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CPT/Inf (2000) 6

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

from 22 November to 4 December 1998

The Spanish Government has requested the publication of the CPT's report on the visit to Spain from 22 November to 4 December 1998 (see CPT/Inf (2000) 5) and of the interim report drawn up in response. The English translation provided by the Spanish Government of its interim report is set out in this document.

Strasbourg, 13 April 2000

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RESPONSE TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT CONCERNING THE VISIT OF A DELEGATION OF THE CPT TO SPAIN FROM 22 NOVEMBER TO 4 DECEMBER 1998

INTRODUCTION

A delegation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "CPT") carried out a visit to our country, from 22 November to 4 December 1998, in pursuance of Article 7 of the European Convention Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

This is the third periodic visit made by the CPT to our country. The other two previous were held on April 1991 and April 1994.

The delegation was made up by the following members of the CPT:

Mrs Ingrid Lycke Ellingsen, First Vice-President of the CPT
Mr Mario Benedettini, member of the CPT
Mr Ole Vedel Rasmussen, member of the CPT
Mr Safa Reisoglu, member of the CPT
Mr Florin Stanescu, member of the CPT

Mr Daniel Glezer, Head of the Regional Psychiatric and Psychological Medical Service at Marseille´s "Les Baumettes" Prison (expert)
Mr James McManus, Scottish Prisons Complaints Commissioner (expert)

Mr Mark Kelly, member of the CPT Secretariat
Mr Jan Malinowski, member of the CPT Secretariat

And five interpreters (Mrs Rosario Baquero, Mrs Cristina Bourgoin-Díez, Mrs Danielle Gree, Mrs Melanie Roe and Mr Félix Ordeis- Cole)

At the outset of the visit, the CPT delegation was received by the Minister for the Interior, Mr Jaime Mayor Oreja, and the Minister for Health, Mr José Manuel Romay Beccaria. Besides, several meetings were held with senior officials of both ministries, the (*Defensor del Pueblo*) Ombudsman, Mr Fernando Alvarez de Miranda y Torres and senior members of his staff; the President of the General Council of the Judiciary,- Mr Francisco Javier Delgado Barrio - and two members of that Council, the Director General of the Prison Service of the Catalonian Generalitat, Mr Ignasi García y Clavel.

The CPT delegation visited the following establishments where people deprived of their freedom are held:

Law enforcement agency stations:

National Police Regional Headquarters, Vía Laietana (Barcelona).
National Police Provincial Station, Calle Arquitecto Bergés (Jaén).
National Police Regional Headquarters, Calle Luis Doreste Silva (Las Palmas de Gran Canaria).
Central Duty Inspection, Calle La Tacona (Moratalaz - Madrid)
Criminal Police Regional Squad, Plaza de Pontejos (Madrid)
National Police Station, Avenida Gatassa (Mataró - Bonalma)
Santa Catalina District Police Station, Calle Dr. Miguel Rosas (Las Palmas de Gran Canaria)
Puerto Police Station (Las Palmas de Gran Canaria)
Catalonian Autonomous Police Station , Calle Bolivia (Barcelona)
Civil Guard Premises, Travessera de Grácia (Barcelona)
Civil Guard Premises, Calle Alicante (Las Palmas de Gran Canaria)
Local Detention Centre, La Riera (Mataró - Barcelona)

Prison establishments:

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

Psychiatric Hospitals:

San Juan de Dios Centre, Ciempozuelos (Madrid)

COMMENTS TO THE RECOMENDATIONS MADE BY THE CPT

A . LAW ENFORCEMENT AGENCIES

1. Ill-treatment

References are made to paragraphs 8 and 14 of the CPT Report

The CPT clearly established in its Report that during the visit this delegation did not received any allegation of torture from any of the interviewed persons. To be precise, in the paragraph 11 of that Report is verbatim said:

"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 they mostly involved the use of excessive force at the time of arrest".

A clear signal that in Spain torture and ill-treatment practices are not carried out, except for a few rare exceptions, is that formal complaints have been scarcely lodged, or disappeared, on those subjects. During the visit to Spain, all this could be verified by the CPT delegation Furthermore, it can be corroborated in the Amnesty International Reports and in the yearly Ombudsman Report before the Parliament; where every year it can be noticed that formal complaints for torture or ill-treatment by law enforcement agencies are lowering. There are some years when complaints of this kind are virtually nonexistent

Not only the Spanish authorities are sensible to human integrity and dignity but also the Spanish society, where torture and ill-treatment are facts subject to a remarkable rejection. A significant piece of information showing the special interest and priority given by the Spanish government to the above -mentioned issues is the change which is taking place in the laws throughout the last years.

Thus, the Spanish Constitution, under article 15 contains an explicit recognition to moral integrity; this moral integrity should be considered as something independent and different to the right to life, physical integrity, freedom or honour. It is an autonomous value related to the person' s dignity but apart from it, as it is more outlined in fact, the right to the dignity of the person is on the base of all fundamental rights, not only in the right to the moral integrity. It represents one of the constitutional bases for public order and social peace.

Pursuant to the trend devised by the Constitution, the Criminal Code enacted by the *Ley Orgánica* (Organic Law) 10/1995, in 23 November, rules in its First Book, Heading VII on torture and other crimes against moral integrity. Also, in the same Book - Heading XXI- are foreseen crimes committed by public officers against the constitutional safeguards.

This new Heading represents one of the noteworthy innovations arising from this new Criminal Code. Legislators had tried - beyond the torture crime – to protect moral integrity. As it is set forth in the Statement of Intents of the concerned Organic Law, whenever the moral integrity is safeguarded, the citizen is provided with a stronger protection against torture.

Consequently, the new Code provides a more effective protection against torture (a more severe punishment, an extension of the behaviours and the usage of a better technique). At the same time, it extends the protection beyond the idiosyncratic torture conducts, conferring a comprehensive protection to the fundamental right of moral integrity, as an autonomous value, pursuant to the constitutional principle and the measures collected in comprehensive international rules, ratified by Spain, that should encourage the legislative and judicial practice pursuant to article 10.2 of the Spanish Constitution. It is framed in the internal rules, once it is ratified and published in the *Boletín Oficial del* Estado (Official Bulletin of the State) as it is the case for international rules where torture is proscribed.

Under the new structure within the Book II of the Criminal Code enacted in 1995, torture and other crimes against the moral integrity are included in the part devoted to the protection of the inherent human-related-rights. That is, they are placed just below the protection granted to life, physical and moral 0integrity and just above the crimes against sexual freedom, privacy and domestic privacy, failure to render assistance and crimes against honour.

All the above considered make us aware of the importance conferred to moral integrity by legislators. Doubtless, there is a willingness to confirm the moral integrity as a fundamental right of the person that should be reinforced by the imposition of penalties, occasionally very severe ones.

There can be no doubt that both the Spanish Constitution and the Criminal Code shape the moral integrity as an explicit axiological, autonomous and independent reality separated from the right to life, physical integrity, freedom and honour. And it is so obvious that in the new article 177 of the Criminal Code a rule is foreseen, according to which the violation of those rights must be punished separately from those against the moral integrity

Thus, the new provisions set forth in the First Book of the 1995 Criminal Code ruling torture and other crimes against moral integrity had been worded as follows:

Article 173

Anybody who may inflict degrading treatment to any person that can result in a serious damage to his/her moral integrity will be punished with an imprisonment penalty, ranging from six months up to two years.

Article 174

Torture is committed by the authority or public official that exceeding his/her post competence, and with the aim of obtaining a confession or piece of information from whoever or to punish him/her for any action that he/she could have been committed, or is suspected of having committed it, the public official subject him/her to circumstances or procedures that for their nature, lengthen or other circumstances may inflict him/her physical or mental sufferings, the suppression or disability of his/her cognitive, discerning or decision faculties, or any other way that his/her moral integrity may be attacked. Whoever is found guilty of torture will have to serve an imprisonment sentence term ranging from two up to six years, if the attack were severe and an imprisonment term ranging from one up to three years, if not. Besides a sentence ranging from eight to twelve years of ineligibility for public office/civil service will be imposed apart from the penalties above mentioned

The same penalties will be respectively applied to an authority or public official who is working in prisons or community homes, or minor houses of correction that may commit acts in above referred section on any arrestee, inmate, or prisoner.

Article 175

The authority or public official that / taking unfair advantage of his/her office - and apart from the facts dealt with under the above article – may commit an outrage on the moral integrity of a person will be punished with an imprisonment term ranging from two up to four years, if the attack were severe and an imprisonment term ranging from six months up to two years, if were not. The torturer, will be anyhow punished with separate penalties to the ones before mentioned, and an especial ineligibility for public office or official post, ranging of two up to four years term

Article 176

The penalties under the above article will be applied to those public officials or authority that no accomplishing the duties inherent to his/her office would allow any other person to perpetrate such offences.

Article 177

If in the offences covered in the previous articles, besides the violation to a person' s moral integrity takes place a harm or damage against life, physical integrity, health, sexual freedom or goods pertaining to the victim, or a third person, the actions will be separately punished with the corresponding penalties to the crimes or offences committed, except when a crime is singularly punished by law".

A comparative survey between the former article 204 bis and the present article 174 of the new Criminal Code enables us to notice the following:

The uniqueness of the term "torture" applied to "the authority or public official".

The extension of the crime type, not only when a confession or a piece of information is intended but also to the punishment for it.

A more accurate description of the crime, which is including both the somehow “bare” term of torture and “scientific” psychological practices

The amendment of the penalty of ineligibility that is not longer “special” to become absolute /”complete” (with the special ineligibility the torturer was allowed to continue as a public official in a Department of the Civil Service different from the one she/he was working in when she/he committed the crime. The absolute ineligibility for public office/civil service prevents from the performance of any public activity or post).

The independence between the length of the term of imprisonment and the one of absolute/complete ineligibility for public office/civil service

Apart from becoming an absolute ineligibility, the term of this measure will range from eight to twelve years.

Lengthening of the criminal penalty for torture. Formerly it was an arrest (ranging from a month and a day up to six months) and now it has been raised up to an imprisonment term ranging from two to six years, if the attack were severe and an imprisonment term of one up to three years, if not.

Therefore, nowadays torture has an accurate definition and its penalty is in accordance with a serious offence (under the article 33 of the enforced Criminal Code, in the classification of penalties as – serious, less serious, no serious - “the imprisonment over three years.” is included as a serious penalty

The Spanish Legal System foresees, in the *Ley Orgánica* Organic Law 2/1986, enacted on 13 March, on Law Enforcement Agencies, pursuant to the outlines set by the European Council - in its “Police Statement” - and by the United Nations General Assembly - in its “Code of Behaviour/Practice for Law Enforcement Agents” - sets forth the basic principles of performance of Public Order officers, as an explicit “Deontological Code of Professional Conduct” that binds all members of law enforcement agencies, imposing the observance of the Spanish Constitution, the standing service to the community, the adequacy between means and aims as an illustrative criteria for their performance, the observance of the honour and dignity of human beings and the accountability in the performance of their duties.

The prime lines of performance for the members of Law Enforcement Agencies are:

In compliance with the Spanish Legal System, especially:

To perform their duties with full observance to the Constitution and other legislation.

In the performance of their duties, they should act with political neutrality and fairness and consequently, with no discrimination due to race, religion or opinion.

To be subjected – in their professional performance – to hierarchy and subordination principles. Under no circumstance, the due obedience could embrace instructions implying the fulfilment of actions that were obvious crimes or opposed to the Constitution.

To co-operate with the Judiciary and support it under the terms of the law.

Relationship with the community. Noteworthy:

To prevent, when in professional duty, any corrupt, arbitrary or unfair practice that could entail physical or moral violence.

To observe, at all time, correct and careful manners in their relationship with citizenship, to whom they will try to help and protect, case there were advisable circumstances, or they were requested to do it. In every performance of duties, they should provide due information, as comprehensive as possible, about causes and aims of those.

When performing their duties, they should act with the due decision and without delay when a serious immediate and irreparable damage could be prevented. During their performance in the previously mentioned cases, their action should be based on the following principles: congruence, timely and sensibility to the usage of the available means

Guns only should be used in those cases when there is a reasonable risk for their lives, their physical integrity or to the life of third persons, or in those circumstances that could involve a serious risk to Public Order and in pursuance of the above referred principles.

Treatment of detainees, namely:

The members of Law Enforcement Agencies should identify themselves as such, at the time of effecting the arrest

They will keep watching over the life and physical integrity of those detained persons, or under their custody and they will respect the person' s honour and dignity.

They will fulfil and diligently observe the stipulated periods and requirements demanded by the legal system when a detention is carried out.

Professional commitment

They should perform their duties in a full-time basis, they should act at any time and moment, whether they were on duty or not, in defence of Law and Public Order

Professional secret

They should keep absolute secret about all information they acknowledge, as a consequence, or result of the performance of their duties. They will not be forced to disclose their sources of information, except when they are carrying out their duties, or in pursuance of law, they were imposed to act otherwise.

Liability:

They are personal and directly responsible for the acts carried out by them during their professional performance, if they would violate or break legal regulations, besides those professional rules governing their profession and the above mentioned principles, without prejudice to pecuniary loss which Administraciones Públicas (Ministry for Public Service) could be liable for.

Those fundamental principles of performance of the Law Enforcement Agencies are the main axes on which the performance of the police duties are focused on, and at the same time, they are emanating from more general constitutional principles, as the lawfulness or consistency with the judicial system.

The active and intense (mutual) understanding between the community and police officers is the main reason of the existence of the late and highlights the direct relation of the service provided by the police to the community, which requires them the highest impartiality and the avoidance of any arbitrary or discriminatory action.

However, it should not left behind that the Law Enforcement agents represent the axis of a difficult balance of weights and counterweights; powers and duties, as they should protect the life and integrity of persons but at the same time, they are required to carry guns; they should treat correct and carefully the members of the community but they should act with rigour and firmness when circumstances so require it. In any case, the usage of force, regardless the result should never be linked to the intention of inflicting ill-treatment. And the balance able to achieve such equilibrium (among those contrasted forces) can not be other than the requirement of a constant training and further training based on a suitable selection guaranteeing the psychological equilibrium of the person.

In this context, it should be reminded that there is a large number of dangerous criminals, who normally are armed and they do not doubt in trying to make use of their guns when they have the feeling that they are going to be detained. It is the reason why the police officers have to use their physical force to neutralise them but always under proportional criteria and never going too far from the needed action or the person requirements. It should not be used more force than is strictly necessary when effecting an arrest.

In spite of the above, when a police officer goes too far in his duties, his/her misconduct could be prosecuted in Court, but also the government bodies make use of all available means to establish liability. The 1997 Ombudsman Report contained this way of operation in the Spanish Government Bodies/Civil Service.

Consequently, the (*Ley Orgánica)* Organic Law 11/1991, dated in 17th June, on the Guardia Civil Disciplinary Measures / Rules foresees, for instance, as a very serious misconduct (article 9.2) to take advantage of his/her duties and practice inhuman, ill-treatment, degrading or to punish persons under his/her custody. A penalty of ineligibility for Civil Service could be enforced for this misconduct – article 10.3 and 17 – (that it is to say, removal from the Guardia Civil Force).

Likewise, the Cuerpo Nacional de Policía (National Police Force) Disciplinary Measures passed by Real Decreto 884/1989 on 14th July, foresees under its article 6.3 as a very serious misconduct offence [in compliance with article 27.3 of the (*Ley Orgánica)* Organic Law 2/1986 dated on 13th March, on Law Enforcement Agencies] the misuse of an agent authority and the practice of ill-treatment, degrading, discriminating, humiliating treatment to people under his /her custody that could enforce a penalty of removal from his /her duties - ineligibility for his /her duties.

Law Enforcement Agencies are given a permanent training, basis- in compliance with article 6.2, paragraph a), b) and c) of the (*Ley Orgánica)* Organic Law 2/1986, dated on 13th March, on Law Enforcement Agencies that sets forth: ” the training of those (agents) should be fitted with the prime lines of performance and should have a professional and permanent nature”

The permanent and professional training of the Law Enforcement Agencies’ members is aimed at preparing the police agents to perform their duties foreseen by the Spanish Constitution (articles 104 and 126) and the (*Ley Orgánica*) Organic Law 2/1986 (articles 11 and 12) to train them on those subjects or techniques where special knowledge or abilities are required.

The several syllabuses of the different training Centres for the different levels and posts are covering, among other subjects and topics, the major international Rules on Professional Deontology:

“The Statement on the Police” by the European Council (Resolution 670 dated on 8th May 1979).

“Law Enforcement Agents Conduct/Behaviour Code” by the United Nations (Resolution 34/169, dated on 17th December 1979).

“Basic principles on the usage of strength and fire arms by the Law Enforcement Agents” by United Nations (8th Congress, La Habana, August-September 1990)

Compendium of principles to protect all persons submitted to /suffering from any kind of arrest or imprisonment “ by United Nations. (Resolution 43/173, dated on 9th December 1988)

“Journal of Minimal Rules for detainee treatment” by the European Council (Resolution 73/5, dated on 19th January)

Reference is made to the paragraph 15 of the CPT Report

Regarding the contents under this paragraph, the Administrative Authority only transfers it to the Judicial Authority, as it has been previously reported to this Committee in other occasions. The Administrative Authority is strictly observant to the Constitutional Law (article 17.1 of the Constitution) that forbids interfering with the Judicial Power Authority.

The Judiciary independence is a key feature in the Spanish Legal System, even in the Spanish Constitution is underlined in its article 17.1, expressing: “the justice is emanating from people and is administrated, on behalf of the King, by Judges and Magistrates who are making up the Judiciary. They are independent, they cannot be removed from their posts, they are responsible and only subject to the rule of law”.

In Spain, every act carried out by the Civil Service or its agents are subject to judicial control. This control is exercised, apart from the ordinary proceedings, through extraordinary legal remedies for protection against fundamental violations, as established under article 53.2 of the Constitution.

The Spanish Constitution under its article 106.1 establishes the rule of law, and subsequently, the submission of all Civil Service and other public authorities to the Law under the control of judges and Courts, the legal mandate, the right to the presumption of innocence, the right to the defence and to the legal certainty and the interdiction at the effective discretion of judges are fully guaranteed by both constitutional and ordinary laws (under articles 6 and 24; articles 1 and 4 of the Criminal Code and article 1 of the Criminal Procedure Law).

As a result of the previously stated, it was submitted to the General Council for Judiciary what was expressed by this Committee and hereinafter it follows the verbatim answer offered by the highest Judges and Magistrates governing body:

STATEMENT ON THE REPORT DRAWN UP BY THE EUROPEAN COMMITTEE FOR TORTURE PREVENTION

BACKGROUND

Dated on twenty-six October Nineteen ninety-nine an official letter/communiqué sent by the Technical General Secretary of the Ministry of the Interior was registered. It was enclosed to this letter the Report drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its last visit to Spain.

As it was established in the mentioned official letter “as there were some remarks contained in the Report at are concerning the Judiciary, a copy of it is submitted .... making clear at the same time that, in the strictest observance of the judicial independence foreseen under article 117 of the Constitution and provided that this Technical General Secretariat has to draw the response of the Spanish Government to the mentioned Report, it would be most useful to have the comments and remarks that this Constitutional Body may deem appropriate to include”

Finally, in the same official letter it was stressed that both the Report and the supporting data and even the relevant consultations have a “confidential” nature. We beg you “the highest confidentiality” up to the moment that the Spanish Government authorises the release of the Report.

The Standing Commission of the Council was informed following the reception of the mentioned official letter. This Body, during its meeting held on 27th December 1999, agreed on the following:

EXPOSITION

FIRST. The several contents included in the Report submitted to the General Council of the Judiciary have an impact upon a variety of groups in accordance with their statutory authority on circumstances where normally there are restrictions to fundamental rights.

They could be grouped, just as an informative approach, in the following sections:

Law Enforcement Agencies.
Performances to prevent crimes (police arrest/detention, page 16)

Prison officers
Ill-treatments (page 34)

Forensic Doctors
Expert practice in Psychiatric Hospitals/Establishments (page 65)

Judges and Magistrates
Safeguards of the rights of the detainees/arrestees (page 22)
Safeguards of rights of the prisoners (page 38)
Other practices in the prison field (page 72)
Hospitalisation in Psychiatric Centres (Page 39)

Throughout its pages, the Report contains assertions and assessments that means a real censure of the Judges and Magistrates practice, such as in paragraphs 62 and 63 in page 26 where it is stated: “...a number of cases of complaints of ill-treatment of prisoners by (prisons) staff not being promptly investigated are currently...”

In other cases, the Report recommends the revision of “the procedures applied by the judicial authorities to investigate complaints of ill-treatment of prisoners...” (page 26)

SECOND. Starting from the information included in the previous section, two considerations could be made with regard to the Report contents subject of this communication. Firstly and in general, it must not be disregarded the quintessential duty that is incumbent upon the Judiciary members -the safeguard and protection of fundamental rights and public freedoms, by express mandate of Article 9 of our Constitution 1978, related to Article 24 and –very specially- the Article 53. It is only from a permanent interpretation of judicial claims of any kind in accordance with the constitutional criteria, that the protection of the legitimate rights and interests that the Constitution guarantees to any person can be made effective. Besides Judges and Courts have the duty to provide this protection.

Therefore, the General Council of the Judiciary does not need to insist in the right fulfilment of this duty because it is directly imposed by the Constitution. In the exercise of its powers, this Council can not issue either general or particular instructions for Judges and Courts on the enforcement of laws because it is expressly banned under Article 12.3 of the Organic Act of the Judiciary 6/1985, dated 1st July. Nevertheless, it does not prevent the General Council of the Judiciary –within the framework of its powers- from carrying out a permanent follow-up of the consistency of this law enforcement with the Constitution. Specifically by means of the guarantee of independence and particularly by carrying out the inspection function directly conferred to this Council by the Article 122 of the Constitution.

In this regard, it is possible to emphasise several actions:

Actions by the Disciplinary Committee

Organisation of training activities:
In Criminal Procedural Law matters
In the general field of Human Rights

Actions by the Disciplinary Committee

With the aim of providing concrete data on the matter in hand, we have asked the Inspection Service of the General Council of the Judiciary for the statistics on complaints related to this issue that have been received and dealt with by them. It can be verified that, along the year 1999, a total of 53 formal complaints -including the complaints made by prison inmates- have been lodged in the Council. Generally, they are incidents related to the treatment received in prisons, in its most various aspects: from the quality of the meals to the prison officers' treatment. These incidents were reported to Prison Supervisory Judges whose response was not satisfactory, according to the mentioned complaints.

All the complaints were dealt with, that is to say, they were sent to the concerned Prison Supervision Court and, whether appropriate, the relevant investigations were made in order to verify the truth of the reported facts and the possibility of imposing disciplinary measures. In very specific cases, they were also sent to the Directorate General for Penitentiary Centres.

All these cases resulted in the shelving of proceedings, with the due notification to the claimant, stating the appropriate appeals.

Organisation of training activities

In this point, it is to be emphasised that the General Council of the Judiciary is systematically organising training courses and seminars related not only to the Prison Supervision field but also to the Charged Person's Statute in general. On this issue, there are annual publications on training activities, especially those within the collection "Cuadernos de Derecho Judicial" (Judicial Law Notebooks) but they do not include all these activities in full. Besides, it is to be noted as a recent new that -on a proposal of the Standing Committee- in the 17 November 1999 Session, the Report sent by the Association against Torture, on behalf of the Co-ordinating Committee of Solidarity with Prisoners, came to the knowledge of the Plenary Session. It was published on 19 October 1999, under the title "Torture and Degrading Treatment in the Spanish Prisons 1998/1999".

In the discussions of the above-mentioned Plenary Session, data concerning Prison Supervision Courts were made known. According to these data, these Courts should be duplicated for an optimum adaptation to the current Spanish prison population. And also, it was carried out a serious reflection on the existing Council's records resulting from similar documents and actions in previous occasions.

As a conclusion, the Plenary Session agreed to increase the number of courses and interdisciplinary activities concerning prison problems –within the framework of the 2000 Training Plans for Judges and Magistrates. Likewise, in the Item 15 of the Agenda it was decided to hold a working meeting of Prison Supervisory Judges -in the course of this year- in order to carry out a detailed study of the Report sent by the Association against Torture.
Similar comments may be made about the section related to the Human Rights treatment. To quote expressly the latest, it can be mentioned here the book "Consolidación de Derechos y Garantías: los grandes retos de los derechos humanos en el siglo XXI" (Rights and Safeguards Consolidation: the Great Challenges of Human Rights in the 21st Century) that has been recently published by the Council. This book collects the papers discussed in the Seminar that was held in commemoration of the 50th Anniversary of the Universal Declaration on Human Rights, which was chaired by His Royal Highness our Crown Prince.

THIRD. From the General Council of the Judiciary, it is only possible to affirm a position of proven sensibility towards the function of safeguard of human rights that is the responsibility of all and every Judge and Magistrate. And also, within the framework of the Council exercise of its powers, to insist in the maximum respect for the fundamental rights of persons, which is to be demanded of every public authority.

In this regard, it can be fully guaranteed the attention and efforts of the Judiciary's governing body. Due to the respect for the constitutional responsibilities of every power of the State, it should not be appropriate either to consider here some aspects commented in the received Report, such as those regarding the goodness or defectiveness of the laws in force, or the zeal of law enforcement members in the performance of their duties.
Paragraph 16 of the Report

In 1997, in the National Police Force, eighteen disciplinary proceedings were initiated against twenty-two officers.

Six of those proceedings have been closed due to lack of evidence concerning the officers responsibility. In three of them the officers have been convicted. And eight of them are at a standstill because the decisions concerning the criminal proceedings instituted by the Courts in connection with these cases are still pending.

In 1998, eight disciplinary proceedings were initiated. One of them has resulted in a court decision of conviction, two of them have been dismissed and the other five are still pending due to the same reasons as the cases of 1997 (Please find enclosed the judicial sentences).

With regard to the Civil Guard Force, we also enclose an exhaustive account of the number of disciplinary proceedings and judicial proceedings during 1997-1998, as well as the result of these proceedings.

2. Safeguards against the ill-treatment of persons in custody

Paragraphs 19, 20 and 21 from the Report.

Legal assistance

In the Spanish legal system, the legal assistance to persons deprived of their liberty is established at the highest level and has a double projection, as it is applicable both to persons in police custody and to persons who have been already charged or accused in criminal proceedings.

So, the Spanish Constitution, in Article 17.3, guarantees the assistance of a lawyer to the arrested person during the police enquiry and the judicial proceedings, as provided for in the laws. And in Article 24.2 this same right is recognised in the framework of the effective protection of the court, meaning a guarantee of due process to the accused or charged person.

Nevertheless, the Spanish Constitution, in Article 55.2, has introduced an authorisation to the legislators for establishing a specific regime of partial and temporary suspension of certain rights, among them the right to legal assistance to the arrested person, with the aim of making easier the investigations on armed gangs or terrorist groups.

However, those are cases of suspension of or limitation on certain fundamental rights, that is to say, cases of temporary legal conditions when the regimes to be applied are not those envisaged as regular or ordinary, but a different regime established in response to a specific threat to democratic order.

The Article 55.2 of the Constitution is also surrounded by several cautions. First, the suspension of certain fundamental rights must be adopted by an Organic Act, that is to say, by the absolute majority of the members of the Congress. But, above all, the Article 55.2 provides certain guarantees, among others those regarding the necessary intervention of courts and the proper parliamentary control (Guarantees of intervention of courts are included in the present Article 520 (bis) of the Code of Criminal Procedure).

Well, coming back to the double constitutional projection of the right to legal assistance, it is possible to point out that our Constitution has a special parallelism with the international instruments on Human Rights signed by Spain. But it goes further because the content of the Spanish Constitution is wider and more generous, explicitly at least, that the content of those international instruments.

So, the European Convention on Human Rights (1950) establishes the right to “due process”, determining the rights of the accused and specifically mentioning his/her right to be assisted by a lawyer chosen by him/her, but it does not include the legal assistance among the rights of a person in preventive detention. This same model appears, without any substantial difference, in the Articles 9 and 14 of the International Covenant on Civil and Political Rights (1966).

Therefore, in these International Instruments the differentiation between arrested and accused person has special importance with regard to the right to legal assistance, and it is also evidenced by the case law of the European Court of Human Rights.

The Code of Criminal Procedure -which expressed the authorisation for establishing the legal terms of legal assistance to arrested persons, as provided for in the Spanish Constitution- in the Article 520 recognises the (right to) free choice of a lawyer both for the arrested and charged person, except for (Article. 527) those cases when they were held incommunicado -which will be always decided by the judge- when the right to legal assistance will be implemented by appointing a lawyer from the legal aid service.

From the above, it can be deduced that, in Spain, every person enjoys the right to legal assistance as from the outset of his/her custody. And only in those cases when the judge could decide that the detained person has to be held incommunicado -due to exceptional circumstances- he/she shall not be able to enjoy the right of access to a lawyer of his/her own free choice. But, anyway, he/she shall be assured of the designation of a legal aid's lawyer.

In this point, it would be advisable to repeat that the restraints -included in the Article 527 of the Code of Criminal Procedure- are always carried out under the strict authorisation and supervision of the judicial Authority, because to hold incommunicado a detained person only can be decided by him/her, by means of a duly grounded writ laying out the reasons for that decision.

Likewise, it can not be disregarded the context in which the person in custody is held incommunicado, aimed basically at a full investigation in cases of a specific social alarm -such as a terrorist attack- when it is allowed to delay the moment when the arrested person is to be brought before a court. In this context, it seems more reasonable, appropriate and not arbitrary that a lawyer can not be chosen, because -in practice- it would mean the possibility of breaking the incommunicado situation.

Having in mind that the prosecution and punishment of crimes is an essential element in the defence of social peace and security of citizens, which are goods recognised in the Articles 10.1 and 104.1 of the Spanish Constitution, -and, therefore, they are constitutionally protected- the restraint set out in the Article 527 of the Code of Criminal Procedure is justified in the protection of these goods. When they are in conflict with the right to legal assistance to arrested persons, the legislator -using the specific reserve vested on him under Article 17.3 of the Constitution- reconciles them by avoiding, temporary and partially, the possibility of free choice of a lawyer.

Finally, it would be advisable to make a brief reference to the analysis made on this law (Code of Criminal Procedure) by our Constitutional Court -supreme interpreter of the Spanish Constitution- which has confirmed that it is consistent with our Constitution. The Constitutional Court specifically states:

- Within the constitutional framework, the legislator may impose the restraints on the normal content of fundamental rights which could be justified in the protection of other constitutional goods and that would be in proportion to it, provided that they should not be detrimental to the essential content of the rights.

- The special nature or seriousness of certain crimes or the combination of subjective and objective circumstances surrounding them, can make indispensable that the police enquiries and judicial proceedings aimed at investigating them will be carried out in the highest secret, in order to avoid that the knowledge of the investigation state by persons alien to it may favour that persons involved in the crimes which are being investigated avoid legal action, or that evidences of the crimes would be destroyed or concealed.

- Under the Code of Criminal Procedure, judicial authorities are vested with the exclusive power to order that the arrested person be held incommunicado, a short-lasting exceptional measure aiming at isolating him/her from personal relations that could be used for transmitting outside news on the investigation, to the detriment of its success. In such a situation, the imposition of a legal aid's lawyer appears as another measure from those established by the legislators -within their powers of regulation of the right to legal assistance- in order to strengthen the criminal investigations secret.

- The restraint established in the Article 527.a) of the Code of Criminal Procedure is justified in the protection of the goods as set forth in the Articles 10.1 and 104.1 of the Constitution.

- The essence of the arrested person's right to legal assistance must be found not only in the form of designation of a lawyer but also in the effectiveness of his/her defence, because the Constitution's aim is to protect the arrested person with the professional assistance of a lawyer, who will give him/her professional aid and advice in law in the moment of the arrest; and this aim is objectively achieved with the designation of a legal aid's lawyer, who guarantees the effectiveness of the assistance.

The free choice of a Lawyer is a part of the normal content of the arrested person's right to legal assistance, but it is not a part of its essential content, because its deprivation and subsequent compulsory designation of a legal aid's Lawyer do not render this right unrecognisable or impracticable, nor divest it of the necessary protection.

In order to ensure forcefully the implementation and right development of this safeguard, the Article 537 of the Spanish Criminal Code 1995 has introduced the following offence:

"Any authority or public official who would hamper or prevent the arrested person or prisoner from enjoying his/her right to legal assistance or would foster or favour his/her waiver to legal assistance, or would not inform the arrested person or prisoner of his/her rights and the reasons for his/her arrest -immediately and in a form understandable to him/her- shall be punished by a fine of more than four and less than ten months, and a penalty of special ineligibility for public office/service service for more than two and less than four years."

Consequently, it can be concluded that the Spanish laws on matters of legal assistance to the arrested person, are not only and in any way inconsistent with the International Conventions signed by Spain -whose interpretative value of the Human Rights and Fundamental Freedoms is established in Article 10.2 of the Constitution- but they have also a wider content.

Paragraphs 22 and 23 of the Report

Notification of custody

The CPT maintains that the five days period of time -as provided for in the Spanish laws- during which it can be denied to detained persons in incommunicado situation the right to have the circumstances of this situation made known to a relative or a third person, should be shortened to guarantee a better balance between the legitimate requirements of the criminal investigation and detained person's rights.

As it can be inferred from the Spanish laws, every person -from the moment of his/her arrest- enjoys all the rights as laid down in International Conventions so that the fundamental safeguards of being treated in accordance to the respect to Human Rights are not violated. And the restriction on this right is only stipulated in exceptional circumstances that would demand it, in case of being involved other rights and interests which otherwise could not be guaranteed.

Both in national and international regulations, there is always a provision for the restriction of the fundamental rights enjoyed by any person (always under the strict control of the relevant authority, in our case the Judge) in those cases when a situation of special and exceptional characteristics would demand it.

As we have previously pointed out, the Article 55.2 of our Constitution provides for an authorisation granting the legislators to establish a specific regime of partial and temporary suspensions of certain rights. They are transitory situations when the regime of fundamental rights' exercise is not the established as regular or ordinary, precisely because -in this special case- a situation of specific threat to democratic order is to be faced.

In order to comply with this provision, the Code of Criminal Procedure grants the judicial authority the exclusive power to decide the incommunicado situation of the detained person, exceptional measure that should not exceed five days, and whose aim is to isolate the detained person from personal relations.

It should not be forgotten that to hold the detained person incommunicado can be only decided by the Judicial Authority via a duly reasoned decision, what distances this measure from being taken by any other authority and from being just adopted at discretion. To this sense, Article 531 of the Spanish Criminal Code, forbids that any authority or public official may decide or enforce or extend the incommunicado situation of an arrested person, prisoner or convict, failing to comply with the stipulated periods or the rest of the constitutional or legal safeguards.

The European Court for Human Rights admits that – exceptionally and for reasonable causes- the exercise of the rights of the detained person may be delayed, which must respond to strict demands of a particular situation and the type of offences to which it is applied, according to circumstances.

In our particular case, it cannot be forgotten the context in which the detained person is held incommunicado, whose ultimate aim is a full investigation of the terrorist action. So, the reason for this measure is the special nature or seriousness of the offences involved and the circumstances surrounding them, which could make indispensable that the police enquiry and legal proceedings aimed at their investigation would be carried out in the highest possible secret.

Therefore, there should be carefully balanced the detained persons' rights, on the one hand, and, on the other, the rights of the whole population that is seriously threatened by the terrorist actions. The necessity of achieving this due balance between the different rights and interests at stake is especially important in the above-mentioned situation.

Therefore, although the Article 520 of the Code of Criminal Procedure provides for the right - in general - 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 granted to all the persons arrested according to legal provisions, restrictions under the Article 527 of this Code, in case of incommunicado situations, directly serve to the protection of values guaranteed by the Spanish Constitution and allows the State to perform its constitutional duty of providing citizens with security.

The incommunicado situation of a person in custody adopted under the conditions stipulated by law, as well as the temporary restriction -five days as a maximum- on the right to inform on his/her arrest of the person in custody who is held incommunicado (right which he/she will be able to exercise once the incommunicado situation will finish), can not be qualified as disproportionate measures, as they are in a reasonably relationship to the aimed result, that is to say, the means are adequate to fit in with the end.

In this regard, it must not be forgotten that the establishment of the *habeas corpus* remedy -specifically provided for in Article 17.4 of the Constitution- ensures the immediate handing over to the judicial authority of any person illegally arrested. With regard to this, the Organic Act 6/1984, May 24th, recognises the right of both the person who is deprived of his/her liberty and his/her relatives -as well as the Public Prosecutor, the Ombudsman, or the competent Judge- to ask the competent Examining Magistrate for determining the legality of holding this person in custody.

In this way, it is consolidated the right of the person in custody to get that, in a very short period of time, the Judicial Authority be aware of, examine and decide on the lawfulness of his/her situation of deprivation of liberty.

As a clear strengthening of the protection of the right to liberty, we mention Articles 530 to 533 of the Criminal Code 1995, which penalise the offences committed by public officials against constitutional liberty.

"Article 530: The Authority or public official who –when there is a case for an offence-decides, enforces or extends a deprivation of liberty to any arrested or detained person or convict, failing to comply with the stipulated periods or the other legal or constitutional safeguards, shall be liable to be punished by special ineligibility for any public office/civil service for a period between four and eight years.

Article 531: The Authority or public official who –when there is a case for an offence-decides, enforces or extends the incommunicado situation of an arrested or detained person or convict, failing to comply with the stipulated periods or the other legal or constitutional safeguards, shall be liable to be punished by special ineligibility for any public office/civil service for a period between two and six years.

Article 532: If the facts described in the two above Articles would be committed by serious imprudence, they shall be punished by suspension in any public office/civil service for a period between six months and six years.

Article 533: Any public official serving in prisons or detention centres for minors who imposes improper disciplinary measures or privations to the inmates or prisoners, or treats them with unnecessary severity, shall be liable to be punished by special ineligibility for any public office/civil service for a period between two and six years."

Paragraphs 25 to 27 of the Report

Right to access to a doctor

The CPT considers the *Protocolo* (standardised form) -that forensic doctors must use during their medical examinations to arrested persons- to be a significant contribution to the prevention of ill-treatment. This *Protocolo* was adopted by an Order of the Minister of Justice on 16 September 1997. The CPT states, however, that this *Protocolo* does not provide for the recording of the doctors' conclusions and, in particular, their opinions as to the degree of consistency between any allegations of ill-treatment and the objective medical findings.

The *Protocolo* used by forensic doctors during their medical examinations to arrested persons -according to both the Spanish medical-legal tradition and international experience- is considered to be an objective instrument of exhaustive character which constitutes the basic element in the relationship between forensic doctors and the relevant legal authority. It is aimed at being used by forensic doctors when performing medical examinations to the arrested persons, so as to collect the medical information in an homogeneous way in all cases and to record it in the most clear possible form.

As such an objective instrument, the *Protocolo* must record all the data of the medical history of the arrested person including the allegations made by the arrested person on the treatment received during and after the arrest, in the "current situation" point. Due to its exhaustive nature, the *Protocolo* also includes all the points and even drawings that let the forensic doctor to record the results of his/her professional medical examination.

Once the medical examination has been performed and the *Protocolo* requirements have been completed, it is available a very useful instrument that objectively reflects a specific situation: la medical situation of the arrested person.

In view of the *Protocolo*, it can result that:

The arrested person states a correct treatment and the medical examination's conclusions do not appreciate any objective finding related to ill-treatment.

The arrested person does not allege ill-treatment, but the medical examination performed results in objective findings which could be consequence of ill-treatment.

The arrested person alleges ill-treatment but the medical examination performed does not result in objective findings which could be consequence of ill-treatment. Or otherwise the allegations of ill-treatment made are partly or fully consistent with the results of the medical examination.

But the work of the forensic doctor does not finish by filling in the *Protocolo*. Once it has been completed, the doctor hands it direct and exclusively over to the competent court.

This handing over is carried out by the forensic doctor by means of an appearance before the Judge, where the doctor will state his/her conclusions in view of the *Protocolo* and, in its case, the reasons for further examinations which he/she would consider appropriate to make. If the Judge deems it appropriate, the forensic doctor -as an expert- will submit a report where he/she will assess and evaluate the complaints of the person in custody, in view of the results of the medical examination. The Judge may decide –during the investigation- that further tests will be made and even that a new medical examination will be carried out, where a doctor nominated by the family of the person in custody will participate.

The new tests or the results of the new full medical examination will be included into the case, followed by an expert report where the participating doctors will make their assessment on the subjective data resulting from the tests and/or the full examination with regard to the claims of the person in custody.

When the time of the hearing comes, and in cases when there is a *Protocolo* with objective data related to possible ill-treatment, the forensic doctor, as well as doctor(s) for the defence, will appear before the court as expert witness and express their assessments.

The *Protocolo* is an exhaustive instrument that includes only
Therefore, it can be concluded that:
and exclusively objective data.

- The objective data recorded in the *Protocolo* may determine the lack of ill-treatment or, on the contrary, the reality of unmistakable signals of an alleged ill-treatment. In the first case, there is no problem and, in the second, the Judge will decide what action is to be taken for the investigation of the alleged offence. This investigation may be also instigated by the Public Prosecutor, the counsel for the defence of the person in custody and even by any citizen through the public prosecution.

- If the objective data recorded are not categorical and unmistakable, the Judge will request the forensic doctor to make an expert report complementary to the *Protocol* where he/she will express his/her assessment, that is to say, his/her conclusions in the view of the data resulting from the examination with relation to the complaints of the person in custody.

- Also, complementary tests may be carried out by judicial decision at the proposal of the doctor. Likewise, a new medical examination may be carried out, even with the participation of a doctor nominated by the family of the person in custody, together with the forensic doctor(s). Both possibilities are set out in a report followed by the assessment of every participant doctor with regard to the recorded objective data.

- In the hearing, in view of the *Protocolo* contents, the forensic doctor as well as the defence or prosecution doctors set out their assessments to the Court, governing the contradiction principle.

Therefore, the Spanish Government understands that the distinction and no confusion between objective data (the *Protocolo*) and subjective interpretations (the forensic doctors opinion) are the reasons which justify the no introduction of the forensic doctor conclusions in the *Protocolo* –as another of its paragraphs- in view of the examination results with regard to the complaints of the person in custody. The forensic doctor opinion –his/her assessment- is submitted to the Judicial Authority and is produced during the process whenever necessary (immediacy principle).

To conclude this section, it must be pointed out that the right to be examined by the forensic doctor or his/her legal substitute in his/her absence, or by the doctor of the Institution where he/she is in custody, or by any other doctor dependent on the State or another Public Administration, is guaranteed by Article 520 of the Criminal Procedure Code. Only in the case provided for in Article 520 bis of this Code the rights of the person in custody are restricted as provided for in Article 527 of this Code.

Paragraphs 29 and 30 of the Report.

Inspection Procedures

In Spain, there is an independent authority, the Ombudsman – invested with wide constitutional powers- who pays a great number of visits to different establishments, among them centres where people deprived of their liberty are placed.

The Spanish Constitution in its Title I, Chapter IV on "Guarantees of Fundamental Rights and Liberties", Article 54 institutes the Ombudsman defining him/her as the High Commissioned of the *Cortes Generales* (Parliament) who is appointed by them to defend the rights set forth in the Title I.

Article 54 of the Spanish Constitution left little room for doubt on who would nominate the Ombudsman when affirming categorically that the *Cortes Generales* shall do it. Therefore it is quite clear the dissociation and independence of this Institution in respect of the Executive (Power). This independence is also availed by Articles 6 and 7 of the Organic Law 3/1981, dated April 6th, which regulates the Statute of the Ombudsman. So, Article 6 textually states: "The Ombudsman shall not be subject to any imperative mandate. He/she shall not receive instructions from any Authority. He/she shall carry out his/her duties with autonomy and according to his/her own judgement".

Both the Constitution and Organic Law 3/1981 –which regulates the concept of Ombudsman- confer on this Institution a very wide area of responsibilities, aiming at making real the protection of rights and liberties under the Title I of the Spanish Constitution, as well as its defence against the Administration, in case of abnormal fulfilment or evident failure to comply with the guiding principles of administrative performance as set out in the Article 103 of our Constitution.

This wide set of powers is clearly laid down in the Organic Law 3/1981, as follows:

"Article 9

Paragraph 1. The Ombudsman may –ex officio or ex parte- initiate or proceed with any investigation leading to clarify the acts and decisions of the Public Administration and its agents with regard to citizens, in the light of the provisions of article 103.1 of the Constitution and the respect for the Rights set forth in its First Title.

Article 10

Paragraph 1. Any natural or legal person appealing for a legitimate interest shall be able to address to the Ombudsman without any restriction. Nationality, residence, sex, age minority, legal incapacity, being an inmate in a penitentiary or prison or, in general, any special relation of subjection to or dependence on a Public Administration or Authority could not be an impediment to it.

Article 19

Paragraph 1. All the public authorities are compelled to help urgent and preferentially the Ombudsman in his/her investigations and inspections.

Paragraph 2. During the checking and investigation stage of a complaint or in an ex officio initiated file, the Ombudsman, his/her Deputy or the person to whom he/she delegates, may appear in person in any Public Administration centre or any office dependent on it or any public service, in order to check as many data as necessary, make personal interviews as appropriate or study the needed files and documents.

Paragraph 3. To this effect, access to any file or any administrative or other document related to the activity or service subject of the investigation can not be denied to the Ombudsman, notwithstanding the provisions of Article 22 of this Act.

Article 22

Paragraph 1. The Ombudsman may request to the public authorities as many documents as he/she deems necessary to carry out his/her duties –including documents classified as secret under law. In this last case, the failure to deliver these documents should be decided by the Cabinet of Ministers. The decision shall be accompanied by a certification certifying the resolution of refusal.

Paragraph 2. The investigations made by the Ombudsman and the staff reporting to him/her, as well as the procedural steps, will be carried out within the highest confidentiality in relation to both the individuals and Public departments and other Bodies, notwithstanding the considerations that the Ombudsman would deem appropriate to include in his/her reports to the Parliament. Special protection measures shall be decided with regard to documents classified as secret.

Paragraph 3. When he would understand that a document, which has been declared secret and has not been sent by the Administration, could decisively affect the good running of the investigation, he shall bring it to the knowledge of the Congress Senate Mixed Committee referred to in Article 2 of this Act.

During the last years, the Ombudsman, using the wide powers vested in him by the Constitution and by his Statute, has visited a great number of centres in which people deprived of liberty are placed. As an example, he paid the following visits between 1995 and 1998.

YEAR 1995

Penitentiary Centres:

Picassent (Valencia)
Valladolid
Soto del Real (Madrid)
Herrera de la Mancha (Ciudad Real)
Alcázar de San Juan (Ciudad Real)
Puerto de Santa María I (Cádiz)
Puerto de Santa María II (Cádiz)
Jerez de la Frontera (Cádiz)
Ocaña I (Toledo)
Ocaña II (Toledo)
Alicante
Córdoba
Madrid IV de Navalcarnero
Valdemoro III (Madrid)
Carabanchel for Women (Madrid)
Madrid IV (Soto del Real)
Martutene (San Sebastián)
Pamplona
Logroño
Bilbao
Burgos
Segovia
Jaén
A Coruña
Salamanca
Castellón
Madrid II (Alcalá Meco)
Villabona (Asturias)
Soria
Madrid I (Carabanchel)
Alcalá II (Madrid)
Sevilla II
Almería
Palma de Majorca
Brieva (Avila)
Brians (Catalonia)
Badajoz
Cáceres I
Cáceres II
Las Palmas (Canary Islands)
Tenerife II
Daroca (Zaragoza)
Palencia
Madrid V
Barcelona for Women
Barcelona for Youth.

Departments of the General Directorate of the Police:

General Department for Foreigners, Madrid.
Provincial Squad for Foreigners, Madrid.
Puerta del Sol Police Station, Madrid.
Provincial Squad for Foreigners, Toledo.
Provincial Squad for Documents Foreigners, Barcelona
El Prat Airport Police Station, Barcelona.
Alcorcón Police Station (Madrid).
Barajas Airport Police Station (Madrid).
Chamartín Police Station (Madrid).

Civil Guard Headquarters Establishments:

- Residential barracks from Humanes (Madrid)
- Residential barracks from Nogarjos (León)
- Residential barracks from Soncillo (Burgos)
- Residential barracks from Villaluenga and Recas (Toledo)

Detention Centres for foreigners:

- Murcia
- Moratalaz, (Madrid)
- La Verneda (Barcelona)
- Valencia

Psychiatric Hospitals:

- Alicante
- Sevilla
- Madrid
- Mérida (Badajoz)
- General Penitenciario de Carabanchel (Madrid)

Judicial Premises:

- Court of first instance, Sevilla
- Juvenile Court, Sevilla
- Country Court from Sevilla

YEAR 1996

Prisons:

- Burgos
- Herrera de la Mancha (Ciudad Real)
- Madrid IV in Navalcarnero (Madrid)
- Jóvenes de Barcelona
- El Dueso, Santoña (Cantabria)
- Ocaña
- Orense
- Logroño
- Huelva
- Nanclares de Oca (Alava)
- Cuenca
- Teruel
- Alicante
- Murcia
- Zaragoza
- Madrid V in Soto del Real
- Vigo (Pontevedra)
- Lugo-Bonxe.
- La Coruña
- Albacete
- Martutene (San Sebastián)
- Granada
- Albolote (Granada)
- Topas (Salamanca)
- Madrid III (Valdemoro)
- Barcelona
- Guadalajara

National Police Establishments:

- Barajas airport Police Station (Madrid)
- Alcorcón Police Station (Madrid)
- Móstoles Police Station (Madrid)
- Leganés Police Station (Madrid)
- Fuenlabrada Police Station (Madrid)
- Getafe Police Station (Madrid)
- Parla Police Station (Madrid)
- Alcobendas-San Sebastián de los Reyes Police Station (Madrid)
- Pozuelo de Alarcón-Aravaca Police Station (Madrid)
- Aranjuez Police Station (Madrid)
- Cáceres Police Station
- Soria Police Station
- Toledo Police Station
- La Coruña Police Station
- Santiago de Compostela Police Station

- Zaragoza Police Station
- Calatayud Police Station (Zaragoza)
- Sevilla Police Station
- Huelva Police Station
- Orihuela Police Station (Alicante)
- Elche Police Station (Alicante)
- Comisaría de Documentación y Extranjería (Madrid)
- Comisaría de Documentación y Extranjería (Barcelona)

Civil Guard establishments:

- Residential barracks, Mogán (Las Palmas)

Detention Centre for foreigners:

- Las Palmas de Gran Canaria.
- Cuartel de Capuchinos (Málaga)

Local Detention Centres:

- Madrid
- Navalmoral de la Mata (Cáceres)
- Trujillo (Cáceres)
- Almazán (Soria)
- Burgo de Osma (Soria)
- Orgaz (Orgaz)
- Quintanar de la Orden (Toledo)
- Betanzos (La Coruña)
- Santiago de Compostela (La Coruña)
- Calatayud (Zaragoza)
- Sanlúcar la Mayor (Sevilla)
- Carmona (Sevilla)
- La Palma del Condado (Huelva)
- Valverde del Camino (Huelva)
- Orihuela (Alicante)
- Elche (Alicante)
- Distrito de La Latina (Madrid)

Psychiatric Hospital:

- Mérida (Badajoz)

YEAR 1997

Prisons:

- Segovia
- Madrid-II (Alcalá Meco)
- Madrid-V (Soto del Real)
- Valladolid
- Alcalá II (Madrid)
- Ocaña I (Toledo)
- Aranjuez (Madrid)
- Martutene (Guipúzcoa)
- Ocaña II (Toledo)
- Madrid IV (Navalcarnero)
- Zaragoza-Torrero
- Dueñas (Palencia)
- Huesca
- Badajoz
- Dueñas (Palencia)
- Palencia
- Madrid III (Valdemoro)
- Córdoba
- Castellón
- Ocaña II (Toledo)
- Jerez de la Frontera (Cádiz)
- Curtis (La Coruña)
- Burgos
- Pamplona
- Madrid V (Soto del Real)
- Brieva (Avila)
- Cáceres I
- Cáceres II
- Ocaña II (Toledo)
- Jaén II
- Madrid Y (Carabanchel)
- Aranjuez (Madrid)
- Villabona (Asturias)
- Cuenca
- Málaga
- Madrid IV (Navalcarnero)

National Police establishments:

- Police station at Madrid-Barajas airport.
- Burgos police station
- Badajoz police station
- Algeciras police station (Cádiz)
- Soria police station
- Leganés police station (Madrid)

Civil Guard establishments:

- Headquarters-Residential Barracks at Soria
- Headquarters-Residential Barracks at Burgos
- Headquarters-Residential Barracks at Zamora
- Residential Barracks at Llança (Gerona)
- Residential Barracks at Algeciras (Cádiz)

Detention Centres for foreigners:

- Moratalaz
- La Verneda (Barcelona)
- CALAMORRO and border boundary (Ceuta)
- Accommodation Center for sub-Saharan inmigrants (Melilla)

Army Establishments:

- Acuartelamiento Disciplinario Militar de Illetas, Calviá (Mallorca)
- Acuartelamiento Disciplinario Militar de Alfonso XIII (Melilla)
- Tercio Gran Capitán de la Legión de Melilla

Penitentiary Psychiatric Hospitals:

- Alicante
- Sevilla

Juvenile Centres:

- San Francisco de Asís, Torremolinos (Málaga)
- El Madroño (Madrid)
- Renasco (Madrid)
- Tabares (Santa Cruz de Tenerife)
- Asociación sin fronteras (Pamplona)
- Lagun Etxea (Pamplona)
- La Jara en Alcalá de Guadaira (Sevilla)
- Residencia Juan de Mairena (Córdoba)
- San Rafael (Córdoba)
- San Vicente Ferrer de Godella (Valencia)
- Sograndio, Oviedo (Asturias)
- Zambrana (Valladolid)
- Aurelio Montero (Pontevedra)

Prisons:

- Acebuche (Almería)
- Albacete
- Alcalá-Meco (Madrid)
- Alcalá II (Madrid)
- Algeciras (Cádiz)
- Aranjuez (Madrid)
- Badajoz
- Bilbao
- Ceuta
- Córdoba
- Daroca (Zaragoza)
- Dueñas (Palencia)
- El Dueso (Santander)
- Foncalent (Alicante)
- Herrera de la Mancha (Ciudad Real)
- Huelva
- A Lama (Pontevedra)
- Madrid II Alcalá-Meco
- Madrid III Valdemoro
- Madrid IV Navalcarnero
- Madrid V Soto del Real
- Masillas de las Muelas (León)
- Nanclares de la Oca (Alava)
- Ocaña I (Toledo)
- Ocaña II (Toledo)
- Palma de Mallorca
- Picassent (Valencia)
- Puerto de Santa María I (Cádiz)
- Puerto de Santa María II (Cádiz)
- Santander
- Segovia
- Topas (Salamanca)
- Valladolid

National Police Headquarters establishments:

-Alcalá de Guadaira Police Station (Sevilla)
-Police Station at Luna Street (Madrid)
-Police Station at Blas Infante Street (Sevilla)
-Salamanca Police Station
-Villareal Police Station (Castellón)
-National Police Council

Civil Guard Headquarters establishments:

- Barbate residential barracks (Cádiz)
- Tarifa residential barracks (Cádiz)

Detention Centres for foreigners:
- Calamocarro and border boundary (Ceuta)
- Capuchinos (Málaga)
- Moratalaz (Madrid)
- Room for refused passengers at the Madrid-Barajas airport.

Judicial Establishments:

Police Courts belonging to Andalucía´s High Court

Army Establishments:

- Penitenciario Militar de Alcalá de Henares (Madrid)
- Regimiento de Infantería de Regulares número 54 de Ceuta
- Acuartelamiento Alfonso XIII de Regulares de Melilla
- Polvorín de Horcas Coloradas (Melilla)
- Hospital Psiquiátrico de Oviedo

These data can be found in the Annual Report submitted to the Spanish Parliament by the Ombudsman which is published in the Official Bulletin thereof.

In addition to these visits, there must be added those made by the Judges and Prosecutors, according to the powers conferred by the Spanish Law (Code of Criminal Procedure, Organic Statute of the Public Prosecutor - Estatuto Orgánico del Ministerio Fiscal -, Organic Law of the Judiciary and the Law of Procedure regarding Habeas Corpus, in order to carry out a control upon the law in force.

Another kind of inspections being regularly carried out, are made by the internal affairs services and those of disciplinary regime, belonging to the National Police and Civil Guard Headquarters, as well as those carried out under the article 2.3b), Royal Decree 1885/1996 dated on August the second, of basic structure within the Interior Ministry, which has established -with the rank of deputy manager´s office-, the Staff Inspection and Security Services, in charge with, among other tasks, the control of the actions carried out by the respective Forces (Civil Guard and National Police).

Paragraphs 31 to 33 of the Report

Rules on police procedures

The National Co-ordination Commission of the Judicial Police, whose chairman is the President of the High Court and the General Council of the Judiciary, also comprising the Attorney General, the Ministry of Justice, the Ministry of the Interior, the Secretary of State for Security and a Magistrate from the High Court, and which aim is to set out the line of behaviour of the Judicial Police, in order to achieve the unity of direction regarding the criminal investigation of the police forces, during the last years the said Commission has studied the conditions of detention in Spain.

It has led to the drawing up of a Criteria Manual for the police inquiry by the Judicial Police, which has been produced within the framework of the Technical Commission, dependent on the National Commission of the Judicial Police. Members from the Public Prosecutor, Judges, and Magistrates as well as professionals from the Police Forces have participated in such process.

When drawing up the said Manual, it was proposed the preparation of an action criteria in which, with synthetic expression of every proceedings, the legal procedures, as well as the High Court and the Constitutional Court´s jurisprudencial interpretation were included, so as to they are taken into account as an acting referent.

Its preparation is pertinent, not only because of the need for unifying the existing criteria when dealing with and carrying out certain investigation activities, but also because of the necessity of their adaptation to the constitutional provisions, from which the legal authorisation to act arise. (Basic rule, arts. 104 and 126) as well as the rules developing it. (sic).

When preparing the Manual, it has obviously been taken into account the procedural legislation restricting the judicial police performance, the interpretation of the law emanating from the Constitutional Court and the Supreme Court of Justice, as well as Circulars and Directions issued by those responsible for the police forces having responsibility for investigating criminal facts.

A catalogue of the most frequently used proceedings in the official report appears in the Manual. It has been tried to make an easy drafting, being compatible with the need for respecting the basic content of the fundamental rights affecting the proceeding. It is specially stressed the need for the judicial police officer to carry out a permanent study on the proportionality of the taken measure, comparing the properties which are the subject of litigation to the legality of the police performance.

In the said Manual, which has already been distributed among the different Judicial Establishments, prosecutor offices and police establishments, having responsibility for the matter, it appears the above mentioned catalogue which proceedings, more frequently used in the official report, are listed below:

1. Searching of premises
2. Photo Identification
3. Identification parade
4. Personal searches
5. Video and photographic recording

6. Telecommunications interception
7. Postal and telegraphic interception
8. Arrest and information to the detainee about his/her rights
9. Lawyer appointment
10. Notification of custody to a relative and the Consulate
11. Medical examination
12. Habeas Corpus
13. Witness protection
14. Crime-scene examination
15. Personal items collection (custody chain)
16. Official report proceeding
17. Detention according to art. 420 of the LECRIM (Law of Criminal Procedure)
18. Controlled delivery
19. Transfer of detainees

The aim of the Manual has not been to obtain a comprehensive summary of the rules in force, which advantage would have been to be provided with a complete volume of the daily round, but given the serious inconvenient of its extent, it has been intended as a consulting Manual of essential minimums to be carried by each patrol or operational squad.

To this end, and so as not to overload the Manual with unlimited appendices of Instructions from the Prosecutor Office, or to increase its thickness with complementary hierarchical Circulars relating to different performances, within the text and in different places where it is necessary for the Manual to be completed, a reference is made to the above mentioned Instructions or Circulars, so obtaining a legal index of all the sequences of the treatment to the detainee as well as the observance of the detainee´s rights while under custody by the judicial police.

To this end, the Manual makes continuous references to the Instructions which are in the hands of the different police Units:

- Instruction 7/1996 dated on December 20, from the Secretary of State for Security relating to the strip naked performance (page 31).

- Instruction dated on November 14, 1988 from the Prosecuting Authorities for the Prevention and Repression of Illegal Drug Trafficking (page 34).

- Instruction 14/1995, dated on November 21, from the Secretary of State of the Interior on Record Books and detainees custody (page 54).

Therefore, and due to the lack of a thorough study of the Manual of Police Proceedings, it could cause the sensation of a superficiality that does not correspond with the reality, since, when carefully studied, in each proceeding it is highlighted a theoretical part for a better understanding, delimitation, purpose and legal requirements aimed at the full validity of the performance when establishing the means of proof. In second place, and where appropriate, a drawing up model is submitted, in which special attention has been paid to the requirements for the suitable individualisation of the contents (statements, procedures, minutes, etc) that are so essential in the due ratification and contradiction of the hearing itself. (sic).

You will find enclosed the copies of the Instructions of the Catalan Autonomous Police (Mossos d´Esquadra) relating to the treatment given to detainees and inmates, as well as the rules to be followed when carrying out their integral body search, which were requested in paragraph 31 of the Report.

3. Conditions of the detention

Paragraphs 34 to 46 of the Report.

General Considerations

The Spanish Government, as one of its essential criteria regarding the performance within the police scope, has been considering the need for modernising its premises. Nevertheless, this guiding principle, that in many cases is already an effective reality, suffers from an obvious budgetary and macroeconomic limit.

Thus, the existing buildings range from the big establishments within county towns, to the smallest Civil Guard residential barracks within rural municipalities, making absolutely impossible to face, at the same time, the modernisation of all of them. In this line of work, priority has been given to the necessities of those buildings with a more advanced degree of damage.

On the other hand, it must be taken into account the fact that, in many occasions, repairing works are aimed at a very old set of buildings suffering from damage due to a long period of use, which makes impossible for us to carry out simple and mere modifications, so forcing us to the construction and design of complete police buildings.

These new premises are provided with all the possible means, so that the working conditions and the treatment to citizens are match the social reality in Spain, as well as the International Conventions and rules in force. In many cases they are even increased. This is the reason why, in certain occasions, a modern set of buildings provided with High Technology has to coexist with another old one needed of urgent changes.

To this effect, it is necessary to make a reference to the setting up, in the last years, of new Police Stations (Canillas-Madrid, Zone Franca de Barcelona, Sevilla, Las Palmas de Gran Canaria, Playa de las Américas-Tenerife, Toledo, Avila, Vigo, Burgos, Palencia, Guadalajara, Málaga, León, Elche y Murcia among others), and new Civil Guard barracks (Salamanca, Melilla, Pamplona, Badajoz, Teruel, Zaragoza, León, Barcelona, La Coruña y Almusafes, with a huge investment that, in a similar way to the modernisation works carried out in penitentiary establishments have allowed us to repair their most important existing deficiencies. Thus, it must be highlighted that since the Plan for the Modernisation of the establishments belonging to the State Police Forces was passed on 1983 by Cabinet Agreement, -and successively extended-, new Plans have been undertaken, allowing us a continuous work in this line.

Nevertheless, this effort is going to be continued in the future years when elaborating the State Budget, since the magnitude of the venture makes it essential.

<u>Conditions of the establishments visited</u>
<u>Provincial Brigade of the Judicial Police</u>

On June 7 1999, the existing cells in such Brigade (Pontejos Barracks), were closed down, so, since that date, the detainees are being moved to the detention cells in Arganzuela Police Station (Madrid), located in Ronda de Toledo 26, where they are responsible for their custody.

Detainees Central Register of the Police Headquarters in Catalonia.

As a first step, and in order to the global tidying-up of the cells, the cells illumination has been improved, as well as the painting, in general, of ceilings and walls.

Regarding the global refurbishment of the said cells such as facing, pavements, electricity, toilets, climatization, ironwork, etc.... there exists a project (Performing Project concerning the improvements in cells, switchboards, and lift replacement in the Police Headquarters in Catalonia), amounting to a sum of pts. 79.732.215 and its execution will permit us to correct the deficiencies inside the cells belonging to the Police Headquarters in Catalonia.

Santa Catalina Police Station in Las Palmas de Gran Canaria

When the delegation visited this establishment, the detainees no longer slept out in the cells of the Police Station, but in the night they were moved to those in the new building of the Police Headquarters. Likewise, during the day, the detainees stay in their cells for as short a time as possible, being moved, as soon as possible, to those of the said Police Headquarters.

The services of these Police Station are going to be moved, in short, to the new premises located in Plaza de Belen María, in Las Palmas.

To this effect, the Project regarding the works to be carried out in the new premises is estimated at pts. 202.245.038.

Civil Guard Establishments in Las Palmas de Gran Canaria

The size of the existing cells in these premises is considered to be suitable, taking into account that they are occupied by only one person, and considering that the time the detainees stay inside the cells is relatively short; it does not usually exceed 24 hours.

Regarding the cells illumination, they use to have small openings, so that the daylight can go through in such a way that the detainees can perform the activities they are allowed to carry out, since bigger openings, both in doors and walls would imply the use of iron bars or other similar systems in order to prevent the detainees from running away, being this measure inconsistent with that of the integrity of the detainee who could injure him/herself.

Civil Guard Establishments in Barcelona

The cells located in Barcelona Command Headquarters, visited by that Committee´s delegation, will not be used by the detainees during the night until improvements are made. When the detainees have to stay overnight, they are moved to the Local Premises.

Cells accommodation on board the Juan J. Sister Ship

The transfer of the detainees from the Canary Islands to the Peninsula, is carried out, most of the times, on board the ship JJ Sister, from the Transmediterránea Company, dealing with the regular travellers service, which is equipped with a wide cabin divided into three departments, (one of them allotted to police officers and the others, as cells, with a capacity for two inmates). Each cell is provided with air conditioning, bunk, bowl and sink with an individual towel for each inmate, always showing optimum hygienic conditions.

Mossos d´Esquadra Police Station in Barcelona

The arrested persons only stay in the cells of this Police Station (that as the own delegation admits are adequately equipped), the essential time to fulfill the strictly necessary formalities until they are brought before the Judicial Authority.

Mataró local detention centre

The facilities for detainees of this Centre, which can hold 16 persons, consist of three cells for men, one (*) cell for women and another one for (remand) inmates. All the cells have natural ventilation and get sunlight. There is also a patio with a surface area of about 125 square metres.

The dining-room, showers, patio and booths for communication with relatives, all of them for common use, are located in the same building as the men's cells.

All the elements in the cells, listed below, are fixed to the floor or the walls for safety reasons. The lighting of the cells is controlled by security officers from the supervision area.

In the men's building, with three cells, each one with room for four persons, are the following elements:

There are in each cell: four beds, four bedside tables, a washbasin, a toilet, an inside bell to ring for the security officers and, next to it, an electrity supply socket which is under the control of the officers in the supervision area. In addition to this there are two TV rooms the interior of which can be seen from all sides for security reasons, plus three showers, each with just one water tap.

In the women's building, with two (*) cells, each one with room for two persons, are the following elements:

A sleeping area with two beds and bedside tables, and another area with a shower, toilet and washbasin. At the entrance of each cell there is a bell to ring for the security officers.

In the cell for (remand) inmates, with room for two persons and -separated from the rest for security reasons, there are:

Two beds and bedside tables, a washbasin, a toilet, and a bell to ring for the security officers. There is also a TV room where the inmates can be seen from outside for security reasons.

B. PRISONS

1. Preliminary Remarks

Paragraphs 47 to 51 of the Report.

This section of the Report deals with objective data regarding the location of the prisons visited and their occupancy level at the time of the visit.

It is to be noted in this connection that the considerable reduction in the number of inmates in the Modelo Prison Establishment for Men of Barcelona - as compared with that at the time of the previous visit of the CPT Delegation in 1994 - shows the efforts carried about by the Prisons Authority of Catalonia to reduce the overcrowding at one time existing in the Centre.

As regards the comment included in Paragraph 51 on the percentage of convicted prisoners (30%) in the Madrid V Centre, which is a preventive detention establishment, it should be noted that prison centres, particularly those conforming to the model of "standard centre", as is the case of the Madrid V, are multipurpose centres, that is, they include all the prison categories established by Organic Law 1/1979 of September 26th, Ley General Penitenciaria[1], and they have totally separate departments to hold men, women, convicted prisoners and prisoners under preventive detention, whether their prison conditions are degrees one, two or three of the prisons regulations.

That the Madrid V Prison in particular should hold sentenced inmates is due to the fact that this Establishment is carrying out specific programmes with inmates who are studying for a university degree through the UNED (National University for Distance Learning), with others included in the programme for drug addicts carried out in cooperation with the Non Governmental Organization "Project MAN", and with those working at the occupational workshops of the Centre.

2. Ill-treatment

Paragraphs 52 to 64 of the Report

Paragraph 52 of the Report says literally "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 other prison establishments in Spain".

<u>Salto del Negro (Las Palmas de Gran Canaria)</u>

There were nevertheless some complaints of allegedly ill treatment that might have been caused in the course of the transfer of prisoners to segregation units or whilst they were being restrained in the said areas. The following facts are explained in this connection:

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[1] General Prisons Regime Law

When the allegations received in respect of the Salto del Negro Prison -to the effect that prisoners were too often handcuffed to their beds for prolonged periods of time (in some cases for some 15 hours overnight) during which time the prisoners in this manner restrained were not provided with mattresses- were brought to the knowledge of the Directorate General for Prisons (Dirección General de Instituciones Penitenciarias), through verbal communication by the Delegation at the meeting held on December 4th 1998, the former requested the Prison Governor to inform them about the incident. The latter provided the following information:

"This was an isolated incident with a female prisoner temporarily banned from walks and recreational activities. When a female officer required her to sit at a different table (one for inmates on a vegetarian diet, as the woman prisoner had requested this sort of food), so as to make the distribution of the meals easier, she refused retorting that she would sit where she best pleased. Upon being repeated the order by the woman officer she left the dining hall shouting that she did not want her meal and wanted to go back to her cell.

Once shut inside, she started shouting and banging everything about. The officer then decided to open the door of the cell, at which the woman jumped upon her, verbally abusing her and threatening to kill her. The officer then shut the door and notified the Officer in Charge (Jefe de Servicio). They opened the door of the cell again and saw the prisoner, who had climbed on to a bunk-bed and was kicking and throwing blows about to no purpose, as no one was hit. The Officer in Charge was forced to climb on to the bunk-bed in order to restrain the woman, whose aggressive, agitated mood did not subside, making it necessary for the other Officer in Charge to help hold her down, whilst the woman cried out to the rest of the women prisoners to make a brawl in the unit.

Upon hearing her shouts, a group of women prisoners, led by one of them, left the dining hall. The leader pushed the officer violently as the latter was trying to lock the dining hall door to prevent the women form getting out, and they marched on in the direction of the gate of access to the cells on the groundfloor. Since the gate had been closed by another officer, they could not go any further, so they stayed there shouting insults and threats at the women officers.

The Jefes de Servicio (Officers in Charge) told the women to stop taking that attitude and go to their cells, which the majority of them did. Ten however persisted in their protest stance, but when ordered to stop it they complied and went back to their cells. Except for one, with whom it was necessary to use force in order to get her back into her cell, where she was handcuffed. After a few hours she gave up and her handcuffs were removed. Many hours had to pass, however, before the woman who started it all could be freed of hers, as she persisted in her aggressive attitude. Consequently she remained handcuffed from 13:30 h. of November 17th 1998 to 11:45 h. of the following day".

As explained by the Prison Governor this was an isolated exceptional incident. Nevertheless, the Prisons Authority wanted to ascertain if this was the case and sent an Inspector to personally verify the situation. The Inspector consulted the records, interviewed persons with responsibilities at the Centre, and spoke with the prisoners themselves.

The findings of the report are as follows:

REPORT BY THE INSPECTION SERVICE: Means of Coercion

"1. Documents:

There is a record book with entries for the name of the prisoner, the action taken, the reason for taking it and the date and time of day when the measure is imposed and lifted.

Given the high number of prisoners (ca. 1,200), the frequency with which the measure had been applied is not considered excessive, the reasons were those provided for in the Ley Orgánica General Penitenciaria (General Prisons Regime Organic Law), and the duration of the measure rarely exceeded 24 hours.

2. Mechanical system for holding the prisoner in the solitary confinement cell:

The bed (fixed to the floor) in two of the cells of the segregation area has two (metal) rings attached to it, one at the level of the wrist, the other one at the level of the ankle. This is meant for holding the prisoner hand-and-foot-cuffed to the bed with as little harm to himself as possible.

3. Verification of the conditions in the cells for provisional solitary confinement.

At the time of the (inspection) visit, the 14th at around 19:00 h., there were two inmates in solitary confinement who - the Officer in Charge said - were about to be transferred back to their unit, as they had abandoned their aggresive stance. We found that there were no mattresses or any personal belongings, which the Officer in Charge explained as being due to the fact that they had been placed in solitary confinement a few hours earlier on that very day (which we ascertained), and were not to be kept overnight. He added that in cases where prisoners had to be kept for a longer period of time they were provided with a mattress and personal belongings".

In the light of the report, the Inspection Service of the Directorate General for Prisons has decided the following:

"To advise the prison governor to eliminate the rings attached to the beds and to remind him that it is absolutely mandatory to provide prisoners with mattresses when they are to be kept in solitary confinement for a long time, and, as is obvious, whenever they are kept overnight.

It must be noted however that El Salto del Negro Prison Establishment does have a register for recording the application of measures of coercion. (Please find enclosed a photocopy with the entries of cases recorded last year).

Given that the CPT's Report states that there was no Register book in the said Establishment, we enclose a copy of the book."

Brians (Barcelona)

As for the complaints regarding the Barcelona Brians Prison, on 6 August 1998 the Director General of the Catalan Authority for Prisons and Rehabilitation requested confidential investigation number 13/1998, regarding the alleged ill-treatment inflicted upon an inmate on 29 July 1998.

After the relevant proceedings had been carried out, on 18 December 1998, considering that the prisoner's allegations were not strictly true, the Investigation Inspector recommended closing the dossier, pending the decision by Martorell Examining Court Nr 1 in charge of the case.

On February 8th 1999, in the light of the considerations of the Investigation Inspector in his proposal for a decision, the Director General of the Authority for Prisons and Rehabilitation resolved to close and dismiss the case, which does not preclude the possibility of its being reopened should the judicial authorities consider that there is new evidence that makes it necessary.

On 18 May 1999, Examining Court Nr 1 of Martorell decided to close Preliminary Proceedings Nr 1102/98, which had also been instituted in connection with this case.

As regards the allegations of ill-treatment in the early morning of 16 October 1998 to an inmate of the same Prison who resisted being transferred to the Prison Centre for Men of Barcelona (the Modelo), it should be noted that in the register books of the above mentioned Authority there is no record of any incident regarding this prisoner -identified through the information provided by the CPT in its report- prior to his tranfer, nor of his having lodged any complaint to the effect.

The use of means of coercion in prison establishments

Regarding the use of means of coercion to restrain violent inmates, the Spanish Prisons Authority has always sought to harmonize the twofold constitutional mandate regarding the custody and rehabilitation of incarcerated persons.

Consequently, in order to procure peaceful coexistence in prisons, it has always taken care to be vigilant and oversee any possible excesses by prison officers when using means of coercion aimed at controlling individual inmates who, because of their evident failure to adapt to the prison regime, refuse to obey orders or to comply with the directions established by the responsible authority in each prison centre.

The use of such measures is accompanied by all sorts of safeguards in line with the principles of necessity and proportion. They are taken in the first instance under the supervision of the Prisons Authority, through the Governor of the Centre, who must authorize their application, and secondly, under the supervision of the judicial authority, through the mandatory notification to the Supervisory Judge.

The Prisons Authority is especially concerned with the respect for inmates' rights and is aware that, for that respect to be achieved, in addition to having a progressive, humane and flexible legislation as are the Ley Orgánica General Penitenciaria (General Prisons Regime Organic Law) and the (Prisons) Regulations to implement it (adopted through Royal Decree 190/1996 of February 9), it is also necessary that the said norms are put into practice.

Instruction 21/1996 of December 31st was issued to that end. It includes the regulation contained in the Instruction of April 15th 1996, referred to in the Report and redrafted into the above-mentioned new Instruction 21/1996 in compliance with Transitional Provision Nr Four of the new Reglamento Penitenciario (Prisons Regulations), which required all Instructions to be adapted before its coming into force on May 25th 1996.

On the other hand, the Prisons Authority oversees the proper application of the directions given in the Instruction through the Inspection Service of the Directorate General, which supervises and controls the activity of all organs of the Prisons Authority.

By taking such action - giving directions for the correct application of means of coercion and controlling this application through the Inspection Service - the Prisons Authority is implementing the most effective measures to bring into real effect the protection to prisoners provided for in prison regulations.

The effectiveness of these measures is evidenced by the following acts of the Prisons Authority:

First. As already said, a new Instruction 21/1996 was issued setting out the procedure to follow when applying any means of coercion, very similar in its tenor to the Instruction of April 15th of the same year (see copy).

Second. On February 24th 1997, a new direction was issued by the Prisons Management Subdirectorate General to report to Supervisory Judges, with the required formalities, when applying any means of coercion, so as to facilitate the supervision by the judicial authority of administrative decisions to apply any of the means of coercion provided for in our prisons regulations (see copy).

Third. From 14 to 22 December last year, the Inspection Service visited all prison establishments under the authority of the Directorate General for Prisons in order to verify on-site that means of coercion are applied in compliance with the instructions delivered (see copy of the Inspection Order).

The following is a detailed report of the visit in the terms requested by the Committee:

Through a notice in writing of 10 December 1998 from the Director General for Prisons, the Prisons Inspection Service was ordered to visit all prison establishments in the course of the month of December. The aim was to verify if Section 45 of the General Prisons Organic Law and 72 of the Prisons Regulations were being observed when applying the means of coercion permitted (see copy).

The General Inspection Service organized the visits from 14 to 22 December. During that period the designated inspectors visited the prisons and drew up the relevant reports, the most outstanding aspects of which we summarize below:

Special mention is made in the reports as to the following aspects observed in the course of the visit:

- When taken to the segregation unit inmates are seen by a doctor, as well as, on a daily basis, during the time they remain under solitary confinement.

- All centres do have a register book to record the measures of coercion taken.

- In some of the centres the beds had mechanical means of restrain. They have been ordered to remove them.

In a few centres the report that must be sent to the Supervisory Judge of any injuries inflicted upon an inmate was seen not to contain the latter's complaints. As early as August 11th 1998, the Prisons Management Subdirectorate General issued the relevant instructions to the effect that any reports on injuries that are sent to the judge or the court must include all available information regarding both the facts and the context, so that they can be known by the judicial authority, in compliance with Circular 12/1998 of 30 July 1998, which sets out the procedure to follow and the form to be used when reporting injuries, and provides for the possibility to make a copy of the report available to the prisoner shoud he request it (see copies of the instructions by the Prisons Management Subdirectorate General and of Circular 12/1998).

- When use is made of some mechanical means to hold down an inmate on to his bed, it is done so under the supervision of a doctor of the Medical Service.

- Due to the shortage of cells in some Centres, a problem arises when female prisoners must be placed in solitary confinement.

- The mandatory communication to the Supervisory Judge of the application and lifting of measures of coercion is done on the following day to their occurrence.

- In some prison establishments the measures of coercion taken are written down in the register book of the Centre for recording general incidents. Directions have been given to do so in a special register book, as established by Instruction 21/1996.

- The doctor's relevant reports have been seen to exist in cases where the implementation of the measure imposed is not medically compatible.

- The relevant reserved information is seen to have been instituted in cases of a complaint lodged for ill-treatment.

- Some Centres do not use standardized medical reports. Directions have been issued to use the standard form established by Instruction 12/1998 of July 30th of the Prisons Directorate General.

- In some cases the duration of provisional solitary confinement was seen to be excessive. The Centres where this kind of irregularity was observed have been given the relevant advice.

- Some Centres do not send an incident report to the judge. They have been instructed to do

so in the terms established by the above-mentioned Instruction 21/1998.

In short, from the visit carried out by the Inspection Service it has been seen that, in the majority of Centres, means of coercion are applied correctly as regards not only the method used and the duration of the measure imposed but also the recording procedure and the notification to the relevant judicial authority. In those cases where an irregularity as to the above-mentioned aspects has been detected directions have been given to make it right. The Prisons Inspection Service will check if it has been done in future visits.

One of the issues repeatedly addressed by the Prisons Inspection Service in its December visit was the claim by the CPT delegation that there was no Register book in any of the prisons visited for writing down all details related to the application of means of coercion, in the terms established by the Instruction of 15 April 1996, now redrafted into Instruction 21/1996. It has been ascertained that the existence of such Register book, where any incidents relating to the application of means of coercion in the terms established by the relevant Instructions are recorded, is common to all Centres. As already said, however, other kinds of Register books for general incidents are sometimes inappropriately used for recording the application of means of coercion.

Directions have been given to use a specific Register book to record and supervise means of coercion.

The training of prison officers

The Report underlines the importance of adequate training in techniques of control and restrain, and requests information as to the training given to officers in this field.

It must be said in this context that officers of the Corps of Prison Assistants, who are responsible for the immediate control of inmates, receive training in physical education and self defense. The subject-matters in which they are trained are:

I. Techniques of control

- Self defense
- Restrain techniques
- Control techniques

II. Defense

- Defense against frontal attacks and attacks from behind
- Arm holds
- Defense against fist and leg attacks
- Defense against cutting and/or punching object attacks.
- Defense against firearms
- Holding attackers down

In addition to it, from the theoretical point of view, they are instructed in the pertinence of using any means of coercion and in the observance of the principle of proportion.

The same kind of training given to the members of the Corps of Prison Assistants by specialized teachers of the Ministry of the Interior will be extended shortly to all the staff adscribed to the supervision area.

As far as the Catalan Autonomous Government is concerned it offers its officers a series of courses that enable them to obtain the Certificate of Security and Supervision in Internment Institutions. To obtain the Certificate they must
successfully go through the following courses:

- Tools to enhance the competence of the supervision and security staff
- Supervision and security staff: a factor of change in behaviour.
- Communication techniques in supervision and security tasks.

Lately the Autonomous Government of Catalonia made a proposal to the Centre for Legal Studies and

Specialized Training to the effect of extending the said courses and the subject matters they include. In essence the courses proposed for next year are the following:

- Skills for reducing and preventing aggressive and hostile behaviour
- Skills for mediating in interpersonal conflicts not involving violence
- Workshop on the use of persuasion and influence when dealing with prisoners
- Officers' alternatives when using disciplinary powers: discretion, pertinence and the legal norm.

Application of means of coercion: its practice and delay in application.

Basic action in crisis situations. Intervention in cases of attempted suicide, self-inflictment of serious injuries, etc.

Supervisory Judges

The Report refers to an aspect that is alien to the Prison Institutions' responsibility, the attention to inmates that is the duty of Supervisory Judges. There is evidence in this regard thar their visits are not very frequent and that investigations into inmates' complaints are greatly delayed.

Concerning these matters, we only have to remember that the separation of powers upon which the legal system is based in Spain, as well as the independence of the Judiciary, prevent the Prison Services from giving directions, and even less, from ordering the Supervisory Judges as to the way they have to accomplish their tasks.

When a case of ill treatment comes to the knowledge of the Prison Services -having this authority the biggest interest in clarifying the possible responsibilities that could derive from the wrong execution of its prison officers-, they immediately open an internal inquiry and, if there exist hints of criminal behaviour, the Duty Magistrate is informed of these facts, so that he will take the appropriate steps.

Information was also requested in the Report concerning the allegation of ill treatment which was the subject of an investigation conducted by the General Council of the Judiciary.

In its day, the so-called “Co-ordinating Committee for the Support of Prisoners” -made up of several associations interested in different aspects of the problems posed within the marginal environment- submitted an accusation of alleged ill treatment about which they had been informed by the prisoners and/or their relatives.

Actually, this accusation was not made against the Prison Services, but against the Supervisory Judges, who were blamed for delayed, passive and wrong actions concerning the allegations of ill treatment that they had received, which in most cases had been shelved. The General Council of the Judiciary opened the relevant inquiry and examined all the cases that had been reported, and the Supervisory Judge dealing with the case was considered to be liable in any of them.

The General Council of the Judiciary has considered that the Supervisory Judges had properly investigated the reported cases and that no liability could be appreciated since it did not exist.

Finally, and concerning this matter, when transcribing the answer given by the General Council of the Judiciary to the CPT Report, we have to refer to the previously stated.

Prison Directors

To conclude, regarding the section on ill treatment, the CPT recommends that the Directors should be encouraged to be at the disposal of the inmates by means of scheduled visits.

The Spanish regulatory scheme on prisons provides us with a comprehensive regulation concerning the way in which the inmates can exercise their right to be informed, to lodge complaints and to appeal. The Prison Services are aware of the fact that this comprehensive legal regulation must have an effect on the real practice. Therefore, to put into practice this regulation, the Prison Services have at their disposal several material resources and staff.

As for the material resources, we have available an information booklet that is handed over to the inmates when they are imprisoned and where all the information about their rights and duties, the regime of the Prison, etc. is contained. The CPT had made a remark in this regard, stating that this booklet really existed and that its contents was right, but indicating that it was not handed over to the inmates on a regular basis. All the Directors have been orally given instructions so that their prison officers provide the inmates with the above information booklet.

Regarding the staff, the professionals of prison-related jobs include, among their tasks, the clarification of any doubt set out to them by the inmates, as well as meeting their requirements, in order to solve those problems reported to them. Teachers, social workers, lawyers, psychologists and other technical staff are included in this group of professionals. The personalised attention paid by these professionals can satisfy any requirement from the inmates.

Nevertheless, there are some issues, as we all know, which are especially sensitive and which require the personal intervention of the Prison's Director. In these cases, the inmates themselves ask for an interview with the Director, and this one answers properly to their request, because the Prisons Directors themselves are the most interested ones in keeping in a direct and frequent contact with the inmates, since it allows them to know, at "first hand", the reality of the situation in their establishments, thus making easier their management. Thus, it is a very usual practice in all the prisons that the Director –in the afternoons, when he is carrying out his duties- uses to hold such interviews, so allowing him to know not only the inmates' mood, but also the coexistence atmosphere within the prison, as well as its premises conditions.

This way of acting, that is usual among the Directors, is also encouraged from the Directorate General of Prisons itself, as Directors always play the role of interlocutor, and because this Directorate General ask them for all the information required; consequently, it is necessary for the Director to have a detailed knowledge of the situation in his Prison, knowing the inmates, specially the most relevant ones.

The Directorate General of Prisons takes advantage of the meetings held with the prisons' Directors to provide them with the guidelines in this regard. That is why, without any doubt, it is being met in a properly way the stimulation that the Report makes reference to.

With reference to the suggestion made by the Report as to inform the inmates about their legal situation (pending cases, sentences, imprisonment time reminder, when will they have the right to benefit from the open-plan scheme -"*tercer grado*"[2] regime- or if they will enjoy a conditional release in a short time), an information which is provided by the Modelo Prison in Barcelona, etc., it is necessary to say that this information is also usually provided in some of the prisons under the Directorate General of Prisons, and this practice will be progressively extended to all the establishments provided with a standardised computer system, which will be implemented on 1st. January 2000, and which is called "Sistema de Información Penitenciaria" (Prisons Information System) (SIP), that will replace the present system.

As for the available staff, and in order to clarify any doubt concerning the above issues, we have to point out that this function is entrusted to the teachers and lawyers, who are at the inmates' disposal to dispel any doubt concerning their personal, procedural or penitentiary circumstances.

3. Inmates who are considered to be "dangerous" or "unadapted to an ordinary prison regime"

Paragraphs 65 to 70 of the Report.

The Report itself admits that some improvements have been made in the Spanish prison system, both at a regulation (with the coming into force of the new Prison Rules) and at a practical level. The number of these inmates has decreased in the last four years and the material conditions in the special units have been significantly improved.

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[2] When certain benefit are allowed to inmates of good conduct, e.g. weekend release

The CPT admits that material conditions in the special units of Jaén and Madrid V prisons are satisfactory as regards the cells equipment and their accommodation conditions. Nevertheless, the CPT makes a complaint about the scarce direct contact between staff and the inmates, indicating that this communication takes place through screens or grills.

The Prison Services admit that the need to monitor the staff activities through separation elements makes difficult their communication with prisoners, but it is necessary to take this preventive measure given the dangerousness of this kind of inmates, who have taken part in violent actions like kidnappings, riots and, in some cases, they have even killed another inmate. That is why it is necessary to preserve the security and safety of the prison staff who, otherwise, would be in danger in case of being in direct contact with the inmates.

However, the Prison Services do not give up the possible rehabilitation of these inmates –as it is shown by the fact that the number of these inmates has decreased-, which means that many of them have been changed from this special regime into a less restrictive one, in which it is possible to have a greater degree of contact with prison officers.

Consequently, when the evolution of these inmates proves to be positive, they are frequently changed into a less restrictive regime, where contact with prison officers becomes more frequent and where physical barriers between these inmates and the prison officers disappear.

On the other hand, the prison authorities are aware that these are the prisoners who need a more intensive attention, as they are undoubtedly the prisoners with more requirements. That is why the Prison Regulations themselves have designed and developed in the practice a specific intervention program for this type of prisoners. This program has achieved favourable results, on account of the increasing number of inmates who leave the special regime and integrate definitively into the ordinary regime, while the number of inmates who need to be returned to the special regime is not relevant.

4. Conditions of detention

Paragraphs 71 to 78 of the Report

Material conditions

The CPT admits the good material conditions of detention in the establishments visited and the healthy and sanitary conditions within their cells. However, it highlights the overcrowding noticed in some of these establishments, specially in the cells for women of Las Palmas Prison, and it recommends to make the necessary effort to achieve the balance between the number of prison places and the number of inmates.

It is necessary to clarify the way in which the prisons capacity and occupancy are devised in our prison system in order to give an appropriate response to the inmates' demands, who at present amount to 39,200 prisoners, not including the self-governing community of Catalonia.

In our prison system, the concept of prison place makes reference to the physical space, wide enough to be occupied, at least, by two inmates and provided with the necessary facilities to preserve its occupants' privacy.

The Spanish prison system assigns an ideal capacity to each prison, according to its measurements. This ideal capacity makes reference to the occupancy level in the establishment, taking into account the cellular principle of single occupancy. Thus, for the Madrid V prison -one of the establishments visited by the Delegation- 1,008 inmates is its ideal capacity, a figure that matches the 1,008 places within the 14 accommodation units (72 cells per unit). To these places, there must be added another additional or supplementary 300 places, which are used for infirmary, initial placement and isolation purposes.

Nevertheless, the prison population requirements do not allow sometimes the strict observance of the single occupancy principle. In such cases, both the prison regulation and the real practice admit some exceptions to this single occupancy principle (one inmate per cell).

Regarding this subject, the article 13 of the Prison Rules lays down that it will be possible to share a cell in the following cases:

- if habitability conditions of the cells -and their measurements- so allow it; if the inmates privacy is preserved, and providing that it does not exist any other treatment, medical, peace or security reasons that might advise against it;

- on a provisional basis, when the number of persons held in prison exceeds the number of single occupancy cells.

Besides the reasons laid down by the Prison Rules, we have to add the reasons arising from the actual functioning of the prisons. We are referring to the cases in which the prisoners themselves make a request for sharing a cell with another prison inmate, because of a personal preference and, in some cases, for therapy reasons (e.g. in the case of a depression crisis, etc.).

These exceptions to the single occupancy principle justify the existence of multiple occupancy cells.

However, and as the Report itself admits, the Spanish Prison Services are making a great budgetary effort to adapt its infrastructures to the socio-economic and cultural level in our country. Thus, from 1991 there is up and running a project for the building of new prisons, ten of which have already been inaugurated, and which fit the model of establishment that the Committee already knows as a result of its visit to Madrid V (Soto del Real) prison; we are waiting for another four prisons to be inaugurated next year 2000; and there are another two establishments which are being built; we have also to add other twenty-four establishments intended for social rehabilitation of prisoners in “tercer grado” regime who are benefiting from the “open plan” scheme.

These new infrastructures have allowed the modernisation of our prisons, but from a quantitative point of view, they have also permitted their overcrowding rate decrease, from 130,9% in 1995 to 108% in 1999.

This rate of 108% (108 inmates per 100 prison places) is very similar to the rate in other States of our environment and which are also members of the European Council.

As for the overcrowding touching the cells for women in Las Palmas (Salto del Negro) prison, the Prisons Services are aware of this problem in the Canary Islands, and specially in this one. Efforts are being be made to mitigate provisionally this situation by means of the relevant transfers of prisoners to the nearest island, that is, to Tenerife. However, the definitive solution to this problem will be attained with the creation of the new penitentiary, that it is foreseen to be built in Gran Canaria island.

Concerning the penitentiaries in the self-governing community of Catalonia, and as a result of the Motion 70/IV which was unanimously passed by the Full Assembly of the Catalonia Parliament, and submitted to the Justice, Law and Public Security Commission, there is a Plan for the Creation and Substitution of Penitentiaries for the period from 1997 to 2007.

The aims of this Plan for the Creation and Substitution of Penitentiaries are to analyse the basic information on the Catalan prisons system, from 1984 to 1986, and to have available a planning instrument allowing us to define the needs of prison equipment in the medium and long-term.

The Program specifically includes the following projects:

Substitution of the penitentiaries located in Barcelona city, that is, the Prison for Men (Modelo), the Penitentiary for Women and the Penitentiary for Youngsters.

The building of a new Penitentiary for remand prisoners in Barcelona city.

The creation of a Psychiatric Unit.

The building of a new establishment for the Enforcement of Judgement.

All this will allow us to reduce the occupancy levels in Catalonia penitentiaries.

Regime activities

The Report itself admits that, in general, the level of the activities carried out in 1998 has considerably improved compared with previous years.

The following indicators highlight this evolution with reference to the penitentiaries as a whole, excepting those of the self-governing Community of Catalonia.

LEVEL OF IMPLEMENTATION

	1996	1999
Regulated teaching	10.840	11.714
Occupational professional training	5.164	10.500
Productive work	3.500	7.100

As regards the establishments examined and for the above mentioned years, the evolution of the activities level was the following:

JAÉN

LEVEL OF IMPLEMENTATION

	1996	1999
Regulated teaching	229	230
Occupational professional training	115	175
Productive work	42	96

MADRID V:
LEVEL OF IMPLEMENTATION

	1996	1999
Regulated teaching	345	427
Occupational professional training	265	580
Productive work	5	292

LAS PALMAS: :
LEVEL OF IMPLEMENTATION

	1996	1999
Regulated teaching	323	319
Occupational professional training	140	180
Productive work	32	78

Despite the above information, it must be acknowledged that, at least, in two of the three establishments subjected to exam, there is still a significant margin in which the activities level has to be increased. For the moment, there are two restricting factors which are determining this level:

- the physical characteristics of the establishments, liable to be improved in terms of production. For this purpose, a plan has been designed to carry out some space adjustments (this is the case of Jaén prison) or for building a new establishment aimed at giving a wider response with regard to production (Las Palmas prison case);

- the establishments staffing, with regard to sports trainers or occupational monitors, that due to budgetary restrictions not always have been able to respond to the ideal outline.

However, considerable efforts have been made in this respect, which become evident from the following indicators:

	YEAR 1996	YEAR 1999
STAFFING (*)		
Sports trainers	39	47
Occupational monitors	40	45
Staff assigned to production	64	153
Permanent staff for training management	0	155

(*) These figures do not include teachers, nor temporal staff. In each penitentiary there is a minimum of one sport trainer and one occupational monitor.

As for the establishments that have been subjected to exam, the situation is as follows:

JAÉN:

	YEAR 1996	YEAR 1999
STAFFING (*)		
Sports trainers	1	1
Occupational monitors	1	1
Staff assigned to production	0	5
Permanent staff for training management	0	2

(*) These figures do not include teachers, nor temporal staff. In each penitentiary there is a minimum of one sport trainer and one occupational monitor.

MADRID V:

	YEAR 1996	YEAR 1999
STAFFING (*)		
Sports trainers	1	2
Occupational monitors	1	1
Staff assigned to production	0	5
Permanent staff for training management	0	3

(*) These figures do not include teachers, nor temporal staff. In each penitentiary there is a minimum of one sport trainer and one occupational monitor.

LAS PALMAS:

	YEAR 1996	YEAR 1999
STAFFING (*)		
Sports trainers	2	2
Occupational monitors	1	1
Staff assigned to production	1	3
Permanent staff for training management	0	3

(*) These figures do not include teachers, nor temporal staff. In each penitentiary there is a minimum of one sport trainer and one occupational monitor.

Regardless the above mentioned, in 1999 something has happened that will have a very positive effect on the activity level in the establishments, but above all, on its quality. It is about the integration of the regulated teaching –to all purposes- into the standardised teaching chain of the Educational Services. One of the rules lays down the abolition of the Penitentiary teachers body. So, the relevant Educational Services will be responsible for the planning, teaching and control of the educational activity in the Penitentiaries in the future. In this way, teaching in this environment is assured, according to the established standards.

Concerning the attendance of youngsters to these activities, the level of participation of this group is at present very greater in number than for other groups of inmates. But, regardless of the above indicated, we are working at a steady pace to implement specific performance modules for this group of population, and even extending it to older population. In this regard, and charged to the EU Integral Program, it is planned to carry out specific and comprehensive training activities in five establishments during 1999. On the other hand, in some of the self-governing Communities, they are keeping in contact with the Service in charge of Youth affairs in order to encourage this kind of programs.

Usually, remand prisoners take part in the productive workshops and the activities organised by the establishment.

Concerning the question that employment should not be determined by the market elements, it must be specified that, at present, an important part of the productive work is carried out within the penitentiary services themselves; that is, certain services -such as those carried out in the kitchen, the store, as well as ancillary services, etc.- are managed as productive workshops and, therefore, they are not dependent on external companies.

The rest of activities does, in fact, rely on the external environment and, at the same time, the productive work has to be self-financed with the resources obtained from its performance. Nevertheless, as the work carried out by the inmates is very specific and it becomes a part of their rehabilitation, it is envisaged to develop a specific rule to regulate in detail this kind of work. In this way, certain aspects, which the common legislation is being applied to, will be able to be dealt with according to their own rule, thus introducing undoubtedly new elements of flexibility.

Concerning the self-governing Community of Catalonia, it is necessary to point out that the company from the public sector that manages the productive work in penitentiaries -the Centre d'Iniciatives i Reinserció (CIRE)- does its best to increase the volume of productive work to be carried out by the inmates. However, the offers from companies providing with work are subjected to fluctuations that have a bearing on the mercantile tract within the private sector.

In paragraph 78 of the Report, it appears a section, the last one, difficult to be interpreted. If a reference is being made to the fact that inmates should take an increased part in the activities of the penitentiaries, we can provide –as a response to the concern expressed by the CPT- the project, according to which penitentiary services are considered productive workshop: kitchens, baking for the prison consumption, stores or auxiliary workshops. If, on the contrary, it is a matter of improving or extending the facilities planned to be used for working within the penitentiaries, we are also working along this line, providing the new workshops with equipment, converting facilities or building new establishments to fulfil their function in the most suitable way.

Finally, we have to underline that the subsidies granted by the European Social Fund, and which are assigned for labour integration purposes, are allowing the reorientation of the Occupational Professional Training Programs in such a way that other programs for labour guidance and supplementary schedules are becoming widespread.

5. Health care services

Paragraphs 79 to 92 of the Report.

Firstly, concerning the staffing level at Jaén and Las Palmas de Gran Canaria prisons, we consider that it is sufficient at present, while the incidental vacancies are filled by temporary staff. On the other hand, the post of Deputy Director at Jaén Prison has been filled from last December.

The health care by specialists is carried out both, through the public services in hospitals, and through temporary staff who visit the penitentiaries.

Concerning the waiting periods for consultations with specialists outside the prisons, there is no difference with the rest of the population. In any case, we have no proof of this 2 years waiting time, as stated in the Report, not even for those specialities for which the waiting time is long, such as ophtalmology. If any similar case should have occurred, it was probably due to other not strictly health reasons (transferral of establishment, etc.).

The Prison Services assure an odontology service in all the prisons, including extractions and repairing operations (sealings and prosthesis). In fact, this service is provided by an external company and these provisions are fully contemplated in the Technical Specifications. At present, the catalogue of benefits that in this regard should be financed by the Penitentiary Institution is being considered, aimed at unifying criteria among prisons.

As regards to psychiatric care, all the prisons mentioned in the report have nowadays an advisor psychiatrist and, for the moment their coverage seems enough.

Concerning the suggestions made, in order to enhance the material environment and living conditions of the Psychiatric Unit of the Modelo Prison Infirmary, the Catalonia Plan for Penitentiaries Substitution and Creation envisage the building of a new psychiatric unit foreseen as a new health care space functional and physically differentiated, whose aims are the comprehensive assistance of patients suffering severe and chronic psychoses as well as to provide psychiatric care to all those patients who suffer a crisis during which a psychopathic problem could arise.

To this effect it was approved a “expediente plurianual de gastos” (pluri-annual public investment expenditure budget) for building such psychiatric unit that will allow to enhance qualitatively the specialised health care for the mentally ill inmates.

On the other side, the psychiatric care of a mentally ill prisoner inside a prison facility has not to do with cohabiting or not with patients of other kind but with a suitable clinical follow-up that that secures the monitoring of the clinical symptoms, once the severe crisis is over. It is not always easy, depending upon the establishment of which we are talking about, to have the optimal spaces but it does not mean that the psychiatric patient has to be necessarily secluded, and especially if the medical treatment that he is undergoing keeps him balanced.

It is necessary to comment, also, that the external psychiatric care makes difficult, occasionally, hospital treatment during the severe crisis. In any case, these could be also treated in the centres themselves, and it is in this context when it is necessary to begin the treatment of the acutely agitated patient with a mechanical restraint that evidently must not last more than the strictly necessary period. In such a case, this is a therapeutic action. Furthermore, in principle, no mechanical restraint of medical type should take place with handcuffs at the present moment because all the centres have the suitable straps

It is also necessary to underline that medical doctors as nurses undergo retraining period in the reference hospitals, being psychiatry one of the priority subjects in retraining curricula.

Concerning the reference made in the report about the task carried out by inmates acting as medical orderlies in the Madrid V Prison, there is no doubt that they are inmates that are occupying some types of posts and that are being substituted gradually in infirmaries by hired staff. However, we think that is not specially negative that inmates could perform certain tasks as medical ordelies, if such activities do not mean a risk for the confidentiality that should have medical acts.

Finally, as far as the issues of this section, it is necessary to state that the medical care units have regulations concerning their role for safeguarding the inmates' personal integrity, and that the inmates have to be examined before or while they are serving their corresponding sentence also they have to submit those injury medical reports to the relevant Judge which are necessary to fill out when the injuries occur no matter their cause. In order to submit these medical reports there is an official form made of self-copying paper leaves. In a short delay, it is foreseen that such form has an extra copy in order to deliver it to the concerned inmate.

6. Other issues

Paragraphs 93 to 101 of the report

Discipline.

Concerning this issue the report acknowledges, specifically, that the disciplinary procedures are "highly developed and surrounded by a number of formal safeguards". We congratulate ourselves on this opinion we as disciplinary regime is essential for achieving an ordered cohabitation within the Prison Centres and to make possible, in that way, not only the security and physical safeguarding of prisoners that, it is both one of the duties under the authority of penitentiary Administrations, and a way of making possible all the intervention and treatment programs, that in other way would not be feasible.

Hence, although the disciplinary regimen is an important instrument for an ordered cohabitation in the Penitentiaries, if it is not used with lawful safeguards could be also, an arbitrary instrument that could clearly work against the inmates because it affects a very sensitive issue as the inmates' personal rights are. Therefore, for the Spanish Administration to have the CPT's recognition concerning the legal safeguards of our penitentiary system is especially satisfactory.

However, it is made a remark about the excessive imposition in Jaen Prison of one of the sanctions foreseen by the penitentiary regulations, as it is the transfer to a segregation unit.

The Prison Rules concerning discipline allow a wide range of sanctions catalogued according the disciplinary faults by which they are imposed, being solitary confinement a sanction to be imposed just in case of serious or very serious misdemeanours whose duration, in days, may be shorter or longer following the seriousness of the infringements. It is not frequent the use of this disciplinary sanction that demands that the facts committed involve an evident aggression and violence.

The Spanish Penitentiary Administration has elaborated by its Management Unit some indications about the conflicts rates in prisons establishments with comparative rates, among which it is the number of faults/misdemeanours committed in each centre and their grade. Regarding the Jaen Prison the rate of serious and very serious misdemeanours/faults is even lower than the national average.

Nevertheless, the Prison Administration will follow up the evolution of the sanctions in Jaen Prison with the aim of establishing if the great number of seclusion sanctions are due to a concrete circumstance that could be related with number of inmates and their characteristics etc.

Concerning certain complaints about some Penitentiary Supervision Judges' performance when they are incumbent on disciplinary issues, once again, we refer to the General Council of the Judiciary report, provided that monitoring judicial activity does not belong to the Penitentiary Administration and only after one appeal has been lodged by the inmate himself or de Public Prosecutor -"the Penitentiary Administration" (Spanish Prison System Central Authority) is not empowered to do ut-, the Supervision Court orders can be modified .

Information to the inmates.

"The Penitentiary Administration" has taken notice of the recommendation, in the report, about the system of information of the Spanish Prison System concerning the information to be given to the inmates about all the issues concerning prison life, that affects their rights and duties and which are framed within the interesting issues for life in prison. As above stated, the Penitentiary Administration has sent to the Centres Directors the relevant instructions in order they adopt the necessary measures both for delivering information booklets to the inmates and for the circulation of those booklets be fruitful for the inmates for preventing that their ignorance about prison life regulations makes them to breach discipline regulations or to ask the other prisoners or prison officials for this information.

Contacts with the outside word

The model of penal servitude, upon which is based the Spanish penitentiary system, starts from assumption that the prisoner is not a human being separated from the society, but one person that is part of the same and he/she has to return to it once his/her sentence has been served. All that for the sake that the prisoner do not break his/her link with the outside world, that his/her imprisonment does not involve a socio-family uprooting that could be prejudicial to his/her future social integration.

The contact with the outside world is encouraged by different formulae: leaves of absence from prison, communications and visits, access to the media etc.

The report makes a positive assessment of such inmates' opportunities in Spain for maintaining contact with the outside world. However, it states some complaints about the acoustic conditions of some communications, and recommend the necessary measures for remedying the above mentioned shortcomings.

The Penitentiary Administration is aware of those problems in some of the centres, provided that sometimes it has been informed by the "Defensor del Pueblo" (Spanish Ombudsman).

A completely satisfactory solution is difficult to be found, provided that it is necessary to talk aloud in those rooms where take place, at the same time an important number of communications using visiting booths and the fact that it is necessary to talk through a pane of glass. All that makes difficult the understanding mainly in those centres lacking of intercoms. Nevertheless, Penitentiary administration has projected to make the necessary building work in those centres where the above mentioned acoustic problems are more relevant by installing intercoms and ameliorating the acoustic isolation of some visiting booths.

Then, as recommended by CPT, the Penitentiary Administration will adopt the necessary measures for mitigating the above-mentioned shortcomings, and also among them the state of repair and cleanliness as for the intimate visit department in Jaen Penitentiary.

Drugs

Regulations concerning persons deprived of their freedom provide that the aim of Penitentiaries is reeducation and social rehabilitation of inmates both protecting and looking after their health as that of the persons living in the community at large, and that they have to employ those psycho-social programs and problem solving oriented techniques, hence the inmate with dependence on psychotropic substances should have the possibility of undergoing programs of treatment, drug abuse overcoming, and specialised attention.

The performance of duties with drug abuser prisoners has to be pursuant to these rehabilitation oriented regulations; hence drug abuse prevention activities are of the outmost relevance. The efficiency of such activities can be assessed considering not only drug abuse/non drug abuse by prisoners or ex prisoners but also the absence of further criminal activity, their no return to the penitentiary, their access to a job, their type of family cohabitation reached, and their psycho-physical health condition enjoyed. All these aspects make up a framework that makes possible favourable results.

According to this premise that puts forwards a preventive intervention policy on toxic substance consumption, aimed both at social normalisation and rehabilitation. To this effect, preventive measures to be carried out at the penitentiaries are aimed at taking into consideration the bio-psycho-socio-cultural (sic), penal and penitentiary aspects of the inmates. Basic performances have comprehensive characteristics, including health care activities (control and follow-up), of health education, psychological support and general activities of the premises -occupational and production work-shops, labour and academic training, occupational work-shops and leisure and free time work-shops (sic)-.

For that reasons, and in every penitentiary it is based a GAD, a multidisplinary team, that defines objectives of the interventions, as well as the resources co-ordination and the follow up, implementation and assessment of the performances. In the GAD it take part the Institution's experts on the different areas (health-workers, psychologists, schoolteachers, social workers, instructors, etc), and ONGs and other Entities.

PSYCHIATRIC INSTITUTIONS –
SAN JUAN DE DIOS PSYCHIATRIC HOSPITAL

1. General Considerations

Presently, 87 Psychiatric Centres are functioning in Spain that have around 20.000 beds which met the requirements of the psychiatric care.

Functional and organic dependence of this Centres, as you can observed in the chart below, is quite diverse; as well as the use and availability of the resources.

OWNERSHP	CONDUCTED BY	HOSPITAL Nº
Governmental	National Health Care System	6
"	Penitentiary Administration	2
"	Autonomous Communities	11
"	Provincial Councils and Inter-island Council	17
"	Other Public Institutions	3
Non-governmental Proprietary voluntary	Catholic Church	19
"	Other private charity institutions	1
Non-governmental – proprietary hospital		28
	TOTAL	87

Furthermore, in almost all the national health care public hospitals are psychiatric units integrated in the hospital services.

Concerning the patients rights the General Law 14/1986, dated April 25th on Health Care pursuant the 43 Article of the Spanish Constitution regulates the actions aimed at enforcing health protection right.

Thereby, under Article 10 of that Law the following rights are granted to the Spanish hospitals users:

1. Respect for their personality, human dignity, e intimacy, ensuring that they are not discriminated on grounds of moral issues, race, social class, sex, economic, ideological political or union affiliation .

2. The right to information about the health care services accessible to them and about the requirements to use them.

3. The right to the confidentiality of all the information concerning their case and about their stays at the public or private health care centres co-operating with the public health care scheme.

4. The right to be informed if the procedures of prognosis, diagnosis and therapy to be put into practice with them, could be used for a research or teaching project, that in no case, could mean an additional danger to their health. In any case, there will be necessary both the previous written authorisation of the patient and of the management of the sanitary centre.

5. The right to be given information about their health care in a understandable way for him/her relatives or close associates complete and continuous information both in written and oral way , including diagnosis, prognosis and alternatives for their treatment.

6. To chose, freely, among the presented options the responsible medical doctor of his/her medical case; being necessary the former written consent of the patient for undergoing any operation, except for the following cases:

a) When lack of therapeutics means a risk for public health.

b) Whenever they are unable to adopt any decision, then that right corresponds to their relatives or close associates.

c) Whenever there is an emergency that does not allow delays, that could cause irreversible bodily harm or in the case of death danger.

7. To have appointed a doctor whose name will be given to his/her, and who will be his/her main interlocutor within the health care team. In case of his/her absence another doctor will assume such responsibility.

8. To be issued a health condition certificate, when statutory provisions or other regulations demand it.

9. To reject the proposed treatment, except for the cases under point 6. In that case the patient has to ask for voluntary discharge under the conditions of paragraph 4 of the next article.

10. To participate, by the community institutions, in the health care activities, pursuant to the conditions provided by the law and on the implementing regulations.

11. To have a written medical file when finishing the patient stay in a hospital, he/she either or a relative or close associate will receive their medical discharge certificate.

12. To use both the complaints and suggestions instruments within the stipulated periods. In both cases he/she will have to receive written answers within the stipulated period pursuant to the enforced regulations at that moment.

13. To chose a doctor and any other dully-qualified sanitary personnel under the conditions established by this law and the enforced regulations passed by the Government Administration.

14. To obtain all the medicaments and sanitary products considered necessary to improve, preserve and recover his/her health, pursuant to the conditions stipulated by the State Administration regulations.

15. Respecting the peculiar economic regimen of each health care service, the rights granted under the paragraphs 1,3,4,5,6,7,9 and 11 of this Article will be also exercised with regard to the private health care services.

Pursuant to the Civil Law, under its Article 211 it is instituted that:

> "Involuntary placement of a presumed disabled person will demand a previous judicial order, except when for emergency reasons such action must be performed immediately. The relevant Judge will be informed as soon as possible, and in any case within a 24-hour term."

The Judge will grant or deny an authorisation for his/her placement after examining that person and after having heard the opinion of a medical doctor appointed by him and so he will inform the Public Prosecutor pursuant to the Article 203.

Without detriment of the provisions of the article 269(4) the Judge, ex officio, will request information about the necessity of continuing the involuntary placement, when he deems it relevant and, in any case, every six months, in the same way as provided in the above paragraph and will rule on the continuity or the dismissal of the involuntary placement."

2. Preliminary remarks

Paragraphs from 102 to 104 of the report

Spanish authorities congratulate themselves on the fact that the Delegation, that visited the San Juan de Dios Psychiatric Hospital, states that they did not hear complaints about ill-treatments.

As your Committee is fully aware, ill-treatment prevention is one of the major concerns of the Spanish Authorities.

Spanish legislation contemplates some legal instruments for both health care fields and any other field that put into practice without the slightest hesitation by the empowered authorities, whenever, always in isolated cases, an ill-treatment situation takes place.

At the psychiatric establishments, in case of the slightest incident, they fill out a form recording the findings of the doctor and nursing staff of the corresponding units or by those persons on duty, following the time these incidents take place. The above mentioned forms have to be analysed by both the Infirmary and Doctors Directorates filing them, if there are no legal or clinic relevant issues detected.

On the other hand, if it is detected any type of anomaly, two parallel actions are performed: first, it is sent an injury report to the corresponding Court and second, an internal inquiry takes place for clarifying the circumstances of the facts.

In this field, direct and indirect inquiry measures are extreme for preventing any possible abuse. If it is the case, sanctions or dismissals depending upon the seriousness of the facts can be enforced.

3. Treatment of patients

Paragraphs 105 to 107 of the report.

Health-care staff is framed within a multidisplinary team with different working post: orderlies, auxiliary nurses, qualified nurses, supervisors, doctors, psychiatrists, all of them dully qualified to perform their duties. So in most of the cases, expertise in this kind of health-care is an essential requirement for being posted to such public offices. The Management of each establishment is responsible, in the end, for all the centre dealings.

Accommodation conditions and care provided at the psychiatric hospitals are identical for all the patients and there is no patients' discrimination, no matter if the placements are voluntary or not. The management internal regulations have as goal the best possible treatment for the persons admitted into the hospital.

The therapeutic environment provides special attention and care in all this aspects that benefit the patients' treatment.

After a patient's admission in any psychiatric centre, an individualised treatment begins. It consist of the initial study on the patient case and the orientation of the treatment to be developed by the patient. A multidisciplinary team holds periodical meetings in order to adopt the relevant measures concerning the individualised program of rehabilitation. In parallel, each inmate has to have opened a medical file.

The therapy used in the Spanish public hospital, for all the cases, has to be dully accepted and authorised by the ill person if his/her level of conscience allows it or by his/her guardian or closer relatives, on the contrary.

In governmental hospitals, working in teams and clinic sessions are habitual forms of performance in all those services involved in planning the diagnosis and therapy guidelines of all the ill-persons admitted to the health care services. This running is contemplated under the General Regulations of the Spanish Public Hospitals.

The staff of the services of psychiatry is constantly retrained. In this sense, they are in permanent contact with the international scientific experts; they are continually updated on the latest developments and they attend to conferences or symposiums , etc which allows to implement the most innovative techniques.

4. Patients' living conditions

Paragraphs 108 and 109 of the report

The health-care approach of these Centres conditions all kind of performance; such as the program of playful-recreational activities as well as the occupational and education ones allows the patients to live in an environment that, mainly, is therapeutic with the limitations of a closed institution.

Once the patient has been admitted into a public hospital, he/she, as well as his family, are delivered an information booklet. This booklet gives information on the Centre premises, running regulations, location of its services, etc and furthermore,it includes the Inpatients Bill of Rights.

The visiting hours of the establishments are flexible enough for enabling the patients to be accompanied during their stays at the establishment. Visiting hours, logically vary accordingly the clinical situation of each patient, be this person a psychiatric patient, or not.

5. Means of restraint

Paragraph 110 of the report.

Health care staff tries to avoid this type of physical restraint. However, if the use of means of restraint is advisable because the agitated patient state advised so, you must have the on-duty-doctor's permission or the corresponding head of floor authorisation. This therapeutic action has to be performed pursuant to a protocol and adopted because of the patient pathology and it is not to be adopted depending upon the patient's voluntary or involuntary placement.

6. Safeguards in the context of involuntary placement

Paragraphs 111 to 119 of the report

Involuntary placement of any patient in a Psychiatric Hospital is made under Article 211 of the Civil Code, which provides that:

The involuntary placement of a mentally disturbed person will require a judicial authorisation and it is not extended except when the patient's clinic symptoms make it advisable. Whenever an involuntary placement is deemed necessary, the concerned Hospital submits a report to the judicial authority in order that they ratify the person's placement.

The psychiatric patients, who voluntary or involuntary are placed in a hospital, because of an acute nervous breakdown, once this process is over, they are discharged and then they are monitored by an ambulatory department, if they need so.

Concerning the psychiatric centres, regular reviews by an independent outside body are carried out. It is necessary to remind you that the Spanish Ombudsman, as it was formerly stated in this report, performs the duty that it has entrusted with regularly calls on the psychiatric centres.

Finally, it has to be reminded that a copy of your Committee report was submitted to the General Council for the Judiciary, in order to inform it about the CPT' s recommendations on the misgivings entertained by the CPT about the effectiveness, in practice, of the judicial review of the need to continue involuntary placement, under Article 211 of the Civil Code.