trained and certified in their use. Further, individual alternative measures to prevent agitation and to calm down juveniles should be developed. It is axiomatic that any force used to bring juveniles under control should be kept to the minimum required by the circumstances and should in no way be an occasion for deliberately inflicting pain.

In the event of a juvenile acting in a highly agitated or violent manner, the person concerned should be kept under close supervision in an appropriate setting (e.g. a time-out room). In the case of agitation brought about by the state of health of a juvenile, staff should request medical assistance and follow the instructions of the health-care professional (including, e.g., to transfer the juvenile concerned to an appropriate health-care setting). It is totally unacceptable to use mechanical means of restraint as a punishment or even as a threat of punishment.

**The CPT recommends that the Spanish authorities put an end to the use of fixation, both as regards the strapping down of juveniles in the prone position and the handcuffing of violent and/or agitated juveniles to fixed objects, in educational centres. Further, the Committee recommends that alternative methods of managing violent incidents and of restraint, including individual alternative measures to prevent agitation and to calm down juveniles, be introduced, taking into consideration the above remarks.**

## 7. Discipline and security measures

132. The disciplinary system is regulated by Article 60 of the LCRJ and Articles 59 to 85 of Royal Decree 1774/2004 (which implements certain provisions of the LCRJ). Disciplinary offences are classified as minor, serious and very serious and the sanctions that may be imposed include reprimand, prohibition of participation in recreational activities for up to two months, deprivation of weekend home leave for up to one month, separation from other juveniles during weekends (for up to five weekends) and solitary confinement ("separation from the group") for up to seven days.

As regards disciplinary proceedings, the juveniles must be informed of the disciplinary charges, may present evidence and may be assisted by a lawyer. A disciplinary sanction is imposed by the director of the establishment, a reasoned decision must be issued and a copy must be given to the juvenile concerned. The decision may be appealed to the juvenile judge.

The examination of the disciplinary registers kept in both establishments and the information gathered through interviews with inmates indicate that these procedures were respected in practice.

However, at both establishments, the CPT's delegation heard a few allegations that juveniles were discouraged from lodging appeals by staff warning them that they would risk stricter sanctions. **The CPT recommends that all staff at Sograndio and Tierras de Oria Juvenile Institutions be reminded that they should refrain from discouraging juveniles from appealing against the disciplinary sanction imposed.**

133. As regards more particularly the legal regulation and the practice concerning solitary confinement of juveniles, these are matters of serious concern to the CPT.

First of all, the maximum length of solitary confinement for a juvenile of seven days, as provided for in the Spanish legislation, is already high. Moreover, the CPT's delegation came across instances of juveniles being placed in solitary confinement as a disciplinary sanction for three consecutive periods of seven days, with an interval of only one night after the first and second seven-day period, which they, however, spent alone locked in their own room. Thus, the juveniles concerned spent virtually 21 days in solitary confinement.

The CPT must stress that any form of isolation may have a detrimental effect on the physical and/or mental well-being of juveniles. In this regard, the Committee observes an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction in respect of juveniles. Particular reference should be made to the United Nations Standard Minimum Rules on the Treatment of Prisoners (*Nelson Mandela Rules*) which have recently been revised by a unanimous resolution of the General Assembly and which explicitly stipulate in Rule 45 (2) that solitary confinement shall not be imposed on juveniles.<sup>96</sup> The CPT fully endorses this approach.

**The CPT recommends that the Spanish authorities take steps to end the use of solitary confinement as a disciplinary punishment for juveniles, which should include amending the relevant legislation accordingly.**

134. On a positive note, the CPT must put on record that whilst in solitary confinement, juveniles were offered two hours of daily outdoor exercise (albeit separately from other inmates), were visited every day by a member of the health-care staff and an educator and the usual entitlement for receiving visits and making phone calls (see paragraph 139) was not restricted. Moreover, the disciplinary solitary confinement was sometimes served in the juvenile's own room (as opposed to a disciplinary isolation cell).

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<sup>96</sup> See also Rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly Resolution A/RES/45/113, Annex).

135. The examination of the disciplinary register kept at *Sograndio* revealed that self-harm was regarded as a disciplinary offence and was punished accordingly. The CPT notes in this context that according to Article 63, letter (l), of Royal Decree 1774/2004, acts of self-harm committed as a measure of pressure<sup>97</sup> or simulating injuries to avoid carrying out mandatory activities constitute a serious disciplinary offence which may be punished with up to two days of solitary confinement.

The CPT considers that acts of self-harm should be approached from a therapeutic rather than a disciplinary standpoint. The isolation of the prisoners concerned is likely to exacerbate their psychological problems. All cases of self-harm ought to be assessed medically immediately after the incident to evaluate the extent of lesions and to have the psychological state of the prisoner comprehensively assessed by a psychiatrist, with a view to providing individualised management.

**The CPT recommends that the Spanish authorities develop measures to identify those at risk of self-harm and put in place preventive measures, such as the development of positive coping mechanisms and healthy problem-solving skills. At the institutional level, conflict resolution by mediation should be introduced.**

136. As already noted in paragraph 106, the delegation gained the distinct impression that placement of juveniles to module 2 at *Tierras de Oria*, which offered particularly austere conditions, was in some cases used as an informal disciplinary punishment and was not accompanied by safeguards. **The CPT considers in this respect that any disciplinary sanction imposed on a juvenile should be the outcome of a formal disciplinary procedure which is accompanied by appropriate safeguards.**

137. Further, at *Sograndio*, the delegation met one juvenile whose personal belongings had been confiscated by staff when the person concerned had started serving a disciplinary solitary confinement. However, one month after the execution of the sanction, the personal belongings had still not been returned and the juvenile concerned had not been told when this would happen. Moreover, this additional measure had not been registered in the disciplinary register. **The CPT would like to receive the comments of the Spanish authorities on this issue, in particular as regards the legal basis for such a measure. More generally, the CPT wishes to stress that any disciplinary sanction should result from relevant existing disciplinary procedures, be duly recorded and not take the form of an unofficial punishment.**

138. In both establishments visited, when resort was had to a strip-search of a juvenile, the inmate concerned was obliged to fully undress.

The CPT considers that a strip-search is a very invasive and potentially degrading measure. When carrying out such a search, every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and put the clothes back on before removing further clothing.

**The CPT recommends that the Spanish authorities amend the current practice of strip-searches to bring them into line with the precepts set out above.**

## 8. Other issues

139. As regards contact with the outside world, according to Article 40 of Royal Decree 1774/2004, juveniles are entitled to receive two visits a week, each lasting 40 minutes (which may be accumulated into one visit). In addition, they may receive a family visit once a month (3 hours) and, under certain conditions, an intimate visit once a month for one hour. In both establishments visited, these minimum entitlements were respected and, in reality, juveniles were offered longer visits.

Further, juveniles could make two phone calls a week (for 10 minutes each) and receive phone calls during their recreation time. They could also send letters and parcels, in principle without limitations.

The CPT considers that such arrangements are satisfactory and call for no particular comments.

140. Effective complaints and inspection procedures are basic safeguards against ill-treatment in juvenile establishments. Juveniles should have avenues of complaint open to them, both within and outside the establishments' administrative system, and be entitled to confidential access to an appropriate authority.

The CPT notes positively in this respect that both establishments were regularly visited by juvenile prosecutors and judges, as well as the NPM/Ombudsman,<sup>98</sup> juveniles confirmed that they could request to meet them and talk to them in private. Further, juveniles could make complaints (and requests) to those bodies (in open or closed envelopes) or to the director of the establishment.

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<sup>98</sup> Between 2010 and 2015, the NPM carried out 39 visits to detention centres for juvenile offenders.

**APPENDIX**  
**LIST OF THE NATIONAL AND REGIONAL AUTHORITIES,**  
**NON-GOVERNMENTAL ORGANISATIONS AND PERSONS**  
**WITH WHOM THE DELEGATION HELD CONSULTATIONS**

**A. National authorities**

**Ministry of Interior**

Francisco Martínez Vázquez	State Secretary for Security
Ángel Yuste Castillejo	Secretary General of the Penitentiary Administration
Carlos Abella y de Arístegui	Director General for International Relations and Migration
Jaime de Villota Ruiz	Director of the European Affairs Unit
Iñigo Gaya Van Stijn	Head of Unit

**Office of the Ombudsman (*Defensor del Pueblo*)**

Soledad Becerril	Ombudsperson ( <i>Defensora del Pueblo</i> )
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