



CPT/Inf (2000) 5

**Report to the Spanish Government  
on the visit to Spain  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)  
from 22 November to 4 December 1998**

The Spanish Government has requested the publication of this report and of the interim report drawn up in response. The Government's response is set out in document CPT/Inf (2000) 6.

Strasbourg, 13 April 2000



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

Strasbourg, 5 August 1999

Dear Sir,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report to the Government of Spain drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Spain from 22 November to 4 December 1998. The report was adopted by the CPT at its 39th meeting, held from 6 to 9 July 1999.

I would like to draw your attention to paragraph 140 of the report, in which the CPT requests the Spanish authorities to provide an interim and a follow-up report on the measures taken upon its report. The CPT would ask, in the event of the responses being forwarded in Spanish, that they be accompanied by an English or French translation. It would also be most helpful if the Spanish authorities could provide a copy of the responses in a computer-readable form.

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

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours faithfully,

Ivan ZAKINE  
President of the European Committee for  
the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment

Mr Rafael RAMOS GIL  
Technical General Secretary  
Ministry of the Interior  
E – 28071 MADRID



## I. INTRODUCTION

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

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Spain from 22 November to 4 December 1998.

The visit formed part of the CPT’s programme of periodic visits for 1998 and was the Committee’s third periodic visit to Spain (the first two having taken place in April 1991 and April 1994).<sup>1</sup>

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

- Ms Ingrid LYCKE ELLINGSEN, First Vice-President of the CPT (Head of the delegation);
- Mr Mario BENEDETTINI;
- Mr Ole Vedel RASMUSSEN;
- Mr Safa REISOĞLU;
- Mr Florin STĂNESCU.

They were assisted by:

- Mr Daniel GLEZER, Head of the Regional Psychiatric and Psychological Medical Service at Marseilles “Les Baumettes” Prison (expert);
- Mr James McMANUS, Scottish Prisons Complaints Commissioner (expert);
- Ms Charo BAQUERO (interpreter);
- Ms Christine BOURGOIN-DIEZ (interpreter);
- Ms Danielle GREE (interpreter);
- Mr Felix ORDEIG-COLE (interpreter) (from 28 November to 2 December 1998);
- Ms Melanie ROE (interpreter);

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<sup>1</sup> The Committee has also carried out three ad hoc visits to Spain, in June 1994, January 1997 and April 1997.

and were accompanied by the following members of the CPT's Secretariat:

- Mr Mark KELLY;
- Mr Jan MALINOWSKI.

**B. Establishments visited**

3. The delegation visited the following places:

**Law enforcement agency establishments**

**National Police stations**

Police Headquarters, Via Laietana, Barcelona  
Police Headquarters, Calle Arquitecto Bergés, Jaén  
Police Headquarters, Calle Luis Doreste Silva, Las Palmas de Gran Canaria

Central Duty Inspection, Calle la Tacona, Moratalaz, Madrid  
Provincial Brigade of the Judicial Police, Plaza de Pontejos, Madrid

Police Station, Avenida Gatassa, Mataró  
Santa Catalina District Police Station, Calle Dr. Miguel Rosas, Las Palmas de Gran Canaria  
Police Station at the Port of Las Palmas de Gran Canaria

**Civil Guard establishments**

Civil Guard Headquarters, Travessera de Gràcia, Barcelona  
Civil Guard Headquarters, Calle Alicante, Las Palmas de Gran Canaria

**Other establishments**

Catalan Autonomous Police (Mossos d'Esquadra) Station, Calle Bolivia, Barcelona  
Municipal Detention Facility, La Riera, Mataró

**Prisons**

Barcelona Prison for Men (Modelo)  
Jaén Prison  
Las Palmas de Gran Canaria Prison (Salto del Negro)  
Madrid V Prison (Soto del Real)

**Psychiatric hospitals**

Centro San Juan de Dios Psychiatric Hospital, Ciempozuelos

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In addition, the CPT's delegation visited the cellular accommodation aboard the vessel Juan J Sister, in which prisoners are transported between the Canary Islands and mainland Spain.

**C. Consultations held by the delegation**

4. In addition to meeting with the local officials in charge of the places visited, the delegation held consultations with national authorities and representatives of non-governmental organisations active in areas of concern to the CPT.

A list of the authorities and organisations with which the delegation held consultations is set out in Appendix II to this report.

**D. Cooperation between the CPT and the Spanish authorities**

5. The CPT wishes to underline that its delegation enjoyed excellent cooperation at all levels, both before and during the visit.

At the outset of the visit, the CPT's delegation was received by the Minister for the Interior<sup>2</sup>, Mr Jaime MAYOR OREJA, and the Minister for Health, Mr José Manuel ROMAY BECCARÍA. Further, it had meetings with senior officials from both Ministries at the beginning and the end of the visit and, in particular, with Mr Ricardo MARTÍ FLUXÁ, Secretary of State for Security, Mr Leopoldo CALVO-SOTELO y IBÁÑEZ-MARTÍN, Under-Secretary for the Interior, Mr Rafael RAMOS GIL, Technical General Secretary of the Ministry of the Interior, and Mr Angel YUSTE CASTILLEJO, Director General of the Prison Service, as well as with Mr Rafael MATESANZ ACEDOS, Director General of Primary and Specialist Care in the Ministry of Health, and Mr Rafael PEÑALVER, Legal Adviser in the Ministry of Health.

The delegation also held consultations with Mr Ignasi GARCÍA I CLAVEL, Director General of the Catalan Prison and Rehabilitation Services.

Further, the delegation had fruitful discussions with the Ombudsman (Defensor del Pueblo), Mr Fernando ÁLVAREZ de MIRANDA y TORRES, and senior members of his staff, as well as with the President of the General Council of the Judiciary, Mr Francisco Javier DELGADO BARRIO, and two members of the Council, Ms Manuela CARMENA CASTRILLO and Mr Teofilo ORTEGA TORRES.

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<sup>2</sup> The Ministry of the Interior is responsible for the law enforcement agencies under the authority of the national Government (i.e. the National Police and the Civil Guard). Since 1996, it has also had responsibility for prisons (with the exception of those situated in Catalonia).

6. It should be added that the delegation received a very satisfactory reception at - and in particular rapid access to - all of the establishments visited, including places which had not been notified in advance of the CPT's intention to carry out a visit. Indeed, it would appear that the management of all of the places of detention visited had been informed of the possibility of a visit by the Committee and were reasonably knowledgeable about its mandate.

The CPT also wishes to express its sincere appreciation of the efforts of the liaison officers appointed by the Spanish authorities and, in particular, Mr Antonio CERROLAZA GÓMEZ of the Ministry of the Interior, to facilitate the delegation's task.

7. In short, the degree of cooperation which prevailed during the visit was fully in compliance with Article 3 of the Convention. Moreover, taken as a whole, the content of the ongoing dialogue between the CPT and the Spanish authorities and the delegation's findings during the 1998 visit indicate that those authorities are committed to taking positive action to implement the Committee's recommendations.

8. Notwithstanding this broadly positive situation, particular reference should be made to the fact that the Spanish authorities have yet to implement the CPT's 1994 and 1997 recommendations that a general investigation of a thorough and independent nature be carried out into the methods used by members of the Civil Guard when holding and questioning persons arrested as presumed participants in one or more of the offences referred to in Article 384 bis of the Code of Criminal Procedure (cf. paragraph 34 of document CPT/Inf (96) 9, Part III and paragraph 51 of document CPT/Inf (2000) 3).

In July 1997, the CPT held high-level talks in Madrid with the Spanish authorities with a view to clarifying the nature of the action required to implement those recommendations. On that occasion, it was agreed that, in the context of the production of a new manual on police procedures, an analysis would be made of the methods actually employed by law enforcement officials when detaining, interrogating and transferring detained persons.

The body charged with drawing up that manual (the Technical Commission of the National Coordination Commission of the Judicial Police) reviewed an extensive range of documents (legislative provisions; judicial pronouncements, including by the Supreme and Constitutional Courts; relevant instructions issued by authorities in charge of the law enforcement agencies); however, there has as yet been no on-the-spot scrutiny of the manner in which detained persons are being treated by law enforcement officials. **To comply with the above-mentioned recommendations requires that there be such scrutiny** (cf. also paragraph 13).

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

### A. Law enforcement agencies

#### 1. Preliminary remarks

9. In the course of the third periodic visit to Spain, the CPT's delegation revisited certain National Police facilities and carried out visits to a number of other National Police and Civil Guard establishments.

Further, the delegation visited an establishment of the Catalan Autonomous Police (Mossos d'Esquadra), an agency under the authority of the Catalan Autonomous Government which is progressively being deployed in Catalonia. It also visited a municipal detention facility under the responsibility of the local authority. Such establishments are used to hold persons detained by the law enforcement agencies (whilst waiting to be brought before a judge), inmates remanded in custody by a judge and persons sentenced to very short terms of imprisonment or to weekend detention.

10. The legislation concerning detention by the law enforcement agencies has been summarised in the CPT's reports following its previous visits. However, particular reference should be made to the 1995 Criminal Code, which has introduced a more developed framework penalising the offences of torture/ill-treatment and "violations of constitutional safeguards" by an authority or public official.

Under the heading "torture and other offences against moral integrity", the Code foresees penalties of up to 4 years imprisonment and up to 4 years ineligibility for public office/civil service for offences committed by an authority or public official which involve a violation of a person's moral integrity, and up to 6 years imprisonment and up to 12 years ineligibility for public office/civil service for the offence of torture. The same penalties apply to an authority or public official who, in breach of their official duties, allow others to perpetrate such offences. Further, when a violation of a person's moral integrity is compounded by a violation of the rights to life, physical integrity, health, sexual freedom or property, those offences are to be the subject of separate penalties.<sup>3</sup>

It is also noteworthy that the Code includes the offences of unlawfully prolonging detention or incommunicado detention, the undue application of sanctions or restrictions to prisoners, or the use of unnecessary rigour, and obstructing the exercise of the right to legal assistance or not complying with the duty to inform detained persons of their rights.<sup>4</sup>

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<sup>3</sup> cf. Articles 173 to 177 of the Criminal Code.

<sup>4</sup> cf. Articles 529 et seq. of the Criminal Code.

## 2. Ill-treatment

11. In the course of the visit, the CPT's delegation received no allegations of torture from persons interviewed who were or who had recently been detained by the Spanish law enforcement agencies. Further, comparatively few allegations were heard of other forms of physical ill-treatment of detained persons by law enforcement officials.

The allegations which were heard from detained persons concerned principally the National Police and mostly involved the use of excessive force at the time of arrest. Reference might be made to the case of a person interviewed at Las Palmas de Gran Canaria National Police Headquarters, who alleged that, at the time of his arrest, a police officer had pistol-whipped him. An examination by a medical member of the delegation revealed a recent 3 cm long wound on the scalp, which was consistent with his allegation.

12. However, both before and during the visit, the CPT received reports from other sources containing a considerable number of allegations of ill-treatment by the National Police, the Civil Guard and the Basque Autonomous Police (the Ertzaintza) relating to periods of custody during 1997 and 1998. Those allegations involved blows to various parts of the body and, in some cases, more serious forms of physical ill-treatment, including sexual assault of female detainees by male police officers, and asphyxiation by placing a plastic bag over the head. In certain cases, the reports included medical certificates recording injuries or conditions consistent with the allegations made by the persons concerned.

Many of the above-mentioned reports related to persons detained in the Basque Country or the Navarre region as terrorist suspects or in connection with terrorist-linked public order offences. It would appear that, in a number of those cases, the persons concerned or their relatives have lodged formal complaints, including before the relevant judicial authorities, about the manner in which they have been treated.

**13. The persistence of allegations of ill-treatment by the law enforcement agencies highlights the need for the Spanish authorities to remain particularly vigilant in this area and, more specifically, to engage in the on-the-spot scrutiny referred to in paragraph 8.**

As regards the alleged use of excessive force at the time of arrest, the CPT fully recognises that the arrest of a criminal suspect is often a hazardous task, in particular if the person concerned resists arrest and/or is someone whom the law enforcement officials have good reason to believe represents an immediate danger. The circumstances of an arrest may be such that injuries are sustained by the person concerned (and by law enforcement officials) without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for them being struck by law enforcement officials. **The CPT recommends that law enforcement officials be reminded of these precepts.**

14. It is axiomatic that one of the most effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties.

Even in the absence of an express complaint, action should be taken if there are other indications (e.g. lesions recorded in a forensic medical report; a person's general appearance) that ill-treatment might have occurred.

15. In Spain, every complaint which may involve the commission of a criminal offence must be examined by the judicial authorities. Detained persons can lodge a complaint about their treatment with the examining judge responsible for their case and are systematically offered the possibility to be examined by a state-employed doctor. The examining judge may refer the matter to another competent judge, or take the necessary steps to preserve evidence and initiate proceedings to investigate the allegations. A complaint can also be lodged before the judicial authorities at later stages.

In all such cases, the public prosecutor has a key role to play. In particular, it is the task of the prosecution service to instigate legal action in defence of the rights of citizens, both *motu proprio* and following a complaint or at the request of an interested party. It also lies with the prosecution service to ensure that other judicial authorities exercise their functions in conformity with the law. Further, in the context of criminal proceedings, prosecutors are required to call upon the judicial authorities to take the steps required to establish the facts of a case.<sup>5</sup>

However, in the course of the delegation's discussions with members of the General Council of the Judiciary, it emerged that examining judges and prosecutors may not always be displaying due diligence when allegations of ill-treatment are brought to their attention. The CPT's own findings during the 1998 visit suggested that judges and public prosecutors could be more proactive when they receive such allegations. **The CPT would like to receive the comments of the Spanish authorities on this subject.**

16. **The CPT would also like to receive the following information in respect of 1997 and 1998:**

- **the number of complaints of ill-treatment by law enforcement officials lodged and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints;**
- **an account of those complaints and the outcome of the proceedings (allegations, brief description of the findings of the relevant court or body, verdict, sentence/sanction imposed).**

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<sup>5</sup> cf. Articles 124 of the Spanish Constitution, 435 of the Organic Law on the Judiciary, 105 of the Code of Criminal Procedure and 3 (1) of the Law governing the Prosecution Service.

17. Developing and strengthening the formal safeguards afforded to detained persons and filling any gaps which may exist in the legal framework governing those safeguards can also make a significant contribution to the prevention of ill-treatment, as can systems for the inspection of law enforcement agency establishments by a judicial or another independent authority.

The Committee will return to these matters in some detail in the following section of this report.

### **3. Safeguards against the ill-treatment of detained persons**

#### a. introduction

18. The CPT has been engaged, for a number of years, in a dialogue with the Spanish authorities on the issue of the safeguards against ill-treatment to be offered to persons detained by the law enforcement agencies. The Committee has placed particular emphasis on three fundamental rights, namely the right of detained persons to have access to a lawyer, to inform a close relative or another third party of their choice of their situation, and to have access to a doctor.

#### b. access to a lawyer

19. The CPT has repeatedly recommended that persons detained by the law enforcement agencies in Spain be granted the right of access to a lawyer as from the outset of their custody. In this respect, the CPT wishes to reiterate that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect on those minded to ill treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

The right of access to a lawyer as from the outset of custody must include the right to talk to the lawyer in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police (whether this be during or after the initial period of police custody). Naturally, this should not prevent the police from questioning a detained person on urgent matters, even in the absence of a lawyer, nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation; however, the latter possibility should be strictly circumscribed by appropriate safeguards.

The Committee has recognised that, in order to protect the interests of justice, it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer chosen by him. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another, independent lawyer who can be trusted not to jeopardise the legitimate interests of the police investigation should be arranged.

20. In their responses, the Spanish authorities have indicated that, in their view, "every person has from the very outset of their detention the right to legal assistance".

Nevertheless, CPT delegations have repeatedly found that, in practice, many detained persons spend some considerable time in police custody before having access to a lawyer. This would appear to be because the Spanish authorities consider that "the essence of a detained person's right to legal assistance ...[relates to the] effectiveness of the defence [in the form of] the help provided by the lawyer during detention".<sup>6</sup> In consequence, the first moment at which detained persons have access to legal assistance is when making a formal statement to the police.

21. In the course of the 1998 visit, the delegation again stressed that the *raison d'être* of the CPT's recommendation on this subject is to enhance the protection of detained persons against ill-treatment. The Committee's concerns are therefore quite distinct from the issues of criminal procedure (including the right to a defence and the evidential value of statements given by detained persons) which have been raised by the Spanish authorities in their responses to this recommendation. It emphasised that - in the interests of the protection of detained persons against ill-treatment whilst in the custody of the law enforcement agencies - the introduction of such a fully-fledged right of access to a lawyer is essential.

The CPT was pleased to learn that, following this exchange of views with its delegation, the Spanish authorities now intend to take steps, in consultation with the relevant professional bodies, with a view to implementing the CPT's recommendation that persons detained by the law enforcement agencies in Spain be granted the right of access to a lawyer as from the outset of their detention. **The CPT would like to receive full details of the concrete action being taken with a view to implementing that recommendation.**

c. notification of custody

22. As regards notification of custody, the CPT has previously expressed concern regarding the period during which certain categories of persons detained by the law enforcement agencies can be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice (as provided for in Article 520 (2) (d) of the Code of Criminal Procedure). In practice, the relatives of detained persons may, on occasion, be aware of the arrest and whereabouts of the persons concerned. Further, the CPT has noted that the competent judge can - and often does - set at less than five days the period of time during which a given person is to be denied the right to have the fact of his custody notified to a third party. Nevertheless, the legal position remains unsatisfactory.

The CPT fully recognises that the denial of the exercise of this right for a brief period may exceptionally be necessary in order to protect the interests of justice. However, in the Committee's view, to deny for up to five days the exercise of the right to have the mere fact of one's custody notified to a third party (i.e. to hold a person in secret for such a period insofar as his family and friends are concerned) is not justifiable.

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<sup>6</sup> cf. pages 3 and 5 of the comments of the Spanish authorities, dated 20 November 1998, in response to a letter sent by the CPT on 17 November 1998.

23. In this respect, the delegation which carried out the 1998 visit recalled the Committee's recommendation that the period of time for which the exercise of the above-mentioned right may be denied should be substantially shortened (e.g. to a maximum of 48 hours).

The CPT welcomes the commitment given in response by the Spanish authorities to seek to shorten the period of time for which persons detained by the law enforcement agencies may be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice. **The CPT would like to receive full details of the concrete action being taken on this subject.**

d. access to a doctor

24. Concerning the right of access to a doctor, the CPT has noted that, on 16 September 1997, a standardised form for recording the findings of forensic doctors was introduced by order of the Minister for Justice. In line with one of the CPT's previous recommendations on this subject, the form requires that a detailed record be made of the doctor's objective medical findings; however, it does not explicitly foresee the recording of statements made by detained persons which are relevant to the medical examination, nor does it provide for the recording of the doctor's conclusions (and in particular his opinion as to the degree of consistency between any allegations of ill-treatment and the objective medical findings).

In practice, the delegation's doctors found that doctors performing medical examinations on police premises noted when detained persons displayed recent traumatic lesions, but did not systematically record statements by such persons of relevance to the medical examinations concerned or their own conclusions as to the likely origin of those injuries.

25. In the course of the visit, the Spanish authorities agreed to give further consideration to the manner in which the recording of information by forensic doctors could be brought fully into line with the CPT's recommendations. More specifically, they invited the Committee to propose a suitable wording for inclusion on the form used by doctors performing forensic functions.

In this connection, **the CPT recommends that:**

- **in section 2 of the form (clinical history), the following words of guidance be added after the heading "current situation": (include statements made by the person concerned which are relevant to the medical examination, e.g. description by the person examined of his state of health and any allegations of ill-treatment);**
- **a further heading - 3 bis - entitled "doctor's conclusions in the light of the patient's current situation (section 2), and the results of the medical examination (section 3)", be added to the form, and that the following words of guidance be added after that heading: (in the event of allegations of ill-treatment being made, indicate whether - and to what extent - those allegations are consistent with the results of the medical examination).**

26. Whilst detained persons who are not being held incommunicado have the right to be examined by a doctor of their own choice, those being held incommunicado do not have such a right. Further, although an examination by a doctor appointed by detainees held incommunicado or their relatives is on occasion authorised by the competent judge, it tends to take place towards the end of - or after - the period of custody by the law enforcement agencies.

The CPT is not suggesting that the right of access to a doctor of one's own choice should replace a medical examination by a forensic doctor or another doctor employed by the State. The purpose of any such second examination is to provide an additional safeguard against ill-treatment, rather than to supplant the role of the officially-appointed doctor. Moreover, such a second examination could be carried out at the detained person's own expense.

The Committee recommends that persons held incommunicado be guaranteed the right to be examined by a doctor of their own choice, it being understood that such a second examination may take place in the presence of a State-appointed forensic doctor.

27. The CPT has previously recommended that detained persons be expressly informed of their right of access to a doctor of their own choice. However, at the time of the 1998 visit, the form used to inform detained persons of their rights still contained no reference to this right.

The CPT recommends that the form currently being used to inform detained persons of their rights be amended in order to ensure that all detained persons (i.e. including those being held incommunicado) are expressly informed of their right to be examined by a doctor of their own choice.

28. Finally, CPT has noted with interest that members of the Catalan Autonomous Police interviewed by the delegation stated that they themselves request a medical examination of detained persons whenever force has been used at the time of arrest or during detention, and whenever the person in question is to be transferred to the custody of another agency. Similarly, instructions issued to the Ertzaintza (cf. also paragraph 31) provide for the medical examination of detained persons in certain cases, even in the absence of a request by them, with a view to the proper attribution of responsibility for injuries sustained before or during arrest and while in custody.

The Committee welcomes this approach.

e. inspection procedures

29. Systems for the inspection of law enforcement agency detention facilities by an independent authority are capable of making a significant contribution towards the prevention of ill-treatment of persons held in custody and, more generally, of ensuring satisfactory conditions of detention. To be fully effective, visits by such an authority should be both regular and unannounced, and the authority concerned must be empowered to discuss in private with detained persons.

30. In previous visit reports, the CPT has discussed the potential role of the judicial and prosecuting authorities in the supervision of the situation of persons detained by the law enforcement agencies<sup>7</sup>. However, during the 1998 visit, the CPT's delegation found no evidence to suggest that such authorities are regularly exercising such on-the-spot supervision of places of detention. Consequently, **the CPT invites the Spanish authorities to establish a system of regular visits to law enforcement agency establishments by an independent authority, having regard to the remarks made in the foregoing paragraph.**

f. rules on police procedures

31. Reference has already been made to the new manual on the procedures to be applied by law enforcement officials (cf. paragraph 8). The manual essentially summarises the existing legal provisions which govern the treatment of detained persons and, in respect of certain points (for example, information on rights, appointment of a lawyer and notification of custody), provides an account of the manner in which those provisions ought to be applied in practice.

The CPT is particularly impressed by one of the documents examined by the National Coordination Commission of the Judicial Police in the context of the production of the above-mentioned manual, namely Instruction No. 29, issued on 10 April 1997 by the Deputy Counsellor for Security of the Basque Government. This is a detailed and comprehensive set of **rules concerning the manner in which persons detained by the Ertzaintza should be treated. The Committee would like to receive copies of any instructions or guidelines on the treatment of detained persons which may have been issued to law enforcement agencies under the authority of other autonomous governments.**

32. The CPT welcomes the existence of such detailed rules on police procedures; however, it would also be desirable for all relevant manuals and/or instructions to include guidance on the conduct of police interviews, including as regards: the systematic informing of the detained person of the identity (name and/or number) of those present at the interrogation; the permissible length of an interrogation; rest periods between interrogations and breaks during an interrogation; places in which interrogations may take place; whether the detained person may be required to remain standing while being questioned; the questioning of persons who are under the influence of drugs, alcohol or medicine, or who are in a state of shock. It should also be stipulated that a systematic record must be kept of the times at which interrogations start and end, the persons present during each interrogation and any request made by the detained person during the interrogation. The position of especially vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be subject to specific safeguards.

**The CPT recommends that such guidance be included in the rules on police procedures to be applied by all law enforcement agencies in Spain.**

33. Finally, having regard to the remarks set out in paragraphs 19 to 27, **the CPT recommends that, in due course, all relevant rules on police procedures be amended to take account of developments concerning access to a lawyer, notification of custody and medical examinations of detained persons.**

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<sup>7</sup> cf., in particular, paragraphs 72 and 73 of the report of the Committee's April 1994 visit, CPT/Inf (96) 9.

#### 4. Conditions of detention

##### a. introduction

34. In the light of its delegation's findings during the 1991 and 1994 periodic visits, the CPT recommended that conditions of detention in the law enforcement agency establishments visited be reviewed. More generally, it recommended that the Spanish authorities take appropriate steps to ensure that the conditions of detention in all such establishments meet the criteria established by the Committee.<sup>8</sup>

In the course of the April 1997 visit to Spain, the CPT's delegation found that material conditions of detention in the National Police and Civil Guard establishments visited still left much to be desired and, more particularly, displayed many of the shortcomings already criticised in the reports drawn up after the Committee's previous visits. Consequently, the CPT recommended that the Spanish authorities establish standards for National Police and Civil Guard detention facilities in general, taking into account the criteria applied by the CPT.

At the outset of the 1998 visit, the Spanish authorities informed the delegation that the Committee's recommendation that standards be established had yet to be implemented; however, they indicated that the general criteria set out by the CPT in its previous visit reports were being taken into account in the building of new police and Civil Guard facilities.

35. As regards the Ertzaintza, in its report on the April 1994 visit, the CPT made reference to standards (dated 5 May 1993) for the construction of new cellular accommodation. Moreover, the CPT is pleased to note that the Basque authorities have established further detailed rules concerning detention by the Ertzaintza<sup>9</sup>. The standards and rules inter alia provide for: reasonably-sized cells equipped with a means of rest (a plinth); wherever possible, cells should benefit from access to natural light; access to sanitary facilities, including access to a shower, the possibility to change clothes on a daily basis and the provision of hygiene items; the provision of cooked meals at appropriate times. Moreover, they establish the general principle that restrictions should be kept to the minimum necessary and that persons in the custody of the Ertzaintza may obtain certain other facilities at their own expense (e.g. additional food). In the course of the 1998 visit, the delegation was informed that there are plans to transfer to new premises the only two remaining Ertzaintza stations in which cellular accommodation does not comply with those standards.

Taken together, these two instruments meet many of the CPT's criteria concerning the conditions to be offered to persons held in the custody of a law enforcement agency; however, **it would be desirable if the rules were to provide that all persons held on Ertzaintza premises overnight are to be provided with a mattress.**

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<sup>8</sup> Those criteria are set out, inter alia, in paragraph 49 of the report on the April 1997 visit (document CPT/Inf (98) 9).

<sup>9</sup> cf. Heading III of Instruction No. 29 of the Deputy Counsellor for Security, relating to the stay and custody of detained persons in Ertzaintza establishments, and more particularly sub-headings 3 et seq. thereunder.

b. situation in the establishments visited

36. Conditions of detention were acceptable in a number of the National Police establishments visited. In particular, cells in the **Police Headquarters in Jaén** and **Las Palmas de Gran Canaria**, the **Central Duty Inspection in Madrid**, and the **police stations in Mataró** and at the **Port of Las Palmas de Gran Canaria** were on the whole clean, of a reasonable size for the number of persons they were used to accommodate, and equipped with a means of rest (a plinth) and a mattress. However, artificial lighting on occasion left something to be desired (e.g. at the Jaén Headquarters and Mataró Police Station).

37. By contrast, the **Police Headquarters in Barcelona**, the **Provincial Brigade of the Judicial Police in Madrid** (which forms part of the former Puerta del Sol holding centre), and the **Santa Catalina District Police Station in Las Palmas de Gran Canaria** offered less satisfactory conditions. The cells were dirty and in a poor state of repair. Artificial lighting was dim, access to natural light was at best very limited and, in many of the cells, ventilation was poor. Moreover, although persons obliged to stay overnight were provided with a mat and blankets, such items tended to be rather dirty. It might be added that, at the Barcelona Police Headquarters, not all cells were equipped with a means of rest (some detainees being obliged to sleep on the floor) and certain cells were, in view of their limited size (4 to 4.5 m<sup>2</sup>), barely appropriate for overnight stays.

The facts found at the Barcelona Police Headquarters and the former Puerta del Sol cells are all the more unsatisfactory given that both establishments have previously been the subject of criticism by the CPT (cf. paragraphs 41 and 44, second sub-paragraph, of the report on the April 1994 visit to Spain).

38. As for the Civil Guard establishments visited, the comparatively new cells at the **Barcelona Headquarters** had good artificial lighting (but no access to natural light) and ventilation and, at the time of the visit, were impeccably clean. However, they displayed a fundamental defect, namely that they were extremely small (3 to 3.5 m<sup>2</sup>). Cells of such a size are only fit to be used for temporary holding purposes (i.e. detention for a maximum of a few hours); they should not be used to accommodate persons kept in custody overnight. Regrettably, the cells in question were being used for overnight stays; moreover, persons held overnight were not provided with a mattress. The six cells at **Las Palmas de Gran Canaria Headquarters** were larger (5.5 m<sup>2</sup>); however, as at the Barcelona Headquarters, persons held overnight were not provided with mattresses. Moreover, one of the cells (which was equipped with double security doors) was ventilated only through an aperture leading directly into an underground garage; this was a most unsatisfactory arrangement.

39. As regards the Catalan Autonomous Police, cellular accommodation at the **Mossos d'Esquadra Station in Barcelona** consisted of an area comprising two 6 m<sup>2</sup> cells and sanitary facilities (wash basin and lavatory) for detained minors, and two separate units for detained adults comprising four and seven cells respectively. The cells were of an adequate size, were clean and had adequate artificial lighting and ventilation; however, the cells used to accommodate adult detainees did not have access to natural light.

40. The Municipal detention facility in **Mataró**, situated in the former Mataró jail, offered satisfactory conditions for short-term detention (a maximum of several days). In particular, the cells were clean, of a reasonable size for the number of persons they were intended to accommodate, had access to natural light, as well as good artificial lighting and ventilation, and were suitably equipped (including in-cell sanitation with, in the case of the cell for women detainees, a shower). It is also noteworthy that men detained at the municipal facility were granted access to an outdoor exercise area.

41. The CPT wishes to make certain additional remarks concerning law enforcement agency detention facilities in general.

With few exceptions (e.g. the Civil Guard Headquarters in Barcelona and the former Mataró jail), cells in the law enforcement agency establishments visited were not equipped with a call system, and it was not always evident that there would be police officers within earshot when the cells were occupied.

Certain of the cells at the Mossos d'Esquadra Station in Barcelona were intended for persons affected by the body-pack syndrome; they were equipped with a semi-partitioned lavatory fitted with a system for the recovery of substances concealed within the body. In this context, the CPT would stress once again<sup>10</sup> that, given the risks involved - namely of perforation of the packaging of the substance resulting in acute poisoning or intestinal obstruction - persons affected by the body-pack syndrome should be placed under close medical supervision.

The state of cleanliness of sanitary facilities for detainees on occasion left something to be desired, and some complaints were heard about delays when a request was made to have access to a lavatory. Further, few of the establishments visited had showers for detainees and, even where they existed, the CPT's delegation was not convinced that detained persons were being allowed to use them.

As regards the question of food provided to detained persons, in certain of the establishments visited they were offered warm meals. However, in other establishments (e.g. the Mossos d'Esquadra Station), detainees were only offered sandwiches and water.

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42. By letter of 11 January 1999, the Spanish authorities informed the CPT of measures taken to address certain of the above-mentioned shortcomings (plans have been drawn up for the complete renovation of the detention facility at the Barcelona Police Headquarters; the Santa Catalina District Police Station and the Provincial Brigade of the Judicial Police in Madrid are shortly to be relocated; instructions have been issued concerning the availability of mattresses and blankets in Civil Guard facilities).

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<sup>10</sup> cf. also paragraph 177 of the report on the CPT's April 1994 visit.

**The CPT recommends that these measures be implemented as a matter of urgency and that, in so doing, full account be taken of the remarks made in paragraph 37. It further recommends that:**

- **steps be taken to remedy the shortcomings in the conditions of detention in the other establishments visited which are identified in paragraphs 36, 38 and 39. As regards, more particularly, the cells at the Barcelona Headquarters of the Civil Guard, they should not be used for overnight stays until such time as they are enlarged;**
- **action be taken to address the shortcomings highlighted in paragraph 41 concerning call systems, the management of persons affected by the body-pack syndrome, sanitary facilities, and the provision of food.**

43. Lastly, the CPT welcomes the fact that account is being taken of the criteria applied by the CPT when new police detention facilities are built (cf. paragraph 34). However, it remains of the view that it would be useful to produce more detailed standards on conditions of detention which should apply in law enforcement agency establishments. Such standards could, in particular, provide a benchmark against which to measure cellular accommodation currently available and serve to clarify the minimum standards which ought to apply in newly-built facilities.

The aforementioned standards for the construction of new cellular accommodation used by the Ertzaintza, together with the relevant parts of Instruction No. 29 of the Deputy Counsellor for Security of the Basque Government (cf. paragraph 31), could provide a useful starting point from which to develop such a set of comprehensive standards for other law enforcement agencies in Spain.

**The CPT recommends that the Spanish authorities give renewed consideration to the production of such standards for all law enforcement agencies in Spain.**

- c. cellular accommodation aboard the vessel Juan J Sister

44. In the report on its April 1994 visit, the CPT made reference to complaints received from prisoners about the conditions of their transport between the Canary Islands and mainland Spain, and requested the comments of the Spanish authorities on this matter (cf. paragraph 27 of document CPT/Inf (96) 9, Part II). The response of the Spanish authorities indicated that these transfers, which are the responsibility of the General Directorate of the Civil Guard, "must be carried out in such a manner that the inmates' dignity and rights, as well as the safety of transportation, are respected..."<sup>11</sup>.

The 1998 visit to the Canary Islands afforded an opportunity for the CPT's delegation to examine the conditions of detention in the cellular accommodation aboard one of the ships which the Civil Guard use for this purpose - the vessel Juan J Sister.

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<sup>11</sup> cf. page 39 of document CPT/Inf (96) 10.

45. The Juan J Sister is a Neptuno series passenger/cargo ferry owned and operated by the Transmediterranea Company. Commissioned in 1993, she is some 150 m long, displaces a maximum of around thirteen and half thousand metric tonnes, and can accommodate up to 550 passengers.

The two cells aboard the vessel are located in a secure area close to the centre of the ship. Each measures some 4.5 m<sup>2</sup> and is fitted with a bunk bed (equipped with two mattresses and bedclothes), an unpartitioned lavatory and a wash basin. The cells have ventilation and artificial light, but no access to natural light.

The delegation was told that prisoners spend the entire voyage between the Canary Islands and Cádiz - which takes some 44 hours - in these cells.

46. In the view of the CPT, a cell measuring some 4.5 m<sup>2</sup> is barely adequate as temporary overnight accommodation for one prisoner, let alone for two. Moreover, the negative effect upon prisoners of being held in such cramped conditions can only be exacerbated by the fact that they share an unpartitioned lavatory, have no access to natural light or fresh air, and cannot take exercise during a sea voyage lasting almost two days.

**The CPT recommends that conditions of detention aboard the Juan J Sister - and on any other vessels where similar conditions obtain - be upgraded, having regard to the above remarks and to the criteria referred to in paragraph 34.**

## **B. Prisons**

### **1. Preliminary remarks**

47. The CPT's delegation carried out a follow-up visit to Barcelona Prison for Men (Modelo), which is under the authority of the Catalan Autonomous Government, and visited for the first time three other establishments under the authority of the Ministry of the Interior, namely Jaén Prison, Las Palmas de Gran Canaria Prison (Salto del Negro), and Madrid V Prison (Soto del Real).

48. The general characteristics of the 94 year-old **Modelo Prison** were described in the report on the CPT's April 1994 visit. At the time of the previous visit, the prison was accommodating more than 2000 inmates, whereas by 26 November 1998 the population had been reduced to 1325 prisoners, of whom 739 were on remand and 586 were sentenced. The prison's capacity continued to be set at 1100, calculated on the basis of two inmates per cell.

49. **Jaén Prison** (commonly known as Jaén II) was brought into service in 1991. It is situated some 10 km from the city. On the basis of one prisoner to a cell, it could accommodate 453 inmates, although it has been attributed a capacity of 710 (on the basis of two inmates per cell in ordinary accommodation). At the time of the visit, Jaén Prison was holding 678 inmates (including some 40 women), around 75 % of whom were sentenced.

50. **Las Palmas de Gran Canaria Prison** (Salto del Negro) is located on a hilltop site just outside the city. It could accommodate 688 inmates on the basis of one prisoner per cell, but is regarded as having an operational capacity of between 1200 and 1300 prisoners. At the time of the visit it was holding 1273 inmates, including 85 women. As was the case for Jaén Prison, the majority of inmates were sentenced prisoners.

51. **Madrid V Prison**, which is situated in the municipal district of Soto del Real, some 40 km north of Madrid, was brought into service in 1995. As with other prisons of recent construction, its 1008 cells are designed in principle to accommodate one prisoner, but may accommodate up to two inmates. Following the closure of the Carabanchel Prison Complex, the establishment serves as Madrid's main remand centre. It is currently considered undesirable by the Spanish authorities to exceed an occupancy rate of 1600, the transfer of prisoners to other establishments being triggered when a figure of around 1550 is reached. On the first day of the delegation's visit, Madrid V Prison was holding 1552 inmates. Although primarily a remand establishment, a sizeable proportion (30 %) of prisoners were sentenced; about one quarter of the prison's population were women.

## 2. Ill-treatment

52. The CPT's delegation heard no allegations of torture - and gathered no other evidence of such treatment - of prisoners by staff in the prisons visited or in other prison establishments in Spain.

Further, the delegation heard no allegations of other forms of ill-treatment of inmates by staff at **Modelo Prison**. However, in the other three establishments visited, the delegation did receive some allegations from inmates to the effect that they had been physically ill-treated by prison officers.

53. At **Jaén Prison**, the more serious allegations heard related to periods a year or more ago, and it would appear that complaints about such conduct had abated in recent times. Nevertheless, complaints continued to be made about the use of excessive force in the context of prisoners being transferred to the establishment's segregation unit.

The allegations received in respect of **Madrid V Prison** (Soto del Real) mainly referred to blows with batons inflicted upon prisoners held in the establishment's special regime unit, including - in one case - after the person concerned had been restrained.

As for **Las Palmas de Gran Canaria Prison** (Salto del Negro), a number of prisoners alleged that they had recently been ill-treated by prison staff. Those allegations were consistent as regards the form of ill-treatment involved, namely blows with batons whilst handcuffed to beds in the prison's segregation unit. From discussions with prison staff and consultation of the relevant registers, the delegation ascertained that, on a fairly regular basis, inmates at this prison were indeed being handcuffed (in a variety of positions) to metal rings attached to beds in the segregation unit. In some cases, prisoners had been restrained in this manner for prolonged periods of time (for example, for some fifteen hours overnight). Prison staff also indicated that inmates thus restrained were not provided with mattresses.

54. In the course of the visit, the delegation also received information concerning two prisoners who alleged that they had been ill-treated at **Brians Prison** (Barcelona Province), respectively on 29 July and 16 October 1998. In the first case, the prisoner concerned alleged that he had been sprayed with tear gas and struck with batons during his transfer from ordinary accommodation to the segregation unit. The inmate in question claimed that, upon arrival at the segregation unit, he had been kicked by several prison officers and that he had then been kept hand- and feet-cuffed for two and a half days. The prisoner had lodged a complaint with the relevant examining court in Lleida.

In the second case, the prisoner concerned alleged that he had been woken at 4 am in order to be transferred to another prison. He objected to being transferred and, in the context of disciplinary proceedings subsequently taken against him, alleged that prison officers had assaulted him and forcibly moved him to the establishment's segregation unit. Upon his arrival in Modelo Prison later that morning, he was found to display abrasions and haematoma which he claimed had been inflicted by prison staff at Brians Prison.

55. To sum up, most of the allegations of ill-treatment gathered by the delegation in the course of the visit related to prisoners being assaulted by prison staff during transfer to a segregation unit, or whilst restrained in such a unit.

56. The CPT recognises that prison staff will, on occasion, have to use force to control violent and/or recalcitrant prisoners and exceptionally may even need to resort to instruments of physical restraint. However, the force used should be no more than is strictly necessary and, once prisoners have been brought under control, there can be no justification for them being struck. **The CPT recommends that prison officers be reminded of these precepts.**

57. Given the increased risk of ill-treatment on occasions when force is used against prisoners, the use of such means should always be surrounded by appropriate safeguards. A range of formal safeguards exists in Spain (these include recognition of the principle of proportionality; prohibition of the application of means of restraint as a sanction, and the requirement that the least onerous means be used; application for the minimum time required; authorisation by the director of the prison and judicial supervision; etc. - cf. inter alia Article 72 of the Prison Rules). However, further measures might usefully be taken to render those safeguards fully effective in practice. In this context, the CPT has noted with interest that, following its visit, the Inspectorate of the Prison Service initiated an investigation into the use of means of coercion in all prisons in Spain. **It would like to receive, in due course, a detailed account of the results of that investigation.**

58. Reference might also be made to the exchange of correspondence between the CPT and the Spanish authorities in 1996, as a result of which the authorities ordered that a detailed centralised register be established in each prison in order to record all relevant particulars concerning the use of means of coercion (cf. the rules issued on 15 April 1996 by the Director General of Prisons as well as the recommendation previously made by the CPT, in paragraph 106 of both the 1991 and 1994 periodic visit reports). However, none of the prisons visited by the CPT in 1998 had such a centralised register.

**The CPT recommends that steps be taken to ensure that the rules issued on 15 April 1996 by the Director General of Prisons are rendered fully effective in practice.**

59. The CPT also wishes to stress the importance of appropriate training in control and restraint techniques (i.e. manual control). The possession of such skills will enable staff to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to prisoners and staff. This, in turn, is likely to lead to a decrease in the number of complaints of ill-treatment lodged by inmates.

**The CPT would like to receive details of the training in control and restraint techniques provided to prison officers in Spain.**

60. As regards more particularly Salto del Negro Prison, the Spanish authorities have indicated that they intend to take specific measures to address the question of the excessive duration of the application of instruments of restraint and the failure to provide the prisoners concerned with a mattress.

**The CPT would like to receive further details of the measures concerned. It would add that, even if the use of handcuffs in the manner described in paragraph 53 were to be authorised by the relevant regulations, the Committee considers it to be an unacceptable practice.**

61. The existence of appropriate supervision and effective mechanisms for examining prisoners' complaints is another fundamental safeguard against ill-treatment in prisons.

In Spain, prisoners may address complaints in confidence to the supervisory judge, to the examining courts and to various other authorities. However, both the Catalan prison authorities and members of the General Council of the Judiciary drew the delegation's attention to the apparent reluctance on the part of many supervisory judges to act in a proactive manner in this context. Further, many complaints were received from prisoners about the role actually played by supervisory judges. The delegation's own observations indicated that supervisory judges continue to be rare visitors to detention facilities (cf. also paragraph 185 of the CPT's report on its 1994 periodic visit).

62. As regards more specifically the investigation of allegations of ill-treatment, it appears that, on occasion, there may be long delays between the alleged ill-treatment (or the lodging of a complaint) and the time when concrete steps are taken to investigate the allegations in question. Moreover, in cases involving allegations of physical ill-treatment by prison staff which could amount to a criminal offence, supervisory judges are obliged to take any immediate measures which may be required and forward information about the complaint to the relevant examining judge. However, according to the information gathered by the delegation, this is not systematically being done.

63. The CPT understands that a number of cases of complaints of ill-treatment of prisoners by staff not being promptly investigated are currently the subject of investigations by the General Council of the Judiciary. **It would like to be informed of the outcome of those investigations.**

**The CPT also recommends that steps be taken to ensure that prisoners' correspondence with judges and other relevant authorities is promptly processed.**

**Further, it recommends that a review be carried out of the procedures applied by the judicial authorities to investigate complaints of ill-treatment of prisoners by staff and that any shortcomings observed be remedied. The objective should be to ensure that prisoners' complaints reach the competent court without delay and that the court in question promptly and thoroughly investigates any allegations of ill-treatment made by persons deprived of their liberty.**

**In addition, the CPT must recommend yet again that supervisory judges be encouraged to visit the whole of a prison's premises when carrying out their duties and to enter into direct contact with both prisoners and prison staff.**

64. It is also very important that prisoners should be able to lodge complaints with the director of the establishment in which they are being held. In this connection, the delegation noted that, at Modelo Prison, the director regularly visited all parts of the establishment, making herself available to inmates who might wish to speak to her. However, the situation was not as favourable in the other establishments visited. **The CPT recommends that prison directors be encouraged to make themselves available to inmates through regular visits to all parts of their establishments.**

### **3. Prisoners who are considered to be "dangerous" or "unadapted to an ordinary prison regime"**

65. In the course of the 1998 visit, the CPT's delegation again paid particular attention to the position of inmates who are considered to be "dangerous" or "unadapted to an ordinary prison regime" (i.e. prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons). Certain noteworthy developments have occurred since the CPT last examined this issue (cf. paragraphs 108 to 112 of the report on the CPT's April 1994 visit).

66. In the first place, the number of prisoners subject to the more stringent of the regimes concerned (i.e. that reserved for prisoners regarded as being dangerous and held in special units) has consistently decreased over the last few years (it has halved in about 4 years); this is a welcome development. Moreover, the visiting delegation was informed that, in the Catalan Prison Service, that regime was not being applied.

Further, at a statutory level, detailed provisions in the 1996 Prison Rules go some considerable way towards implementing the recommendations made by the Committee on this subject. In particular, the Prison Rules clearly stipulate that in no case may the regime of such prisoners involve restrictions which are equal to or go beyond those which apply to segregation as a disciplinary measure.

Prisoners regarded as being dangerous, who are to be accommodated in so-called "special units", are entitled to at least 3 hours of outdoor exercise every day (in groups of no more than two prisoners) and may be offered up to 3 hours of organised activities per day (in groups of not more than five inmates). Prisoners considered to be unadapted to an ordinary prison regime are to be accommodated in "closed units/establishments" and are to benefit from a minimum of 4 hours of association every day, which may be extended by a further 3 hours for organised activities; group activities are to involve at least five inmates.

The precise content of the programmes of activities to be offered to such prisoners is to be determined by the Treatment Board of each prison. In terms of the 1996 Rules, they are to include cultural, sports, recreational and educational activities, as well as work. It might be added that the management of each prison is empowered to draw up the house rules for special/closed units, in particular as regards access to showers and to the canteen, and also concerning the books, magazines and newspapers, radio and television, clothes and other personal belongings which such prisoners may be allowed to have.

The CPT's delegation paid particular attention to the manner in which the above-mentioned legal provisions were being applied in practice.

67. Material conditions were satisfactory in the special units visited in Jaén and Madrid V prisons. The cells, occupied by one inmate, measured some 10.5 m<sup>2</sup>, were adequately equipped and had good access to natural light and ventilation. Prisoners were being offered three hours of outdoor exercise every day. At Jaén Prison, they were being offered a total of approximately 10 hours of out-of-cell activities/association time; however, in the special unit at Madrid V Prison, only two weekly sessions of two hours of out-of-cell activities/association (in addition to outdoor exercise) were being offered to prisoners. At both establishments, prisoners were entitled to have a television set in their cell, receive newspapers, and have writing material and reading matter.

68. While the situation of this category of prisoners has improved in many respects as compared to that observed in the course of the 1991 and 1994 periodic visits, the question of the quality of the relations between staff and prisoners in special units remains a source of particular concern to the CPT.

At both Jaén and Madrid V prisons, there was scarcely any direct contact between staff and prisoners, other than through screens or grills. Inmates remained strictly separated from staff even during activities such as education and sport. This was also the case as regards most medical consultations and interviews with the director and other senior staff.

This approach is not conducive to the building of positive relations between staff and prisoners, which are in the interests not only of the humane treatment of the special units' occupants, but also of the maintenance of effective control and security and of staff safety.

69. In the closed units of all four of the prisons visited, the situation of prisoners considered as unadapted to an ordinary prison regime was somewhat better. In particular, the nature and extent of their interactions with staff were of a higher standard. However, while they benefitted from more out-of-cell time than prisoners regarded as being dangerous, the range of activities offered to them during such time could usefully be developed.

**70. The CPT recommends that efforts continue to be made to improve the quality of staff-prisoner relations in special units and to develop the regimes offered to all prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons, taking into account the above remarks.**

#### 4. Conditions of detention

##### a. material conditions

71. Material conditions of detention were broadly of a good standard in all of the establishments visited. Cells had good artificial lighting and ventilation, access to natural light, and - with the exception of certain accommodation areas/galleries in Modelo Prison - heating. They were adequately furnished (beds, storage space, table and chair), and fitted with a wash basin and lavatory (and, at Madrid V Prison, a shower). On the whole, cells were in a satisfactory state of repair, although the units having a high turnover of remand prisoners at Madrid V and Modelo prisons would clearly benefit from more frequent repair work and renovation, and greater attention to their state of cleanliness.

72. Cells designed for single occupancy in the prisons visited measured between 8.5 m<sup>2</sup> and 10.5 m<sup>2</sup>, a size which offers sufficient living space for one inmate. However, in all four establishments, the majority of inmates were being accommodated two to such cells. The cells, in particular those measuring 8.5 m<sup>2</sup>, provided only cramped accommodation for two persons. At Modelo Prison, many prisoners were accommodated three or even four to a 10 m<sup>2</sup> cell; such occupancy levels are unacceptable.

Occupancy levels were also unacceptable in the multiple occupancy cells for women at Las Palmas de Gran Canaria Prison. By way of example, at the time of the visit, up to six women were being held in a cell measuring some 16 m<sup>2</sup>, and up to eight women might be placed in a cell of that size.

##### b. regime activities

73. The vast majority of inmates in the establishments visited enjoyed extensive out-of-cell time (in excess of 10 hours a day), but by no means all prisoners were provided with meaningful activities, and particularly with work, during that time.

At **Modelo Prison**, out of some 1300 inmates, up to 200 were offered so-called "productive paid work" (clothes making, printing, bakery, etc.) and a further 175 had a paid job in the prison's services (kitchen, maintenance, canteen, food distribution, etc.); however, most jobs were only part-time. However, a large number of prisoners were involved in association, cultural and educational activities (some 600 participated in organised sports activities, and over 400 in artistic and educational activities).

At **Jaén Prison**, out of around 670 prisoners, some 200 were offered productive work on a half time basis (e.g. woodwork, gardening), and there were over 400 part time jobs in the prison's general services. In addition, inmates could participate in a variety of association, cultural and educational activities and sports.

**Madrid V Prison** was providing paid work (including to satisfy the prison's own needs) to some 250 inmates out of a total prison population of around 1500. Over 300 additional jobs were offered in the prison's general services, and a significant number of prisoners participated in organised association, sports, cultural and educational activities. By way of example, about 80 prisoners were following university level distance learning and more than 200 were receiving vocational training.

The situation was less favourable at **Las Palmas de Gran Canaria Prison**. In particular, out of some 1200 inmates, only about 80 were being offered productive paid work and a comparatively small number of other inmates had a job in the prison's general services. Nevertheless, a significant number of prisoners participated in other activities (e.g. education, vocational training and sports activities).

c. assessment

74. Considerable efforts are being made by the Spanish authorities with a view to resolving the problem of overcrowding in prisons. At a national level, the stated aim is to bring the number of prison places (calculated on the basis of one prisoner to a cell) and the number of inmates into balance in the course of the year 2000. Significant progress has already been made towards this goal in the context of the implementation of the 1991 plan for the renovation of the prison estate. Further, several new prisons are to be brought into service in the near future, and it is expected that the number of persons held in prison under ordinary conditions will - as has already occurred in recent years - continue to diminish. This is to be achieved, inter alia, by having more recourse to open regimes, weekend detention and alternatives to imprisonment.

As regards the Catalan Prison Service, the objective is somewhat less ambitious. In addition to the three prisons most recently built in Catalonia, it is envisaged that, by the year 2002, two more 900 place prisons will be built in the Barcelona Province. The first of these establishments is designed to put an end to the problem of overcrowding. The second will permit the withdrawal from service of the three prisons which continue to operate in the city of Barcelona - the prisons for men (Modelo), for women (Wad-Ras), and for young offenders (La Trinidad). Two further prisons should be built in Catalonia by the year 2007, with a view to providing appropriate accommodation to prisoners in the Provinces of Girona and Tarragona. The objective of the Catalan authorities is to reduce occupancy levels to a maximum of two inmates per cell measuring in the region of 10 m<sup>2</sup>.

**75. The CPT recommends that every effort be made to meet the goal of bringing the number of prison places (calculated on the basis of single occupancy) and the number of inmates into balance within the year 2000.**

As regards Catalan prisons, **the CPT recommends that efforts continue to be made to reduce cell occupancy rates at Modelo Prison to a maximum of two prisoners per cell. The Committee further recommends that the Catalan authorities vigorously pursue their medium-term plans to address the problem of overcrowding in Catalan prisons (without prejudice to the objective of complying, in due course, with the principle of single occupancy laid down in Article 19 of the General Organic Law on Prisons).**

**76. The CPT also recommends that steps be taken to ensure that all accommodation areas/galleries at Modelo Prison have adequate heating, and that particular efforts be made to ensure that units at Modelo and Madrid V prisons which have a high turnover of remand prisoners are kept in a satisfactory state of repair and cleanliness.**

77. As regards regime activities for prisoners, the situation observed in 1998 represents a considerable improvement as compared to that which was found in certain establishments visited on previous occasions by the CPT. However, there is still scope further to develop the programmes being offered to prisoners in all of the establishments visited. In particular, the facilities set aside for activities in all four prisons visited were under-utilised. This situation was explained by the lack of staff resources to organise and animate activities or appropriate contractual arrangements with outside companies/firms to enable the provision of paid work to inmates, or a combination of both factors.

The CPT is particularly concerned about the failure to provide adequate activities to young persons held in prison. This was, for example, the case of male prisoners aged 18 to 21 at Jaén Prison.

78. The provision of appropriate work to sentenced prisoners is a fundamental part of a constructive regime. Further, in the interest of their psychological well-being, remand prisoners should as far as possible also be offered work. It follows that the employment situation within the prison system should not be dictated exclusively by market forces.

**The CPT recommends that special measures be introduced with a view to providing more work places for prisoners. The Committee also recommends that priority continue to be given to developing other regime activities for prisoners; this may well require reviewing staffing levels in the establishments visited.**

## 5. Health care services

### a. introduction

79. In the reports on its 1991 and 1994 periodic visits, the CPT paid considerable attention to prison health care services (cf. CPT/Inf (96) 9, pages 53 et seq. and 148 et seq.). In this context, the Committee indicated that it attaches considerable importance to the general principle that prisoners are entitled to the same level of health care as persons living in the community at large, a principle which is fully accepted by the Spanish authorities (cf. Article 208 of the Prison Rules).

The information gathered in the course of the 1998 visit confirmed the situation observed during the previous periodic visit, namely that, on the whole, the level of health care provided to persons held in prison was of an acceptable standard.

### b. health care in general

80. In each of the prisons visited, the number of health care staff and the facilities at their disposal were broadly sufficient to enable adequate health care to be delivered to prisoners.

At **Modelo Prison**, while the inmate population had significantly decreased over the last four years, the staffing level of the health care service had remained roughly the same. The health care team included 10 general practitioners as well as 11 qualified and 11 assistant nurses, and was supported by a biologist (dealing with environmental health and hygiene-related issues). At **Madrid V Prison**, there were 10 general practitioners, as well as 10 qualified and 10 assistant nurses.

Health care staffing levels at **Jaén** and **Las Palmas de Gran Canaria Prisons** were somewhat lower but, in principle, adequate. It should be recalled in this connection that these two establishments accommodate a high proportion of sentenced prisoners and, consequently, have a lower turnover of prisoners than the Modelo and Madrid V Prisons. Health care staff at Jaén Prison consisted of 5 general practitioners, 5 qualified and 2 assistant nurses and, at Las Palmas de Gran Canaria Prison, of 7 general practitioners, 8 qualified and 5 assistant nurses.

81. Nevertheless, a number of prisoners complained about the quality of care which they actually received, particularly at **Jaén Prison**. It should be noted that, in that establishment, the post of Deputy Director of the prison in charge of Medical Services was vacant. The smooth operation of a health care service presupposes that doctors and nursing staff form a working team under the authority of a senior doctor in charge of the service. **The CPT therefore recommends that the vacant post of Deputy Director of Jaén Prison in charge of Medical Services be filled without delay.**

The delegation also noted that, in the infirmary at **Madrid V Prison**, a number of prisoners were being called upon to act as medical orderlies. **The CPT wishes to stress that the use of inmates in this manner should always be a last resort.**

82. In the report on the CPT's April 1994 visit to Spain, the Committee indicated that a prison's health care service should be able to count on the support of a fully-equipped hospital service *inter alia* for the purpose of specialist examinations.

In this respect, the situation was on the whole acceptable in **Modelo, Madrid V** and **Las Palmas de Gran Canaria Prisons**; however, this was not the case at **Jaén Prison**, which was rarely visited by outside specialists. Moreover, prisoners at that establishment had to wait for long periods for consultations with specialists outside the prison (e.g. six months to see a cardiologist and up to two years to see an ophthalmologist or an internal medicine specialist).

**The CPT recommends that steps be taken without delay to remedy these shortcomings.**

83. As regards, more particularly, dental care, the CPT has repeatedly recommended that steps be taken to provide caries treatment (of a conservative nature rather than simply extractions) to prisoners, treatment which should be free of charge for those not in a position to pay for it.

Whilst indigent inmates at **Modelo Prison** received free caries treatment, the delegation was not convinced that practice in the other prisons visited was in accordance with the Committee's recommendation. **The CPT would like to receive the comments of the Spanish authorities on this matter.**

c. psychiatric care

84. In comparison with the general population, there is a high incidence of mental health problems among prisoners. Consequently, a doctor qualified in psychiatry should be attached to the health care service of every prison, and some of the nurses employed should have had training in this field.

A mentally ill prisoner should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system. Whichever course is chosen, the accommodation capacity of the psychiatric facility in question should be sufficient to avoid prolonged waiting periods before necessary transfers are effected. The transfer of a mentally ill prisoner to a psychiatric facility should be treated as a matter of the highest priority.

85. Ambulatory psychiatric care at **Modelo Prison** was provided by two full-time psychiatrists and four psychiatric nurses (who also staffed the establishment's psychiatric unit). The situation as regards ambulatory care at **Madrid V Prison** (where a psychiatrist attended four days per week) and **Jaén Prison** (with a psychiatrist present twice a week) was also acceptable. However, at **Las Palmas de Gran Canaria Prison** a psychiatrist was present for a mere 3 hours per week. This is manifestly insufficient to meet the ambulatory psychiatric needs of some 1200 prisoners, let alone to provide care to psychiatric in-patients accommodated at that establishment (cf. paragraph 88).

**The CPT recommends that the time for which a psychiatrist is present at Las Palmas de Gran Canaria Prison be significantly increased.**

86. Each of the four establishments visited also provided in-patient psychiatric care in facilities located on their premises.

87. The CPT is pleased to note that improvements had been made in the psychiatric unit at **Modelo Prison** as compared to the situation observed in 1994 and that, in particular, measures had been adopted to enhance night supervision and to improve material conditions. In addition, treatment programmes had been enhanced (and included training in social skills, self-control, recovery of cognitive abilities, as well as occupational rehabilitation). Further, at the time of the visit, certain of the patients placed in the psychiatric unit were allowed to spend time in other parts of the prison (e.g. workshops, ordinary galleries) during the day. However, **the material environment and living conditions in the psychiatric unit could be further improved**; with suitable decoration and with clear instead of frosted glass in the windows, the premises could be rendered more welcoming and the visual stimulation of patients increased.

88. At **Jaén, Las Palmas de Gran Canaria** and **Madrid V Prisons**, psychiatric patients were accommodated within the prisons' infirmaries. Treatment programmes for such patients at all three establishments were underdeveloped (consisting principally of pharmacological treatment).

As regards, more particularly, **Las Palmas de Gran Canaria Prison**, psychiatric patients were accommodated in a 19-bed dormitory, which was also used for convalescent somatic patients. The CPT considers that it is undesirable to accommodate somatic patients together with psychiatric patients. Moreover, although collective accommodation can offer certain advantages, e.g. as regards the management of patients who are regarded as being a suicide risk or auto-aggressive, large capacity dormitories of the type seen at Las Palmas de Gran Canaria Prison are scarcely compatible with the norms of modern psychiatry. Smaller accommodation structures will facilitate the psycho-social rehabilitation of psychiatric patients and, more generally, enable a suitable allocation of patients according to therapeutic considerations.

**The CPT recommends that the treatment of psychiatric in-patients at Jaén, Las Palmas de Gran Canaria and Madrid V Prisons be reviewed in the light of these remarks.**

89. A further specific point of concern relates to the management of acutely agitated psychiatric patients at **Las Palmas de Gran Canaria Prison**. The delegation's doctor noted that, in certain cases, instruments of physical restraint were applied to patients for prolonged periods (e.g. two days) and that patients could be subject to a measure of seclusion for very long periods (up to several months). Further, the means of physical restraint employed included handcuffing psychiatric patients to their hospital beds. It is also noteworthy that, although the use of mechanical restraint and isolation in respect of psychiatric patients required notification to the supervisory judge and was recorded in the patient's file, no central register was kept of the physical restraint of patients.

In any psychiatric facility, the restraint of agitated patients may on occasion be necessary and the CPT recognises that resort to instruments of physical restraint (straps, etc.) may exceptionally be justified. However, the application of such instruments to a psychiatric patient for a period of days cannot have any therapeutic justification and amounts, in the view of the CPT, to ill-treatment. Further, as a matter of principle, the use of handcuffs to restrain psychiatric patients to their beds is completely unacceptable; other, more appropriate, means of restraint must be found.

As regards the practice of seclusion, it should be the subject of a detailed policy spelling out, in particular: the types of cases in which it may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; the need for staff to be especially attentive. The CPT would also point out that there is a clear trend in modern psychiatry to avoid seclusion of psychiatric patients and that it is generally accepted that the long term seclusion of patients is highly undesirable.

90. **The CPT recommends that steps be taken without delay at Las Palmas de Gran Canaria Prison to ensure that if, exceptionally, recourse is had to instruments of physical restraint, they are removed at the earliest opportunity and that handcuffs are no longer used as a means of restraining psychiatric patients. The Committee also recommends that appropriate steps be taken to ensure that patients are not held in seclusion for long periods and that a detailed policy on the use of seclusion, as described above, is drawn up.**

More generally, **the CPT recommends that every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion) be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff.** This will greatly facilitate both the management of such incidents and supervision of the extent of their occurrence.

d. the role of prison health care services in the prevention of ill-treatment

91. As already indicated in previous visit reports, prison health care services can contribute to the prevention of violence against detained persons, through the systematic recording of injuries and, if appropriate, the provision of information to the relevant authorities.

92. The facts found during the 1998 visit indicated that there is still room for progress in this area. Consequently, the CPT welcomes the information provided by the Spanish authorities after the visit to the effect that prison directors have been informed of the requirement that medical certificates recording injuries should be as detailed as possible and forwarded to the judicial authorities with utmost urgency, to ensure that the latter are in possession of all relevant information.

Moreover, the Committee has noted that consideration is being given to developing a new form for use by prison doctors in this context. **The CPT recommends that such a new form be developed without delay and that, in addition to the doctor's objective medical findings, the form provide for the recording of any relevant statements by the prisoner and the doctor's conclusions** (cf. also, in this connection, paragraph 25).

## 6. Other issues

### a. discipline

93. It should be stressed at the outset that disciplinary procedures in Spanish prisons are highly developed and surrounded by a number of formal safeguards (in particular, the requirement that proceedings be served on prisoners in writing; the possibility to be assisted by a third party, including a lawyer; the possibility to present evidence and the requirement that a decision declaring evidence inadmissible be motivated; the possibility to appeal, including - in respect of issues related to fundamental rights - to the Constitutional Court; etc.).

94. On the whole, the CPT's delegation found no evidence of excessive recourse to disciplinary measures. However, at Jaén Prison, it observed that sanctions involving the segregation/isolation of inmates tended to be imposed for comparatively minor offences. Further, some complaints were heard, including from staff at Modelo Prison, to the effect that certain supervisory judges determined appeals against sanctions lodged by inmates in a manner which was more onerous to the prisoner concerned than the original sanction (e.g. two days isolation "reduced" to 21 days of deprivation of association which, for an inmate who did not participate in activities, implied a much more severe restriction).

### **The CPT would welcome the comments of the Spanish authorities on these matters.**

95. Under Spanish law, a disciplinary measure involving the segregation of an inmate does not necessarily involve placement in an isolation unit. Indeed, according to the legal provisions, whenever it is possible and not incompatible with security and good order requirements, disciplinary segregation should be served in the prisoner's own cell or in one of similar characteristics (cf. Article 43, paragraph 4 of the General Organic Law on Prisons). In this context, the CPT's delegation noted that, at Modelo Prison, certain ordinary cells in the galleries were set aside for disciplinary segregation of short duration. Moreover, disciplinary measures involving segregation for brief periods were not immediately enforced, but were rather accumulated until a minimum of five days segregation had to be served.

Otherwise, segregation for disciplinary reasons was served in the segregation unit of each of the establishments visited. Material conditions of detention in those units and the regime applied to inmates placed in them were quite acceptable. As regards the latter, inmates undergoing such a measure were allowed to take their television or radio with them (if they possessed one) as well as writing material and reading matter. Such inmates also retained their right to have contact with the outside world (i.e. to send and receive letters, and to receive visits), were offered at least two hours of outdoor exercise every day and, in certain cases, were allowed to continue to participate in some activities (education, work).

b. information to prisoners

96. In all of the establishments visited, the delegation observed that information booklets were available in a range of languages for distribution to inmates upon arrival, and that information was given orally to them by educators and other staff. In certain cases, relevant information was brought to prisoners' attention using audio-visual means or was displayed in cells. Further, at Modelo Prison, there was an information office ("Point i") which had produced a brief information note for inmates and their relatives; the information office was available to respond to queries by both prisoners and their families.

However, a certain number of inmates interviewed by the delegation claimed that they had not actually been given a copy of the information booklet. **The CPT invites the Spanish authorities to verify that the booklet is being given systematically to all newly-arrived prisoners.**

97. Inmates at Modelo Prison were also regularly provided with updated information (including in writing) about their legal situation (pending cases; convictions; time to be served; when eligible for open regime (Grade 3), or early or conditional release; expected date of release). Further, members of staff were available to clarify any doubts which inmates might have in respect of their situation.

The CPT welcomes this approach and **suggests that it be followed in other prisons in Spain.**

c. contact with the outside world

98. Opportunities for prisoners in Spain to maintain contact with the outside world are, in principle, adequate. They are entitled to two 20-minute visits per week, with a maximum of four visitors; prison management may authorise that these two weekly visits, which take place in closed visiting booths, be accumulated. In addition, prisoners may receive two monthly open visits, lasting between one and three hours each, one of them being an intimate (so-called vis-à-vis) visit, the other from close relations. Further association visits, lasting a maximum of six hours, from the spouse or partner and children of up to ten years of age may also be authorised.

In addition, prisoners are entitled to receive and send letters and to make telephone calls. According to the information received by the delegation in the establishments visited, inmates were allowed to make between two and five telephone calls every week, each call lasting some five minutes.

99. However, the conditions under which the ordinary weekly visits take place remain unsatisfactory.

Many complaints were heard about the poor acoustics in closed visiting booths, and those complaints were borne out by the delegation's own on-the-spot findings in the establishments visited. **The CPT must recommend once again that steps be taken to remedy this problem.**

100. As for intimate and family visits, conditions were on the whole quite acceptable. Further, at Jaén Prison, an area had been set aside for visits from close relations (including children) which, once work had been completed, would comprise several rooms and a yard fitted with playground equipment.

By contrast, the facilities for intimate visits in Jaén Prison were in a poor state of repair and cleanliness. Further, the room used at that establishment for intimate and family visits to prisoners subject to the special regime was small and badly ventilated, had limited access to natural light and an unwelcoming appearance.

**The CPT recommends that steps be taken to remedy the above-mentioned shortcomings.**

d. drugs

**101. It is important that the prison authorities make efforts to provide an environment in which prisoners are not encouraged to take or to start taking drugs and where prisoners who do have problems associated with the taking of drugs are helped to overcome them.**

In cooperation with relevant outside bodies, laudable efforts were being made to this end in the prisons visited (including drug-awareness of staff; education, counselling, and other forms of support for inmates; drug-free units; multi-disciplinary therapeutic programmes).

## C. San Juan de Dios Psychiatric Hospital

### 1. Preliminary remarks

102. Founded by a religious order in 1887, San Juan de Dios Psychiatric Hospital is located in the village of Ciempozuelos, some 40 kilometres south of Madrid. The establishment is privately-run and funded; however, a proportion of the subsistence expenses of patients is borne by the Government of the Autonomous Community of Madrid.

The hospital consists of a series of relatively modern buildings set in a large and leafy compound. It receives four main categories of patients: mentally handicapped persons (including those with profound mental handicaps), who are accommodated in units 1, 2 and 3; patients with mental health problems (mostly chronic psychoses, in particular, of a schizophrenic nature), who live in units 4, 5 and 6; mentally-ill patients with somatic health problems, who are treated in unit 7; and psychogeriatric patients (in most cases, suffering from senile dementia), who are placed in unit 8.

Upon admission, all patients are accommodated in unit 9 for observation, before being discharged or transferred to one of the above-mentioned residential units.

103. At the time of the visit, the hospital had a total of 1030 beds, and was accommodating 1027 patients, of whom 4 were emergency admissions, 56 were voluntary patients and the remaining 967 were involuntary patients, being held on the basis of Article 211 of the Civil Code (cf. paragraphs 112 to 113 and 118 to 119).

104. The CPT wishes to make clear at the outset that its delegation heard very few allegations of ill-treatment of patients by staff at the San Juan de Dios Psychiatric Hospital. Staff-patient relations appeared to be relatively relaxed and the care staff were evidently dedicated to their work.

The delegation did interview one patient who alleged that he had been struck by an auxiliary. However, the patient concerned declared himself satisfied with the manner in which his complaint about this matter had been handled and, in particular, with the fact that he had received an apology from the staff member concerned.

## 2. Treatment of patients

105. The CPT's delegation found that the number of staff<sup>12</sup>, the facilities at their disposal and the treatment programmes available at San Juan de Dios Psychiatric Hospital were, in principle, sufficient to provide an adequate level of care for the majority of patients.

However, the delegation was concerned to learn that, at night, only three fully-qualified health care staff (a doctor and two nurses) were on duty for the entire establishment. This level of staffing is manifestly insufficient for a psychiatric hospital holding over one thousand patients, and **the CPT recommends that it be increased significantly.**

106. Psychiatric treatment at the hospital followed an individualised approach, a detailed treatment plan being drawn up for each patient on admission. Most patients were receiving pharmacological treatment (in the majority of cases, with neuroleptic drugs), but the delegation found no evidence of the inappropriate use of medication, or of overmedication.

107. In addition, the establishment had spacious workshops and occupational therapy rooms and well-equipped sports facilities, including a swimming pool. Patients were offered family therapy, group therapy, individual psychotherapy, behaviour therapy, work and a variety of leisure activities.

However, whilst the range of therapeutic and other activities on offer at the hospital is impressive, the proportion of patients who participate in such activities could be significantly increased. For example, at the time of the visit, only some 320 to 350 patients (i.e. barely a third of the patients) were involved in work and occupational therapy activities (170 to 200 in four workshops, around 100 in occupational therapy, 30 in an art workshop and 20 in cleaning duties). It might be added that the number of patients actually present in the workshops was found to be approximately half of the figure given on official lists of those employed.

**The CPT recommends that efforts be made significantly to increase the proportion of patients at San Juan de Dios Psychiatric Hospital who participate in therapeutic and other activities.**

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<sup>12</sup> At the time of the visit, the staff included: 18 medical doctors (including 12 psychiatrists), 2 psychologists, 4 senior nurses, some 20 qualified nurses and around 200 auxiliary nurses.

### 3. Patients' living conditions

108. The delegation's overall impression of the San Juan de Dios Psychiatric Hospital was of a meticulously clean and well-kept establishment. Patient accommodation throughout the hospital was well-lit, adequately heated and ventilated, and included satisfactory sanitary facilities, to which patients had ready access.

However, with rare exceptions (e.g. the attractive single rooms used for emergency admissions in unit 9) the decoration of patients' rooms left something to be desired. In most rooms and dormitories, the only decoration on the plain whitewashed walls was a single crucifix and/or a picture of a saint; a rather austere ambience prevailed.

Moreover, although the on-ward communal facilities were well furnished, the same cannot be said of the patients' rooms. A number of rooms were equipped only with beds and, in most of those where bedside tables/lockers had been provided, they were found to be empty.

109. The aim in any psychiatric establishment should be to offer material conditions which are conducive to the treatment and welfare of patients; in psychiatric terms, a positive therapeutic environment. Creating a positive therapeutic environment involves, first of all, providing sufficient living space per patient as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements. As indicated above, these requirements were being fully met at the San Juan de Dios Psychiatric Hospital.

However, attention should also be given to the decoration of both patients' rooms and recreation areas, in order to give patients visual stimulation. The provision of bedside tables and wardrobes is highly desirable, and patients should be allowed to keep certain personal belongings (photographs, books, etc.). It is also important that patients be provided with lockable space in which they can keep their belongings; the failure to provide such a facility can impinge upon a patient's sense of security and autonomy.

**The CPT recommends that efforts be made at San Juan de Dios Psychiatric Hospital to improve the decoration of patients' rooms throughout the establishment and to provide patients with lockable space within which they can keep their belongings.**

#### 4. Means of restraint

110. The CPT's delegation was pleased to note that practice at San Juan de Dios Psychiatric Hospital as regards the use of instruments of physical restraint was in accordance with the Committee's recommendations on this subject (cf. paragraph 204 of the report on the CPT's 1994 visit). In particular, a detailed medical policy on the use of means of restraint (*Actuación Protocolizada en la Contención*) had been drawn up and issued to all staff.

As regards the rooms in which patients might be restrained (located in units 2, 4 and 9), they were, on the whole, of an acceptable standard. However, the delegation was concerned by the use being made of the "immobilisation" room located adjacent to the television room in unit 1. The room was very small and contained only a chair bolted to the floor, to which agitated patients might be strapped. Bloodstains on the wall behind the chair (apparently caused by a restrained patient banging his head against it) attested to the unsuitability of this facility.

**The CPT recommends that the "immobilisation" room in unit 1 be taken out of service.**

#### 5. Safeguards in the context of involuntary placement

##### a. initial placement

111. It is axiomatic that the procedure by which involuntary placement in a psychiatric establishment is decided should offer guarantees of independence and impartiality as well as of objective psychiatric expertise.

112. As already mentioned, all of the involuntary patients at San Juan de Dios Psychiatric Hospital had been placed there under Article 211 of the Civil Code, which inter alia provides that:

"The involuntary placement of a mentally disturbed person ... will require judicial authorisation. Authorisation should be sought prior to placement except when reasons of emergency warrant the immediate adoption of such a measure, which shall be reported to the Judge as soon as possible and, in any event, within twenty-four hours ...

The Judge, after having examined the person and heard the opinion of a doctor appointed by him, will grant or refuse the authorisation ...".

113. Pursuant to these provisions, San Juan de Dios Hospital is visited once a week by a forensic doctor who reviews the situation of all newly-admitted involuntary patients. The forensic doctor submits a report to the competent judge, who then issues a formal decision as to whether the person should be detained under Article 211 as an involuntary patient.

However, the forensic doctor concerned is not a psychiatrist and the delegation was told that few of the state-appointed doctors who are called upon to carry out such tasks in psychiatric establishments have any professional qualifications in psychiatry.

In the view of the Committee, the formal decision to place persons in a psychiatric hospital against their will should always be based on the opinion of at least one doctor with professional qualifications in psychiatry, and preferably of two. **The CPT would like to receive the comments of the Spanish authorities on this issue.**

b. during placement

114. An introductory brochure setting out the establishment's routine and patients' rights should be issued to each patient on admission, as well as to their families. Any patients unable to understand this brochure should receive appropriate assistance.

In this respect, the CPT has noted that Article 10 (2) of the General Law on Health<sup>13</sup> provides that a patient in a public hospital shall have the right to "information on the health services to which he may have access and on the necessary requirements for their use". However, it would appear that this right does not extend to patients in private hospitals such as San Juan de Dios<sup>14</sup>, and no introductory brochure was issued to patients admitted to that establishment.

**The CPT recommends that an introductory brochure be drawn up and issued to all patients admitted to the San Juan de Dios Psychiatric Hospital.**

115. An effective complaints procedure is another basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

Article 10 (11) of the General Law on Health provides that all patients, including those in private hospitals, shall have the right "to use the complaints and suggestion procedures within the established time limits. In both cases, a written response shall be given to them within the time limit established by law."

**The CPT would like to receive more detailed information about the complaints procedures available to patients held in psychiatric institutions - whether public or private - on an involuntary basis.**

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<sup>13</sup> cf. Law No. 14/1986 of 25 April 1986.

<sup>14</sup> cf., in this respect, Article 10 (14) of the General Law on Health.

116. The maintenance of contact with the outside world is also essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint.

The CPT's delegation was pleased to note that patients at San Juan de Dios Psychiatric Hospital could receive visitors at any time during the day, and could send and receive uncensored letters. In addition, the majority of patients were allowed to leave the hospital during the day if they so wished.

117. Further, the CPT attaches considerable importance to psychiatric establishments being visited on a regular basis by an independent outside body (e.g. a judge or supervisory committee) which is responsible for the inspection of patients' care. This body should be authorised, in particular, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations.

The delegation was told by staff at San Juan de Dios Psychiatric Hospital that the establishment was, on occasion, visited by the local supervisory judge, but that this was not a frequent occurrence.

**The CPT would like to receive further information from the Spanish authorities on this subject.**

c. discharge

118. Involuntary placement in a psychiatric establishment should cease as soon as it is no longer required by the patient's mental state. Consequently, the need for such a placement should be reviewed by an appropriate authority at regular intervals. In addition, patients themselves should be able to request at reasonable intervals that the necessity for placement be considered by a judicial authority.

In this respect, Article 211 of the Civil Code provides that:

"... the Judge, ex officio, will request information on the need to continue the placement, when he deems it relevant and, in any case, every six months, in the same manner as provided for in the previous paragraph, and will take the appropriate decision concerning the continuation or not of the measure".

119. Taken at face value, this provides for an automatic review by a judge on a regular basis of the necessity to continue an involuntary placement in a psychiatric establishment.

However, a detailed examination of a number of patients' files revealed that the six-month period foreseen by Article 211 (3) was not being respected. The forensic doctor interviewed by the delegation admitted that she found it difficult to carry out all necessary reviews within that timescale, and estimated that most Article 211 patients were being reviewed about once every eight months. The delegation's own findings suggested that, in many cases, the interval between reviews was closer to twelve months.

Moreover, quite apart from the fact that the forensic doctor concerned had no qualifications in psychiatry (cf. paragraph 113), both her reports to the judge and the judge's decisions as to whether placement should continue were set out on forms which employed a standardised wording for every patient reviewed. No attempt was made to provide reasoned grounds for the need to continue the placement of an individual patient.

To sum up, at San Juan de Dios Psychiatric Hospital, reviews of the need to continue involuntary placements are conducted at intervals longer than those foreseen by law, based upon the advice of a doctor with no qualifications in psychiatry. Moreover, neither that doctor's report to the judge nor the judge's decision contain reasoned grounds. In the light of its delegation's findings, the CPT entertains misgivings about the effectiveness in practice of the judicial review, under Article 211 of the Civil Code, of the need to continue involuntary placement. **The Committee would like to receive the comments of the Spanish authorities on this subject.**

### III. RECAPITULATION AND CONCLUSIONS

#### A. Law enforcement agencies

120. The CPT's delegation received no allegations of torture from persons interviewed who were or who had recently been detained by the Spanish law enforcement agencies. Further, comparatively few allegations were heard of other forms of physical ill-treatment of detained persons; those which were heard concerned principally the National Police and mostly involved the use of excessive force at the time of arrest.

However, both before and during the visit, the CPT received reports from other sources containing a considerable number of allegations of ill-treatment by the National Police, the Civil Guard and the Basque Autonomous Police (the Ertzaintza) relating to periods of custody during 1997 and 1998. Those allegations involved blows to various parts of the body and, in some cases, more serious forms of physical ill-treatment, including sexual assault of female detainees by male police officers, and asphyxiation by placing a plastic bag over the head. In certain cases, the reports included medical certificates recording injuries or conditions consistent with the allegations made by the persons concerned.

121. The persistence of allegations of ill-treatment by law enforcement officials highlights the need for the Spanish authorities to remain particularly vigilant in this area and, more specifically, to engage in on-the-spot scrutiny of the methods actually employed by such officials when detaining, interrogating and transferring detained persons, in pursuance of recommendations already made by the CPT in 1994 and 1997.

As regards the alleged use of excessive force at the time of arrest, the CPT has recognised that the arrest of a criminal suspect is often a hazardous task and that, on occasion, injuries may be sustained by the person concerned (and by law enforcement officials), without this being the result of an intention to inflict ill-treatment. Nevertheless, the Committee has recommended that law enforcement officials be reminded that no more force than is strictly necessary should be used when effecting an arrest and that, once arrested persons have been brought under control, there can be no justification for striking them.

122. As regards formal safeguards against ill-treatment, the CPT has again placed particular emphasis on three fundamental rights, namely the right of detained persons to have access to a lawyer, to inform a close relative or another third party of their choice of their situation, and to have access to a doctor.

The Spanish authorities have now made known their intention to implement two of the CPT's long-standing recommendations in this area: that persons detained by the law enforcement agencies be granted the right of access to a lawyer **as from the outset** of their detention; that the period of time for which such persons may be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice, be substantially shortened. The Committee has requested full details of the concrete action being taken in this respect.

Concerning the right of access to a doctor, at the Spanish authorities' invitation, the CPT has proposed detailed changes to the form used by doctors performing forensic functions. The aim of those changes is to ensure that forensic doctors record not only traumatic lesions displayed by detained persons, but also statements by such persons of relevance to the medical examinations concerned, and their conclusions as to the degree of consistency between any allegations of ill-treatment and the objective medical findings. In addition, the CPT has recommended that - as for other persons detained - persons being held incommunicado be guaranteed the right to be examined by a doctor of their own choice, and that the form currently being used to inform detained persons of their rights be amended in order to ensure that all detained persons are made aware that they enjoy this right.

123. The CPT has further recommended that guidance on the conduct of police interviews be included in the recently-adopted rules on police procedures, and has invited the Spanish authorities to establish a system of regular visits to law enforcement agency establishments by an independent authority.

124. Conditions of detention were acceptable in a number of the law enforcement agency establishments visited but, in others, displayed many of the shortcomings already criticised in previous visit reports (cells too small for overnight stays; dirty and dilapidated detention facilities; inadequate sleeping arrangements; poor lighting and ventilation; etc.).

The CPT has recommended that the Spanish authorities take steps to remedy these shortcomings in the establishments concerned, and that renewed consideration be given to the production of standards on conditions of detention for all law enforcement agencies in Spain.

125. The 1998 visit to the Canary Islands afforded an opportunity for the CPT's delegation to examine the cellular accommodation aboard the Juan J Sister, one of the ships which the Civil Guard use for the transport of prisoners between the islands and mainland Spain. In the light of its delegation's findings, the CPT has recommended that conditions of detention on that vessel - and on any others where similar conditions obtain - be upgraded.

## **B. Prisons**

126. The CPT's delegation heard no allegations of torture - and gathered no other evidence of such treatment - of prisoners by staff in the prisons visited or in other prison establishments in Spain. However, it did receive some allegations to the effect that inmates had been physically ill-treated by prison officers, in most cases during transfer to a segregation unit or whilst restrained in such a unit.

Prison staff will, on occasion, have to use force to control violent and/or recalcitrant prisoners and exceptionally may even need to resort to instruments of physical restraint. However, the CPT has recommended that prison officers be reminded that no more force than is strictly necessary should be used and that, once prisoners have been brought under control, there can be no justification for them being struck. The CPT has also recommended that the Spanish authorities ensure that all prisons maintain a detailed centralised register concerning the use of means of coercion.

127. The existence of appropriate supervision and effective mechanisms for examining prisoners' complaints is another fundamental safeguard against ill-treatment of prisoners. In this connection, the CPT has recommended that steps be taken to ensure that prisoners' correspondence with judges and other relevant authorities is promptly processed. In the light of information received, it has also recommended that a review be carried out of the procedures applied by the judicial authorities to investigate complaints of ill-treatment of prisoners by staff, and that any shortcomings observed be remedied. The objective should be to ensure that prisoners' complaints reach the competent court without delay and that the court in question promptly and thoroughly investigates any allegations of ill-treatment made by persons deprived of their liberty.

Further, the Committee has again recommended that supervisory judges be encouraged to visit the whole of a prison's premises when carrying out their duties and to enter into direct contact with both prisoners and prison staff.

128. In the course of the 1998 visit, the CPT's delegation reviewed the position of inmates who are considered to be "dangerous" or "unadapted to an ordinary prison regime" (i.e. prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons). The situation of this category of prisoner was found to have improved in many respects as compared with that observed by the Committee in 1991 and 1994. However, the CPT has recommended that efforts continue to be made to improve the quality of staff-inmate relations in special units and to develop the regimes offered to all prisoners subject to Article 10.

129. Material conditions of detention were broadly of a good standard in all of the establishments visited. However, cell occupancy levels were often high and, on occasion, unacceptable (e.g. four prisoners to a 10 m<sup>2</sup> cell at Modelo Prison; up to eight women in a cell measuring some 16 m<sup>2</sup> at Las Palmas de Gran Canaria Prison).

The CPT has recommended that the national authorities make every effort to meet their goal of bringing the number of prison places (calculated on the basis of single occupancy) and the number of inmates into balance within the year 2000. As regards prisons in Catalonia, the Catalan authorities have set themselves a somewhat less ambitious objective; in this respect, the CPT has recommended that they pursue their medium-term plans to reduce occupancy levels in all prisons under their authority, without prejudice to the objective of complying, in due course, with the principle of single occupancy laid down in Spanish law. As regards, more particularly, Modelo Prison, the Committee has recommended that efforts continue to be made to reduce cell occupancy rates to a maximum of two prisoners per cell.

130. As regards regime activities for prisoners, the CPT's delegation found that despite considerable improvement, there is still scope further to develop the programmes being offered to prisoners in all of the establishments visited. Although the vast majority of inmates enjoyed extensive out-of-cell time, by no means all prisoners were provided with meaningful activities during that time; the CPT has recommended that special measures be introduced with a view to providing more work places for prisoners and that priority continue to be given to developing other regime activities.

131. The information gathered in the course of the 1998 visit concerning prison health care services confirmed that, on the whole, the level of general health care provided to persons held in prison was of an acceptable standard. In each of the prisons visited, the number of health care staff and the facilities at their disposal were broadly sufficient to enable adequate health care to be delivered to prisoners. However, the CPT has recommended that the vacant post of Deputy Director of Jaén Prison in charge of medical services be filled without delay, and that steps be taken to remedy shortcomings observed in that establishment as regards access to specialist examinations.

132. Certain lacunae were noted in the provision of ambulatory and in-house psychiatric care to prisoners. In this respect, the CPT has recommended that the time for which a psychiatrist is present at Las Palmas de Gran Canaria Prison be significantly increased, and that the treatment programmes of psychiatric in-patients at Jaén, Las Palmas de Gran Canaria and Madrid V Prisons be developed. The practice observed in Las Palmas de Gran Canaria Prison of accommodating together psychiatric and somatic patients should also be brought to an end.

The management of acutely-agitated psychiatric patients at Las Palmas de Gran Canaria Prison was a specific point of concern. In certain cases, instruments of physical restraint - including handcuffs - were being applied to such patients for prolonged periods (e.g. two days), and they could be subject to a measure of seclusion for up to several months. In this connection, the Committee has recommended inter alia that if, exceptionally, recourse is had to instruments of physical restraint, they be removed at the earliest opportunity and that handcuffs no longer be used as a means of restraining psychiatric patients. The Committee has also recommended that appropriate steps be taken to ensure that patients are not held in seclusion for long periods and that a detailed policy on the use of seclusion be drawn up.

133. As for the role of prison health care services in the prevention of violence against detained persons, the Committee has welcomed measures taken by the Spanish authorities to ensure that medical certificates recording injuries are as detailed as possible, and forwarded to the judicial authorities without delay. The CPT has recommended that a form be developed for use by prison doctors in this context, providing for the recording of the doctor's objective medical findings, any relevant statements by the prisoner and the doctor's conclusions.

134. Other issues addressed by the CPT in its report include discipline, information provided to prisoners, contact with the outside world and drugs in prison. The Committee wishes, in particular, to highlight its recommendations that improvements be made to the visiting facilities in certain of the establishments visited and, in particular, as regards acoustics in closed visiting booths.

**C. San Juan de Dios Psychiatric Hospital**

135. Very few allegations were heard of ill-treatment of patients by staff at the San Juan de Dios Psychiatric Hospital. Staff-patient relations appeared to be relatively relaxed and the care staff were evidently dedicated to their work.

136. The number of staff and the facilities at their disposal were, in principle, sufficient to provide an adequate level of health care. However, the level of staffing at night was manifestly insufficient; the CPT has recommended that it be increased significantly.

The range of therapeutic and other activities on offer at the hospital was impressive. However, efforts are required significantly to increase the proportion of patients who participate in such activities.

137. Patient accommodation throughout the hospital was well-lit, adequately-heated and included satisfactory sanitary facilities to which patients had ready access.

However, with rare exceptions, the decoration in patients' rooms left something to be desired, and most patients were not provided with a lockable space within which to keep their belongings. In the interests of providing patients with increased visual stimulation and fostering their sense of security and autonomy the CPT has recommended that these shortcomings be addressed.

Further, the "immobilisation room" in Unit 1, which was used for the temporary restraint of agitated patients, was unsuitable for this purpose. The CPT has recommended that it be taken out of service.

138. The CPT has also made a number of remarks concerning safeguards in the context of involuntary placement of patients in a psychiatric institution.

The procedure by which involuntary placement is decided should offer guarantees of independence, impartiality and objective psychiatric expertise, and involuntary placement should cease as soon as it is no longer required by a patient's mental state. In this connection, the Committee has expressed certain misgivings about current procedures under Article 211 of the Civil Code, concerning initial involuntary placements in psychiatric institutions and reviews of the need to continue such placements.

The CPT has also recommended that an introductory brochure be drawn up and issued to all patients admitted to the San Juan de Dios Psychiatric Hospital, and has requested information about the complaints procedures available to patients held in public and private psychiatric institutions.

**D. Action on the CPT's recommendations, comments and requests for information**

139. The various recommendations, comments and requests for information formulated by the CPT are summarised in Appendix I.

140. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the CPT requests the Spanish authorities:

- i. to provide within six months an **interim report** giving details of how it is intended to implement the CPT's recommendations and, as the case may be, providing an account of action already taken;
- ii. to provide within twelve months a **follow-up report** providing a full account of action taken to implement the CPT's recommendations.

The CPT trusts that it will also be possible for the Spanish authorities to provide in the above-mentioned interim report reactions to the comments formulated in this report which are summarised in Appendix I as well as replies to the requests for information made.

## APPENDIX I

### **SUMMARY OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION**

#### **A. Law enforcement agencies**

##### **1. Ill-treatment**

###### recommendations

- law enforcement officials to be reminded that no more force than is strictly necessary should be used when effecting an arrest and that, once arrested persons have been brought under control, there can be no justification for them being struck (paragraph 13).

###### comments

- the persistence of allegations of ill-treatment by law enforcement officials highlights the need for the Spanish authorities to remain particularly vigilant in this area and, more specifically, to engage in on-the-spot scrutiny of the methods actually employed by such officials when detaining, interrogating and transferring detained persons (paragraphs 8 and 13).

###### requests for information

- comments of the Spanish authorities on whether examining judges and prosecutors are always displaying due diligence when allegations of ill-treatment are brought to their attention (paragraph 15);
- in respect of 1997 and 1998:
  - . the number of complaints of ill-treatment by law enforcement officials lodged and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints;
  - . an account of those complaints and the outcome of the proceedings (allegations, brief description of the findings of the relevant court or body, verdict, sentence/sanction imposed) (paragraph 16).

## 2. Safeguards against ill-treatment of detained persons

### recommendations

- the standardised form for recording the findings of forensic doctors, introduced on 16 September 1997 by order of the Minister for Justice, to be amended as follows:
  - . in section 2 of the form (clinical history), the following words of guidance to be added after the heading "current situation": (include statements made by the person concerned which are relevant to the medical examination, e.g. description by the person examined of his state of health and any allegations of ill-treatment);
  - . a further heading - 3 bis - entitled "doctor's conclusions in the light of the patient's current situation (section 2), and the results of the medical examination (section 3)", to be added to the form, and the following words of guidance to be added after that heading: (in the event of allegations of ill-treatment being made, indicate whether - and to what extent - those allegations are consistent with the results of the medical examination) (paragraph 25);
- persons held incommunicado to be guaranteed the right to be examined by a doctor of their own choice, it being understood that such a second examination may take place in the presence of a State-appointed forensic doctor (paragraph 26);
- the form currently being used to inform detained persons of their rights to be amended in order to ensure that all detained persons (i.e. including those being held incommunicado) are expressly informed of their right to be examined by a doctor of their own choice (paragraph 27);
- guidance on the conduct of police interviews to be included in the rules on police procedures to be applied by all law enforcement agencies in Spain. The matters addressed in that guidance to include: the systematic informing of the detained person of the identity (name and/or number) of those present at the interrogation; the permissible length of an interrogation; rest periods between interrogations and breaks during an interrogation; places in which interrogations may take place; whether the detained person may be required to remain standing while being questioned; the questioning of persons who are under the influence of drugs, alcohol or medicine, or who are in a state of shock. Provision also to be made for a systematic record to be kept of the times at which interrogations start and end, the persons present during each interrogation and any request made by the detained person during the interrogation. The position of especially vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) to be subject to specific safeguards (paragraph 32);
- all relevant rules on police procedures to be amended in due course, to take account of developments concerning access to a lawyer, notification of custody and medical examinations of detained persons (paragraph 33).

comments

- the Spanish authorities are invited to establish a system of regular visits to law enforcement agency establishments by an independent authority, having regard to the remarks made in paragraph 29 (paragraph 30).

requests for information

- full details of the concrete action being taken with a view to implementing the CPT's recommendation that persons detained by the law enforcement agencies be granted the right of access to a lawyer as from the outset of their detention (paragraph 21);
- full details of the concrete action being taken to shorten the period of time for which persons detained by the law enforcement agencies may be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice (paragraph 23);
- copies of any instructions or guidelines on the treatment of detained persons issued to law enforcement agencies under the authority of autonomous governments other than the Basque Government (paragraph 31).

**3. Conditions of detention**

recommendations

- the measures referred to in paragraph 42 concerning conditions of detention at Barcelona Police Headquarters, the Santa Catalina District Police Station (Las Palmas de Gran Canaria), the Provincial Brigade of the Judicial Police (Madrid) and Civil Guard detention facilities, to be implemented as a matter of urgency. In the implementation of those measures, full account to be taken of the remarks made in paragraph 37 (paragraph 42);
- steps to be taken to remedy the shortcomings in the conditions of detention in the other law enforcement agency establishments visited which are identified in paragraphs 36, 38 and 39. In this connection, the cells at the Barcelona Headquarters of the Civil Guard not to be used for overnight stays until such time as they are enlarged (paragraph 42);
- action to be taken to address the shortcomings highlighted in paragraph 41 concerning call systems, the management of persons affected by the body-pack syndrome, sanitary facilities, and the provision of food (paragraph 42);
- renewed consideration to be given to the production of standards on conditions of detention for all law enforcement agencies in Spain (paragraph 43);
- conditions of detention aboard the Juan J Sister - and on any other vessels where similar conditions obtain - to be upgraded, having regard to the remarks made in paragraph 45 and the criteria referred to in paragraph 34 (paragraph 46).

comments

- it would be desirable for the rules concerning detention by the Ertzaintza to provide that all persons held on Ertzaintza premises overnight are to be provided with a mattress (paragraph 35).

**B. Prisons**

**1. Ill-treatment**

recommendations

- prison officers to be reminded that no more force than is strictly necessary is to be used to control violent and/or recalcitrant prisoners and that, once prisoners have been brought under control, there can be no justification for them being struck (paragraph 56);
- steps to be taken to render fully effective in practice the rules issued on 15 April 1996 by the Director General of Prisons concerning recording the use of means of coercion (paragraph 58);
- steps to be taken to ensure that prisoners' correspondence with judges and other relevant authorities is promptly processed (paragraph 63);
- a review to be carried out of the procedures applied by the judicial authorities to investigate complaints of ill-treatment of prisoners by staff and any shortcomings observed to be remedied. The objective should be to ensure that prisoners' complaints reach the competent court without delay and that the court in question promptly and thoroughly investigates any allegations of ill-treatment made by persons deprived of their liberty (paragraph 63);
- supervisory judges to be encouraged to visit the whole of a prison's premises when carrying out their duties and to enter into direct contact with both prisoners and prison staff (paragraph 63);
- prison directors to be encouraged to make themselves available to inmates through regular visits to all parts of their establishments (paragraph 64).

comments

- even if the use of handcuffs in the manner described in paragraph 53 were to be authorised by the relevant regulations, it is an unacceptable practice (paragraph 60).

requests for information

- a detailed account of the results of the investigation by the Inspectorate of the Prison Service into the use of means of coercion in all prisons in Spain (paragraph 57);
- details of the training in control and restraint techniques provided to prison officers (paragraph 59);

- further details of the measures taken to ensure that means of restraint are not applied to prisoners at Las Palmas de Gran Canaria Prison for excessive periods and that all prisoners placed in the segregation unit are provided with a mattress (paragraph 60);
- the outcome of the investigations currently being carried out by the General Council of the Judiciary into whether complaints of ill-treatment of inmates by prison staff are being promptly investigated (paragraph 63).

## **2. Prisoners who are considered to be "dangerous" or "unadapted to an ordinary prison regime"**

### recommendations

- continued efforts to be made to improve the quality of staff-prisoner relations in special units and to develop the regimes offered to all prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons (paragraph 70).

## **3. Conditions of detention**

### recommendations

- every effort to be made to meet the goal of bringing the number of prison places (calculated on the basis of single occupancy) and the number of inmates into balance within the year 2000 (paragraph 75);
- continued efforts to be made to reduce cell occupancy rates at Modelo Prison to a maximum of two prisoners per cell (paragraph 75);
- the Catalan authorities vigorously to pursue their medium-term plans to address the problem of overcrowding (without prejudice to the objective of complying, in due course, with the principle of single occupancy laid down in Article 19 of the General Organic Law on Prisons) (paragraph 75);
- steps to be taken to ensure that all accommodation areas/galleries at Modelo Prison have adequate heating, and particular efforts to be made to ensure that units at Modelo and Madrid V prisons which have a high turnover of remand prisoners are kept in a satisfactory state of repair and cleanliness (paragraph 76);
- special measures to be introduced with a view to providing more work places for prisoners (paragraph 78);
- continued priority to be given to developing other regime activities for prisoners; this may well require reviewing staffing levels in the establishments visited (paragraph 78).

#### 4. Health care services

##### recommendations

- the vacant post of Deputy Director of Jaén Prison in charge of Medical Services to be filled without delay (paragraph 81);
- steps to be taken without delay to remedy the shortcomings observed at Jaén Prison as regards visits by outside specialists and waiting periods for consultations with specialists outside the prison (paragraph 82);
- the time for which a psychiatrist is present at Las Palmas de Gran Canaria Prison to be significantly increased (paragraph 85);
- the treatment of psychiatric in-patients at Jaén, Las Palmas de Gran Canaria and Madrid V Prisons to be reviewed, in the light of the remarks made in paragraph 88 (paragraph 88);
- as regards the management of acutely agitated psychiatric patients at Las Palmas de Gran Canaria Prison:
  - . steps to be taken without delay to ensure that if, exceptionally, recourse is had to instruments of physical restraint, they are removed at the earliest opportunity and that handcuffs are no longer used as a means of restraining patients;
  - . appropriate steps to be taken to ensure that patients are not held in seclusion for long periods;
  - . a detailed policy on the use of seclusion to be drawn up (paragraph 90);
- every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion) to be recorded in a specific register established for this purpose (as well as in the patient's file). The entry to include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff (paragraph 90);
- a form to be used by prison doctors when recording injuries to be developed without delay. In addition to the doctor's objective medical findings, the form to provide for the recording of any relevant statements by the prisoner and the doctor's conclusions (paragraph 92).

comments

- the use of inmates as medical orderlies should always be a last resort (paragraph 81);
- the material environment and living conditions in the psychiatric unit at Modelo Prison could be further improved (paragraph 87).

requests for information

- whether all prisons are providing caries treatment (of a conservative nature rather than simply extractions) free of charge to prisoners who are not in a position to pay for such treatment (paragraph 83).

**5. Other issues**

recommendations

- steps to be taken to improve the acoustics in closed visiting booths (paragraph 99);
- at Jaén Prison, steps to be taken to remedy the shortcomings in the facilities for intimate visits, and in the room used for intimate and family visits to prisoners subject to the special regime, identified in paragraph 100 (paragraph 100).

comments

- the Spanish authorities are invited to verify that an information booklet is being given systematically to all newly-arrived prisoners (paragraph 96);
- other prisons in Spain might usefully follow the example of Modelo Prison, where prisoners were provided with regularly-updated information about their legal situation and members of staff were available to clarify any doubts which inmates might have in this respect (paragraph 97);
- it is important that the prison authorities make efforts to provide an environment in which prisoners are not encouraged to take or to start taking drugs and where prisoners who do have problems associated with the taking of drugs are helped to overcome them (paragraph 101).

requests for information

- comments on the disciplinary issues raised in paragraph 94 (paragraph 94).

### **C. San Juan de Dios Psychiatric Hospital**

#### recommendations

- the level of staffing at night to be increased significantly (paragraph 105);
- efforts to be made significantly to increase the proportion of patients who participate in therapeutic and other activities (paragraph 107);
- efforts to be made to improve the decoration of patients' rooms throughout the establishment and to provide patients with lockable space within which they can keep their belongings (paragraph 109);
- the "immobilisation" room in unit 1 to be taken out of service (paragraph 110);
- an introductory brochure to be drawn up and issued to all patients admitted to the hospital (paragraph 114).

#### requests for information

- the comments of the Spanish authorities concerning the need for decisions to place persons in a psychiatric hospital against their will to be based on the opinion of at least one doctor with professional qualifications in psychiatry (paragraph 113);
- more detailed information about the complaints procedures available to patients held on an involuntary basis in public and private psychiatric institutions (paragraph 115);
- further information on whether psychiatric establishments are visited on a regular basis by an independent outside body (e.g. a judge or supervisory committee) which is responsible for the inspection of patients' care (paragraph 117);
- the comments of the Spanish authorities on the effectiveness in practice of the judicial review, under Article 211 of the Civil Code, of the need to continue involuntary placement in a psychiatric establishment (paragraph 119).

**APPENDIX II**

**LIST OF THE AUTHORITIES AND ORGANISATIONS  
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

**A. Ministerial authorities**

**Ministry of the Interior**

Mr Jaime MAYOR OREJA	Minister for the Interior
Mr Ricardo MARTÍ FLUXÁ	Secretary of State for Security
Mr Leopoldo CALVO-SOTELO y IBÁÑEZ-MARTÍN	Under-Secretary
Mr Rafael RAMOS GIL	Technical General Secretary
Mr Angel YUSTE CASTILLEJO Mr Javier NISTAL BURÓN	Director General of the Prison Service Deputy Director General for Prison Management
Mr Santiago LÓPEZ VALDIVIESO Mr Rafael YUSTE	Director General of the Civil Guard General of the Civil Guard
Mr Pedro DÍAZ PINTADO	Deputy Director General for Operations of the Police
Mr Felipe del POZO BLANCO	Head of the Technical Office of the Directorate General of the Police
Mr Antonio CERROLAZA GÓMEZ	Deputy Director General for Reports and Institutional Relations
Ms Marisol CRESPO MACÍAS	Head of Service for Relations with the Ombudsman
Mr Pablo MARTÍN ALONSO	Head of the Coordination and Studies Department of the Secretary of State for Security
Mr Eusterio PÉREZ GAGO	Head of the Regulations and Reports Department
Mr Manuel MANZANO SOUSA	Head of the Regulations and Reports Service
Mr Marcos VEGA GÓMEZ	Adviser to the Minister in respect of International Affairs

**Ministry of Health and Consumer Affairs**

Mr José Manuel ROMAY BECCARÍA	Minister for Health
Mr Rafael MATESANZ ACEDOS	Director General for Primary and Specialist Care
Mr Rafael PEÑALVER	Adviser to the Under-Secretary
Mr Pedro Angel GARCÍA GONZÁLEZ	Deputy Director General for International Relations
Mr Juan Antonio LÓPEZ BLANCO	Deputy Director General for Prison Health
Ms Leticia MORAL	Technical Adviser
Ms María del Carmen COLLADO ÁLVAREZ	Technical Adviser

**Ministry of Justice**

Mr Javier BORREGO BORREGO	Head of the Legal Service for the European Court of Human Rights
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**B. Other national authorities**

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

Mr Fernando ÁLVAREZ de MIRANDA y TORRES	Ombudsman
Mr Manuel AZNAR LÓPEZ	Adviser on Social Welfare, Work and Minors
Mr José Mario FERNÁNDEZ MATEO	Adviser on the Interior
Mr Angel Luis ORTIZ	Adviser on Justice

**General Council of the Judiciary**

Mr Javier DELGADO BARRIO	President of the Council
Ms Manuela CARMENA CASTRILLO	Member of the Council
Mr Teófilo ORTEGA TORRES	Member of the Council

**C. Authorities of the autonomous communities**

**Catalan authorities**

Mr Ignasi GARCÍA I CLAVEL

Director General of the Catalan Prison  
and Rehabilitation Services

Ms Esther BUSQUETS

Director of the Health Programme of  
the General Directorate of the Catalan  
Prison and Rehabilitation Services

**Basque authorities**

Mr José Luis AURTENETXE GOIRIENA

Head of Legal Affairs of the  
Department of the Interior of the  
Basque Government

**D. Non-governmental organisations**

Association against torture (ACT)

Association of relatives of Basque prisoners (Senideak)

Group against torture (TAT)

Group of parents of detained youths (Gurasoak)

Spanish association for human rights (APDHE)