

## 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 mecánica*). 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 mecánica 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.