PART I

RESPONSE OF THE SPANISH GOVERNMENT TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT) ON ITS VISIT TO SPAIN

FROM 10 TO 22 APRIL 1994

Ministerio de Justicia e Interior
Dirección General de Codificación
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RESPONSE OF THE GOVERNMENT CENTRAL AUTHORITY OF SPAIN TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING PUNISHMENT OR TREATMENT AFTER ITS SECOND PERIODIC VISIT TO SPAIN.

December 1995

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RESPONSE TO THE CPT PERIODIC REPORT

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VOLUME V.- Study of "Privation of Freedom: Legal and Operational Problems"

N.B. *Volumes II to V and other annexes referred to in the response are not reproduced in this document.*

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RESPONSE TO THE CPT PERIODIC REPORT

PRESENTATION

According to the importance that the Spanish Government gives to the fulfilment of the obligations taken by the signing of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I am pleased to

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forward the following documents to this Committee:

1.- Volume 1. General response made by the Spanish Central Authority, following the order of questions established in Appendix I to the Report on the periodic visit to Spain carried out in 1994. References to the corresponding paragraphs in the reportare included, as well as to the administrative authority which has provided the information.

2.- Volume II. Nine documents containing the literal responses made by the persons in charge of the competent administrative bodies in relation to the information requested in the Report on the periodic visit to Spain carried out in 1994.

VOLUME III.- Record-Book of Detainees and Custody Book

VOLUME IV.- Forensic Protocol of medical examination of detained persons

VOLUME V.- Study of "Privation of Freedom: Legal and Operational Problems"

Finally, we wish to note that the following publications provided by the General Directorate of Prison Services of the Ministry of Justice and Interior of Spain, are included in the present report:

1.- Activity report of the Secretariat of State of Penitentiary Aaffairs, 1994.
2.- Strategic Plan of Employment of the Secretariat of State of Penitentiary Affairsr.
3.- Draft of the Project of Penitentiary Rules.
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5.- Global policy of action in the instance of drugs in Penitentiary Institutions.

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7.- Handbook of infirmary techniques and procedures for Penitentiary Institutions.

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VOLUME I

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FIRST PART

INFORMATION FROM THE LAW ENFORCEMENT AGENCIES ON TORTURE AND OTHER FORMS OF ILL-TREATMENT.

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FIRST PART.-

INFORMATION FROM THE LAW ENFORCEMENT AGENCIES ON TORTURE AND OTHER FORMS OF ILL-TREATMENT.

I.- CRIMINAL PROCEEDINGS INSTITUTED AND SENTENCES ISSUED IN CRIMINAL JURISDICTION

In the CPT Report 1994, it was expressed the wish to receive information on *the number of cases in which criminal proceedings have been instituted in relation to allegations of ill-treatment of detained persons by law enforcement officials* from 1992 to 1994 *and an account of judgements delivered by the courts in cases involving allegations of ill-treatment by law enforcement officials (i. e. brief description of the facts; verdict;if appropriated, sentence imposed), (paragraph 22).*

According to the information provided by the State Public Prosecutor, the criminal proceedings instituted in relation to the allegations of ill-treatment of detained persons by law enforcement officials in the "Audiencias Provinciales" during the period 1992-1994, are shown in the following table:

CRIMINAL PROCEEDING INSTITUTED IN RELATION TO ILL TREATMENT (1992-1994)

"AUDIENCIAS PROVINCIALES"	NUMBER OF PROCEEDINGS	SUMMARIES ON MENOR OFFENCES		PRELIMINARY REPORTS			PROCESS	SENTENCES	
		Acquittals	Verdicts of guilty	Nº	Dissmissal	Continued		Acquittals	Verdicts of guilty
SAN SEBASTIAN	28			26	25	1	2		2
CUENCA	3	2							
CIUDAD REAL	1			1		1	1		
HUELVA	1			1		1	1		
TARRAGONA	3						3	1	
TENERIFE	2						2	1	1
TERUEL	1						1		1
CASTELLON									1
BADAJOZ	3	2	1						
BILBAO	7						1		1
CACERES	1						1		1
SANTANDER	2						2		2

"AUDIENCIAS PROVINCIALES"	NUMBER OF PROCEEDINGS	SUMMARIES ON MENOR OFFENCES		PRELIMINARY REPORTS			PROCESS	SENTENCES	
		Acquittals	Verdicts of guilty	Nº	Dissmissal	Continued		Acquittals	Verdicts of guilty
GRANADA	1						1	1	
LAS PALMAS							6	3	3
MURCIA				1		1	1		
ZARAGOZA	1			1		1	1		1
VALENCIA			2	9					
LOGROÑO		7	2	1					
TOTAL	**54**	**11**	**5**	**40**	**25**	**5**	**23**	**6**	**13**

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On the data of the above table it is possible to make the following precisions:

a) "Audiencia Provincial" de **San Sebastián**

During this period 1992-1994, 26 previous proceedings of criminal procedures have been commenced. 25 of which have been dismissed and only in the case of the Previous Proceedings 1066/94 of the Examinig Court number 2 of San Sebastián, filed against members of the Civil Guard for alleged ill-treatment on the 5-6-94, are the proceedings in the stage of instruction.

During this period two hearings for crimes of torture had been held, ending with the following proceedings:

- Case Record number 21/84 of the Examining Court number 2 of San Sebastián against Civil Guards for a crime of torture on the 29-7-83. The sentence of the 22-9-92 condemned the accused for being the authors of a crime of torture of four misdemeanours of injuries.

- Preliminary Reports 4098/89 of the Instruction Court Number 1 of San Sebastián against Civil Guards for torture inflicted on the 19-8-82. The sentence of the 2.11.94 condemned the accused for being the authors of a crime of torture.

b) "Audiencia Provincial" of **Cuenca.**

In addition to two summaries on minor offences in which two verdicts of 'non guilty' were pronounced, the Previous Proceedings 761/93 of the Examining Court number 2 of Cuenca were filed, the Court acknowledging the prior Jurisdiction of the Aranjuez Dean Court on the 21-9-93.

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c) "Audiencia Provincial" of **Ciudad Real.**

Between 1992 and 1994 the Previous Proceedings 312/94 of the Examining Court number 2 of Alcázar de San Juan have been instituted, being converted later into the Brief Procedure 130/94. A date for the trial has yet to be fixed.

d) "Audiencia Provincial" of **Huelva.**

During this period only the Brief Procedure nº 44/95 of the "Audiencia Provincial (which was previously the Previous proceedings 174/93) has been instituted. A date for trial has yet to be set.

e) "Audiencia Provincial" of **Tarragona.**

During the years 1992, 1993 and 1994 three criminal proceedings for ill-treatment had been instituted and resolved. In two of them, negligent conduct of the police was considered, in the third, a verdict of 'not guilty' was pronounced.

f) "Audiencia Provincial" of **Tenerife.**

On the 28 July 1995, Section II of this "Audiencia" pronounced a verdict of 'guilty' against two policemen of the Local Police of the City Council of La Laguna, the punishment being two years, four months and one day of "minor prison". The sentence is not final yet because it has been appealed by those condemned.

On the 28 June 1993 the same Section pronounced a verdict of 'not guilty' in relation to a policeman accused, by the Public Prosecutor, of a crime of injuries.

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g) "Audiencia Provincial" of **Teruel.**

In the said period only the Brief Procedure nº 15/92 of the Examinig Court number 2 of Teruel.

By virtue of the sentence pronounced on the 9th December 1992, the "Audiencia Provincial" condemned four members of the Civil Guard for two misdemeanours of injuries caused to the detainee by ill-treatment. The "Tribunal Supremo" partially overturned this decision with the sentence of the 30th December 1993 sentencing each of the four accused only for a misdemeanour of injuries. The sentences have been served and the case was filed definitively on the 1st July 1994.

h) "Audiencia Provincial" of **Castellón.**

During the period 1992-1994, no criminal proceedings had been instituted in relation to allegations of ill-treatment of detained persons by law enforcement officials. On the 20th January 1994, in the Brief Procedure 60/91, Section 1 of the "Audiencia Provincial" of Castellón sentenced three policemen to one month and one day of major arrest for a crime of coercion and to seven days of minor arrest for a misdemeanour of damages.

i) "Audiencia Provincial" of **Badajoz.**

In the period 1992-1994, no criminal proceedings had been instituted in relation to crimes of torture and only proceedings on minor offences were instituted in relation to allegations of ill-treatment of detained persons by law enforcement officials.

j) "Audiencia Provincial" of **Bilbao**

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There is recognition of the sentence of the 26th October 1994, pronounced by the First Section of the "Audiencia Provincial" of Bilbao against members of the Civil Guard, who were sentenced for crimes of the article 204 bis. The "analogical extenuating circumstance of undue delay" was applied, as stated in the sentence, because the facts occurred in 1984.

k) "Audiencia Provincial" of **Cáceres.**

During the period 1992-1994, a criminal procedure had been instituted for torture by a member of the Civil Guard. He has since been sentenced.

l) "Audiencia Provincial" of **Santander**

During this period 1992-1994, two sentences had been pronounced, on the 6th May 1994 and on the 21st september 1994, against two policemen of the City Council of Laredo. They were sentenced as authors of misdemeanours and the punishment was from 15 days to 7 days of major arrest.

m) "Audiencia Provincial" of **Granada.**

There is recognition of the Brief Procedure 21/93 of the Examinig Court Number 1 of Granada, which held the hearing before Section 1st of the "Audiencia Provincial", in this process, an acquittal was pronounced on the 6th April 1995.

n) "Audiencia Provincial" of **Las Palmas de Gran Canaria.**

In this Court exist the following Brief Procedures: Brief Procedure 529/92 of Court nº 7 of Las Palmas, for coercions and injuries, against two members of the Local Police, who were

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sentenced, on the 30-4-92, for a misdemeanour of minor coercion. Brief Procedure 998/90 of Court nº 2 of San Bartolomé de Tirajana, for torture, against an Inspector of the National Police, who was sentenced, on the 16-1-91, to five months and one day of major arrest and to six years and one day of specific disqualification. Brief Procedure 100/91 of Court Nº 2 of Puerto del Rosario, for torture, against a National Policeman, he was acquitted on the 18-5-93. Brief Procedure 2453/9 of Court nº 1 of San Bartolomé de Tirajana, for malicious arrest against members of the Local Police; one of them was sentenced, on the 20-5-93 to one month and one day of suspension. Brief Procedure 2/91 of the Court nº 2 of Puerto del Rosario, for injuries, against two members of the Local Police, they were acquitted on the 22-7-93. Brief Procedure 221/93 of Court nº 3 of Telde for torture against five members of the Civil Guard, they were acquitted on the 2-2-94.

o) "Audiencia Provincial" of **Murcia**.

The Previous Priceedings 279/93 of the Examining Court number 3 were initiated. On the 15-6-95, procedural nullity was pronounced.

p) "Audiencia Provincial" of **Valencia**.

Criminal Court Nº 11 pronounced Sentence 35/94, on the 27th January, for two misdemeanours of injuries, and Sentence 528/94, on the 4th November for a misdemeanour of injuries. Court Nº 18, three Previous Proceedings. Court of Carlet Nº 1, two Previous Proceedings. Court of Gandía Nº 6, three Previous Proceedings. Court of Torrente Nº 5, one Previous Proceedings.

q) "Audiencia Provincial" of **Zaragoza**.

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Examining Court of Daroca initiated the Previous Proceedings 358/92 for a crime of injuries according to article 420. A sentence of 'guilty' was pronounced by the Third Section; the appeal is pending.

r) "Audiencia Provincial" of **Logroño.**

From seven summaries on minor offences, two finished with a verdict of 'guilty'.

- Case Record on minor offences nº 44/93 of Examining Court Nº 1 of Logroño. The Sentence of the 8-9-93 acquitted one of the accused and declared the other as 'guilty'.

- Case Record on minor offences nº 45/94 of the Examining Court of Haro. Acquittal for one of the accused and verdict of guilty for the other, on the 22-6-94.

Besides, the Previous Proceedings nº 464/94 of Examining Court nº 5 of Logroño are in the stage of Summary Procedure nº 14/95.

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II.- GUARANTEES IN THE ADMINISTRATIVE PROCEDURE FOR THE CLARIFICATION OF LIABILITIES DERIVED FROM COMPLAINTS ABOUT ILL-TREATMENT RECEIVED DURING THE TIME IN CUSTODY ON THE PREMISES OF LAW ENFORCEMENT AGENCIES.

The existence of an efficient mechanism, at an administrative level, for the examination of the claims of ill-treatment is considered in the CPT Report of utmost importance; as a consequence the CPT requested **Information on the existing mechanism at the administrative level for examining complaints about treatment whilst in the custody of law enforcement agencies, including full details of the guarantees ensuring the objectivity and independence of their investigations, (paragraph 23);** below, the main substantive and procedural guarantees are described:

1.- Substantive guarantees: prescribed provisions on the acting of the Law Enforcement officials and disciplinary provisions typifying administrative breaches.

Article 5º, 3, b) of the Organic Law 2/86, of 13th March, on Law Enforcement Agencies, provides, as a basic principle the cating of those Law Enforcement Agencies, that of caring for the life and physical integrity of the persons detained by them or in their custody, respecting their honour and dignity.

A) The National Police

Article 27, 3, c) of the above-mentioned Organic Law and Article 6º, 2 of the Royal Decree 884/1989, of 14th July, approving the Rules of Disciplinary Régime of the National Police, define "the abuse of competence and the practice of inhuman, degrading, discriminating and vexatious treatment to the

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persons in their custody as a very serious disciplinary breach".

In the case where criminal proceedings were initiated for the same facts, against the alleged agents of ill-treatment to the detainees, this will not prevent the initiation of the corresponding disciplinary proceedings for the same facts. However, the final decision of the record can only be given when the judgement issued in the criminal field is final; and the statement of proved facts will be binding for the Administration.

B) The Civil Guard

Article 170 of the Royal Regulations of the Armed Forces (Law 85/1978) sets out the duty to"...strictly comply with the provisions concerning the legitime use of force, the respect deserved for human life always being present...". Article 171 adds that "A person's dignity and inviolable rights are values that require the obligstion to be respected and the right to de demanded. No member of the Army may subject any other person to, or suffer himself from, any ill-treatment either by word or act, or any other improper vexation or limitation of his rights."

On the other hand, Article 9.2 of the Organic Law 11/1991, 17th June, on the Disciplinary Régime of the Civil Guard, tefines "...the practise of inhuman, degrading, discriminating or vexatious treatment to the persons in their custody".

2.- Procedural guarantees.

A) National Police

When any police agent knows (either by means of the detainee in the same police report, or by communication made by the

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judicial Authority or by any other channel) of a person in police custody who has been subjected to alleged ill-treatment by members of the National Police, it is fitting to initiate the disciplinary procedure for the clarification of this matter that could be derived from such acts.

The procedure to demand disciplinary reaponsability fromliability to the National Police members and every other aspect relating to this matter are ruled in the above-mentioned Royal Decree 884/1989, 14th July, where the Rules of Disciplinary Régime of the National Police are approved.

In accordance with those Rules, the initiation of the procedure for serious and very serious breaches corresponds to the Director General of the Police, who on knowing of a suspected fact of alleged ill-treatment to detainees by police officials, will be able to decide, before issuing the writ for the initiation of proceedings, the practice of a confidential information for the clarification of the facts.

Once the Proceedings have been initiated, the Director General of the Police will be able to decide, as a measure of caution, the provisional suspension in the functions of the accused in the proceedings.

B) Civil Guard

The procedure to demand the disciplinary responsibility from the Civil Guard members, and all the other aspects relating to this matter are ruled in the Organic Law 11/1991 of Disciplinary Régime of the Civil Guard.

Article 18 of this Law establishes that "Every senior

official has the duty to correct the infractions that he may notice on the part of the lower officials, whether they are subordinated directly to him or not. If apart from this, he thinks they warrant a sanction, he himself will sanction them if he is competent to do so or, otherwise, he will report same immediately to whoever is competent to sanction".

The competence to order the initiation of disciplinary proceedings is attributed by Law to the Director General of the Civil Guard and to the General Officials with command or head positions in the Civil Guard.

Whenever it may be considered necessary to relieve somebody immediately of his functions, the head himself (in provinces the Chiefs of Headquarters) can relieve the personnel who had committed some criminal fact, applying Article 98 of the Royal Ordinances of the Armed Forces (Law 85/1978), as an interim measure before other measures of the relieving of their functions. In the same way and subjected to the initiation of Disciplinary or Governmental Proceedings, for an alleged serious or very serious misconduct within of the Law on Disciplinary Régime of the Civil Guard (Organic Law 11/1991), the competent Disciplinary Authority will be able to decide up to THREE MONTHS OF RELIEF OF, according to the provisions set out in Article 85 of the said Law.

Finally, a proposal may be submitted to the Director General of the Civil Guard for the passing to the situation of SUSPENSION OF FUNCTIONS AND RELIEF FROM POSITION, in pursuance of the provisions set out in Article 102 of the Act 17/89 on the Regime of the Professional Military Personnel, that according to the Fourth Additional Provision, in point 2, of the Law 25/94 on the Régime of the Civil Guard Personnel, will be for a maximum period

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of SIX MONTHS, once the proposal has been favourably decided by the Ministry of Defence.

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III.- POSSIBLE APPLICATION OF THE PROTOCOL ON TRANSFERS TO THE DETAINED PERSONS, APPLIED BY THE PENITENTIARY ADMINISTRATION

The report requests *the points of view of the Spanish Authorities on the possibility of applying to arrested persons a system comparable to the one existing in the Protocol on the Transfer of Sentenced Persons of July 1994. (paragraph 26).*

The aim of the above-mentioned Protocol is to make the security of the transportation compatible with the gratest respect for the inmates' dignity and rights. For this purpose, a series of mechanisms or duties are established in order to guarantee the exact respect for those rights such as:

- the right of the inmate who is going to be transferred, to be informed about a series of rights, including, inter alia, the possibility of stating petitions and complaints and of communicating any other circumstance;

- the duty to complete some specific documents by the Authorities (form on the control of transfers, report of particulars of transportation) that may reflect whatever circumstance occurred;

- the carrying out of an individual medical examination on the inmates to be transferred,both on their departure and on their arrival;

- the existence, at the departments of arrival and departure of all the Penitentiary Centres, of a 'requests and complaints' form at the inmates' disposal.

We have noticed that the application, since 1994, in Spain

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of the Protocol on the Transfer of Sentenced Persons has allowed the obtaining of some very satisfactory results in recent months. In view of this verification, the Ministry of Justice and of the Interior is studying, at present, the possible application of that Protocol to the arrested persons. For this purpose, a working group has been set up, made up of civil servants of that Ministry and professionals of the State Law Enforcement Agencies, who although at first encountered some technical problems in carrying out this task, continue working on this line so that, either by applying the Protocol on transfer or elaborating a new specific Protocol for arrested persons, the citizen's conditions of deprivation of liberty are improved.

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IV.- THE TRANSFER OF ARRESTED PERSONS BETWEEN THE CANARY ISLANDS AND MAINLAND SPAIN

The comments of the Spanish authorities on the conditions of transport between the Canary islands and mainland Spain, (paragraph 27) are as follows:

1. Transfers between the islands and the peninsula are carried out, ordinarily, by ship; however, when medical circumstances demand it, an airplane is used; in the same way, the aeroplane is also used when the number of inmates to be transferred is sufficient to cover the 60 seats of an Air Force "Hercules" airplane.

2. The carrying out of transfers is the competence of the General Directorate of the Civil Guard who should be provided with the necessary material means for their accomplishment in accordance with the provisions set out in Article 3 of Decree 2355/67 of 16th September, where the transportation of arrested persons, prisoners and convicts is ruled.

3. Transfers must be carried out in such a manner that the inmates' dignity and rights, as well as the safety of transportation, are respected, in pursuance of Article 80 of the Penitentiary Rules.

4. There is no evidence in this General Directorate either of the shortcomings pointed out in the CPT Report, or of any possible information in this sense givend by any inmate transferred in the said itinerary.

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SECOND PART

MATERIAL CONDITIONS OF DETENTION

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SECOND PART: MATERIAL CONDITIONS OF DETENTION

I.- SPECIFIC RECOMMENDATIONS ON DETENTION CENTRES

1.- Civil Guard Establishments

The CPT recommends that conditions of detention at the Outer Madrid Headquarters, the Headquarters in Madrid and the La Salve Barracks in Bilbao be reviewed in the light of the remarks set out in paragraphs 29 and 34 to 39 above of the CPT report (paragraph 40).

Concerning the shortcomings noticed in the cells of the Outer Madrid Headquarters, the cleaning of blankets and mattress covers and the improvement in the lighting intensity have been effected. The premises are provided with air-renewing extractors, and as regards hygiene, we can say that the cells are disinfected when they are going to be occupied. Lastly, the periods of detention do not exceed 24 hours and when they are longer, they do not exceed 72 hours.

As regards the detention conditions at the "La Salve" District Barracks in Bilbao, steps have been taken for the general tidying-up of the cells, the rough beds and walls having been changed with white tiles which are easier to be cleaned, and a shower facility has been installed.

2.- National Police Establishments

The CPT recommends that conditions of detention at the Police Headquarters and Area 1 District Police Station in

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Barcelona, at the Central District Police Station (Calle de la Luna) and at Parla Police Station in Madrid, be reviewed in the light of the remarks set out in paragraphs 29, 44 and 45).

a) Cells at the Barcelona Police Headquarters.

The referred to Commission, on noticing the shortcomings in the cells of the premises situated at the said police headquarters (Via Laietana), underlined their filthy condition, scarce lighting and narrowness, in some cases, of the cells, which makes them scarcely appropriate for the overnight stays of detainees.

Periodic reviews are carried out by the Services pertaining to the Police Headquarters, especially by its Medical Service, on the hygienic condition of the cells, the defects being palliated as much as possible.

The fluorescent tubes of the lighting are changed at the moment the malfunctioning is detected; both blankets and mattresses are periodically cleaned by means of laundry services already contracted.

Cells, only in exceptional cases, are occupied by more persons than those recommended by the Commission, with guidelines having been given to those persons in charge of the appropiated Stations so that there are no more persons than those pointed out, spending the night in the cells.

The two transportation carried out (in the morning and in the afternoon) of the arrested persons to the Court on duty, out has led to a reduction in the number of arrested persons spending the night in the cells of the Station; in this way the

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overcrowding of detainees at the Police Premises which could have occurred before, has been palliated.

What we have stated above, regarding the cells of the Police Headquarters, is of application to the Area 1 District Police Station.

b) Central District Police Station in Madrid

This Station is nowadays provided with four cells for men and one cell for women, apart from the entrance hall, toilet facilities and access area.

Their capacity is adequate for no more than fifteen detainees, for this reason it has been decided that when in those cells there are five or more persons whose police proceedings have concluded, these persons be immediately transferred to the General Inspection on Duty, and, in the case where this it is not possible, they are taken to the "La Latina" District Station, next to the other, with the purpose that in no case should a situation of overcrowding of detainees occur.

With respect to the hygienic condition of the cells, they were painted, for the last time, in January last, their cleaning being carried out twice a day. However, the personal hygienic condition of the citizens passing through these by this Station cells, most of the times, is deplorable, with bad body odore, dirty clothes, etc., which, logically, is reflected in a very negative way by the condition of the cells and mattresses, which are intended to be cleaned as quickly as possible.

Regarding the ventilation system, in view of the architectonic characteristics of the building, it is of a forced

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nature, with a compressor for the extraction and expelling of cold and hot air.

c) "Parla" Police Station (Madrid)

The case of this Station is completely incidental, having been immediately put right, and directions given for a better control of the condition of blankets and mattresses.

3.- Basque Autonomous Police (Ertzaintza) Establishments

The CPT recommends that the remarks in paragraph 50 be taken into account when persons are detained at the Sestao and Tolosa stations, as well as in the operation of existing Ertzaintza establishments in general and in the construction of new ones, (paragraph 51).

With respect to the first one of the two specific recommendations, that recommendation concerning the size of individual cells at the stations (paragraph 50), has already been taken into account for the stations where the space designated for detainees zone are in course of construction in the centres depending on the Department of the Interior of the Basque Government. On the other hand, the fitting of those already existing areas presents more problems of material implementation. The Department of the Interior has created a working programme where they have intended to conjugate together the present state of the centres, as regards the surface area of the individual cells and the number of those necessary for the Station, and the budgetary allowance that this reform requires in each case. The aim is such that, in general terms, the cell surface of the Ertzaintza centres is not under 7, with a minimum useful width of 2.10 metres and a minimum height of 2.50 metres.

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The implementation of the prepared programme requires a temporal minimum period of three years, during which time the reform of the centres will be accomplished in terms of the situation they present. It is expected that the work, as a whole, could be finished by December 1998. Meanwhile, when persons are detained at the Sestao and Tolosa centres, the remarks made by the Committee in paragraph 50 of the report will be taken into account, which, at the same time, will be applied to other centres which may present a similar situation.

4.- Municipal centres of detention. Municipal Police Headquarters in Bilbao

In the CPT Report it is pointed out that ***the matters stated in the report on the 1991 visit concerning cellular accommodation at the Municipal Police Headquarters in Bilbao be addressed without further delay, (paragraph 53)***. In this respect, the Mayor of Bilbao has informed the Competent Authority that the relevant instructions have been given so that the shortcomings pointed out in the writ are remedied.

As a consequence, the work in the preparing of the corresponding technical project has been initiated, and after the entry into force of the municipal budget for this year, on the 7th June of this year, the corresponding amount will be given to its execution when the draft of the said project is finalised.

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II.- OTHER RECOMMENDATIONS OF A GENERAL CHARACTER AND INFORMATION REQUESTED BY THE CPT

1.- Relevant measures to allow detained persons to fulfil those natural and personal needscomply with the needs in private

According to the report, *appropriate steps must be taken to allow detained persons to comply with the needs of nature in private, (paragraph 52)*. To achieve this aim, both the establishments which would be built and those already existing will guarantee the detainee privacy and personal security. In the establishments functioning at present, the necessary repair work

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will be arried out at the same time as those work concerning the cell surfaces area witin the time limits set for each centre.

In the same way, the competent Authorities have the obligation of taking the *appropriate steps to ensure that the conditions of detention in the establishments of law enforcement agencies meet all the requirements indicated in paragraph 29,* concerning size, lighting, ventilation and equipment, as indicated in paragraph 57.

2.- Arrangements for providing food

The existing arrangements will be reviewed for providing food to persons detained by the law enforcement agencies, in order to ensure that such persons receive food at appropriate times, including at least one full meal every day.

In accordance with the sources of the Spanish Legal System, some aspects included in the Penitentiary Rules concerning the food of inmates in Penitentiary Centres are applicable to the subject concerning food to persons detained on police premises.

A) Premises of the General Directorate of the Police

The persons detained at police Premises are provided with food by the National Police officials in charge of their custody. The food to persons detained, as a general rule, consists of three rations distributed in the form of breakfast, lunch and dinner, provided by the General Directorate of the Police. The cutlery is usually disposable, and the Premises are generally provided with apparatus to heat meals, which is generally facilitated by contracted firms.

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B) Premises of the General Directorate of the Civil Guard

The maintenance of persons detained by the Civil Guard is the responsability of the Administration and, consequently the amount necessary appears in the State Budget to meet the corresponding expenses. As a general rule, the bills for the meals served by the different units where arrests occur, are sent to the Division of Common Expenses, where they proceed with their payment, charging the quantity to the corresponding budgetary chapter.

3.- Information on regulations or guidelines issued to municipal authorities concerning cellular accommodation and the facilities to be offered to persons detained. (paragraph 53)

Conncerning the possibility of providing guidelines to municipal authorities concerning cell accommodation and the facilities to be offered to persons detained, we must point out that, by virtue of the principle of local autonomy, which regulates the administrative relations in our constitutional system, there exits legal impossibility for the central Government or for the Autonomous Communities Governments to provide regulations on matters of municipal competence.

In this sense, the Spanish Constitution in Article 137 points out that *"The State is organized territorially into municipalities, provinces and any Autonomous Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests."* This provision contains, therefore, the recognition, by the constitutional legal system, of the municipality and the province as territorial systems. The Constitutional Court, in the Judgement of 2nd February 1981 makes two fundamental statements:

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- *"The general bodies of the State do not exert the totality of public power, because the Constitution provides, in accordance with the vertical distribution of powers, the participation of the territorial entities of different rank in the exertion of power"*.

This same judgement continues stating: as *"the autonomy principle is compatible with the existence of a control of legality on the exertion of competence, although we understand that the provision of generic and undetermined controls place the local entities in a position of quasi-hierarchical subordination or dependence from the State Administration which does not fit in with the principle."* adding that *"controls must be referred to cases where the exertion of the local entity competence may influence general interests which are concurrent with the entities themselves"*.

By means of Law 7/85, of 2nd April, Regulating the Bases of the Local Régime, the institutional guarantee of local autonomy is developed, intending to combine a proper balance among the three administrations: local, autonomic and central administrations.

Articles 25 and following of Law 7/85 regulate the municipal competence, specifically, subsection 2º, letter a) of Article 25, which gives them the competence about "Security in public places".

We must also mention the Organic Act 2/1986, of 13th March, on State Law Enforcement Agencies, whose Title V is totally dedicated to Local Police Groups.

In view of the above stated, it is quite clear that, in the

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Spanish legal system, the State Central Administration cannot provide regulations on matters which are of municipal competence.

However, in my position as Central Authority, I think I can state that the next publication of the report on the CPT's second periodic visit to Spain will contribute, no doubt, to the achieving of greater care on the part of local authorities concerning the treatment to the detainee and the facilities to be offered to persons detained.

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THIRD PART

SAFEGUARDS AGAINST THE ILL-TREATMENT OF DETAINED PERSONS

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THIRD PART: **SAFEGUARDS AGAINST THE ILL-TREATMENT OF DETAINED PERSONS**

A) RECOMMENDATIONS

1.- Reduction of the period provided for in Article 520 (2) of the Criminal Procedure Law, access to a lawyer and confidentiality of conversation.

According to the CPT report, *the period during which a detained person can be denied the communication provided for in Article 520 (2) (d) of the Law on Criminal procedure will be shortened substantially; in the Committee's opinion, a period up to a maximum of 48 hours would strike a better balance between the requirements of investigations and the interests of detained persons, (paragraph 60); the Spanish authorities will comply with the recommendations in the sense that persons detained by the law enforcement agencies be granted the right of access to a lawyer as from the outset of their detention. It being understood that in the case of a detainee held incommunicado, that lawyer may be officially appointed on his behalf.; that the right of access to a lawyer should include inter alia the right to contact and to be visited by such lawyer, in both cases under conditions guaranteeing the confidentiality of the detainee/lawyer conversations, (paragraph 64);*

With respect to Article 520 bis of the Criminal Procedure Law, whose existence in the Spanish legal system is the reason for these CPT recommendations, I would like to make some precisions.

Article 52 of the Constitution allows governmental detention to be extended for more than 72 hours, which is the general limit

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provided in Article 17.2 of the Constitution, and this possibility of extension is set out as a "suspension" of the right recognized in that article.

The suspension of the right is exclusively limited to that extension of the governmental detention time and neither alters the procedural meaning of that detention nor diminishes, in principle, all the other guarantees are of use of the detainee. The extension of governmental detention over 72 hours cannot be initiated or carried out, in accordance with Articles 17.2 and 52.2 of the Constitution, **without the prior and express judicial authorization.** Besides, the fixation of the maximum period of duration of this extended detention corresponds to an Organic Law. **The legislator has a margin of discretion in this respect, but not a freedom of option allowing him to extend the duration of this exceptional situation, at his own discretion.** In this way, both Article 9.3 of the International Agreement on Civil and Political Rights, and Article 5.3 of the European Convention for the Protection of Human Rights and Fundamental Liberties, continue being the reference points; both of them having been ratified by Spain, and they require that the detainee be handed over to the judge "within the shortest possible term".

All of this means that the legislator must appraise both the requirements derived from the investigations concerning the action of armed gangs or terrorist elements, and the application of the criterion of strict need and of the shortest possible term.

In this sense, the Constitutional Court, in its Judgement 199/87 of 16th December, pointed out that ***"the extension of detention up to an additional term of seven days (as provided in Article 13 of the Organic Act 9/84), did not meet the***

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requirements of Article 17.2 of the Constitution".

We must point out that in Article 17.2 of the Constitution *("Preventive detention may last no longer than the time strictly required in order to carry out the necessary investigations aimed at establishing the facts; in any case the person arrested must be set free or handed over to the judicial authorities within a maximum period of seventy-two hours".)*

a) a concept, relative in the end, as that of need, is reinforced by the adverb 'strictly', which is always obliged to be interpreted it in the most restrictive possible way.

b) In practice, most of the time it is impossible to appraise from the commencement, whether a person's detention is or its extension is or not strictly required for the probable success of the investigation, or to foresee whether the detention will yield or not some useful result or will become inefficient.

c) The only reason for the detention is that of carrying out enquiries which tending to the clarification of facts.

In the same way, the establishment of measures extending the time of the governmental detention, is obviously contrary to the European Convention on Human Rights; these measures can be decided when, under Article 15 of this same Convention, a situation occurs of such kind that a State fights against a danger that threatens the nation, since in such a case "the state would be helpless if it was required to do everything at the same time, to adapt all its means of action to measures of protection compatible with the requirements of the functioning of public powers and the reestablishment of civic peace. (This doctrine is contained in the Judgements of the European Court on Human Rights

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of 18th January, 1978 and 1st July, 1981).

In any case, it must be clear that, according to the legislation in force in Spain, the express authorization of the competent Judge, which must be given by means of a reasoned decision, is the requirement demanded for the extraordinary time of detention.

Within the rules in force, it is quite clear that the Police only have powers to request the extension and never without grounds, but in a well founded way, because the Law is compelling in this respect ("provided that"). With the Police having requested the extension, if within the ordinary term they do not receive a judicial reply, the detainee must be released. The judicial authorization is *"conditio sine qua non"* for the detention extension over 72 hours. In this respect, and so that the competent Judge can have immediately the greater number of elements of reason to decide on the detainee's fate, the last paragraph of article 520 bis allows him an efficient possibility of information, and he can require it personally through delegation from the Examining Judge of the district where the detainee is, in order to know about his condition.

On the other hand, and as regards the incommunicado detention, the Spanish Constitutional Court, in the Judgement of 16th December 1978, stated that the unlimited and extensive use of incommunicado of the detainee by the police could harm some fundamental rights: "therefore, in our legal system, the decision of incommunicado always corresponds to the judicial organ even in case of governmental detention; but this does not exclude nor does it prevent that the final decision in this respect need be issued by the judicial organ. That is to say, a previous decision of an interim character given by the governmental authority, but

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subjected and conditioned to the simultaneous request of confirmation by the judicial organ, is justified in order to seek the efficiency of the measure, this being a sufficient guarantee for the interested person's right..." . The Constitutional Court points out also that it does not desagree with the Constitution that the governmental Authority can provisionally order, when necessary, the detainee's incommunicado, although requesting at the same time the confirmation of this measure from the judicial organ.

In view of the above stated, we can deduce that the preventive detention and incommunicado régime established in the Spanish legal system, has been thoroughly analyzed and studied not only by the Parliament, which regulated same, but also by the Constitutional Court, aimed at avoiding unnecessary limitations of citizen's rights, and trying to seek a fair balance between efficiency in the fight against crime and the respect for citizen's rights.

However, in my position as of Central Authority responsible for the enforcement of the European Convention on Prevention of Torture, I want to state clearly my firm commitment to study in depth the recommendations stated by CPT on the preventive imprisonment and the detainee's incommunicado régime, especially the proposal of paragraph 74 of the report, on the transport of detained persons in the presence of the competent judge before he takes a decision in accordance with Section 520 bis, paragraph 1, on the subject of extending the detention time over 72 hours.

2.- Medical examinations

The Spanish authorities will comply with the recommendations in the sense that: every medical examination of the detained

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persons be conducted out of sight or even out of hearing of law enforcement officials; the results of all the medical examinations as well as the relevant statements of the detained person and the doctor's findings, will be formally registered by the doctor and they will be available to the detained persons, (paragraph 65); the detained persons, who are not held incommunicado, must be informed of their right to be examined by a doctor of their own choice, (paragraph 67); and the detained persons held incommunicado must be expressly informed about the possibility open to them to be examined by a second doctor, (paragraph 68);

The General Directorate on Codification and on International Legal Cooperation, as Central Authority in charge of the enforcement of the European Convention on the Prevention of Torture and of the most part of International Treaties of a humanitarian content, ratified by Spain, tries to comply, to the extent of its possibilities, with the recommendations made by the International Organizations, (especially the United Nations and the European Council).

In this way and with the intention that the legal provisions that rule the performance of forensic doctors in Spain be adapted to the internationally recognized techniques and proceedings, we have just concluded the draft of a **"Protocol of medical examination for detained persons"** which in the near future will be enforced by these doctors and which is inspired, as regards its content and structure, in the **United Nations manual on efficient prevention and investigation of extra-legal, arbitrary or summary executions**. Such Protocol, a copy of which is attached, attemps to gather the remarks stated by the European Committee on the Prevention of Torture (CPT), enriched with the contributions made by the Spanish forensic doctors who have

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actively participated in United Nations humanitarian work.

This Protocol for the examination of detained persons has the intention of keeping the medical information regarding the detainee stored by the forensic doctors in an homogeneous way in all cases, and that such information appears in the clearest and most concise way possible.

In the content of this new protocol, the following parts are differentiated:

1. **Identification of the examined person.** It intends to leave a clear record of the filiation of the detained person subjected to medical examination, as well as place, date and time where such examination takes place, and of the court and case pursued against the person deprived of liberty.

2. **History of the detention.** This part has the intention of assisting forensic doctor so thet he can know and record the circumstances in which the detention of the person whom he has to examine, took place, in such a way that, if it were a violent detention, the type of violence occuring would be specified.

3. **Examination of the detainee's clothes in case they are the same he was wearing at the moment of the detention.** The forensic doctor must record in this section every piece of information regarding the stains, tears, rips, etc.. detected in the detained person's garments.

4. **Clinical history,** where the information regarding family and personal medical background of the detainee, toxic habits and special treatments received by the detained person at the moment of his detention will be recorded. In the same way,

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the results of the medical examination will be recorded and, just in case, the prescribed treatment or the petition of complementary medical tests whose carrying out is considered relevant by the forensic doctor, including the order of admittance in hospital.

5. **Particulars stated by the detainee and findings in connection with ill-treatment and/or torture, excepting illnesses.** This subsection is of great importance since in view of the information provided to the forensic doctor by the detained person, at the moment of the medical examination, on possible ill-treatment received, the forensic doctor not only must record in the protocol what the detainee had stated to him but must also try to gather documentary evidence in the way he considers proper, about the truth of such statements.

6. The inclusion in such Protocol of a **"Sheet of development"** deserves a special mention; it will be used every time a new examination is conducted on the same detained person. In this way, the first time a detainee is examined, the general protocol will be used and in every subsequent medical examination, the sheets of appraisal or follow-up will be filled in (one in each examination). With this measure, it is intended that any doctor who examines the detainee, should leave a record of the results of his examination in the Protocol and, at the same time, know in detail the results of the former medical examinations carried aout on the detainee.

3. Conduct of interrogations and custody records

The Spanish Authorities will comply with the recommendation of drawing up a code of practice for the conduct of interrogations by law enforcement officials so that the use of

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ill-treatment be prohibited, and this code will regulate, inter alia, the following: the systematic informing of detainees about the identity (name and/or number) of those present at the interrogation; the permissible length of an interrogation; rest periods between interrogations and breaks during an interrogations; places in which interrogations may take place; whether the detainee may be required to remain standing while being interrogated; the interrogation of persons who are under the influence of drugs, alcohol, medicine, or who are in a state of shock. It should also be required that a record be systematically kept of the time at which interrogations start and end, of the persons present during each interrogation and of any request made by the detainee during the interrogation. The position of specially vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be the subject of specific safeguards, (paragraph 70); the Spanish Authorities will reconsider its recommendation concerning the possible introduction of a system of electronic recording of interrogations by law enforcement officials, (paragraph 71);

The Spanish Authorities will develop a single and comprehensive record to be used by law enforcement agencies, (paragraph 76).

The CPT points out here, as possible lines of action, the introduction of a system of electronic recording of interrogations by law enforcement officials, the drawing up of a code of practice for the conduct of interrogations and the unification of the custody records of detainees.

Regarding the first proposal, we must point out that the budget availability does not allow the installation of systems for electronic recording of interrogations by the General

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Directorate of the Police or the General Directorate of the Civil Guard at the police Premises.

With respect to the CPT recommendation on the drawing up of a single and comprehensive record to be used by law enforcement agencies, I have the pleasure of informing you that, on 21st November, 1995, **The Guideline nº 14/1995 of the State Secretariat of the Interior, regulating the "Registry-Book of Detainees" and the Custody-Book of detainees"** became enforced, with the purpose of being able to know in a reliable and documentary way, the incidents which may happen in the period of time from when a person has been deprived of liberty until this person is handed over to the judge or is released.

Until the enforcing of this Guideline, the incidents and vicissitudes which occurred during the stay of a detained person at the police premises, were reflected in a series of registry-books whose format and content were not uniform in the different State Law Enforcement Agencies, and for this reason their unification has been advisable, in order to guarantee the legal enjoyment and protection of the detained person's rights.

The implementation of this new registry-book system entails two basic innovations:

1. All the Law Enforcement Agencies will use the same format in the books used to record the detention and incidents that may happen on the police premises during the time the detainees remain there.

The premises or Units of the General Directorate of the Police and of the Civil Guard where detention can occur, must posses the above said books for their formal use.

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2. They will use, only and exclusively, the two above-mentioned books, whose use is declared compatible with the registry-book referred to in Article 20.3 of the Organic Law 1/1992 of 21st February, on the protection of people's security.

With this measure, it is sought that there be a proper documentary support to keep track of those vicissitudes that may occur from the moment of any person's detention until his release or handing over to the judge, with the purpose of guaranteeing the rights they are granted by the Constitution.

The new Registry-Book of detainees will provide the following information:

1. Premises or Unit where the detained person is.
2. Number of Order given to the detainee.
3. Date and Time when the detained person enters on the premises.
4. Detainee's filiation: surname, first name, ID or passport, year of birth and nationality.
5. Motive, reason or generic cause that has given rise to the detention.
6. Number of personal identification of the official who has brought the detainee onto the detention premises and identification initials of the force to which he belongs.
7. Information on whether the detainee has been examined or not by a doctor before his internment on the custody premises and, if appropriate, the doctor's registration number or name of the medical centre where he has received care.
8. Bar number of the lawyer who has rendered him "legal assistance".
9. Authority or Court to which the detainee is handed over upon his leaving the police premises.

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10. Number of the police report or official letter accompanying the detainee when he leaves the detention centre.

On the other hand, through the information provided by the Custody Book, we will know of any kind of incident that may have occurred during the time the detainee stayed at the detention centre.

In this way, the personal identification of the official in charge of the detainee at the custody place and the latter's belongings will be reflected; also, the list of those belongings, the visits he has received, the medicine supplied to the detainee in pursuance of the corresponding doctor's prescription, the effects on the detainee as well as any other incident different from the above-mentioned and what the official in charge considers necessary to be pointed out, will be reflected.

The Registry and Custody Books must be kept on the premises or Units where they are being engorced during a period of five years from when the proceeding of conclusions had been effected, subsequently being passed to the corresponding file.

Finally, and in connection with the suggestion made by the CPT on the drawing up of a code of practice for the conduct of interrogations, I have the pleasure of informing you that, once the task of drawing up the new models of the above-mentioned Registry and Custody Books, the task leading to the drawing up of that code of practice was initiated under the direction of this Central Authority. It is a task of great technical difficulty which, first of all has led us to carrry out a wide study on the legal and operational problems derived from the citizen's deprivation of liberty by Law Enforcement Agencies.

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In this study, a copy of which we are enclosing herewith, several chapters are devoted to the analysis of the requirements of ordinary detention for offence, to the régime of stay, transfers and conditions of custody, to the exercise of rights by the detainee and to the basic principles for the performance of Law Enforcements agents.

On the basis of the information collected in this study, this Central Authority wishes to continue the work so that, as soon as possible, we will be able to comply, in the most proper way, with the CPT's recommendation of drawing up a code for the practice of interrogations, since, in view of the technical difficulty of this subject, a longer period of time is required for its preparation.

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B) REQUESTS FOR INFORMATION

Views of Spanish Authorities on:

- the fact that law enforcement agencies systematically request that persons arrested in relation to terrorists activities be held incommunicado and that the competent judges systematically grant such requests;

- the possibility of requiring that a decision ordering that a person be held incommunicado should be reviewed at a specified moment (for example, when a request that the detainee's period of detention be extended is examined), (paragraph 62);

With the aim of clarifying the interpretative doubts that the CPT apparently has as regards some aspects of Spanish Law, I would like to make the following precisions:

A) Article 24.1 of the Spanish Constitution recognizes every person's fundamental right to effective protection from the Judges and the Courts in the exercise of his legitimate rights and interests, and in no case may he go undefended. In this way, the Constitutional Court by its Judgement 56/87 of 14th May, points out, that "*the right to this effective judicial protection includes the right to obtain by way or answer to the party's pretension, a legal grounded decision, that is to say, laying out the reasons of the decision...It is quite clear that the interested person or party has to know the decisive reasons, the grounds of the decisions that affect him, since they are necessary instruments for a possible appeal; in the same way,it is logical and reasonable that, in general, he should know what procedural means can he use, requiring information about same.*

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But the above-mentioned, which is valid in general terms, requires, however, some clarification. From the constitutional approach, it has been said that a detailed answer to every allegation made by the parties may not be demanded, neither is it possible to demand to the examining or criticising the interpretation and application of Law, nor, in short, to qualify the form or structure of a judicial decision, except that when, of course, by doing so, a recognized constitutional right is clearly infringed or left without possible remedy, causing a situation of lack of defence or of ajudicial lack of protection.

On the other hand, we must remember that the Criminal Procedure Law, in Articles 502 and following sections, establishes clearly the need to decide the detainee's incommunicado through a **Writ laying out the reasons** made by the relevant judicial Authority. In the same way, Article 141 of the said Law provides in its last subsection that the writs be drawn up founding on specific Resulting and Consideration clauses, limited to the question which is decided.

Finally, everybody knows, that when the Judicial Authority adopts a measure of a cautious nature, this measure is, by its own nature, subject to revision.

Concerning the comment made by the CPT on the Judicial Authority performance, this Central Authority reminds that in our constitutional system, the independence of the judges in the exercise of their assigned functions and their freedom against any kind of interfering, constitutes the cornerstone of the constitutional democratic State of Law.

This judicial independence, is clearly defined in our Constitution - Article 117.1- *"Justice emanates from the people*

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and is administered on behalf of the King by Judges and Magistrates of the Judiciary who shall be independent, irremovable, liable and subject only to the rule of law." - as well as in the Organic Law 6/85 on Judicial Power.

In this context, we must state that our Constitution completely guarantees the independence of Judicial Power and with this purpose it creates an organ, the General Council of the Judicial Power, which is constitutional and independent.

On the other hand, and with regard to the CPT's comment on the fact that "law enforcement agencies systematically request that persons arrested in relation to terrorist activities be held incommunicado and that the competent judges systematically grant such requests", I consider that I have the obligation to deny such affirmation on the basis of the following data provided by the State Secretariat of the Interior on <u>persons detained for alleged terrorist activities during the years 1994 and 1995:</u>

<u>YEAR 1994.</u>

1. Arrested persons 119

Persons held incommunicado 105
Non-incommunicado 14

Extension of detention 45

48 hours of detention 22
24 " " 14
Between 12 and 24 hours of detention 2
12 hours of detention 1
Under 12 hours 6

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YEAR 1995:

1. Arrested persons	**133**
Persons held incommunicado	**129**
Non-incommunicado	**4**
2. Extension of detention	**33**
48 hours of detention	**3**
Between 24 and 48 hours of detention	**19**
24 hours of detention	**3**
Between 12 and 24 hours of detention	**2**
Under 12 hours of detention	**6**

- Clarification on the period of time within which the notification of the arrest must be given to the competent judicial authorities/public prosecutor (paragraph 75);

One of the most important guarantees for the detained person is the security of being released or handed over to the judge within a maximum period of time 72 hours. With this, a maximum limit is secured for a person remaining in police custody. We must point out, however, that the maximum term provided by the Constitution is not, actually, 72 hours: this is a maximum **time limit.** The Constitution points out that the detention "may last no longer than the time strictly required in order to carry out the necessary investigations aimed at establishing the facts". This, "strictly necessary time", is the maximum period of time, although it is undetermined. It is not constitutionally admissible, therefore, that with the establishment of facts having been carried out, the governmental detention continue. In the same way, it is clear that if the detainee states that he refuses to declare, he must be immediately handed over to the

judge, since governmental detention has no meaning if there is not going to be a statement. The Supreme Court, having recourse to this interpretation, deemed that the sentence of a municipal agent for illegal detention was according to the Law; even though the municipal agent had established the facts and had stated that he only intended to declare before the judge, he extended the governmental detention.

The maximum period of detention is marked out, therefore, by the time required to clarify the facts, and the seventy-two hours are an impassable limit even when that clarification has not occurred.

Lastly, we must point out that the time limit of detention provided by the Constitution, is a maximum period, and in this way, in no way is the legislator prevented from establishing another inferior limit. In fact, Article 496 of the Criminal Procedure Law sets out that "the particular person, Authority or agent of the judicial police who arrested a person... must release him or hand him over to the nearest Judge within the next 24 hours".

The term for the detention becomes extended, however, in specific cases: offences committed by terrorist elements or armed gangs; in such cases Article 520 bis 1 of the Criminal Procedure Law makes it possible for the detention to be extended forty-eight hours more; this extension must be decided by the judge with a reason-based decision before the end of the police's seventy-two hours; therefore it cannot be considered, in fact, as a governmental detention, since such decision is the competence of the judge.

- *persons who are detained for the purposes of*

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identification must be informed of the rights they are granted, in accordance with the Organic Act 1/1992 on the protection of people's security (paragraph 79).

Article 20 the Organic Law 1/1992, provides, in its four subsections, the following:

"1. The Law Enforcement officials may demand, in the exercise of their functions of investigation or prevention, the identification of persons and they may carry out the relevant verifications, either in the street or in the place where the requirement had been made, provided that the knowledge of the required person's identify was necessary for the performance of functions of the protection of security that the agents are entrusted by the present Law and the Organic Law on Law Enforcement Agencies.

2. In the case where the identification was not attained by any means, and when it becomes necessary for the purposes mentioned in the above subsection, the agents, in order to prevent the commission of an offence, may require those who could not be identified, to accompany them to some close-by premises that are provided with the proper means to carry out the proceedings of identification, for this sole purpose and for such time as is deemed necessary.

3. In the above-mentioned premises, a Registry-Book will be kept where the proceedings of identification carried out will be recorded, as well as their reasons and duration, and this Book, at any time, will be at the disposal of the competent judicial authority and of the Public Prosecutor's Office. Notwithstanding the above-mentioned, the Ministry of the Interior will forward, periodically, an extract of the proceedings of identification to

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the Public Prosecutor's Office.

4. In the cases of resistance or unfounded refusal to be identified or to carry out the verifications or practices of identification in a wilful way, the provisions set out in the Criminal Code and in the Criminal Procedure Law will be applicable.".

The interpretation of the scope of this Article has been the subject of analysis by the Constitutional Court, which, in its Judgement 341/1993 has made the following clarifications:

A) The proceeding of identification at the police premises, is a form of deprivation of liberty. "*the measure of identification at the police premises supposes, due to circumstances of time and place (transfer of the required person to the next police premises where he will stay during the time necessary), a situation which goes beyond the mere immobilization of the person as an instrument of prevention and investigation, and for this reason it must be considered as a form of deprivation of liberty. Evidently, we are, thus, fronted with one of those cases referred to in Article 17.1 of the S.C., whatever the person's disposition in the face of the received order may be; this verification giving its meaning to the character of Organic Law in Article 20.2 ...*"

B) As regards the persons who can be subject to this kind of police detention the High Court points out that: "*...it may only be effected on non-identified persons from whom it can be assumed with good reason and motive that they are found in a disposition to commit a criminal act or from those persons who had already incurred in administrative 'infraction'; in this way, the Law establishes an instrument that can be used in cases where*

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the need for identification arises from the need to prevent an offence, a breach or to recognize an offender of the law in order to sanction him".

C) On the other hand, and regarding the application of the guarantees provided in Article 17.2 and 3 of the Constitution, the Constitutional Court states that the proceeding of identification must be carried out "**in an immediate way and without any delay**" and in the same way the application of this measure will be carried out in "**close-by premises and which are provided with adequate means in order to effect the identification proceedings**". The Court adds that the application of the "habeas corpus" instrument is a judicial mechanism to prevent the distortion of the proceeding due to an hypothetical abusive extension of the citizen's stay at the police premises.

D) Lastly, and concerning the rights granted to the person detained to be identified, the requirement that a person, who has been obliged to accompany the police in order to be identified, must be informed, in a direct and immediate way, of the reasons justifying the requirement in question, is beyond any reasonable doubt. Failing to keep a registry-Book where, inter alia, the duration of the measure must be recorded, implicitly demonstrates - according to case law opinion- that the citizen deprived in this way of liberty, has to be informed of the reasons for this deprivation. However, this being so and the fact that we are fronted with a form of deprivation of liberty, does not enable us to defend the observation of the guarantees set out in number 3 of Article 17 of the Constitution (mainly the right not to make a statement and to the lawyer's assistance). In the view of the Constitutional Court, and always paying attention to the object of the police proceeding, the above-mentioned constitutional guarantees are not applicable to this case, since the only

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purpose sought by the measure is the identification of the required person. The Court points out that "...*the rule does not allow in any way, to interrogate or to investigate the person on issues other than those strictly concerning his identification (in order to get the personal details, referred to in Article 9.3 of the same Organic Law)*".

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FOURTH PART

DETENTION CENTRES FOR FOREIGNERS

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FOURTH PART: **DETENTION CENTRES FOR FOREIGNERS**

A) RECOMMENDATIONS

1. *"On the Detention Centre for foreigners at Moratalaz".*

The functioning of the Centre of Moratalaz, will be reviewed without further delay, in the light of recommendations and observations made in paragraphs 68 to 78 of the report on the first periodical visit (paragraph 82).

There exists an official commitment to repair and improve the Centre, although the work has not been initiated due to the lack of a sum of money allocated for this purpose in the budget.

With regard to the access to the yard, every inmate has the possibility to go there during the morning because the afternoons are reserved for the visits of relatives and lawyers.

In relation to the problem of languages, the Centre now has an Arabic interpreter, and for the rest of the languages the Centre uses, and in the most reasonable and efficient possible way, the services of the interpreters of the "Brigada Provincial de Extranjería y Documentación" on which the Centre depends.

2.- *On the Detention Centre for foreigners at Barcelona.*

The recommendations and observations made in the report on the first periodic visit on the selection of the policemen for vigilance in the Detention Centres and the carrying of -and recourse to- truncheons will be taken into account (paragraph 84); - there will be no more than six inmates in the 16 m^2 cells,

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(paragraph 85); - measures will be taken immediately in order to assure that the people in the Centre are allowed to exercise in the open air at least one hour per day, (paragraph 86); - the defects observed in the recreational activities and the information provided will be rectified (paragraph 87).

To comply with the recommendations, there is a project, already planned, for the improvement of ventilation through the installation of more potent extractors in the skylight and in some lateral windows.

The civil servants working in this Centre have been chosen especially for this purpose. They work without any armaments or protection. They treat the inmates correctly, attending their demands and the language, except in some exceptional cases, is not a problem.

The open air zone is being studied and planned. If an inmate, on an individual basis, asks for such, he can go to the external yard with the due supervision.

The lack of recreational activities has been rectified, the inmates can practise some games, once they are compatible with the security of the area.

B) REQUESTS OF INFORMATION.

1.- Information on the health-care service provided for people detained in the Detention Centre for Foreigners at Barcelona (paragraph 89);

The medical attention is guaranteed by a competent medical staff, not only during the daily visits in the mornings and

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afternoons, but at any other moment the inmates need it.

2 - More information on the improvements made in the transit detention service, in Barajas airport, Madrid, (paragraph 92);

In relation to the Special Transit Area of Barajas Airport, in the month of June a new Room will be opened for the asylum petitioners and for the accommodation of those citizens not admitted into Spanish territory.

With a common entrance, it has two modules perfectly separated, with big windows, therefore, benefiting of natural light.

The module for asylum petitioners is composed of:

- a police checkpoint, with a toilet for the civil servants;

- a living and dining room, with six tables and their respective chairs and armchairs;

- toilets with toilet seats and showers, they also have tables for the changing of baby napkins;

- two public telephone booths;

- a T. V.;

- hot drinks and non-alcoholic vending machines;

- a nursery room, with four cots and gamesfor children;

- six rooms, with four beds per room in the form of two bunks;

- a room for the user's luggage;

- The second module, designated for foreign citizens not admitted, has the same distribution, except for the room for the police checkpoint which will be occupied by a social worker, the position of which, up to now, has not been filled, and that will serve also to keep material for the attention of children; and except also the nursery room which in this module will be reserved as a bedroom for ill people. They have the same facilities such as telephones, living room, dining room, etc.

Each module has a surface area of 387 square metres, of which 30 metres are for the dining room, 15 metres for every bedroom, and 24 metres for the toilets.

The general conditions with regard to food, health services, etc they have until now been maintained, considering that these people remain the least time possible, until they are returned to their country.

3. On the alternative location for the settlement of persons detained under the Aliens Law after the closure of the Tarifa Centre (paragraph 94);

After the closing on the 26th October 1993 of the Tarifa Centre of Internment, which was carried out due to its precarious installations and deficient conditions of hygiene and security, the capacity of accommodation of foreigners waiting for their expulsion has not decreased, because on the 16th November of the

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same year a new centre was opened in Sangonera la Verde (Murcia), it has a capacity for 60 inmates and its installations have been considered satisfactory by the Ombudsman on a visit he made recently.

So, the installations of Málaga and those new ones in Murcia are the most common alternative, without leavinf out the other National Territory centres.

4. On the formal safeguards and the practical arragements applied in Spain to ensure that aliens are not sent to countries where they run the risk of being subjected to torture or to inhuman or degrading treatment or punishment (paragraph 95).

Law 5/84, reformed by the 94/94 on the Right of Asylum and the Condition of Refugees, guarantees that the foreigners will not be expelled to a country where they could be subjected to torture or inhuman or degrading treatment or punishment.

In the case of the condition of refugee being denied to a person in these circumstances, the proceedings for the expulsion will be put on hold until an interdepartmental commission, with representation by the Ministers of Justice and Home Affairs, Foreign Affairs and Social Affairs have examined the expulsion. The expulsion is decided by the Minister of Justice and Home affairs or by the Council of Ministers, according to the different cases.

In the practice of expulsions article 33.1 of the Geneva Convention on the Statute of Refugees of the 28th July 1951 is scrupulously observed; it establishes that "no State Party can, by expulsion or devolution, place a refugee in any way on the

borders or in such territory where his life or his freedom is put in danger because of his race, religion, nationality, his belonging to a specific social group, or his political opinions".

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FIFTH PART

PRISONS

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FIFTH PART: **PRISONS**

I. PRELIMINARY CONSIDERATIONS OF THE GENERAL DIRECTORATE OF PENITENTIARY INSTITUTIONS OF THE MINISTRY OF JUSTICE AND THE INTERIOR OF SPAIN

First of all, the General Directorate of Penitentiary Institutions thanks the CPT for its encouraging comments on the progress made in the prison conditions in Spain since the issue of its first report in 1991.

This progress is explained by the new penitentiary policy introduced by the government since 1991, and whose main ideas revolve around the following points:

* **Construction of new penitentiary infrastructures.** To this effect the Plan of Creation and Suppression of Penitentiary Centres, approved by the Council of Ministers in July 1991, intends to solve the problem of overcrowding in prisons, as well as to modernize the penitentiary infrastructures.

During 1995 three new Penitentiary Centres were opened in Soto del Real (Madrid) - in service since March -, in Topas (Salamanca) and in Huelva.

According to the forecast of the Plan, in 1998 there will be fourteen new Centres in operation. These and the predictable decrease in the number of people in penitentiary institutions will allow the solving the problem of overcrowding.

This explains that it is not reasonable to invest in the improvement of the Penitentiary Centres which are going to be suppressed such as the Carabanchel Prison Complex or the Madrid

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Prison for Women, whose problems of overcrowding will be definitively solved by the complete fulfilment of the Plan.

* **Strategic Plan of Employment**, whose aim is to develop and estimate adequately the personnel of the Penitentiary Administration according to the forecasts of changes in the number of people in penitentiary institutions and the putting into operation of the new Penitentiary Centres.

* **Adjustment of the legal frame**, through the elaboration of new Penitentiary rules that relate in depth to the most innovative and advanced aspects of the Spanish penitentiary law, including the main recommendations of the Council of Europe as regards the question of foreign inmates, health and educational services, etc.

The new legal frame also includes:

* A new **model of health attention**, whose services are rendered by the public health network, except the primary attention which is given in the Penitentiary Centres by the Penitentiary Administration's own means, as well as the psychiatric attention given in closed Institutions.

  One result of this new model has been the closing of the General Penitentiary Hospital in March 1995.

* A new **model of organization of the Penitentiary Centres**, which boosts the role of the technical organs (Treatment Boards and Technical Teams) to favour the penitentiary treatment of inmates and, in general, the activities carried out in prisons, as well as to invigorate their internal functioning.

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The General Directorate of Penitentiary Institutions estimates that these lines of action will allow the penitentiary policy to aproximate the objective established in the Spanish Constitution which is the re-socialization and re-education of the inmates.

II. ON THE RECOMMENDATIONS AND INFORMATION REQUESTS MADE BY THE CPT

1.- About torture and other forms of ill-treatment.

1.1.- Paragraphs 103, 104 and 107.

These paragraphs refer to the complaints of ill-treatment lodged by the inmates of the Madrid II Prison and, in general, in all the prisons managed by the General Directorate of Penitentiary Institutions, against prison officers in the years of 1993 and 1994, as well as to the measures taken in relation with these complaints.

As a **specific question**, paragraph 104 refers to the metal rings inserted in the concrete blocks which form the base of cell beds and tables in the Madrid II Prison.

With respect to the complaint about alleged ill-treatment by prison officers brought by the inmates in 1993 and 1994, we include a list of these complaints in Appendix 1.

As we can see, these complaints totalled five in the years 1993 and 1994. Of the five complaints lodged, four were made by people condemned for being in an armed gang (terrorist).

The complaints have been lodged before the supervisory

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Judge. The Penitentiary Administration is not aware of any decision mede in favour of the complaining inmate.

Apat from these complaints of the Madrid II Prison, we include in Appendix II the list of complaints lodged in all the Penitentiary Centres managed by the General Directorate of Penitentiary Institutions in 1993 and 1994. There were seven complaints during 1993 and fourteen during 1994.

In Appendix II there is also included a list of the disciplinary proceedings and confidential information (which are previous to the proceedings when they are appropriated) initiated "ex officio" by the Central Penitentiary Administration, that total fourteen in the two years requested. In the disciplinary proceedings number 116/94, two prison officers were suspended provisionally.

In relation to the specific question of the metal rings, we inform that all of them have been removed, as a consequence of the observation made by the members of the CPT. The Spanish Penitentiary Administration reiterates that these metal rings had the exclusive purpose of attaching to the hook devices used to carry the concrete blocks which form the base of cell beds and tables.

1.2 Paragraphs 105 and 106.

With respect to the recommendation of the definitive removing of "sprays having an adequate effect", the General Directorate of Prison Services does not considerer it convenient because this it is a less aggressive means of coercion than the rest of the measures allowed by the Spanish Penitentiary Law (provisional isolation, personal physical force, truncheons, and handcuffs, according to article 123 of the Penitentiary Rules).

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Consequently, the Spanish Penitentiary Administration, in the legal exercise of its competence, keeps the sprays on the list of means of coercion.

Therefore, to minimize the danger of its use, this Administration has proceeded in the following form:

1. Provisional suspension of its use ordered by the Instruction of the 7th April 1994, as the members of the CPT were informed.

2. Study of the sprays, requiring information from the National Institute of Toxicology, Universities, technical reports, etc.

3. Selection of the spray brand "SNPE" with a minor degree of toxicity. (0.4 milligrams/m^3).

4. Purchase of sprays for the different Penitentiary Centres.

5. Comprehensive information to all the prison officers on the precautions in its use, side effects and instructions for use.

With these measures, the Penitentiary Administration considers that the harmlessness of the use of sprays as a means of coercion is guaranteed, its use being considered necessary because of its less aggressive nature. We include in Appendix III the Instruction 14/1994 of the 18th July.

With regards to the matter of the use of means of coercion in general, the Spanish Penitentiary Laws (article 45 of the

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General Organic Law on Prisons and article 123 of the Penitentiary Rules) establish limits and warrants for its use:

* Its application must be addressed to the restoration of normality and it must be limited to the time strictly necessary to achieve this end.

* As a second guarantee, the penitentiary law demands that the director be informed immediately about the adoption of such measures, who, in turn, must immmediately communicate their application to the supervisory Judge, explaining the reasons for the adoption of the said measures.

For this reason, even if the laws don't request a record of the application of means of coercion, their use is always recorded in writing (in the communication to the Director, and in the subsequent communication to the supervisory Judge). Furthermore, it is communicated to the Penitentiary General Inspection, which is the Central authority for the application of means of coercion.

Nevertheless, accepting the CPT's recommendations, in the near future an Instruction will be issued for the creation of a Registry Book on the basis of the use of means of coercion in every prison.

2.- As regards the treatment of prisoners considered as "extremely dangerous" or as "unadapted" to an ordinary prison régime (paragraphs 108, 109, 110, 111 and 112).

This part of the report refers to the treatment of prisoners considered as extremely dangerous or as obviously unadapted to

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an ordinary prison regime, which is the object of the application of the closed régime (article 10) and included in the FIES (Record of Inmates whith Special Control).

The Penitentiary Administration is making a big effort to modify the rules of the closed regime.

In this way, a bill will be introduced in the parliament to modify article 10 of the General Organic Law on prisons. The bill will establish expressly that "In any case, the régime of life for the inmates in a closed regime can lay down equal or greater restrictions to the restrictions established for the punishment of isolation in a cell". The CPT's remarks and recommendations are followed in the establishment of this unsurmountable limit; therefore we must reiterate that this limit has been accomplished scrupulously by the Penitentiary Administration on every occasion.

Moreover, a redefinition of the closed régime and the FIES record has been made by the Instructions 7 and 8/1995, as well as the introduction of the Program for the recuperation of Conflictive Inmates (PRCI), which emphasizes the treatment activities designed for this kind of inmate.

In Appendix IV these Instructions and the Program are included, as well as the statistics of inmates placed in each of the FIES groups and the staying time of the inmates in the FIES (RE) group - presently direct control - in isolation régime.

As can be observed in Appendix IV, the Penitentiary administration has taken into account the CPT remarks to modify the regulation of the closed régime.

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On the other hand, as is observed on page 43 of the "Memoria de actividad 1994" (Activity report 1994) - which is included, the number of FIES inmates (RE, now called direct control) tend to decrease, having fallen from 152 in December 1993 to 88 in July 1995.

3.- As regards the conditions of detention in the prisons visited.

3.1.- Paragraphs 132, 135 and 137.

These paragraphs of the report deal with the problem of overcrowding in the Spanish penitentiary system.

As was stated in the response to the CPT 1991 report, one of the priorities of the Penitentiary Administration is the reduction of the overcrowding in our prisons.

The solution to this problem can't be reached in a short term, it is necessary to wait until the conclusion of the Plan of Creation and Suppression of new Penitentiary Centres.

The Penitentiary Administration is convinced that the creation of new penitentiary infrastructures, together with the stabilization and even the decreasing of the number of people in prisons in absolute figures, will succeed in reducing in a term of three years the rates of occupation of our prisons to highly satisfactory levels.

Furthermore, the budgetary restrictions originated by the Convergence Plan of the European Union demands the concentrating of the investments in the creation of new infrastructures and the cutting down on the investments in the maintenance and

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improvement of prisons destined to disappear in the near future.

In these conditions, the relieving population pressure in the Madrid I Prison and in the Madrid-Women Prison is being produced as a consequence of the opening of the new the Madrid V (Soto del Real) Prison, in March 1995.

When the new Madrid IV Prison (Aranjuez) is opened the Madrid I and Madrid-Women prisons will be closed, and the occupation levels recommended in the report will be reached.

In appendix V, there is a table, on a global basis, with the capacity of the prisons managed by the General Directorate of Penitentiary Institutions; it can be noted that the occupation levels in the operative capacity of the Centres do not exceed, on average, 100 %.

3.2.- Pragraphs 133, 134, 135 third subsection and 136 of the report.

This part of the report refers to the different questions dealing with activity programs offered to the inmates to avoid their forced idleness (133), with the necessity of permitting to all inmates, without exception, to take at least an hour of exercise in the open air every day (134), with the necessity of avoiding mothers and their offspring sharing their cells with other inmates (135 third subsection), and also with the opinion about the length of time during which children should be allowed to stay with their mothers in prison (136).

With regard to the first question (133), we include in Appendix VI the programs of training, educational, cultural, recreational and sport activities in the Madrid I Prison. As can

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be noticed the variety of activities is quite extensive and it allows the occupation of the greater part of the prison population. We also include in Appendix VI the activity program for the Mothers Unit (module for the mothers in prison with their young children) in the Madrid V Prison (Soto del Real) opened in March 1995, as well as photographs of its excellent installations.

In relation to the question in paragraph 134, the Penitentiary Administration is not aware that any inmate in a closed régime or suffering the punishment of isolation in a cell does not enjoy more than an hour in the yard every day, as is ordered by article 112.5 of the Penitentiary Rules and Instruction 7/95 included in Appendix IV.

The limitation of this regime can be adopted only temporarily when it is necessary to ensure the personal security of a threatened inmate, to end this limitation a transfer of the threatened inmate to another prison is ordered.

Furthermore, the draft Project of the Penitentiary Rules - which is included in this report - intends to increase number of the hours in the yard in closed régime to 3 and 4 hours every day in each of the two kinds of régime (articles 93 and 94), and to 2 hours during the punishment of isolation in a cell, this punishment can be interrupted or cancelled by the doctor's prescription (article 261.5).

Regarding the question in paragraph 135 subsection three, the opening of the Madrid V Prison (Soto del Real), which has a modern Mothers Unit, has allowed the transfer of the mothers from the Madrid Prison for Women to this Unit, where they don't have to share a cell with other inmates.

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Finally, the question in paragraph 136 will be solved in the near future by the passing of a bill in the parliament, at an advanced stage, which will reduce the age of the children of inmates in prison to three years. We include in Appendix VII a photocopy of the proposed law that modifies Article 38.2 of the General Penitentiary Organic Law. This measure is included in article 17 of the Draft Penitentiary Rules.

3.3.- Paragraphs 138, 139, 141 and 142.

These refer to the conditions of the visiting-rooms and to the communications made to inmates by post or telephone.

As for the improvements in the visiting-rooms of Madrid I, the planned closure advises against the investment in such improvements. The budgetary restrictions oblige investments to be concentrated in the creation of new prisons which, once they are finished in 1998, will solve this problem. Nevertheless, the problems related to hearing in the visiting-rooms were solved in 1994 as a consequence of the observations made by the CPT.

With respect to paragraph 139, the new prisons have proper and sufficient rooms for family visits, including open areas which allow a new form of family visit with longer duration defined in article 4.5 of the Draft Penitentiary Rules.

In relation to the written correspondence and the communication by telephone (paragraphs 141 and 142), the Penitentiary Administration is not aware of any problems or significant delays in the distribution of letters in general terms, which shows that the problems pointed out in the report have been solved promptly. With regard to the possibilities to make telephone calls, the Rules allow the Director of each prison

enough flexibility. In fact, there were almost no complaints presented to the Penitentiary Administration or to the supervisory Judge.

3.4.- Paragraph 143.

According to Spanish Penitentiary Law, the Penitentiary Administration has the exclusive competence for the destination and transfer of the inmates.

The Penitentiary Administration exercices this competence with the attempt of avoiding the social uprooting of the inmates, according to the principle of article 12 of the General Organic Law on Prisons.

However, the optimization of the penitentiary population distribution among all the prisons, as well as security reasons impede the acievement of an ideal distribution, although it is estimated that more than the 80 % of the inmates are in prisons near their place of residence.

The criterion for the destination of the prisoners awaiting trial is different because the proceedings demand their location in places near to the Examining Court on which they depend.

4. As regards the health services.

4.1- Paragraph 144.

With regard to this paragraph, we have to note that an agreement has been signed with the Assistance Services of the National Health System (INSALUD), whose aim is to improve the conditions of specialist out-patient and hospital in-patient

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care, as well as to support the Teams of Primary Care of prisons with Penitentiary Health staff.

Similar agreements with the Autonomous Communities of Andalucía, Pais Vasco, Madrid, Valencia, Galicia y Canarias are being handled. We include in Appendix VIII the agreement signed with INSALUD.

Great effort has been made in the psychiatric care with the aim of stability in its provision. In Madrid Prisons the psychiatric care has been covered by specialists from the General Penitentiary Hospital which was closed in March.

At present the situation of the health-care services in Madrid I and Madrid-Women can be described in the following form:

* A general practitioner of the Doctors Staff of Prisons attends to the inmates of these prisons.

* The Teams of Primary Care of these prisons have been reinforced with the doctors from the General Penitentiary Hospital and the nursing personnel is going to be increased with 40 additional nurses.

The health documentation has been reviewed to help the Health Team. A pharmaceutical vademecum is going to be published to optimize the pharmaceutical prescription.

4.2. Paragraphs 150 and 152.

On the question of the conditions of the Madrid I and Madrid-Women Prisons infirmaries, repair works have been carried out, consisting of the reform of the cell structure, to provide

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them with natural light and ventilation, the construction of a bath room and the painting of all the walls.

Furthermore, the decrease in the number of inmates in these prisons has appreciably reduced the problems of overcrowding in the infirmaries of same.The figures have fallen from 2,184 inmates in April 1994 to 1,875 inmates in September 1995 in the Madrid I Prison, and from 637 inmates in April 1994 to 540 inmates in September 1995 in the Madrid Prison for Women.

4.3.- Paragraphs 156 and 157.

A medical check-up is carried out not only on the new inmates but also on to the transferred inmates. We include, in Appendix IX, Instruction 23/1994 on the transfer of inmates.

In relation to the offer of diagnostic tests, it is carried out according to a protocol which provides information on the offer and significance of the tests. The protocol also informs of the right of the patient to take all the tests or only those he desires. He can also choose to know the tests results or not.

As for the risk of suicide, we include in Appendix X the programme of reduction of suicidal risk, which is used in all prisons, not only for the new inmates but also for the inmates living in the prison.

4.4 Paragraph 160.

There exists ample dental care that covers both preventive and therapeutic aspects. An agreement has been signed recently with "Clínica Madrid" to reinforce the preventive dental programme.

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4.5 Paragraphs 163 and 164.

In relation to the information on HIV, the Penitentiary Administration is making a great effort so that the Health Education Teams, which exist in every prison, extend their information task to specific and individual matters addressed to the inmates who have been HIV tested.

Moreover, agreements are being signed to develop permanent health information. Non-Governmental Organizations are taken part in these agreements. The inclusion of the penitentiary HIV information programmes in the Plans for the fight against AIDS in the different Public Administrations is facilitating such effort.

As for the confidentiality of the information, we include in Appendix XI the Instruction issued with that purpose, which follows the main recommendations of the Council of Europe.

4.6.- Paragraphs 171 and 175.

We communicated, in the report sent to CPT when the General Penitentiary Hospital was closed (March 1995), the closure of the Psychiatric Unit of this Hospital.

As has been explained in the response to paragraph 159, the psychiatric patients of the Madrid Prison for Women are attended to in the Gregorio Marañón Hospital or are transferred to the Psychiatric Penitentiary Hospital of Font Calent (Alicante) when it is ordered by the Judge or when this measure is considered indispensable.

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Moreover, a psychiatrist has been assigned full time to the attention of the patients of the Madrid I and Madrid Women Prisons, from the closed General Penitentiary Hospital.

In adition, a project for the creation of Rehabilitation Groups for chronic patients has been started up, so that these patients may receive specialized attention. As a first step, two courses for the training of the Group members are being given.

In the Madrid I Prison a Unit of Medical Specialities Unit has been put into operation. The analysis of which is included in Appendix XII.

There is no response to paragraphs 176 and 177 because both Units have been closed with the closure of the General Penitentiary Hospital.

4.7.- Paragraph 178.

On page 39 of the 1994 Activity Report, which is attached, the constant progression of the application of article 60 to grant the conditional release to terminally-ill prisoners because of AIDS can be noted. In 1994, 364 conditional releases were granted, in 1995 there may have been more than 450.

4.8.- Paragraph 179.

In January 1995, a complete re-elaboration of the global policy of the Penitentiary Institutions in the matter of drugs, has been made. We enclose a book containing this policy with the mentioned title.

At the present time, specific drug addiction programmes and

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methadone programmess are being put into operation. We include them in Appendix XIII.

On the other hand, the number of inmates receiving help for drug addiction in out of prisons institutions keeps on increasing. This is stated on page 39 of the 1994 Activity Report (456 inmates in 1994).

4.9.- Paragraph 180.

Penitentiary Law ensures the systematic recording of injuries, through medical examinations of the new inmates and the transferred inmates as well as those inmates living in the prison. This can be verified in Instruction 23/1994 on transfers, included in Appendix IX.

When a violent act occurs which may be defined as a crime, it is communicated to the Public Prosecutor and to the Judge, who orders, in previous proceedings, the medical examination of the inmate by a Forensic Surgeon.

5.- Other questions. (Paragraphs 181, 182 and 183).

All the questions raised in these paragraphs are included in the Strategic Plan for Employment which is attached. The purpose of this Plan is to settle the necessities of personnel according to the evolution of the prison population in a medium term basis.

In the list of measures proposed there is the definition of administrative careers for the prison officer civil servants and the development of internal promotion. These measures must allow the exercising of their university level professions in relation

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with prisons.

On the question of specific training for prison officers working with foreign inmates, we include in Appendix XIV, a summary of the Training Plan.

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III. CONSIDERATIONS OF THE GENERAL DIRECTORATE OF PRISONS AND REHABILITATION SERVICES OF THE CATALAN GOVERNMENT.

1.- AS REGARDS THE PRISON FOR MEN IN BARCELONA (*La Modelo*)

The prison population as a whole has decreased, although not in terms that would be viewed as desirable or convenient. At present, 12th July, 1995, the total number of inmates in the centre is 1891. When a new unit at "Brians" Prison is put in operation, we expect the prison population to decrease by more than two hundred people.

The conditions in the kitchen have improved in line with the Committee's suggestions. So, we have proceeded to change the floor with a nonslipping material; the mentioned problems with regard to the drainpipes and, in general terms, hygiene on the premises have been solved

Infirmary and health conditions. Considerable effort has been taken in order to improve the cleanliness of the infirmary rooms, which is carried out by an exterior company; we have asked them for greater attention and quality in their service.

Concerning the fire exits mentioned in the report, we can point out that the corresponding fire-escape stairs have been installed, according to the rules in force.

The Committee specially emphasizes the written information on health aspects. In this way, the newly-arrived inmates receive different leaflets and some triptychs on health items, apart from the hygienic set. However, in future the said written information will be facilitated together with the hygienic set.

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Although the psychiatric department is at the infirmary, it seems more convenient to respond to this question in a different subsection, since the Committee makes out a set of specific considerations on it.

The psychiatric patients are separated from the rest of the patients admitted in the infirmary. The reason for not having installed doors is one based on sanitary reasons.

The recommendation regarding the placement of transparent glass in the common room windows of the psychiatric unit will be put into practice as soon as possible and the present opaque glass will be substituted for other transparent, shielded glass.

Concerning the psychiatric treatment of inmates, after the Committee visit, we improved human resources. Thus, the Barcelona Prison for Men has two full-time psychiatrists, included on the health staff payroll.

As regards the rest of the suggestion on psychiatric matters, they will be taken into account when designing the new psychiatric equipment for chronic patients which will be set up within less than a year and a half.

In spite of the difficulties that the overcrowding of the centre leads to, as the Committee recognizes, great efforts have been made to improve the level of activities offered to the inmates of the Centre. We must bear in mind, however, that Spanish penitentiary law does not include the obligation to participate in treatment activities.

Regarding the practice of exercise in the open air for at least one hour a day, we can point out that nearly all the

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inmates can avail of possibility.

The rooms designated to intimate communications could not be improved, although special endeavour has been given in improving their condition of cleanliness and hygiene.

The measures suggested by the Committee, in connection with the visiting rooms, will be taken shortly, mainly in the improving of their acoustics and cabins.

The distribution of letters and parcels, in general terms, does not suffer any excessive delay. However, in view of the Committee's recommendation, we will proceed with the review and subsequent analysis of the channels for the distribution of correspondence, in order to improve them.

Telephone calls are governed by the penitentiary rules and by the domestic provisions of every penitentiary centre. Each inmate has the right to one telephone call at the moment of his confinement in prison and to a fixed number of calls every month which varies between two and four calls. In spite of this general rule, extraordinary calls, which could be necessary, are authorized when a justified cause arises.

2.- Health care.

Odontological Treatment. We have taken into account the recommendation made by the committee, whose aim consists of being able to provide anti-caries treatment to those inmates who could not afford it. We will study in depth the measure we intend to implement, starting from next year.

Penitentiary Hospital Pavilion at Terrassa. The suggestion

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aimed at the care of the women confined in the penitentiary centre has already become reality since February 1995.

Regarding the opening of a psychiatric division, a possibility that was posed to the Committee in the course of the visit, a psychiatric unit has been opened recently for the care of patients with acute crisis. On the other hand, in the way we pointed out in point 1.4, the fitting of a psychiatric unit for chronic patients coming from the different Catalan penitentiary centres is being studied.

3.- **Psychiatric Institutions.**

The Committee's report includes, in its subsection E, several recommendations corresponding to the psychiatric institutions, after the visit carried out to Santa Coloma Mental Hospital.

The content of the recommendations has been forwarded to the officers in charge of the "Servei Catalá de la Salud", which depends on the Department of Health and Social Security of the Government of Catalonia for the relevant measures to be adopted.

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SIXTH PART

DETENTION CENTRES FOR MINORS

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SIXTH PART: **DETENTION CENTRES FOR MINORS**

A. RECOMMENDATIONS

1. El Madroño

The paint will be removed from the windows in the girls' rooms at "El Madroño", (paragraph 190);

Regarding the Committee's recommendation on the removal of the paint from the glass windows in the minor girls' rooms at the "El Madroño" Centre, they are proceeding with the substitution of those painted windows for shielded, white and opaque glass in the 15 existing rooms, this substitution being at an advanced stage and, foreseen to be concluded shortly.

2. El Renasco

The minors' rooms at El Renasco are to be equipped with call bells, (paragraph 194);

Concerning the Committee's recommendation on the need for the minors' rooms at "Renasco" Centre to be equipped with a call bell, the relevant studies have been made aimed at proceeding with the fitting of a mixed system, acoustic in principle, which subsequently can be transformed to optic form, in order to avoid, in the way the Committee itself points out, the increase of disciplinary measures derived from the improper use of it. Once those studies are examined, and subject to the corresponding budgetary estimates, the fitting of the above-mentioned system

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of communication will be undertaken immediately.

Appropriate measures to be taken to ensure that minors held at the Renasco Centre have ready access to a proper toilet facility at all times (paragraph 194);

Regarding the Committee's recommendation on taking the appropriate measures to ensure that minors held at the Renasco Centre have ready access to proper toilet facilities at all times, this will be solved by a mixed procedure or system, the access to the Centre toilets being facilitated through the use of a call to the night educator by means of the bell and optic signal systems, which were already mentioned in the former subsection and keeping the present mechanism for those cases of coincidence in the calls of two or more minors.

Bearing in mind that the system of exit from the sleeping rooms can be improperly used by the minors, and with the aim of avoiding the possible conflicting situations that such system could lead to, the Committe is proceeding in the same way with the analysis of the budgetary possibilities for the reinforcement of the night list of staff.

3.- Disciplinary proceedings

The minor's right to be heard on the subject of the offence it is alleged he/she has committed, will be guaranteed.

The right of appeal to a higher authority against sanctions imposed (i.e. to the Director of the Centre, as regards sanctions imposed by educators, and to the competent judge as regards sanctions imposed by the Director) will be expressly recognised;

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A register be kept in each Centre, containing full details of all disciplinary sanctions imposed, (paragraph 197);

As regards these recommendations, we have to say that the protective measures contained in them have already been foreseen in the new Statute on Domestic Régime of the Centres, adapted to the provisions of Act 6/1995, of 28th March, on the Guarantees of Infancy and Adolescence Rights in the Madrid Community.

The underlying motives for every instance of self-injury will be examined by a competent member of the medical staff before that conduct is sanctioned as a breach of discipline, (paragraph 198);

Concerning the Committee's recommendation that every "self-injury" be examined by a competent member of the medical staff before that conduct is sanctioned as a breach of discipline, this recommendation is foreseen in the same way in the new Statutes; that is to say, in the cases of self-injuries, and before considering the possible imposition of a sanction, the condition of the minor and the circumstances converging in this specific case are necessarily appraised by the health and psychological staff.

4.- Guarantee of the medical confidentiality of the results of HIV tests

Appropriate measures will be taken to ensure that the results of the HIV test are protected by strict medical confidentiality (paragraph 200).

As regards the concern showed by the Committee concerning the HIV antibody testing and the importance that adequate

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counselling exists both before and after HIV test, we have to state that each personal situation is known only by the Director, the Doctor and the Guardian-Educator with the purpose that they can, properly and confidentially, approach the subject with the minor, acting as a team; such confidentiality is required in the same way from the staff of the Central Services in charge of the custody of the files and of the minor's follow-up and deviation to other resources that may be necessary.

B. <u>REQUESTS FOR INFORMATION.</u>

The CPT Report requested **more information on the care provided by specialist doctors to the minors at "El Madroño" and "Renasco" Centres, especially regarding dental and psychiatric treatment. (paragraph 199).**

In relation to the request for further information on medical subjects, we can point out that in cases of emergencies and specialist doctors, attention is given at the "Gregorio Marañón" Hospital of the Madrid Community, in the same way as in the other minor Centres which are under the "Instituto Madrileño de Atención a la Infancia" (IMAIN). As regards attention to dental problems, as in the previous case, this is taken care of by the odontologists engaged by the IMAIN and distributed by area, for the treatment of preserving odontology.

Concerning the invitation of the Committee with the effect of improving the standards of equipment at the boys' bedrooms and of looking for the possibility of placing the girls' bedrooms in another area of the building of the "Renasco" Centre, we have to say that this can only be dealt with by means of carrying out of work which would mean the installment of new toilet facilities

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for the girls; and with respect to the standard of equipment in the bedrooms, the study and analysis of the alternatives to this equipment offered by other Centres of similar characteristics would be necessary and, as a result, the relevant projects will be requested, not forgetting that in such Centres of high security, the majority of the room contents and furniture cannot be movable, metallic,...etc.

On the other hand, the possible solution to this issue is closely linked to the budgetary availability to undertake the building of a new Centre, whose plan is already prepared. This Centre, bringing together the best guarantees of safety and control, would have, at the same time, a nice, comfortable and adequate appearance aimed at facilitating the cohabitation of its users.

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SEVENTH PART

PSYCHIATRIC INSTITUTIONS

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SEVENTH PART: **PSYCHIATRIC INSTITUTIONS**

A. RECOMMENDATIONS.

A detailed medical policy on recourse to instruments of physical restraint will be laid down dealing in particular with: the types of cases in which application of such instruments is permissible; their duration and frequent review; the provision of appropriate human contact; and the staff's duty of increased attention; (paragraph 204);

Instruments of physical restraint will be applied only on the express instructions of a doctor or immediately brought to the attention of a doctor for approval (paragraph 204).

Every use of such instruments will be recorded in the patient's file and in an appropriate register, with an indication of the times at which the measure began and ended, the circumstances of the case and the reasons for resorting to the measure (paragraph 204).

The Ministry of Health and Consumption has forwarded to every Health Department of the Autonomous Communities, a copy of the report issued by the European Committee for the prevention of Torture regarding the care of psychiatric patients admitted against their will to the said centres, so that they may adopt the measures they deem fitting within their field of responsibility in pursuance of the recommendations included in the report.

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The above-mentioned Administrations have dependence on or control of the psychiatric centres included in their responsibility, except for the psychiatric care of acute patients provided for in centres depending on the National Health Institute within its non-transferred field of competence; for this reason, the same report and recommendations were forwarded to the National Health Institute.

B. REQUESTS FOR INFORMATION.

Information on any specific training that the law enforcement agencies may receive for the treating of mentally disturbed persons (paragraph 205).

Article 211 of the Civil Code states that "The confinement of an alleged incapacitated person will require previous judicial authorization, save that for reasons of emergency the immediate adoption of such a measure were necessary, which in turn will be communicated to the Judge as soon as possible and, in any case, within the period of twenty-four hours.

The Judge, after having examined the person and after having heard the opinion issued by the expert appointed by him, will grant or refuse the authorization and he will inform the Public Prosecutor's Office of the facts, to the effect of Article 203.

Without prejudicing the provisions set out in Section 269,4, the Judge, ex officio, will request information on the need to continue the confinement, when he deems it relevant and, anyway, in any case, every six months, in the same way as provided for in the previous paragraph, and he will decide as to what is appropriate concerning the continuation or not of such confinement".

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The principal role in the cases in question will be taken, therefore, by the Judge.

The police Agents will be able to intervene in these cases only when there are "reasons of urgency" and with the aim to fulfilling the functions that the Organic Act 2/1986, 13th March on Law Enforcement Agencies, assigns them in Section 11.b). "To assist and protect persons and to secure the conservation and custody of goods which may be found to be in a condition of danger due to whatever cause". In any case, the decision taken and the reasons for having taken it, must be notified to the appropriate Judicial Authority.

Some generic notions on psychology, as well as Personality disturbances, are included in the programming for entry and promotion in the National Police Unit and in the further training courses of that Unit; they are considered useful for the officers when they deal with mentally disturbed persons.

In a similar way, the officers of the Basic Scale, principally, receive specific training concerning the way to carry out services of assistance to citizens and humanitarian interventions, this being one of their specific tasks.