PART II

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 10 TO 14 JUNE 1994

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Ministerio de Justicia e Interior
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Madrid, 16 May 1995

Mr. Claude NICOLAY
President of the European
Committee for the prevention
of torture and inhuman or degrading
treatment or punishment

Dear Mr President,

The report issued by the committee following the ad hoc visit carried out to Spain from 10 to 14 June 1994 has been the subject of partial replies by this Ministry as the information urgently requested became available.

The content of the report has also given rise to abundant administrative activity; however, in order nor to delay further a global response by the Government, a full reply es now given to the Committee's report.

At the outset, I would like to thank you for your understanding concerning the reasons for the delay in providing a full response, which were explained orally by the liaison officer at an earlier date.

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I

As regards heading B of the report, "Nature and context of the visit"

1. In that section, it is noted that "It is not infrequent for allegations of torture and/or ill-treatment to be made by persons detained in Spain in connection with terrorist-related offenses, particularly persons suspected of belonging to the terrorist organisation Euskadi ta Askatasuna (ETA). The Spanish authorities often contest the veracity of such allegations, claiming that it is the policy of terrorist organisation to have their members systematically allege that they have been tortured or ill-treated by members of the law enforcement agencies".

I should highlight the right choice made by the Committee in its accurate wording of the sentence "the Spanish authorities often contest ...". It is true that the Government, judges and courts, faced with systematic complaints of ill-treatment in those cases, do not reply with a similar systematic dismissal of the complaints, but take them into account and process or reject them, following their examination and analysis.

As requested, extensive documentation concerning this subject will be forwarded together with the response to the report on the periodic visit.

Nonetheless, it is deemed appropriate to forward at this stage the decision given on 2nd instant by the United Nations

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Committee Against Torture in respect of a communication concerning Henri Parot. The Committee notes that "There are no grounds for Mr. Parot or the author of the communication to challenge the procedure followed in this case by counsel during the trial but he also made frequent exercise of his right to make other charges and complaints, which were also considered by the authorities of the State." (paragraph 10.7 of the Decision).

2. In my capacity of Competent Authority, I would underline my agreement with the Committee's opinion as regards rejecting acts of terrorism, both in their dimension of despicable criminal actions as well as in their liberticide intent against democratic societies. The reference made to the members of the law enforcement agencies is also fair in that they are faced by " great difficulties [...] in their struggle against this destructive phenomenon" and that "terrorist activities rightly meet with a strong response from State institutions".

Equally, I would express to the Committee; with all possible emphasis an absolute identification with its assertion that "under no circumstances should that response be allowed to degenerate into acts of torture or other forms of ill-treatment".

3. In order to finalise the response to this section, I would like to convey the will of the Spanish authorities and notably of the Ministry of Justice and the Interior, to bring into effect the recommendations of the Committee, in the firm belief that the preventive measures proposed to date have contributed to

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improving the Spanish framework of human rights safeguards, in particular to avoid organisational flaws which, when they occur, render verification of the proper conduct of police officers difficult.

Further, the cooperation and the experience of the Committee in the task of perfecting the prevention of ill-treatment are expressly thanked.

II

As regards heading C, "Consultations undertaken and cooperation received during the visit"

4. In my capacity of Competent Authority, I would like to convey my thanks to the Committee for its remarks acknowledging the efforts made in order to provide the documents requested for the visit at very short notice.

5. In respect of the circumstances set out in paragraphs 9 and 10, their content has been transmitted to the competent judicial authorities for appropriate action.

III

As regards Part II, concerning the facts found during the visit"

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6. I would like to put on record the disagreement with the last phase of paragraph 21, i.e. "The two marks, of an entirely different character to the acneform marks[1], were highly indicative of the application of electrodes."

This conclusion is rejected. Firstly, because of the bluntness of the expression "highly indicative", which is considered inadequate as, in the opinion of the experts, such a statement should have followed the histological study of the area by means of a biopsy, completed with chemical analysis or spectrographic techniques. Secondly, because the judicial authority, following the investigation carried out, concluded with a dismissal of the allegations, a conclusion which is contrary to the views of the Committee. Thirdly, because the conclusion of the Committee could have been supported by the request, at the time of the visit, of a specialist expertise, which would have been immediately facilitated under the terms of Article 8 of the Convention.

7. No comments are made to heading C, which sets out the action taken by the Spanish authorities.

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[1] N.B. The words "which the person concerned also bore" have been left out in the Spanish citation of the report.

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IV

As regards heading D "Assessment and action proposed"

8. In connection with the recommendation formulated in paragraph 34:

9. As regards the precise events examined during the visit, the competent authority must refer to the facts set out in the ruling given on 21 July 1994 by the Judge in charge of the Central Examining Court given that, un our legal system, such a judicial decision has acquired the status of "res judicata". It should be highlighted that administrative authority - the Secretary of State for the Interior - ordered the opening of disciplinary proceedings which, pursuant to the law, had to be discontinued following the exculpatory judicial decision.

It should be stressed that neither the public prosecutor nor any of the defence lawyers of the persons concerned have appealed against that judicial decision.

10. As a consequence of the Committee's recommendation and subsequent to the above, it was decided.

To set up a working group with the objective of giving effect to the recommendation.

For that purpose, a detailed analysis has been made of the

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successive administrative and judicial activities that take place from the time when a person is arrested until that person is physically brought to presence of the judge. The methodological approach has been to identify areas of potential risk in the external control of those activities, which could result in an absence of transparency that could facilitate the impunity of improper conduct.

The identification of an "area of risk should lead to exploring different or reinforced modes of action in terms of prevention and control, which are legally and administratively feasible.

Once the solutions have been decided, they should be implemented, together with mechanisms to avoid any risk of ineffectiveness.

The working group was formed, and continues to be formed (because it is considered convenient that it should continue to function), by representatives of the Ministry, selected for their professionalism, together with representatives of the high operational level of the Civil Guard, the National Police and the Prison Service.

(Although the Committee's recommendation only referred to the Civil Guard, it had been decided to carry out this work in respect of all the bodies which are related to persons deprived of their liberty, excluding as a matter of course, the judges. The group work and the profound knowledge of the mutual functions were believed to be more useful than action in one isolated body.

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Reality has proven this decision right).

The conclusion of work carried out to date, which virtually represent the accomplishment of the task, save for follow-up work, are set out hereunder.

A. At the time of arrest

11. It was observed that, given the characteristic dangerousness of the members of terrorist groups, violent arrests are not infrequent. The arrests carried out in apartments or dwellings, where the surprise element in the entry to avoid escapes or risk of armed response led inter alia to the breaking down of the door, were also examined.

As regards that stage, it has been resolved:

To call for a grater accuracy in the content of the reports, particularly in the recording and description of injuries and damage to properly, concerning both the persons detained and the participating officers themselves. The fact that the primary concern is the police action, does not appear to be incompatible with recording information in writing and, if necessary, gathering medical evidence.

B. Transfer to the police premises

12. Given the brief period of time involved, the transfer from the place of arrest to the police premises does not pose risks

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other than those involved in the arrest itself.

C. At the police premises

13. Several issues have been examined by the working group. With the exception of "medical examinations" which shall be considered under heading D hereof, the issues dealt with and decisions adopted are set out below.

a. detention registry book

14. The police establishments where detention by the State law enforcement agencies can take place possess a registry book for the accurate recording of the personal particulars of detainees and the time of transfers of detained persons and proceedings.

Anti-terrorist operations usually involve the detention of rather numerous groups of persons. It also involves a constant police activity to complete the operation and avoid the risk of escape of persons not detained at the outset or of evidence being concealed.

At the same time as tending to the operational requirements, all movements/action taken must be recorded.

All detentions are the subject of a file under the responsibility of an examining officer [instructor], assisted by the secretary. The examining officer - in the Civil Guard a

lieutenant or captain - is responsible for all occurrences until the detainee is presented in court, as well as for the police proceedings. It has been verified that examining officers have a full knowledge of their functions and are fully conscious of their responsibilities. Thus, by way of example, it has been observed that no one, not even a higher-ranking officer, is allowed to see a detainee, save with the explicit authorization of the examining officer, of which he keeps a record.

Following the necessary exchanges of views concerning the matter and having regard to the prevailing situation, it has been resolved to draw up a unique detention registry book for all the law enforcement agencies, setting out all the possible occurrences in terrorism-related detentions.

A sample of the detention registry book, subject to final adjustments, is enclosed. It is currently being discussed whether this detailed model of detention book should be used in all types of detention; it should not be ignored that there are numerous police establishments, some having such low staffing levels that a formal obligation, of an excessively meticulous character, could give rise to serious dysfunctions in public safety/protection.

b. Notification of custody to a close relative or third party of the detainee's choice in cases of incommunicado detention.

15. On examining this issue, it was observed that this legal measure [of withholding notification of custody] is, to a large

extent, not used, given that its purpose is impaired by the common practice of publicising in certain information media the identity of the detained persons, which is protected by the right to freedom of information guaranteed in the Constitution.

As a result of the above, it is usual practice to inform the next-of-kin of the fact of the detention and the place where the detainee is being held when such family members go the police establishment.

Having regard to the prevailing situation, the following has been decided:

Given that every incommunicado detention is ordered by the judge and he is in charge of its progress, as soon as an incommunicado detention becomes publicly known, the examining officer shall immediately request an authorization from the court to allow the detainee to inform directly a person of his choice of the fact of his detention and of the place where he is being held.

Thus, the inconsistency of suspending the right to inform of the detention, when the fact of the detention of that person is the subject of press coverage on the following day, is avoided.

In the exceptional cases where the detention does not become public knowledge, not to withhold notification beyond the time in fact needed for the purposes sought by the incommunicado detention and, if possible, not beyond 48 hours.

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For the record, it should be noted that the above has been decided because it is considered to be appropriate, despite this issue not being the subject of complaints from family members of terrorist detainees.

c. Judicial involvement.

16. No case is known of failure to give notice within 24 hours of the arrest and lodge an application with the competent judge for a ruling concerning incommunicado detention pursuant to Article 520 bis of the Code of Criminal Procedure.

On examining the activities of judges in respect of the detention of suspected terrorists, which usually take place in the North of Spain, it has been found that their approach to the powers granted to them by Article 520 bis, third sub-paragraph of the Code of Criminal Procedure is not uniform. Further, the analysis carried out has led to the conviction that such variance is the result of the personal approach/decisions of the judges concerned.

In this respect, the working group has indicated to the competent authorities that it would be convenient if judges and public prosecutors were to carry out such visits and that the law enforcements agencies welcome them because, for such agencies, they are a guarantee of the correct functioning of the system.

d. lawyer.

17. On examining the prevailing situation, it has been established that lawyers participate in all interrogations in conformity with Spanish law, be it an officially appointed lawyer or, once the incommunicado detention has ceased, a freely chosen one.

No practical incidents worthy of note have been identified in this connection; the appointment of lawyers by the Bar/Law Societies is correctly carried out and officially appointed lawyers promptly go to the police establishment.

In an effort to improve the system, instructions have been issued to the law enforcement agencies to inform the General Secretariat of Justice in the Ministry of Justice and the Interior of any anomalies (delays, etc.) in the performance of the duties of officially appointed lawyers, in order to request from the Bar/Law Society that such anomaly is not repeated and, if necessary, for appropriate measures to be adopted.

By way of example in this matter and in connection with the above-mentioned complaint of the terrorist Parot Navarro to the United Nations, when the complaint was reported in the press, the officially appointed lawyer that assisted him, personally appeared before the Public Prosecutor and explained in detail his participation. The implications of this must be taken into account.

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e. interrogations.

18. No breaches of significance of the rules of conduct set out in Article 5 of the Organic Law on State Law Enforcement Agencies (copy enclosed) have been noted in the carrying out interrogations in practice.

Following the relevant analysis and comments, the above-mentioned rules, together with the penal and disciplinary sanctions foreseen in the same law as well as in the Penal Code and the Disciplinary Regulations (copies also enclosed) in respect of any transgression of the powers conferred, have been found to suffice at present.

The use of audio/video recording techniques of interrogations has been debated. It is considered that their use is a desirable objective. However, for budgetary considerations, the implementation of such system is not feasible in the short run.

19. The information requested in paragraph 35 was transmitted at an earlier date, and an update thereto, regarding the disciplinary proceedings referred to in paragraph 27, is enclosed herewith.

D. As regards medical examinations

20. In this connection, a sub-group was formed in order to analyse and examine the manner in which to implement the

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Committee's recommendations.

This group was composed of two senior civil servants in the Ministry and three forensic doctors: the Director of the Forensic Institute[2], a forensic doctor attached to the Audiencia Nacional in madrid and the Director of the Forensic Clinic in Bilbao.

In the first place, the situation concerning forensic staff in Madrid, the Basque country and navarra was examined. It was concluded that no structural problems existed in respect of forensic services in Madrid, Bilbao, Vitoria and Pamplona. A shortage of forensic staff was observed in San Sebastián.

In order to remedy this shortcoming, the possibility that the police establishments in San Sebastián retained doctors in private practice to carry out the examination of detained persons was discussed. However, this proposal was withdrawn given that it cannot, for the time being, be set up in a way which permits the reconciliation of the detainee's right to be informed of the identity of the doctor assisting him and the right of the doctor to safeguard his personal security vis-à-vis potential pressure from criminal organisations.

It was resolved that in cases of persons detained in anti-terrorist operations in while in other - in fact few - cases, the detainee is taken San Sebastián, the medical examinations immediately following the arrest should be carried out by the forensic doctors in San Sebastián themselves; this should be

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[2] Instituto Anatómico Forense

insisted upon. In cases where, due to their work, the San Sebastián forensic doctors cannot go over to the police establishment, this service would be requested from the Bilbao forensic doctors; for this purpose, the way to make those immediate examinations possible is being studied. The revision of the rota of on duty forensic doctors is being studied, as well as its budgetary implications, with a view to reaching the best possible solution for the problem posed in the specific situation which at present exists in San Sebastián.

The authorities in the law enforcement agencies are markedly favourable to those examinations. They point out that it would be convenient to make alternative arrangements for the cases where the presence of the forensic doctor is not immediately possible.

Practice is not uniform concerning the promises where the examination is carried out. Depending upon the circunstances of each detention, an examination is sometimes carried out in the police establishments, while in other - in fact few - cases, the detainee is taken to the forensic clinic.

To a large extent, this depends on the available staff, given that transfers require a reinforcement at a time when staff may be assigned to tasks having priority in the domain of public safety/protection.

The discussions held on this subject with the forensic doctors and the working group from the law enforcement agencies did not reach a unanimous view. The working group from the law

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enforcement agencies considers that policing needs would be advanced if the examination were to take place on the premises of the police establishment, provided the premises meet the standards required by forensic doctors. This is without prejudice to transferring the detainee to a hospital whenever the need for further examination becomes apparent. This is normally common practice and does not pose particular problems.

The forensic doctors shall inform the General Secretariat of Justice in the Ministry of Justice and the Interior of the equipment they require in the police premises used to perform examinations. As regards the premises in the Civil Guard Headquarters referred to in paragraph 38 of the report, the lighting has now been improved and a request es expected from the forensic doctor, concerning the specific equipment she considers should be available in those premises.

In respect of the possibility suggested in paragraph 39 of the report, concerning specialist examinations, the forensic doctors have confirmed that they prescribe a specialist examination and any other rest which they consider to be useful or convenient for the purposes of the examination.

As regards forensic doctors informing detainees of their identity, it should be noted that the forensic doctor who carries out an examination in clearly identified in the judicial proceedings to which his/her signed report is incorporated. There in no exception to the practice of forensic doctors identifying themselves as such to detainees.

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As regards the manner in which forensic doctors identify themselves, it should be highlighted that after the Committer's visit, Organic Law 19/1991 of 23 December on the Protection of Witnesses and Exports in Criminal Cases came into force. The main objective of this recent law is to give specific powers to the judicial authorities to partially withhold the identity of experts from public knowledge during the investigation of criminal cases, without weakening the guarantees concerning the right to a defence. A copy of the new law is enclosed.

It has been concluded that, for the time being, sufficient identification of forensic doctors is provided in the reports containing the result of the examinations which, bearing their name and signature, they deliver to the court. Once incorporated into the proceedings, they can be, and in fact are examined by the detainee's lawyers.

There is no legal possibility for the medical reports drawn up in the place of detention to travel with detainees in case of their transfer. Forensic doctors deliver their reports to the courts to which they are attached and do not give copies of them to the police or Civil Guard (it should be borne in mind that forensic doctors are answerable to the court and not to a law enforcement agency). These reports, together with the proceedings drawn up in the place of detention, are forwarded to the central court by the court to which the former has delegated functions. Whenever a forensic doctor considers it necessary to see the results of examinations carried out in the place of detention, they can, on request, be sent by fax to him/her in the relevant court.

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With reference to the Committee's recommendation concerning the replacement of the model or form used to record the result of the medical examination, after an extensive exchange of views, the Director of the Forensic Clinic in Bilbao has been commissioned to draw up a new model of medical examination incorporating the Committee's recommendations. Work in this respect is currently under way. The Committee shall be informed as soon as the new form is available.

21. Finally, the last point in the report (paragraph 40) was the subject of a reply at an earlier date. Nonetheless, a copy of the response given is also enclosed.

22. The Committee is hereby also informed that, in the light of the recommendation concerning transfers made in the report on the periodic visit, the possibility is being considered of applying to detained persons a system comparable to that established for prisoners in the protocol on transfers of the Prison Service dated July 1994. No particular problems have been noted and a favourable view has been formed; in due course it will be resolved accordingly.

23. I take the opportunity of this full response to the report on the Committee's visit to Spain in June last year, to reiterate the spirit of full cooperation with the Committee in the exercise of its functions, both on my part and on that of all authorities competent in the matter.

Kind regards,