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Response

of the Spanish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Spain

from 27 September to 10 October 2016

The Spanish Government has requested the publication of this response. The CPT's report on the September/October 2016 visit to Spain is set out in document CPT/Inf (2017) 34.

Strasbourg, 16 November 2017

MINISTERIO
DEL INTERIOR

SECRETARIA DE ESTADO DE
SEGURIDAD
DIRECCIÓN GENERAL DE RELACIONES
INTERNACIONALES Y EXTRANJERÍA

In compliance with Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, on the 6th of April 2017 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) presented the report on the visit to Spain that took place from the 27th of September tothe10th of October 2016 to the Spanish Government.

Along the visit in 2016, the CPT's delegation examined the treatment that people under custody received by law enforcement agencies. Special attention was paid to the application of safeguards against ill-treatment and the changes made in the legal framework regarding incommunicado detention. The delegation also evaluated the treatment of inmates in several prisons, particularly focussing on the use of mechanical restraint for regime purposes. Likewise, the delegation examined the treatment offered to juveniles deprived of liberty according to the Spanish criminal law in two centres.

The report issued by the CPT includes recommendations, comments and information requests about three areas: **law enforcement agencies, prison establishments and detention centres for juvenile offenders**. In the period of 6 months granted, this is the information that can be provided by the Spanish authorities about each of the recommendations and information requests:

A. LAW ENFORCEMENT AGENCIES
1. ***Ordinary custody by law enforcement agencies***
b. Ill-treatment
"8. (...) The CPT reiterates its recommendation that the Spanish authorities remain vigilant in their efforts to combat ill-treatment by law enforcement officials (...)" "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."

"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 and should be applied only for as long as is strictly necessary."

It is important to highlight that in Spain there are several regulations regarding arrest and treatment of apprehended persons, as well as their custody, mainly:

- Organic law 10/1995, approving the Criminal Code, specifies the crimes of torture committed by civil servants in its Articles 174 to 177.
- Organic law 2/1986, on Law Enforcement Agencies, gathers the basic principles of action by Police agents.

- Instruction 12/2015 of the State Secretariat for Security, approving the “Protocol of action in establishments for the custody of detainees by law enforcement agencies”.
- Instruction 12/2017 of the State Secretariat for Security on the behaviour requested to law enforcement officials in order to guarantee the rights of people arrested or under police custody.
- Instruction 1/2017 of the State Secretariat for Security on the “Protocol of police action with children”.

When they act, law enforcement officials are subject to the law in force and, therefore, to the regulations and provisions developing the law in order to regulate the different procedures to carry out certain proceedings, especially when these entail interference in individual rights granted by the Constitution.

We wish to mention the Instruction 12/2007 of the State Secretariat for Security on the behaviour requested to law enforcement officials in order to guarantee the rights of people arrested or under police custody, where the following directives are included regarding issues of interest for the CPT’s delegation in its report:

A. Regarding the **use of force during the arrest**, the SEVENTH INSTRUCTION says it is exceptional and only to be used when it is unavoidable in circumstances that may entail a serious risk for the security of citizens or a rationally serious risk for the life of the agent, his/her physical integrity or that of third parties, and in those cases the agents must act according to the principles of opportunity, consistency and proportionality always with the *duty to cause the minimum harm possible*.

The referred SEVENTH INSTRUCTION expressly establishes that ***no matter what the behaviour of the detainee has been, violence is never justified once the person has been restraint***.

B. Concerning restraining and handcuffing of detainees, the NINTH INSTRUCTION provides for the following:

3.- *The agent must be aware at every moment that restraint with any fixing element can hinder the physical capabilities of the detainee, so* ***its duration must be adjusted, avoiding unnecessary suffering, without prejudice of the fact that the restraint must be ensured (to avoid flight, external aggression or self-harm of detainees).***

The content of the said Instruction 12/2007, as well as the laws and legal rules inspiring it are **fully included in the training plans of admission, promotion and professional updating of the law enforcement agencies**.

On the other hand, the Ethical Code of the National Police is an essential document published in the General Order n. 2006 on 6 May 2013, representing the professional values expected from National Police agents in fair correspondence with the national and international rules on protection of human rights, also governing their actions.

The said document contains a ***Code of Conduct***, and its Article 26, on the *Use of force*, covers among other preventions, that ***the use of force will cause the minimum harm possible, reducing the harm and the injuries to the minimum and providing immediate assistance to injured people***.

Therefore, practices such as those referred to by the CPT's delegation cannot take place in the law enforcement agencies. However, after the visit of the Committee, the National Police Headquarters reminded its staff in an official letter the duty to abide by the provisions related to the use of force and handcuffing of people deprived of liberty.

Likewise, any behaviour considered reproachable, committed by law enforcement agents, will be subject to the corresponding disciplinary measures. The Internal Affairs department is the body in charge of this type of investigations.

Without prejudice of that, in case there are signs of a crime, the criminal court will be immediately informed in order to clarify the facts **in a preferential manner**.

From the punitive point of view, there is a specific legal classification in our Criminal Code that foresees torture and other degrading treatments committed by authorities or civil servants in Articles 174 (basic type) and 175 (mitigated type) of the Criminal Code.

At the same time, **Article 174** describes the **autonomous crime of torture** following the guidelines set by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10th December 1984, ratified by Spain on the 21st of October 1987.

In the typical structure of the crime of torture, the following elements are present:

a) The **material element** represented by the behaviour or action identified with physical or mental suffering, suppression or reduction of cognition, discernment or decision, or that in any way may **harm moral integrity**.

b) The fact that the **active subject** is an authority or civil servant who may have acted abusing their position, taking advantage of the situation of dependence or submission of the passive subject (wide concept, according to the Article 24.2 of the Criminal Code, **expressly including prison establishments, protection centres or juveniles centres)**.

c) The **teleological element,** since this crime only exists when there is an aim to obtain a confession or information from any person or to punish a person for any action carried out or suspected to be carried out. **The Criminal Code in force has widened this teleological element including, apart from fact-finding torture, vindicative or punishing torture** for what the passive subject has done or is suspected to have done.

The purpose is to provide typical coverage to cases where authorities or civil servants act as a reprisal to the action of the passive subject. Finally, **for the consummation of the crime it is not necessary** that the purpose leading the agent has been achieved, but it is considered a trend element, together with willful intent, that must be present in the person acting.

The definition of torture that has been covered in Article 174 of the current Criminal Code establishes a difference in behaviour and in the corresponding sanction, depending on the seriousness of the crime, providing that the "conditions or proceedings that, by their nature, duration or other circumstances" are to be used as guidelines to determine when a behavior can be considered torture. The applicable punishment varies **between one year and six years of custodial sentence depending on the seriousness of the crime, apart from absolute disqualification**.

The provision of a mitigated type in Article 175 of the Criminal Code when not all the requirements of the type in Article 174 are met **does not imply laxity in the treatment, but rather the contrary**. Any attack against the moral integrity by an authority or civil servant not meeting these conditions is, in any case, considered a serious crime, and it is redirected to Article 175 with

punishments of 6 months to 4 years of custodial sentence, also depending on the seriousness of the attack, apart from the ancillary punishment of special disqualification.

However, special attention must be paid to the fact that the punishment may vary if, apart from attacking the moral integrity, an injury or harm to life, physical integrity, sexual freedom or goods of the victim or a third party may be caused, since according to the rule established in Article 177 of the Criminal Code, the offences will be punished separately, with the punishment corresponding to each of the offences committed. This means that, as they are different offences with different legal nature, it is possible to punish them separately.

"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."

Concerning this, we highlight the following:

1st. The inspectors' rooms are individual and the statement-taking of people under investigation, victims, witnesses, etc. is carried out in the detainees' room (ground floor) or in the offices of the rest of police staff in the Judicial Police department, if it is the first or the latter.

2nd. The objects mentioned by the CPT are never displayed to people who are not agents. Some of these items, such as rams, crowbars, picks and hydraulic jacks are used in investigation operations with prior judicial authorisation.

3rd. In the police premises, apart from what the CPT calls "whip" and which in reality was a stick seized in a drug trafficking operation, there were: a stick seized by the group specialized in injuries against people and a string, which looks like a rope, seized to a person arrested for burglary. Those items were placed in the rooms of the staff in charge of processing the files to be immediately sent to the judicial authority.

c. Safeguards against ill-treatment
ii. Notification of custody
"12. (...)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).

According to the Subdirectorate-General of Logistics, under the Directorate-General of Police and competent in matters of telecommunications, in November 2016, after adopting the necessary measures to enable international phone calls from the phones in National Police stations with area of arrest and custody, instructions to the provincial delegations of telecommunications were given so that the necessary changes were made in the phones and the collaboration of the Central Service was to be requested in case those changes could not be made.

Finally, after assisting many requests from peripheral bodies regarding this issue, in the month of May this year, all the steps had been taken to guarantee that 100% of the police stations that had requested assistance for the technical activation of the service were operational.

iv. Access to a doctor
*"**15. 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. The CPT reiterates its recommendation that such a right be guaranteed by the national legislation."***

The Code of Criminal Procedure (CCP) includes as one of the rights of detained people, being consulted by the forensic doctor or their legal substitute and, in absence thereof, by the doctor of the institution the detainee is in or any other part of the State or Public Administrations. **The public nature of the doctor is an additional guarantee of total impartiality of the report made and without prejudice of the person under investigation to choose another doctor.**

With the purpose of reinforcing the guarantees and following the recommendations of international bodies defending human rights (Istanbul Protocol), the National Plan of Human Rights already gathered the commitments by the Spanish Government with human rights, included under the title "Personal freedoms and law enforcement agencies", and had a measure to try to reinforce the legal guarantees of the detained person: "the forensic doctor will examine the person following the guidelines set in a Protocol that will be drafted by the Ministry of Justice for that purpose and that will contain the minimum medical check-ups to be done and the standardized reports to be filled out." In order to do so, **the Forensic Medical Board has drafted a Protocol at national level for incommunicado detainees that is still to be published when this report is being drafted**.

In the judicial practice, **the additional medical supervision is generalized in terrorism cases**. This enables the detainees to be consulted by a doctor they choose, if they request so, together with the forensic doctor, **who visits the detainee every eight hours and whenever it is necessary**. The forensic doctor generates a report and the personal doctor generates another report, and both will be delivered to the judge that will take statement to the detainee. We must also take into account that, according to the **Protocol for detentions to avoid Police ill-treatment and abuse**, the civil servants are forced to bring any detainee who states they are injured, even if not visible, to a hospital "immediately". If the detained person is under the influence of drugs or suffers a mental disorder, they should also be brought to a doctor before going to the cell. **As a corollary, regarding the application of jurisprudence on such regulation, our Constitutional Court,** as the mentioned sentence 130/2016, FJ 2, says, goes in line with the jurisprudence of the European Court of Human Rights, that insists on the need to apply a reinforced measure of investigation when there are claims of tortures or ill-treatment by law enforcement agents (sentence of the Constitutional Court 39/17, 24 April, 144/16, 19 September). We remind that there is no possibility to close an investigation of tortures without a thorough investigation, using all reasonable and efficient means of investigation. We point out that the fact that the plaintiff denies suffering ill-treatment is not a concluding argument for the absence of ill-treatment ant the lack of identification of ill treatments by the forensic doctor is not concluding.

v. Information on rights
"17. (...)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."

The National Commission for Coordination of Judicial Police, *a body whose members are the Ministry of the Interior, Ministry of Justice, the State Judicial Council, the State Prosecution Service and a representative of each of the autonomous regions with competence for the protection of people and goods and for keeping public order*, in its working session held on the 3rd of April 2017, agreed to approve the content of the handbook *Criterios para la Práctica de Diligencias por la Policía Judicial* (Criteria for the Procedures by Judicial Police).

The Royal Decree 769/1987, 19 June, on the regulation of the Judicial Police, in Article 36 c) grants the National Commission for Coordination of Judicial Police the competence to "intervene, strictly respecting the principle of judicial Independence in the jurisdictional actions, to unify criteria or solving potential incidences that may hinder the proper functioning of the Judicial Police or any other that may arise in the relations between the Judicial Authority or the Prosecutor and the Judicial Police".

The said handbook has been recently published in the General Order/Official Gazette of the law enforcement agencies so all their members are informed about it. It is frequently used and consulted and it contains a special section related to information on rights to detained people, highlighting the issues pointed out by the Committee (clear information to detainees about their rights, registering information on rights and right to keep the information in writing).

In the chapter of the handbook dealing with preventions on rights of detainees, it establishes that:

I) The detainee will be allowed to keep the statement of rights in written format during the time under custody, in such a way that is compatible with their physical safety during their stay in police premises. When such compatibility does not allow the detainee to keep the statement of rights, it will be available while the person is under custody, together with their personal belongings.

Likewise, in accordance with the Article 520 of the CCP, at the moment of arresting a person, the Police agents must verbally inform about their rights, the facts attributed and the reasons for the arrest. Subsequently, in the police premises, the detainee will again be informed of his/her rights and the facts attributed and this will be recorded in writing.

As established in the said article of the CCP, the detainee is allowed to keep the written declaration of rights while in police custody, in such a way that is compatible with their physical safety during their stay in police premises. When such compatibility does not allow the detainee to keep the statement of rights, it will be available while the person is under custody, together with their personal belongings.

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."

As the Committee states, generally the custody records and the detainees records in the detention centres meet the rules. In fact, this circumstance is one of the issues examined during inspections to detention centres by the State Secretariat for Security in the inspection to staff and security services. Already in 2014, the Instruction 13/2014 of the State Secretariat for Security was issued, *reminding of the duty to comply with the rules regulating official records*.

In the said Instruction, the custody books are required to be filled out in a correct and complete way, apart from giving instructions to carry out training and control activities.

In the same way, in the Instruction 5/2015 of the State Secretariat for Security, this body is granted the specific mission to *"Guarantee that law enforcement agencies comply with national and international standards against torture and other cruel, inhuman or degrading treatments or punishments"*. Very recently, the organizational chart in the Ministry of the Interior has changed according to the Royal Decree 770/2017, of 28 July, developing the organizational structure of the Ministry of the Interior. In this Royal Decree, the Inspection of Staff and Services is granted the

status of Subdirectorate-General, directly under the State Secretary for Security and has been given the specific function of "*Promoting actions that favour professional and ethical integrity of the law enforcement officials"*.

The stay of detained people in official police establishments requires the recording in the Detainees Records, one for adults and other for under-age, created and regulated by two Instructions of the State Secretary for Security:

- Instruction 12/2009, of the State Secretary for Security, regulating the *"Detainees record and custody book".*
- Instruction 7/2005, of the State Secretariat for Security, on the *record book for under-age detainees.*

The said Instructions of the State Secretary for Security include the right way to fill out each of the corresponding record books, which all Police agents know and abide. The one-off occurrence that certain civil servants have not filled out the books in the correct way does not mean that this happens usually, even more so, taking into account that the incidences that may take place are documented in police records.

"20. (...) 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."

The Instruction 12/2007, of the State Secretariat for Security, which all Police agents must abide by in their work establishes in the THIRD INSTRUCTION, *on Rights of the Detained Person*, that:

1. Once the person has been arrested, **the detainee will immediately be informed – in a language and form that is comprehensible – on the catalogue of rights as per Article 520.2 of the CCP, the facts attributed to them and the reasons for their deprivation of liberty.**

In the same fashion, we must point out that currently, those circumstances are being documented in the text of the police record sent to the judicial authority, according to the applicable laws (Article 292 of the CCP) and also in the record book of phone calls, existing in all police establishments, as set out in the Instruction 12/2007 of the State Secretariat for Security, THIRD INSTRUCTION, on the *Rights of the Detained Person*:

5.- (...) In the record **book of phone calls, the phone call or calls to the lawyer or the bar association and all incidences that may arise must be recorded** (impossibility of communicating with them, no reply, etc).

The document on information of rights to detainees, part of the Police records, has some specific fields to include those designations, which are then included in the IT system of the corresponding Police force. In this way, the recommendation from the Committee is met.

Likewise, regarding this recommendation, we highlight the modification to the Code of Criminal Procedure (CCP) made by the Organic Law 13/2005, of 5 October, for the **reinforcement of the procedural guarantees** and the regulation of technological investigation measures, issued, among others, with the aim of transposing the rights for people deprived of liberty granted by the Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013, 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. This led to the creation of a "Statute of the Persons under Investigation", which materializes in the **new drafting of the Articles 118, 509, 520 and 527 of the CCP.**

They include new demands and also criteria for **best forensic practices that were to be found in lower profile rules or had been developed by jurisprudence**, and with the ultimate goal to provide higher legal security to the system of guarantees, bringing all its rights into one single legal text.
In this context, within the Statute of the Persons under Investigation and Detained Persons, references will be made to the questions asked in the CPT report.

- It is specified that at the moment of the arrest and all subsequent transfers, the officials in charge **must guarantee the respect to constitutional rights to honour, privacy and personal portrayal of detainees and inmates**. Among others, the purpose is bringing the provisions of the Instruction 3/2009 of the State Prosecutor, on the control of how to carry out arrests, and the Instruction 12/2007 of the State Secretariat for Security, on the behavior requested to Police members to guarantee the rights of detained persons or under custody (Article 520.1 of the CCP) into the legal text.

- With the purpose of completing the Statute of the Persons under Investigation and Detained Persons, it is established that the **Police record includes place and time of arrest and Police custody or release**.
- In the right of defence, **the assistance of a freely designated lawyer or, failing this, a exofficio lawyer, with whom the detainee can communicate and meet in private at any moment since the crime is attributed (before and after making the statement) and who will be present in all their statements** is an essential part. The right to **access a lawyer** immediately after being deprived of liberty is recognized, so the maximum **period of eight hours to receive assistance of a lawyer is now reduced to three hours**.

The lawyers that provide a service as ex-officio lawyers are professionals who have the proper training for that. They must prove more than three years of work as lawyers and have the certificate of the School of Legal Practice (Escuela de Práctica Jurídica) or equivalent certificates approved by the bar associations. The recent modifications to the Law 1/1996, of 10 January, on free legal assistance by the Law 42/2015, of 5 October and 2/2017, of 21 June, highlight the importance of training these professionals and the quality of the assistance provided in order to guarantee the constitutional right of defence.

On the other hand, the bar associations have the responsibility to establish the systems for objective and equitable distribution of the shifts and the means to designate ex-officio lawyers. In order to ensure the defence of the detainee during the arrest and the preliminary criminal proceedings that may be necessary, there is a system of shifts that guarantees permanent assistance and defence. These will be provided until the end of the process in the judicial body and, when it is the case, the implementation of the judgement.

Concerning the **right of the detained person to have telephone communication**, without unjustified delay, with a third party of their choice, **this right is not limited to foreign nationals, since they expressly have the right to communication with the consular office of their country, so this office is the communication channel**.

d. Conditions of detention.
"21. Regarding the material conditions of the cells, the CPT reiterates its recommendation that all cells constructed or reconstructed in the future should enjoy access to natural light. Moreover, all the installations, including the cells, must have adequate ventilation and light."

The Instruction 11/2015, of the State Secretariat for Security, approves the "Technical Instruction for the design and construction of detention areas" with the aim of establishing the directives for the construction of the said areas located in police premises, presenting uniform technical criteria that must be taken into account in their planning, design and execution.

The said Instruction gathers the general orientations for functional relations, layout and configuration of the different spaces integrating the Detention Areas such as the technical characteristics that their infrastructures and installations have to meet, with special attention to security equipment.

Therefore, the custody cells for detainees have, in accordance with this Instruction, adequate ventilation and lighting for their stay but no natural light for security reasons.

*"**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 (...)The Committee would like to be updated on this."***

[And in connection with this final remark]

*"**28. The CPT recommends that the Spanish authorities ensure that persons held in police custody have a ready access to toilet at all times.**"*

Concerning this last aspect, we wish to reiterate that the Action Plan designed by the Economic and Technical Division of the Directorate-General of the Police to include the necessary improvements in the detention areas, with the purpose of these cells to comply with the provisions foreseen in the Instruction 11/2015 of the State Secretariat for Security, for the design and construction of detention areas and the recommendations made by the Ombudsman, foresees the installation of doorbells.

Those improvements are being carried out according to the budget available, since the total cost of implementation in the cells of National Police establishments is of around 6,000,000 EUR.

*"**23.(...) The CPT recommends that custody cells at Madrid (Calle de Leganitos) Police Station measuring 8m², 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."***

The territorial demarcation of the central district police station is known for the high rates of crime incidence, which means there is a high number of arrests every day (an average of 7,000 detainees a year). However, thanks to the experience of the Police officers in this station, proceedings are done in a very agile and efficient way and the time that people are deprived of liberty in their custody cells is the minimum indispensable time, only rarely 24 hours are exceeded.

Regarding the cleaning and sanitation of the cells, this is done every day throughout the year.

*"**24. (...) The CPT recommends that the cells measuring less than 5m² at Oviedo (Calle General Yagüe) Police Station not be used for overnight accommodation"***

Concerning this point, we must state that, according to the information provided by the Police headquarters in Asturias, on the 11th of May this year, the mentioned cells were banned and only those located in other police premises in the same territory were used in Avenida de Buenavista, in the same city.

*"**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.***
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."

According to recent information by the territorial body to which this premises belong, at the end of 2016 a project for the refurbishment of the minors' cells was drafted (the floor plan is attached as **Annex I**) and it was in line with the recommendations by the CPT's delegation after their visit to the said premises and in line with the regulations established by the State Secretariat for Security, for the construction and refurbishment of custody areas in law enforcement agencies' establishments.

The refurbishment meant the construction of an integrated module through an access area of 2 cells, located to the left and to the right, and a toilet at the end with sink, toilet and shower cabin. The lightning of all the areas was LED lights that can be activated from the outside and with a safety glass screen. In the reform, the installation of video surveillance cameras was foreseen, so the pre-installation necessary for them was also arranged.

These new cells are operational since the beginning of the month of July, when the Works finished, and their functioning has been quite satisfactory.

"26. Concerning the waiting rooms (the so-called "precalabozo"), 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."

The common practice in terms of custody of detained persons is the custody in individual cells, with the necessary security elements for the detainee's physical integrity and with Police agents in charge. It could have been the case that, for the sake of the personal safety of the detainee, his/her immobilization to a fixed element may have been resorted in Police premises, which would have been an isolated and rare case, and always for a very short period of time.

"27. 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."

In accordance with the Article 17.2 of the Spanish Constitution and the Article 520.1 of the CCP, the preventive detention cannot take longer than the strictly necessary time, maximum of 72 hours, but generally it is solved in few hours, son it is not necessary to have this type of facilities.

2. Incommunicado detention.

"38. The CPT considers that the possibility to impose the incommunicado detention regime should be removed altogether from the Spanish legislation. Likewise, it considers that the application of the incommunicado regime to all persons under the age of 18 be prohibited. Finally, it requires that all detained persons should be allowed to meet a lawyer in private, from the outset of their detention and thereafter as required."

As the Committee expressly admits in its report, Spain has made an important effort in the reform of the Code of Civil Procedure (CCP) in order to guarantee the rights of detainees.

These reforms have a special impact on the incommunicado detention regime.

On this remark of the Committee about removing the incommunicado detention regime, we have to consider the **absolutely exceptional and exiguous nature of its practical application**, because, as the members of the CPT had the chance to see during their visit to Spain in 2016, in the last few years, the incommunicado regime has not been ordered to a single person. On the other hand, its legal drafting, modified by the Organic law 13/15 of 5 October, far from granting a status of ordinary practice, implies its regulated nature and avoids discretionality, which may occur in other

States where this kind of measures are agreed *de facto* and as an exception based on the seriousness of the facts investigated. **We reiterate that the fact that it is included in our legal texts provides legal and constitutional guarantees to the person affected by the measure**.

The exceptional nature is justified according to the circumstances of the case, where the **reasons** need to be explained in the resolution and only if the following conditions occur:

a) An urgent need to avoid **serious negative consequences for the life, the freedom or the physical integrity of a person,** or
b) An urgent need for immediate action by the authorities to **avoid seriously compromising the criminal process**.

Likewise, as opposed to the law prior to the reform that established the duty to suspend the basic rights of the incommunicado detainee or inmate during the incommunicado time, now the restrictions "can" be applied to each of these rights, which allow a better adjustment to the circumstances of each case.

Therefore, the reform establishes that:
a) **It can** be agreed that the detainee's lawyer be appointed ex officio (with the aim of avoiding the frustration of Police action as a consequence of potential communication among several terrorist elements through the lawyer assisting one of them).
b) **It can** be agreed that the person will not have the right to meet his/her lawyer in private.
c) **It can** be agreed that the person may not communicate with all or some of the people they may have the right to, except for judicial authorisation or the authorisation by the Prosecutor or the forensic doctor.
d) **It can** be agreed that the detained person does not have access to the proceedings.
e) **It can** be agreed that the detainee's lawyer does not have access to the proceeding, including the Police report (in accordance with Article 7.4 of the Directive 2012/13).

The duration of the incommunicado regime is kept as in the previous law (five days, extendable to other five days in case of terrorism) but it is important to highlight that establishing a maximum period does not mean every case will get to the maximum. That is why the first premise in this respect, explicitly mentioned, is that it will last the time strictly necessary for the urgent proceeding to avoid the risks foreseen.

In this respect, in connection to the recommendation by the CPT to exclude this measure for people under 18, we must take into account that the reform in our CCP in Article 509.4 expressly excludes the possibility to apply the incommunicado detention to people under 16.

On the other hand, in view of the high terrorist threat in the West and especially for the members of the Council of Europe, Spain has decided to apply its ordinary laws to combat terrorism, instead of applying an exceptional law as other member countries of the Council of Europe have legitimately done. The international community has expressed so with the report of the UN Working Group on Enforced or Involuntary Disappearances, after their visit to Spain in September 2013. The said report states that **"as opposed to other countries, Spain replied to the terrorist violence without systematically applying forced disappearances"**.

Finally, we can add that, as preventive measure, the **National Mechanism for the Prevention of Torture** has been implemented according to the commitment of Spain after the ratification of the Optional Protocol to the Convention against Torture. In order to comply with it, the Parliament has designated the **Ombudsman** as the National Preventive Mechanism (NPM).

Regarding the development of regulations of the NPM, we confirm to the Committee that the Spanish State will guarantee to be ruled by the principles of transparency, independence and

dialogue with the civil society, as per the recommendations of the Subcommittee for the Prevention of Torture, which determined the following: “when the possibility is considered to designate as National Preventive Mechanism an already existing body, the issue must be brought to an open discussion where civil society can participate”. For that purpose, the annual reports are totally transparent as a consequence of its inspection function.

B. PRISON ESTABLISHMENTS

1. Preliminary remarks

As stated in the CPT report, the public policies implemented to reduce prison overcrowding have proved very efficient, allowing for the reduction of the level of occupancy in prison establishments and eradicating their overcrowding. Paying special attention to the actions that help this reduction, such as developing punishments or measures other than prison sentences and those facilitating the social reintegration of those convicted to prison sentences continues to be one priority objective for the Spanish government.

2. Ill-treatment

“***43.The CPT states that, despite the fact that the majority of prisoners did not allege any ill-treatment by staff, they received a significant number of allegations of physical ill treatment in the closed-regime modules and in special departments of the prisons visited, as well as some verbal abuse of race or religious content especially to Roma or foreign inmates”.***

In terms of ill-treatment, there is no complacency or tolerance by the Prison Administration and therefore, apart from the corresponding jurisdictional controls, the Inspection department controls the lawfulness of the prison activity and specifically, the systemic investigation of all allegations received so that, given the case, corrective or sanctioning measures may be adopted or proposed.

Having said that, the closed-regime or special departments mentioned are exceptionally foreseen in the Spanish prison system for the inmates with higher dangerousness and who have clearly shown their lack of adaptation to normally coexist in normal regimes (ordinary and open), either because they have caused serious incidents or because they keep showing bad behaviour.

This exceptional nature means that only 2% of the prison population is located in these departments but obviously, due to their profile and attitude of confrontation or opposition to the rules, it is more frequent that they are subject to disciplinary correction and application of coercive means and this, in turn, generates a higher number of allegations or complaints.

Regarding the alleged verbal abuse of race or religious content, especially in the case of Roma or foreign nationals, these complaints are always linked to other facts denounced such as ill treatment, delay in processing their requests, non granting of prison privileges, etc. However, in any case, the Prison Administration is always vigilant, not only to eradicate and correct any attitude or behaviour that may amount to verbal abuse in this sense, but also to help the relations of staff with inmates develop correctly.

“***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 the 3rd of 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.***

After investigating the facts, at the moment of lunch, the inmate O.P.R. was part of an incident when, after insisting and ordering him repeatedly to dress up and he finally accepted, once the door of the cell was closed, he started to shout and insult the officers and even leaped on them when they opened it again. The officers had to use the minimum force necessary to restrain him.

The medical record of the inmate and the report issued by the doctor on the same day of the facts at 14:25 state that no injuries are found after examination and that the inmate said he felt well. Thirteen days after that, on the 16th of August 2016, when the inmate visited the doctor in his module, he said he had a punch on his right side and, after conducting the corresponding diagnosis tests, it was ascertained that his IX and X ribs were broken. He rejected the painkilling treatment he was offered.

There is no evidence that the officers used rubber batons or that the inmate alleged any illtreatment during this event. In the same way, he did not refer to that in the allegations he lodged before the body in charge of imposing sanctions in the disciplinary file he had due to his behaviour on the 3rd of August 2016 and no complaint or allegation can be found in the days afterwards at any administrative or judicial authority.

Therefore, the analysis of what happened and the documents do not allow inferring that the injury in the ribs was due to the action of the officers on the 3rd of August and under no circumstances that the doctor may cover any irregular action by maliciously omitting the origin of the injury in the medical record.

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.***

Having reviewed the computer records and the books of the prison, on the day mentioned (23rd of September 2016), no such incident appears. However, the inmate F.B. describes a similar situation in the complaint he filed before the Subdirectorate of Penitentiary Inspection for the facts on the 26th of September 2016.

In order to clarify what happened, the corresponding administrative procedure was started (Inspection report 401/2016). Nevertheless, as the criminal proceedings for those facts had already started, pre-trial proceedings 491/2016 in the Instruction court 3 of El Puerto de Santa María, the administrative proceedings are temporarily suspended until there is a court decision.

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 delivering several baton blows on the way to another department where he was fixated face down and hit several times with a truncheon on his back. 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;***

The investigation conducted indicates that around 10.55 of the mentioned day, the inmate A.V.M. used the intercom in his cell and communicated that he had self-harmed with a piece of glass and threatened to put an end to his life. He was immediately transferred to the infirmary where he was cured of the minor injuries he caused in his arms. It was agreed to mechanically fix him because he continued to have the intention and the threatening attitude of self-harming.

The injuries report and the medical report issued textually say: “seen at 11:05 in the infirmary, he has more than 25 injuries on his arm and forearm in the form of scratches using a sharp object of low depth in horizontal direction. Likewise, there are other two injuries of the same characteristics in vertical direction. The injuries only need first cure as their prognosis is minor”.

There is no evidence or sign that rubber batons were used and the complaint of this inmate was not known until the reception of the CPT report. Nevertheless, the administration informed the judicial authority and it is all recorded in the Prison Supervision Court, file of 15th September 2016, declaring that the measures adopted were according to the law.

iv) ***an inmate at Puerto III Prison alleged that on 10 May 2016 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 and that he had not been subject to ill-treatment”.***

The investigation conducted and the revision of the records and documents point out that the inmate J.H.L., when he was going to be searched after a quarrel with other inmate, it was seen that he tried to hide something under his clothes and when the officers tried to remove it, he reacted very violently attacking them. In order to reduce him and overcome his active violent resistance, it was necessary to use several coercive means (physical force, rubber batons and handcuffs). As a result of this action, the inmate and four officers were injured.

As stated in the injury report and medical record of the inmate, the injuries he had and which were registered (described by the CPT in its report) are compatible with the previous quarrel he had with another inmate as well as with the legitimate use of coercive means by the prison officers, without finding any evidence or sign endorsing his version of having been repeatedly hit after being mechanically fixated.

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;

The investigations conducted indicate that the said day, there was an incident involving the inmate H.A. when, around 9:00 his cell was searched and he repeatedly refused to remove the clothes of the window or the strings hanging from it. Soon after that and being asked to go out to the yard, he self-damaged with a small cut and asked other inmates to do the same while threatening and insulting the officers.

The use of physical force and the use of handcuffs were registered when he was taken to the infirmary and to the department where he was temporarily isolated but the fixation was registered to have been used for the time necessary to transfer him, not more than 20 minutes, until the application of temporary isolation.

Concerning the use of sprays, the centre does not have any for the staff to use them and, as is the case of the extension of the time of the fixation measure, there are no signs as to the truthfulness of the inmate's account. In this sense, the inmate did not refer to this alleged illtreatment in the arguments stage of the disciplinary proceedings started due to this incident or in the appeal brought before the Prison Supervision Court 1 in Galicia – A Coruña.

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.

Having reviewed the books and the computer records of the prison establishment, there is no evidence that on that day or the days before or after that, any incident had happened between inmates in the closed-regime department.

The only incident stated is that of the 14th of September 2016 where the inmate C.D.M.R. around 20:30 and before the prison officers, swallowed some batteries and threatened to bump his head against the wall while he was saying he was fed up of being in first degree and anxious about his family problems. The doctor on call was called and at his request, the inmate was applied mechanical restraint until the doctor arrived to the department, in approximately 5 minutes.

There are no signs that rubber batons were used. In this sense, the medical record of the inmate contains a note about the swallowing of batteries but no reference is made to the injuries, which the doctor did not see nor the inmate expressed. The inmate never said to the doctor that he had been subject to ill-treatment by the officers.

"45. The CPT's delegation refers to a complaint received in the prison establishment Puerto III from an inmate who said that on the 14th of January 2016, during his detention in the prison establishment of Huelva, he was subject to several vexations and physical ill-treatment by a group of officers and that having asked the doctor to fill out an injury report detailing the injuries he had that day, the doctor said she would do nothing that may cause problems to her colleges. The complaint lodged to the Prison Supervision Court was dismissed as the judge said the medical attention was appropriate and that a more thorough medical examination was not possible due to the aggressive behaviour of the inmate."

The revision of the service books and computer records indicates that the said day, the inmate S.J.P. was involved in an incident when, after repeated orders received, he resisted going out of the social worker's room shouting and banging the walls. After applying the temporary isolation measure for these facts, it is recorded that he was examined by the doctor at 12:00 and that no injuries are recorded. On the next day, 15th of January 2016, when the isolation measure ends and

he is notified of his regime change, he starts to be upset and shout, insulting and threatening the officers and leaping on them when they opened the cell.

The use of coercive means to restrain him (personal physical force, rubber batons and mechanical fixation) was recorded. At first, after being restrained, the doctor could not examine him due to his aggressiveness but later on, after he changed his attitude, he was dully examined and a medical report was issued where the following injuries were recorded "*erythema and inflammation in right hand at wrist level (in X-ray no bone injury is observed). New X-ray in one month.*"

Regarding the performance of the prison, surveillance and healthcare staff, as the CPT states in its report, it was studied and declared "according to the law" by the Prison Supervision Court.

"46. The CPT has serious concerns about the gravity of its findings which suggest that a pattern exists of physical ill-treatment. It 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 the management in each prison should demonstrate increased vigilance in this area."

The Spanish Prison Administration understands the concerns of the CPT's delegation for the cases they have known but cannot agree that they are a sign for a generalized ill-treatment pattern in the Spanish prisons. All the cases referred by the delegation have been duly investigated and, regardless of the fact that no corrective measures were considered to be necessary, measures for the improvement of prison performance in the field of strict respect of the rights of the inmates and the due treatment and relations with them have been adopted and we work on their implementation.

The commitment of the Prison Administration to avoid any ill-treatment in prison establishments is reflected in the provision of control mechanisms. These controls are internal –Penitentiary Inspection- as well as external –supervisory judges, criminal jurisdiction bodies and other type of bodies such as the Ombudsman- that identify and correct any wrong behaviour.

The protocol in a potential case of ill-treatment is immediate reaction by the Administration by checking the facts and adopting the necessary corrective measures. In this sense, zero tolerance to any sign of ill-treatment and performance led by the principle of prosecuting and eradicating these behaviours by the prison staff can be observed in the number of administrative proceedings conducted by the Subdirectorate of Penitentiary Inspections this year: a total of 88 until 30th of August.

The workers as well as the management of prison establishments know the rejection and the strictness used by this Administration when prosecuting these behaviours. In this respect, on the 21st of October 2016, all prison establishments received the Service Order 8/2016 requesting them to have a specific record of the complaints of the inmates regarding illtreatments, which must be submitted to the Subdirectorate of Penitentiary Inspections to guarantee their correct and objective investigation. Quantifying the complaints will allow not only individual addressing but, given the case, by means of more general performance strategies or measures that impact the general working of the prison.

In any case, in order to investigate ill-treatment complaints, the Subdirectorate of Penitentiary Inspection has an action protocol that guarantees that in every case all possible evidences are pursued, including taking the statement from the inmate filing the complaint and avoiding to presume the per se truthfulness of the officers.

Despite this, it is necessary to take into account the regulatory framework of the Spanish prison system and inform that, as the CPT's delegation knows, the prison laws allow the Administration to use certain coercive means, among others, physical force, rubber batons and mechanical restraint,

in special circumstances and with the corresponding judicial control. For this reason, the use of physical force or other coercive means by officers can be considered under no circumstances physical ill-treatment but that assumption would require a thorough study and evaluation of the facts and the circumstances where the force was used and/or maintained.

"46. 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."

The need of the Prison Administration to have the necessary and dully qualified staff for developing its functions is a requirement of the General Penitentiary Organic Law (1/1979, 26 September) and, as informed to the CPT, in this regulatory framework the training structure this Administration has designed for its staff is the following:

- **Before entering**
Knowledge of the subjects foreseen in the selective process to access the prison staff. The selective process for assistants, for instance, covers 55 subjects, out of which 15 correspond to criminal law, 20 to prison law and 3 to human conduct.

- **Initial training complementary to the selective process**
This training materializes the legal mandate of providing specific theoretical training on a face-to-face format and a practical training through learning and carrying out their functions in the prisons where they are trainees. The skills and attitude that the candidates show when dealing with the inmates are also followed up.

- **Life-long training**
Specific training courses to get new skills, to consolidate, to update and to perfection existing procedures or techniques, or to implement new action protocols, programmes, etc. that contribute to improving their skills in any circumstance, increasing their knowledge, adaptability and reaction capacity, all in the framework of the constant goal of this institution, which is improving prison public service.

- **Other training actions**
This section covers collaboration agreements with other institutions, granting of permits to attend to courses, congresses, conferences, organized by training bodies apart from the General Administration of the State and that contribute to the personal and professional development of prison civil servants.

Likewise, this Committee knows that, among the subjects in initial training as well as in life-long training and especially for the group of surveillance and security, the following subjects are more relevant:
1. The guarantee scheme of the inmates under the prison laws and protection of human rights.
2. Interpersonal relations, in terms of social skills for communication (active listening, assertive authority, organization of group events) as well as prevention and peaceful resolution of conflicts (empathy and emotional intelligence).
3. Personal defence and correct use of coercive means: explanation of the regulatory framework of justified, weighted and proportionate use, always seeking minimum and nonharmful intervention, including techniques to manage hostile behaviour as a prior mechanism of resolution without the need of direct intervention.
4. Active and electronic security procedures and systems.
5. Prevention of occupational risks.

All of them are linked to the functionalities of the different prison corps and cross-cutting subjects or common subjects to all, such as professional ethics, equality policies, and prevention of gender violence, among others.

Having said that and focussing on the recommendation of the current report (just like the National Preventive Mechanism recommends), in order to improve the professional qualification of the prison staff who have more interactions with inmates who are more prone to have disruptive behaviours, it is necessary to highlight that with the recent signature of the “Specific action protocol for aggressions in prison establishments and social inclusion centres” belonging to the General Secretariat of Prison Establishments, a Specific plan for the prevention and response to aggressive behaviours has been implemented, foreseeing a Special training plan to improve the capacity for action of its workers in the interaction with people deprived of liberty in critical contexts linked to situations where their security, that of the workers or the prison establishments is at risk.

As could not be otherwise, given the re-educational and security aims and purposes inspiring prison establishments, this training has the objective of making its workers (mainly but not only surveillance staff) capable of identifying and anticipating those moments or situations that may lead to conflict, knowing and applying the procedures of action to prevent them, familiarizing with the peculiarities of working in certain units (such as closed-regime, access, nursery), providing them with the necessary strategies to peacefully solve conflicts that help them to make intelligent decisions, so they are able to evaluate the results/consequences obtained from past experiences (addressing regime or security problems with enough guarantees of risk minimization), increasing their professional skills in relation to this type of interventions or learning how to deal with inmates who are sick or have mental disorders, among others.

So, without trying to be comprehensive, these are some of the subjects covered: basic concepts for conflict resolution (active listening, empathy, distortions, assertive solutions to conflicts), realistic analysis of situations, basic techniques for the communication with mentally ill and management, treatment and intervention with inmates, opportunity and suitability of interventions, social skills for intelligent use of authority, mediation (characteristics and application), analysis, evaluation and consideration of alternatives in the decision-making process, evaluation of foreseeable consequences of each decision or action in case of selfharming or suicide attempt.

The training course called “Prevention and response in case of conflict situations” has a threemodule structure that deals with prevention and response in case of aggressions (basic module), action protocols in certain units (advanced module) and action protocols in special situations (specialization module).

Initially, a training for trainers course which will be run in the fourth quarter this year has the aim for the trainers (workers of the establishments with experience in security) to receive the complete training so they can then transfer their knowledge to the officers in the prisons, starting with the surveillance staff but it is foreseen that they complete all the training with the peculiarities and needs of the prison centres.

Other training actions are also foreseen focussing on “education on mental health”, taking into account the prevalence of mental illnesses in prison vs. society and the knowledge and strategies that need to be developed to improve the interaction with this type of inmates, thus, avoiding conflict situations that, if previously understood, may be addressed and solved from other more efficient and calmed perspectives.

In parallel, there will be a training for the staff in the technical groups of treatment for the implementation of a programme called “PICOVI” in the prison centres and aimed at the intervention with inmates having violent criminal activity or permanent maladjustment to the ordinary regime showing violent behaviours on a serious and repeated way and whose goals are: helping the inmate to recognize their behaviour and motivate them to change, developing cognitive, emotional

and behavioural skills that enable the participants to identify and manage distorted thoughts that facilitate violent behaviour, training in the self-regulation of intensity and/or frequency of emotions related to the violent process and promoting the use of adaptive behavioural styles that help to positively address conflicts.

Knowing the complex context of the prisons and also the numerous and varied staff –who have to make urgent and sometimes immediate decisions-, of the circumstances and the characteristics of the relation with inmates, the personal, family, life, legal peculiarities that come together, the necessary guarantee for security for the prison workers, collaborators, premises, without forgetting that custody must be ensured, as the court has decided, as well as the higher requests that public administrations receive from a democratic and plural society, the commitment of constant improvement of the prison institutions has to be considered not only a purpose but a constant and inalienable goal.

"47. 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 illtreatment they receive, reiterating the data and observations that the report must contain, the way to fill out the record, its sending ex-officio to the competent judicial authority and accessibility for the inmate and his lawyer."

The prison health-care staff knows and is very aware of their duty to register and inform about ill-treatment complaints from inmates. However, we point out that the medical record of injuries, which is an official document whose aim is to attest the existence or non existence of injuries, is filled out not only in those occasions but in any conflict situation, such as in cases of selfharming or accidents.

Following the recommendations of the Ombudsman, the General Secretariat of Penitentiary Institutions established an official form of medical record for injuries which basically complies with the indications pointed out by the CPT in its report, advising to include what the person in question refers at the moment of the medical examination, as well as a detailed description of the reality observed. The carbonless copy paper was also regulated to facilitate the duty to send the original copy to the court, give another copy to the inmate and file another copy in the medical records.

Concerning the causal link between what the inmate expresses and the injuries observed, we don't consider it is necessary to issue any kind of opinion to the health-care staff that generates these injuries reports. Establishing the consistency or lack of consistency between those considerations implies a value judgement and this is neither the task of the forensic doctor belonging to the judicial authority nor the task of the health-care staff.

In relation to documenting the injuries with photographs, even if there is no objection by the health-care staff to do so, it is estimated that they are not an indispensable tool to correctly document injuries and therefore, following the recommendations of most of the national and European protocols, we consider it is sufficient and possible to appropriately document injuries through the detailed and thorough account of the doctor, even if there are no photographs.

Regarding the inclusion of a body chart in the injuries record to facilitate the explanation of where the injuries are located, we will soon have that available as the new digital medical records, currently under development and implementation, foresee an auxiliary screen that, based on a topographical division, it allows the doctor or nurse to describe the location of injuries in a more precise way.

In any case, a general vision of the performance of doctors in all the prisons in this matter indicates that the injuries reports are being dully filled out and processed, without prejudice that in some isolated cases, this may not be the case and, once identified, those deficiencies are rapidly corrected.

"48. 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 and requests an explanation on this issue."

The explanation is based on the fact that there is no such wide incidence or frequency of physical ill-treatment as the CPT indicates in its report. Moreover, such statement is surprising when in the report, the lack of complaints for ill-treatment in ordinary-regime modules is recognized, which represents the largest part of our prison system in Spain, and relates them to other closed-regime or special departments where, as said before, only 2% of the inmates population is to be found.

Regarding the fact that no criminal case has reached the final stage, we must point out that out of the eight that were being processed when data were given to the CPT's delegation in October 2016, one has already finished and the final court decision has been to sentence the officer who participated in the events on the 29th of June 2015 in the prison establishment Puerto III (case 778/2015 of the Instruction court 3 in Puerto de Santa María). We would like to reiterate that the Spanish prison system has enough internal and external control mechanisms that guarantee the processing and investigation of complaints in an absolutely independent manner.

"49. 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, which informed that the Subdirectorate had conducted no inspections to the prisons and that no administrative and judicial investigations about the staff for the alleged ill-treatments were pending."

It is not a contradiction but a misinterpretation of the information provided, as the names used by the Subdirectorate of Penitentiary Inspections to identify its different procedures were confused.

Therefore, it is true that, as said in the report issued by the Subdirectorate of Penitentiary Inspections, from the 1st of January 2014 to 30th September 2016, 8 inspection reports were issued in the prison Puerto I and 4 in the prison of Teixeiro for alleged ill-treatment. It is also true that, as the managements of both prisons stated, in none of the cases reserved information procedures, disciplinary sanctions or proceedings were instituted by the judicial authority and, thus, no investigations or administrative or judicial proceedings were pending.

Likewise, as the managers reported, in the framework of the general inspection mission assigned by the Subdirectorate of Penitentiary Inspections, during this period no inspection visit was conducted. This means that no prison inspectors came to the centres in order to monitor and ascertain the general functioning of the services and management units of the centre, what is called "inspection visits".

"50. The CPT recommends that an effective strategy to tackle inter-prisoner violence be put in place in the prison establishments visited."

Prison Administration in Spain has many and very diverse measures to avoid inter-prisoner violence with highly positive results. This statement is reflected in the reduced number of serious incidents that take place among the inmates or the virtual disappearance of violent deaths (none in 2016) and the very limited aggressions that could be considered "very serious" (none in 2016) or "serious" (only 5 this year).

Among such measures, we could highlight the appropriate inner separation of inmates and their appropriate categorization in the different degrees of treatment, the special regimes where the control is more thorough, special departments with higher and better security conditions, and an optimum level of occupancy in the prisons, far from the overcrowding that leads to inter-prisoner

conflict (since 2009, the decrease of inmate population managed by the General Secretariat of Penitentiary Institutions has been of 14,646 inmates less).

To these measures, we can add those that have recently been implemented after the coming into force of the “Specific protocol of action in case of aggressions in prison establishments and social integration centres belonging to the General Secretariat of Penitentiary Institutions”, referred to in point 46, where several measures are implemented, among others, for officers to better know the inmates.

Having said that, the Prison Administration continues to work in this field to prevent interprisoner conflict or violent situations among the inmates, by means of training of staff to facilitate their skills for communication with inmates or so they can address violence situations efficiently, as well as implementing programs or measures that positively affect the good social environment of the said departments.

3.- Conditions of detention in ordinary regime

b. Material conditions:

“52. 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.”

During the last years, the construction of new prison establishments and the decrease in the number of persons deprived of liberty due to the legal reforms recently in force have helped overcrowding not to be a problem in Spanish prisons anymore.

The new establishments, called “standard establishments” (centros tipo), are not devised as individual cells. The cells in residential departments have a surface of around 10 square metres and are designed for double use.

This occupancy is usually agreed. The inmate has the option to choose his/her cellmate or, given the case, they can also choose to use a cell individually. However, if the prison does not have enough cells, the inmate will be assigned to one. We have observed that living together in the same cell has positive effects on the inmates as it facilitates interpersonal relations that contribute to generate a good social environment in the department.

We would also like to stress that, even if the Prison Administration has the possibility to assign cells for individual use to all the inmates that wish so, in many cases this would entail a transfer to other prisons where vacant cells would be available and this could be more detrimental or rejected by the person than sharing a cell, as they would be out of their social or family environment.

In any case, the possibility for the sanitary annexe to be fully partitioned would imply such a huge cost, since it affects the structure of the cells in the more than 23 new establishments, that it cannot be considered or realized.

Regarding the refurbishment for the inmates to keep their personal belongings on a safe way during the day, which is already available in some departments of other prisons, it will be assessed by the management of each of the prisons depending on the specific characteristics.

In relation to the refurbishment in the workshops and communal toilets in the Modules 1 and 5 in Sevilla II, some actions have already been conducted:

- The walls and ceilings of the workshops and the toilets have been painted.
- The access door to the toilets has been repaired and a steel sheet has been placed underneath to avoid corrosion from humidity. For this same reason, the iron frameworks of the doors have been replaced for tiles in the bottom part and have been painted.
- The drains of the urinals have been reformed to avoid blockage of pipes.

In the prison Puerto III, the following actions have been conducted:

- In the workshops in Module 1 and 2, the unnecessary material has been removed, they have been cleaned, walls and ceilings painted, the broken shelves changed and new material was brought for the activities. So, both workshops are now in good condition and work properly.
- In the communal toilets in Module 1 and 2, the tiles and toilets were cleaned, the shower heads were changed and the daily cleaning tasks are now more closely supervised.

We also wish to emphasize that, despite not having enough budget to carry out more works in the premises, we will request to include these works in the next Plan of Amortization of Prison Establishments (PACEP), which the public company Sociedad de Infraestructuras y Equipamientos Penitenciarios (SIEP) carries out once the current period finishes in 2018.

"55. 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."

The modules the delegation describes as "conflict-prone" are residential modules that have the same architectural characteristics than the rest of departments and, in no case being in one or the other means to have a different regime. The only peculiarity is that inmates with different profiles are assigned to one or the other, basically depending on their willingness to participate in a treatment program: respect modules, therapeutic and educational units or treatment module.

However, there is no difference between the treatment modules and the regime modules. The inmates in each have different profiles and therefore, the prison action is different focussing on treatment reasons but also taking into account security or regime reasons.

In this context, normally the inmates in these modules are repeat offenders with previous stays in prison, disciplinary measures being processed, with a sanction pending or who are serving a sanction, who don't show interest in residing in modules with treatment programs.

The inmates in these departments have a wide variety of activities that can be compared to that of the other departments, except when it is required to go outdoors to carry them out. This means that, when activities are carried out in other modules such as the social and cultural department or in workshops, they need prior authorisation to participate and no security reasons must impede it.

So, generally activities take place in the departments but inmates can also access the general offer of prisons, which covers the following:

- **Educational area,** including all levels of regulated education and university;
- **Training area,** including occupational training and professional integration programs;
- **The working area,** including productive workshops and labour integration;
- **Sports area,** including competition sports, leisure and sports training;
- **Cultural area,** including training activities and cultural dissemination activities;
- **Occupational area,** including occupational courses and workshops.

In any case and according to the CPT recommendation, a further individualized and detailed study of the situation and circumstances of each inmate in those departments will be conducted with the

purpose to evaluate the suitability of the activities offered and, in its case, the possibility to increase them depending on their deficiencies and interests.

***"56. The CPT would appreciate the comments of the Spanish authorities on the fact that the swimming pools in Puerto III and Sevilla II were not available.**"*

The times of economic boom in Spain until some years ago led to the construction of this type of installations in some of the new prison establishments. However, as the economic situation changed and we are now under a stage of public cost contention, these installations were closed because the Prison Administration had more urgent needs to cover.

On the other hand, Spain is a country that suffers endemic droughts where towns or neighbourhoods do not have, not only swimming pools, but even access to water for all the population during part or all the day. Moreover, this summer some prisons had to give bottled water to their inmates as the water company could not guarantee drinkable water to cover the needs of the prison.

In this context of scarcity of water resources, the Prison Administration considers irresponsible and inappropriate to put the swimming pools into operation given the cost this entails, not only in economic but also in environmental terms. Therefore, the swimming pools have a level of water enough so they do not deteriorate but do not offer guarantees for people to swim.

d. Respect modules
"57. *The CPT's delegation is surprised by some restrictions to the inmates in the respect modules of the prison establishment Puerto III."*

The restriction of not speaking during meal times was not a measure imposed by the Administration, but a decision taken by the inmates' assembly, who expressed their preference to eat in quieter environment. Nevertheless, after the recommendation by the CPT's delegation during its visit in November 2016, this decision was assessed again and it was decided to annul it.

Regarding the dress code, there is no problem if the inmates wish to wear sleeveless shirts except, exclusively for hygiene purposes, to access the canteen, where bare chest is forbidden.

In relation to the restriction of only walking in one direction, this prohibition has never existed.

Obviously, the inmates can walk in whatever direction they like.

Finally, the prohibition to hang up clothes on the windows of the cells is due to aesthetic and preservation reasons for the establishment, as the windows are made of iron and this would generate rusting. Apart from that, the establishment has a free laundry service for the inmates, where the clothes are washed, dried, ironed and sewed. In case the inmates wish to hang their intimate apparel after washing it themselves, they have circular clotheshorses they can buy at the shop.

4. Closed regime

"60. 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."

These courtyards have metal grilles for security reasons, to prevent the inmates from climbing up the walls and come out or to prevent their colleges to throw forbidden objects inside. This grill allows the sun light to go through and does not generate any feeling of confinement.

Regarding the look of the courtyards, some mural paintings have started with different colours so they look more welcoming and are nicer to view than concrete walls.

Finally, as opposed to what the CPT states in its report, the courtyards of Modules 13 and 15 of Teixeiro do not have metal grilles.

"61. 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."

The metal grille in this courtyard is justified for the same reasons explained in the previous paragraph. Regarding the equipment referred to, with the height of the yard (3.10 m) the benches would facilitate for inmates to climb up. However, after evaluating different possibilities, a decision was made that a small masonry bench was built, so the inmates can rest and the security of the centre is guaranteed.

"64. After seeing the scarce activities offered in the closed-regime departments, the CPT recommends to take measures to implement the spirit and the letter of the Instruction 17/2011. It also recommends to foster direct contact (without screens or bars) of the inmates with the prison officers and to use the canteens in Modules 1 and 2 in Puerto I."

As the instruction establishes, the intervention program has the aim to design an execution model and adjust the general treatment programs to the regime needs of these departments to achieve gradual adaptation to ordinary regime and a detailed planning of activities of all kinds for the inmates in the first-degree of treatment or in the preventive type, in application of Article 10 of the General Penitentiary Organic Law.

The need for a more direct and intense intervention with these inmates who, due to their living conditions, hindered the identification of any positive progress, led to establishing an annex in the above mentioned Instruction including an action protocol for the intervention program with closed-regime inmates in the framework of the rules it envisaged for them in closed-regime and special departments.

One of the basic principles of this program is the series of daily activities that must be planned as well as the presence or authorization of professional staff. Nevertheless, as in the rest of the programs, the participation is voluntary and not all inmates wish to participate.

In all the prison establishments, the program is structured with different activities adapted to the closed regime and the specific circumstances of each inmate. It attempts to respond to the needs or gaps identified in the inmates.

In general, the activities are organized to cover the working days with the professionals in the Technical Team. The activities are, for example:

- **Regulated education**, provided by a teacher from the adult educational centre of the prison with the aim to shorten the educational gap and lack of qualifications.
- **Training and cultural activities** led by a trainer, such as video forum or reading groups, with the aim to learn social skills and to use free time in a productive way.
- **Occupational activities in the cultural, creative and training fields**, led by an occupational instructor or, given the case, by any of the professionals in the Team.
- **Sports activities**, whose schedule would depend on the installations and the resources of the prison but which is usually exercise plans in the gym of the department under due monitoring.
- **Psychological intervention,** by the psychologist of the Team, who would use the techniques he/she deems more suitable in each case.

Nevertheless, the Prison Administration is aware that it needs to continue developing these programs to encompass or involve in them a higher number of inmates. In this sense, in a spirit of moving forward and improving, the expansion or redesign of the activities will be studied to make them more appealing to the target audience or the possibility to have more resources for its development, as is the case in Teixeiro, where an NGO provides support in an intervention program.

In connection with fostering direct contact with staff, the general criterion in these departments is the monitoring of the inmates, estimating that their dangerousness profile requires a barrier to guarantee the security of the prison staff. The prison staff also shows interest in direct contact with inmates, since that is the most comfortable and suitable way of working to achieve the goals of the activities they carry out. However, in some very exceptional cases, direct contact can entail a high risk that the Prison Administration cannot make its staff run. In this sense, the profile of some inmates who live in this restrictive regime is characterized by lack of control of their impulses, use of violence as a way to solve conflicts and also several psychological disorders. In this context, monitoring through the fences tries to facilitate the assistance the staff provides to the inmate and at the same time to protect the worker in any incident that may have very serious consequences.

In terms of the use of the canteens in Modules 1 and 2 in Puerto I, the canteen of Module 2 is fully operational and the inmates use it for their means. On the contrary, the canteen in Module 1, which was not being used, is not operational. The dangerousness of the inmates who may exceptionally be in this special regime department does not allow sharing a common space without putting security of the establishment and themselves at risk.

***"65. 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*."**

This recommendation was abided by immediately and out-of-cell entitlements to a bigger yard were granted to her, where she could have regular contact with other inmates that resided in them and not only with those who were temporarily located there to serve a sanction.

The referred inmate is not in prison anymore. She was released on the 25th of February 2017.

"66. 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."

In all the prison establishments, the Programme for the comprehensive care of inmates suffering from a mental disorder in prison (PAIEM) is available. A multidisciplinary team is in charge of early detection of these persons, diagnosis and stabilization, offering an individualized program of treatment that pursues their best adaptation to the environment and their rehabilitation during prison sentence. This program is open for all the inmates regardless of their degree, responding to the assistance and treatment these inmates need.

"67. 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."

The FIES (a file for inmates who require special follow-up) is of administrative nature and in no case prejudges the classification of inmates, restricts their right to treatment or means a different system of life that than assigned to them. Therefore, including an inmate in this file never means a limitation to their right to religious freedom.

On the contrary, the Instruction 2/2016 establishes the mechanisms to collaborate with the Islamic Commission in Spain to disseminate a moderate interpretation away from extremist views, with moderate imams. Since the entry into force of this instruction, this is being gradually included in the prison establishments and currently there are 10 imams. However, in those prisons not having an imam, it is attempted that the inmates serving a sentence for terrorist activity or proselytism in Islamic radicalization do not influence the rest of the inmates.

"68. 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."

The Service Order 6/2016 is attached **(Annex II)**

5.- Means of restraint
"69. and 70. The CPT considers that 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. It is sometimes used as a punitive measure, in an incorrect way and to inmates with mental disorders. The CPT knew about some credible cases and the most worrying one was:

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; he remained fixated until 8.00 a.m. on 25 July. According to the records, the doctor had seen no contra-indications to the application of the measure although the inmate had presented several injuries (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). 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. The record corresponding to means of restraint states that 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". In the CPT's view, the treatment of this prisoner could well be seen to amount to inhuman and degrading treatment;

This exceptional case of application of a mechanical restraint for 72 hours to the inmate R.F.J.S., from the 21st of July at 10:00 until the 24th of July at 10:30 (not until the 25th as is stated) is a one-off case due to exceptional circumstances.

He is an extremely violent inmate. He is now serving sentence for several murders committed when he was released as well as when he was in prison. The serious incidents he has caused in prison, his physical condition and his skills in martial arts make him the most violent and dangerous inmate among the Spanish prison population.

Regarding what happened on the 21st of July 2016, the inmate attacked the six officers working in the closed-regime department with a sharp object. Four of them needed hospital assistance and, given his violence and aggressiveness, after being restraint using physical force and rubber batons, he was mechanically restraint. Despite being restraint, the inmate spat and tried to headbutt the officers and hindered his medical examination. The doctors managed to give him anxiolytic and sedative drugs to reduce the restraint time as much as possible. The inmate was informed about it and he did not object.

As the CPT states in its report, this measure was appropriately controlled by the medical service and the prison staff and was declared proportionate by the supervisory judge. However, the Prison Administration is aware and agrees with the criterion that these cases must be avoided and, in this sense, as was informed to the Spanish Ombudsman acting as National Preventive Mechanism, it

will address a reform in the regulation of the matter and will review the current action that prison establishments conduct as regards this measure in order to adjust its practice to the national and international recommendations.

"71. to 76. The CPT describes in detail the matter of mechanical restraints for regime purposes in terms of the fixing method, the equipment in the cells used for it, supervision, recording and frequency of such a measure (sections 71 to 75). It reiterates the recommendations made in the previous visits in 2007 and 2011 and states that, to a great extent, these continue not to be applied, showing special concern for: its use as a punishment (not considering the principles of legality, subsidiarity and proportionality gathered in Article 72 of the Prison Regulation), often together with physical ill-treatment and long periods of restraint when the inmate is denied the use of the toilet and their supervision and recording is deemed inappropriate. In consequence, the CPT urges to put an end to the current practice of mechanical restraint for regime purposes and says that, when an inmate is in a state of agitation and generates a serious danger for his/her integrity or that of others, the temporary isolation in the cell until he/she recovers control should be the last resort, in accordance to Article 72."

As pointed out in the CPT's report, the existence of certain inmates that imply a serious risk for themselves and others make these means of restraint sometimes necessary in a prison establishment.

Nevertheless, we are aware of the need for improvement and taking as a starting point the best practices standards proposed by the Ombudsman acting as National Preventive Mechanism, the Prison Administration is dealing with this issue through several initiatives that have the aim to:

- Improve material conditions of the cells where this measure is to be applied in prison establishments. This work is underway and in many of the establishments the works have finished with improvements such as:

1. Anti-slip bands on the floor, free of furniture and shelves and properly ventilated and illuminated.
2. With an articulated bed, anchored to the floor and with elements ensuring safe fixation and at different levels foreseen in the regulations in force (certified handcuffs or strips). Likewise, the bed must enable the staff to access without difficulties to its entire perimeter for restraint actions guaranteeing the safety of all professionals involved.
3. With video surveillance camera to enable permanent visual control of the inmate from the security booth of the officer and, if possible, also from the control tower or centre of the prison.
4. With an audio system that enables communication between the inmate and the officers.

- Drafting a new action protocol to make internal rules more precise in terms of the use of mechanical fixation, always taking into account the guarantees and rights of the inmates and the requirements of security and order in prison establishments. In order to do so, the actions in this field are being reviewed in prison establishments and later on, a procedure considering the key elements will be specified, such as a de-escalation strategy prior restraint, the use of minimum force using deterrent and coordinated actions by 4 or 5 people, the consideration of personal hygiene and environment habitability conditions, frequent medical and security check-ups as well as the restraint to be carried out in supine position, unless there is an explicit and justified medical indication otherwise.

- In terms of training the staff. We are convinced that training is a key element to put the use of coercive means into context in a legal framework that foresees their use in exceptional circumstances. That is why we emphasize communication and personal interaction skills and conflict management, in order to provide the staff strategies that facilitate their peaceful resolution or, failing this, self-defence techniques and procedures to apply the means foreseen in Article 72 of the Prison Regulation.

"77. 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."

The internal rules of the Prison Administration, Instruction 3/2011, foresees that this provisional isolation measure to be conducted in one "observation" room or cell, specifically designed to avoid the hiding of forbidden substances or objects and equipped with interception and recovery elements, that will be placed in the access department or where the management deems suitable.

In general, they have been installed in the access departments of the prison centres for the following reasons:

- The measure is for regime and not for health-care purposes, i.e. the monitoring task to avoid the hiding or destruction and to facilitate interception and recovery of objects and substances is considered part of the task of strict observation and surveillance that prison officers have in their service. This does not prevent a potential health-care intervention if the officer observes that the inmate is in bad mental or physical condition.

- The optimization of the human resources available in each prison establishment, which depends on the designation of tasks to each group and in this case, observation, monitoring, control and occupation of forbidden objects in prisons is generally assigned to monitoring officers in the specific units.

- The infirmaries are units for health-care assistance to inmates and not places for strict monitoring. Therefore, the health-care professionals decide on admission to infirmaries depending exclusively on health-care reasons, not due to facts or circumstances that, as is the case, require certain regime monitoring.

On the other hand, we don't agree that the health-care staff has the duty to "monitor the expulsion of packs" that the inmates may carry in their bodies or similar tasks, considering that the health-care staff intervention must be strictly for assistance or medical purposes, not monitoring.

6.- Health-care services

"80. Access to a doctor. **The CPT recommends that steps be taken 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 healthcare staff. Further, prison officers should not seek to screen requests to consult a doctor*.*"***

The request to consult a doctor is made through the module officers but they do not examine, ask or evaluate the reasons for the request, but just register it. This is a mere administrative procedure that does not compromise confidentiality or generate any delay in the health-care assistance. In fact, this process is comparable to the task carried out by administrative staff in health-care centres in charge of managing the appointments of the users.

"81. Medical examination carried out upon admission*. The CPT recommends that dedicated registers on traumatic injuries sustained by inmates prior their imprisonment or during detention should be introduced at all prisons*."

We agree on the need for the injuries observed upon admission in prison to be thoroughly described and that the reports are managed as quickly as possible in order to discriminate the injuries occurred before admission. The health-care internal regulations establish so and in principle, this is done in all prison establishments. However, taking note of the report of the CPT

and in order to correct any occasional failure, the health-care service will be reminded of their duty to duly and diligently fill them out.

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

Mental health-care is ensured thanks to the health-care staff of the Prison Administration, with wide experience, and specialized services of the National Health-Care System.

As the CPT points out, the availability of psychiatrists is limited in many establishments because the Prison Administration depends on the decisions of each regional health-care service, some of which provide professionals to the prison establishments but others offer assistance in the mental health centres.

Except for the Prison Psychiatric Hospitals, as is foreseen in Article 209 of the Prison Regulation, primary health care is provided with the means of the Prison Administration but specialized care is preferably ensured through the National Health-Care System, so no positions for psychiatrists are available in the prison establishments. Therefore, over time, different collaboration agreements were signed up with some autonomous regions (those willing to do it) so they would explicitly assume the psychiatry service to inmates or, failing this, the Administration has executed contracts for the provision of health-care service specialized in psychiatry.

Regarding the provision of clinical psychologists, the Prison Administration has its own psychologists, who are civil servants. Every year (except 2012 and 2013) positions for this speciality are offered within the Corps of Technical Experts in Prison Institutions and all the prison establishments have psychologists among their staff. The tasks these professionals must carry out are regulated in Article 282 of the Prison Regulation 1981 where, among others, it is specified that it is among their competences to "execute the psychological treatment methods for each inmate, especially in terms of individual and group psychological counselling, techniques for behaviour modification and behavioural therapy". Thus, all prison establishments have psychology experts with enough knowledge and competence to intervene from the perspective of clinical psychology.

"83. The CPT recommends that the Spanish authorities review the implementation of the PAIEM programme as it considers the therapeutical path offered insufficient and urging to provide the inmates suffering from mental disorders a more suitable environment, involving the different categories of health-care professionals and specifically training prison staff working with them."

It is said that there is a high proportion of mental disorders in prison but they are mainly personality disorders, anti-social personalities or drug addictions without any other psychiatric pathology involved.

The inmates with psychotic illnesses represent round 5% of the prison population (it is estimated in 2.5% in the general population) and they are the most susceptible to psychiatric treatment and for specific programs such as PAIEM. On the other hand, one of the pillars of PAIEM is the integration of the inmates with mental disorders with the rest of the prison population, so that once the acute phase is over, generally treated in the infirmary, their participation is reinforced in common activities avoiding their segregation and marginalization.

Therefore, we don't agree with the proposal to offer mental health-care assistance in specific separated modules in the form of asylums, which would contribute to a higher stigmatization of the sick inmates. A different issue is dealing with sick inmates having a dual pathology, when their stay in the ordinary modules or infirmary must be assessed case by case.

Nevertheless, as the delegation pointed out during its visit, exceptionally in some prisons like Teixeiro the general criterion is interpreted in different ways because, for operational reasons in terms of efficiency and profitability of resources, a large part of the inmates included in the program are in the same module. Specifically, out of the 95 inmates included in PAIEM in this prison, 26 are in the infirmary department, 23 in the different residential modules and 46 in the same module, known as the “PAIEM module” because most of the inmates of this module are under the PAIEM.

In any case, the work under this program is multidisciplinary, with participation of health-care staff and therapists and the rest of the treatment area, even professionals from nongovernmental institutions that collaborate with the Administration in this field but where obviously a continuous learning process is underway.

“84. 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. The delegation was informed that the reason for them to be in prison was that there were not enough places in the only two forensic psychiatric institutions in the country, which are overcrowded.”

The courts impose security measures for several reasons (mental illness per se, i.e. with psychotic causes, depressive states, behaviour disorders, drug addictions or conjunction of several conditions) and the initial approach of the sentences is that all security measures are subject to be dealt with in psychiatric institutions, except where outpatient or detoxification treatment is prescribed.

- Security measures are applied depending on the complete or partial exoneration. In the first, the measure means the acquittal of the defendant, which is not compatible with staying in an ordinary prison establishment. In fact, the limited security measures for complete exoneration in an ordinary prison are so because those persons are waiting to be transferred after the sentence or, in exceptional cases, when due to works in the psychiatric hospital of Alicante, some floors have to be closed. Unfortunately, security measures for complete exoneration but applied due to diagnoses that from the medical point of view cannot be accepted to be treated in closed psychiatric centres end up being for the same precisely because these are not ordinary prisons. Even in the cases where the admission of a person is medically justified, the problem is that when the person improves, the discharge has no effects because of the duration imposed in the sentence.

- Regarding security measures for partial exoneration, the accused person has been de facto sentenced. In these circumstances, their stay in an ordinary prison is, in our view, perfectly compatible, so the final destination is decided depending on the diagnosis and the possibility to be treated, except when the judicial decision states the contrary. If it is a psychiatric disorder subject to hospital admission, the prison psychiatrists are appropriate while the acute phase lasts. On the contrary, if it is simple drug addictions or personality disorders, an ordinary prison establishment is appropriate. In this sense, we cannot forget that the legislation precisely refers to appropriate establishments and not necessarily psychiatric centres.

- Saying that not being admitted to a specialized health-care centre would not guarantee an appropriate treatment is a generalized and daring statement. It is surprising that the document says that forensic psychiatric inmates claim their admittance in a specialized health-care centre, which would mean they are clearly aware of their illness and that an outpatient treatment would be more beneficial, as the fundamental mission of closed psychiatric centres is to treat acute illnesses or refractory to treatment. The PAIEM was precisely implemented for the following-up and integration of chronically sick patients once they are stabilized.

In conclusion, in the case of security measures, it is true that there is overcrowding in hospitals belonging to Prison Institutions but it is also true that regional governments are reluctant to transfer

a mentally ill from a hospital belonging to Prison Institutions to another non-Prison Administration, even if their dangerousness profile and the judge so authorises, in the last evaluation carried out, only 2% of these patients were transferred when 30% of them met the requirements to be transferred to the two psychiatric hospitals belonging to Prison Institutions.

Despite this, all the inmates declared immune from sentence and imposed a security measure are transferred to the two psychiatric hospitals belonging to Prison Institutions except in very exceptional circumstances and in agreement with the prosecutor and the court, this measure could be counterproductive for the evolution of the illness, due to the short duration of the sentence and/or the geographical distancing from family and therapeutic environment.

"85. Drug addiction. ***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."***

We share the general vision that the CPT shows in its report on this matter. We just wish to clarify that the prison policies in the field of drug addiction are giving encouraging results:
- Upon admission into prison, 64% of the inmates consumed some kind of drugs, 13% of them were injected.
- Once in prison, 19% of the inmates are consumers of some kind of drugs, 0.2% injected.
- 13% are under some therapeutic program against drug addictions.
- In the case of cannabis consumers, half of them quit when they come into prison and in the case of heroin addicts, 8 out of every 10 quit.

"85. 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."

The admission process in the UTE I and II in Villabona prison goes in line with Instruction 9/2014 regulating organization and functioning of these units.

The admission and stay in the UTE is a conscious and voluntary decision of the inmate and, therefore, normally the admission process starts by the inmate's request although it can be evaluated ex officio when the individualized treatment program created by the Treatment Board recommends so. In any case, the admission in a UTE is voluntary and this is shown in the signature of an application by the interested party and the therapeutic commitment, which is done under no pressure.

The fact that the participation in this therapeutic program, as in any program, is voluntary does not mean that when the inmate expresses his/her will to leave the program, he is immediately transferred to another department. It is not an automatic process but it is assessed that his/her stay does not negatively affect the peaceful coexistence in the department. In any case, the request to leave the program goes hand in hand with the request to be transferred to a specific module and this request is not responded immediately, the inmate may confuse the non transfer of module with leaving of the program.

Finally, the statistics related to the number of relevant incidents in Villabona prison and therefore, its UTEs, point at a decrease in the last 4 years, highlighting that 2016 was the year with the lowest number of incidents.

"86. Transmissible diseases. **The CPT recommends that the Spanish authorities ensure the respect of the principle of equivalence of care by providing the same access to antiretroviral treatment to inmates diagnosed with hepatitis C as in the general society. At the prisons visited, only a very limited number of inmates were receiving the most recent**

anti-retroviral treatment which is normally available and facilitated by the Spanish National Health Service."

Regarding the situation of the most prevalent transmissible diseases, referred to by this report, we would like to make some remarks:

In 1989, when the first prevalence studies were conducted, the proportion of inmates with HIV was of more than 28%. Currently, the prevalence is around 5% in a population that cannot be compared to the general population due to its characteristics. Saying that this rate is high is excessive and seems not to take into account the effect of public policies in this subject, in the prison environment as well as outside, the National Plan of the Ministry of Health and the collaboration of the Ministry with Prison Institutions. As it has been internationally recognized, the General Secretariat has always had the fight against HIV/Aids as a priority in all aspects: education for health, preventive measures and treatment for all the ill as they were available. Regarding the infection by HCV, nowadays all ill inmates are receiving treatment when it is prescribed by the specialized services of the National Health System, according to the recommendations of the Strategic Plan of the Ministry of Health.

"87. Medical fixation*. The CPT recommends that the Spanish authorities 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." Regarding fixation for medical reasons, this is a measure with therapeutic approach whose duration is necessarily very limited and in principle, does not pose any problem. It is always carried out in the observation rooms of the infirmary in the establishments and the health-care staff is in charge of monitoring this and taking note in the corresponding medical records.

"88. Medical ethics*. *The CPT understands that in order to safeguard 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 (a task that is not for medical purposes). It recommends that these principles are respected and its implementation promoted in all prison establishments, and, 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."

The document expresses the statements of an inmate according to which the doctor rejected to fill in an injury report due to ill-treatment by prison officers, and that due to corporatism. In another similar case, the doctor would reject to fill it in due to alleged aggressiveness of the inmate. In both cases, only the statement of the inmate is referred to. Regardless of the truthfulness of those situations, it is obvious that prison doctors and nurses have the duty to fill in injury reports even if only requested by the inmate, as well as informing about suspicions on ill-treatments, as any other health-care professional. We don't consider it is necessary to remind this duty because if they don't comply with it, it will be investigated by this Unit as well as by the Penitentiary Inspection.

Another very different problem arises from the participation of prison doctors and nurses in activities to identify forbidden substances, understanding that this can effectively lead to a conflict between security and their own duties of medical assistance in the Prison Administration, as it breaches the doctor/patient relationship of trust. In this sense, we agree with the remarks of the CPT, also gathered under the European prison regulations, regulating that prison doctors must not

involve in gathering and analysing urine samples for health-care reasons, nor any other invasive tests.

However, we don't agree that a medical consultation is not necessary in situations where coercive means are to be applied, as it is a protectionist view. That said, the consultation cannot go beyond the report currently drafted saying whether it is suitable or not depending on the situation of the inmate, without any further precision. In fact, the regulation forces the doctor to daily visit the inmates in isolation due to classification or to sanction without this compromising the doctor/patient relationship.

7.- Other issues

a. Discipline

"89. to 92. After an examination of disciplinary procedures, the CPT's delegation 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.

Further, it believes that the disciplinary sanction of deprivation of walks and communal activities for up to 30 days is clearly disproportionate.

Currently, a reform in the prison legislation is being tackled where the remarks of the CPT in disciplinary issues will be taken into consideration.

b. Staff

"93. The CPT invites the Spanish authorities to take appropriate measures to investigate the causes of the phenomenon of absenteeism of custodial staff. 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."

Under normal circumstances, the reasons for absenteeism of custodial staff are temporary inability to work due to sickness, accident, risky pregnancy, etc.

Regarding the definition, reasons and follow-up of labour absenteeism, the Prison Administration follows the general criterion established for all the staff of the General State Administration where "institutional absenteeism" is not considered as such, as these are absences from work that are justified or covered by the regulations in force, as could be attendance to training courses, facility time for trade union representation, permits/licences, attendance to collegiate bodies, etc.

As in the rest of the General State Administration, the Prison Administration monitors labour absenteeism with an analysis of the reasons and its evolution for many years.

On the other hand, regarding austerity measures and their relation to staff, we point out that the General Secretariat of Prison Institutions has newly admitted staff when the corresponding Royal Decree so authorizes, which regulates the public employment offer.

In order to make requests of public employment, all necessary variables are considered to plan short and medium-term needs weighting existing vacancies in the list of positions for prison establishments, the current staff, the structural leaves/retirements from the previous year, the potential opening of new prisons, average age of the civil servants not only for retirements but also for second activity purposes, etc.

However, it must be taken into account that these needs of the Prison Administration have to go in line with the corresponding Law on the State General Budget (for each year) and then approving the public employment offer. In this sense, in the years 2012 and 2013 the Prison Administration had no public employment offer and therefore, it could not replace the staff lost or structural leaves from previous years. Apart from that, the public employment offer in years 2011 and 2014 was quite limited, where the replacement rate was 30% of the leaves.
Nevertheless, this trend is improving since 2015. For this year, the Royal Decree 702/2017 of 7 July, approving the public employment offer for 2017, according to Article 19, for this year, the Royal Decree 702/2017 of 7 July approving the public employment offer for 2017, according to Article 19 and in line with the Law on the State General Budget, for 2017 it foresees a replacement rate of around 200%, which allows to face not only current needs but also those foreseen at short term, reinforcing most of the prison establishments with new staff, neutralizing not only structural leaves related to retirement, also with second-activity situations of Special Corps and auxiliary staff to which workers can access at a certain age, temporary inabilities to work, maternity/breastfeeding permits, facility time for union representation, leaves of absence for family reasons but reserving the job, etc. all taking into account that there will be real provision of service.

c. Contact with the outside world
"94. 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. Further, the Spanish authorities should explore possibilities to allow foreign inmates to conduct conversations with family members through videoconference."

One of the basic principles of the Spanish prison system is considering that the inmate is part of a society and he/she will come back to it when the sentence is over as expressed in the Explanatory Memorandum of the General Penitentiary Organic Law.

In this sense, Article 3.3 of the Prison Regulation states that "the inspiring principle of serving a sentence and security measures depriving of liberty will be the consideration that the inmate is a subject of law and is not excluded from the society, but continues to be part of it. In consequence, the life in prison must take life in freedom as a reference, reducing the negative effects of confinement, favouring social bonds, collaboration and participation of public and private institutions and access to public benefits.

The way to make this principle effective is allowing the inmates to have their corresponding relation with the outside world through direct as well as indirect contact inside and outside the prison establishment. These relations materialize in the access to information and media, communication, visits, prison leaves, etc.

Specifically, as regards communication and visits, the prison legislation regulates them as a right of all prisoners regardless of their judicial or prison situation, with the only exception of those who are under court-appointed incommunicado regimes. This right does not depend on the behaviour of the inmate, whether they are condemned or under preventive measures or their degree of classification. Their privacy must be respected in any case. Further, there will be no restrictions regarding the people or modality, except for those due to security reasons, to treatment or to proper order in the establishment, and all these restrictions are established under the prison regulations.

Even if both terms –communications and visits- are mixed in the prison regulations, in principle the difference between both types of relations of the inmate with the outside world is that in the first there is no direct physical contact between the visitor and the inmate (telephone, post or verbal communications and the two persons separated by a glass), while in the visits there is no barrier between them (family or acquaintances' visits).

In any case, the right of all inmates to have verbal, written and telephone communication with their families, friends, acquaintances, lawyers, judicial staff, different professionals and even among themselves as well as receiving the visit of their families or acquaintances in proper places – for the so called family, private or coexistence communications- is thoroughly developed in the prison legislation, which also regulates their frequency and duration.

This detailed regulation on communications and visits as well as the duty of the Prison Administration to satisfy the right of the inmates to have them in the frequency and conditions set, does not allow to mix the different regimes and does not allow to favour one over the other, given the architecture and design of prison establishments.

Finally, up to date no specific data can be provided but we would like to inform that the Prison Administration has been studying the possibility of introducing a videoconference system of the communications of foreign inmates.

c. Transgender prisoners.
"95. 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."

The Prison Administration, according to the Instruction 7/2006 of 9 March, established criteria to order the prison admission of "transsexual inmates" in the framework of the inner separation which, due to their sex, is established in Article 16 of the General Penitentiary Organic Law 1/1979 of 26 September.

In order to tackle the cases of transsexual inmates requesting to be sent to a module with the gender they self-identify but different to their physical identity, the said Instruction sets a procedure with criteria of positive actions as a tool to improve the social integration of these people, inside and outside the prison establishment. It regulates that, having the necessary medical and psychological reports together with the recognition of the psycho-social gender identity for prison purposes, the transsexual people without official recognition of the gender they identify with, can access modules and internment conditions appropriate to their condition.

In the specific case referred to by the CPT in Villabona prison, during their visit, there was a male inmate (L.A.A.N. who was released on the 4th October 2016) who had requested to have his gender identity recognised as a woman.

This inmate was admitted to the prison on the 19th of February 2014 and was placed upon his request to Module 9, a male module, which is a respect module, where he stayed until the 4th of February 2015 where he was sent to Module 10, a female module.

We must say that the inmate did not request to have his psychosocial gender identity recognized or to be sent to the female module until nine months had passed since his arrival to the male module. He requested the change of module on the 27th November 2014 by means of a closed envelop sent to the prison manager. Since that day, the process explained in the Instruction 7/2006 (interview with the psychologist and the doctor, reports from medical experts, analysis of other medical reports provided by the inmate) started and on the 2nd of February 2015 the manager issued the resolution approving the recognition of his gender identity as woman for the purposes of inner separation and, therefore, to place him in Module 10 and use the name according to his identity in all group and interpersonal relations except in official communications, where his official name will continue to be used.

Regarding the time he spent in Module 9, the investigations conducted point that there is no claim or complaint filed by the inmate for abusive behaviour of the officers. Likewise, the Technical Team

of the module says that he always had a behaviour adapted to the dynamics of the group and that they did not receive any complaints by the inmate and were not witnesses of any verbal abuse or discriminatory treatment by the staff or the rest of the inmates for his feminine physical aspect or clothes.

e. Searches.
***"96. 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 and 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**."*

Due to the duty of the Prison Administration to safeguard the health and integrity of the inmates as well as the order and security of prison establishments, the legislation foresees actions to guarantee this and, specifically, the strip-searches, in Article 68 of the Prison Regulation, in accordance with the doctrine of the Spanish Constitutional Court.

In this regulatory framework, for the purpose of harmonizing the work of the prison staff and include the indications by the Ombudsman, the Prison Administration has established in the Service Order 7/2006 a protocol for action to do this searches where it expressly sets:

- That it is an exceptional measure and has a specific record.
- That it can only be used when the circumstances make it necessary and indispensable, i.e., that there is no other less grievous way for the privacy of the person.
- That the decision must be motivated according to the inmate and circumstances.
- That its purpose is exclusively verifying the existence of any object or substance that may be harmful for the health or integrity of people or which can affect good coexistence and security of the prison.
- That it must be carried out by officers of the same sex, in a proper closed place and without the presence of other people. If the measure is necessary, it can only be conducted when the specific circumstances make it indispensable for the purpose pursued and no other less grievous way for the right to privacy can be used.
- That it will be conducted in the shortest time possible, firstly carrying out a visual inspection of the body to check that there is nothing hidden or adhered to the body and providing a gown or similar garment that prevents the continuous nudity.
- That the fact that it has been conducted and its result will be informed to the Prison Supervision Court.

This matter is supervised by the Penitentiary Inspection during its periodic visits to prison establishments to test the functioning and in general, no abuses by the staff have been observed, which does not mean that any irregularity that may occasionally appear be immediately corrected.

f. Complaints and inspection procedures

***"97. 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, will not be tolerated and will be punished accordingly*."**

There are no signs of threat or intimidation by officers in the prison of León about any inmate to avoid that they file a complaint. Further, taking into account the number of ways inmates can send complaints without the staff knowing (in sealed envelope, post, callers, personal interview with lawyers, Prison Supervision Court, etc.) and the number of letters that inmates send to the authorities from all the establishments with very different complaints, this allegation lacks plausibility.

In any case, the management and the staff of the said centre knows, as the rest, that in no case those behaviours will be tolerated and that any incidence or complaint is duly investigated and, given the case, duly corrected.

"98. 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*."*

As the CPT recommends, the State Judicial Council will be informed in the terms proposed by the delegation.

C. DETENTION CENTRES FOR JUVENILE OFFENDERS

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 illtreatment, 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."

The Juvenile Judicial Services of Asturias stated in its report of 12th December 2016 that there was no record of any of its files containing such allegations. The CPT is invited to visit the Casa Juvenil de Sograndio Juvenile Institution and examine one by one the files of all the juveniles, in which no complaints of ill-treatment are mentioned.

The following table shows, by way of example, the complaints brought before the juvenile court by the juveniles of the institution over the last three years:

YEAR	***COMPLAINT***	***CAUSE***
2014	*Complaint brought before the juvenile court (dismissed by this court)*	*Denial of leave permit considered unfair*
2015	*2 complaints brought before the juvenile court (dismissed by this court)*	*Security camera inside the isolation cell*
	7 complaints brought before the juvenile court (dismissed by this court)	*Disagreement with denial of leave permit*
	Complaint brought before the juvenile court (dismissed by this court)	*Disagreement with body search after a visit*
	Complaint brought before the juvenile court (dismissed by this court)	*Disagreement with the use of means of restraint*
	Complaints brought before the juvenile court (dismissed by this court)	*Complaint on a drug control test*
2016	*3 complaints brought before the juvenile court (dismissed by this court)*	*Disagreement with denial of leave permit*
	Complaint brought before the juvenile court (dismissed by this court)	*Disagreement with a disciplinary sanction*

Casa Juvenil de Sograndio Juvenile Institution has a Protocol on Ill-treatment (see **Annex III**). Under this protocol, any member of the staff who knows that any juvenile is being ill-treated must immediately inform the management of the institution. Failure to do so might result in disciplinary sanctions. The protocol has only been used once when a juvenile attacked another. No members of the staff were involved.

Judgement of Oviedo juvenile court, deciding on the prosecuted facts, is attached as **Annex IV**.

It is worth noting that it is particularly difficult to prove something that has not occurred, as the Latin maxim goes ‘incumbit probatio qui dicit, non qui negat’. It is not the first time that juveniles invent things with the sole purpose of using revenge to express their frustrations and bringing the public bodies into disrepute.

Attached as **Annex V** is a report by the Asturias senior deputy prosecutor for juveniles expressing his surprise about the fact that some juveniles had allegedly claimed to have witnessed or suffered ill-treatment by the staff of the institution. The senior deputy prosecutor declares that a strict and continuous monitoring of the public body for juvenile rehabilitation is carried out by the juvenile prosecutor’s office and the juvenile court. They both conduct private interviews with the juveniles that request so at least once a month. No complaint has ever been made by any of the juveniles, not even any comment on illtreatment or abuse of any kind inflicted by the staff of the institution.

Only two legal proceedings involving this institution are recorded in the register office of Asturias juvenile prosecutor’s office:
- Proceeding No. 4/2013 relating to an incident occurred on 19th June 2013 where the juvenile M.T. was hurt. Following the relevant investigation, the case was closed because it was proved that the security staff took appropriate action and used proportional force with the sole objective of overpowering the juvenile who was behaving in an extremely violent and aggressive way.

- Proceeding No. 2/2014 relating to an incident occurred on 1st September 2014. The juvenile O.M. headbutted a security officer and injured his/her nose.

Finally, it should be pointed out that all the juveniles can access a lawyer at any time and, given that the talks are private, inform him/her on what they consider necessary.

With regard to Tierras de Oria Juvenile Institution, it can be claimed that neither ill-treatment, nor threats or verbal abuse occur in the establishment.

Juveniles can make allegations of violation of their rights before the Ombudsman, prosecutors and courts or public bodies. However, there is not any allegation of ill-treatment such as the allegations described by the Committee in its report.

Furthermore, in accordance with the Code of Criminal Procedure and child protection laws, any civil servant or authority who knows that abuses as the above-mentioned, which might amount to a crime, are occurring, is obliged to inform the prosecutor’s office or the relevant judicial authority.

3. Conditions of detention

a. Material conditions

“104. 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.”

The damp problem and damage caused by water leakage on the walls is being remedied both in the corridor and in some of the rooms of the residential buildings.

Rooms for accommodation of juveniles are not equipped with call bells for educational purposes. These might be used during the nightly rest period to disturb the institution order. The proof is that the juveniles sometimes whistle or make repetitive noises to disturb.

The institution has sufficient staff to always properly attend the juveniles when they are in their rooms. The juveniles have never complained about this subject; they are immediately attended to when required.

"106. 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."

At Tierras de Oria Juvenile Institution internment measures for all type of regimes are applied, including closed regime. Some of the juveniles are there to comply with legal orders related to very serious crimes which involve very long-internment periods. That is why especial security elements are deemed necessary.

When designing security elements the carceral aspect is avoided as much as possible. There are no barred windows in any of the rooms at Tierras de Oria Juvenile Institution. The windows in the rooms have fixed and movable parts (to open them) both with safety glass.

In module 2, where juveniles with erratic behaviour or new inmates are temporarily accommodated, the observation phase takes place and decorative elements that can be manipulated or be dangerous for the juveniles or third parties are not allowed. However, personal pictures or other decorative elements are permitted.

At Tierras de Oria Juvenile Institution as well as in the rest of institutions of Andalusia, priority is given to safety prevention through socio-educational intervention. This approach has made it possible to progressively remove security elements such as the barbed wire for the perimeter area from all the Andalusian institutions.

"107. 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."

Under the Education Project of Tierras de Oria Juvenile Institution, sport activities are:

- **Outdoor sport activities** in the yards and sport tracks of the institution.

- **Swimming pool** for summer months for which timetable is organised so that all juveniles can have equitable access.

- **Gymnasium and indoor sport hall** used by each module at least three times a week.

- **Outdoor sport** following the individual juvenile intervention programme.

Outdoor sport facilities have fixed elements such as goalposts or basketball hoops. There is also all the necessary sport equipment: mats, cones, balls, etc., which is stored and taken out when the facilities are used by the juveniles. Furthermore, there are toilets in all the yards.

For safety reasons, the courtyard of Module 2, where juveniles with erratic behaviour or new inmates are temporarily placed, has less sport equipment. It is the only module with no porch since when raining or snowing the juveniles enter the building through a door which is only a few metres away.

When outdoor courtyards cannot be used due to bad weather, there is an indoor sport hall available.

We believe that there are diverse and sufficient sport facilities and outdoor sport activities at Centro de Tierras de Oria Juvenile Institution.

b. Regime.

"109. At Sograndio, 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 1st 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."

In this respect, paragraph 3 of Article 54 of *Ley Orgánica* 5/2000 of 12 January, regulating the Criminal Responsibility of Minors (hereinafter L.O. 5/2000) states as follows: 'Establishments shall be divided into modules appropriate to the age, maturity, needs and social skills of the juveniles and shall be governed by internal operating rules, the compliance of which shall aim to facilitate a peaceful coexistence enabling the diverse educational programmes to be implemented and the juvenile custody-related functions to be conducted'.

The issue of the juveniles accommodated on the first floor makes it not possible for them, for safety reasons, to participate in activities along with the rest of inmates. However, if they evolve positively, they are progressively engaged in those activities and workshops together with the other juveniles placed in the different modules.

It should be expressly stated that juveniles accommodated on the first floor attend academic, pre-employment and vocational training workshops and have socio-educational activities with a view to be accommodated in another module. This practice, which was implemented in the institution in 2003 in order to guarantee peaceful coexistence, has been very successful.

"111. 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."

It is understandable that due to the characteristics of population at Tierras de Oria Juvenile Institution ─ juveniles subject to custodial sentences ─ more access to fresh air is requested since outdoor activities are more appealing than others such as academic or vocational training.

However, the establishment offers a wide range of indoor and outdoor activities. As described in paragraph ***107***, the Institution has fully-equipped outdoor sport facilities. Furthermore, many outdoor sport and leisure activities are carried out with teaching staff such as hiking, cycling and athletics. In addition, municipal facilities from nearby towns are used.

"112. 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"

All the juveniles accommodated in Tierras de Oria Juvenile Institution are assessed in order to determine which are the most suitable activities for them. The assessment translates into a Personalised Programme for the Implementation of Legal Orders approved by the juvenile judge.

Juveniles suffering from a mental disorder placed in the therapeutic module have a very complete and diverse annual programme of academic, vocational, leisure and free time activities.

Moreover, most of them can enjoy therapeutic, sport, family, cultural and leisure programmed activities which are carried out outside the institution. Therefore, the juveniles can benefit from all this range of outdoor activities organised by public and private bodies.

"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."

The communication of the juveniles with the security staff is restricted. Juveniles are always accompanied by the educational direct care staff who implements the intervention programme and is also responsible for the inter-juvenile interactions.

At Tierras de Oria Juvenile Institution conversations among juveniles during school classes and workshops are not considered a breach. It is allowed but it is subject to the educational activity.

When they are in the gymnasium or the swimming pool they can freely talk to each other.

4. Health-care services.

"115. 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."

When juveniles are returned to the establishment after an escape, the protocol implemented is the same as when admission: the medical staff is immediately informed after their return so that they undergo a medical examination. In the past there have been some juveniles who have told the staff that they refused to be seen by the doctor. These incidents were then stated on writing.

"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."

It should be stated that all the juveniles admitted in the establishment have an interment order from the juvenile judge. The order specifies the type of internment that must be applied to the juveniles among all those governed by L.O. 5/2000.

Upon their admission, the establishment has already the reports provided by the supporting team of the juvenile's prosecutor office and the decision of the juvenile court establishing the interment measure.

The juvenile institutions visited by the CPT are surprised by the fact that, taking into account its few and short visits, cases of juveniles suffering from mental disorders have been observed; especially because those were neither mentioned by the supporting team in its previous reports nor noticed by the professionals working in those establishments (educators, teachers, psychologists and psychiatrics).

In some cases, at the request of an educator-teacher, some juveniles are sent to see the psychologist in order to improve communication between the juveniles and the educator and not because mental disorders have been observed.

At Tierras de Oria Juvenile Institution all the juveniles suffering from mental health disorder are given a multidisciplinar tailored treatment regardless of their placement or not in a therapeutic module. Working as part of the institution team there are expert professionals, including a psychiatrist and an expert clinical psychologist.

"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."

When dealing with juvenile offenders (and also with other vulnerable groups of people) it is very important to work with heterogeneous groups and use standard resources. This is one of the reasons why the establishment has always tended to place in the therapeutic module juveniles who are not held under a therapeutic measure. To date, no coexistence problems have been observed. So much so that all the juveniles, following or not a therapeutic programme, have been granted leave permits and take part in activities offered by the local community.

Finally, it should also be stated that Article 1 of the Rules on the Internal Functioning of the Therapeutic Module, adopted by Resolution of 24 May 2016 of the former Department of Justice, Public Security and Foreign Relations of the Regional Government, provides as follows:
1. The therapeutic treatment module is a specific unit to comply with the therapeutic internment order set out in Article 7.1 d) of Ley Orgánica 5/2000 of 12 January regulating the Criminal Responsibility of Minors.
2. Further, this module might be used for non-therapeutic internment orders or weekend stays in the institution in cases of juveniles with therapeutic needs requiring specialized educational care or a particular treatment of this type.
3. It might also be used for juveniles serving custodial measures who do not need specialized care or treatment, where occupancy conditions and personal characteristic of the juveniles allow so.

"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."

Regarding the juvenile mentioned in the report of the CPT who is placed in the therapeutic module under closed regime at Sograndio Juvenile Institution, it can be said that the response to the tailored therapeutic programme has been successful to date. From closed regime he was then placed under day-release regime by which he is granted weekend leave permits ─ from Friday to Sunday ─ to be spent with his/her family. He/she has also been taken part in several community activities for months leaving the institution by himself/herself at 8.30 am and coming back at 6 pm accompanied by his/her family. During this time he/she attends a Comprehensive Care Centre in which he/she participates in many leisure, pre-employment and sports activities and receives specific therapy for his/her condition.

Several reports have been recently drawn up by the Comprehensice Care Centre to apply the juvenile judge to replace the placement in the institution by supervised release for the juvenile concerned. By order of 18 July 2017, the Oviedo juvenile court decides to substitute the remainder of his/her placement in the centre for therapeutic treatment under a day release regime by supervised release with the obligation to follow a mental health treatment.

Likewise, we would like to report on a 22-year-old juvenile held for therapeutic treatment at the time of the CPT visit to Tierras de Oria Juvenile Institution.

The juvenile concerned has been diagnosed with mild mental retardation (F70) according to the ICD-10 classification and has been legally recognised as having a 65% disability.

He was admitted to the institution in 2013 and was released after the Committee visit.

During his/her stay in the institution he/she showed very positive progress with regard to acquiring personal and social skills, problem solving skills, self-control, and coping with emotions. His/her behaviour remained stable and he/she gradually acquired skills that helped him/her to function normally among peer groups and the socio-educational team of the centre.

El joven carece de sistema familiar y de referentes familiares adultos que le proporcionen apoyo familiar o social. The juvenile has no family or adult relatives who can act as a point of reference and provide him/her with social or family support.

Before his/her release, the institution, coordinated with the local social services and the Dependency Degree Assessment Department of Almería dependent upon the Social Services and Dependency Agency of Andalusia under the authority of the Gender Equality and Social Policies Department of the Regional Government of Andalusia, managed the benefits he/she might be entitled to within the dependency care system.

An individual care programme including residential care service was approved. The juvenile was also provided placement in a specialised residential centre for disabled people in Almería.

Currently, the juvenile is spending the period of supervised release imposed to him/her by judicial decision in the aforementioned establishment where he/she is treated for his/her mental condition. In order for the juvenile to have a better adaptation to the residential centre, and based on a mutual caring relationship, the staff who was in charge of him/her at Tierras de Oria juvenile institution visit him/her regularly.
The Open Regime Comprehensive Service of Almería, which is dependent upon the Judicial Services of the Government representative body in the Regional Government of Andalusia, is responsible for the monitoring of the supervised release and coordinates with the local social services and the relevant mental health services.

5. Staff.

“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.

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.”***

All security staff members receive specific training to work in places with particular characteristics, in this case, a juvenile institution.

Clause 15.21 of the Specific Administrative Clauses governing the surveillance and private security contract for the institution provides as follows:

‘The contracted company shall have the following **specific obligations** and shall bear the cost thereof:

*c) Providing appropriate **training** to security staff so that they can carry out their duties(regulations on criminal responsibility of minors, regulations concerning the institution, retraining courses, updating…).*

Furthermore, clause 17.6 of the Specific Administrative Clauses states that: 'staff assigned to the service shall have the necessary professional authorisation, training and qualifications to perform their duties and shall meet all the conditions required by the relevant legislation in force.'

That is why the company providing the service and to which the staff assigned depends upon, has the explicit obligation to provide its personnel with the appropriate and specific training for the service concerned.

At Tierras de Oria Juvenile Institution, the members of the staff charged "exclusively with security duties" are all security guards. They are specialised personnel with the training, guarantees and conditions established by the Spanish legislation on private security.

In addition, all the security staff receives specific training to carry out their duties when starting working in the institution and then on an ongoing basis.

Finally, all the staff whose duties include the use of means of restraint requiring physical force is already trained to do so.

"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 prisonlike 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."

This practice is used at Sograndio Juvenile Institution because it is a possibility legally envisaged and provided for in the relevant legislation in force.

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 restraint94 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".

In the 2015 review of the CPT rules it is established that 'the placement of a violent or agitated juvenile in a room in order to calm him/her down should be a highly exceptional measure. Any action of this type should not last longer than a few hours and should never be used as a punishment not specifically stipulated. Mechanical restriction should never been used for this type of situations'.

In the Spanish legislation, **Article 55.2 c)** of Royal Decree 1774/2004 of 30 July by which the Regulation implementing the *Ley Orgánica* 5/2004 of 12 January on Criminal Responsibility of Minors is approved, provides for the possibility to use mechanical restraint as a means of restraint.

Article 55.-Means of restraint
1. Only the means of restraint described in paragraph 2 of this Article shall be used for the following cases:
a) To prevent violent acts or selfharm of juveniles or injuries to others.
b) To prevent escapes.
c) To prevent damage to the premises of the institution.
d) To counter active or passive resistance to obey the instructions given by the staff of the institution when legitimately fulfilling their tasks.
2. The authorised means of restraint shall be:
***a)** Physical force*
***b)** Rubber defenses*
c) Mechanical restraint
***d)** Temporary isolation*
3. The use of means of restraint shall be proportionate to the intended purpose, shall never be used as an informal punishment and shall only be applied if there is no other less intrusive way to achieve the intended purpose and for the shortest time possible.
4. The means of restraint shall not be used neither with pregnant juveniles, juveniles until six months after termination of pregnancy, nursing mothers, mothers with children in the institution nor with convalescing juveniles after a serious illness unless their acts constitute an imminent danger to their integrity and that of other juveniles.
5. The temporary isolation measure shall be applied in a room with the necessary measures to prevent the juveniles from hurting themselves or others. The doctor or the relevant specialised staff shall visit the juveniles during the time the temporary isolation lasts.
6. The use of means of restraint shall be previously authorised by the director of the institution or the person appointed by the public body and specified in its regulations unless cases of urgency do not allow so. In such case, the director shall be informed immediately. Likewise, the juvenile judge shall be informed of the use of such means and the end of the measure specifying the facts that lead to the implementation of the measure and the circumstances that might require its continued application.
7. The material means of restraint shall be stored in a place or places deemed right by the director or the person appointed by the public body and specified in the regulations.
8. In cases of serious disturbance presenting immediate danger to the life, threat to physical safety or damage to the premises, the public body or the director of the institution may request the assistance of the relevant law enforcement agencies of that territory and inform immediately the juvenile judge and the Public Prosecutor's Office.

'The use of mechanical restraint in juvenile institutions is of auxiliary nature. In accordance with the recommendations of the Directorate-General for Juvenile Justice and Cooperation 'it is an auxiliary means and, due to the extreme nature of the measure, it is necessary to exhaust every possible way to handle the situation with different strategies before resorting to it, ensuring that it is used as a last resort to achieve the intended purpose, only as long as it is strictly necessary and always assessing the need and manner to implement it for each individual case. It shall always be

conducted with guarantees and shall be monitored so that it is applied in the best possible conditions for the juveniles.'

The use of mechanical restraint is conducted with all the possible safety guarantees and respect for the fundamental right of the juveniles.

In February 2016, the Directorate-General for Juvenile Justice and Cooperation established several new additional guarantees to those provided by Royal Decree 1774/2004 to apply longterm mechanical restraint (when the situation cannot be solved with a few minutes restraint or straps are required).

Mechanical restraint is conducted with the following guarantees:

- **Its use is limited to prevent violent acts or self-harm of juveniles, when all the alternative methods have been exhausted.**

- **Medical monitoring**

Previous monitoring. At Tierras de Oria, if a medical condition preventing the use of this means of restraint or other is observed by the doctor or psychiatrist during the medical examination, it is recorded in the juvenile's medical record and the professionals of the institution are informed.

For long-term mechanical restraint (when the situation cannot be solved with a few minutes restraint or straps are required) an additional medical monitoring is conducted.
Before the restraint. The juveniles are seen immediately by a doctor or the health staff required who will record by written if there is or not any medical reason preventing restraint.

During the restraint. The juveniles are seen by the medical staff every 30 minutes who will assess their condition.

After the restraint. At the end of the long-term mechanical restraint the juveniles are medically examined by a doctor.

- **On-going monitoring**

During the mechanical restraint the juveniles are under on-going supervision by members of the educational care team of the institution. They must inform regularly the person responsible for the implementation of the measure on any incident or change in the juvenile's attitude at least every 30 minutes.

The monitoring of the long-term mechanical restraint by the staff must be recorded.

- **Training**

The staff involved in the means of restraint requiring the use of physical force is specifically trained to do so.

- **Secure room**

Mechanical restraint is carried out in a room with special security measures where no other juveniles are present.

These rooms are lighted, have natural ventilation and are similar to those of the rest of the institution. They also have technical means to ensure that the isolation is carried out in the least intrusive way, always guaranteeing the integrity of the juveniles. To that end, the room is equipped

with fixed vandal resistant furniture and no dangerous objects or items that might be used as weapons are allowed inside. There is also an image recording system for surveillance that can be employed if authorised by a judge.

- **Physical restraint**

Restraint is carried out in a properly equipped bed allowing the staff to walk around with no obstacles at all. In order to ensure the physical, psychological and moral integrity of the person subject to mechanical restraint, only approved straps in good order are used. No handcuffs or other physical restraint means are ever employed.

Juveniles are never handcuffed to fixed objects.

- **Implementation of the measure**

Mechanical fixation must be applied following a health protocol. In any case, it must be proportionate to the particular situation of the inmate and never be used on a routine basis.

- **Record**

At Tierras de Oria, apart from the personal files of the juveniles, there is a specific book on means of restraint in which, in case the measure is applied, the following must be recorded in detail:

- Reasons to resort to the restraint and the long-term application.
- Actions undertaken.
- Records or not of an impediment to carry out the restraint.
- Description of the supervision and monitoring while the restraint measure was conducted.
- Report of the psychologist or medical staff who have seen the juvenile.
- Any incident that may have occurred during the implementation of the measure.
- Results of the medical examination carried out to the juvenile.

Further, the juvenile judge and the Public Prosecutor's Office are immediately informed of the start and the end of any means of restraint set out in Royal Decree 1774/2004, among which mechanical fixation is included, explaining in detail what caused the resort to it and the circumstances that led to the long-term application.

It can be stated that the Spanish juvenile institutions complied conscientiously with the applicable legislation in force and the means of restraint are only used as exactly provided by law.

Sometimes, in cases of juveniles behaving in an extremely violent way, some of them have been handcuffed as it was impossible to control them by other means. Mediation has always been used when conflicts arise, but in some cases, when other methods have not been successful, handcuffs have been used to maintain order, prevent self-harm or injuries to others.

In extreme cases of imminent self-harm such as head-butts against any type of object, kicks, gobs of spit or bites, the juvenile concerned has been handcuffed to a fixed object for the minimum time needed. This is not a common practice and it is only applied after weighing up the situation effectively, always based on the principle of proportionality, on the legal rights to be protected and with the main objective of safeguarding the integrity of the juveniles and professionals who are with them. It should also be stated that the juveniles are accompanied at all times, not guarded, and the staff tries to calm them down and return them to normal behaviour.

In some of the socio-educational activities with the juveniles, work is done on the institution regulations, the different alternatives for dispute resolution, the mediation and the prevention of recidivism.

"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. (...)".

"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. (…)

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."

"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 timeout 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 healthcare 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."

It should be stated that in 2016 only two juveniles were attached to fixed objects ─ in one case both of them at the same time ─ as they were acting in a highly violent manner. This year, the measure has only been applied once with one of the juveniles from the previous year and for the same reasons.

In these three cases, security staff grabbed their legs and arms but could not calm them down. Neither the psychologist nor the psychiatrist were able to stop the violent attacks: kicks, gobs of spit, bites, self-injuries, head-butts against the wall or any type of object. It was even necessary to wrap a towel around their heads to prevent self-injuries. Whenever the educators, the psychologist or the psychiatrist entered the room they were continuously insulted or threatened by them. That is why in cases of such extremely violent behaviour the juveniles are left alone but they are always supervised by security staff members and educators through the hatch in the door until the violent attacks have ceased.

As it has been previously been pointed out several times, it is a measure of last resort for situations of extreme violent acts employed to protect the integrity of the juveniles themselves.

The use of means of restraint is recorded in the restraint register of the establishment, the juvenile court and the juvenile prosecutor's office are informed by written and a copy of this document is included in the file of the juvenile. Another copy is also submitted to the lawyer of the juvenile if so requested by him/her.

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.

The juvenile institutions visited maintain that the allegations of juveniles being discouraged from lodging appeals against the disciplinary sanctions imposed are completely false. Further, they are given the chance to talk with their lawyers to inform them of the offence committed and the sanction imposed. Juvenile offences and the relevant sanctions are part of the educational intervention process. When juveniles commit any type of offence ─ minor, serious or very serious ─ the socio-educational staff of the establishment organises tutorial classes to specifically deal with the events occurred so that juveniles can incorporate within themselves the idea that the establishment's regulations and social standards have to be respected.

Appeals lodged by the juveniles to a juvenile judge during a disciplinary procedure follow the established procedure. The appeals are registered and processed as usual with every guarantee established by the Spanish legislation.

To comply with the CPT's recommendation, the staff of those institutions will be reminded by the management that they should refrain from discouraging juveniles from appealing against the disciplinary sanction imposed to them.

"133 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."

The use of solitary confinement provided for in Article 55 of the *Ley Orgánica* on Criminal Responsibility of Minors can never be imposed as a punishment or an informal sanction; its purpose is to ensure the juvenile's safety. The CPT's recommendation, in which duration is mentioned, must be referring to the disciplinary sanction involving *separation from the group laid down in Article 66 of the Ley Orgánica on Criminal Responsibility of Minors.*

At Tierras de Oria Juvenile Institution, the punishment involving separation from the group is conducted in compliance with the current legislation and the measure is far from being an isolation regime. During this time, the juvenile is in his/her regular room, his/her intervention programme is not ceased and he/she participates in the training activities where professional of the establishment and other juveniles are present.

"135. The examination of the disciplinary register kept at Sograndio revealed that selfharm 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 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."

In cases in which based on previous reports included in the files of the juveniles or on monitoring by the socio-health staff of the establishment a juvenile is found to be at risk of committing self-harm, the suicide prevention protocol is implemented. He/she is then more closely watched by the staff and specifically monitored by the psychologist and psychiatrist.

At Tierras de Oria Juvenile Institution, self-harm is not regarded as a disciplinary offence leading to disciplinary proceedings. The response of the establishment is not of a punitive but educational nature and priority is always given to prevention.

In order to deal with these situations, there is a prevention suicide risk protocol which provides for self-harm and assigns priority to the prevention of this type of behaviour.

"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."

This issue is related to the return to the preceding educational stage, i.e., the observation stage. This return must never be based on an unofficial disciplinary sanction. To comply with the CPT's recommendation, the following guarantees shall be applied to this measure:

- Placement in the observation stage will be applied to juveniles requiring further temporary monitoring to adjust to life in the institution due to their very high conflict personality with erratic behaviour and non-observance of the establishment rules on a regular basis.

- In no case will this placement be a pseudo disciplinary regime outside the procedures laid down.

- The reasoned decision of the socio-educational commission on the commencement and cessation of the replacement in this stage will be included in the personal file of the juvenile concerned.

- When the return to the observation stage is agreed, a special follow-up report stating the objectives of the socio-educational intervention will be prepared. The juvenile court and Judicial Services of the Government representative body in the Regional Government of Andalusia responsible for the follow-up will be informed.

- The return to this stage will be overseen at least once a week by the socio-educational team.

In cases in which the replacement must extend for more than 20 days, a special reasoned report will be drawn up and included on the personal file of the juvenile. The juvenile court and the Government representative body in the Regional Government of Andalusia responsible for the follow up of the measure will be informed of such decision.

"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."

In this particular case, in which several clothes and makeup products and accessories were confiscated to a juvenile girl, it should be stated that once the disciplinary sanction is served all personal belongings are returned to the juveniles. However, there are some clothes or items regarded by the establishment as privileges that are rewarded, little by little, for good behaviour. All juveniles are allowed to have the strictly necessary clothing and toilet articles provided for in the establishment's regulations. However, if a sanction is imposed on them those items regarded as privileges rewarding good behaviour may be confiscated.

"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 minimize 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."
As for strip-search, the usual practice (where there is suspicion that the juveniles might try to bring into the establishment prohibited or dangerous items) is to request them to remove clothing above the waist and then, once the clothes are put back on, remove clothing below the waist.

To comply with the CPT's recommendations, Tierras de Oria Juvenile Institution and the other juvenile institutions of Andalusia have been informed on how strip-searches must be carried out so that all the clothes are not removed at the same time.

Madrid, 25th September 2017

Note: The annexes are only available in Spanish. Those published can be found at the end of the Spanish version of the response.