



REPORT OF THE
CATALAN
MECHANISM FOR
THE PREVENTION
OF TORTURE
DECEMBER 2016

SÍNDIC

EL DEFENSOR
DE LES
PERSONES

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Síndic de Greuges de Catalunya

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I. INTRODUCTION

1. INTRODUCTION

This report describes the activity conducted by the Catalan Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment (CMPT) in 2016. This is the sixth report presented to the Parliament of Catalonia, pursuant to the terms of Article 74 of Law 24/2009, of 23 December, on the Síndic de Greuges (the Catalan Ombudsman).

A total of 50 centers were visited this year, making for a slight increase over 2015, in which the visited facilities totaled 45. Most of the visits were made to police stations, belonging to the Mossos d'Esquadra (Catalan Autonomous Police) and several local police forces, which in Catalonia have custody areas for detained persons. Furthermore, five penitentiary centers have been visited, including two newly-built facilities (Puig de les Basses and Mas d'Enric) as well as new youth and adolescent detention centers (juvenile justice, therapeutic and intensive or educational action facilities). As in other years, a number of mental health and geriatric centers have been visited. This year, as a new development, two Mossos d'Esquadra penitentiary guard units, stationed at the Quatre Camins and Ponent penitentiary centers, were visited.

Also according to established practice, the CMPT has followed a standardized action protocol with the specific considerations of the type of center subject to supervision. Before each visit, the Task Force decides on the objectives and methodology that will be followed. Visits can be made at any time, without prior warning, and the liberty deprivation facilities chosen by the Task Force are visited, especially those where there is the greatest risk of abuse, such as restraint rooms, or in penitentiary centers, special departments. Considering that many of the facilities housing persons deprived of liberty have been visited by the CMPT on several occasions in recent years, visits now tend to focus not so much on the already-known functional aspects of these places, but on confidential interviews with persons deprived of freedom. This year, in some cases, group meetings have been added to these individual interviews to discuss more general affairs.

From the inspection of the facilities and the interviews conducted, the Task Force draws the most relevant observations, and the conclusions and recommendations that must be conveyed to the Administration responsible for the visited center. Furthermore, once it receives the response from the Administration, the content is evaluated to either close the case, or if necessary, request additional explanations or make later follow-up visits.

In this year's report, aside from the information sheets that outline, for every center visited, the main observations and conclusions drawn by the Task Force, and also the recommendations derived therefrom, two studies are presented. These are the result of the visits made by the Task Force and the research carried out by members of the CMPT Advisers Council and the Catalan Ombudsman himself. These considerations center on two topics of unique importance in the penitentiary realm:

1. The rights of the women deprived of liberty in the penitentiary centers of Catalonia. Starting in the last third of 2015 and throughout 2016, the CMPT Task Force has visited the five penitentiary centers in Catalonia that have women's modules, including the only center exclusively devoted to female prisoners. Along the same lines, the interviews conducted on visits to detention centers for minors have also focused predominantly on young women. Along with the research conducted by Sabina Puig, member of the CMPT Advisers Council; the information received during the training session held on occasion of the International Day in Support of Victims of Torture, and the experience accumulated by the Catalan Ombudsman institution, these visits have made it possible to conduct a study on the situation of the rights and guarantees of women in the penitentiary system and their compliance with the best international regulatory standards. The main conclusion drawn is that, although in many aspects the situation in Catalonia is above international standards, it is necessary to give the country's penitentiary policy a gender perspective and implement certain specific improvements that are described in the second chapter of this report.

2. The solitary confinement regime in Catalan prisons. First degree (or closed regime) imprisonment is a very severe regime that can have impacts on the physical and mental health of the persons deprived of liberty who are subjected to it. Although only a small number of inmates (around 2% of the prison population) are held in solitary confinement, it is an issue that concerns Catalonia's organized civil society, and was the subject of parliamentary debate this year. These so-called "special departments" or "disciplinary wards" have been systematically inspected by the Mechanism from its beginnings, focusing on the facilities themselves and conducting interviews with persons being disciplined or first-degree inmates. This year, the legal framework and practice have been analyzed, arriving at the final recommendation that extreme caution must be used in applying solitary confinement. It is especially important that more flexibility be introduced into its eventual reversion, without waiting for the expiry of the maximum time frames for review set by law.

Another new development in this year's report is the detailed account of the status of compliance with the main general recommendations made in last year's report. Along these lines, the CMPT has a favorable view toward all the steps taken this year to provide training to various social groups (especially medical and other health care personnel) on the Istanbul Protocol, and trusts these measures, begun this year, will make it possible to increase the quality of injury reports and other documentation

essential for the effective investigation of possible reports of torture or abuse. On another note, such a positive opinion cannot be given on the interpretation made by the Catalan Autonomous Police Force-Mossos d'Esquadra (PG-ME) of Article 520 of the Criminal Procedure Act, regarding the provision of legal aid to detained persons. Despite some minor improvements, the Directorate General of Police continues to employ the interpretation of this article made in the past by the National Commission of Judiciary Police. In the opinion of the CMPT and other institutions such as the Barcelona Bar Association (ICAB), this interpretation is completely insufficient to meet the demands of the European directive from which this precept is derived.

In the institutional realm, especially noteworthy were the celebration for the fourth consecutive year of the International Day in Support of Victims of Torture, as mentioned previously, and the participation by members of the CMPT in several national and international training activities.

The report closes with conclusions in which, for the first time, special mention has been made of the best practices detected over the course of the Mechanism's visits and other activities. Additionally, without undermining the observations and suggestions addressed to the Administration resulting from every visit made, this paragraph features some general recommendations to alleviate problems of a systemic nature in the penitentiary, police, justice and youth protection systems.

II. RIGHTS AND GUARANTEES OF WOMEN IN THE CATALAN PENITENTIARY SYSTEM

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Women now stand for somewhat less than 7% of the total inmate population in Catalonia. Their clearly marginal position in this area is one of the factors that, along with the gender inequalities persistent in society, leads to penitentiary policies and programs that do not always pay enough attention to their specific needs and circumstances. Historically, the judicial framework and the penitentiary system have been defined and developed around a mostly male population. Today, despite the efforts by part of the competent authorities to ameliorate the imbalances in this sphere, the lack of gender perspective can generate additional discrimination, inequality and suffering for the female inmate population in comparison with their male counterparts.

This is a situation that is repeated universally, and is far from being unique to Catalonia. At the international level, many advancements have been made in reflection and the adoption of human rights standards that take into account the special characteristics of women who have come into contact with the criminal justice system. One of the most significant are United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as the Bangkok Rules, approved by the General Assembly of the United Nations in December, 2010. These rules complement other United Nations rules and human rights principles related with the treatment of persons deprived of liberty: The Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners. At the European level, mention must also be made of the European Prison Rules as defined by the Council of Europe (Recommendation of January 11, 2006) which devotes a number of very specific articles to the rights of women in the penitentiary context.

Though they are not judicially binding, the Bangkok Rules “are inspired by principles

contained in various United Nations conventions and declarations and are therefore consistent with the provisions of existing international law” (preliminary observations, paragraph 4). Therefore, they should be the minimum rules of reference to be applied in Catalonia wherever internal regulations are not clear enough, or do not offer sufficient specific guarantees to ensure the dignity, and physical and mental health of female prisoners.

On June 28 of this year, to celebrate the International Day in Day in Support of Victims of Torture, the CMPT held a discussion session to promote more widespread familiarization with these rules. In their various interventions, speakers identified the main shortcomings in the legal system and practices that are not compliant with the most recently adopted international standards, and that could reinforce the situation of vulnerability faced by women deprived of liberty or even favor abusive practices.

On another note, throughout their visits to penitentiary centers and in deliberations with the Advisers Council, the CMPT Task Force has identified a number of situations in which female prisoners, because of their condition as women, suffer discrimination or find themselves in a situation of special vulnerability. Following is a list of some of these circumstances, which are expressed in relation with the international standards. Measures are proposed to offer greater guarantees for the dignity of women deprived of liberty.

Admission into the criminal justice system

Catalonia has reached a high imprisonment rate in recent years. This rate of incarcerated population has begun to descend, primarily due to the automatic deportation of convicted foreign offenders. In the case of women, the imprisonment rate appears to have remained relatively stable, around 7% of the total of the prison population.

Statistically, the criminal behavior of women, and therefore the reasons for their imprisonment, is different from that of men. In Catalonia, the vast majority of incarcerated women are serving drug

trafficking sentences. Prison terms for drug trafficking are longer than other sentences handed down for crimes of similar severity.

The life circumstances of imprisoned women also tend to differ notably from those of men. For example, a significant proportion of female prisoners continue to assume a major share of family responsibilities, even from prison. This reality, when not taken into sufficient consideration in penitentiary policies and programs, can lead to additional suffering for women. On this matter, the second Bangkok Rule establishes that “Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, regardless of their age, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.” Article 17 of the Penitentiary Regulations, which would be its equivalent in Spanish legislation, is more restrictive and only establishes that “the administration of the facility must admit the children under three who accompany their mothers at the time of their admission.”

On another note, the effects of imprisonment can be even more damaging for women who have lived through some type of gender violence prior to entering prison, especially when this life circumstance is not taken into consideration. According to a study by the SURT Foundation (*Violence against women. Analysis of the female penitentiary population*, 2005), 88.4% of female inmates in Catalonia have suffered some type of gender violence in their lives. Nearly 70% have suffered sexual violence. In 40% of the cases, the sexual assaults have been systematic; in other words, ongoing sexual abuse in childhood; rape, in the majority of cases by a partner, and ongoing sexual assaults by individuals from their family or social environment. In 25% of the cases, these assaults took place when they were minors.

The Bangkok Rules also stipulate that, at the time of their admission into prison, women be given medical screening, which must determine, among other items, their “mental health-care needs, reproductive

health history, existence of drug dependency, and sexual abuse and other forms of violence that may have been suffered prior to admission.” On another note, “prison authorities shall endeavor to ensure that (the female prisoner) has immediate access to specialized psychological support or counseling.” The Bangkok Rules specify that “particular efforts shall be made to provide appropriate services for women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.”

Imprisonment conditions: imprisonment sites, classification and individualization

Rule 4 of the Bangkok Rules establishes that “All prisoners should be allocated, as far as possible, close to their homes or places of social reintegration, in order to facilitate their care-taking responsibilities, as well as their preferences, and agencies and services used to enhance their social rehabilitation”. In Catalonia it is difficult to meet these criteria for proximity and suitability of the imprisonment site according to their services. Precisely because the weight of women inside the prison population is so low, they tend to be imprisoned in modules annexed to male macro-facilities with considerable geographic dispersion.

In Catalonia there are five penitentiary centers with female inmates: CP Puig de les Basses (Figueres), CP Mas d’Enric (Tarragona), CP Brians 1 (St. Esteve Sesrovires), CP Dones de Barcelona (known as Wad-Ras) and CP Ponent (Lleida). Of these, those that house the highest female prison populations are Wad-Ras and Brians. The new facilities Puig de les Basses and Mas d’Enric have women’s departments, and now hold 34 and 18 women, respectively. The CP Ponent houses 24 women. Only Wad-Ras is a center exclusively for female prisoners, including mothers. Therefore, it is inferred that most women’s departments are located in facilities designed and built to house men, and for this reason, are not adapted to the needs and specific characteristics that women could have or present.

For the same reasons, it is also difficult for Catalonia to comply with Rules 40 and 41 on the classification and individualization of women prisoners. As they number very few in absolute terms, female prisoners tend to be housed all together.

The CMPT has visited all of the women's facilities or departments in Catalonia on several occasions, except for Mas d'Enric and Puig de les Basses, which it has visited once, as they only recently opened.

The objective of the visits has been to examine the general conditions in which incarcerated women find themselves, and the way in which their fundamental rights are guaranteed. In this context, the visits have addressed a number of specific aims, such as an inspection of the site and structure of the facilities, the prison regime of women deprived of liberty, the legal statute of each type of liberty deprivation, and also the access to medical, psychological and social care.

As for location of the site, it has been confirmed that opening the new penitentiary centers Mas d'Enric and Puig de les Basses will help ameliorate the problem of overcrowding and lack of capacity in the Tarragona and Girona areas. By the same token, in Barcelona, the CMPT has found that Wad-Ras continues to suffer the same problem of overcrowding as in prior years, and significant, endemic problems regarding infrastructure, lack of space and conditioning of the premises. On the other hand, the level of occupancy and the involvement of the professionals in the daily lives of the prisoners is very positive. As a result, although it is a facility conceived for inmates in pretrial custody, the prisoners do not wish to be transferred to any other center.

In the case of Brians 1, the CMPT has also found, and gathered proof from its interviews with the administrative staff and the inmates, that the existence of only two residential modules makes for limited possibilities of classification as compared to the men's modules. Furthermore, the incompatibilities among female prisoners are more difficult to manage, which translates into a higher potential for conflict. The situation of the Brians

Women's Department is aggravated by the fact that it receives the prisoners with the most disruptive behavior from other penitentiary centers (including Mas d'Enric and Puig de les Basses), which also explains the higher number of regimental incidents recorded there.

Pursuant to the Bangkok Rules, "Women prisoners shall have access to a balanced and comprehensive program of activities which take account of gender-appropriate needs."

It has been observed that in Catalonia, due to the low number of women prisoners and their geographic dispersion, among other factors, these types of programs are very limited in their variety and specialization. The vast majority are related with vocational training. This vocational training, more than occupational and social reintegration, seems focused on occupying female inmates in traditionally feminine tasks. The CMPT has found that the workshops offered to women were mostly on hairdressing, sewing or cosmetics ("Make Yourself Beautiful").

Medical screening

In the foregoing section of the report, it was mentioned that the Bangkok Rules recommend a thorough medical screening on admission to a penitentiary center to determine a prisoner's basic health care needs. The Bangkok Rules go even further, specifying that "If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible." This provision coincides with the terms established by the General Health Care Act of 1986, and the Charter of Citizens' Health and Health Care Rights and Obligations of 2005, in terms of a person's right to choose their primary care team, general practitioner, nurse of reference, etc. Unfortunately, there are no instructions or circulars that regulate how these rights can be exercised in the penitentiary context of Catalonia.

The Bangkok Rules also state that, "Only medical staff shall be present during medical examinations unless the doctor (...) requests a member of the prison staff to be present for security reasons or the woman prisoner

specifically requests the presence of a member of staff.” In any event, the prison staff members must be female, and the examination must be conducted in such a way that the female prisoner’s privacy and dignity are protected, and the confidentiality of the procedure is preserved.

Pursuant to the Penitentiary Regulations, no staff member may be present during a medical consultation, unless proceeding otherwise would violate the inmate’s right to dignity and privacy (Art. 4.2.b. of the PR). From the information gathered on the CMPT’s visits and interviews, it has been found that this rule is respected on doctor’s rounds to modules, or administration of ordinary health care in the nursing ward. On the other hand, this prohibition is routinely breached in some facilities when the medical care is a consequence of restraint usage or temporary solitary confinement.

That said, in general terms, in the interviews conducted with inmates, no complaints were received on the medical services or the medical care received. To the contrary, they tend to hold a very positive opinion of the services and care.

On visits to women’s centers or departments, it has been found that the infirmaries are outfitted in a manner comparable to any public health care facility. They have the necessary medical equipment and meet the minimum requirements in this field. Aside from primary medical care, there is the care given by specialists from referral hospitals.

At a more specific level, the Bangkok Rules refer to other hygiene measures, and sexual and reproductive health:

- “A regular supply of water, (...) in particular (for) women are menstruating or in menopause, are pregnant or have children in the prison.”
- This includes easy access to sanitary napkins, free of charge, without having to feel self-conscious about asking for them. In this regard, a number of women prisoners have expressed their complaints to the CMPT on the reduction in frequency of hygiene kit distribution, and the consequent need to resort to the shops managed by the CIRE, where items are priced above the market level, for access to personal hygiene products.
- Access to preventive health care (cervical and breast cancer).

- Access to drug dependency and detoxification programs.

- Access to sexually transmitted infection treatment services, including voluntary testing, HIV/AIDS treatment, and pre- and post-partum care.

- Prohibition of forced and coerced pregnancy tests.

- Prohibition of forced or coerced sterilization.

Sexual abuse

The CMPT has no record of sexual abuse complaints in the penitentiary realm. Nor does it have any record of the detection of past sexual violence forming part of center admissions protocols. In general, it can be said that if the professionals have this information it is because they received it from the inmate herself, or because her suicidal or disruptive behavior activates the diagnostic process at some time.

A considerable number of the women interviewed report having suffered some type of gender violence before entering prison by a sentimental partner or a close family member. Some of them describe prolonged episodes of abuse that they eventually normalize within their discourses on their life stories, including sexual abuses during childhood and other abuse within the family. Therefore, regarding this item, the data of the 2005 SURT Foundation study continue to be fully current.

The CMPT has been notified by the Catalan Autonomous Ministry of Justice that, to handle this situation, aside from multidisciplinary actions in general treatment programs, in which empowerment of the woman before interpersonal relationships is developed, specific intervention programs have also been implemented.

According to the Catalan Autonomous Ministry of Justice, over the years 2014 and 2015, the Vicki Bernadet Foundation has carried out a program aimed both at women who have lived through situations of violence and find themselves in situations of vulnerability, and women wishing to work on protection and self-protection concepts. In 2016, the Tamaia organization was responsible for conducting this activity, that offered abused women the possibility to build a new

life without violence once they assimilated awareness of the abuse they suffered.

At the same time, the inmates interviewed stated that they were not involved in any intervention or specialized follow-up to handle this problem, beyond some specific workshop they might have attended on the topic. Regarding this issue, the Catalan Autonomous Ministry of Justice has announced plans for an intervention on this problem, and that if it cannot be financed with external organizations, it will be taken up by the professionals of the centers themselves, within the framework of the EVA project (a group activity that deals with this problem).

Mental health

Experts have warned that oftentimes, factors that have more to do with the structural system end up becoming medical pathologies. Along these lines, in the penitentiary realm, there have been observed an overmedicalization and an overmedication of the female population, and a reinforcement of gender stereotypes that refer to health.

In this context, the Bangkok Rules must not be overlooked, as they state that “Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programs shall be made available for women prisoners with mental health-care needs.” Likewise, “Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.”

It has been found that the prevalence of personality disorders is very high in prisons, and that the concurrence of borderline personality disorder (BPD) and antisocial personality disorder is frequent. Incarcerated women who have personality disorders tend to have more problems adapting to the rules of the institution and, consequently, breach them frequently. Additionally, women who have BPD also have non-suicidal self-injury behavior, make suicide threats and other forms of violent conduct.

It has been observed that there are no treatment programs specialized in this area in prisons, a situation that only accentuates these inmates’ adaptation problems. In this situation, the problems are identified in terms of simple

regimental behavior, and therefore, the answer given follows the same pattern (restraint and punishment), which makes it impossible to improve the situation or these women’s quality of life. Rather, they tend to worsen.

The recent study on the incidence of BPD in incarcerated women in Catalonia is noteworthy (Navarro et al., CEFJE, Barcelona, 2016). It gives the incidence of this pathology among this population. The study, promoted by the CP Brians 1 administration, concludes that the presence of women with BPD is high, and that its prevalence may range from 20 to 30%. The data gathered highlight: “a) the need to assess the diagnosis of BPD among inmates, b) the suitability of implementing specific treatment programs for these inmates that improve the associated psychiatric clinical condition, and their functionality during their prison terms”.

Social and family relationships

The spirit promoted by the Bangkok Rules is that “Prison authorities shall (...) facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration.” The Organic Penitentiary Law also configures communication and visits of inmates as a right, regardless of their procedural or incarceration status, with the sole exception of those being held under a judicial *incomunicado* detention measure. Communication and visits, as a prisoner’s right, must be regular, open to any type (family, friends, professionals) and with respect for privacy. The penitentiary Administration may restrict them for reasons of order, security and interest of the treatment, but never as punishment of the inmate. In fact, no punishment in the Penitentiary Regulations entails the prohibition of visits. Severe offenses (Art. 109 PR) can be punished with the limitation of verbal communication to the minimum established in the regulations, for a maximum period of one month.

As regards special communications, the fact that a woman prisoner is under punishment cannot keep her from enjoying them. Furthermore, Article 254.5 PR, on the manner in which solitary confinement punishment is to be served, states that the inmate is entitled to two daily hours of exercise time (alone), and that they cannot receive products from the penitentiary shop, except for those authorized. From the interpretation of this precept, it cannot be thought that special communications are subject to limitations, as such a conclusion would be against the terms of the law.

Another matter is, considering the high number of female prisoners who have been victims of domestic violence, and the risk of suffering violence during a conjugal visit, these inmates must be thoroughly consulted on the individuals, even family members, who are allowed to visit them.

One of the factors that causes the most added suffering to female inmates is the lack of contact with their children and the rest of the family. As previously stated, the fact that there are few penitentiary facilities for women means that oftentimes they are geographically separated from their family and social groups. These circumstances are especially difficult for families with small children and an incarcerated mother. Admission into prison and the difficulties of contact break many family bonds.

Article 45 of the Penitentiary Regulations establishes measures that, from the outset, do much to complicate contact between female inmates and some of their minor children: “There must be granted, following presentation of a request by the interested party, visits involving open contact with the spouse or other similar sentimental partner and the children under ten years of age. These visits, which are compatible with those outlined in Article 42 and by paragraphs 4 and 5 of this article, must take place in suitable premises or areas, with a maximum length of six hours.

The Bangkok Rules state that “Women prisoners’ contact with their families, including their children, and their children’s guardians and legal representatives shall be (...) facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.” These compensatory measures may be “assisting with transportation”, “increasing the telephone calls women prisoners are allowed to make”, “extending the length of visits”, etc.

Women who are pregnant or have children in their care

Article 17.5 PR stipulates that the penitentiary administration must have a mothers’ unit, equipped with a nursery school and be architecturally separated from all other departments. The administration admits children up to three years of age. Decree 329/2006 (Penitentiary Regulations of Catalonia) also stipulates mothers’ units (Art. 4.3.1) as a special incarceration formula.

In Catalonia, this unit is in Wad-Ras Penitentiary Center, which, although it is located within the same correctional facility, is separated from the rest of facilities and services. It is a small unit, with practically direct access from the street, which is very positive for the children.

In this unit it is more appropriate to refer to rooms (12 total) instead of cells because, as opposed to the rest of the center, the rooms are not locked at night. The GMPT has found that the rooms are of a size suitable for occupation by a mother and her children.

The unit features all other services for daily life: showers, kitchen, and multi-purpose classroom, the condition of which has found to be satisfactory.

On the second floor of the mothers’ unit there is an area equipped as a day care facility (for three to five month-old children), with toys and games, conceived for the first days in which the baby is living in the center. After that time, the intention is for them to go to the nursery school. If there are no openings, they remain in this facility while their mother begins to carry out her activities.

From the interviews held with women housed in this unit, it is understood that they are offered a special approach to motherhood that attempts to achieve the maximum normalization in the lives of minors living there. Additionally, a common complaint among all female inmates interviewed is that the pediatrician only makes weekly calls and there is no on-call pediatrician.

On another note, the unit staff underscores the positive relationship and cooperation with the nursery school, and the involvement of penitentiary staff in the care and treatment of children living with the female inmates. Nonetheless, they emphasize the lack of action and coordination criteria between the Children’s and Adolescents’ Affairs Units (CAAU) with the professionals of the penitentiary center or with the mothers who have children under the guardianship of the Directorate General for Children and Adolescent Services (DGAIA).

Penitentiary personnel qualifications

Although the Bangkok Rules do not make any specific statement of this matter, they do refer to minimum rules for the treatment of inmates, that establish that inmates must be guarded exclusively by “officers”.

In the event that, as occurs in Catalonia, prison guards are male, special measures must be taken to ensure that they do not have access to the private or intimate areas of female inmates (i.e. bathrooms). At the centers with female inmates visited it has been found that the guard staff is of both genders, and from the interviews, it has been concluded that their relationship does not depend as much on their being men or women, as it does on the attitude the guards take toward the inmates.

What is important is that, whether they be men or women, the officers responsible for guarding women in prisons have the necessary training on the specific needs of inmates and their rights. Their training background must include gender and human rights matters, with a special emphasis on HIV, and the social stigmatization and discrimination it causes. Likewise, it is important that penitentiary personnel be trained to detect mental health needs and self-inflicted injury and suicide risk among inmates, and know how to refer them to specialists in a timely manner.

To the extent that the CMPT has been able to detect, in Catalonia penitentiary personnel have the opportunity to attend courses on gender perspective and criminal procedure, but it is training offered by the Center for Legal Studies and Specialized Training (CEJFE), and only on an elective basis.

Treatment programs to prevent drug consumption

As already indicated, the majority of female inmates in penitentiary centers of Catalonia are serving sentences or in pretrial custody for crimes related with drug-trafficking, and many are users of narcotics. Drug dependency treatment programs in penitentiaries are not effective if they do not include a gender perspective. The programs addressed to female inmates must take into account the different factors that influence a man or woman to begin consuming illicit drugs, and the different stigmas borne by male and female drug users, the consequences for women in their condition as mothers, or for belonging to a certain ethnic minority, and the causal relationship between being a victim of gender violence and narcotics use.

On this issue, the Bangkok Rules state that “Prison health services shall provide or facilitate specialized treatment programs designed for women substance abusers,

taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.”

All of the penitentiary centers visited feature specific programs for drug dependency intervention. For example, in the case of Wad-Ras, the program has two parts; a motivational module and a reparation module, which is only held at the center, and that consists of the inmates gaining awareness in recognition of the crime, and in what it implies for victims, as many of the women have acted as intermediaries and are unaware of the realities hidden behind the drug trade.

Transfers

Transfers of female prisoners to the courts or another correctional facility must be carried out in vehicles with closed-circuit television cameras and under supervision. The Bangkok Rules recommend that persons responsible for the transfer be women or that, at a minimum, there is at least one woman among the personnel carrying out the transfer.

Some of the complaints received on transfers had to do with inmates’ desire to remain at the only women’s correctional facility that exists in Barcelona, Wad Ras, conceived for pretrial custody of prisoners. Another recurrent complaint is the distance of the penitentiary center for women prisoners from the Tarragona and Terres de l’Ebre area, as the nearest prison to them is CP Ponent. Nonetheless, now this problem has been solved thanks to the opening of the new Mas d’Enric prison, which has a women’s department with capacity for over 60 prisoners.

Women in solitary confinement or other types of disciplinary segregation

Being held in solitary confinement can have psychological, and even physiological effects on the incarcerated individual. For this reason, it is recommended that it only be applied sparingly, and in the case of prisoners with mental illness, that it be prohibited.

Solitary confinement can have negative effects on the health of pregnant women or those who have recently given birth. Solitary confinement measures can have negative effects on the children of pregnant or breastfeeding women prisoners. Therefore, and in keeping with the Bangkok Rules, solitary confinement must be

avoided in such cases. In our country, solitary confinement punishments, which are the most restrictive, are not applied to pregnant prisoners or women until six months after termination of their pregnancy, to breastfeeding women or any whose children are with her (art. 254.3 PR).

It must also be remembered that for women whose children are outside the prison, being in solitary confinement and having no contact with them for an extended period may be a source of added suffering, and have a negative impact on the children's well-being. The circumstances and frequency of application of this regime among this category of women must be examined.

In the case of women with care needs due to mental health problems, or histories of self-harm or suicide attempts, solitary confinement should not be applied, or at most, applied in very exceptional cases with even stricter guarantees.

On its visits to the different women's penitentiary centers, the CMPT has often found the Closed-Regime Units (DERT) or their equivalent, empty, without any female inmate being punished in them. The exception is Brians I, for the reason described above. Additionally, the analysis of the disciplinary records of the punished women reveals that they have less severe disciplinary records than those of men, but that they accumulate more offenses, a circumstance likely related with the high incidence of BPD among female inmates. What is more, this group of women often present self-harm and suicidal behavior, as opposed to their male counterparts, whose conduct may be disruptive, but not related with mental health problems.

Search practices

According to The Bangkok Rules, searches "shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures." As for invasive body searches, it must be ensured that they are only performed in highly exceptional cases established by law, after having used all other available search procedures.

In Catalonia, Circular 1/2008, on searches and the application of appropriate resources, specifically establishes that searches must be carried out by personnel of the same gender as

the person to be searched, in the strictest privacy and on an individual basis (point 1.2.2).

Medical personnel should not be involved in searches of inmates, as they are measures that have to do with security, and not the promotion or protection of health. Confusion between the two roles may generate in the prisoner mistrust toward health care personnel. This being so, in exceptional cases, and at the request of the person to be searched, the participation of medical personnel in invasive body searches can be justified. In such scenarios, it is preferable that it be specialist medical personnel who do not form part of the prison medical staff who participate in the search and, in any event, the searched inmate must be clearly informed that the normal conditions of medical secrecy will not apply, and that the results of the search will be made known to the relevant authorities.

It must be ensured that any strip searches and invasive body searches are duly recorded, along with the grounds for conducting them, the results and the relevant authorization. These searches must be authorized by the duty chief, and conducted in premises that are separated from the rest of female inmates. The CMPT has been able to verify that there are premises to conduct such searches, without video cameras, where the inmate is given a gown to wear. Note of the performance and grounds for the search is made on the inmate's record, and the penitentiary warden is also notified. The prison supervision judge is notified, in order for them to be aware that the search has been conducted.

Female prisoners do not habitually file complaints for the way in which these searches take place, though they do object to their frequency, or to the searches of their belongings, which are carried out in their cells without them being present. In essence, they complain when they perceive personal or cell searches being used as an abusive or arbitrary recourse.

In any case, pursuant to the Bangkok Rules, "Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

Usage of restraint systems

Pursuant to Standard Minimum Rules for the Treatment of Prisoners, the use of bodily restraint resources on female inmates must be restricted and subjected to a number of guarantees.

The Bangkok Rules expressly state that “instruments of restraint shall never be used on women during a medical visit, during birth and immediately after birth.”

In some interviews conducted by the CMPT (Brians and Ponent), female prisoners have complained that the restraint devices were used for longer than strictly necessary, and that they are not released to use the restroom. Rather, they are given a bedpan or something similar to use.

The CMPT found that restraint mechanisms are applied differently depending on whether this is done in infirmaries or special departments. Specifically, in special departments the restraint position is ventral decubitus, while in infirmaries it is supine decubitus, which is the common practice in hospitals. It has also been observed that there is not any ongoing training on the procedures to apply restraint measures for the penitentiary guards who apply this type of measure.

Conclusions and recommendations

Law 17/2015, on Effective Equality of Men and Women, charges public authorities to “guarantee the transversal incorporation of gender perspective, and that of women, in all public policies to achieve real and effective equality, and parity between women and men,” (Art. 41.2) and penitentiary policy can be no exception. From this perspective, and based on the analysis outlined in the foregoing pages, certain conclusions and recommendations can be reached.

1. In general terms, gender perspective must be incorporated into the penitentiary policy of Catalonia and the work of the administrative bodies of its penitentiary centers. This must translate into the gathering of specific statistical data on the number, social context, penitentiary situation, etc. of women prisoners, the adoption of a legal and administrative language in line with gender perspective, etc.

2. Before admission to prison, women must be able to make the necessary arrangements for the children in their care, regardless of their age, pursuant to Article 1, Section 2 of Organic Law 8/2015, of July 22, on the modification of the children and adolescent protection system.

3. At the time of their admission into prison, the medical screening that inmates must always receive should detect, among other items, their mental health needs, their reproductive health history, possible drug dependency problems and signs of sexual abuse or other forms of violence that the female inmate may have suffered before entering prison. This information must be instrumental in establishing the programs, treatments and care most appropriate for women deprived of liberty, especially those who have been victims of physical, psychological or sexual abuse.

4. The low number of women deprived of liberty in Catalonia’s penitentiary system (a positive figure in of itself) generates a difficult-to-resolve dilemma between the desirable objectives of closeness and treatment. Three of the penitentiary centers with women in Catalonia (Ponent, Puig de les Basses and Mas d’Enric) have relocated female inmates to sites closer to their home territories, but the low critical mass of these centers’ women’s modules causes excessive standardization of the programs and treatments. This difficulty should not be an obstacle to carrying out whatever treatment programs are necessary, incorporating the gender perspective and avoiding those that perpetuate subordinated roles. Furthermore, implementation of programs specifically tailored to groups of women according to their needs (young inmates, elderly women, women with disabilities, women belonging to minority groups, etc.) must be promoted.

5. It has been observed that there are no treatment programs specialized in mental health in prisons and that some adaptation problems are exclusively approached from a regimental perspective. The analysis of the disciplinary records of the punished women reveals that they have less severe disciplinary incidents than those of men, but that they accumulate more offenses, a circumstance likely related with the high incidence of BPD among female inmates. Mediation programs must be introduced to minimize conflicts among inmates, between inmates and prison officers, and reduce to the extent possible the recourse to the closed regime and coercive mechanisms.

6. Efforts must be made to facilitate contact between inmates and their families, especially their children. Given the possible distance between penitentiary centers and family homes, additional compensatory measures

are necessary, such as assisting with transportation, increasing the telephone calls women prisoners are allowed to make, extending the length of visits, etc.

7. Prices of CIRE shops must be brought down to bring them into line with the economic capabilities of the inmates, and plan to include in hygiene kits the personal hygiene products of basic necessity for women, which have a higher demand.

8. A module on gender equality, with specific reference to the Bangkok Rules and other relevant international standards must be incorporated into the initial training and

lifelong learning programs for prison staff. Specifically, the officers responsible for guarding women in prisons must necessarily receive training on the specific needs of inmates and their rights. An effort must be made to ensure that all officers responsible for women's modules or prisons have this training, which is now only optional.

9. With regard to body searches, whenever possible, preference must be given to alternative inspection methods, such as scans, to avoid searches that can be humiliating or have psychological consequences with negative impacts on the health of women deprived of liberty.

III. APPLICATION OF SOLITARY CONFINEMENT IN CATALAN PRISONS

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The CMPT has insisted on the need to restrict recourse to the first degree, and in any event, lighten the conditions in which this sentence is served, increasing the hours devoted to the individual treatment of inmates in first-degree imprisonment. Furthermore, the issue of solitary confinement has been the subject of a research project by the Catalan Coordinator for the Prevention and Reporting of Torture (*L'aïllament penitenciari a Catalunya des d'una mirada de defensa dels drets humans*, April 20, 2016) in addition to a number of questions and motions in parliament.

Additionally, considering that classification in first degree prison regime is currently enforced in penitentiary centers, the CMPT has sought to analyze whether the application of this life regime, as it is conducted in Catalonia's penitentiary system, violates the right to rehabilitation and social reintegration, or restricts other fundamental rights.

Classification in first degree of prison regime

The penitentiary classification is defined as the set of actions that the penitentiary administration carries out to issue a ruling on an inmate's degree of prison regime, and allocates the prisoner to the penitentiary center where they are to serve their sentence.

First degree classification is the most severe, because of the restriction of rights it involves, as compared to other classifications (semi-open, open regime, probation) in which inmates can take jobs, participate in general celebrations inside the center (e.g., the book fair), cultural activities, etc.

Article 72.1 of the General Organic Law on Penitentiaries (GOLP) states that liberty-deprivation sentences are to be served according to the scientific individualization system, separated by degrees, the last of

which is probation. The second section of the same precept establishes that those classified as first degree must be housed in closed regime facilities, according to Article 10.1 of the same law.

This precept orders that there be closed-regime prison facilities or special departments for prisoners classified as extremely dangerous, or for cases of maladjustment to semi-open and open regimes, as determined by objective causes, in a grounded decision, unless the study of the subject's personality indicates the presence of anomalies or deficiencies that must determine their allocation to an appropriate special center.

On another note, Article 63 GOLP establishes that for the individualization of the regime, following appropriate observation of each inmate, they must be classified, and assigned to the prison facility whose regime is the most appropriate for the treatment indicated for them, and if necessary, to the most suitable group or section within it. The classification must take into account not only the personality and family, social and criminal history of the inmate, but also the length of their sentence and other penalties if relevant, the environment they will likely return to, and the resources, expediting factors or difficulties that exist in each case and time for the success of the treatment.

Article 65.3 of the GOLP indicates that lowering the degree is appropriate when an unfavorable evolution is observed in the inmate's personality with regard to their treatment. Nonetheless, first-degree, closed-regime classifications have to do with the order, regime and security of a center, a situation that differs from scientific individualization and, in short, from treatment. The GOLP aims to establish an appropriate instrument for the penitentiary administration to face its obligation to guarantee the life, integrity and health of inmates (Art. 3.3 GOLP) and designs a regimental space for a stricter control of inmates who endanger legally-protected rights. The treatment assigned to them must also take place in this space.

Application of closed regime. Life regimes of Articles 93 and 94 of the Penitentiary Regulations

Article 10 of the GOLP states that closed regime is applied to inmates who, either due to extreme dangerousness or maladjustment to semi-open and open regimes, are classified as first degree.

Within the closed regime, the Penitentiary Regulations (PR) establish two regimes in the life system, depending on whether the inmates are assigned to closed modules or centers (Art. 94 PR) or special departments (Art. 93 PR). It is worth noting that most Catalan penitentiary centers make no distinction between the two types of spaces.

For inmates classified as first degree, a maximum term of six months is set for review of their classification, in accordance with Article 105.1 PR.

Prison regimes

Penitentiary Regulations currently recognize two prison regimes, in relation with the site and assignment of the prisoner. When a life modality is reviewed, pursuant to Article 92.3 PR, what is actually being analyzed is the suitability of the inmate remaining in a special department or a closed center or module.

A) Article 93 PR refers to life modality in special departments. This modality is applied to inmates with extremely dangerous behavior who, furthermore, have taken part in severe regimental altercations. The life regime must comply with the following rules:

1. Inmates must have at least three hours in the exercise yard per day. This time can be extended by up to three additional hours for participation in planned activities.
2. Daily cell and personal searches.
3. No more than two inmates may be together in the exercise yard.
4. Scheduled medical appointments.

The first of the rules establishes a minimum of three hours, and a possible extension for

participation in activities. Therefore, it is always possible to extend this number, regardless of the purpose assigned to the additional hours.

Additionally, Circular 5/2001 establishes that the regime intervention must be based on two hours per week of time with a psychologist, two hours per week with an educator and one hour per week with a teacher. On the CMPT's visits, inmates classified as first degree have made reiterated complaints on the lack of treatment and care by treatment professionals.

It is also expressed that the prison regime review is a period not to exceed three months. At this time, there must be an assessment to determine whether to maintain the current prison regime or reassign the inmate to another regime of Article 94 PR.

B) Article 94 PR is the prison regime established for closed modules or centers. The regime planned in this precept is applied to prisoners with clear maladjustment to rules of the common, or semi-open regime or open regime. The rules must comply with the following parameters:

1. Inmates must have at least four hours of communal life with other inmates per day. This time can be extended by up to three additional hours for participation in planned activities.
2. The minimum number of inmates who can participate in a group activity is five.

The application of Article 94 PR is organized around a progressive system, with an initial period of fifteen days of evaluation followed by two execution phases, pursuant to the terms of Circular 5/2001.

An inmate's minimum term in Article 94 PR is three months (short period) or six months (long period) with care from treatment professionals who must design and supervise the programmed activities.

Data on Catalan prisons

In response to a parliamentary question (BOPC 129, May 13, 2016), the Catalan Government informed parliament that between January 1, 2010 and December 31,

2015, 5,030 inmates had been housed in special closed regime departments. Approximately 6.5% were women, which stands for 7% of the prison population in Catalonia. There is not a significant nationality bias of the inmates housed in a special department over this period.

The CMPT has analyzed the data for the months of March, April and May, 2016 and has reached the following conclusions:

- The percentage of inmates classified in first degree prison regime and Article 10.2 GOLP is maintained at a constant level, between 1.8% and 2% of the total inmate population.
- Of the inmates classified as first degree, the vast majority (approximately 80%) are held under the prison regime of article 94.
- The first degree is most commonly applied to male inmates.
- Over the entire period analyzed, the Centre Penitenciari Dones de Barcelona (Barcelona Women's Penitentiary Center) did not have any inmate classified as first degree.
- Over the entire period analyzed, Article 93 PR has not been applied to the inmates classified as first degree at the Joves (Youth) Quatre Camins or Mas d'Enric penitentiary centers.
- The penitentiary centers where there are male and female inmates housed under the first degree do not have the data broken down by gender, as concerns the prison regimes of Articles 93 and 94 PR.
- This institution does not have data on the length of first degree terms beyond six months, although on the visits made within the CMPT framework, reports have been gathered indicating that it is not a minor occurrence; in other words, inmates serve in the first degree for longer periods.

Conclusions and recommendations

The first degree regime is an especially difficult one that can affect individuals' physical and mental health. In some cases, especially when these prisoners spend

much of their sentence in such a restrictive prison regime, it can generate, in the long term, deep, irreversible damage (disidentification and depersonalization) which impedes the later rehabilitation and social reintegration of the inmate into society. Added to this complexity are the attitudes of mistrust and resentment of the inmates towards the center officers and administration due to the perception they have of being egregiously abandoned by the penitentiary system. Within this context, the following recommendations are made:

1. The climate of tension and hostility inherent to the deprivation of liberty, and especially, closed regimes must be defused. This involves implementation of treatment models based on mediation, reparation and conciliation, the positive effects of which in reduction of conflicts and violence inside prisons have been thoroughly proven.
2. The administrative decision by which an inmate is classified as first degree of prison regime must be soundly grounded, as required by Article 10 GOLP.

Given the reduction of fundamental rights derived from the closed regime, its exceptional nature and the potentially negative psychological consequences it could entail, the Administration must ground its application based on the strictest criteria. It is enough to refer to extreme dangerousness or maladjustment. Rather, this diagnosis must be accompanied with precise data that justify the adoption of the measure.

3. The classification must be adapted to the modifications that come about in the personality and conduct of the prisoner, pursuant to Article 65.f) GOLP, which determines the dynamic character of the treatment.

Articles 64.4 and 105.1 PR establish, generally, a maximum term of six months in which to review the classification. This notwithstanding, considering the restriction of rights associated with the closed system and the negative consequences it could entail for the inmate's health, the review of the classification decision should come about in a shorter time period, of three months, at most.

For this reason, centers must be equipped with the human and material resources necessary for there to be an objective assessment of all the circumstances affecting the prisoner, in order for a degree classification to be completed in a period of three months, with sufficient guarantees to either propose progression or maintain the first degree.

4. Circular 5/2001 must be modified to adapt it to the need to review the classification in a period not to exceed three months.

Neither the GOLP nor the Penitentiary Regulations determine the existence of a specific minimum period for classification in the first degree. Along these lines, and considering the exceptional character of the classification in the first degree, once the causes that have led to its application (extreme dangerousness or maladjustment) have ceased to exist, the inmate must be classified in a semi-open regime.

IV. INSTITUTIONAL SCOPE

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Composition of the Task Force and Advisers Council

On February 3 of this year, the Parliament of Catalonia unanimously approved the appointment of five new members of the Mechanism's Advisers Council, to occupy the places that had been left vacant in the prior year. The appointees are: Ignasi Puig Ventalló, proposed by the bar associations; Núria Cuxart i Ainaud and Rosa M. Servent Pedescol, proposed by professional health care associations; Noemí Pereda Beltran, proposed by university research centers devoted to human rights; and David Bondia Garcia, as a professional with experience in the area of torture prevention and in work with persons deprived of liberty. The new members of the Advisers Council began to attend the council meetings as of their March 15 session.

There have not been any changes in the Mechanism's Task Force in 2016. It continues to be made up by the Catalan Ombudsman, or his delegate, José Maria Mena, Eva Labarta, Olga Casado and Mar Torrecillas. Due to personal and professional reasons, Doctors Francesc Ferrer and Esperanza Gómez are no longer performing external support tasks. The Mechanism expresses its appreciation for their services.

Institutional relations

Throughout the year, there have been a number of institutional meetings designed to promote dissemination of the Istanbul Protocol, as a means of following up on the recommendations made by the Mechanism in 2015.

■ On January 20 and March 1, the Deputy, Olga Casado, and Mar Torrecillas met with Elisabeth Turu, director of the penitentiary health program of the Catalan Health Institute, and Rafael Guerrero, health care director of the program, to prepare training sessions for penitentiary center health care staff members on the Istanbul Protocol.

■ On February 2, the Catalan Ombudsman, his Deputy and Mar Torrecillas met with

Abel Pié and Ignasi Puig on behalf of the Catalan Council of Bar Associations (CICAC) to discuss matters of common interest between the Mechanism and the Catalan legal community, such as training on the Istanbul Protocol, and correct application of Article 520 of the Criminal Procedure Act on legal aid to detained persons.

■ On June 30, the Deputy and Mar Torrecillas met with Teresa Sánchez Cancio, of the Sub-directorate General for Professional Organization and Development of the Autonomous Ministry of Health, to prepare training activities for health care employees of the Catalan health care system on the Istanbul Protocol.

Several meetings have also been held with heads of the Autonomous Ministries of Home Affairs and Justice to follow up on the conclusions and recommendations of the CMPT's report from last year. Specifically, there have been two meetings with the director general of Penitentiary Services, Armand Calderó and the head of the Institutional Relations Office of the Autonomous Ministry of Justice, Oriol Sagrera, on May 6 and September 20; one meeting with the director general of Juvenile Justice, Pilar Heras, on May 20, and a meeting with the director general of police, Albert Batlle, and the commissioner-in-chief, Josep Lluís Trapero, on May 3.

The Ombudsman's Deputy and Mar Torrecillas met with professors Cristina Fernández and Gema Nicolás, of the Observatory of the Penal System and Human Rights (OSPDH) of the University of Barcelona, who shared with them the results of the European project "Improving Incarceration Conditions by Strengthening Infectious Disease Monitoring" (*"Millorar les condicions d'empresonament enfortint el monitoratge de les malalties infeccioses"*).

As for its relations with other administrations, staff members from the Catalan Ombudsman institution have taken part in two visits by the National Torture Prevention Mechanism for Catalonia. Specifically, on April 26 and 27, to the Mas d'Enric Penitentiary Center and June 9, 2016, to the Centre Penitenciari d'Homes de Barcelona (Barcelona Men's Penitentiary Center).

On another note, the Catalan Ombudsman has opened three ex-officio actions regarding the Foreigners Holding Center of Barcelona: in June, following the announcement of the CIE's reopening; in October, as a consequence of the hunger strike begun by a group of inmates to protest the conditions of the center, and in November, following the internment of a minor in this facility. A complaint was also registered following the complaint filed by the OSPDH on alleged police irregularities in the contention of the riot that took place in the CIE on November 1. As in prior years, the attempts to visit the CIE in conditions compliant with international supervision standards have been fruitless.

In this vein, on September 21, the Mechanism's Task Force visited the Spanish National Police station in la Jonquera. The Deputy Ombudsman was received by the station chief who, after consulting his superior, informed him that it would be impossible to enter the custody area as no prior notification of the visit was given. Despite this, the station chief gave certain explanations on the volume of detained persons, the condition of the cells and the cooperation with the rest of area law enforcement agencies (Mossos d'Esquadra, Local Police and Civil Guard [Guardia Civil]). In any event, this experience, as well as that of the CIE, only strengthen the Mechanism's position that, as the Catalan Ombudsman exercises torture prevention duties in the territory of Catalonia, it would be advisable for the Directorate General of the Spanish Police to grant a general authorization for the Mechanism's visits to stations of the Spanish National Police in Catalonia, which would be accompanied by the necessary agreement with the Spanish Ombudsman institution.

Commemoration session for the International Day in Support of Victims of Torture The rights of women deprived of liberty

The session took place at the Catalan Ombudsman's headquarters on June 28, 2016. The introductory presentation, given by the Catalan Ombudsman, focused on the role of the institution as the Catalan Mechanism for the Prevention of Torture, with the visits it makes to incarceration

centers, and the special view taken this year on the gender perspective.

After that, the first lecturer, Noelia Igardea, professor of the Autonomous University of Barcelona, took the floor to give a presentation on the Bangkok Rules for the treatment of women prisoners and the situation in Catalonia, highlighting the parts of these rules in which there is room for improvement by Catalan prisons.

This was followed by a round table discussion moderated by Sabina Puig, member of the CMPT Advisers Council, featuring as panelists Teresa Pifarré, deputy director of the CP Dones de Barcelona; Cristina Fernández, from the Observatory of the Penal System and Human Rights of the University of Barcelona; Olga Casado, of the CMPT, and Isabel Hernández, coordinator of the Center Internment Measures of the IRES Foundation.

To close the session, the Deputy Catalan Ombudsman told the audience about the Mechanism's goal of including a detailed analysis of the situation of women in the Catalan penitentiary system in this year's annual report.

Training

The main training activity conducted by the Mechanism was that on the Istanbul Protocol in the area of penitentiary health care, as described in the section on compliance with decisions of this report.

Furthermore, various members of the task force have taken part as speakers or participants in a number of training activities throughout the year.

The Catalan Ombudsman participated in the session entitled "Detained persons' right to information: a comparative perspective" at the Barcelona Bar Association, on November 11, with a presentation on the Mechanism's conclusions regarding Article 520 of the Criminal Procedure Act.

The Deputy spoke at the European Court of Human Rights and Prison seminar,

organized by Irídia on February 26, and in the Seminar on Solitary Confinement in the Catalan Penitentiary System, organized by the Coordinator for the Prevention and Denunciation of Torture, on June 29. Both events were held at the Contemporary Culture Center of Barcelona.

With a lecture on the duties and activities of the Mechanism, Eva Labarta spoke at the symposium organized for the 15th anniversary of the Observatory of the Penal System and Human Rights of the University of Barcelona, on March 10, at the Faculty of Law.

June 10 marked the presentation of the HIV, HCV, and TB monitor for damage reduction in prisons, a diagnosis and prevention method based on human rights. The event was attended by Mar Torrecillas. During the meeting, the European project “Improving Incarceration Conditions by Strengthening Infectious Disease Monitoring” was also presented. The seminar, organized by the OSPDH, was

participated in by representatives of the two torture prevention mechanisms, the Catalan Autonomous Ministry of Justice, the Autonomous Ministry of Health, the university community and civil society.

The Deputy Ombudsman took part in the international seminar on the role of ombudsmen as national human rights institutions, held in Monaco on October 19th.

Eva Labarta, Mar Torrecillas and the Deputy Ombudsman attended the Hate Crimes Symposium, organized by the International Criminal Justice Committee of the Barcelona Bar Association and the Center for Legal Studies and Specialized Lifelong Learning (CEFJE) on May 24.

Last, plans call for the Deputy Ombudsman and Olga Casado to be invited lecturers at the Istanbul Protocol and Injury Report Symposium, organized by the Catalan Health Institute and the CEFJE in early 2017.

V. COMPLIANCE STATUS OF RECOMMENDATIONS MADE IN PRIOR YEARS

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V. COMPLIANCE STATUS OF RECOMMENDATIONS MADE IN PRIOR YEARS

1. Istanbul Protocol

The 2015 Annual Report of the Catalan Mechanism for the Prevention of the Torture concluded that the Istanbul Protocol was largely unknown to professionals and institutions responsible for detained persons or those deprived of liberty. It was found—and it is still the case—that medical examinations of individuals deprived of liberty were often performed in the presence of police or other custody officers. This practice is systematic in the case of emergency care units. Furthermore, medical and injury reports are still found to be incomplete in their descriptions of facts. This ignorance has a very negative impact on the effectiveness of police brutality complaints filed with competent judicial bodies. For this reason, in the 2015 report, different recommendations were made to promote the knowledge and use of the Protocol among medical and other professionals.

Despite this, the steps made this year toward more widespread knowledge and application of the Istanbul Protocol have been significant and must be viewed favorably.

1. Forensic medicine, as a guarantor of the health and integrity of detained persons plays a significant role in the prevention of torture and abuse.

Last year, a review of the existing regulations revealed that the medical-forensic protocol for medical attention to detainees of the Legal Medicine Institute of Catalonia, following Ministerial Order of September 16, 1997, did not meet the minimum standards set by international organizations, nor those of the Istanbul Protocol, as an international reference guide for the specific evaluation of abuse; nor did they include any conclusion on the compatibility between alleged facts and those observed in the clinical examination.

Therefore, the Catalan Ombudsman recommended that the Legal Medicine Institute of Catalonia create a mandatory protocol compliant with the directives of the Istanbul Protocol so that both medical exams and the reports of forensic doctors would meet the international

standards of quality in the documentation and investigation of torture and abuse.

In response to this recommendation, the Institute has drawn up the medical-forensic action protocol for allegations of torture or abuse. The Protocol includes a reference document with suitable information and recommendations for its correct application, a model report flexible enough to be adapted to every situation, various body diagrams and a selected bibliography.

The Protocol aims to be an eminently practical tool. For that reason, the Institute proposes its use be supervised, and its application and operation verified. In any event, it has been agreed that the Protocol is to be applied when the detained person claims to have suffered abuse or torture during detention or custody, in cases when the forensic doctor suspects that the detained person has received abuse or torture or when the judicial authority or Prosecutor's Office so request it in the course of judicial proceedings.

2. Within the Autonomous Catalan Government, specifically the Catalan Autonomous Ministry of Justice, and the associations of health care professionals, it was recommended that the Istanbul Protocol be known and used among medical professionals who treat persons deprived of liberty, through various training plans.

Special mention is to be made of the positive reception this recommendation has had in the Catalan Autonomous Ministry of Health, and specifically the senior management of the Penitentiary Health Program of the Catalan Health Institute, considering that from the beginning, they expressed interest in taking part in the training activities designed around this manual.

Therefore, training sessions aimed at the medical teams of penitentiary centers were planned starting in June, 2016. The Autonomous Ministry of Health, in collaboration with the Catalan Ombudsman, took responsibility for organizing the courses prepared for health care personnel.

The course was taught by Dr. Olga Casado, general practitioner and member of the Catalan Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment, with the support of Jaume Saura, Deputy Catalan Ombudsman.

The goal of the sessions was to make known the essential elements of the Istanbul Protocol as a tool to properly investigate well-founded

allegations or suspicions of torture or abuse in the penitentiary context.

The first session was held on June 21, 2016 and was addressed to executive personnel of the medical services of Catalan penitentiary centers. After that, the following sessions were organized for the medical teams of each of the centers.

October 13	CP Ponent
October 19	CP Brians 1 and Brians 2
October 25	CP Homes de Barcelona and CP Dones de Barcelona
November 24	CP Puig de les Basses
November 29	CP Lledoners
December 13	CP Quatre Camins and CP Joves
January 2017	CP Mas d'Enric

These sessions begin with an explanation on the background of the Istanbul Protocol and the work of the Mechanism. The focus then moves to the information that must be included in any injury report sent to the courts for it to comply with the terms of the Protocol.

3. Among the recommendations included in the 2015 Annual Report, a specific one on medical and injury reports stated that they had to meet the standard of quality of the Istanbul Protocol, and always include a judgment of compatibility between the alleged facts and those observed in the medical exam.

Considering that the Istanbul Protocol is widely unknown among health care professionals in general, there are plans for a specific training session to be held in early 2017 and addressed to this entire professional group. The Istanbul Protocol, along with the new single injury report of the ICS and its guidelines for use, will be presented.

Now all that is left is to train health care professionals. With regard to the response from the Directorate General of Police to the Mechanism's recommendations, it must be reiterated that international standards state that the interview between doctor and detainee must be conducted in private, and as a general rule, out of the earshot and sight of custody

agents.

4. Also within the training realm, the Catalan Autonomous Ministry of Justice showed interest in promoting the knowledge and usage of the Istanbul Protocol. To wit, in May 2016, Amand Calderó, director general of Penitentiary Services, announced a program of training courses to be held for penitentiary staff with the aim of preventing abuse in Catalan prisons, in accordance with the Istanbul Protocol.

According to the director general, this will be a ground-breaking program in Catalonia. It is addressed to staff providing treatment as well as interior regime penitentiary officers.

It has been confirmed that the courses will be given by the Center for Legal Studies and Specialized Training and that they will provide information to professionals who have contact with prisoners to "detect situations of abuse" and develop strategies to prevent them, in addition to providing instruction on respect of human rights.

The training is already being provided to the senior leadership of the prison officers and the psychologists who work in the penitentiary services of Catalonia, and plans call for the courses to be progressively extended to the rest of the Ministry of Justice penitentiary staff.

2. Unsatisfactory interpretation of the European directive on detained persons' right to information

A number of observations were made in the 2014 Report of the Catalan Authority for the Prevention of Torture regarding Spanish law enforcement agencies' generalized non-adherence to the directives adopted in the European Union on the right to translation and interpretation in criminal proceedings (2010/64/EU), right to information in criminal proceedings (2012/13/EU) and the right to access a lawyer in criminal proceedings (2013/48/UE).

The reform of the Criminal Procedure Act (LECrim), completed in 2015 through organic laws 5/2015 and 13/2015, in force as of October of that year, partially ameliorated the shortcomings described in the 2014 report. Over several meetings held with senior officers of the Catalan Police, the CMPT was able to gain first-hand knowledge of the interpretation of the reform of Article 520 LECrim that had been reached both by the National Coordination Commission of Judiciary Police as well as the Directorate General of Catalan Police.

The 2015 annual report expressly states that, while directives 64/2010 and 48/2013 had been correctly transposed into legislation and police practice, the same had not occurred with Directive 2012/13/EU, on the right to information in criminal proceedings. The CMPT believes that there has been a deficient, and late, transposition of the Directive as concerns the right to access the elements of action essential to challenge the legality of a detention.

One of the salient points of the Directive is the right of detained persons to access their specific case file, especially the grounds for their detention, the specific offense of which they are accused or suspected and the material evidence held by the competent authorities. The purpose of this regulation is to ensure that the detained person and their defense have the documents essential to be able to challenge the detention.

Regarding the application of the Directive following approval of the LECrim modification, the National Commission of Judiciary Police stated:

"The following elements of police procedure, which consist only of that information that is fundamental to appeal or assess the relevance

of a detention, are considered essential to challenge the legality of such a detention, and must be provided to the detained person or their attorney:

- Place, date and time of the detention
- Place, date and time the offense was committed
- Identification of the offense and brief summary of the facts
- Signs from which the participation of the person in the offense is deduced" (sic).

Pursuant to this interpretation, the Catalan Autonomous Police force provides attorneys who enter police premises to provide legal assistance with form "N01. Charter of Detainee Rights", in which, according to different situations, this information is indicated in more or less detail. Specifically, with regard to the information provided to the detained person on their "alleged participation in the offense", the document has gone from having just one dotted line to several, on which the reporting officer merely writes down the *nomen iuris* and an identification of the offense attributed to the detainee.

Furthermore, as for the information provided to the detained person on the signs of their participation in the offense, the informative sheet features a checklist in which the officer only has to check fields such as "incriminating documents", "witness' statement", "officers witnessed the offense", etc. There are no provisions for the detained person to know what these documents are, or the identity of the witnesses, the veracity or falsity of which determine the legality of their detention, despite the clarity of the mandate featured in Article 7 of the Directive, and its unquestionable interpretation, pursuant to points 30 and 31 of the preamble.

It is worth noting that the conclusions reached by this institution coincide with those that the Barcelona Bar Association has also expressed, to wit, that under no circumstances can the right to access the "elements" of police proceedings be fully honored with the Charter N01. According to the Barcelona Bar Association, it has not been possible to reach consensus with the Mossos d'Esquadra on an interpretation of the

indicated precepts, as the police reaffirm their need to follow the instructions given by the Coordination Commission of the Judiciary Police, dated July 15, 2015, and that therefore, they believe the provision of form N01 meets the aforesaid instructions and criteria.

In light of this situation, there are records of some individual attorneys who, if in the course of their duties in a police station, they or their detained principal are not allowed physical access to the police proceedings, file a formal complaint of this fact at the time the detained person makes their statement.

Without prejudice to this fact, it is clear that in order to resolve this situation, collective responses to the interpretation of the legal assistance regulations for detained persons must be found.

The CMPT reiterates the need to come up with an interpretation that is compliant with the European directive, with the cautions, when necessary, to safeguard the *sub judice* rule and protect victims and witnesses. In this subject, it has been reiterated that the Directorate General of Police should draft a new circular in which it establishes the right of the detained person to secure the materials and documents that have led to their detention. No response had been provided at the time this report was written.

The only recommendation considered fulfilled is the modification of the detainee rights information sheet so that the detainee may be given a description, however succinct, of the facts that have led to their detention. It should be emphasized that proof of compliance with this recommendation has been collected on the visits made by the CMPT to Mossos d'Esquadra police stations.

Last, considering that the National Coordination Commission of the Judicial Police, created by Royal Decree 769/1987, of June 19, on the regulation of the judicial police, depends on the general administration of the Spanish state, the opinions of the CMPT and the Barcelona Bar Association have been conveyed to the Spanish Ministry of Home Affairs.

3. Coordination between local and the Mossos d'Esquadra police forces

As in prior years, a very heterogeneous casuistry has been observed in the duties performed by local police in the framework of liberty deprivation. This especially applies to detainee custody and transfers. A lack of standardization in the agreements signed between local councils and the Autonomous Ministry of Home Affairs in the area of public safety was also observed.

Specifically, there are municipalities that have local police forces, but no custody areas in their police stations. For that reason, they transfer any detained persons directly to the Mossos d'Esquadra station with competencies in their territory. Among the visits made this year, this was the case of the local police of Montgat or la Roca del Vallès. Other local police forces have custody areas, but these have defects that in some cases are rectifiable, and others, are not. There are also local police forces that have custody areas but do not use them, or use them for other purposes. On the other hand, there are local police forces without a detainee custody area, that, if they arrest anyone, make the detainee wait in one of the offices of the police station, accompanied by a police officer.

Further, and concerning the duties of judiciary police, it is still observed that some local police forces assume these competencies to open arrest reports or police proceedings for offenses of minimal complexity. They generally assume competencies over urban traffic violations, and oftentimes, crimes of male violence against women when they do not entail severity or complexity. In such cases, the local police take the detainee before the competent judicial authority (or release them with a summons to appear in court). For the rest of offenses, they take the detained person to the Mossos d'Esquadra police station in their area, as this is the agency responsible detainee custody.

In this context, the CMPT continues to recommend closure of the custody areas in local police stations, and a review of the agreements signed, in order for the Mossos d'Esquadra to take responsibility for the

detention from the very beginning, even if this means that the police vehicle has to leave its municipality. In municipalities that keep their custody areas in operation, and do not transport detainees directly to judicial authorities, the current practice entails a double stay in each respective police facility and the extension—even if for a matter of hours—of the duration of the detention.

Until the elimination of custody areas and the formalization of new agreements are possible, the CMPT has recommended the individualized rectification of the shortcomings detected at each of the visited custody areas, such as the installation of video surveillance systems, the posting of informative signage or the adoption of other corrective measures.

Local councils' responses to this recommendation have been mixed. On one hand, some have agreed to close their custody facilities and transfer all detainees to the Mossos d'Esquadra. Of the police stations visited this year, this was the case of the Valls local police. Others are waiting to revise the cooperation agreement they have in force with the Mossos d'Esquadra, such as the Montornès local police. Last, there are local forces who agree to rectify the shortcomings, but wish to continue with the detainee custody and transfer protocol, such as the Reus municipal police.

According to the Catalan Ministry of Home Affairs, in response to the recommendations made by the CMPT in its 2015 Report, it is difficult to provide a single, generalized solution, given the diversification of the 213 local police forces in Catalonia, from organizational and geographic standpoints, the presence (or absence) of Mossos d'Esquadra police stations and different action protocols for the transfer and custody of detained persons. In light of this situation, the Ministry has stated that it would be necessary to carry out an individualized study and adapt this heterogeneous reality to the public safety cooperation and coordination agreements between the Ministry of Home Affairs and the relevant Local Council.

On another note, among the considerations provided by the Ministry of Home Affairs to

defend its position on the judiciary police competencies assumed by local police forces, they essentially underscore those having to do with these facts:

- The legislation in force grants local police general judiciary police competencies, including “The initial proceedings of prevention in the custody of detained persons.”
- Some local police stations have to assume the role of a holding facility for detainees waiting to be presented to the courts.
- Local police forces of Catalonia have assumed the full examining competencies of different types of offenses, especially traffic safety violations.
- There are framework public safety cooperation and coordination agreements formalized between local councils and the Ministry of Home Affairs, establishing the operating protocol between both police agencies.

It should be noted that the CMPT has never questioned the current legal framework's coverage of local police forces' competency to hold detained persons in custody. There should be an assessment of the suitability of them doing so effectively, considering the rights of detained persons and the constitutional mandate by which such detentions are to be prolonged the minimum time possible. In this regard, the CMPT reiterates the need to prevent a detained person from being held in two different police stations before being presented in court.

In consideration of the response from the Ministry of Home Affairs, the Catalan Ombudsman opened an ex-officio action in which the institution requested information on the following items:

One. List of local police stations in Catalonia that have a detainee custody area.

The Ministry responded that, at present, of the 213 local police forces of Catalonia, those of the following municipalities have and use detainee custody areas:

Barcelona Metropolitan Police Region	Northern Metropolitan Police Region	Southern Metropolitan Police Region	Girona Police Region	Central Police Region	Ponent Police Region	Camp de Tarragona Police Region	Terres de l'Ebre Police Region
GUB Sants-Montjuïc	Arenys de Mar	Castelldefels	Blanes	Igualada	Lleida	Cambrils	Alcanar
GUB Eixample	Argentona	Cubelles	Castell-Platja d'Aro	Tona		Creixell	Amposta
GUB Horta-Guinardó	Badalona	Gavà	Figueres	Torelló		Mont-roig del Camp	Deltebre
GUB Nou Barris	Calella	l'Hospitalet de Llobregat	Girona	Vic		Reus	Tortosa
GUB Raval	Cerdanyola del Vallès	Martorell	Lloret de Mar			Salou	
GUB Barceloneta	Granollers	el Prat de Llobregat	Olot			Torredembarra	
	Lliça de Vall	Sant Feliu de Llobregat	Palafrugell				
	Malgrat de Mar	Santa Margarida i els Monjos	Palamós				
	Mataró	Vilafranca del Penedès	Tossa de Mar				
	Mollet del Vallès		Salt				
	Pineda de Mar						
	Sabadell						
	Sant Andreu de Llavaneres						
	Santa Coloma de Gramenet						
	Santa Eulàlia de Ronçana						
	Ripollet						
	Rubí						
	Terrassa						
	Tordera						

It is worth noting, however, that this list may not be current, as on its visit to the Roses Local Police this year, the CMPT observed an operational detainee custody area (although it had not been used yet).

Two. Of the foregoing list, the CMPT asked the Ministry to identify those custody areas that act as a municipal holding facility for detainees awaiting arraignment, and give its opinion on whether a Mossos d'Esquadra police station could perform this task, and on the real use of these holding facilities in 2015.

According to the Ministry, and according to the statistics provided by the chiefs of local police in these municipalities, the stations that assume the competency of acting as a judicial detainee holding facility on a delegated, sporadic basis are: Badalona, Girona, Mataró, Olot, Valls and Vic.

It bears mentioning that the Local Council of Valls, in response to the CMPT's recommendation to close the custody area, given the existence of a Mossos d'Esquadra police station in the municipality itself, has agreed and closed the facility. The same response was recently received from the Local Council of Puigcerdà, following the recommendations given by the CMPT last year.

Three. List of agreements signed between the Ministry of Home Affairs and the local council of Catalonia regarding cooperation between their police forces.

According to the Ministry, the public safety and police coordination and cooperation agreement is a framework agreement signed between the autonomous ministry responsible for public safety (Ministry of Home Affairs) and the local councils with municipal police forces to coordinate the duties that law enforcement agencies that depend on different administrations carry out within the same city limits.

At the time the Ministry's report was published, in July, 2016, there were 208 signed coordination and cooperation agreements for public safety and police out of the total 213 local police forces in Catalonia. The municipalities with local police forces whose agreements were pending formalization

were: Alcarràs, Almacelles, Ribes de Freser, Sant Joan de les Abadesses and Sarrià de Ter. According to information from the Ministry, steps have been taken to sign the agreement with these municipalities.

Starting in September of this year, the Catalan Ombudsman's Office has attempted to arrange a meeting with the Directorate General of the Security Administration to evaluate, together with the Autonomous Ministry, the role of custody areas for persons detained by the local police forces of Catalonia, although it has not been possible to do so before closing this report.

4. Persistent signs of abuse

Once again, throughout 2016 visits have been made to penitentiary centers that have focused on individual, in-depth interviews of prisoners. In the case of women's penitentiary centers or women's departments that have been visited, group interviews have also been carried out.

While making clear the professionalism of the personnel working in Catalonia's penitentiary centers, and the positive attitude of the administrators at the visited centers, for yet another year, some reports were gathered from inmates who complained of having been the object of disproportionate action. In these cases, with the consent of the inmate, a complaint has been filed with the Catalan Ombudsman. For example, in two of the cases investigated, signs of abuse have been found. Both originated in closed regime departments when the inmates were being subdued due to disruptive behavior that they themselves admitted, although they allege that excessive force was used. The external medical exam performed by the CMPT according to the Istanbul Protocol found high levels of consistency between the examination and the description of the events, and the documentary elements provided by the penitentiary administration were insufficient to refute the inmates' allegations. The content of the decisions handed down can be consulted in the Catalan Ombudsman's 2016 Annual Report to Parliament.

In this context, aside from the recommendations of the Catalan

Ombudsman, the CMPT continues to work from a perspective of prevention and recommend that the administrations of penitentiary centers investigate with strict criteria, expediency and impartiality all complaints of inmates, and that the reports prepared by prison officers and medical personnel, as well as inmates' allegations, be examined. On this point, it is essential that a tool such as the Istanbul Protocol be used to document any possible cases of physical and psychological abuse that may have come about.

The response from the Directorate General of Penitentiary Services was that the administrations of the respective penitentiary centers are always committed to the investigation, clarification and eradication of any type of conduct that indicates physical or moral abuse. They went on to state that the complaints and reports presented by inmates are always given consideration, and that, upon finding any sign that could point to this kind of behavior, the administration would act consequently.

The CMPT has also insisted that a clear message be conveyed on the inadmissibility of any type of abuse, even verbal abuse, with the reminder that all complaints presented will be investigated in depth, and if necessary, the relevant corrective actions will be adopted. In response to this recommendation, the DGPS has stated that prison officers are fully aware of their duties and obligations. It indicated that they are well-trained professionals subjected to continuous perfection processes. For this reason, the Directorate General claims that penitentiary staff members are fully aware that no abuse of any kind will be tolerated, and if any came about, the appropriate measures would be taken, as has already occurred on certain occasions.

Further, as it happens that in the premises where episodes of abuse have been reported there is no video surveillance system, the CMPT has also recommended that the facilities be equipped with cameras. This is the case of the area known as "La Rotonda" in the Ponent Penitentiary Center, in which it has been recommended that video surveillance cameras be installed. In

response to this recommendation, the Directorate General of Penitentiary Services has notified the Catalan Ombudsman that the observation had been conveyed to the Security Affairs Information Department and Penitentiary Facility Department, for them to complete a study and install cameras in transit areas and stairwells of the CP Ponent Admissions Department.

Additionally, there have been reports of excessively rigorous punishments, or prolonged stays in the DERT (closed regime) and a prison regime that could be incompatible with the basic rules of respect for human rights and an orientation toward social reintegration and reeducation that must be part of the prison sentence. For this reason, it has been decided to devote a specific chapter of the 2016 report to this prison regime.

5. Admission in geriatric centers of elders unable to freely express their will

Regarding the admissions into geriatric centers of elders who are not legally incapacitated but cannot freely express their will, the CMPT concluded in its 2015 annual report that it is a habitual practice in such establishments to accept as "voluntary" those admissions made by family members of elderly persons when they are not legally incapacitated, do not have a de facto capacity to accept or refuse the internment.

According to that annual report, this practice was justified by the Autonomous Ministry of Welfare (currently, Autonomous Ministry of Labor, Social Affairs and Families), in keeping with the terms of Article 7, sections 3 and 4, of Decree 176/2000, on social services, which states that, when a person cannot freely express their will at the time of their admission, their relatives (forebears, descendants, spouse, common-law partner or siblings) may act in their name.

It was also stated that admissions into residential centers of elderly persons incapable of freely expressing their will are not voluntary, even if family members or de facto guardians intervene. Therefore, in such cases, once the admission has been made, the director of the establishment becomes the de facto guardian of the person who has

not been able to freely express their will to enter the center. Pursuant to Article 225.2 of the Civil Code of Catalonia, the director must notify the competent judicial authority or Prosecutor's Office of this guardianship within 72 hours of its beginning.

It has thus been made clear that the Decree contradicts the Civil Code, and therefore the CMPT has made the recommendation to the Ministry of Social Affairs that it rectify its position. The Ombudsman further asked the Ministry to immediately inform all geriatric centers of Catalonia where elders unable to freely express their will could be admitted of the necessity to notify the judicial authority or prosecutor's office if such an admission had been made in the shortest possible time span.

The CMPT asked the Official Doctors' Association of Barcelona for an opinion on this matter. According to information sent by this organization, the Ethics Committee of the Official Doctors Association of Barcelona (ODAB), in its meetings held October 8 and November 12, 2015, expressed its agreement with the CMPT's conclusions. Specifically, the ODAB made the following recommendations:

- Before admitting an elderly person who is not legally incapacitated into a geriatric center, the family must provide a complete report from the doctor who has cared for the patient in their home up to that time.
- At the time of admission into geriatric centers of elderly persons who are not legally incapacitated, their decision-making capacity must be evaluated within a doctor-patient relationship by the competent doctor of the center, who must write a complete report on their decision-making capacity, starting from the previously-provided basis.
- At the methodological level, in a report on the person's decision-making capacity, the following must be indicated: etiological diagnosis, thoroughly documented with accrediting examination and tests; evolutionary condition and functional affectation in daily, family, work and social life; evolutionary prognosis and degree of dependency. Likewise, the elder's living conditions, persons in their environment and care-taking unit must be put on record.

Since it is likely that the doctor on duty at the geriatric center will not know the patient at the time of admission, they will describe what they evaluate. If the patient is suffering a disease with fluctuating symptoms (i.e. vascular dementia) or is confused and in the process of adaptation, the doctor will take note of this in their report.

- Elders must be encouraged to prepare living wills, in which a representative can be designated. Advanced care directives must also be planned. It would be recommendable for patients with advanced-stage complex chronic pathologies to have advanced care directives prepared and updated by the psychology advisory team.
- It is also relevant to promote self-guardianship and the figure of the de facto guardian as a prior stage to incapacity in most cases. This way, the declaration of incapacity can be used with restrictive criteria, in such a manner that the person's capacities and autonomy will be respected to the highest degree, and a staged, progressive declaration of incapacity can be produced.
- When this declaration has been given, the admission of an elder in a residential establishment must be communicated to the judiciary authority or Prosecutor's Office within 72 hours from the beginning of guardianship.

It is now necessary to wait for the Ministry to give its positions on the aforesaid recommendations and the measures it will take to comply with them.

Over the past year, the CMPT has continued to observe that this procedure is not habitually followed, and therefore, reiterates the need to comply with these recommendations.

6. Excessive disciplinary measures in child and adolescent internment centers

In its recent reports, the Catalan Ombudsman has found, based on systematic interviews with the youth interned at visited centers (Intensive Educational Residential Centers and Juvenile Justice Centers) shortcomings or

inadequacies in disciplinary measures, both due to the lack of guarantees and lack of knowledge by inmates of the penalization regime, including disproportions or penalties with inappropriate content.

Evidence of the persistence of these situations has been found on the visits made by the CMPT. It has been made clear that isolation in the youth's usual room is still used as punishment and, on occasion, such stays in their rooms are prolonged throughout the entire night (Castanyers). It has also been made clear that punishments can affect the right to education. This situation is especially salient at the Font Fregona Center, where non-attendance to school (even over long periods of time) is used as a corrective measure for bad behavior at the center. The situation of youths to whom the strictest disciplinary measure is applied is especially severe, as they live in a regime of total inactivity and isolation, without communication.

In this area, the response received from the Autonomous Ministry of Health is disconcerting, as, aside from not questioning this situation of inactivity and isolation, it has not taken a position, and appears to accept the violation of the right to education. Therefore, in the report issued by its inspectors, following the CMPT's intervention, it states that: "regarding school enrollment, we have been informed that it is voluntary and that all (youths) go through an adaptation phase that allows them to integrate into the school" (response from the Autonomous Ministry of Health,

received on November 2, following the report from the Directorate General of Professional Health Care Organization and Regulation). It must not be overlooked that the right to education is a fundamental right, and enrollment in our educational system is mandatory up to the age of 16.

As concerns knowledge of the penalization system, in the case of Font Fregona, it was clearly shown that the violation and penalization code is devoid of guarantees. Specifically, the children and adolescents do not have information on punishable conduct, which is left up to the variable criteria of the staff, which creates legal and psychological insecurity. The shortcomings detected in the knowledge of punishable conduct and the applicable punishments make necessary the creation of a strategic plan in which a more detailed account of the action methodology is given.

It was also found that in a number of centers, there is still in place a punishment system that includes the suppression of visits from family members, which is in violation of applicable legislation.

Last, concerns still exist around the application of punishment systems in environments where interned youth suffer severe mental disabilities (Can Rubió), and consequently, their behavior is not volitionally attributable to them, nor do they have the capacity to understand the meaning and purpose of the punishment, which causes it to lose its justification.

VI. GENERAL CONCLUSIONS

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Throughout the visits made by the Mechanism, and also through the responses of the Administration to its suggestions, a number of **best practices** have been found, that deserve to be highlighted in this report, with the understanding that the following paragraphs are by no means an exhaustive list.

As already stated in this report, the Administration's response to the recommendations on training in the Istanbul Protocol and the adaptation of injury reports and the medical practice to international standards, has borne fruit in the form of a wide-ranging training program, which is scheduled to continue in 2017. This training is not a "silver bullet" that will eradicate malpractice in the treatment of persons deprived of liberty on its own, but it is an essential step to sensitize in prevention the personnel who deal with prisoners, and eventually facilitate the punishment of inappropriate behavior. The CMPT, even as it acknowledges this important step, will remain attentive to the further implementation of training, the quality of injury report protocols, and practice in police stations and penitentiary centers.

In the chapter of local police forces, there are many municipalities that, in application of the CMPT's recommendations, have closed their detainee custody areas. Some cases deserve special mention, such as the Sant Cugat del Vallès local council, which, in construction of its new Municipal Police station, eliminated the part initially designed as a custody area, so that now all detained persons are transferred immediately to the Mossos d'Esquadra police station. Other examples are the Berga, Puigcerdà and Valls local councils which, despite having the status of municipal holding facilities for detainees, have renounced this judiciary support role, in favor of the Mossos d'Esquadra police station.

Some of the practices observed by the CMPT Task Force in Mossos d'Esquadra police stations are also noteworthy. The

police stations of Sabadell and Tarragona, which have designed and posted informative signs, in addition to the official signage, to clarify certain matters for detained persons, have already been mentioned. Or, as indicated in the 2014 Report, the case of the Mossos d'Esquadra station in Vielha and Mijaran, which had an icon that indicated the direction to the Mecca, as a reference for detainees of the Muslim faith. The police stations that, in their relations with the relevant police courts, facilitate morning and afternoon transfers of detained persons, also provide better service to citizens, as they are able to significantly shorten the duration of detentions.

On another note, generally speaking, the linen change protocol for detained persons has improved at Mossos d'Esquadra police stations, as they are changed much more frequently than in prior years. Nonetheless, the CMPT continues to recommend a system based on disposable linens, or at least that the protocol guarantee that the detainee be able to obtain a new set of linens upon request.

Based on the visits made throughout 2016, the CMPT has reached the following **conclusions and recommendations**:

1. Two items have been systematically observed at **Mossos d'Esquadra Police Stations** that, in the Mechanism's view, must be corrected:

- The **booking and identification rooms** of the custody areas are sensitive spaces in the circuit of detention that do not have video surveillance cameras. The rooms where detainees meet with their attorneys do not have cameras, either, but in this case the lack of cameras is fully justified to guarantee the confidentiality of the interview. This is not the case of the booking rooms. The detained person must necessarily pass through it, always accompanied by at least two officers, and remains there for the time necessary to identify them (fingerprints, photograph, etc.). The lack of cameras in this area means there is a small, completely unjustifiable space of opacity in which police brutality as well as unconfirmable

false testimony may occur. The Mechanism has systematically requested, on all of the visits made to Mossos d'Esquadra police stations this year, that they equip these rooms with video surveillance cameras. According to the Ministry of Home Affairs, it was decided time ago not to provide video coverage in this space by the body responsible for the detention process quality management system. That said, the Ministry is now willing to assess whether to equip these premises with video surveillance cameras.

- Amongst the **restraint materials** available at Mossos d'Esquadra police stations, there are full-face motorcycle helmets (without the visor), meant to keep a severely disturbed person from injuring themselves by banging their head against the cell walls. In most police stations, the Task Force has found that these helmets are in very poor condition, after being kept in closets for years, given that the management of the stations visited have all stated that, with few exceptions, they have never been used. With a view to renewing this equipment, the CMPT has suggested they be replaced by elements that are less rigid, and therefore not as difficult to put on a severely disturbed person, such as the pads used in sports such as kick-boxing. The Ministry has confirmed that it will study the proposal within the framework of a broader protocol being negotiated with the Barcelona Municipal Police and the Medical Emergency Services, to determine the guidelines for action when it is necessary to restrain agitated individuals.

On another note, although mention of them has already been made, it is important to reiterate certain significant shortcomings in the police custody circuit:

- The need expressed in the 2015 report to interpret **Article 520 LECrim** in a manner that is compliant with Directive 13/2012 of the EU, which includes conveying to the detainee and their defense (with the very restricted exceptions described in the Directive) the documentation justifying their detention, as a guarantee that the deprivation of their liberty is justified.

- The right of detained persons to be treated by a doctor pursuant to the standards of the **Istanbul Protocol**; in other

words, with respect for their privacy and confidentiality of the doctor-patient relationship, a principle also recognized by the legislation currently in force.

2. The CMPT reiterates the recommendation made in the 2015 report, that the **local police** not exercise custody duties for detainees and that, using the relevant agreements with the Autonomous Ministry of Home Affairs, they directly transport such persons to the Mossos d'Esquadra station with competencies in their territory.

3. In relation with **penitentiary centers**, first and foremost, the recommendations made in Chapters II and III of this report must be repeated. In summary:

- The **gender perspective** must be incorporated into the penitentiary policy of Catalonia, and in the work of the management bodies of penitentiary centers from the time a woman is admitted to prison—even before evaluating if her personal circumstances and the severity of the crime make this admission indispensable—and in all aspects of incarceration, especially as concerns family relationships, health care, detection and treatment of gender violence suffered, disciplinary measures, etc.

- As regards **solitary confinement** in prisons, the Administration must very rigorously ground the application of this measure in each case. References to extreme dangerousness or maladjustment of the inmate will be insufficient. Rather, this diagnosis must be accompanied with precise data that justify the implementation of this measure. Additionally, the classification must be flexibly adapted to the modifications that come about in the personality and behavior of the inmate. For this reason, the necessary human and material resources must be made available to perform an objective assessment of all the circumstances affecting the inmate in a dynamic manner. Therefore, the CMPT recommends that Circular 5/2001 be modified to adapt it to the need to review the classification in a period not to exceed three months.

There are other conclusions and recommendations that can be derived from each of the visits made to penitentiary centers this year, but if there is one that

reflects a unanimous feeling among inmates interviewed on these visits it would have to do with the high prices that have been progressively imposed in penitentiary shops as they have come under management of the CIRE. This public company of the Catalan Autonomous Ministry of Justice is providing a growing number of services (staffing kitchens, training workshops, etc.) in penitentiary and juvenile justice centers. In these shops, the Catalan Ombudsman has found that the prices of private label products are comparable to those found at points of sale such as filling stations or the El Corte Inglés (department store) supermarket, to give two examples that would not be truly qualified as economical. The increase of intervals at which free hygiene kits are distributed among inmates worsens the problem as regards access to products of basic necessity. On all its visits to penitentiary centers throughout the year, the CMPT has recommended significant price cuts for the products in CIRE-managed prison shops, especially those of basic necessity.

4. Regarding **child and adolescent centers**:

In general, throughout the wide variety of visited centers that handle minors with behavioral disorders, mental health problems and who have had some sort of trouble with the law (whether or not under the guardianship of the Administration) continued evidence has been found that the ratio of professionals working there is insufficient to carry out the task assigned to them (both in terms of educators as well as psychiatric and psychological staff) given the profile of children and adolescents residing there. Additionally, most centers should be staffed with more qualified personnel, as there is proof of the growing number of adolescents admitted with more behavioral difficulties and mental illnesses associated (or not) with the consumption of narcotics, who require a more specialized intervention. A lack of such personnel can be translated into interventions more based on providing a container than therapy and reparation. That is why the CMPT has recommended staffing them with more personnel, with lifelong training adapted to each type of center. In light of some of the statements made by the minors in interviews, the CMPT has also issued a reminder of the need to supervise and

follow the work of educators, to ensure they maintain a respectful, appropriate relationship with interned youths at all times.

This year the Task Force also observed a lack of information and resources for the young people to be able to communicate with any other institution or body, for the presentation of complaints. Authorities, from the DGAIA (Directorate General for Children and Adolescent Services), to the Prosecutor's Office and the Catalan Ombudsman, are reminded by the CMPT of the need to guarantee the right to complain for all youth, in accordance with the Charter of Rights and Obligations of Children Living in Centers. Furthermore, the CMPT has also stated that it is essential that the Administration carry out a systematic, intense supervision activity on the operations of the centers that includes, in any event, listening to the children and adolescents. To gather reliable information on the individual treatment of inmates, they must be listened to individually and confidentially, regardless of other group approaches that can give general information on the facility's operation.

Regarding restraints, the CMPT has issued another reminder of the need to duly complete the log of physical restraints and/or solitary confinement, and to guarantee compliance with the regulations on the application of these restraint resources, in the sense that they be applied when strictly necessary, for the minimum essential time, proportionally, and respecting all guarantees.

At the facility level, some of the centers visited continue to show considerable wear and tear, and deficiencies in conservation and maintenance, such as the Can Rubió Educational Activity Residential Center (CRAE). This is so despite having reiterated to the Administration the need to take urgent steps to bring them into compliance with conditions of comfort, and guarantee that secondary victimization situations are not generated. Totally insufficient facilities have also been detected at the ITA center for adolescents with behavioral disorders. In the same vein, cleanliness and unpleasant odors are a recurrent problem in such centers, such as the Centre

Residencial Urbà CTE Sociosanitari Barcelona. Therefore, in such cases, the CMPT recommends carrying out the actions necessary to correct this situation.

In the health care area, in many cases the use of polypharmacy has been observed for conduct control of children and adolescents. In some cases, the side effects of these drugs, such as excessive sedation, are readily apparent. This could indicate overmedication. In some cases, the systematic prescription of antipsychotic drugs as a psychopharmacological containment measure has also been observed. In light of this situation, the CMPT has given notice that restraint of any kind, including pharmacological, is meant

to serve a therapeutic objective for the control of behavior that could signify a risk for the individual themselves or a third party, not as punishment. On another note, the CMPT has recommend avoiding the systematic prescription of antipsychotic drugs as a psychopharmacological restraint measure in cases of agitation or aggressiveness. Further, the CMPT believes it is necessary to evaluate in each specific case the causes of the agitation (organic, psychiatric, for abuse or deprivation of toxic substances), the best-suited drug, appropriate dose and most recommendable form of administration, always under the supervision of a physically present doctor and with a thorough medical follow-up of the measure.

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