

NPM 2014

Spain's National Preventive
Mechanism against Torture



SPANISH OMBUDSMAN



SPANISH OMBUDSMAN

Annual Report 2014

**Spain's National Preventive Mechanism
against Torture**

Madrid, 2015

The following annexes are attached to this report, in electronic format:

- I Visits made in 2014.
- II Short-term deprivation of liberty in 2014.
- III Deprivation of liberty for infringements of Organic Act 4/2000, of 11 January, on rights and liberties of foreign nationals in Spain and their social integration in 2014.
- IV Deprivation of liberty in penitentiary centres in 2014.
- V Deprivation of liberty in penitentiary psychiatric hospitals and units in 2014.
- VI Deprivation of liberty in centres for juvenile offenders in 2014.
- VII Operations for the repatriation of foreign nationals in 2014.
- VIII Conclusions of the visits made in 2014, and follow up of the conclusions of the visits made in previous years.
- IX List of technical experts who participated in the visits of the NPM 2011-2014.

Both the report and its annexes may be consulted at <www.defensordelpueblo.es>

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Ejemplar realizado por el Defensor del Pueblo

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Pº Eduardo Dato, 31 - 28010 Madrid
www.defensordelpueblo.es

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Presentation

The Spanish Parliament, through Organic Act 1/2009, of 3 November, agreed to entrust the Ombudsman's Office with the functions of National Preventative Mechanism against Torture, pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NPM) of the United Nations.

The assignment of these powers implies, firstly, trust in the institution to perform these functions and, also, a great responsibility to be discharged with the utmost professionalism, reporting annually to the Spanish Parliament and to the Subcommittee on Prevention of Torture of the United Nations (SPT).

To perform these functions, all kinds of centres for deprivation of liberty are visited, including those of the National Police Corps, the police of the autonomous governments, local police and the Civil Guards. Penitentiary centres, centres for the protection of minors, hospitals with custody units, centres of border controls and centres for the internment of foreign nationals, with participation in repatriation flights.

The regular visits made to the centres have the purpose of detecting eventual deficiencies, suggesting improvements or evaluating correct actions and conveying the results and making the appropriate recommendations to the responsible authorities.

The technical experts of the institution are accompanied by specialists of various professional centres to fully appreciate the aspects that should be assessed, such as infrastructures, healthcare, psychological counselling, legal assistance, visits regime, communications, surveillance methods and, accordingly, absolute respect to human rights. The duration of the visits is several days in order to observe all the facilities and hold interviews with the inmates and also with the personnel of the centres.

In addition, an Advisory Council exists formed by persons proposed by the professional associations, whose members also participate in the visits, preparing reports and observations to be taken into account.

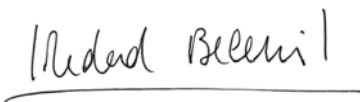
Three centres for the internment of foreign nationals were visited in London, Paris and Rotterdam, to compare their operating procedures and make recommendations of the good practices observed.

After five years discharging the entrusted functions, a set of criteria and rules exists to be used as guidelines to carry out the assessments contained in this report, which ends with the recommendations made. The Annexes, in electronic format, render full account of all the visits made.

The Ombudsman's Office considers these functions entrusted to it to be of the maximum relevance and discharges them with the utmost objectiveness and professionalism.

In addition, the Defensor del Pueblo (Ombudsman) in person often accompanies the technical experts, to observe the centres personally and hear the persons staying or providing their services at them. The Ombudsman's Office definitely intends to comply with the mandate entrusted to it by the Spanish Parliament which, accordingly, cannot be delegated since is the sole authority in its capacity as National Preventive Mechanism against Torture to prevent inhuman treatment or treatment failing to conform to the law, in the entire national territory, in matters of human rights.

Madrid, May 2015

A handwritten signature in black ink, reading "Soledad Becerril", is written above a horizontal line.

Soledad Becerril

DEFENSORA DEL PUEBLO

[SPANISH OMBUDSMAN]

ACRONYMS AND ABBREVIATIONS USED

AENA	Aeropuertos Españoles y Navegación Aérea
AOM	Association of Ombudsmen of the Mediterranean
APDH	Asociación Pro Derechos Humanos de España (Pro-Human Rights Association of Spain)
AUGC	Asociación Unificada de Guardias Civiles (Unified Association of the Civil Guard)
CA	Comunidad Autónoma (Autonomous Community)
CAT	Committee against Torture
CCAA	Comunidades autónomas (Autonomous Communities)
CE	Constitución Española (Spanish Constitution)
CEAR	Comisión Española de Ayuda al Refugiado (Spanish Committee of Aid to Refugees)
CRPD	International Convention of the Rights of Persons with Disabilities
CGEF	Comisaría General de Extranjería y Fronteras (General Headquarters for Immigration and Borders)
CIE	Centro de Internamiento de Extranjeros (Centre for the Internment of Foreign Nationals)
CNP	Cuerpo Nacional de Policía (Spanish National Police Force)
CP	Centro Penitenciario (Penitentiary Centre)
CPT	European Committee for the Prevention of Torture (Council of Europe)
DGGC	Dirección General de la Guardia Civil (Directorate General for the Civil Guard)
DGP	Dirección General de la Policía (Directorate General for the Police)
DUE	Diplomado Universitario en Enfermería (Holder of a University Diploma in Nursing)
EDM	Establecimiento Disciplinario Militar (Military Disciplinary Establishment)
FIES	Fichero de Internos de Especial Seguimiento (File of Inmates subject to Special Monitoring)
FJ	Fundamento jurídico (Ground of Law)
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GC	Guardia Civil (Civil Guard)
H	Hombre (Man)
HPP	Hospital Psiquiátrico Penitenciario (Penitentiary Psychiatric Hospital)
INE	Instituto Nacional de Estadística (National Statistics Institute)
M	Mujer (Woman)
NPM	National Preventive Mechanism against Torture and other cruel, inhuman or degrading treatment or punishment
UN	United Nations
OM	Orden Ministerial (Ministerial Order)

NGO	Non-Governmental Organisation
UNO	United Nations Organisation
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PAIEM	Programa marco para la atención integral a los enfermos mentales (General program for integrated assistance to persons with mental disease)
ICCPR	International Covenant on Civil and Political Rights
PIEM	Programa Individualizado de Ejecución de Medida de Internamiento (Individual Program for Execution of Internment Measure)
PPS	Programa Prevención de Suicidios (Suicide Prevention Program)
RP	Reglamento Penitenciario (Penitentiary Regime)
SES	Secretaría de Estado de Seguridad (Ministerio del Interior) (Secretary of State for Security (Ministry of Domestic Affairs)
SGIP	Secretaría General de Instituciones Penitenciarias (Secretary General for Penitentiary Institutions)
SPE	Servicio Planificación Extranjeros (Foreign Nationals Planning Service)
SPT	Subcomité para la Prevención de la Tortura y otros Tratos Crueles, Inhumanos y Degradantes (Subcommittee for the Prevention of Torture and other Cruel, Inhuman and Degrading Treatment)
STC	Sentencia Tribunal Constitucional (Judgment of the Constitutional Court)
T1	Terminal 1 Adolfo Suárez Madrid-Barajas Airport
T4	Terminal 4 Adolfo Suárez Madrid-Barajas Airport
UCER	Unidad Central de Expulsiones y Repatriaciones (CNP) (Central Unit for Expulsions and Repatriations (CNP))
EU	European Union
UHPP-C	Unidad de Hospitalización Psiquiátrica Penitenciaria de Cataluña (Unit for Penitentiary Psychiatric Hospitalization of Catalonia)
URPP	Unidad de Rehabilitación Psiquiátrica Penitenciaria (Penitentiary Psychiatric Rehabilitation Unit)

Introduction

This report renders account of the activity performed by the National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NPM) in 2014, as was done also in years 2010 to 2013, while it reviews the work of this institution performing this function **throughout the first five years** of its career.

As mentioned in the first report, Organic Act 1/2009, of 3 November, introducing a single final provision in the Organic Act on the **Ombudsman**, designated this institution as the **NPM**, which position it held **since 5 November 2009**, when said organic act entered into force.

Since then, the Ombudsman's Office, as NPM, made a total 485 visits and prepared the relevant reports, in compliance with the Optional Protocol of the Convention of the United Nations against torture and other cruel, inhuman or degrading treatment or punishment (OPCAT), made in New York on 18 December 2002.

The previous report, which contemplates the activity carried out in 2013, **was filed for entry on the Register of the Parliament** on 27 May 2014, and was sent also to the Subcommittee of the United Nations on Prevention of Torture in compliance with the obligations established by the OPCAT. Finally, the Ombudsman appeared on 17 June 2014 before the Mixed Committee for Relations with the Ombudsman of the Spanish Parliament to submit said report, and also the report on *Injury reports on people deprived of their liberty*, which was then published on the website of the Ombudsman's Office.

In 2014 the pace of the visits made in previous years was maintained, a total **61 inspections** having been made. As in previous years, the immense majority of the visits were made without prior notice. In addition, photographs were taken of all the visited facilities and centres, which were attached to the records, some of which are included in this report.

This report also maintains the practice of including the list of visits made, in addition to the conclusions drawn, the follow up of visits of previous years and other data of interest in the **annexes** to this report, although this time the annexes will only be included in **the digital version**.

As on previous occasions, various **external experts** in fields such as legal and forensic medicine, psychiatry and psychology have also cooperated, participating in some of the visits and making contributions from their respective fields of work. This practice affords added value to the assessments, providing them with a multi-disciplinary and much more complex focus.

Thus, after the external experts joined, 30% of the visits were made in their company. In 2014, these experts participated in 20 visits.

The list of external experts who cooperated with the NPM is provided in Annex IX to this report.

We point out that, one more year, it has been customary practice for the **responsible authorities to cooperate** during the visits, permitting access to all the facilities and documents and the holding of interviews, both with personnel and with the persons deprived of liberty, facilitating the work of the NPM.

The main purpose of the visits is to detect possible deficiencies in the treatment afforded and conditions applied to persons deprived of liberty that could favour torture or ill-treatment, or that could hinder the investigation of such acts and, as the case may be, their punishment. Accordingly, after the relevant inspections, the NPM draws up its **conclusions** which are conveyed to the responsible authorities for them to take them into consideration and make any improvements they consider necessary to correct the problems eventually detected, reminding them that, should they fail to make such improvements, the Recommendations, Suggestions or Reminders of Legal Duties would be sent, exercising the prerogatives that the law affords the Ombudsman's Office. Thus, in 2014, 84 Recommendations, 114 Suggestions and 6 Reminders of legal duties were sent, as shown in the following charts:

CHART 1

Recommendations, Suggestions and Reminders of legal duties



If during the visits a **specific case** of torture or ill treatment is observed, the NPM forwards it to the responsible area of the Ombudsman's Office for it, if it considers this appropriate, exercising the powers vested in it by law, to commence the appropriate action.

The inspections made by the NPM include **follow-up visits** to verify whether the responsible authority made the changes suggested or recommended by the NPM after its previous visit and to identify any new deficiencies.

In addition, it must be pointed out that, after its creation in June 2013, the **Advisory Council** held four meetings (two in 2013 and two in 2014). The Advisory Council, created in compliance with Organic Act 1/2009 as "technical and legal cooperation body", is formed by qualified professionals of various scientific fields, affording productive advice completing the work of the NPM and of its experts.

Lastly, it must be borne in mind that the NPM performs preventive work, to promote material changes and improvements in the conditions applied to persons deprived of liberty. Through the recommendations it makes to the Administration, it seeks to cooperate with the responsible authorities for the prevention of torture and of ill treatment.

I. Visits made
§1 - §43

1. In 2014, a total 61 visits were made to places of deprivation of liberty, **20 of which were multidisciplinary**, in other words, with the cooperation of external experts, specialised in legal and forensic medicine, psychiatry and psychology. In addition, 22 visits were made for follow-up purposes, to verify compliance with the conclusions drawn at previous visits made to the same facilities and to identify eventual new deficiencies.

One of the visits was made accompanied by a delegation of the Ombudsman of Georgia.

Members of the NPM Advisory Board participated in 12 of these visits and experts of the autonomous committees participated in another 4.

2. In 2014, unlike other years, more foreign national repatriation operations to various countries were supervised, account of the results of which is rendered below.

3. The distribution of visits is set out in the following table

TABLE 1
Type of places of deprivation of liberty visited

PLACES	NUMBER OF VISITS
Healthcare centre	1
Centres for first aid and detention of foreign nationals	2
Centres for the protection of minors	1
Centres for juvenile offenders	4
Prisons	8
Social healthcare centres	4
Centre for internment of Foreign Nationals (CIE)	8
Autonomous Police Stations	2
Local Police Stations	4
Police stations and other places of short-term custody of the National Police Force	14
Barracks and other places of short-term custody of the Civil Guard	9
Foreign national transportation operations (FRONTEX)	4
Total	61

I.1 Short-term deprivation of liberty

5. The DGP reported that, in 2014, a total 38,419 identifications were carried out, pursuant to article 20.2. of Organic Act 1/1992, of 21 February, on the protection of citizen security. Of that total, 19,658 were made on foreign nationals and, of these, 8,041 were carried out in Madrid.

6. In 2014, the total number of detentions in cells made by the CNP, the Civil Guard and autonomous police was 335,571, meaning a decrease in respect of the detentions carried out in 2013, in which 361,066 people were detained, as shown in the following table.

TABLE 2
Detentions in cells

POLICE CORPS	NUMBER OF DETAINEES
National Police Force	213.089 (42,245 for infringement of the immigration Act)
Civil Guard	69.314
Ertzaintza (Basque Country)	6.836
Mossos d'Esquadra (Catalonia)	45.230
Foral Police of Navarre	1.062
Canary Islands Police	40
Total	335.571

7. Annex II to this report shows the following data:

- **Detentions with confinement in cells** made by the CNP and the Civil Guard, in terms of autonomous communities, autonomous cities and provinces, and those carried out by the various autonomous police forces in the territories within their competence.

- **Complaints filed for purported malpractice or purported torture, ill-treatment, cruel or inhuman treatment inflicted by officers of the various police forces on person deprived from liberty**, in 2014, at official facilities.

- Statistic information provided by the Office of the Secretary of State for Security, contained in the software contemplated in the National Plan for Human Rights, on the **complaints for police conduct that could be purported acts of torture, ill-treatment or denial of safeguards to detainees, in 2013**. This information supplements that provided earlier by the DGP and the DGGC, contemplated in paragraph 13 of the NPM annual report 2013.

- **Activity registered at the Centre for Support to Security**, answerable to the autonomous body Madrid Salud, of Madrid City Council.

- Attempts of self-injury or deaths of persons deprived of liberty at facilities of the various police corps.

8. Annex VIII to this report set out the conclusions and, where appropriate, good practices, remitted to the various authorities, in respect of each of the facilities visited this year.

Notwithstanding the above, paragraphs 75 to 97 reflect the criteria that the NPM considers should be met in short-term deprivation of liberty.

I.2 Mean-term deprivation of liberty

I.2.1 Centres for internment of foreign nationals

9. Centres for internment of foreign nationals (*centros de internamiento de extranjeros*–CIE) are non-penitentiary public establishments, where foreign nationals pending processing or execution of their expulsion or repatriation are held. They are not of a penitentiary nature and both authorisations for admission and for detention, for a maximum duration of 60 days, are subject to court control.

According to the Ministry of Interior, in 2014, a total 12,549 irregular entries took place, implying a considerable increase in respect of the 3,237 of year 2013.

TABLE 3

Irregular entries through non-enabled border posts in 2014

Mainland	4.613
Ceuta	1.666
Melilla	5.819
Canary Islands	427
Balearic Islands	24
Total	12.549

Source: Own preparation based on data furnished by the DGP
(General Police Headquarters for Immigration and Borders)

The number of persons who entered Spanish territory irregularly in 2014, in terms of nationalities, is shown in Annex III to this report.

The number of irregular entries into Ceuta and Melilla in 2014, by means, is shown below:

TABLE 4

Irregular entries into Ceuta and Melilla in 2014

MEANS	CEUTA	MELILLA	TOTAL
False document	482	2.861	3.343
Vessel	766	236	1.002
Fence	201	574	775
Vehicle	53	2.069	2.122
Others	164	79	243
Total	1.666	5.819	7.485

Source: Own preparation based on data furnished by the Government at the Congress of Deputies

10. According to the information made available by the Directorate General for the Police, in 2014, **the number of detentions with confinement in cells, of foreign nationals for infringement of the Immigration Act, was 42,245**, almost 15% less than the detentions carried out in 2013, which were 49.406.

The list of such detentions, by autonomous communities and cities and provinces, is shown in **Annex III** to this report.

11. Of the total 42,245 foreign nationals detained, 7,340 were held at the various CIE, as shown on the following table.

TABLE 5

Foreign nationals held in CIE in 2014

CIE	NO. OF DETAINEES		
	MEN	WOMEN	TOTAL
Algeciras	1.827	174	2.001
Barcelona	1.251	0	1.251
Las Palmas	266	23	289
Madrid	1.886	98	1.984
Murcia	847	0	847
Tenerife	82	9	91
Valencia	775	102	877
Total general	6.934	406	7.340

Source: Own preparation based on data furnished by the DGP (General Headquarters for Immigration and Borders)

Of that total, of 7,340 foreign nationals interned, 3,483 were expelled, although their internment is intended to ensure the effective repatriation of foreign nationals, as shown in the following table. This means that 47.45% of the foreign nationals interned in 2014 was expelled, a figure similar to that for 2013.

TABLE 6
Expulsion of foreign nationals interned in CIE in 2014

CIE	NUMBER INTERNEED	NUMBER EXPULSED	PERCENTAGE
Algeciras	2,001	644	32,18
Barcelona	1,251	552	44,12
Las Palmas	289	15	5,19
Madrid	1,984	1,237	62,34
Murcia	847	619	73,08
Tenerife	91	25	27,47
Valencia	877	391	44,58
Total	7,340	3,483	47,45

Source: Own preparation based on data furnished by the DGP (General Headquarters for Immigration and Borders)

12. The list of **foreign nationals interned in each CIE**, by nationality and gender, is shown in **Annex III** to this report.

13. In 2014, a **total 11,817 repatriations of foreign nationals took place**, according to data furnished by the DGP.

TABLE 7
Number of repatriations of foreign nationals in 2014, differentiating returns, non-qualified expulsions and qualified expulsions

Expulsions	7,696
Returns	4,121
Qualified repatriations*	6,557
Total	11,817

*Qualified repatriations included in the computation of expulsions and returns.

Source: Own preparation based on data furnished by the DGP (General Headquarters for Immigration and Borders)

TABLE 8

Number of return and expulsion proceedings instituted and resolved in 2014

Proceedings instituted	34,138
Proceedings resolved	27,410
Returns ordered	11,979

14. In 2014, as explained, **9 visits were made to various CIE, specifically those of Algeciras, Barcelona, Tenerife, Las Palmas, Madrid and Valencia.** All of them were visits for follow-up purposes and those of Algeciras, Tenerife, Las Palmas and Valencia were made in the company of external experts.

15. Annex VIII to this report sets out the conclusions and, where appropriate, good practices, which were sent to the DGP, in respect of each of the CIE visited this year.

Notwithstanding the above, **paragraphs 98 to 134 show the criteria that the NPM considers should be met in deprivations from liberty at CIE.**

I.2.2 Military disciplinary establishments

16. According to the information made available by the Secretary of State for Defence, in 2014 the following **arrests were carried out at the various disciplinary military establishments (*Establecimientos Disciplinarios Militares*–EDM).**

TABLE 9

Arrests at EDM in 2014

EDM ARMY										EDM AIR FORCES				EDM NAVY		TOTAL	
EDM Centre		EDM Ceuta		EDM Melilla		EDM Tenerife		EDM Las Palmas		EDM North		EDM Las Palmas		EDM South			
H	M	H	M	H	M	H	M	H	M	H	M	H	M	H	M	H	M
53	4	25	0	18	0	13	1	7	1	28	1	0	0	14	0	158	7

Source: Own preparation according to data furnished by the Secretary of State for Defence

17. According to the information made available by the Secretary of State for Defence, in 2014 there is **no record of attempts of self-injury or complaints for purported malpractice or purported torture, ill-treatment or cruel or inhuman treatment at the various EDM.**

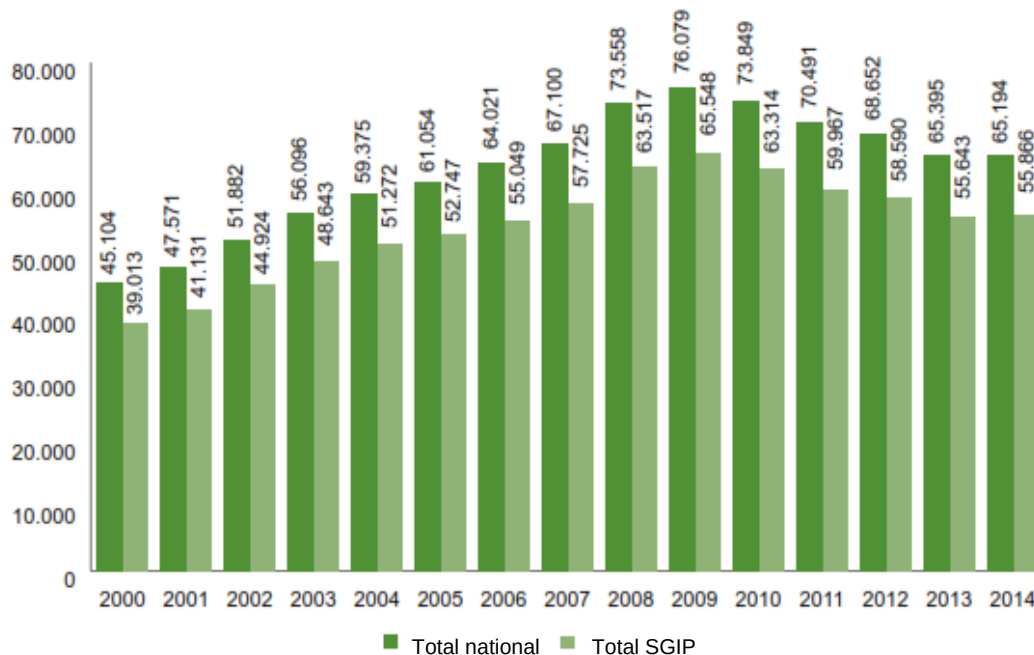
Notwithstanding the above, **paragraphs 135 to 147 of this report show the criteria that the NPM considers should be met in deprivation of liberty at EDM.**

I.3 Long-term deprivation of liberty

I.3.1 Prisons answerable to the Office of the Secretary General for Penitentiary Institutions (SGIP) and the Department of Justice of the Government of Catalonia

18. The prison population decrease trend of the past years, particularly since 2009, when it reached its historical maximum, **appears to have stopped in the past year.** Although the decrease continued in the CP of Catalonia, there was a slight increase of inmates in CP of the SGIP, as may be observed in the following tables:

TABLE 10
Evolution of the Spanish prison population



Source: Own preparation based on data furnished by the SGIP

TABLE 11

Distribution of prison population in CP answerable to the SGIP and of the Department of Justice of the Government of Catalonia, by gender and litigation-criminal situation in 2013 and 2014

	SGIP			CATALONIA				
2013	PREVENTIVE	CONVICTED	TOTAL SGIP	PREVENTIVE	CONVICTED	TOTAL CATALONIA	TOTAL	%
MEN	7,056	44,231	51,287	1,405	7,712	9,117	60,404	92,48
WOMEN	710	3,646	4,356	121	514	635	4,991	7,52
Total	7,766	47,877	55,643	1,526	8,226	9,752	65,395	100,00
2014	PREVENTIVE	CONVICTED	TOTAL SGIP	PREVENTIVE	CONVICTED	TOTAL CATALONIA	TOTAL	%
MEN	6,484	45,024	51,508	1,241	7,445	8,686	60,194	92,33
WOMEN	699	3,659	4,358	88	554	642	5,000	7,67
Total	7,183	48,683	55,866	1,329	7,999	9,328	65,194	100,00

Source: Own preparation based on data furnished by the SGIP

The following table shows the distribution of prison population, by grade of treatment and by autonomous communities, respectively.

TABLE 12

Distribution of convicted prison population by grade of treatment in 2014

GRADES	MEN	WOMEN	TOTAL
First grade	1,024	79	1,103
Second grade	38,494	2,747	41,241
Third grade	7,520	967	8,487
Not classified	3,960	323	4,283
Total	50,998	4,116	55,114

Source: Own preparation based on data of the SGIP
(<http://www.institucionpenitenciaria.es/web/portal/index.html>)

TABLE 13

Distribution of prison population by autonomous communities, Gender and litigation-criminal situation in 2014

CCAA	PREVENTIVE		TOTAL PREVENTIVE	CONVICTED		TOTAL CONVICTED	TOTAL GENERAL
	MEN	WOMEN		MEN	WOMEN		
Andalusia	1,712	142	1,854	12,246	995	13,241	15,095
Aragón	172	15	187	1,872	103	1,975	2,162
Asturias	96	7	103	1,148	109	1,257	1,360
Balearic Islands	253	31	284	1,330	110	1,440	1,724
C. A. Ceuta	75	4	79	96	11	107	186
C. A. Melilla	81	12	93	193	9	202	295
Canary Islands	405	52	457	2,739	193	2,932	3,389
Cantabria	64	5	69	550	20	570	639
Castile-La Mancha	202	10	212	1,627	22	1,649	1,861
Castile and Leon	271	37	308	4,167	291	4,458	4,766
Catalonia	1,241	88	1,329	7,445	554	7,999	9,328
Extremadura	90	13	103	977	61	1,038	1,141
Galicia	316	28	344	3,201	196	3,397	3,741
La Rioja	36	7	43	280	14	294	337
Madrid	1,578	242	1,820	6,279	729	7,008	8,828
Murcia	210	17	227	1,397	105	1,502	1,729
Navarre	64	4	68	256	20	276	344
Basque Country	93	7	100	1,098	152	1,250	1,350
Valencia Autonomous Community	766	66	832	5,568	519	6,087	6,919
Total	7,725	787	8,512	52,469	4,213	56,682	65,194

Source: Own preparation based on data provided by the SGIP

19. Annex IV to this report shows the following data:

- **Information relating to inmates classified in the first grade** in CP of the SGIP and of the Government of Catalonia. In addition, the data of participation of inmates of the first grade in the Closed Regime Program in the fourth quarter of 2014 in CP of the SGIP are included.

- Information on **convictions and proceedings for ill-treatment**, instituted or resolved in year 2014, against public officers of the SGIP and of the Department of Justice of the Government of Catalonia.

- **Deaths of inmates in CP answerable to the Government of Catalonia** in 2014 by cause, CP and place of death. The data on deaths at CP of the SGIP were not furnished since they were not available on the date of the report.

- **Loss of medical appointments of inmates due to lack of police officers for their transfer and custody** in 2014, at CP of the SGIP and of the Department of Justice of the Government of Catalonia.

- **Number of inmates participating in the General Program for Integrated Assistance to Persons with Mental Diseases (*Programa Marco de Atención Integral a Enfermos Mentales –PAIEM*)**, at 31 December 2014.

20. During 2014, as explained, **8 visits were made to CP**, specifically to the CP of Albolote (Granada), Badajoz, Bilbao, Logrono, Madrid III, Mahon (Balearic Islands), Topas (Salamanca) and Ponent (Lleida). Of these, 6 were multidisciplinary, one was for follow up and one was institutional.

21. Annex VIII to this report sets out the conclusions and, as appropriate, good practices, sent to the SGIP and to the Department of Justice of the Government of Catalonia, **in respect of each of the CP visited in 2014**.

Notwithstanding the above, **paragraphs 148 to 224 of this report show the criteria that the NPM considers should be met in general at all CP**.

I.3.2 Penitentiary psychiatric hospitals and units

22. The Office of the Secretary General for Penitentiary Institutions has two penitentiary psychiatric hospitals (*hospitales psiquiátricos penitenciarios*–HPP), in Fontcalent (Alicante) and Seville. The following table shows the occupation of said centres at the end of 2014.

TABLE 14

Distribution of prison population by gender and litigation-criminal situation at HPPs of the SGIP in 2014

CENTRES	PREVENTIVE		TOTAL PREVENTIVE	CONVICTED		TOTAL CONVICTED	TOTAL GENERAL
	MEN	WOMEN		MEN	WOMEN		
Seville Psychiatric Hospital	11	0	11	160	0	160	171
Alicante Psychiatric Hospital	5	0	5	282	37	319	324
Total	16	0	16	442	37	479	495

The penitentiary system of Catalonia has a healthcare network created under the agreement reached in 2001 between the Departments of Justice and Health of the Government of Catalonia and the Mental Health Services of the Order of the Brothers Hospitallers of St. John of God. The network consists of the following specialised resources: Polyvalent Psychiatric Unit of CP Quatre Camins, Penitentiary Psychiatric Hospitalisation Unit of CP Brians-1 (UHPP-C) and Penitentiary Psychiatric Rehabilitation Unit of CP Brians-2 (URPP). Apart from these specialised resources, the infirmaries of CP Brians-1, the CP for men of Barcelona and the CP for women of Barcelona have a specific psychiatric area attended also by personnel of the Brothers Hospitallers of St. John of God.

23. The inmates at the penitentiary psychiatric hospitals of the SGIP and the inmates assisted at penitentiary psychiatric treatment departments at CP of the Government of Catalonia, in 2014, are shown on the tables of Annex V to this report.

24. Paragraphs 225 to 242 of this report show the criteria that the NPM considers should be met at penitentiary psychiatric hospitals and units.

I.3.3 Centres for juvenile offenders

25. According to a report issued by the National Statistics Institute (*Instituto Nacional de Estadística*–INE) published in September 2014, in 2013, a total 14,744 final judgments were entered at the Registry of Juvenile Offender Criminal Liability Judgments, implying a decrease of 8.8% in respect of the previous year.

The rate of juvenile offenders aged from 14 to 17 years convicted per 1,000 inhabitants in the same age group was 8.6, in contrast with the 9.3 registered the previous year. Analysing the number of criminal offences perpetrated by minors and their types, in 2013 25,814 were registered, 7.9% less than in the year before. By gender, male minors perpetrated 82.3% of the offences and female minors 17.7%.

In 2013, the judges ordered 23,771 measures, implying a decrease of 6.4% in respect of the year before. The most frequent measures ordered were liberty under surveillance (39.6% of the total), community service (18.1%) and semi-open custody (12.4%).

Taking into account the nationality of the offender, it is observed in relative terms that **the measure of internment under the closed regime is imposed more frequently on foreign minors** (4.5% of the total), that on Spanish minors (1.9%). **The same occurs in the case of the measure of internment under the semi-open regime** (16.2% in the case of foreign minors and 11.0% in the case of Spanish minors). However, **the measures of performance of social-educational work and community services are imposed less frequently on foreign minors** (7.4% and 16.2% of the total, respectively, in contrast with the 10.4% and 18.8% of Spanish minors).

26. The **capacity of each centre visited in 2014 and the number of places that were occupied** on the days of the visit are set out in the following table.

TABLE 15
Places and occupancy of centres for juvenile offenders visited

CENTRES VISITED	NUMBER OF PLACES	OCCUPATION
Aranguren Educational Centre in Ilundáin (Navarre)	22	11
Ibaiondo Juvenile Justice Educational Centre in Zumárraga (Guipuzcoa)	39	33
San Jorge Centre of Education and Internment for Court Measure (Saragossa)	69	24
Sierra Morena Centre for Internment of Juvenile Offenders in Cordoba	48	51

Source: Own preparation based on data furnished by the centres

27. Distribution of inmates at the various centres, according to agreed regimes and type of court decision are set out below.

TABLE 16
Aranguren Educational Centre in Ilundáin (Navarre)

INTERNMENT REGIME	NUMBER OF MINORS
Closed regime	1
Semi-open regime	9
Weekend regime	1
COURT DECISION	NUMBER OF MINORS
Final	10
Precautionary	1

TABLE 17
Ibaiondo Juvenile Justice Educational Centre in Zumárraga (Guipuzcoa)

INTERNMENT REGIME	NUMBER OF MINORS
Closed regime	4
Semi-open regime	26
Weekend regime	3
COURT DECISION	NUMBER OF MINORS
Final	28
Precautionary	5

TABLE 18
San Jorge Centre of Education and Internment for Court Measure (Saragossa)

INTERNMENT REGIME	NUMBER OF MINORS
Closed regime	5
Semi-open regime	16
Semi-open therapeutic regime	2
Weekend regime	1
COURT DECISION	NUMBER OF MINORS
Final	22
Precautionary	2

TABLE 19

Sierra Morena Centre for Internment of Juvenile Offenders in Cordoba

INTERMENT REGIME	NUMBER OF MINORS
Closed regime	6
Semi-open regime	31
Open regime	2
Therapeutic regime	11
Weekend regime	1
COURT DECISION	NUMBER OF MINORS
Final	35
Precautionary	16

28. Annex VI to this report shows the following data:

- **Complaints and claims for purported malpractice or purported torture, ill-treatment and cruel or inhuman treatment** brought in 2014, at the various centres according to the information furnished by the various autonomous communities.

- **Attempts of self-injury or deaths at centres for juvenile offenders.**

- **By autonomous communities, the total number of minors convicted in 2014 for criminal offences; the number of juvenile offenders having their residence in one autonomous community and who have served or are serving a court measure in another autonomous community; the number of inmate minors who had in their company children under the age of 3 years old; the number of breaches of measure occurred, differentiating escapes from internment centres from non-returns from any leave or outing; number of centres for minors with health or conduct disorders.**

29. Annex VIII to this report sets out the conclusions and, where appropriate, good practices, sent to the various authorities, in respect of each of the facilities visited this year.

Notwithstanding the above, **paragraphs 243 to 285** show the criteria that the NPM considers should be met at centres for juvenile offenders.

I.3.4 Centres for minors with conduct disorders and in a situation of social difficulty

30. Minors in a situation of social difficulty are considered to be those who, due to their serious maladjustment to the family and educational environment in which they develop, may cause themselves or other persons damage.

It has been decided to use the term “social difficulty”, in order to include it clearly in the scope of protection systems and distance it from measures for reform for the perpetration of offences in the context of juvenile justice.

31. The difficult situation of these adolescents, who often also suffer mental disorders, and the fact that some of them have perpetrated illegal acts, has led the autonomous legislators and the authorities to establish a **protection system for these minors in which measures for reform are occasionally related to or confused with measures for reform**. The result is that certain adolescents are being treated at inadequate residential shelter centres, a circumstance to be avoided both by the public powers and by the entities managing these establishments.

32. Indeed, the public authorities should put in place the necessary protection measures to prevent and neutralise situations of maladjustment, discrimination or social exclusion that could lead to more serious acts. However this field of **crime prevention is absolutely unrelated to the treatment that conduct disorders should be given**, since it is excessive to consider that all minors who perform an illegal act suffer mental disorders or vice versa.

33. The **Galapagar Residence (Madrid)**, with a **maximum 18 places**, was visited. On the day of the visit, 16 places were occupied, although only 15 minors were staying there (of whom 8 were boys and 7 were girls), since one of them had escaped.

The minors were aged between 13 and 17 years old.

The protection measure for 9 of the minors was their placing in custody of Madrid Autonomous Community, except two: one of them in custody of Aragon Autonomous Community and the other in custody of Castile-La Mancha Autonomous Community. **The rest of the minors (7), were placed under legal guardianship**, depending on their families.

34. Annex VIII to this report sets out the conclusions and good practices sent to the authority, in respect of these facilities.

Notwithstanding the above, **paragraphs 286 to 310 of this report show the criteria that the NPM considers should be met at centres for the protection of minors with conduct disorders and in a situation of social difficulty.**

I.3.5 Residential establishments providing healthcare, social and/or rehabilitation services

35. In 2014, 4 visits were made to these centres: two to geriatric centres (the Geriatros Oleiros Residence and the Laraxe Cabanas Senior Citizens Residence, both of them in Corunna) and the other two to “mixed” centres with places for senior citizens, persons with intellectual disabilities and persons with mental diseases, although the visits were focused on the mental health units (Centre San Juan de Dios at Ciempozuelos (Madrid) and Centre “La Morenica” at Villena (Alicante)). All of the visits were multidisciplinary.

36. Annex VIII to this report sets out the conclusions and, if appropriate, good practices, sent to the responsible authorities in respect of each of the centres visited in 2014.

Notwithstanding the above, **paragraphs 311 to 348 show the criteria that the NPM considers should be met in general at all residential establishments providing healthcare, social and/or rehabilitation services.**

I.4 Special purpose places of deprivation of liberty

I.4.1 Foreign national repatriation operations

37. The Central Unit of Expulsions and Repatriations (*Unidad Central de Expulsiones y Repatriaciones*–UCER), reporting to the General Headquarters for Immigration and Borders (*Comisaría General de Extranjería y Fronteras*–CGEF), is responsible for executing the repatriation of those foreign nationals whose expulsion or repatriation has been decided by the authority in charge.

38. In 2014, four repatriation flights were supervised.

TABLE 20
Foreign national repatriation operations

ORDER No.	NAME	PROVINCE
1	FRONTEX foreign national repatriation operation organised by Spain from Adolfo Suárez Madrid-Barajas Airport to Belgrade (Serbia), on 21 March 2014	Madrid
2	FRONTEX foreign national repatriation operation organised by Spain from Adolfo Suárez Madrid-Barajas Airport to Tbilisi (Georgia), in connection with the FRONTEX foreign national repatriation operation organised by France from the Airport of Lille to Tirana (Albania), on 3 July 2014	Madrid

3	FRONTEX foreign national repatriation operation organised by Spain from Adolfo Suárez Madrid-Barajas Airport to Tirana (Albania) and Tbilisi (Georgia) on 3 December 2014	Madrid
4	FRONTEX foreign national repatriation operation organised by Norway from Adolfo Suárez Madrid-Barajas Airport to Lagos (Nigeria) on 10 December 2014	Madrid

39. The tables set out in **Annex VII** to this report show the **foreign national repatriation operations organised by FRONTEX and by the CGEF, in 2014**, according to data furnished by the DGP.

40. **Annex VIII** to this report sets out the conclusions and good practices sent to the authority, in respect of the supervision of these flights.

Notwithstanding the above, **paragraphs 349 to 364** of this report show the criteria that the NPM considers should be met in repatriation flights.

I.4.2 Centres for first aid and detention of foreign nationals

41. This is a **first aid device in the eventual arrival of foreign nationals in an irregular situation**. The duration of the stay of these persons at the facility is a maximum 72 hours, before they are transferred through the relevant centre for the internment of foreign nationals, to the border post through which the order for return or release is executed.

42. In **2014 two centres** of this type were visited.

TABLE 21
Centres for first aid and detention of foreign nationals

ORDER No.	NAME	PROVINCE
1	Almería**	Almería
2	Motril	Granada

** Follow-up visit

43. **Annex VIII** to this report sets out the conclusions and, if appropriate, the good practices sent to the various authorities in respect of each of these facilities.

Notwithstanding the above, **paragraphs 365 to 376** of this report show the criteria that the NPM considers should be met in short-term deprivation of liberty of this type.

II. Observations of the NPM on the prevention of
torture and other ill-treatment
§44 - §72

44. During the **485 visits** made by the NPM throughout its five years of activity, both deficiencies and improvements have been observed, either of a general nature, or specific to each visited facility, account of which has been rendered in the various annual reports prepared by the Ombudsman's Office acting in the capacity of NPM.

This institution would like to express its satisfaction with the **transparency shown by the responsible authorities** while the visits are made, at which the public officers on service cooperate and afford access to all kinds of documentation, and in the private interviews held with persons deprived of liberty, thus complying with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (OPCAT).

45. It must be pointed out that it is the **main function of the NPM to help prevent** ill treatment of persons deprived of liberty and, for that purpose, after each visit, it prepares a report in which it explains its observations including, if appropriate, Recommendations or Suggestions, which is the base of the work of the NPM before the various authorities.

These **Recommendations and Suggestions** often lead to significant improvements of the conditions in the treatment and procedures relating to persons deprived of liberty. These advances demonstrate the response of the responsible authorities to the work of the NPM and, accordingly, respect to the rights of persons deprived of liberty.

46. In this respect, **major progress has been made** contemplating the contents of various Recommendations, such as the continuation of the implementation of video-surveillance systems at places for the deprivation of liberty; the creation of a database containing updated data on complaints of police conduct that could imply a breach or violation of the rights of the persons in custody or the gradual application of the recommendations included in the report on *Injury reports on people deprived of their liberty* prepared by the NPM.

47. As regards the **police facilities, improvements** have been observed at various detention centres (for example, by eliminating items that could facilitate self-injuries); observance of the obligation of identification of the Ertzaintza; better compliance with the chain of custody of detainees or improvement in the health conditions.

48. An **improvement in the healthcare provided at CIE** has been observed, with an extension of the timetable during which healthcare personnel are present and the implementation of a record of demands for healthcare; the approval of a suicide

prevention plan; the final approval of the internal system and operating regulation of these centres, which contemplate many of the Recommendations made by the NPM over these years or improvements in essential aspects of the day-to-day of the inmates, such as the installation of items that facilitate their hygiene or the acquisition of leisure material.

49. At **CP** we have observed greater control by the SGIP of the application of coercive methods and application of article 75 of the Penitentiary Regulation; the review of the protocols of action to improve medical participation in the application of mechanical restraint measures at the CP of Catalonia; the preparation of a protocol of radiological tests as a measure of control at CP answerable to the SGIP; improvements in the suicide prevention program or improvements observed in the organisation of healthcare.

50. At many **reform centres for juvenile offenders** the systems for the submission of complaints and requests have been perfected; the preparation of protocols for simultaneous use of systems of contention and the creation of records of the application of such means have increased; the number of centres applying suicide prevention programs has increased; the communication with lawyers of minors on the resolution of disciplinary proceedings or the communication of the negative or positive results of personal searches or searches of rooms and belongings of minors, to the court authority, have improved.

51. At the **residential establishments providing healthcare, social and/or rehabilitation services**, we have observed an improvement in the legal safeguards of non-voluntary internments; the preparation of internal regulations; improvements in the complaint procedures of the inmates; improvements in the application of the protocols for contention or advances in the promotion of independence and active participation of the inmates.

52. Notwithstanding these improvements, those **of a more specific nature** observed at the visited facilities are set out **in the relevant tables** of the annual reports of the NPM published to date and, as regards this year, those shown in **Annex VIII** to this report.

53. Despite the above, the NPM observes that **a margin for improvement continues to exist** to further progress in strengthening the fundamental safeguards of those deprived of liberty and it thus recommends that the following general policies be observed:

54. The Criminal Code should be amended to include in the subjective scope of the **crime of torture**, contemplated in article 174, «any other person in the discharge of public functions» other than public authorities and officers, and to provide a statutory definition of the fact that torture is carried out for the purpose of «intimidating or coercing that person or others», as has been requested by various UN Committees and Rapporteurs.

In addition, according to the Committee against Torture (CAT), the penalty contemplated in article 174 of the Criminal Code (two to six years of prison if the offence were serious and from one to three years otherwise) is not consistent with article 4.2 of the Convention against Torture of the UN, which contemplates the **obligation to punish any act of torture with adequate penalties**, taking into consideration its seriousness, and the obligation to ensure that all acts of torture be considered serious. This opinion is shared by the NPM and the authorities are encouraged to undertake this reform of the law.

55. It is to be avoided that persons in a vulnerable situation (because they are deprived of liberty or due to their imminent repatriation) should encounter **difficulties when bringing complaints for** ill-treatment or tortures or that such complaints should in practice not be adequately investigated and judged.

In cases of torture and ill-treatment, it is essential for **the judiciary to carry out an in-depth investigation**. All parties involved should assume that any complaint for ill-treatment or torture will be systematically investigated.

A diligent examination by the court authorities and other responsible authorities of any complaints that may be filed for ill-treatment by the public forces and the imposition, where appropriate, of an adequate penalty, has relevant dissuading effects. On the other hand, if the authorities fail to order efficient measures to respond to the complaints filed, the eventual infringers perceive that they are able to inflict ill-treatment without punishment.

56. Along the same lines, the grant of **pardons** to officers who have been convicted for ill-treatment to persons deprived of liberty should be avoided. Once again, the deterrent effect of the enforcement of a judgment on all its terms against the eventual performance of such actions in future should not be forgotten, which effect disappears on granting pardon, since it gives rise to certain expectations of impunity.

57. It has been verified that fast access to a lawyer immediately following the deprivation of liberty is essential for the prevention of torture and ill-treatment. In this regard, article 520.4 of the Criminal Procedure Act (*Ley de Enjuiciamiento Criminal*–LECrim) should be reformed to reduce the maximum term of eight hours in which the **right to be assisted by a lawyer** should be made effective.

58. With regard to **non-voluntary internments of a civil nature**, it must be borne in mind that Judgment of the Constitutional Court 132/2010 declared unconstitutional two paragraphs of the first section of article 763 of the Civil Procedure Act, regulating these internments, considering that they should be regulated not by an ordinary act but instead by an organic act.

It is unacceptable that, after almost five years have elapsed since the judgment was rendered, this matter has not yet been regulated through an organic act containing a more general and complete regulation of internments of this kind. Particularly, an adequate regulation should be passed, ensuring the grading of the measures to be

ordered, their regular supervision and the material conditions in which they are implemented, in addition to the policies for the use of physical and pharmacological means of restraint

59. Any **regulation having effects on the manner of carrying out a deprivation of liberty** necessarily implies a direct effect on fundamental rights. For that reason, it should be demanded that such regulations, which are essential to establish the manner in which to proceed in such cases, have a high ranking of law, **avoiding their regulation through instructions or circulars**. Such instruments do not meet all the requirements established for legal provisions, since they do not address citizens in general but only the personnel involved, and the process for their preparation does not respect the procedure and safeguards pertaining to the adoption of laws.

60. In view of the heterogeneous structure and size of the **local police** forces and the need to ensure an impartial procedure for evaluation of the actions of the members of the smaller police forces or the persons to which they report directly from a political point of view, it would be advisable to establish **unified inspection systems** for the set of personnel of these forces so that they are homologated in this respect with the large national or autonomous community security forces. The Inspectorate of Security Personnel and Services of the SES could be used as reference, as a theoretical model with regard to operating issues.

61. If the responsibility for a person deprived of liberty must be transferred to a different facility or corps, it should be required, in addition to the customary procedures of action, that **it be verified that the transferred person does not show signs of having suffered ill-treatment** either physical or mental, carrying out, in the case of doubt, even if the person in question does not request this expressly, an immediate medical examination permitting any irregularity to be detected.

62. In line with the suggestions of the SPT, it would be advisable for **information** (notices, informative brochures, etc.) **on the prohibition from torture and ill-treatment**, and on the manner in which and the person before whom to bring complaints against these acts, visible to the public and easy to understand, to be available at all facilities at which persons deprived of liberty are held.

63. Prevention is an essential factor in the battle against torture and ill-treatment. In this respect, **video-surveillance and video-recording** play a relevant role in the prevention of improper conduct by personnel providing services at places of deprivation of liberty. In addition, in the case of complaints, they provide unequivocal evidence to verify the accuracy of the claims. Although, as mentioned above, the installation of these devices and the various facilities has increased, great disparity continues to be observed as regards their use. These technical devices should be used **at all facilities** where persons deprived of liberty may remain, although excluding certain areas such as rooms for confidential interviews with lawyers or religious ministers, or for intimate of family meetings, toilets and cells or rooms in mean- or long-term deprivation of liberty.

It would be necessary to carry out a **report on certain matters related to the recordings**, such as the conditions in which they are activated, the time for which they should be kept, the security protocols to ensure their safety and the manner in which to inform the persons deprived of liberty of the making of these recordings and the authority before which they may exercise the rights established by personal data protection laws.

The obligation to extract and keep any pictures showing any incident that occurs with a person deprived of liberty, without need for a formal request to such effect, should be included in all action protocols on the matter.

In addition, the inspection services of the responsible authority should carry out, in general and as a prevention measure, regular audits of the recordings, not necessarily related to the clarification of specific incidents.

64. Since **solitary confinement** is a system of special restriction of rights of the person deprived of liberty which should always be applied restrictively, with special compensating safeguards, it would be advisable to analyse this institution in an overall manner to assess its practical efficiency and adopt the most indicated legislative policy decisions.

The law should expressly prohibit the application of this system to minors and permit the detainees to be able to hold confidential interviews with the lawyer assigned to them ex officio. In addition, it would be advisable for the NPM to be able to designate a second medical practitioner, of the public health system, to examine the detainees independently for the duration of their solitary confinement.

The immediate participation of the court authority, particularly when establishing and supervising the extension of the solitary confinement should be increased and the video-recording, with audio, should be required on an ongoing basis for the duration of the solitary confinement to capture all places in which the detainees remain or are in transit, including vehicles, with the sole exception of toilets. Lastly, it would be necessary to generalise the most complete forensic-medical examination protocols and regulate the reporting of the fact and the place of detention to the direct family relatives of the detainee.

65. Although progress is observed in the application of unified criteria to prepare injury reports, it must be remembered that, in those cases in which the person deprived of liberty attributes the injury to aggression, the **medical reports** must be completed in detail, particularly as regards the description of the injuries since this is the only manner in which the compatibility of the cause with the denounced facts may be established. In addition, photographs of the injuries must be included, as established by the *Manual for efficient investigation and documentary record of torture and other cruel, inhuman or degrading treatment or penalties*, known as the Istanbul Protocol, and the aforementioned report on *Injury reports on people deprived of their liberty* of the Ombudsman's Office of May 2014.

66. Police officers and penitentiary public officers must compulsorily bear **their identification number in a visible place** while they are on service, to facilitate the investigation in the case of complaints for ill-treatment. In addition, it is essential, in the case of breach of such duty, for adequate corrective measures to be adopted.

67. It would be desirable to implement a **suicide prevention program** at those facilities lacking one, and to provide greater psychiatric and psychological assistance, particularly in mean- and long-term deprivation of liberty.

68. Finally, it would be advisable to limit the **exposure to the media** of police detentions, particularly in cases particularly brought to the attention of the public, since the broadcasting of handcuffed persons leaving their homes or accessing police or court buildings contravenes the regulation on detentions contemplated in article 520.1 of the LECrim. Such situations are thus to be avoided by the police force, since they are in themselves degrading treatment.

Report on *injury reports on people deprived of their liberty*

69. In year 2014, the NPM prepared its first theme report: the report on *Injury reports on people deprived of their liberty*, registered with the Parliament on 27 May 2014, and submitted by the Ombudsman to the Mixed Committee of Relations with the Ombudsman's Office of the Parliament on 17 June 2014.

At the visits made by the Ombudsman's Office as NPM to places of deprivation of liberty, it has been observed, in the review of the injury reports by external experts, specialists in legal and forensic medicine, in psychiatry and in psychology, that the type, share, size, exact location and other features of the injury that could permit the manner in which it occurred to be established are often not adequately described. In certain cases, it has even been observed that the injury reports do not describe the manner in which the injured person states that they occurred, so that it is impossible to verify the consistency of the statement made by the person deprived of liberty with the observations made by the medical practitioner.

70. Given the importance of this matter, the Ombudsman's Office considered it advisable to prepare a report. For such purpose, it firstly obtained information on **State and autonomous community law regulating the issue of injury reports**, and on the **standard forms of injury reports** used in each territory. Later a retreat was held to analyse the results of the work carried out at the previous stage, at which various experts on the matter participated (judges, forensic medical practitioners, psychiatrists, psychologists, medical practitioners and jurists).

Although problems and deficiencies were detected both at the basic and emergency healthcare levels and in the subsequent investigation that should be carried out by the forensic medical practitioner, at the request of the court authority, **the NPM focused its attention on the first level of healthcare**, which is that afforded to the person deprived of liberty when he has suffered, or states that he has suffered, ill-treatment or tortures.

71. The result of this work was the preparation of the report on *Injury reports on people deprived of their liberty*, which analyses injury reports in the Spanish legal and healthcare system, making recommendations for their unification and defining the minimum set of data that they should contain in the case of persons deprived of liberty, to comply with the international obligations agreed by Spain on the matter and to facilitate the court investigation.

72. The Recommendations have in general been well accepted by the responsible authorities. Given their importance for the prevention of torture and ill-treatment, a table is set out below showing the decisions made and the answer given by each authority:

TABLE 22

Report on *injury reports on people deprived of their liberty*

AUTHORITY	BRIEF DESCRIPTION	ANSWER OF THE AUTHORITY	STATUS
Office of the Secretary of State for Justice (R)*	Promote the appropriate reforms for complete and homogeneous regulation in the entire Spanish territory of the minimum contents of an injury report contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>	No powers	Not accepted
Office of the Secretary of State for Security (R)	1. Establish in the scope of its powers, a standard injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i> . 2. Give appropriate instructions to all public medical services...	Extension of actions	Partly accepted
National Healthcare Management Institute (R)	Same as previous RECOMMENDATION	Extension of actions	Accepted
Department of Justice and Interior of the Government of Andalusia (R)	Same as previous RECOMMENDATION		Accepted
Department of Presidency and Justice of General Deputation of Aragon (R)	Same as previous RECOMMENDATION		Accepted
Presidential Department of Principality of Asturias (R)	Same as previous RECOMMENDATION	Extension of actions	Pending
Department of Justice of Government of Catalonia (R)	Same as previous RECOMMENDATION	Extension of actions	Partly accepted

Department of Presidency, Justice and Equality of Canary Islands (R)	Same as previous RECOMMENDATION	Extension of actions	Pending
Department of Presidency and Justice of the Government of Cantabria (R)	Same as previous RECOMMENDATION	Extension of actions	Pending
Department of Presidency and Public Authorities of the Government of Communities of Castile-La Mancha (R)	Same as previous RECOMMENDATION	Extension of actions	Pending
Department of Presidency of the Government of Castile and Leon (R)	Same as previous RECOMMENDATION	Extension of actions	Partly accepted
Department of Health and Social Policy of the Government of Extremadura (R)	Same as previous RECOMMENDATION	Process commenced. Extension of actions	Accepted
Deputy Presidency and Department of Presidency and Public Authorities of the Government of Galicia (R)	Same as previous RECOMMENDATION	Extension of actions	Partly accepted
Department of Health of the Autonomous Community of the Balearic Islands (R)	Same as previous RECOMMENDATION		Accepted
Department of Presidency, Justice and Spokesmen of the Government of Madrid Autonomous Community (R)	Same as previous RECOMMENDATION	Extension of actions	Partly accepted
Department of Presidency and Employment of Murcia Region (R)	Same as previous RECOMMENDATION	Extension of actions	Partly accepted
Health Department of the Government of Navarre (R)	Same as previous RECOMMENDATION	Extension of actions	Accepted
Department of Public Authorities and Justice of the Government of the Basque Country (R)	Same as previous RECOMMENDATION	Extension of actions	Pending

Department of Presidency and Justice of La Rioja Autonomous Community (R)	Same as previous RECOMMENDATION		Accepted
Healthcare Department of Valencia Autonomous Community (R)	Same as previous RECOMMENDATION	Extension of actions	Partly accepted
Department of Government and Justice of Valencia Autonomous Community (R)	Same as previous RECOMMENDATION		Pending
Department of Presidency, Government and Employment of Ceuta Autonomous City (R)	Same as previous RECOMMENDATION	Extension of actions	Accepted
Department of Presidency and Citizen Participation of Melilla Autonomous City (R)	Same as previous RECOMMENDATION		Accepted

*Recommendations (R)

III. Minimum criteria in deprivation of liberty

§73 - §383

73. In previous years, **the NPM pointed out in its reports**, in addition to the deficiencies or good practices observed during the visits, **certain material matters that it examines when visiting places of deprivation of liberty**.

Accordingly, after these five years of activity, it is **considered that all places where persons deprived of liberty remain**, whether short-, mean- or long-term, **should meet certain minimum criteria or safeguards** (as mentioned in paragraph 107c of Annual Report 2011 of the SPT), in accordance with international and domestic laws on the matter, **for such deprivation of liberty to be carried out without detriment to the fundamental rights of persons deprived of liberty**.

The intention, in addition to safeguarding such fundamental rights, is for such criteria, established from an essentially preventive point of view, and based some of them on the recommendations already made by the SPT itself, the CPT and the Ombudsman's Office, may be of use for the personnel working at places of deprivation of liberty and their superiors, as a basis for constructive dialogue on which to improve the situation and correct any deficiencies that may be observed.

74. As explained in the first annual report of the NPM, including the work performed in 2010, **the maximum duration of each type of deprivation of liberty is considered a determining factor to establish the minimum criteria applicable to each case**.

Thus, those considered necessary for short-term deprivation of liberty, estimated by days; for mean-term deprivation of liberty, which may have a duration of up to two months, for long-term deprivation of liberty, which may have a duration of more than three months and for deprivation of liberty at special purpose places, are set out below.

III.1 Criteria to be met at facilities for short-term deprivation of liberty

75. It is of interest to point out, firstly, that the duration of deprivation of liberty at police facilities is relatively short (the average duration of detentions is approximately 24 hours) and, accordingly, **it cannot be expected that the conditions in which such detention takes place should be the same as in other places, where people may be deprived of liberty for much longer time**, as could be, for example, penitentiary

centres. Nevertheless, these facilities must meet certain criteria in the treatment afforded to detainees and should also meet certain elementary material requirements.

76. Special attention should be given to the time for which a person deprived of liberty remains under police custody and it should be ensured that the **detention in police facilities**, before release or committal to trial of the detainee, **is not extended for more time than necessary to clarify the purportedly criminal facts for which that person was detained.**

With regard to the committal of detainees, the NPM considers it necessary to remind that the Constitutional Court deemed the practice of bringing detainees before the judge at the first hour in the morning of the day after completion of the police action, extending the detention for longer than necessary, violates article 17.2 of the Spanish Constitution. This does not mean that the existence of protocols for cooperation between the courts and the Security Forces and Corps, intended to organise the transfer of detainees, is incompatible with the constitutional requirement not to prolong the detention of citizens unduly, since both provisions may reasonably coexist, weighing up in each case the particular existing circumstances.

77. In respect of the **medical assistance** provided to persons deprived of liberty, the NPM expresses its concern with what has been observed at many of the visits made, at which it has been verified that the medical reports that are issued are delivered to the public officers accompanying the detainee and kept with the records of the investigation.

It is deemed necessary, when the healthcare services provide medical attention for disease to a detainee, for the medical assistance reports be delivered only to the party concerned, recording in a separate form the medical prescription and treatment ordered, if appropriate, by the medical practitioner, in addition to any measures that may be required in the case of infectious-contagious diseases.

In the same context, in those cases in which medical attention is given and the existence of injuries is observed in the patient when healthcare is provided, the **“injuries report” issued should not include personal data such as health information and previous clinical record of the patient.**

Lastly, it must be pointed out that **medical and injury reports may only be furnished to the Security Forces and Corps meeting the requirements established in articles 11.2d or 22.2 of Organic Act 15/1999, of 13 December, personal data protection act**, pursuant to the criterion issued by the Spanish Data Protection Agency in its legal report 0133/2008, i.e.: «a) It must have been duly evidenced that it is necessary to obtain the data for the prevention of an actual serious damage to the public health or for repression of criminal infringements and, in the case of particularly protected data, they should be absolutely necessary for the purposes of a specific investigation. b) The request should be concrete and specific. c) The request should be fully founded. d) In compliance with article 22.4 of the LOPD, the data must be

79. The existence of **video-surveillance and video-recording** systems at places of deprivation of liberty is of particular importance, since it is considered that such systems would considerably facilitate the investigation of any allegation of undue conduct on the part of the personnel providing their services at such facilities. This would benefit both the persons who may have suffered such undue conduct of the police and the police officers unreasonably accused of ill-treatment or psychological pressure. Accordingly, it is considered necessary for such technical means to be used at all places at which persons deprived of liberty may remain, including their conduction to the cells, other than toilets and rooms for interviews with lawyers.

The number of facilities that are proceeding to install these systems grows although, in the case of the State Security Forces and Corps, it would be very much valued for the economic restrictions not to impede a full coverage of their facilities.

We should like to point out once again that the **recording of the interrogatory or taking of statements** is another additional relevant safeguard against eventual conduct not considered to be adequate on the part of the police officers and would also reduce the possibilities that the purported culprits could deny, later, to have made certain statements when these were taken.

80. Special attention is given, during the visits made, to the **access to the cell area** of the police facilities. Although at many of such facilities, particularly those newly built, the access to the custody area is provided through the garage or through entrances other than the principal entrance, in others, the detainees are led through the main door.

It should be ensured that such access **is not provided through the common areas used for general attention to citizens**, given the implications of this, from both a security point of view and given the exposure it implies for the person who, although deprived of liberty, maintains the fundamental rights to honour and one's own image.

81. It is a matter of satisfaction to verify that, at the visited police facilities, in the distribution of detainees in the various cells, **it is ensured that they are separated by gender and age. Nevertheless**, it is considered that, to the extent possible, **it should be ensured that persons who have purportedly perpetrated a crime should remain separate from those who have been detained for not having the proper documents.**

82. Special importance is given during the visits to the items or material of the doors to the cells and we are concerned and bring the attention of the authorities to what has been observed at certain facilities, in which the cells contain **items that persons deprived of liberty could use to injure themselves or attempt suicide**, such as, for example, horizontal bars, metal plates around the locks, bolt locks, etc.



Small window with horizontal bars at the Police Station of the CNP of San Blas district, Madrid

83. We have observed, at some of the facilities visited, the existence of **ceramic appliances in the toilets**, in respect of which we express our concern, since the detainees could break them to attempt to injure themselves or attach the officers. For this reason, the responsible authorities must proceed to have them replaced by others made of anti-vandalism materials.



Porcelain toilet appliances at the Station of the GC of Ciudad Real

84. It is of particular importance for **officers to be constantly present at the cells when detainees are kept at them**, to prevent risks in a situation that requires the immediate assistance of the officers. Concern is expressed in this respect as we convey to the authorities since we know of certain cases of death of a detainee, which could possibly have been avoided and it is considered that all necessary measures should be adopted for such acts not to occur, without its being possible to allege lack of personnel, or that they have to cover other services.

85. Compliance by the Security Forces and Corps, with the exception of certain local police forces, with the policy contemplated in paragraph 40 of the 2nd General Report of the CPT, relating to the existence, at all custody facilities, of **a record books in which the occurrences relating to the detainee are entered, is very positively valued.**

Nevertheless, we have observed that **the data recorded in the individual forms for each detainee vary, depending on the facility visited and on the public officer responsible for custody** and do not always include all the occurrences (time of detention, time of placing in cells, body searches made, identity of the public officer responsible, reading of rights, taking of statements, meals, visits, legal assistance, medical assistance, bringing before the court, etc.), thus ensuring the chain of custody and incidents.

For example, in some of these records it has been observed that it had not been mentioned that the detained person, who was detained for a serious crime, had had his statement taken although after checking the police records or the records of the investigation sent to the court authority, statements had been taken so that the number or police records should always be stated to be able to check these facts.

In other cases, it was observed that the **custody forms** were left **blank** and, when the officers were asked for an explanation they stated that the detainee had not been placed in cells and that after taking his statement in an office he had been released.

Page of custody form left blank at the Headquarters of the GC of Ciudad Real

For that reason, it is pointed out, once again, that **the purpose of these forms or records is to know, at any time, who is responsible for the custody of the detainee and the formalities adopted for the duration of such deprivation of**

liberty, regardless of whether or not the detainee was arrested in a cell, so that such forms should necessarily be duly completed.

86. It must be ensured that **full body searches** be recorded in the Custody Book, setting out expressly the reasons for it, and informing the court authority of the adoption of such measures in the record of the investigations. The absence of entries of this kind is explained by the police officers by the fact that full body searches are not made or are carried out as an exception, which is inconsistent with many of the statements made during the interviews with persons deprived of liberty, at which the detainees stated that these searches were carried out.

In this context, it must be pointed out that **bodily searches** of persons deprived of liberty **must be carried out by persons of the same sex**, and that any search requiring a person to be nude must be made out of sight of the custody personnel of the opposite sex.

87. It must be ensured that the **belongings taken away from persons deprived of liberty**, prior to their arrest in cells, be duly set out in the custody form, the party concerned to give his consent with his signature, and that they be kept in self-closing bags, so that they may be opened only by the detainee himself on leaving the facilities.



Bags of belongings at the Police Station of the CNP of Torrelavega (Cantabria)

88. At the visits made to police facilities, particular importance is given to the distribution of the cell area, to assess whether the cells where persons deprived of liberty are found are very far away from the place where custody personnel is usually located and, in such case, whether **calling devices** (electric bells, inter-phones, etc.) exist for the detainees to be able to call the public officers since there is otherwise the risk that they police may be unable to intervene in time in the case of incidents of various kinds (violence between detainees, illness, fire, etc.). It must be point out that appropriate measures should be put in place **to ensure that persons deprived of liberty may get in touch, at any time, with the personnel responsible for their custody**.

Concern is expressed with the **cell locking devices** observed in some of the visits, **which would not enable their fast opening in emergencies**, which should be corrected.

89. At certain visits **suspicious objects have been found at the police facilities, such as wooden sticks, baseball bats, imitation fire weapons or knives**. These objects, either because they were confiscated from the detainees and are to be subsequently used as evidence, or because they are purely ornamental, should be kept at a place especially reserved to deposit confiscated objects, away from the cells, in the first case, and not on display in the second, both to avoid speculation on incorrect conduct of the police and to eliminate potentially hazardous sources, both for personnel and for detainees.

90. At many of the visits made to facilities of the CNP it has been observed, and this is a reason for concern, **that not all the public officers performing custody tasks are duly identified**. On asking about the reasons for such lack of identification, we have received different answers, although many of them refer to the fact that the small badges, on which the identification number is recorded, easily detach from the support.

Without evaluating the reasons for which the agents fail to wear their identification badges, as is their obligation (Instruction 13/2007 of the SES: "This obligation is defined as a right of citizens to identify, at all times and without any positive action of demand on their part, the agents that are performing the relevant function or service, and as a counterpart the duty of such agents to allow such identification"), the NPM should like to point out that the responsible authorities should put in place the measures necessary, including those of a disciplinary nature, for this obligation to be duly performed.

91. The **presence of female personnel** should be ensured at custody facilities **where women are deprived of liberty**. The presence of female and male personnel, as contemplated by the CPT in paragraph 23 of its 10th General Report, may have a beneficial effect as regards both the values of the custody and the encouragement of a level of normality at the place of detention. Mixed personnel also permits an appropriate workforce to face tasks in which gender is a determining factor, such as bodily searches.

92. **Officers should avoid wearing their statutory weapon loaded at the cell area**, for the purposes of safety of the detainees and of the officers themselves.

93. Persons deprived of liberty should be ensured to have access to sufficient **adequate food**, special diets for medical, creed or cultural reasons, and access to drinking water at all times.

94. Attention should be brought to a series of health and safety matters in respect of persons deprived of liberty. Although this is not frequent, complaints have been received from detainees relating to delay in accessing the toilets, after they have requested this from the officers. For that reason, persons deprived of liberty should be afforded **access to the toilets, without undue delay, at any time, and they should**

be afforded appropriate means for their personal hygiene, particularly in the case of women who so require or persons whose personal hygiene is linked to religious practices which should be respected.

The specific needs of hygiene of women deprived of liberty, which differ significantly from those of men, and should be treated adequately, and the **supply of female intimate hygiene products** are of particular importance, as mentioned by the CPT in its 10th General Report on stating that “the lack of such basic needs may be classified itself as degrading treatment”.

95. To the extent possible **it is to be avoided that cells not for individual use should contain toilets within them**, since it is not acceptable either as regards the lack of privacy that such location implies for the detainees, or for the rest of the detainees who must put up with the bad smell.



Toilets within a cell at the Police Station of the Mossos d'Esquadra of Barcelona

Likewise, **the existence of squat toilets is inadequate for persons who, because of their age or physical condition, need to use seat toilets**.

96. It should be ensured that the **sizes of the cells** are adequate for the number of persons staying in them, their over-occupation to be always avoided.

It must also be ensured that persons deprived of liberty who must remain in a cell overnight have the **minimum means necessary to rest**, such as ledges, avoiding in any case that they remain on the floor, in addition to mattresses and blankets, the latter not to have been previously used by another detainee.



Interior of a cell at the Police Station of the CNP of Almeria

97. It should be ensured that the cells are adequately **cleaned and ventilated**. It must likewise be ensured that their **lighting** permits due rest of the persons deprived of liberty, and that it is adequate so as not to be an unnecessarily afflictive measure for the detainees.

Lastly, excessive oscillations of **temperature** at the cells should be avoided, by adapting it to the weather and station of the year.

III. 2 Criteria to be met at facilities for mean-term deprivation of liberty

III.2.1 Centres for internment of foreign nationals

98. As in the above section, it is considered that **facilities for mean-term deprivation of liberty, specifically CIE, should also meet criteria as regards the treatment afforded to detainees, and certain elementary material requirements.**

99. The control of the state of health of the inmates of a CIE is a fundamental duty towards each one of them since their physical and mental health may be affected by previous traumatic experiences. The special circumstances of the inmates at such centres, with poor expectations as regards their personal situation, the uprooting of persons who led an adapted life, their little relationship with their loved ones, the lack of alternatives and the type of life they lead at the centre, render it advisable that they may be afforded psychological assistance.

100. It would be advisable, at all CIE, for the inmates to be informed in writing, upon arrival, of the existence and operation of the healthcare service, and on the basic measures of hygiene.

101. It has been verified that a medical practitioner and a DUE exist at all CIE although it would be advisable for their timetable to include also nights and weekends.

102. It has been observed, and this is a reason of concern, that the **principle of medical confidentiality is not always respected at CIE in the same manner as it is outside them.** It must be reminded that the **medical record of the inmates should not be accessible by non-medical personnel, without express consent from the party concerned,** pursuant to article 16 of Act 41/2002, of 14 November, organic act regulating patient independence and clinical reporting and documentation rights and obligations.

Nevertheless, there is no objection to the fact that the medical services provide information to the management on the measures that should be adopted to ensure a healthy surrounding and cohabitation of all the personnel of the centre, but this should not imply furnishing the health data of a specific inmate.

103. It is important to carry out analytical tests on the inmates, which is not done in general, **to be able to detect, if appropriate, infectious diseases and put in place measures to ensure the health of all persons living together at the centre.**

When an inmate enters the CIE, no qualitative drug detection tests are made and no analyses are made systematically to rule out infectious contagious diseases as immediately as possible.

104. All medical examinations should be made privately and, unless the medical practitioner in question requests otherwise, in a specific case, out of sight of surveillance personnel.

105. It should be ensured that medical personnel have immediate access to qualified interpreters, for language not to be an impediment to fluid communication between the healthcare services and the inmates requiring medical attention, for it to be provided correctly, without errors due to poor communication and without effects on their personal privacy.

It has been observed that, in many cases, the translation is made by other inmates, and not all of them wish to give details through other inmates.

106. It is a matter of satisfaction that the Recommendation made to prepare a suicide prevention protocol for persons deprived of liberty in CIE, has been accepted through the publication of an Instruction of the General Headquarters for Immigration and Borders.

Nevertheless, it has been observed in the visits made after said instruction was published that the medical services of the various CIE are unaware of it and, accordingly, **it would be advisable to implement the provisions of said instruction to ensure its compliance at all CIE.**

107. It would be desirable for a Record of demands for healthcare and scheduled appointments to exist at all CIE, using the same format, stamps and pages, freely accessible by all inmates, to record, in addition to the demands for healthcare and scheduled appointments, the daily assistance actually provided.

Urgencias	Reingreso	Nuevo Ingreso	Hospital	Planta 0	Planta 1	Planta 2
		1454		1454	1454	
		1455		1455	1455	
		1456		1456	1456	
		1457		1457	1457	
		1458		1458	1458	
		1459		1459	1459	
		1460		1460	1460	
		1461		1461	1461	
		1462		1462	1462	
		1463		1463	1463	
		1464		1464	1464	
		1465		1465	1465	
		1466		1466	1466	
		1467		1467	1467	
		1468		1468	1468	
		1469		1469	1469	
		1470		1470	1470	
		1471		1471	1471	
		1472		1472	1472	
		1473		1473	1473	
		1474		1474	1474	
		1475		1475	1475	
		1476		1476	1476	
		1477		1477	1477	
		1478		1478	1478	
		1479		1479	1479	
		1480		1480	1480	
		1481		1481	1481	
		1482		1482	1482	
		1483		1483	1483	
		1484		1484	1484	
		1485		1485	1485	
		1486		1486	1486	
		1487		1487	1487	
		1488		1488	1488	
		1489		1489	1489	
		1490		1490	1490	
		1491		1491	1491	
		1492		1492	1492	
		1493		1493	1493	
		1494		1494	1494	
		1495		1495	1495	
		1496		1496	1496	
		1497		1497	1497	
		1498		1498	1498	
		1499		1499	1499	
		1500		1500	1500	

List of medical visits at the CIE of Madrid

108. The medical reports on the injuries that the inmates may show are of particular importance and it has been observed with concern that these reports are not always issued. Accordingly, it is pointed out once again that **whenever the existence of injuries is observed in inmates, regardless of the origin attributed to them by the injured person, an injuries report should be issued.**

It is also customary practice, in certain centres, for injury reports to be sent to the manager for the manager to convey them, if appropriate, to the court controlling the CIE. The NPM expresses its concern in this respect and has conveyed this to the authorities, on considering that **injury reports should be sent by the medical practitioner issuing them directly to the duty court, notwithstanding the fact that this may be reported to the controlling court, to the court that authorised the internment and to the public prosecution.**

109. To ensure control of the correct application of the means of restraint used at CIE, it is necessary for all of them to have a record book, the completion of which should be compulsory, recording the name of the inmate, the use of means of restraint (physical force, handcuffs, temporary separation), the starting and ending

times, the incidents that may arise during separation (meals, visits of the medical practitioner, etc.) and the date on which the measure was reported to the judge.

110. The practice of identifying or calling inmates of CIE by a number and not by the name and surnames must be eradicated, for the purposes of preserving the dignity of the inmates, as human beings, which should be a fundamental ethical value for the persons responsible and public officers of the CIE, pursuant to article 10 of the ICCPR which establishes: “Any person deprived of liberty must be treated humanely and with all due respect to the dignity inherent in the human being”.

111. Nude bodily searches must be duly founded, as established by STC 17/2013, of 31 January, for such measure to be understood, both by the person in question should he wish to exercise his right to file a complaint or claim or seek the assistance of a lawyer, and, as the case may be, by the court responsible for control of the measure for internment ordered, for it to be able to assess the grounds for sacrifice of the right to personal privacy.

112. The information on the rights and duties to inmates at CIE should be available in the languages that they most commonly speak and, if necessary, the services of an interpreter should be used. Such information should, in addition, include the possibility of instituting an habeas corpus proceeding.

113. Concern must be expressed due to the act that **inmates may have their legal rights limited, depending on the CIE in which they are interned, since if the centre is in a province other than that where the foreign national has been granted free assistance of a lawyer, the possibility of interviewing his lawyer may be reduced.**

Nevertheless, we are pleased to see that the new Regulation on the operation and internal system of CIE contemplated, in article 15, the Recommendation made to the authorities for cooperation agreements to be made with bar associations, for the legal rights of inmates not to be limited.

114. It has been verified **that immigrants who are inmates of CIE have access to an asylum procedure, and that information exists on international protection**, thus ensuring compliance with article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

115. It has been observed, and this is a reason for concern, that **the notification to the inmates of the time when they will be expelled from Spanish territory is not given sufficiently in advance for them to collect their belongings, warn their relatives and friends both in Spain and in their country of origin and make, if appropriate, any arrangement that may be necessary.**

Accordingly, the public authorities must inform inmates sufficiently in advance of the time when they will be expelled and of the details, for them to be able to make the aforementioned arrangements adopting, if appropriate, the measures that may be

deemed necessary to safeguard both the rights of the inmates to information prior to their being expelled and their physical safety.

116. A general lack of medical certificates issued to the inmates who are to be expelled not only to those with a known pathology **to confirm that there is no objection from the medical point of view to realise their expulsion, has been verified**, which situations may imply a risk to health if they suffer certain pathologies that would have to be ruled out.

It is necessary for the medical examination to be carried out at the CIE and the result should be accompanied by the clinical record containing, at least, the background information, diagnosis and prescribed treatment.

117. Special attention is given to the existence of **video-surveillance and video-recording systems** at facilities for deprivation of liberty, on considering that such systems would considerably facilitate the investigation of any allegation of undue conduct on the part of the personnel providing their services at such facilities.

This would benefit both the persons who may have suffered such undue conduct, and the public officers unfoundedly accused of ill-treatment or psychological pressure.

Such technical means should extend to include all facilities at which persons deprived of liberty may remain, other than toilets and rooms to hold interviews with lawyers.



Screens to view pictures at the CIE of Tenerife

118. It has been observed, and this is a reason for concern, that **not all public officers performing custody tasks are duly identified**. The necessary measures should be put in place, including of a disciplinary nature, for due performance of this obligation.

119. **The security and surveillance personnel of CIE** face a particularly difficult task. The recommendations for the tasks of the police to be limited to external surveillance of these centres have not been met, so that said personnel **should be selected with**

care and receive specific training on matters such as inter-cultural communication, interaction with detainees and the prevention of ill-treatment.

120. It is considered essential for the authorities to provide **social and cultural assistance services at CIE**, as contemplated in article 15 of the Regulation on the operation and interior system of CIE.

121. The **presence of female personnel** should be ensured at custody facilities **where women are deprived of liberty**. The presence of female and male personnel, as contemplated by the CPT in paragraph 23 of its 10th General Report, may have a beneficial effect as regards both the values of the custody and the encouragement of a level of normality at the place of detention. Mixed personnel also permits an appropriate workforce to face tasks in which gender is a determining factor, such as bodily searches.

122. It is appreciated that the Regulation on the operation and internal system of CIE establishes the **possibility of separation of inmates who have been convicted or who have a criminal record, from others who are inmates due to their mere unlawful stay in Spain**, as repeatedly claimed by the NPM, **although such separation has not yet been put into practice**.

123. It is a matter of concern that the **devices used to close cells/dorms, observed in most CIE, do not enable their fast opening in emergencies**, which should be corrected.

124. A washing machine and a drying machine should be acquired at CIE lacking these appliances, for inmates not to find themselves obliged to wash their own clothes and hang them in the outdoor yards, in their dormitories or in the toilets, and **for them to be able to keep the most elementary standards of hygiene and cleanliness in the clothes, taking into account the time they may remain at the centre**, and the fact that the new regulation establishes, among the duties of the inmates, that they must keep adequate standards of personal care and hygiene.



Clothes hung to dry at the courtyard of the CIE of Murcia

125. It is considered a matter of concern that it has been observed at certain visits that **inmates are not provided with adequate clothes or footwear when they lack such belongings**. It must be reminded that it is the obligation of the authorities, pursuant to article 32.2 of the Regulation on the operation and internal system of CIE, to provide the inmates with such belongings during their stay at the centre, so that **allowances should be made in the budget to implement said article**.

126. In general, the safeguards contemplated by the CPT in its 19th General Report, on the fact that “immigrants detained in an irregular situation should be afforded the possibility of holding significant contacts with the exterior world (including the right to make telephone calls and receive frequent visits) and their freedom to move within the detention centre should be as broad as possible”, are met in Spain.

Nevertheless, it is a matter of concern that, **at certain centres, the inmates find themselves obliged to pay for telephone cards with an overcharge**.

127. **The use of mobile phones without cameras should be authorised**, which would permit calls to be received from outside and would also minimise the costs currently incurred by inmates to purchase telephone cards. **The use of these telephones would imply a certain degree of control by the persons responsible for the centre**, as may be the obligation to return them at established resting times or other controls necessary to safeguard the safety of any inmate in particular.

128. **CIE should have leisure and reading material and adequate sports material, given the free time of inmates**, who may remain interned for up to 60 days, and the lack of activities and entertainment observed at the visits to these centres.



Leisure material at the CIE of Algeciras

129. Likewise, it would be desirable for all CIE to have **roofed yards, for the inmates to be able to go out of doors in poor weather conditions**.

130. At the visits made in 2014 it was observed, and this is a reason for satisfaction, that **mattresses of adequate thickness are used for due rest of the inmates**, unlike those used previously which were similar to those thinner ones used at police stations.

131. It is important to bring attention to the **lack of privacy at the showers** of some CIE, **since they are lacking separations**, which should be corrected.



Showers at the CIE of Murcia

132. During the visits, it has been verified that **inmates are not always allowed to use the toilets at night**, so that they find themselves obliged to use plastic bottles or washbasins within their dormitories to urinate, which could be considered degrading treatment.

Access to the toilets without delay at any time should be ensured or toilets should be installed within the dormitories, as has already been done in some CIE.



Toilets within a dormitory at the CIE of Madrid

133. The specific needs of hygiene of women deprived of liberty, which differ significantly from those of men, and should be treated adequately, and the **supply of female intimate hygiene products** is of particular importance, as mentioned by the CPT in its 10th General Report on stating that *“the lack of such basic needs may be classified itself as degrading treatment”*.

134. It should be ensured that inmates have access to **adequate and sufficient food, with varied menus and special diets** for medical, religious or cultural reasons, and access to drinking water at all times.

III.2.2 Military disciplinary establishments

135. The improvements in the **conditions**, in general, **of deprivation of liberty in EDM**, as regards healthcare, food, infrastructures and living regime of those disciplinarily punished are positively valued.

136. Nevertheless, certain issues that must be improved in these establishments, as regards the **treatment afforded to inmates and the material conditions of this deprivation of liberty** must be placed on record in this section.

137. With regard to the application of **means of restraint**, it is considered that at EDM the criterion contemplated in paragraph 109, relating to CIE should be met.

138. Likewise, the criterion mentioned in paragraph 111, on **nude bodily searches**, should be applied at EDM.

139. It must be remembered that the **information on the rights and duties** to inmates at EDM **should include the possibility of instituting an habeas corpus proceeding**.

140. The installation of **video-surveillance and video-recording systems** at EDM is also considered a priority. The full coverage of facilities of this kind, other than dormitories, toilets and rooms to hold interviews with lawyers, would be of assistance in the investigation of any allegation of undue conduct on the part of the personnel providing their services at such facilities.



Screen to view pictures at the EDM of Colmenar Viejo (Madrid)

141. The **presence of female personnel** at EDM should be ensured, **when women are deprived of liberty**, as stated by the CPT in paragraph 23 of its 10th General Report.

142. During the visits made to these facilities, it has been observed that, at some of them, the use of mobile phones is permitted. The general policy should be to **authorise the use of mobile telephones without cameras. The use of these telephones would imply a certain control by the persons responsible for the centre**, such as may be the obligation to return them at the established resting times, or other controls necessary to safeguard the safety of one arrested person in particular.

143. It has been observed, and this is a reason for concern, that the technical system used to make telephone calls through a switchboard operator might not preserve the privacy of the calls, should this be the intention of the persons responsible for the switchboard. For this reason, **a communication system that duly safeguards the privacy in communications should be put in place.**

144. It could occur that various penalties for serious offences to be served at an EDM be joined, so that the stay of the arrested person could exceed two months and one day even should it not exceed four months. This means that an arrested person could remain deprived of liberty for longer than a person who perpetrated a crime, but the latter is entitled to the **vis-à-vis** meeting on serving a sentence at military prisons which have an area enabled for the purpose. **Accordingly, the NPM considers that the Book of Internal Rules (section 5.5) should contemplate such possibility, since this kind of visits is not specifically prohibited by OM 97/1993.**

145. It should be pointed out that **EDM should have leisure and reading material, in addition to adequate sports facilities and material.**

146. Likewise, it would be desirable for all EDM to have **partly roofed yards, for the arrested persons to be able to go out of doors in poor weather conditions.**



Yard at the EDM of Tenerife

147. Lastly excessive **temperature** oscillations should be avoided at the centres, adapting the temperature to the weather and station of the year.

III.3 Criteria to be met in facilities for long-term deprivation of liberty

III.3.1 Penitentiary centres

148. At visits to CP **special attention** is given to eventual **allegations of ill-treatment** of inmates and the application of **coercive measures and regimental limitations**. However, many other aspects of the detention at penitentiary centres are examined, since they affect the living conditions of the inmates.

149. Despite the drop in the prison population of the past years, **the excessive occupation** observed in many Spanish CP is observed, implying an almost generalized breach of the legal mandate of the principle that one prisoner should exist per cell, is a matter of concern; other than in few exceptional cases, cells are doubled and in some cases inhabited by three, four or even more inmates.



Cell with capacity for 7 inmates at the CP for women of Barcelona

150. A reason for great concern of the NPM are the **statements made by inmates who have described that they were victims or witnesses of ill-treatment or incorrect actions on the part of the personnel**. When complaints of this kind are received, the persons in question are requested to give their agreement for the Security and Justice Department of the Ombudsman's Office to commence the relevant investigation which it commences with the Authority, if appropriate, to know the facts. Nevertheless, the inmates occasionally state that they do not wish to bring a complaint for fear of retaliation, this institution respecting their will in such respect.

Notwithstanding the complaints that are actually filed and the results that may arise from them, in the context of both the authorities and the courts, it is essential, in the case of claims or complaints for torture or ill-treatment, or even where no complaint has been filed but there are signs of the fact that an act of this kind could have existed, **for an investigation to be commenced conforming to** the provisions of the *Manual for efficient investigation and documentation of torture or other cruel, inhuman or degrading treatment or punishment*, namely, the “**Istanbul Protocol**”.

Notwithstanding any court action, where the management of a CP has knowledge of signs or statements made by any inmate of having suffered ill-treatment, the **actions necessary to clarify the facts should be put in place firstly by the establishment itself and secondly by the specialised units of the central prison services**. Such actions should be carried out using means that ensure that they are effective, obtaining ex officio any eventual evidence. The same procedure will apply in cases of deaths at the centre.

Although the existence of contradictory versions of inmates and public officers is customary, the investigation of purported irregular conduct should be exhaustive, irrespective of the judgment of truth that the Authority may have at a first view, hearing the version of the inmate in an atmosphere that generates trust in the person explaining the problem, permitting him to produce and/or request evidence. In this respect, it is considered that the existence of recordings made by the video-surveillance systems is an essential factor of evidence to supplement the investigations, thus the importance given by this institution to having systems cover all areas, with the sole exception of those that could harm privacy (cells and toilets).

151. Both the managements of CP and the central services of the prison authorities are urged to give the maximum priority to setting up all **devices that could permit situations that may be considered of ill-treatment or torture to be detected**.

152. It is **essential for inmates to have legal guidance services** during their stay in prison, **in addition to an efficient system for the filing of complaints and claims**: through the professionals and authorities of the CP, the prison surveillance judge, the duty court, the Ombudsman's Office or the autonomous committees, if appropriate. It must be ensured that the system is absolutely confidential, applications and forms to be filed in a closed envelope.

153. At all CP a **record or book should exist to enter the complaints filed by inmates, and the complaints or court proceedings** known, relating to incorrect actions or ill-treatment by the public officers, for them to be monitored and supervised by the management of the CP, notwithstanding the facts that the records may be conveyed to the Prisons Inspectorate for specialised and effective investigation.

154. **The creation of constructive relationships between the personnel and the inmates reduces the risk of ill-treatment and makes the work of such personnel more gratifying**, as stated by the CPT in paragraph 26 of the 11th General Report (CPT/Inf (2001) 16). To ensure such relationships, the provision of personnel should be

adequate for the actual needs of surveillance and attention to inmates and top importance should be given to their training in various fields having effects on the rights of the inmates. In particular, particular emphasis should be given to training on peaceful dispute resolution and oral and non-oral techniques to abort incipient aggressive episodes without having to adopt coercive measures; the correct application of safety and restraint measures; mental health and drug dependence, etc.

155. We must repeat to the public authorities that, **when the medical services assist an inmate with injuries** (due to the application of coercive measures or for any other reason, either fights between inmates or self-injuries, and those they have when they enter prison from liberty or from any other penitentiary establishment), **they must systematically complete the relevant injury report**, and send it to the responsible court authority, pursuant to article 262 of the Civil Procedure Act.

156. In accordance with the policy established in the report of the NPM *Injury reports on people deprived of their liberty*, of 2014, **injury reports must be adequately completed in detail**, including the allegations made by the inmates on the manner in which the injuries were caused, providing a detailed description of the observed injuries –with photographs of the injuries– and a judgment of compatibility between the observed injuries and the origin attributed to them by the convict. In addition, the specific time and place of the medical examination should be placed on record, identifying the signatory medical practitioner. Such information will facilitate the eventual court investigation, on providing the forensic medical practitioner with further information to evaluate the origin of the injury and the compatibility of the mentioned originating mechanisms. A copy of the injury report must be delivered to the person in question.

157. Also essential for the investigation of the facts is the **fast sending to the duty court of the relevant injury report**, for the judge to be able to resolve according to his criterion and the contents of the report and order, if appropriate, the exploration of the inmate by the forensic medical practitioner as soon as possible.

158. We must repeat the obligation for public officers to wear their **compulsory identification recording the post of work and number of professional document**.

159. The “closed regime” implies the application of maximum security criteria, and is the most restrictive type of life contemplated by penitentiary laws, so that it **should be applied only as an exception and for the minimum time necessary**. We must applaud the implementation of a specific treatment program for inmates in the closed regime, one of the purposes of which is to ensure progression to a higher grade.

160. The inclusion of inmates in the “**File of Inmates subject to Special Monitoring (Fichero de Internos de Especial Seguimiento –FIES)**” **will not give rise to a living regime different from that** applicable to them by regulation.

161. The disciplinary regime of convicts should seek to ensure safety and orderly cohabitation. In the course of a disciplinary proceeding, **the allegations made by the**

inmates and, particularly, those relating to eventual ill-treatment, must always be contemplated in full in the disciplinary commissions, including through their video-recording if contradictory versions exist and accordingly the necessary actions must be undertaken to clarify the facts in an incidental proceeding, firstly, by the establishment itself and, later, by the specialised units of the central penitentiary services.

162. It would be advisable for the pictures taken by the video-surveillance system to be attached ex officio to disciplinary records, which could be of assistance on occasion to clarify the facts.

163. As regards serving of the penalties, this institution considers that, for the benefit of the inmates and to make the prolonged isolation less afflictive, the inmates should be allowed to opt for having at least one day of rest in the serving of punishment of isolation in cell when the punishment implies more than 14 days of isolation.

164. Both the management of CP and the central penitentiary services should ensure that the application of coercive measures is proportionate to each situation, only for the time strictly necessary and when no other less burdensome manner exists, and that they are not a concealed form of punishment. For such purpose, regular inspections and reviews of the practical application of such means should be carried out.



Coercive means at the CP of Basauri (Bizkaia)

165. The application of mechanical restraints using validated belts of a psychiatric kind observed in many CP is a matter of concern since the requirements established in the above paragraph were not met and the measures of control and supervision were not adopted.

166. Clear instructions should be given on the cases and conditions in which mechanical restraints should be used, expressly excluding their use as punishment, which would be a form of torture and cruel, inhuman and degrading treatment, for them to be always respectful and in accordance with the human rights.

167. Immobilisation should only be applied **exceptionally when no other less burdensome manner exists to achieve the sought purpose**, and weighing up the need for application in each particular case. However, the application of this measure on a customary and routine basis, for example, after self-injuries of the inmates, as “negative reinforcement” to discourage certain actions is, in the opinion of this institution, inconsistent with the requirements of article 72 of the RP.

168. The **application of isolation and mechanical restraint to inmates with serious mental disorders and even psychotic disorders should be prohibited**, since in such cases it could be torture, given the high risk that the isolation may cause psychotic crises or decompensate previously existing disorders.

169. Immobilisations should be reduced to the minimum time necessary. Long periods of immobilisation are extremely rare in the healthcare context, since they imply serious health risks (ischemic injuries due to excessive compression of arms and legs, reduction and/or loss of conscience due to dehydration and/or low blood pressure, confusion syndromes and disorientation, risk of thrombosis...). Accordingly, mechanical restraints for long time periods should be exceptionally founded given their serious adverse effects on the rights of inmates, and should be reviewed by the management of each CP and by the relevant central services.

170. Clear rules should exist and specific training courses should be given to the public officers on the **adequate method for mechanical restraints**.

171. Immobilisation **should be applied proportionately** according to the specific situation of the inmate (with contention of one, three or five points), instead of always with the maximum possible restriction.

172. Persons who are immobilised should be accompanied at a first moment by a person who explains the reason for the measure and assumes a role of reducing tension and, in any case, they should be **permanently supervised**, to avoid potential complications that could occur while they are absolutely immobilised and incapacitated to react adequately to such eventual complications. It is also necessary to supplement such supervision with a video-surveillance system that permits the pictures and sound to be recorded for the duration of such a restrictive measure.

The practice of the SGIP, at the CP of which the control must be carried out every hour, and cases have even been detected in which the supervision is carried out at longer intervals, and also –with few exceptions– are lacking video-surveillance in immobilisation cells, is a matter of concern.

On the other hand, the video-surveillance and video-recording protocols of the CP reporting to the Directorate General for Penitentiary Services of the Government of Catalonia are a matter of satisfaction. At these, pictures are recorded in a hard disk, which remains at the office area and to which the officers do not have access, the manager keeping the relevant extractions in an independent disk, for six months, having to obtain authorisation for its destruction, after such period has expired, from the general management.



Mechanical restraint cell with video-surveillance at the CP for women of Barcelona

173. The control by the surveillance officers, service managers and professional personnel **of the immobilisations should be placed on record**, stating the specific state of the inmate and the need to continue the measure.

174. Officers should extreme control of the **temperature, ventilation and conditions of the immobilisation** and, to the extent possible, untie the inmates for them to be able to eat, drink or attend to their physiological needs, entering this in the book monitoring the measure, for it not to be more burdensome than absolutely necessary, since it would otherwise be a punitive use of immobilisations and, accordingly, a form of torture and cruel, inhuman and degrading treatment.

175. The NPM expresses its concern with the fact that **metal handcuffs are used for several hours at certain CP**. It must be remembered that metal handcuffs are indicated only for short contentions (such as moving inmates between departments), and it is compulsory to use cloth material restraints for immobilisations.

176. The reporting to the penitentiary judge of the commencement and cessation of the application of coercive measures **should take place immediately**, the practice observed at certain CP of sending the information to the court several days or even weeks after the facts not being correct.

In addition, it would be advisable for the report to the penitentiary surveillance judge, apart from the date and starting and ending times, and the reasons for adoption of the

measure, to include the following issues: whether the measure was authorised by the manager; if only the medical report on the existence or not of impediments to adopt the measure was reported to him; the total duration of the measure in the case of its cessation, and whether or not the facts gave rise to the institution of a disciplinary proceeding, affording the inmate the possibility of making allegations, as soon as possible, once the measure has been withdrawn.

177. The **training of personnel on the application of coercive measures should be improved and**, in particular, special courses should be given on the application of such belts.

178. We must insist on the **need to record correctly the application of coercive measures** differentiating the application of metal handcuffs from psychiatric-type cloth belts, and those of a regimental nature from those applied for medical reasons.

179. **Cells specifically prepared for immobilisations should be in adequate condition:** they should be well ventilated and lighted; in a good state of cleanliness; they should have means to regulate the temperature; they should have an articulated bed anchored to the floor in the centre of the room; the belts should be prepared and ready for use; and interphones or push bells should be within reach of the inmates.



Mechanical restraint bed at the CP of Badajoz

180. At CP **regimental limitations are also imposed pursuant to article 75 RP.** Nevertheless, the **criterion adopted by the penitentiary authorities is inconsistent with that of the Ombudsman's Office.** In the opinion of this institution, this article should be observed as worded verbatim, so that in all cases regimental limitations that may be ordered under said article should have the only reason to secure the inmate and, should other objectives be sought, the possibilities afforded by legislation in force should be used, such as the application of the disciplinary regime, the use of coercive measures, the proposal of regression to the lower grade, the change of module or department, or any other contemplated by penitentiary legislation. Otherwise, the

safeguards granted by penitentiary legislation to convicts would be seriously weakened.

181. Regardless of the criterion of this institution, since in practice CP **use article 75.1 RP** to impose regimental limitations similar to punishment of isolation or the closed regime, **without the same procedural safeguards**, their application is reviewed in depth at the visits. In any case, the exceptional and secondary nature of such measures should be observed, in addition to the procedure established in the internal operating instructions established by the penitentiary authorities themselves.

182. Indeed, **the application of article 75.1 RP should be limited only to facts that**, given their seriousness, **jeopardise the safety and order of the prison**, and to cases in which other less damaging measures may not be adopted or a fast processing of the disciplinary proceeding cannot be carried out to achieve the sought objectives in a manner affording greater safeguards to the inmate.

183. **With regard to the procedure, the specific grounds for application of article 75.1 RP and the regimental limitations it implies** (changes of unit, greater security measures, restriction of the right to privacy, to go out to the yard and participate in activities, etc.) **should be expressly evidenced** both in the decision of the management ordering it, and in the notifications to the penitentiary surveillance judge, with the possibility of adversary statement by the inmate in question through an appeal. In addition, record should be kept of whether the inmate has been examined by the medical services.

184. At some CP, **article 75.1 RP is applied with a frequency apparently inconsistent with the exceptional application** that should in any case preside over the use of this measure. In addition, occasionally, the regimental limitations applied based on this article are extended over long time periods, of even over one month. Accordingly both the respective managements and the respective central services should proceed to review the application of said article.

185. **The measure of article 75.2 RP, although for protection of the inmates, is in any case exceptional and implies regimental limitations.** Accordingly, the proliferation in a CP of inmates requiring the protection contemplated in said article may be considered a sign or the abnormal operation of the internal separation system. In addition, a prolonged duration of the application of article 75.2 RP could imply that other measures to remedy the situation such as, for example, moving to another CP were not adopted. Accordingly, whenever possible, these measures should be used to reduce the number of times in which it is necessary to adopt the measure contemplated in article 75.2 RP.

186. **The facilities used for isolation, provisional isolation or regimental limitations and personal protection measures, based on article 75 RP, should be adequate** and have features similar to those of ordinary cells, particularly in those cases of long duration of the stay of the inmates.

It must be pointed out that to keep inmates for various days in cells without any furniture other than the bed, without access to their belongings and without even the most basic items of toiletry or sheets, is not acceptable, even for security reasons.

Neither are the yards covered by metal mesh existing at certain isolation departments considered to be adequate.



Yards of the isolation units at the CP of Villabona (Asturias) and Albolote (Granada)

187. A matter of concern are the **cases observed in some CP at which the action of the medical services** in situations of isolation, or of regimental limitations and personal protection measures contemplated in article 75 RP, **was not carried out with all safeguards for inmates**, such as: the lack of a medical examination of the inmates during the isolation or provisional isolation; their medical examination several hours after provisional isolation or even mechanical restraint commenced (with the consequent risk in the case that contraindications might exist) or the issue of the medical report before the isolation punishment based only on the clinical record of the inmate without his personal examination.

Accordingly, **an adequate protocol should be in place for medical examinations** to be carried out in the case of isolation coercive measures and article 75 RP.

188. The medical practitioners should play a more proactive role, particularly in the application of mechanical restraints, as regards verification of the continuation or cessation of the reasons for their adoption, that the measure should have the minimum necessary duration, supervision of the conditions in which it is carried out (state of the cell, of the bed, basic health conditions...) and the use of concomitant medication, recording all this in the clinical record of the inmate and in the reports prepared for the management of the centre.

All the above forms part of the functions of the medical personnel of CP, from the point of view of the protection of the health of the inmates and their participation in the supervision of the conditions in which coercive measures are applied, as contemplated by the CPT in paragraphs 52 and 53 of its third General Report. In addition, such actions should be recorded in forms established for such purpose for their completion

after the regular supervision of the medical practitioner, notwithstanding the fact that this is already placed on record in the clinical record.

189. The medical exploration should be carried out in direct contact with the inmate –not through bar doors– and without violating the right to privacy and confidentiality between doctor and patient, in other words, out of hearing and, if possible, out of sight of non-medical personnel. Security measures should be limited to only those cases in which they are strictly necessary because founded suspicions of risk exist.

190. Also important is the documentation of the medical assistance given in these cases in the clinical records of the inmates, recording also that it was provided in the proceeding for application of the measure in question.

191. Body and cell searches must be carried out with all safeguards. In particular, it must be ensured, in the case of full body searches, that an overall is always be afforded for inmates to cover themselves, and the inmates must always be present during cell searches. In addition, it would be advisable for the results of the searches to be analysed regularly, particularly in the case of full body searches and radiological explorations, to assess whether these measures are founded.



Body searches room of the CP of Mahon (Balearic Islands)

192. Radiological explorations as a medical control measure, but adopted for regimental reasons in the case of suspicion that an inmate conceals drugs in his body, **should be contained in a specific legal provision contemplating such limitation to the right to privacy**, pursuant to article 8 of the European Convention on Human Rights and Judgment 207/1996, of 16 December, of the Spanish Constitutional Court.

Such provision, on having effects on fundamental rights, should be contemplated in a organic act as regards its most essential issues, although a more detailed regulation

may be contained in a provision of lower ranking including, among others, each and every one of the events and requirements of the action, the features that the informed consent by the inmate to the measure should meet, the criteria to be taken into account to apply the principle of proportionality (reasonableness of the suspicions, seriousness of the offence...), the need to apply for a court order for body searches if the inmate refuses to have the radiological test carried out and the contents of such request to the penitentiary surveillance judge, etc.

193. Regardless of the need for a measure limiting fundamental rights to be contemplated in an organic act, this institution must express its reserves as regards this matter, while mentioning that **only very founded and restrictive criteria may found the performance of radiological explorations on regimental grounds.**

Any conflict between the dignity and rights of the inmates and the duty of the penitentiary Authority to maintain the security and proper regimental order of the Centre must be resolved studying the possible alternatives and weighing up the ensuing risk/benefit in each case. Unless the medical services consider that the life of the inmate is at risk because he carries a foreign body or narcotic drug in his body, other measures less detrimental to the rights of the inmates could likewise ensure the intended purpose, such as moving the inmates to a department containing a controlled toilet system enabling the narcotic substance to be recovered, with the proper medical monitoring and control of the inmate.

194. The application of mechanical immobilisation is not considered adequate where, it is suspected that the inmates may conceal drugs in their body, but **they do not give their consent to submit to radiological controls**, since article 72 RP establishes that coercive measures “will only be applied where no other less burdensome measure exists to achieve the intended purpose”, such as that mentioned in the preceding paragraph.

195. In addition, in the exceptional cases in which radiological explorations are carried out for regimental reasons, for further safeguard of the rights of the inmates, they should be furnished with an **informed consent form**, informing them in terms they are able to understand and in a sufficient and adequate manner, of the nature and effects of the radiological test that it is intended to perform and of the consequences for their health that the carrying of foreign bodies or narcotics in their body may have.

196. In addition, in the opinion of this institution, **the request to the penitentiary surveillance judge for a court order for radiological test**, if appropriate, should contain information on the risks and consequences of the test that is to be carried out on the inmate, the specific reasons for which such test is requested, the tests of the same case carried out at least in the past year and their results, and any other information that may be relevant.

197. In accordance with the recommendations of the World Health Organisation, **the healthcare services of the centre should be integrated into the public health services.** Although Act 16/2003, of 28 May, on cohesion and quality of the national

health system, ordered penitentiary healthcare services to be transferred to the autonomous governments for their full integration into the public health services, to date the healthcare services of prisons of the Basque Country and Catalonia are the only ones in Spain in which such transfer has taken place.



Entrance to the infirmary of Osakidetza at the CP of Basauri (Bizkaia)

198. Until the transfer has taken place, it should at least be ensured that **the electronic clinical record system is set up and services are coordinated with the public health services**, for both primary and specialised medical assistance, in addition to tools to improve the medical assistance afforded to inmates.

199. In addition, the preparation of protocols between the penitentiary services and the respective regional departments responsible for healthcare of the autonomous governments should be encouraged, to **facilitate the making of certain medical consultations using video-conference and tele-medicine systems**, to reduce waiting time at the medical services, improve flexibility in the scheduling of medical appointments of the convicts, and increase the information on the eventual duration of the consultations and actions.

200. The **provision of medical practitioners at CP should be sufficient** in view of the occupancy of the centre. In addition, the frequency of consultations on request should be adequate to prevent an excessive request for urgent consultations.



Medical surgery at CP Ocaña II (Toledo)

201. The **lack of medical assistance 24 hours at some CP** is a matter of concern. Although a located shift on duty exists, this does not ensure immediate assistance if necessary. Accordingly, **CP should have healthcare personnel at the centre 24 hours.**

202. CP **should enable a record of requests for healthcare** both ordinary and urgent, and of the scheduled appointments with healthcare services, to verify that all requests for medical assistance are met.

203. The measures necessary should be adopted for **language not to pose an impediment for the fluid communication between the healthcare services and the inmates** who request assistance, without errors attributable to lack of communication, and without this having effects on their privacy, such as, for example, through telephone translation services.

204. The **supply of medicines prescribed** to the inmates by the medical practitioners of the centre and the specialist medical practitioners, in coordination with the referral hospitals of each autonomous community, must be available.

205. It is the policy of the Ombudsman's Office, where a **closer monitoring of the taking of medication is required** (as in the case of psycho-drugs), that this medication be dispensed under the immediate observation of the healthcare personnel.

206. Measures must be put in place to **prevent losing medical appointments** for tests or specialist consultations due to lack of police officers for the custody and transfer of inmates, with the consequences that this may have on the health of inmates.

207. **The large number of inmates in CP with mental disorders** of a greater or lesser degree and who, accordingly, need specific assistance is a matter of particular concern. In this respect, the general lack of adequate psychiatric assistance to inmates is serious. Most CP do not have a psychiatrist on the payroll, so that such assistance is provided through the public health service or by engaging external consultants, who visit to the centre at various intervals, of between one week and one month.

Nevertheless, it is considered necessary for the treatment of mental disease in CP not to be limited to diagnosis of the pathology in question setting up the adequate pharmacological therapy. It is, in addition, necessary to improve the quality of living of the patients, increasing their personal independence and adaptation to the environment. In this respect, it is considered **necessary to increase the frequency of the psychiatric attention given to prisoners** and, in the case of the SGIP, to implement the PAIEM (General program for integrated assistance to persons with mental disease) in its entire extension, including –in addition to occupational activities– integrated therapeutic actions containing psycho-educational actions and ensuring greater coordination of the medical services with the rest of the services of the multi-disciplinary team. Likewise, a **psychological counselling service should be set up at CP.**

In addition, the necessary arrangements must be carried out with the healthcare authority to enable the internment of persons with acute mental diseases inmates of the CP requiring specialised monitoring.

208. The penitentiary Authority should extreme measures to avoid suicide conduct and assess their efficacy regularly to improve their quality. Specifically, the practical implementation of the suicide prevention plans should be improved to detect suicide risk more efficiently.

209. Specialised treatment programs addressed to re-education and social reinsertion of convicts (for sexual aggressors, on gender violence, support to foreign inmates, of negotiated conflict resolution, health education, treatment of drug addictions, therapies with animals, closed regime inmates; persons under 25 years of age, road education and safety, respect units, etc.) are of particular importance, so that it is considered that the provision of the economic and human resources necessary should be deemed a priority.

In this respect, special mention should be made of initiatives such as the Therapy and Education Unit, special education units and units for persons with mental or sensorial disabilities, which should be acknowledged as a good practice of the penal and penitentiary system, their implementation in more CP to be recommended.

210. The Authority must enable both the basic education of the inmates and the possibility tat these may take the relevant medium or higher degree courses. For such purpose, a workforce of teachers should exist in sufficient number to assist the population of certain centres. In addition, to encourage the social reinsertion which penalties for the deprivation of liberty should seek, CP should have an offer of training workshops.



Library at the CP of Mahon (Balearic Islands)

211. Measures should be put in place to extend the offer of **paid work at penitentiary workshops** or at «paid posts » in CP.



Labour workshop at the CP of Lleida

212. As regards **fun and sports activities**, the **Authority should facilitate** activities of use to channel the artistic vocation and leisure concerns of the inmates, such as workshops for radio, theatre, music, painting, laugh therapy, internal publications, etc. In addition, for prisoners to be able to take exercise, centres should have sports facilities available and sufficient personnel to manage them, essential sports monitors.



Assembly room of the CP of Topas (Salamanca)

213. The **contact of the inmates with the exterior world should be facilitated to the extent possible**, for example, by adapting the areas for intimate or family visits in the older centres, installing booths in telephones lacking them, to preserve the privacy

of the calls made by the inmates, or making the rules for visits and telephone contacts more flexible when possible.

214. Upon entering a centre, inmates must be provided with oral and written information on the features of the centre and their rights and duties, including the possibility of requesting habeas corpus where legally appropriate. Such information should be furnished in a manner that is clear and easy to understand, available in various languages, visible in a place where it may be frequently consulted and inmates should be allowed to keep a copy. In addition, CP should have a simultaneous translation system in those cases where this is necessary.

215. The food at CP should be of adequate quality and served in a sufficient quantity. The distribution of meals should be organised in a manner such that it is served at optimum temperature.

216. The video-surveillance systems at CP should be extended for them to cover permanently all departments in which inmates reside, except for the interior of toilets and cells, and recording protocols should be put in place in line with the aforementioned criterion.



Video-surveillance system at the CP of Topas (Salamanca)

217. In addition, CP without them should install inter-phones or sound calling systems in cells for inmates to be able to report any incident to the officers.

218. At some CP the fire safety measures should be improved, its being desirable for all of them to have fume detectors within the cells.

219. The use of video-conference systems should be encouraged permitting communication between the CP and the courts, to avoid unnecessary trips and movements of inmates for certain procedural matters, with the consequence damage

for the person in question and the organisational difficulties for the personnel of the Security Corps and Forces responsible for moving them, other than in events in which the procedural safeguards render their physical presence necessary.

220. The **measures necessary should be adopted for inmates to have sufficient belongings with them during transfers** in accordance with the estimated duration of the transfer and, if appropriate, until their return to the CP of origin, and for them to access to them and to their toiletry as convenient.

221. The **ongoing transfers of an inmate from one CP to another may have noxious effects on his physical and mental welfare**, and hinder contacts with their family relatives and lawyer, so that they are to be avoided other than where strictly necessary.

222. The geographical location of most CP, in areas far from town and city centres, hinders their access by persons visiting them mainly to communicate with the inmates, In this regard, **access to CP by public transport should be enabled**.

223. Although the overall state of **repair and maintenance** of most of the centres visited could be considered acceptable, the state of the facilities of many CP, particularly the older ones, should be improved for example, as regards paintwork, repair of defects, damp, heating and/or air conditioning according to the climate of the area, roofing of part of the yards to permit their use in poor weather conditions, fitting of separations or other items for the preservation of privacy in common showers, etc.

224. The **area and furniture of the cells are generally insufficient to meet the needs of the inmates occupying them**. Taking into account that most inmates must share cells, at many CP the criterion explained in the second General Report of the CPT (1991, paragraph 43) is breached. Said criterion considered the size of approximately 7 m² to be desirable for single rooms, with at least 2 metres between walls, and not less than 2.5 metres from floor to ceiling. Based on this information and other statements of the CPT, a general proportion of 5 meters per person for spaces to be occupied by groups has been suggested as acceptable.



Cell at the CP of Badajoz

III.3.2 Penitentiary psychiatric hospitals and units

225. A security measure is the legal consequence that is applied to a person who had a criminal conduct from which he was held not criminally liable. In the case of persons with a mental disease, the security measures of deprivation of liberty applied by the courts may be served at penitentiary psychiatric hospitals or units and, by way of exception, at ordinary penitentiary centres where expressly requested by the penitentiary Authority –even if they do not have the same services as specialised units – or at civil psychiatric centres, if the measure is replaced.

226. Two different models exist according to the differing scopes of powers for penitentiary matters in Spain. The SGIP has two penitentiary psychiatric hospitals (HPP), one in Fontcalent (Alicante) and the other in Seville. Given their geographical location, the HPP of Seville is intended for male prison population of Andalusia, Canary Islands, Extremadura and Ceuta and Melilla autonomous cities, while the HPP of Alicante would take care of the rest of the national territory and of the entire female prison psychiatric population, although this is not always the case in practice.

At these HPPs persons declared non-accountable are to be found upon whom a security measure at a penitentiary psychiatric centre has been imposed, persons who, involved in a criminal court proceeding, need to have an expert appraisal carried out, and convicted persons on whom a security measure has been imposed due to supervening mental disease.

The penitentiary system of Catalonia has a healthcare network managed by the Sant Joan de Déu Hospital Order and consisting of various specialised teams located in various CP of Catalonia, according to the profile of the patients: wards for acute, sub-acute, mean/long term stay and transit to the community in CP Brians 1; patients of mean/long term stay with conduct disorders and two do not need intense rehabilitation; ambulatory treatment and rehabilitation unit in the CP Quatre Camins; chronic patients with a rehabilitating profile and without serious conduct disorders, crisis observation unit and intensive rehabilitation unit for serious mental disorders at CP Brians 2; and psychiatric departments in the infirmaries of CP Brians 1, for men in Barcelona and for women in Barcelona.

In the penitentiary system of Catalonia, the referral of a certain inmate to a unit for treatment of his mental health is done taking into account his psychiatric state. In this manner, persons on whom security measures have been imposed may remain interned in the psychiatric infirmary of a CP in one of the specialised units, depending on the clinical criterion, while convicts with psychiatric pathologies may be held either at such units or in an ordinary unit with ambulatory treatment.

227. It would be advisable for penitentiary legislation to contemplate expressly that **the referral of patients** to a certain unit or centre for treatment of their mental health **should be carried out taking into account the clinical opinion on their psychiatric state**, instead of their legal-litigation situation.

In addition, it is considered that **the most adequate procedure for the treatment of mental disease is the referral of persons with a mental disease to psychiatric centres and hospitals accountable to the autonomous community healthcare networks.** In the case of inmates who, given the high risk of escape or because they pose a risk to themselves or to others, require special security measures, intermediate healthcare devices with security measures should exist

228. The fact is that the scarce alternative resources, the existing difficulties to refer patients to social-healthcare resources and the predominating court admission and release policy means that, in most cases, the judges designate penitentiary psychiatric hospitals and prisons as a place to serve sentence. Accordingly, **the authorities involved should propose integrated strategies to enable patients to receive treatment at external resources.**

229. Inmates in penitentiary psychiatric hospitals and units should have the status of patients, not of prisoners. Accordingly, such centres **should operate as healthcare centres**, as regards their organisation, operation, infrastructure and location independent from the penitentiary centre, clinical policies to prevail over regimental policies.

The treatment, rehabilitation and care should be similar to that afforded to the rest of the population with a mental disease, although with any necessary security preventions.

The current location of penitentiary psychiatric units and hospitals within penitentiary complexes and the facilities themselves nevertheless implies a limitation to their standard use as a social-healthcare institution: isolation of population cores, scarce room space and common areas and yards, insufficient space for the rehabilitation of patients, lack of accessibility, etc.



Gardens of the Penitentiary Psychiatric Hospital (HPP) of Seville



Yard of the Penitentiary Psychiatric Hospitalisation Unit of CP Brians-1 (UHPP-C)

230. The **information delivered to patients on admission** should be available in various languages, in addition to Spanish, delivered both to patients and to their family relatives and be situated visibly at various places in the centre.

231. Generally, the internment in penitentiary psychiatric units and hospitals extend until the end of the security measure, which implies that, in practice, the person with a mental disease stays for a time much longer than he would have remained in prison had he be convicted as guilty, since the maximum penalty provided by law could not have been imposed and penitentiary benefits could have been applied.

Special services should exist for a study of alternative measures to be carried out, from admission, setting therapeutic objectives, by common agreement with the penitentiary surveillance judge and the sentencing judge, enabling patients to be attended in an alternative surrounding before the time of deprivation of liberty that the maximum penalty would have implied elapses.

In addition, the penitentiary Authority should coordinate with other Public Authorities with powers for the matter for the **psychiatric treatment of the inmates to be continued, if necessary, after they are released to liberty**, and for the patients whose personal and litigation situation so permits to be included in the rehabilitation programs and intermediate structures existing in the community model for mental health assistance.

232. The centres must have **adequate rehabilitation units with sufficient personnel** to be able to carry out customised treatment plans with patients including an assessment and a proposal of therapeutic objectives and rehabilitating activities, updated regularly.



Occupational workshop at the HPP of Fontcalent, at Alicante

233. In this respect, **it would be advisable for** the responsible authorities to **implement protocols for assessment of the risk of repetition**, using objective valuation scales permitting an evaluation of the minor, moderate or serious risk posed by a patient, which could facilitate the making of administrative and court decisions.

234. Given the particular features of the internment in these centres, the multi-disciplinary team must issue a report every six months on the state and evolution of the patient for due control by the court. Based on such information, the penitentiary surveillance judge may make to the sentencing court or judge, at least once every year, a proposal to maintain, terminate, replace or change the security measure of deprivation of liberty. In the opinion of this institution, **the information sent regularly to the penitentiary surveillance judge should be as exhaustive as possible.**

235. It is essential **to prepare the exist and accompanying of the patient in the first steps of the social reinsertion process**, providing adequate prior and subsequent support to the family environment and arranging the transfer of the patient to the clinical resources and social services of the area. The geographical proximity of the place where the measure is served and the customary place of residence permits adapted programs to be implemented, to work on community insertion and not to lose the relationship of the patient with his surrounding.

236. The provisions of the disciplinary regime of the Penitentiary Regulation do not apply to patients of penitentiary psychiatric units and hospitals. In the **case of violation of the cohabitation rules**, measures are applied depending on the context and patient, with the need to give the appropriate instructions for them to follow **adequate procedures for adoption of therapeutic measures**, such as medical prescription and inclusion in a therapeutic context.

237. In situations of lack of control of impulses or behaviour disturbances, when oral contention is not successful, **measures of isolation and coercive measures are adopted** on clinical criteria. These measures **must fall within the individual action plan**, should not be used in excess or inadequately or for punishment and should be properly implemented in protocols and recorded. Mechanical restraints should be applied in rooms with a video-surveillance system.



Observation room of the unit for acute patients of the HPP of Seville



Observation room of the UHPP-C

238. In cases of aggressions between inmates, in addition to sending to the court on duty the injuries report of the victim, **some sort of document should be attached rendering account of the mental state of the assailant**, in general and at the time of the aggression.

239. The dosage and combinations of medication prescribed to patients should be adequate, since overmedication has various relevant adverse effects on the health and wellbeing of patients: risks arising from the cardiovascular side effects (high rates of metabolic syndrome, morbid obesity...), short-term neuro-motor problems (walking difficulties) and in the mean and long term (dyskinesia, trembling and others), an unkempt and chronic look having effects on the image and self-respect of the patient, and a feeling of clumsiness, slowness, which hinders rehabilitation programs.

240. Agreements should be reached with the autonomous community healthcare authorities for it to be possible to access from the penitentiary psychiatric hospitals and units **the clinical information of the public health services**, to have the medical records of the patients and avoid duplicating tests, among other advantages.

241. Courses for ongoing training of personnel should be given regularly, for example, on peaceful dispute resolution or handling of persons with mental diseases.

242. Currently, the transfer of patients from one centre to another may imply a route of several days through various penitentiary establishments, which is stressing for them, in a context in which the adequate, complete and timely taking of their customary medication cannot be ensured.

Before the transfer, the medical practitioner should report whether, if the transfer is carried out in the normal manner in a regular transportation –of the specific conditions of which he should be aware: number of hours of each trip, nights spent at other establishments and total duration of the transportation-, **this could have effects on the state and evolution of the patient**, taking into account his pathology, his past and current statue, the risk of alterations in the taking of medication and other circumstances of interest, **for such information to be used to evaluate more adequately whether it is advisable to carry out the transfer in a special direct manner, to safeguard the health of the patients.**

III.3.3 Centres for juvenile offenders

243. Measures of deprivation of liberty should be implemented at **specific centres**, close to the place of residence of the offending person, where therapeutic measures may be provided simultaneously such as ambulatory treatment to stop consuming toxic substances or psychological treatment of abnormalities or mental or perception disturbances, that cause a serious alteration of awareness of the situation in these minors.

244. It is considered essential for minors to be able to file **complaints and requests** in writing with the management of the centre, the court authorities, the Ombudsman's Office or other similar institutions, using a printed form and in closed envelopes to

preserve confidentiality, keeping a copy to be able to evidence submission and the dates.

245. At all centres minors should be furnished with written information on the possibility of instituting an **habeas corpus proceeding**, to ensure that their internment conforms to law and that their fundamental rights are respected.

246. Likewise, we wish to point out the importance of all centres delivering on admission an **informative dossier** on the rights, duties and rules for cohabitation, disciplinary system, etc., adequate for the inmates as regards its **terms and language** and, if possible that its reading be enabled and encouraged.

247. It has been observed, and this is a reason for concern of the NPM, that, in general, **free lawyers do not visit the minors** for the time during which they are serving these measures, which should be rectified.

248. The **disciplinary regime** of minors should be addressed to ensure their dignity **and they should never be deprived of their rights** to be fed, compulsory education, communications and visits, contemplated by law, and contacts with the external work may never be restricted or denied as a disciplinary measure as contemplated by the CPT in paragraph 34 of its 9th General Report (CPT/Inf (99) 12).

249. We should like to point out the importance of having the **stages of the disciplinary proceedings** that may be instituted perfectly investigated and recorded in documentary form, placing on record the possibility of reducing the penalty for good behaviour of the minor and that these be reported to the court and public prosecutor's office, and to the lawyers of the inmate minors.

250. In addition, all centres must have a **record book** to enter any disciplinary proceedings that may be instituted in it.

251. In turn, the decisions given in disciplinary proceedings should be **signed by the minor or**, as appropriate, **include the statement that he refuses to sign**.

252. The punishment of **separation from the group should be applied** for therapeutic and security reasons, to protect the minor and other persons, and should be proportionate to the infringement and for the shortest possible time, being supervised by the management of the centre and followed up daily by a medical practitioner and a psychologist, who will report on the physical and mental state of the minor, and on the advisability of suspending, modifying or rendering null and void the imposed penalty.

These penalties should be **served** in the rooms of the minors or, as appropriate, at rooms with features similar to those of any other room of the centre, eliminating any items that could be hazardous for the safety of the minors and with sufficient light, temperature and ventilation, eliminating those that do not meet such minimum conditions.

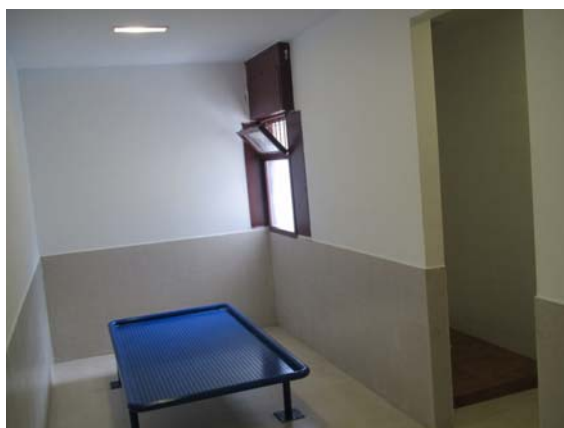
In addition, **while the minor is serving the penalty**, he must be allowed, at least, two hours per day outdoors, to attend compulsory training or education courses and to receive, in addition, the visits contemplated in his individual educational project.

253. On those occasions that the manager decides to **remove a penalty of separation from the group** before it expires, such circumstance should be placed on record with an entry of the manager in the disciplinary record.

Priority should be given to the use of **punishment alternative** to separation from the group such as deprivation of weekend leaves, deprivation of leisure outings and deprivation from participating in recreational activities.

254. All centres should have **protocols for the simultaneous use of contention means, such as physical or pharmacological contention, mechanical restraints and provisional isolation**. These protocols should establish in detail the manner in which the personnel should act in these cases, the places in which they will be applied and, if necessary, extreme the surveillance and control of the isolated minor, demanding that a medical examination be carried out on the minor and that he is accompanied for the duration of the isolation and while his state of crisis, of anguish, persists, particularly if the minor is mechanically immobilised, such situation to be supervised permanently and preferably by healthcare personnel.

It is also essential for centres to have a **specific record of means of contention** recording all means of contention that are used, including mechanical restraint, personal or pharmacological physical contention, separation from the group or provisional isolation, the duration of these measures and the reasons for which they were used, for them to be reported, in full, to the judge and to the Juvenile Public Prosecutor's Office, regardless of the internal name given to these means of contention.



Interior of an isolation room of Ibaiondo in Zumarraga (Bizkaia)

255. It is essential to put in place at all centres a **program of phases or progress**, in which the minor progresses from one stage to another, enjoying more privileges depending on his behaviour and achievement of objectives, strategies and resources

proposed for each minor, in accordance with his educational needs for the duration of the measure of internment (Individual Program for Execution of Internment Measure *Programa Individualizado de Ejecución de Medida de Internamiento –PIEM*).

In this context, it would be advisable for the scope of privileges or setback, as appropriate, to be conveniently established with adequate safeguards, to **prevent the making of arbitrary decisions by personnel**.

256. Body searches and searches of clothes, belongings and facilities of minors are a matter of concern, to ensure that no actions are carried out violating the right to personal privacy, and it is considered necessary to remind that these should conform to the provisions of law and of regulation.

257. It must be remembered that, in those cases in which it is considered necessary to carry out a **nude body search**, prior authorisation from the manager of the centre must be obtained and prior report to the duty juvenile court and to the duty public prosecutor must be made, explaining the reasons rendering the search advisable and reporting the results to the court authority.

These searches should always be carried out in a closed place, without presence of other minors, with personnel of the educational team of the same sex and a security guard, providing the juvenile with an overall or bathrobe to preserve his privacy.

258. We must point out the importance of video-surveillance at these centres. Indeed, the **video-surveillance and video-recording system** would have to cover all common areas such as dining rooms, workshops, etc., and all rooms used for provisional isolation and mechanical restraint, since this will enable supervision of the manner in which these contention means were applied and their duration.

In this context, the inside of the rooms of the minors and the rooms for family visits should be excluded from such coverage, to ensure the right to personal and family privacy.

259. The **protocols for activation of recordings** should contemplate the obligation to extract and keep the pictures and sound recordings reflecting any incident that may occur with a minor deprived of liberty.



Video-surveillance screen of an isolation room in Aranguren (Navarre)

260. The installation of a **video-conference system** at the centres would enable the communication with the Administration of Justice in procedural formalities and would reduce the number of conveyances outside the centre, with all the advantages that this entails both for the minors and for the custody and security personnel.

261. It is considered necessary to point out that, in the best interest of the minor and to ensure his right to privacy, security and dignity, the **Security Forces and Corps responsible for transfers** should not wear a uniform and should use vehicles without official signs.

262. Along these lines, the **security personnel** working at these centres should consist of persons of both genders, particularly trained in peaceful dispute resolution and intervention in crises with the maximum respect to the rights of inmates, and that the use of force in their control be used when all other means have been exhausted and found unsuccessful and in the manner expressly authorised and described in the internal regulation of the centre.

263. With regard to **healthcare**, it is observed with particular concern that the legal term established for all minors, upon their admission to a centre, to pass a medical examination before 24 hours have elapsed is not always complied with.

264. It should be ensured that the medical attention received be provided maintaining the **privacy** of the minors and, if appropriate, ensuring that they receive **adequate information** in respect of the medical treatment that is to be given to them, in a manner such that they may give their informed consent, not obliging inmates to take medication or punishing them for failing to do so.

Likewise, it would be advisable to set up forms for the inmate to sign his waiver to take the medication under his responsibility.

265. It is essential when applying certain **medical treatments, when the minor is incapable either mentally or emotionally of understanding the scope of the action**, to request consent from the legal representative of the minor, after granting the minor a hearing.

In any case, in the case of an action of serious risk in the opinion of the professional, the parents should be informed and their opinion will be taken into account to make the relevant decision.

266. It is wished to bring attention to the **clinical record** of the inmates. It has been observed that, on occasion, centres are lacking a record and those that do have one do not use the same format for all patients, so that a clinical record form should be established conforming to that contemplated in Act 41/2002, of 14 November, organic act regulating patient autonomy and rights and obligations relating to clinical reporting and documentation.

267. The clinical records of minors should record the **pharmacological contention guidelines in the case of agitation**, to enable an immediate response if necessary.

268. It is necessary for all centres to have **adequate and sufficient medical and psychological attention**, with specialised training in attending the population in question. **Psychiatric attention** is essential, particularly where the facilities have therapeutic units.

It is also essential for systematic and active coordination to exist between the management and the educational and medical-healthcare team.

269. The measures for **therapeutic internment** of minors are a matter of concern. Indeed, centres with units of this kind must provide **specialised educational attention or specific treatment** targeted to persons suffering mental alterations or abnormalities, a state of dependence on alcohol, toxic drugs or narcotics, or changes in their perception that imply a serious alteration of awareness of reality.

In this respect, a **specific treatment program for the internment measure** should be available, with the recommended social-healthcare guidelines and controls to ensure their compliance, which should form part of the individual program for implementation of the measure.

It should be suggested to the minors' judge that **it would be advisable to transfer the minor to a social-healthcare centre**, if his progress when serving the internment measure renders this advisable, in the opinion of the respective professionals.

270. It is considered necessary **to extreme precautions to avoid suicide conduct at these facilities**. All centres should have a Suicide Prevention Protocol which should be regularly assessed as to its effectiveness and should be known by all the personnel of the establishment.

271. **Injury report forms should be established conforming to the Recommendations of the Ombudsman's Office** set out in the report of the NPM on *Injury reports on people deprived of their liberty* and, where the medical services assist a person who was injured due to a purported aggression, it should be completed and sent to the court authority as contemplated in said report.

272. It is considered necessary for centres to have sufficient **professionals, selected through a careful recruitment process**, with personal maturity and capacity to face the challenges of working with and protecting the wellbeing of this group, capable of guiding and motivating juvenile offenders.

273. The existence of the **tutor** of the inmate minors is considered necessary and the number of tutors should be sufficient.

274. In addition, **the management of these establishments** should be entrusted to persons with leadership ability, capable of answering effectively the demands made

both by minors and by personnel, and of resolving any incidents that may occur immediately.

275. The right to receive compulsory education should be ensured, with formal and vocational education and schooling assistance programs.

276. In the same manner occupational and specific vocational training workshops should exist, given by specialised personnel in addition to **vocational training courses with official degrees**.



Electricity workshop at Ibaiondo, Zumarraga (Bizkaia)

277. Inmates should be afforded sufficient fun and sports activities and, to the extent possible, if so permitted by the weather conditions, these should be performed out of doors.

278. Residential resources should exist to facilitate the reinsertion work, after the minors leave the centres on reaching the age of 18 years where they are unable to return to their family homes.

279. We have observed with satisfaction the flexibility observed on the part of the management of some centres, in respect of visits of family relatives and friends who receive the minors since, depending on the circumstances and their place of origin, the duration of the visits and the number of visitors may be increased.

280. Special importance is given to the food supplied. Indeed, minors must be provided with adequate and sufficient food, ensuring the preparation of special diets, for both medical and religious reasons, and permitting, to the extent possible, inmates to participate in the preparation of the menus.



Kitchen of Ilundáin at Valle de Aranguren (Navarre)

281. “Witness” **samples should be kept** of the meals supplied for the legally established time, for them to be tested in an eventual intoxication.

282. It is of particular importance for the **facilities** to be adequate for the inmate population, well kept and maintained and ensuring the safety of the admitted minors.

283. All centres should have a **centralised mechanical opening system for the doors to the rooms**, to ensure emergency evacuation if necessary, and have **inter-phones or lighting or sound calling systems** within them, for minors to be able to communicate with the educators in a situation requiring their immediate assistance.



Call control board at Ilundáin, Aranguren (Navarre)

284. Likewise, the **fire-safety measures should be improved**, its being desirable for all establishments to have smoke detectors (even inside the rooms), alarm push bells, extinguishers, evacuation doors and an evacuation plan.

285. To the extent possible, it would be advisable to consider the **location of the centres** since a good natural environment benefits the participation of minors, having positive effects on the professionals working at them.



Partial view of the exterior of Ibaiondo at Zumarraga (Bizkaia)

III. 3.4 Centres for minors with conduct disorders and in a situation of social difficulty

286. It is considered necessary to remind that, due to their vulnerability, **minors deprived of liberty require special attention and protection**, and should have their rights and wellbeing safeguarded for the period during which they are deprived of liberty and after that period.

287. It would be desirable to intensify the **actions addressed to establish intermediate resources and devices and those for rehabilitation from situations of social difficulty** from the educational, healthcare and social contexts **rendering it unnecessary to institutionalise minors**.

288. It is to be pointed out that **access of all minors to public resources for the diagnosis and treatment of situations of social difficulty** arising from conduct disorders should be encouraged, **without any discrimination, in accordance with their being minors in custody or not in custody of the Public Authority**.

289. **Centres for minors with conduct disorders** are a matter of particular concern for the NPM, since it is at these centres that **situations limiting their rights may occur**, notwithstanding the fact that such limitations may also be observed in centres of other kinds.

290. It is desirable for the autonomous communities to establish a specific administrative procedure for **referral of minors with conduct disorders to the protection resource most adequate for their needs**.

Such procedure should specify the reasons giving rise to the need for assistance to the juvenile at a specific centre. The hearing and eventual allegations made by the parents

and by the minor, who should in any case have his right to be heard respected always before a decision affecting him is adopted, should also be placed on record.

Accordingly, **the administrative decision concluding the proceeding and ordering the admission of a minor to a centre** for minors with conduct disorders, **should be duly founded**, explaining the reasons for which it has been deemed advisable to admit him in a certain centre in his best interest. **Such decision should be notified personally, both to the parents, where no court decision prohibits this, and to the minor himself**, in a manner adequate given his age and circumstances, always meeting the requirements established by Act 30/1992, of November 26, on the legal system of public authorities and common administrative procedure.

It is necessary to obtain **court authorisation for admission into any centres that apply measures that imply any limitation of the rights of minors**, and it is a matter of satisfaction that said provision be included in the project for an organic act for amendment of the system of protection of infancy and adolescence.

291. The **right to free legal assistance** is of particular importance and it is considered that **it should be recognised, in any case, to minors and to their parents or other legal representative, in the context of the proceedings addressed to adopting measures for admission to a centre for minors with conduct disorders.**

In those cases in which the minors, particularly adolescents, are not in agreement with the protection measure finally ordered, **procedures should be put in place for them to file a claim or appeal against the measure with qualified legal assistance.**

292. Particular attention should be given to the implementation of **protocols defining the scope of attention to minors** with conduct disorders **and to define the quality and assessment criteria in such action.**

It would be advisable, after the action program is completed, for the families and minors to be followed up, to evaluate the results and, if appropriate, adopt any advisable measures.

293. The training of persons in close contact with minors with conduct disorders is important. All centres should be required to have **educators** who have, at least, a **medium-level degree in fields of social action and action with minors**. In addition, the **specialised and ongoing training of these professionals** should be promoted and the exchange of good practice experiences should be encouraged.

Such professionals should have available **support and reinforcement actions and programs** to assist them in facing the emotional tension arising from their work.

294. Particular relevance is granted during the visits made to these centres to the fact that they have a duly approved **internal regulation**, in compliance with applicable legislation.

It would be desirable for the entities to verify that all centres have such regulation available, since its absence, poor implementation or use of an inadequate language for its understanding by minors, could be **factors of legal uncertainty that could encourage an arbitrary application of the rules at the centre and the defencelessness of the minors.**

Such arbitrary application of rules could occur in the absence of homogeneous criteria to establish the **disciplinary regime in the internal regulations** which could lead to certain centres applying very strict regulations and others more flexible one, for minors with the same or similar needs, so that the NPM considers it necessary for **this matter to be regulated.**

Disciplinary proceedings should be the **last recourse to be used**, giving priority to restorative dispute resolution and educational interaction systems over formal proceedings or punishment.

295. Such regulation should contain, at least, a description of **rights and obligations**, matters of **general organisation**, rules of **cohabitation and operation of the centre**, procedures to file **requests, claims or appeals**, the system of **infringements and penalties** and, if necessary, the protocols to apply **contention measures** in situations of crisis of minors, among other situations. If necessary, the contents that they fail to understand of such information should be explained to them.

296. It is considered necessary **that, upon arrival to the centre, the minor be delivered a copy of the regulation**, worded in a clear, simple language adapted to his level of understanding, together with the address of the responsible authorities to which he may bring his complaints and the public or private bodies and organisations that provide legal assistance.

Minors who are not sufficiently fluent in the language spoken by the personnel of the centre should have access to **free services of an interpreter** whenever necessary, particularly while receiving information on the contents of the internal regulation, medical examinations and disciplinary actions.

For **minors unable to read and write or unable to understand the language in written form**, the information should be given in a manner that they are perfectly able to understand.

297. It has been observed, and this is a matter of concern, that no general legal framework exists on minors with conduct disorders, establishing the events, requirements and conditions for the public entities for the protection of minors to apply specific programs that contemplate the use of non-penalising **measures of contention.**



Bed for contentions at the Residence of Galapagar (Madrid)

The policies on the use of means of contention at centres of these features, since they are centres of a therapeutic nature, are linked the policies for their use in the specifically healthcare context.

In respect of this matter, the development of the parliamentary work on the project for an organic act for amendment of the system for protection of infancy and adolescence is followed with interest.

298. The conduct of **body or room and belongings searches** at centres of minors with conduct disorders, in a situation of social difficulty and, in certain cases, for protection, should be homogeneously regulated, establishing a record where they should be entered and the channels to report their performance and results to the various authorities.

REGISTRO DE MENORES A RELLENAR A LA SALIDA O LLEGADA AL CENTRO

Motivo por el que se hace el registro: *Suspecha de tenencia de tabaco*

Fecha: *10-9-2013* Hora: *13:30h*

Menor: *[Redacted]*

Educador que lleva a cabo el registro: *[Redacted]*

Objetos inadecuados encontrados:

Ninguno

Firma del educador o educadores: *[Redacted]* Firma del menor: *[Redacted]*

Record of minors at the Residence of Galapagar (Madrid)

The policies for these records are those established in paragraphs 256 and 257 of this report.

299. The **healthcare** provided to minors at these centres is of particular importance. In respect of the **technical team**, the required qualifications vary from one centre to another depending on its higher or lesser degree of specialisation. All centres should afford, at least, psychological, social and technical-healthcare assistance, given their therapeutic nature.

It must be ensured that the medical assistance received is provided preserving the **privacy** of the minors, and that these receive **adequate information** on the medical treatment that will be afforded to them, in a manner such that they may give their informed consent. The **use of medicines** should be strictly monitored, not obliging the minors to take them or punishing them for not doing so.

Likewise, it would be advisable to set up certain **forms** in which the minor may sign his **waiver to take the medication** under his own responsibility.

300. It is essential when applying certain **medical treatments, when the minor is incapable either mentally or emotionally of understanding the scope of the action**, to act as provided for in article 9.3c of Act 41/2002, of 14 November, organic act regulating patient autonomy and rights and obligations relating to clinical reporting and documentation.

Likewise, if the medical treatment is afforded to minors under sixteen, the advisability of informing the public prosecution on its application should be considered, pursuant to article 174.2 of the Civil Code.

In any event, in the case of an action of serious risk in the opinion of the professional, the parents should be informed and their opinion will be taken into account to make the relevant decision.

301. At all centres, a system should exist to file **claims and complaints**, of which the public entity for protection of minors should in any case have record.

In this respect, adequate channels should be provided permitting minors **to inform the public prosecutor's office and the court authority of situations that violate their rights**.

The policies for the filing of complaints and claims at centres of these features **are those established in paragraph 244 of this report.**

302. Special importance is given to the existence of **video-surveillance and video-recording systems** at facilities for the deprivation of liberty, as mentioned in this report, and it is considered that such systems should be installed at centres for minors with conduct disorders and in a situation of social difficulty.

These means should cover all departments in which minors may remain (other than rooms and toilets) and, very particularly, at places used for their contention.

303. Minors should be afforded **adequate communication with the exterior world**. The NPM considers that all possible means should be put in place for the purpose, since such communication is an inseparable part of the right to fair and humanitarian treatment and benefits the integration of these minors into society.

A **system of calls to family relatives and friends** should be set up, the cost of which should be borne by the centre and at which the privacy of such calls should be respected.

Relations with the family of the juvenile should be permitted and facilitated, unless a court decision otherwise is issued, their frequency to be established in the individual project, and such frequency may only be limited where so decided by the judge.

304. It is considered necessary, in general, to give particular attention to compliance with legislation relating to the **adaptation of the facilities**, prior to the approval of any project that implies affording minors shelter. Thus, the enabling of new resources that do not meet suitable conditions for implementation of the project in question should be avoided.

305. Centres should have, to the extent possible, **large areas** permitting sports and outdoor leisure activities.

306. Special attention should be given to the **lighting conditions** in common halls and rooms, encouraging natural light, and **evaluating the temperature** existing in the centre throughout the year, in order to avoid excessive oscillations, adapting it to the weather and station of the year. Attention should also be paid to ensuring an adequate **ventilation** of indoor areas.

307. All centres should have a **centralised mechanical opening system for the doors to the rooms**, to ensure emergency evacuation if necessary, and have **inter-phones or lighting or sound calling systems** within them, for minors to be able to request the immediate assistance of personnel of the centre if necessary.

308. Centres should ensure that all minors have available **adequately prepared and served food** at the usual times, meeting quality and quantity conditions satisfying diet, and health and safety rules, with **special diets** for medical, religious or cultural reasons, and access to drinking water at all times.

309. Religious and cultural beliefs, and moral practices and provisions of minors should be respected.

310. The **ongoing supervision of centres of this kind by the responsible authority** is of great importance.

Such supervision would permit greater surveillance of cases of admissions of minors to specific centres for the treatment of conduct disorders, verifying, at least on a six-monthly basis, **the situation of the minor, and requesting, if appropriate, before the judge any measures that may be deemed necessary.**

It would be desirable, for the purposes of due coordination for **the result of such inspections to be conveyed to the Public Prosecutor's Office, notwithstanding the inspections that may be carried out by the public prosecution itself.**

III.3.5 Residential establishments providing healthcare, social and or/rehabilitation services

311. Also reviewed by the NPM are public or private residential centres providing healthcare, social or rehabilitation services including, among others, to groups such as senior citizens, chronic patients and persons with a mental, physical, sensorial or intellectual disability, which may include **persons whose internment was not voluntary.**



Senior Citizen Residence Geriatros of Corunna

312. From the start, the Ombudsman's Office has verified an **absence of regulation to sufficiently safeguard the fundamental rights of patients who are inmates of healthcare or social mental health centres**, and to establish the eventual restrictions for the protection of their life, health or physical safety. The legislative reform has become even more necessary if possible after Judgment of the Constitutional Court 132/2010, of 2 December, which declares unconstitutional two paragraphs of the first section of article 763 of the Civil Procedure Act, which contemplated non-voluntary admission due to mental disorder, on considering that such measure, depriving a person of liberty, could not be implemented in an ordinary law and required a law with the ranking of organic act.

A project for an organic act should be prepared to regulate admissions carried out under civil legislation and to conform to the regulation of the United Nations

Convention on Rights of Persons with Disabilities, of 13 December 2006, and the Observations of the United National Committee for Rights of Persons with Disabilities in its initial report for Spain (CRPD/C/ESP/1).

313. As regards the non-voluntary admission to senior citizen residential centres, the existing legal gaps have caused both the authorities and the judges and public prosecutors to apply inconsistent policies. Until such reform of the law, the policy is that the **system of safeguards** currently contemplated in article 763 of the Civil Procedure Act **should extend to senior citizens who are admitted to residential centres** when they are not in condition to give freely their consent to their admission.

314. Thus, **in any case in the absence of independence of a person to give his consent to his admission** to a centre, **the procedure contemplated in article 763 of the Civil Procedure Act for non-voluntary admissions should apply.** In general, the application should be processed through ordinary channels prior to admission, by the family relatives or tutors who are aware of the need for admission and the lack of independence.

315. **Where an emergency situation is observed** that requires immediate admission to the centre, **the requirements contemplated in article 763 of the Civil Procedure Act** and implemented by **Judgment of the Constitutional Court 141/2012, of 2 July**, should be met, considering particularly, that the admission will only be founded in the case of serious mental disorder and in a situation of emergency or immediate need for medical action, and the measure of admission should not only be advisable but should also meet the requirements of need (no other less burdensome alternative measure may be adopted) and proportionate (with regard to the purpose sought).

316. The **non-voluntary admission should be urgently reported to the responsible court authority** as soon as possible and in any case within twenty-four hours after admission, for the compulsory ratification of the measure. The notice should include at least information on the following issues: precise date and time of admission; circumstances of admission; medical report evidencing the mental disorder founding immediate admission, grounds for the need and proportionality of the measure and, if appropriate, evolution of the state of mental health; and forecast duration of the measure.

317. As regards the court control, the **delay on the part of certain court authorities in non-voluntary admission proceedings**, particularly in those of an urgent nature, and **the lack of grounds observed in many proceedings for non-voluntary admission**, in which the need and proportionality of the measure are not assessed contravening constitutional case law (FJ 7c of STC 141/2012) are matters of concern.

Accordingly, the appropriate measures should be adopted, evaluating the needs that the court bodies may have and, if necessary, **reinforcing the court bodies and the public prosecutor's office**, to ensure that the safeguards of the rights of persons in respect of whom non-voluntary admission is requested is effective, including regular visits to the centres in question.

318. In addition, it would be advisable to set up **services of legal guidance for persons with disabilities at bar associations** that do not have them and to carry out training and sensitising actions among the professionals members of the various bar associations.

319. In addition, we agree with the policy contemplated in the *Manual of good practices of specialised services of the public prosecution in the protection of persons with disabilities and supports*, according to which **the Public Prosecutor's Office**, whenever possible, in addition to reviewing the report prepared by the centre, **will take into account the report of the forensic medical practitioner or a professional designated by the judge, different and independent from the centre, and will grant the person whom the measure affects a hearing.**

320. When the **admission is voluntary and the party in question subsequently states his change of opinion in respect of the voluntary nature of his stay**, the requirements established in article 763.1 of the Civil Procedure Act must be met to maintain the stay and the 24-hour term to report it to the court body will commence (FJ 5c of said STC 141/2012). In addition, it would be advisable for the notice to state the evolution of the state of mental health of the person in question since his admission and the reasons for the change of voluntary to non-voluntary internment.

Likewise, all cases of relevant cognitive impairment should be reported to the public prosecutor for said authority to consider the need to institute a proceeding for incapacitation or require court authorisation for non-voluntary admission due to supervening disorder.

321. **Upon expiry of the seventy-two hour term** in which the court authority must issue a decision, without the measure having been ratified, **the centres are not protected by the law to keep the person in question forcibly interned.** This should be conveyed to the responsible court authority, to the public prosecutor and, if appropriate, to the legal representative of the person in question. In such a situation, if the inmates expresses his intention to abandon the centre, he may do so by signing the voluntary release form.

322. In respect of the regular control of non-voluntary admissions, it is the obligation of the centres, pursuant to article 763.4 of the Civil Procedure Act, to inform the court of the need to maintain the measure every six months, unless the court establishes a shorter term. For absolute respect of the safeguards of the inmates, **the medical reports sent to the responsible courts regularly must be complete and updated.**

323. In Spain the implementation of article 12 of the United Nations Convention on the Rights of Persons with Disabilities, whereby the **State must ensure adequate and effective safeguards for measures relating to the exercise of legal capacity to respect the rights, will and preferences of the person** to be proportionate and adapted to their circumstances and to be subject to regular tests by a responsible, independent and impartial court body or authority, among other requirements, is as yet to be implemented.

324. The effective custody of disabled persons residents in centres of this kind, **has direct effects on the defence and safeguard of the rights of the persons in custody.** The public and private custodian entities must have sufficient personnel and means for individual monitoring of the persons in their custody and to visit the centres at regular intervals.

325. Centres with these features **must have available an internal regulation** or document setting out the rules of the centre. Such regulation should be situated in a visible public place.

326. In addition, **they should have books of complaints** (implying a process of internal service quality control), **suggestions boxes or books** (implying an attempt of the inmates or their families to participate in improving the centre). In addition, the complaints must be reviewed and an answer should be given to the parties involved.



Suggestions box at the Centre La Morenica, at Villena (Alicante)

327. To ensure an actual and effective knowledge of their rights, **both the persons in question and their family relatives should be informed orally and in writing** of the type of internment in question (particularly if it is for a long duration), the internal operating rules, the living regime, the therapeutic procedures or the restrictions to which the inmate will be subject, etc.

In the case of non-voluntary admission of an urgent nature, information must also be afforded on: the data and time of admission and the reporting of the internment to the court authority, stating that the centre is obliged to render account of the internment as soon as possible and, in any case, within twenty-four hours, and that the necessary court ratification must be provided within a maximum term of seventy-two hours; the reason for admission; the policies applied in the ongoing review of their situation; their rights pursuant to article 763 of the Civil Procedure Act and the right to institute an habeas corpus proceeding.

Said document should be drawn up taking into account the features of the residents, ensuring that its wording and format are adequate for its understanding; and it should be signed by the person affected by the measure, stating that said information has

been explained and that he has understood it adequately, and by the professionals of the centre who provided the information. The admitted person should keep a copy of that document.

328. Centres should apply a **policy of respectful and polite treatment of residents**. The NPM should like to point out in this respect the kind and close treatment of residents by personnel, which it has observed in general at all centres of this kind that it has visited.

329. The **adequate management of personnel may contribute significantly to the prevention of ill-treatment and inadequate practices**, as contemplated in paragraph 31 of the 8th General Report of the CPT (CPT/Inf (98) 12). In particular, the management should ensure that the therapeutic role of the personnel is not deemed to be of a secondary nature to the security conditions.

330. These centres should have sufficient personnel with the adequate qualifications, experience and training, including medical practitioners, psychologists, psychiatrists and rehabilitation personnel in accordance with the profile of the inmates.

331. The recruitment and initial and ongoing training of the personnel is of great importance for quality attention to be provided. Ongoing training courses for personnel are of particular importance, particularly those directly related to protocols of action with patients, and the measures to prevent the «burnt out worker syndrome» in the workers of the centre, in view of the particular circumstances of certain centres which may lead to situations of tension.

332. These centres should have available rehabilitation and therapeutic programs, in accordance with the profile of the inmates. In addition, it is essential to carry out an **individual and inter-disciplinary evaluation** of each case on a regular basis. In addition, maximum efforts should be made to involve the inmates in their treatment and therapeutic process, affording them the possibility of participating in it and making decisions to the extent possible.



Psychomotricity room of the Centre La Morenica, at Villena (Alicante)

333. The measures necessary should be adopted for the **supply of activities and stimulation of residents to be sufficient and adequate.**



Labour workshop at the Centre San Juan de Dios at Ciempozuelos (Madrid)

334. The contact of inmates with the outside world should be encouraged, with outings and walks outside, including that of those with cognitive impairment, adopting the measures necessary. In this respect, the very location of the centres may have positive or negative effects on such contact with the outside world.

335. The exercise by the inmates of their rights should be enabled, encouraging their independence, both from a therapeutic point of view and for the purpose of respecting their fundamental rights, through a board of inmates, group activity areas, participation in aspects of day-to-day life, etc.

336. Taking into account the profile of the inmates, **reinsertion in the community and coordination of the centres with the Authority** should be sought so that, should an inmate show improvement and a degree of independence permitting him to be transferred to a community resource, he may be released from the centre. In this respect, nevertheless, the NPM must express its concern by the general scarcity of therapeutic alternatives in the autonomous communities, such as semi-open residential resources (apartments in custody, mini-Residences with open doors, day centres ...).

337. The state of health of inmates and the medication prescribed to them should be reviewed regularly. In the case of persons with a mental disease, regular psychiatric follow up must be ensured.

Psychotropic drugs should be used adequately, adopting in certain cases –such as the treatment of insomnia– alternative measures such as increasing the physical activity of the inmates and reducing the number of hours during which they remain without stimulation, in bed or in their rooms.

In addition, inmates should be able to give or not their **free and informed consent to the treatment**, with the sole exceptions contemplated by Act 41/2002, of 14 November, organic act regulating patient autonomy and rights and obligations relating to clinical reporting and documentation matters.

338. Centres of this nature should have the necessary protocols and plans in accordance with the profile of their residents, such as a **suicide prevention plan**, a protocol to report on documents of “**early will**” or “**preliminary instructions**” (to state in advance their wishes or instructions that should be taken into account related to medical actions should they find themselves in a situation in which the circumstances do not permit them to express their will freely) and a **plan of “palliative care”** for patients in a serious and irreversible state.

339. Although these establishments do not have a disciplinary regime as such, they usually have **systems of reinforcement by incentives or measures applied to certain inadequate conducts of the inmates**. It would be advisable to define clearly which actions are therapeutic and to specify them in the individual therapeutic plans.

340. Physical and pharmacological restraints are used with relative frequency at psychiatric hospitals and senior citizen Residences, among other reasons, to prevent falls or injuries to oneself or to other persons, to avoid alterations of the therapeutic program (removal of intravenous medication, nasogastric tubes, etc.), or to handle violent or aggressive behaviour.

It is necessary to **regulate at the national level clearly and precisely the use of physical and pharmacological restraints** in accordance with international criteria, particularly the definition of restraint, the events in which restraints should be applied, the proportionality and suitability of the means used, the temporary nature of the measure, the authorisation for its use, the personnel authorised to apply it, the documentation of the actions, the evaluation of the effects and results and all necessary safeguards.

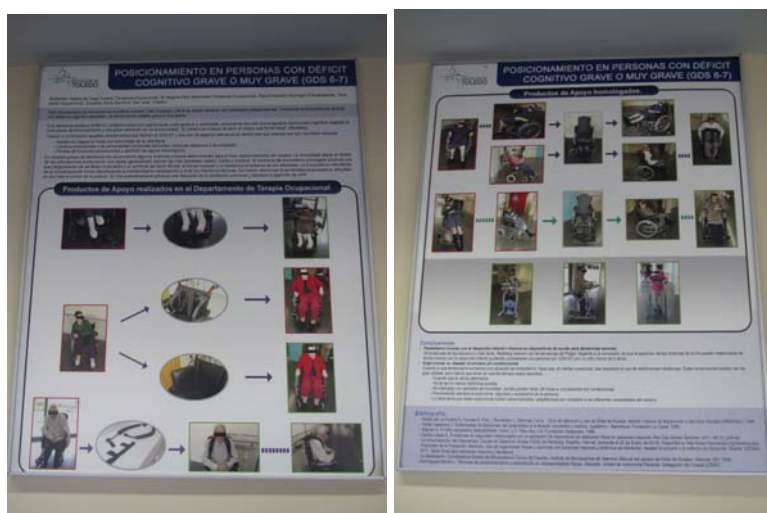
341. Notwithstanding such regulation by the law, **these centres should have a protocol for the use of restraints and a record** in which to enter those instructed for each resident, the reason and medical instructions, the start and end times and observations of the infirmary, among other issues. Their use should always obey to the principles of need and proportionality, they should be applied only for the time strictly necessary and should never be used as punishment. In addition, training courses on restraints should be afforded to the professionals of each centre.



Map showing the various restraints needed by each inmate at the Senior Citizen Residence Laraxe (Corunna)

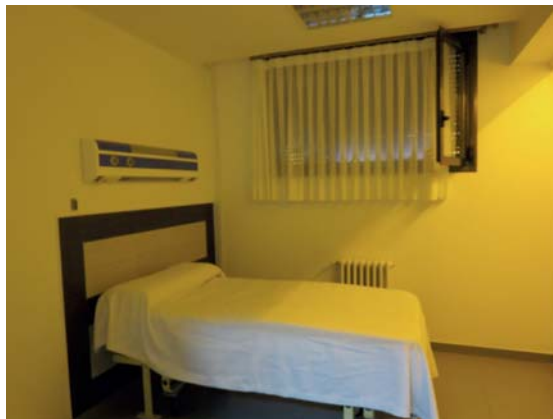
342. An unnecessary or excessive use of physical and pharmacological restraints may violate the rights to human dignity and free development of personality (article 10 CE), to freedom (article 17 CE), to physical and moral safety, and not to suffer inhuman or degrading treatment (article 15 CE). In both types of restraint, negative effects of their continued use have been recorded.

In the opinion of this institution, **centres should tend to reduce the use of restraints**, considering the existence of experiences that evidence the possibility of achieving the contention through alternative measures. Likewise, priority should be given to the use of restraints that limit only to the extent necessary the mobility of the patient. Accordingly, the restraints used should be reviewed regularly, to reduce them to the extent possible.



Informative posters on the use of restraints at the Assisted Social Residence San José, at Toledo

343. Rooms prepared for mechanical restraints with psychiatric belts for episodes of disturbance or aggressiveness should have video-surveillance systems with recording available, be free of metal edges that could pose physical risk to patients, have natural lighting, have an adequate temperature and, in general, encourage a calm environment for the inmate. One member of personnel should always be present to maintain the therapeutic purpose and afford the patient due assistance, pursuant to paragraph 50 of the 16th General Report of the CPT (CPT/Inf (2006) 35).



Room adequate for mechanical restraint at the Residence Santa Teresa de Arévalo, at Arévalo (Avila)

344. Centres should have a protocol for the prevention and detection of cohabitation problems. Personnel should receive **training on peaceful dispute resolution and action in crises** and oral and non-oral techniques, to abort incipient episodes of aggressiveness without need to adopt measures of restraint.

345. When for security reasons the rooms have to be searched for potentially hazardous objects or non-authorized belongings, the searches **should be carried out in the presence of the inmate and with his cooperation**, to prevent a feeling of defencelessness and violation of privacy that the contrary practice may imply.

346. Injury report forms should be established conforming to the Recommendations of the Ombudsman set out in the report of the NPM on *Injury reports on people deprived of their liberty* and, where the medical services assist a person who was injured due to a possible aggressions, it should be completed and sent to the court authority as contemplated in said report.

347. Rooms should have call or alarm systems or alternative systems for those cases in which the immediate assistance of personnel to inmates is required.

348. The physical conditions of the centres should be focused on the treatment and wellbeing of the inmates and to create a positive therapeutic environment, pursuant to paragraph 34 of the 8th General Report (CPT/Inf (98) 12). The facilities require special care as regards their maintenance and security and health and safety conditions. The health, safety, risk prevention and emergency rules should be

observed. In addition, comfort should be ensured in the common zones and areas, meals and zones for positive interaction for most residents. Also, all rooms should have maximum capacity for two persons, affording each inmate sufficient space.



Four-bed room in one of the units of the Centre San Juan de Dios at Ciempozuelos (Madrid)

The facilities should allow a certain degree of privacy to inmates, particularly in the toilets, since although the lack of walls or separations benefits accessibility and handling by personnel, it may violate the right to privacy of the patients. In addition, inmates with a greater degree of independence should have locked wardrobes to keep their belongings and have access to their dormitories during the day.



Toilet of the Residence Santa Teresa de Arévalo, at Arévalo (Avila)

III.4 Special-purpose places of deprivation of liberty

III.4.1 Foreign national repatriation operations

349. From the start of its activity until this report was prepared, a total 11 operations were supervised, the conclusions drawn on the matter having been sent both to the Ministry for Domestic Affairs (Directorate General for the Police) and to the European Ombudsman, pursuant to article 8 (6) of Directive 2008/115/EC of the European

Parliament and of the Council of 16 December 2008 on common criteria and procedures in Member States for returning illegally staying third-country nationals, and articles 13 and 14 of the Code of Conduct of FRONTEX.

350. Flights organised both by the Spanish authorities, through the Central Unit for Expulsions and Repatriations (*Unidad Central de Expulsiones y Repatriaciones* – UCER), attached to the General Headquarters for Immigration and Borders (*Comisaría General de Extranjería y Fronteras* – CGEF), and by the European authorities, through flights in which Spanish police officers participate and which are operated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX).



Supervision by the Ombudsman's Office of the boarding of the FRONTEX Operation to Pakistan

351. It is necessary for a **fit-to-travel medical check-up to be carried out in Foreign National Repatriation Operations** (FRONTEX flights) on all foreign nationals who are to be expelled and not only on those with a known pathology, to confirm that no objection exists from a medical point of view for their expulsion. If the foreign nationals, originate from any CIE or penitentiary centre, the medical examination must be carried out at the centres of origin. In such cases, the result will have attached a summary of the clinical record containing, at least, the background history, the diagnosis and the treatment prescribed, if appropriate. For those originating from places other than those mentioned above, the medical examination must be carried out by the medical practitioner accompanying the operation during the flight.

352. The obligation should be established, both in operations organised by Spain and in those carried out by FRONTEX, that any persons who were included in any **failed proceeding for repatriation be submitted to a medical examination** immediately afterwards, pursuant to paragraph 39 of the 13th General Report of the CPT.

353. The **presence of medical personnel on all repatriation flights should be ensured**. In addition, it would be advisable for the medical practitioners to be fluent in the English language to ensure the medical confidentiality with the repatriates and coordination with the police escorts of various nationalities.

354. On some of the supervised flights no interpreter was present and a large number of persons who were to be expelled did not speak either Spanish or English. The NPM considers the **presence of an interpreter to be necessary in all repatriation operations.**

355. The **medical documentation** of repatriates must remain in closed envelopes, accessible only to healthcare personnel, as established by article 16 of Act 41/2002, of 14 November, organic act regulating patient autonomy and the rights and obligations relating to matters of clinical information and documentation.

356. Both a **defibrillator and a refrigerator** should be available for the eventual conservation of medicines such as insulin, on flights organised by Spain and on those operated by FRONTEX.

357. It has been observed, and this is a matter of concern, that the **transportation of pregnant women and minors to the plane and their seating in it** is not always carried out in a manner that they do not make contact with other citizens not of their own family, so that the necessary measures should be established for this not to occur.

358. It would be advisable for a **record book to enter all means of restraint** used in the custody of the persons to be repatriated to be enabled at the facilities of the UCER of Adolfo Suárez Madrid-Barajas Airport and during the flight.



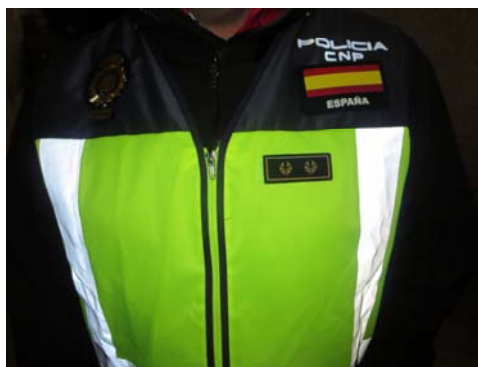
Restraint belt at the boarding of the FRONTEX Operation to Pakistan

359. In line with paragraph 44 of the 13th General Report of the CPT, it is to be pointed out that it would be advisable to establish a **video-recording system** to record the operations for expulsion carried out by Spain and by FRONTEX, particularly where the deportation is considered to be contentious.

360. It has been verified, and this is a reason for concern, that sometimes **the custody forms of detainees do not record all the occurrences with citizens who will be repatriated in flights organised by Spain**, in particular, the **telephone communication** with their family relatives, thus ensuring the chain of custody and incidents.

361. Special importance is given to the existence of a **claim procedure** to exist for persons to be repatriated who consider that their fundamental rights have been violated, to be able to use it, and have a copy evidencing their filing delivered to them both in flights organised by Spain and in those operated by FRONTEX.

362. Satisfaction is expressed with regard to the fact that the recommendation made for Spanish police escorts who participate in repatriation flights to use **vests permitting the nationality of the officers to be identified** was accepted by a decision of the Directorate General for the Police which establishes the inclusion of badges bearing the statement España, in compliance with article 9 of the Code of Conduct of FRONTEX.



Vest of the CNP of Spain

363. The need for all escorts participating in these operations to be **identified by their plate number** must be remembered.

364. The airport facilities, used to host citizens to be deported, should have **sufficient furniture and access to toilets, water and food when boarding is delayed**.

III.4.2 Centres of first aid and detention of foreign nationals

365. Set out below are **the criteria** that the NPM considers **should be met at these facilities of deprivation of liberty, notwithstanding the fact that those others explained in general in the section on short-term deprivation of liberty are also applicable**.

366. Facilities hosting illegally staying foreign nationals who reach Spain in vessels from the north of Africa, namely **centres of first aid and detention of foreign nationals, do not meet the most adequate conditions for persons who arrive to them after a journey that usually takes some days in conditions of extreme duress both physically and psychologically speaking**.

An urgent renovation of these facilities is considered necessary given their state of maintenance and upkeep.



Signing room at the centre of Motril (Granada)

367. Detention at these facilities, with an average duration of 48 hours, **is particularly hard for those groups that need most protection and whose protection should be a priority, such as minors and pregnant women.** Attention must be brought to this matter and to the need to prepare a **specific protocol for these groups.**

368. As a general rule, **the measure of deprivation of liberty is adopted** while the necessary arrangements or actions are carried out after these persons arrive to the coast. The NPM considers that **other alternatives should be explored.**

369. The United Nations Convention on the Rights of the Child establishes that **the deprivation of liberty of a minor should be a measure of last resource and for the shortest possible period. The alternative** to detention in a police station or similar facilities, such as first aid resources, **would be to stay in centres for humanitarian shelter.**

If the alternative measures cannot be adopted, **the non-applicability of the less restrictive options should be founded, and it should be evidenced that the deprivation of liberty is ordered in the best interest of the minor.**

370. Such alternatives should likewise apply to pregnant women or women with children, who should not be detained other than in few founded exceptions.

371. It is a priority that, in **cases of minors accompanied by their parents,** the best interest of the child should imply, rather than detention of the family, the **preservation of the family unit without using a measure of deprivation of liberty.**

In other cases, **minors should remain separated from adults who are not their family relatives.**

372. The police protocol applied when various vessels are intercepted within few hours **does not contemplate the possibility of prioritising the taking of information from minors or pregnant women**, who have to wait their turn together with the rest of the members of the vessel.

It is considered that this practice should be amended **and priority should be given to the taking of information from and processing of return proceedings with pregnant women and minors, regardless of the order of arrival of their vessel.**

373. Means should be provided for **pregnant women and minors to be able to take a hot shower and receive adequate food immediately.**

374. It is considered a priority for **minors and pregnant women**, during their stay at these departments, **to be provided with access to take fresh air daily** and, if possible, for them to have access to natural light.



Lighting of a cell in Motril (Granada)

375. It is necessary for all facilities to **provide mattresses thicker than those used customarily at police stations, avoiding, in any case, that the detainees remain on the floor, in addition to blankets that have not been previously used by another detainee.**

Proper rest of these persons should be procured, **taking into account the precarious physical state in which immigrants admitted to these facilities usually arrive.**



Cell in Motril (Granada)

376. It must be ensured that **the units are cleaned when the detainees leave the facilities and they should be disinfested and disinfected more often.**

III.4.3 Rooms for foreign nationals refused entry and seeking asylum

377. The **criteria that should be met at these facilities** for deprivation of liberty are set out below, **notwithstanding the fact that in the cases of deprivation not exceeding 72 hours, the general criteria set out in general in the section of short-term deprivation of liberty will apply.**

378. It has been verified, after reviewing the record books kept **at the facilities of Adolfo Suárez Madrid-Barajas Airport**, that **a relevant number of persons have remained at them for more than 72 hours waiting to be refused entry or while their request for asylum is resolved.**

In these cases, such persons should be hosted in facilities permitting them to have access to natural lighting.



Leisure room at terminal T4

379. Likewise, **these persons should be permitted**, adopting if appropriate any security measures considered appropriate, **to remain outdoors at least one hour per day**, which would allow them to carry out physical activity, enjoy the benefits of solar radiation or, at least, breathe fresh air for that time. **These measures should be a priority in the case of minors and pregnant women.**



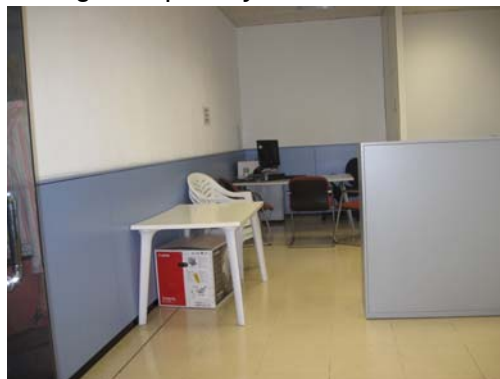
Children's park at the T1

380. The **video-surveillance** at these facilities should meet the policy repeatedly explained by the NPM in its reports, but the installation of cameras in areas for separation or isolation of these persons should be a priority.

381. It is considered necessary for **such cases of separation or isolation to be recorded in writing.**

In addition, **the extension of internment by the court authority** of those persons who remain in the facilities for more than 72 hours pending refusal of entry **should be entered on a record book**, as provided for in article 60 of Organic Act 4/2000.

382. Interviews with potential victims of human trafficking should be held at **adequate facilities** preserving their privacy.



Interviews room at the T4

383. The appropriate measures should be adopted **to safeguard the right to privacy as regards aspects related to the health of the persons held at these facilities.**

The report on their health data should be in their possession and the non-healthcare personnel responsible for administering medication need not know the pathologies they suffer. It would suffice for them to know the medication that they must supply and the times at which they should administer it.

IV. Institutional training and dissemination activities

§384 - §391

384. As mentioned at the beginning of this report, pursuant to article 23 of the OPCAT, as in previous years, the annual report for 2013 was registered with the Lower House of Parliament (27 May 2014) and remitted to the United Nations Subcommittee for the Prevention of Torture.

385. The Ombudsman appeared before the Mixed Committee of Relations with the Ombudsman of the Parliament on 17 June 2014, to submit the 2013 report and the report on *Injury reports on people deprived of their liberty*. The report was published in the website of the Ombudsman's Office on the date of the appearance.

For the dissemination of both reports, the representatives of civil society and professional associations were invited and, from 30 October to 13 November 2014, meetings were held with members of the General Council of the Spanish Legal Profession, Red Acoge, Cruz Roja, the Spanish Commission for Aid to Refugees (*Comisión Española de Ayuda al Refugiado –CEAR*), the Association for Human Rights of Spain (*Asociación Pro Derechos Humanos de España –APDHE*), Rights International Spain (RIS), the Unified Association of the Civil Guard (*Asociación Unificada de la Guardia Civil –AUGC*) and the National Union of Local Police Heads and Executives (*Unión Nacional de Jefes y Directivos de Policía Local –UNIJEPOL*).

386. As regards the dissemination and publicising in 2014 of the competence, operation and action of the NPM, technical experts of the Unit participated at the Officers Academy of the Civil Guard, in the Round Table *The Legal Profession Against Torture* at the Session against Torture organised by the Human Rights Section of the Bar Association of Madrid (*Colegio de Abogados de Madrid –ICAM*), in the Legal Congress of the Spanish Legal Professional organised by the Bar Association of Malaga, at the I Congress on Human Rights of the Spanish Legal Profession on *Prevention of ill-treatment and torture* of the Foundation of the Spanish Legal Profession, and in the symposium *Facing situations of vulnerability of children in detection*, organised by the Association for the Prevention of Torture in Geneva (Switzerland). In addition, meetings have been held with entities of civil society in the context of investigation projects on matters related to deprivation of liberty.

387. During the visit of a delegation of the European Committee for the Prevention of Torture of the European Council (CPT) to Spain, in July 2014, a meeting was held with it focused on the situation of foreign nationals deprived of liberty, in accordance with immigration laws.

388. A working meeting was held with the Directorate General for the Police (*Dirección General de la Policía –DGP*) and Aeropuertos Españoles y Navegación Aérea (AENA), to continue making progress on improving the conditions of deprivation of liberty of persons remaining in Rooms for Persons Refused Entry and Seeking Asylum at Terminals 1 and 4 Satellite of the CNP at Adolfo Suárez Madrid-Barajas Airport.

389. The NPM cooperates with human rights institutions of other countries, carrying out workshops on the mandate and activity carried out by the Spanish NPM. In 2014 working sessions were held with the Ombudsman of the Republic of Georgia, within the context of cooperation of the Association of Ombudsmen of the Mediterranean (AOM); and with a delegation of the Ombudsman of Turkey, whose visit was included within a project to assist in the start up of the institution of the Ombudsman in that country, financed in full by the European Union and led by the Ombudsman for Spain and the Ombudsman for France.

390. It must be pointed out that, during the working trips of the personnel of the institution, occasionally, **visits are made to Spanish prisoners in foreign penitentiary centres (CP)**, to know their situation and the assistance that they receive from the Spanish consular services. In 2014, the Ombudsman in person made three visits at which she interviewed Spanish prisoners: the CP of Rabat-Salé 1 in Morocco (in March), the Penal Cotopaxi at Quito (Ecuador) in May and the Penal de Inca in México City (in October). In addition, the First Assistant visited on 13 June the citizens imprisoned at the CP of Tangiers (Morocco). As a consequence of these visits, the Migrations and Equal Treatment Department commenced action as regards the particular situations of the interviewed inmates.

Also in this context, the working meeting held by the Ombudsman for Spain with the Ombudsman for Colombia must be pointed out at which, among other matters the situation of Spanish prisoners in Colombia and of Colombian prisoners in Spain was discussed, to establish future channels for cooperation. Both institutions cooperated in past for the benefit of Spanish prisoners in the Latin American country and the result of this work was the transfer of a seriously ill Spanish prisoner for him to serve the rest of his sentence in a Spanish penitentiary centre.

391. Lastly to be pointed out are the **visits made by the Ombudsman in person to Centres for the Internment of Foreign Nationals**, to know the situation in which migrants are held in other European countries: in Paris -11 February - the Centre de Rétention du Mesnil-Amelot; in London -27 October - the Brook House Immigration Removal Centre, and in Rotterdam -24 November - the Detentiecentrum.

After these visits, Recommendations and Suggestions were made to the Directorate General for the Police to improve the conditions of CIE, given some of the practices observed.

V. Processing of complaints for ill-treatment by the
Ombudsman
§392 - §397

392. As in previous editions, this report includes an appendix containing a summary of the most relevant actions carried out by the Ombudsman's Office in respect of complaints for torture or cruel, inhuman or degrading treatment, and their main conclusions, also mentioned, in further detail, in the annual report of the Ombudsman for 2014.

393. It should be remembered, as mentioned at the beginning of this report that, when the Ombudsman's Office has **knowledge of a fact that may be ill-treatment**, it commences a proceeding to clarify the facts and establish the eventual liability of the institutions involved.

Also, if **knowledge reaches it of the death** of a person deprived of liberty, it commences a proceeding ex officio for the same purpose.

394. In respect of the **penitentiary centres** (CP), in 2014, 45 proceedings were instituted for purported ill-treatment and incidents at CP, although in certain cases the deficient descriptions without mention of specific facts limited the taking of action.

Due to the conviction of a public officer of the SGIP for a crime of sexual harassment of two prisoners in 2013, in 2014 an attempt has been made to know whether both at the centre where the facts occurred, and at other CP, adequate systems exist for **registration of complaints** that maybe filed by the inmates in cases of ill-treatment by the public officers of the centres. It was verified that there is no unified complaint registration system or common support for all centres, as would be wished, to have an adequate source of information and facilitate the control and supervision work, improving transparency.

395. In respect of the actions of the Security Forces and Corps, 9 proceedings have been instituted for purported ill-treatment. Thus, although a previous complaint existed, an investigation was commenced ex officio on the conduct of the National Police officers at the **demonstration** held on 11 March, 2014, at Santiago de Compostela, due to the protest of the sailors of the purse-seine fleet. In addition to the statements of various participants who complained of the **violence used by the officers**, it was possible to view a recording showing their action. Information was requested from the DGP and an extension of such information was subsequently requested.

In another case, a citizen filed a complaint because he had been arrested together with his Bulgarian couple in Palma de Mallorca, receiving, at the time of his arrest and subsequently in the cells, as he stated, **blows and kicks from the officers**. The Ombudsman's Office requested the DGP to send information to clarify the facts and the Directorate General sent the relevant report. The action has been stayed since the case has been brought before the courts.

396. In 2014, three proceedings were instituted for purported **ill-treatment at CIE**, two of which (relating to the CIE of Algeciras and Barcelona) are currently before the courts. The third also refers to the CIE of Algeciras, which the Ombudsman visited in February, and, in view of the complaint for ill-treatment of an inmate, instituted a proceeding to clarify the facts. After viewing the recordings of the days on which the ill-treatment purportedly took place, without being able to verify them, in view of the action of the responsible Police Station, which ordered an investigation by professionals external to the centre, the complaint was dismissed.

As regards immigration matters, it is to be pointed out, in addition, that in June 2014 approximately 100 persons attempted to **enter Spain unlawfully through the fence close to the border post of Mariuari**. The incidents that occurred at such entry were recorded by the members of an association which sent the recordings to the Ombudsman's Office requesting its action. In view of the facts, information was requested from the Office of the Secretary of State for Security, after which knowledge was had that the matter had been brought before the courts which, in November 2014, dismissed the request for provisional dismissal requested by the Public Prosecutor's Office. The Ombudsman's Office, although it suspended actions in view of the existence of a court proceeding, requested the Public Prosecutor's to keep it informed of the evolution of the case.

A complaint was also received relating to the action of the Security Corps and Forces in the attempt to enter Spain irregularly through the **border fence of Melilla on 1 May 2014**, where the officers used an extinguisher in the case of one of the citizens who had climbed up the fence. The Ombudsman's Office commenced action requesting information on this case from the Office of Secretary of State for Security, which sent the relevant reports and videos recording the occurrences on 1 May. The Ombudsman's Office reminded said centre of the legal duty of the Security Forces and Corps to act in line with the basic principles established by article 5 of Organic Act 2/1986, of 13 March, on Security Forces and Corps, and particularly, to impede, in the performance of their professional action, any arbitrary, abusive or discriminatory action entailing physical or moral violence and to act on the principles of consistency, opportunity and proportionality in the use of the means within their reach.

397. In 2014, action was also commenced by the Ombudsman's Office in cases of complaints or knowledge of eventual ill-treatment or mistreatment at residential centres for **minors, senior citizens and persons with disabilities**, as contemplated in the 2014 report of the Ombudsman.

Action was taken ex officio for the **death in February 2014 of an inmate in the hands of another at the Psychiatric Centre** of Ciempozuelos (Madrid), both of the same unit. In addition to taking action ex officio to know the circumstances of the case and the record of the persons involved, the NPM visited the centre on 10 and 11 March 2014, as may be observed in this report. The Ombudsman's Office exchanged information with the Directorate General for Social Services of Madrid Autonomous Community, which provided the relevant reports on the measures adopted and the conduct programs applied.

In addition, in view of a complaint relating to an inmate of the **Assisted Residence** for Senior Citizens of Castile and Leon (Segovia) who had suffered **purported ill-treatment**, the Ombudsman, in addition to taking the appropriate action to clarify the facts, sent a reminder to the Family and Equal Opportunities Department of Castile and Leon Autonomous Community of the legal duty to complete the injuries report systematically and notify it immediately to the court authority.

Action was also taken with the Social Affairs Department of Madrid Autonomous Community for the **death of two senior citizens** at a home in Las Rozas, due to a **fire** occurred in the room, for reasons, in principle, attributable to the victims. Since the case is being investigated by the courts, action has been suspended until the result of the court proceeding is known and the measures that may be ordered have been adopted.

Lastly, as regards **minors**, the actions relating to the Social Policy Department of Navarre Foral Community, commenced after the death of a minor at the Observation and Sheltering Centre of Pamplona, have been continued. It has been verified that an Inter-institutional Coordination Committee for Prevention and Attention to Suicide Conduct has been created and that it submitted in August 2014 a protocol for prevention and action in the case of suicide conduct.

VI. Recommendations

VI.1 Reform of the Criminal Procedure Act

Recommendations to the Ministry of Justice	Status
Recommendation of 31 October 2014. Take into account, in the forecast reform of the Criminal Procedure Act, the matters submitted by the Ombudsman relating to procedural-criminal matters contemplated in the annual reports of the National Preventive Mechanism against Torture, specifically, paragraphs 468, 476, 480 and 481 of annual report 2010; 226 of annual report 2011 and 254 of annual report 2012	PENDING
Recommendation of 31 October 2014. Include, in the forecast reform of the Criminal Procedure Act, the provisions necessary for transposition of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012	PENDING
Recommendation of 31 October 2014. Include, in the forecast reform of the Criminal Procedure Act, the necessary provisions for transposition of Directive 2013/48 of the European Parliament and of the Council of 22 October 2013	PENDING

VI.2 Centres for internment of foreign nationals

Recommendations made to the Directorate General for the Police	Status
Recommendation of 20 February 2014. Provide all CIE with thicker mattresses than those currently used, which are similar to those used in police stations, since they are not adequate for a stay that may have a duration of up to 60 days, according to the criterion set out in paragraph 38 of Annual Report 2012 of the National Preventive Mechanism against Torture	ACCEPTED
Recommendation of 20 February 2014. Establish common criteria in all CIE, for all inmates, individually, to be provided with disposable shaving razors and nail clippers, to avoid infectious diseases for sharing these personal hygiene items	ACCEPTED
Recommendation of 11 March 2014. Complete the clinical record with analytical tests to detect the consumption of toxic substances or the existence of infectious-contagious diseases as soon as possible	ACCEPTED BUT NOT IMPLEMENTED
Recommendation of 11 March 2014. Provide all CIE with permanent healthcare services, to ensure medical and DUE assistance on an ongoing basis, to permit the initial medical examinations to be carried out as early as possible, according to the criterion established in paragraph 53 of Annual Report 2012 of the National Preventive Mechanism against Torture	REJECTED
Recommendation of 11 March 2014. Adopt the necessary measures for the right to privacy of the inmate be ensured at medical consultations, permitting the door to the medical surgery to be closed and, other than in duly founded cases, without presence of a member of the National Police Force during the consultation	REJECTED
Recommendation of 18 June 2014. Provide all CIE with permanent healthcare to ensure medical and DUE attention on an ongoing basis, permitting the initial medical examinations to be carried out as soon as possible	PARTLY ACCEPTED
Recommendation of 18 June 2014. Complete the clinical record with analytical tests to detect the consumption of toxic substances or the existence of infectious-contagious diseases as soon as possible	PARTLY ACCEPTED
Recommendation of 18 June 2014. Adopt the necessary measures for the right to privacy of the inmate be ensured at medical consultations, permitting the door to the medical surgery to be closed and, other than in duly founded cases, without presence of a member of the National Police Force during the consultation	REJECTED

Recommendation of 18 June 2014. Establish a system to record requests for healthcare services and scheduled appointments permitting to know who request these services, how many persons are assisted each day and the regular appointments given by the healthcare services because this is required by the pathology suffered by the inmate	ACCEPTED
Recommendation of 18 June 2014. Ensure adequate specialised assistance to inmates at the Centre, including psychological and psychiatric counselling and dentist	PARTLY ACCEPTED
Recommendation of 18 June 2014. Issue injury reports with the maximum technical precision when describing the injuries, for compatibility with the cause to be established and, failing this, make photographs of the injuries to attach to the court report	ACCEPTED
Recommendation of 18 June 2014. Issue an injury report whenever the existence of injuries is observed in the inmates, regardless of the original attributed to them by the injured person	ACCEPTED
Recommendation of 18 June 2014. Adapt the clinical record of the inmates to the form contemplated in Act 41/2002, of 14 November, organic act governing patient autonomy and rights and obligations relating to clinical information and documentation matters	ACCEPTED
Recommendation of 18 June 2014. Prepare an electronic clinical record form which, in addition to greater safeguards, would afford the possibility of obtaining further information and would make the health data more easy to locate	ACCEPTED
Recommendation of 18 June 2014. Ensure that language is no obstacle to fluid communication between the healthcare services and the inmates requesting medical assistance, for it to be conducted correctly, without errors attributable to communication and without detriment to their personal privacy	REJECTED
Recommendation of 18 June 2014. Carry out a systematic medical check-up on all inmates who are placed in a situation of temporary separation, both before and immediately after leaving it, having the result entered on the relevant record book	ACCEPTED
Recommendation of 18 June 2014. Place on record any assistance provided at CIE by the healthcare emergency teams, keeping the medical report that they issue in the clinical record of the inmates	ACCEPTED
Recommendation of 18 June 2014. Carry out a medical examination on any citizens who are to be repatriated by air or sea, within the 48 hours preceding their exit from the CIE, to confirm that there is no objection from the medical point of view to the repatriation, and attach said report, together with a summary of the clinical record containing, at least, the background data, diagnosis and treatment that may be prescribed to the inmate	ACCEPTED

Recommendation of 18 June 2014. Provide the medical service of each CIE with computers with access to the internet	ACCEPTED
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VI.3 Penitentiary centres

Recommendations made to the Secretary General for Penitentiary Institutions	Status
Recommendation of 21 May 2014. Adopt, at all centres accountable to that Office of Secretary General for Penitentiary Institutions, the measures necessary to ensure that language is no obstacle to fluid communication between the healthcare services and the inmates requesting medical assistance, for it to be conducted correctly, without errors attributable to communication and without detriment to their personal privacy, such as, for example, through telephone interpretation services, as contemplated in paragraph 80 of Annual Report 2012 of the National Preventive Mechanism against Torture	ACCEPTED BUT NOT IMPLEMENTED
Recommendation of 27 November 2013. Provide the infirmaries of all penitentiary centres with a specific book to enter the healthcare mechanical restraints, as is done for regimental immobilisations	PARTLY ACCEPTED
Recommendation of 19 September 2014. Give the appropriate instructions to penitentiary centres for the penitentiary surveillance judge to be immediately informed of the adoption and cessation of coercive means, for the judge to be able to exert effective control, understanding that the emergency situation that may cause them to be adopted does not prevent if from being reported within a reasonably short time period, as mentioned in paragraph 108 of Annual Report 2013 of the National Preventive Mechanism against Torture	REJECTED
Recommendation of 19 September 2014. Give instructions to the penitentiary centres for the notice made to the penitentiary surveillance judge of the adoption of coercive means, in addition to the date and time of commencement and cessation, and the reasons for adoption of the measure, to include the following issues: whether the measure was authorised by the manager or only reported to him; the medical report on whether or not impediments exist to adopt the measure; total duration of the measure if cessation is reported; whether or not the facts gave rise to the institution of a disciplinary proceeding and, in cases of aggression, whether the aggressor suffers any mental pathology and/or is receiving psychiatric treatment according to the criterion of the Ombudsman set out in paragraph 108 of Annual Report 2013	PARTLY ACCEPTED
Recommendation of 19 September 2014. Give the relevant guidelines to penitentiary centres for inmates to be permitted, for the benefit of the inmates and to make prolonged isolation less afflictive, to have at least one day of rest when serving punishment of isolation in cell implying more than 14 days of isolation, as stated in paragraph 107 of Annual Report 2013	REJECTED

Recommendation of 19 September 2014. Carry out internal investigations in the case of deaths, complaints of ill-treatment or cases of special interest by specialised personnel not on the payroll of the penitentiary centre where the facts occurred, a criterion of this institution repeated in the annual reports of the Ombudsman and paragraph 131 of Annual Report 2013. Such investigations should be exhaustive, independent from the judgment of truth that the Authority may have on a first analysis, hearing the version of the inmates –if appropriate– in an environment that generates trust in the person explaining the problem, and permitting him to file and/or request evidence.	REJECTED
Recommendation of 19 September 2014. Give guidelines to the penitentiary centres, in the case of suspicion that the inmates may carry drugs, to apply only very founded and restrictive grounds to carry out radiological controls, studying the possible alternatives and weighing up the risk/benefit in each case, since it is a measure of control of a medical nature but adopted for regimental reasons and taking into account that various documents –such as Directive 97/43/Euratom, of the Council of the European Union-, on the protection of health from risks arising from ionising radiation in medical exposures and the <i>Guidelines on indications for the correct application of diagnostic imaging tests</i> of the European Commission's Directorate-General for the Environment establish that unnecessary exposure to radiation should be reduced, according to the criterion of this institution set out in paragraph 103 of Annual Report 2013	ACCEPTED BUT NOT IMPLEMENTED
Recommendation of 19 September 2014. Give the appropriate instructions to penitentiary centres so that, when it is considered that sufficient reasons exist to carry out the radiological control and the inmate does not voluntarily consent, the compulsory court order should be requested, without its being possible to consider that the consent of the inmate to such test, granted to suspend mechanical immobilisation, is free, in line with the criterion of this institution set out in paragraph 104 of Annual Report 2013	REJECTED
Recommendation of 19 September 2014. Give the appropriate guidelines to penitentiary centres for them, in the request for a court order for the performance of radiological controls, information be included both on the tests of the same kind made on the inmate in the past year and their results, and on the risks and consequences of the test to be performed, and any other information that may be relevant	ACCEPTED BUT NOT IMPLEMENTED
Recommendation of 21 March 2014. Adopt the measures necessary to afford the organisational structure of the Penitentiary Psychiatric Hospitals of Seville and Fontcalent (Alicante) a more healthcare nature, for such centres to be similar to hospital institutions	PENDING
Recommendation of 21 March 2014. Increase the healthcare personnel of the Penitentiary Psychiatric Hospitals of Seville and Fontcalent (Alicante), to reinforce the possibilities of carrying out individual actions and rehabilitation activities	PENDING

Recommendation of 21 March 2014. Reinforce the preparation of the release and follow up of patients discharged from the Penitentiary Psychiatric Hospitals of Seville and Fontcalent (Alicante) and establish this work field as one of the maximum quality indicators of the assistance provided at said centres	ACCEPTED
Recommendations made to the Office of Secretary of State for Justice	Status
Recommendation of 22 November 2013. Have the Ministry of Justice undertake a legislative initiative for the complete regulation through an organic act of the measures of radiological exploration, including, among other issues, each and every one of the events and requirements of the action, the features that the informed consent of the inmate to the measure should meet, the criteria to be taken into account to apply the principle of proportionality (reasonableness of suspicions, seriousness of the offence...), the need to request a court order for body action if the inmates refuses to take the radiological test and the contents of said request to the penitentiary surveillance judge, etc.	REJECTED
Recommendations made to the Ministry for Domestic Affairs	Status
Recommendation of 20 January 2014. Have the Ministry for Domestic Affairs undertake a legislative initiative for the complete regulation through an organic act of the measures of radiological exploration, including, among other issues, each and every one of the events and requirements of the action, the features that the informed consent of the inmate to the measure should meet, the criteria to be taken into account to apply the principle of proportionality (reasonableness of suspicions, seriousness of the offence...), the need to request a court order for body action if the inmates refuses to take the radiological test and the contents of said request to the penitentiary surveillance judge, etc.	REJECTED
Recommendation of 10 April 2014. Amend the documents of informed consent for the performance of radiological explorations of the Secretary General for Penitentiary Institutions so that, for further safeguard of the rights of the inmates, the medical services of the penitentiary centres inform them in writing, in terms that they are able to understand, sufficiently and adequately, of the nature and effects of the radiological test that it is intended to carry out on them and of the consequences that the carrying in their bodies of foreign bodies or narcotics could have on their health	REJECTED
Recommendations made to the Department of Justice of the Government of Catalonia	Status
Recommendation of 31 January 2014. Give the necessary instructions for the medical practitioners to play a more active role in the control of application of coercive measures, particularly in the application of mechanical restraints, relating both to verification of permanence or cessation of the reasons that founded their adoption (to verify that immobilisations are prolonged only for the minimum time necessary) and supervision of the conditions in which they are applied (state of	ACCEPTED

the cell, of the bed, basic conditions of hygiene...), and with regard to the use of concomitant medication	
Recommendation of 31 January 2014. Give the necessary instructions for photographs to be made of injuries that prisoners whose custody is attributed to that Authority may show and include them in the relevant injury reports, in accordance with the criterion of this institution set out in paragraph 115 of Annual Report 2012 of the National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment	REJECTED

VI.4 Report on *injury reports on people deprived of their liberty*

Recommendation made to the Ministry of Justice	Status
Recommendation of 26 June 2014. Promote the appropriate reforms to regulate, in full and homogeneously, in the entire national territory, the minimum contents of an injury report contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>	REJECTED
Recommendation made to the Office of Secretary of State for Security	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services for: - The public officers providing their services at them to complete such report, which should be available at all healthcare facilities (including those located in penitentiary centres, centres for the internment of foreign nationals, and centres for juvenile offenders). - The relevant copy of the injury report to be delivered directly and without intermediaries to the person concerned, to the duty court and, if appropriate, to the court controlling the deprivation of liberty and for the report to be sent without delay, for the action of the forensic medical practitioner, who is the person who prepares the report that should be of assistance for the judge to establish the origin and consequences of the injuries, not to be carried out very late, when the injuries have disappeared, or when they have materially varied. - The injury report not to be delivered to the persons having the detainee in their custody and, if so, in a closed, sealed envelope, appropriately addressed to the court authority, other than in the events contemplated in paragraph 22 of Annual Report 2012 of the National Preventive Mechanism against Torture (where it is duly evidenced that the obtaining of data is necessary for the prevention of an actual and serious hazard for the public security or for the repression of criminal offences and, in the case of particularly protected data, that they are absolutely necessary for the purposes of a specific investigation; that the request is concrete and specific, since the exercise of massive requests for data is not compatible with what is mentioned above; that the request be duly founded, that its relation to the events mentioned be evidenced); and, in compliance with article 22.4 of Organic Act 15/1999, of 13 December, personal data protection act (LOPD), the data to be cancelled «when they are not necessary for the investigations for which they were kept». - The medical interviews with persons deprived of liberty to be held always in private, without custody personnel present in the area or in areas within sight or within hearing of the interaction between the medical practitioner and the detainee, with the patient free from physical restrictions (shackles or other restraints), other than in cases of reasonable suspicions of risk, in which case the medical practitioner may agree to carry out the exploration with the detainee, recording in writing in the report the circumstances in which it was carried out (in presence of the police, with other persons present, physical restraints, etc.).	PARTLY ACCEPTED

Recommendations made to the National Healthcare Management Institute	Status
Recommendation of 31 October 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	ACCEPTED
Recommendation to the Department of Justice and Interior of the Junta de Andalusia	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	ACCEPTED
Recommendation to the Department of Presidency and Justice of the General Deputation of Aragon	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	ACCEPTED
Recommendation to the Department of Presidency of the Principality of Asturias	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PENDING
Recommendation to the Department of Justice of the Government of Catalonia	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PARTLY ACCEPTED
Recommendation made to the Department of Presidency, Justice and Equality of the Canary Islands	Status

Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PENDING
Recommendation made to the Department of Presidency and Justice of the Government of Cantabria	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PENDING
Recommendation made to the Department of Presidency and Public Authorities of the Government of Communities of Castile-La Mancha	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PENDING
Recommendation made to the Department of Presidency of the Government of Castile and Leon	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PARTLY ACCEPTED
Recommendation made to the Department of Health and Social Policy of the Junta de Extremadura	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	ACCEPTED
Recommendation made to the Deputy President and Department of Presidency and Public Authorities of the Junta de Galicia	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PARTLY ACCEPTED

Recommendation made to the Health Department of the Autonomous Community of the Balearic Islands	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	ACCEPTED
Recommendation to the Department of Presidency, Justice and Spokesperson of the Government of Madrid Autonomous Community	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PARTLY ACCEPTED
Recommendation made to the Department of Presidency and Employment of Murcia Region	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PARTLY ACCEPTED
Recommendation made to the Health Department of the Government of Navarre	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	ACCEPTED
Recommendation made to the Department of Public Administration and Justice of the Basque Government	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PENDING
Recommendation made to the Department of Presidency and Justice of La Rioja Autonomous Community	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	ACCEPTED

Recommendation made to the Health Department of Valencia Autonomous Community	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PARTLY ACCEPTED
Recommendation made to the Department of Government and Justice of Valencia Autonomous Community	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	PENDING
Recommendation made to the Department of Presidency, Government and Employment of Ceuta Autonomous City	Status
Recomendación de 4 de junio de 2014. 1. Establecer, en el ámbito de sus competencias, un modelo de parte de lesiones que contenga los datos mínimos que se recogen en el apartado 5.4 del estudio <i>Los partes de lesiones de las personas privadas de libertad</i>. 2. Dictar las instrucciones oportunas a todos los servicios médicos públicos...	ACCEPTED
Recommendation made to the Department of Presidency and Citizen Participation of Melilla Autonomous City	Status
Recommendation of 4 June 2014. 1. Establish, within the scope of its powers, an injury report form containing the minimum data contemplated in section 5.4 of the report <i>Injury reports on people deprived of their liberty</i>. 2. Give the appropriate instructions to all public medical services...	ACCEPTED

VI.5 Special-purpose places of deprivation of liberty

Recommendations made to the Directorate General for the Police	Status
Recommendation of 26 June 2014. Enter on the Book of Registration and Custody of Detainees all vicissitudes that occur relating to repatriates and, in particular, the telephone communication with their family relatives, thus ensuring the chain of custody and incidents, as established in Instruction 12/2009 of the Office of Secretary of State for Security	REJECTED
Recommendation of 26 June 2014. Make the necessary technical arrangements to include a defibrillator in all repatriation flights, to provide an immediate response to any eventuality that may occur on them	ACCEPTED
Recommendation of 26 June 2014. Make the necessary arrangements with the airline responsible for the repatriation flights for a new specific refrigerator to be included in the flights, to maintain the drugs to be supplied to the repatriates cool	ACCEPTED
Recommendation of 26 June 2014. Issue the appropriate measures for the officers of the CNP who participate in repatriation flights to wear on their vests the word "España" or a distinguishing sign, such as a flag, to permit the nationality of the officers to be identified	ACCEPTED