



REPORT OF THE
CATALAN
MECHANISM FOR
THE PREVENTION
OF TORTURE
DECEMBER 2018

SÍNDIC

EL DEFENSOR
DE LES
PERSONES

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I. INTRODUCTION

1. INTRODUCTION

This report details the activity carried out by the Catalan Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment (CMPT) in 2018. This is the eighth report presented to the Parliament of Catalonia, pursuant to the terms of Article 74 of Law 24/2009, of December 23, of the Catalan Ombudsman.

This year, 45 centers were visited, and two of them twice. These figures are similar to those of prior years. Most of the visits (26) were to police stations, mostly to the local police forces (14) in Catalonia that have their own detainee custody areas. The team visited six penitentiary centers, one of which (Brians U-Dones Penitentiary Center) on two different occasions. Furthermore, seven youth and adolescent detention centers (therapeutic, intensive educational and juvenile justice centers) were visited. One of the therapeutic centers specialized in treatment of adolescents with severe behavioral disorders that had already been studied by the Mechanism in prior years, was visited twice. It has received individualized attention in the conclusions of this report. Last, four geriatric residences, one social-health care and one mental health center were visited. This means the recovery of the supervision levels over these types of establishments of the initial years of the CMPT's operation.

The Mechanism's action protocol has remained the same as in prior years. It is based on the Team's prior preparation, unannounced visits, and to the degree in which most of the facilities are well-known by the Mechanism, the holding of confidential interviews with individuals deprived of liberty. Civil servants, treatment staffs and management of the centers or units visited are also interviewed if necessary. The conclusions and recommendations derived from the visit are conveyed to the responsible administration and the facility that has received the visit.

As is customary, this report features each of the information sheets that detail the main observations and conclusions reached by the Task Force, as well as their recommendations, for each center. In

addition to this, the report also contains two studies that are the result of the visits made by the team, and research conducted by members of the CMPT Advisers Council and by the Catalan Ombudsman himself. These considerations center on two topics of unique importance in the penitentiary realm.

1. Respect for human rights, and immobilization and mechanical fixation of persons deprived of liberty. Over recent years, the CMPT Task Force has received numerous complaints from inmates on possible excesses in the application and duration of mechanical fixation measures. The analysis of existing protocols and recommendations of national and international organizations, as well as the experience of the Mechanism this year have made it possible to hold a study day at which a number of considerations on this matter were prepared. These considerations address: the duty to take effective measures for prevention of disruptive conduct by inmates, to keep from reaching the phase of mechanical fixation when this behavior occurs; the most appropriate procedures to apply immobilization and mechanical fixation; the proactive role that medical personnel must have in the supervision of fixation; and the effectiveness of judicial guarantees as concerns the application of these measures.

2. Management of economies and productive work in penitentiary centers. This is an issue brought up in the vast majority of interviews held by the Team with inmates at penitentiary centers over recent years, especially as concerns the price of products considered to be of basic necessity, such as female hygiene, or food products, although they are formally considered supplementary. There has also been analysis of the discrepancies existing, according to complaints filed by inmates, between the hours actually worked in the centers and those officially recorded, with the resulting damage to the rights of the person deprived of liberty.

In both cases, the recommendations derived from the studies conducted must be followed up in upcoming reports of the CMPT.

Along these lines, this year's report provided a detailed account of the status of fulfillment of the main recommendations made in reports of recent years, along the methodological lines begun with the 2016 report. There are reports of the new developments that arose throughout 2018, in matters such as the use of Tasers by the Mossos d'Esquadra (finally deployed and in use since the second half of this year); the rights of detained persons' in the framework of Article 520 of the LECrim (in which many of the recommendations made by the CMPT in the 2015 report have been accepted); the rights of women in the penitentiary setting (especially noteworthy are the changes underway at CP Brians One Women's Penitentiary Center and in the Semi-open Regime Unit, the closed-regime and solitary confinement units (to which the new instruction of the Directorate General of Penitentiary Services is not being fully applied). The relationships between local police and Police of the Generalitat-Mossos d'Esquadra, as regards the custody areas (in which it is reiterated that the custody duties of detainees should be handled solely by the latter law

enforcement agency); the situation of the facilities that provide initial services to immigrant minors (stemming from the situation reported last year in the City of Justice and that this year has spread to numerous police stations throughout the territory), among others.

In the institutional realm, the visit from the Committee for the Prevention of Torture (CPT - Council of Europe) to Catalonia in September, 2018 was especially significant. Members of the CMPT Team had the chance to meet with the CPT delegation before their official visit began, and also took part in the closing session of the visit.

Also along these lines, mention must be made of the 6th consecutive annual International Day in Support of Victims of Torture, and also participation of CMPT members in several national and international training activities.

As in every edition, the report concludes with the main conclusions and recommendations derived from the visits and studies carried out this year.

**II. RESPECT FOR HUMAN RIGHTS, AND
IMMOBILIZATION AND MECHANICAL
FIXATION OF PERSONS DEPRIVED OF
LIBERTY**

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Mechanical fixation or subjection is defined as the process of immobilizing a person with instruments, equipment or materials designed to restrict their movements or normal access to their body. Although mechanical fixations may have a therapeutic indication in the health care realm, in this chapter, reference shall only be made to fixations of regimental nature that take place in liberty deprivation facilities. In other words, those applied by guards of such facilities as a security measure, to prevent the individual being restrained from causing damage to others or themselves. In this situation, the guards initiate, supervise and terminate the measure.

On the visits made by the Catalan Mechanism for Prevention of Torture over recent years, numerous testimonials have been compiled from individuals—adults, young people and adolescents—detained in liberty deprivation facilities on mechanical fixation applied to them in the course of their incarceration. Furthermore, civil servants and other personnel on the staff of the centers and administrators have also had the opportunity to exchange information with the CMPT Task Force on fixation practices. On certain occasions, the members of the Task Force have witnessed fixations being applied at the time of their visit, and have seen in person the circumstances in which they have come about. In other cases, they have had the opportunity to examine the relevant documentation and recordings from the video surveillance system.

Taken altogether, it is possible to state that in Catalonia, the regimental mechanical fixation practices, in penitentiary as well as juvenile justice centers, and in other

residential facilities for adolescents are not always entirely respectful of the highest standards of human rights. This situation has also been echoed by the Spanish Ombudsman, as the National Mechanism for the Prevention of Torture, who has published good practice guidelines for mechanical fixation.¹ The Committee for the Prevention of Torture of the Council of Europe, on their last visit to Spain in 2016, expressed the same sentiment.²

The Catalan Mechanism, following discussion with medical and regimental authorities of these facilities, convened on occasion of the conference held to commemorate the International Day in Support of Victims of Torture, has sought to present a number of considerations on four dimensions of fixation practices: prevention measures, fixation application procedures, the role of medical personnel, and judicial guarantees during and after imposition of the measure.

Prevention

The ultimate goal of any public policy on immobilization of persons deprived of liberty should be zero fixations. In other words, the Administration should implement the necessary measures to avoid having to immobilize and restrain by mechanical means anyone deprived of liberty.

Therefore, prevention must focus on the step prior to mechanical fixation, which is reduction and immobilization of the inmate, to which there is a two-fold dimension. On one hand, in each specific case, when an inmate is upset or threatens their own or others' safety, the measures that can be adopted to avoid physical immobilization. On another, at a more general level, which environmental or prevention measures can be taken to avoid these situations, especially with respect to inmates that often have disruptive

¹ National Mechanism for the Prevention of Torture: Guía de buenas prácticas en contenciones mecánicas (centros de privación de libertad), [Good Practice Guidelines for Mechanical Fixation (liberty deprivation facilities)] https://www.defensordelpueblo.es/wp-content/uploads/2017/05/guia_contenciones_mecanicas.pdf (last visited: 14 December, 2018). Hereafter, NPM Guidelines 2017.

² Committee for the Prevention of Torture: Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 September to 10 October 2016, CPT/Inf (2017) 34, Strasbourg, 16 November, 2017, especially pages 39-43. Accessible at: <https://rm.coe.int/pdf/168076696b> (last visited: 14 December, 2018). Hereafter, CPT Report.

behavior, to whom this measure is most often applied.

From the initial standpoint, it must be reiterated that mechanical immobilization and fixation must be the last resort for the resolution of conflict situations, and before resorting to it, all other non-coercive measures must be attempted. In this regard, the CPT Report states that fixation must only be used “when all other reasonable options fail to satisfactorily contain those risks (to themselves and/or to others)” (CPT Report, p. 42).

Despite the absolute consensus among authorities and experts on this principle, the CMPT’s experience shows that it is not always respected. In some cases, the Team has found that, according to the official reports, just a few moments are spent trying to convince an upset inmate—who is not creating a threat to anyone—to modify their attitude before they are reduced. The Mechanism believes that as long as there is not a situation of imminent threat, all possible paths of communication must be attempted to calm the individual’s temper and redirect the situation. This is particularly applicable to adolescents, with whom emotional containment should be developed in order for the minor to be able to talk and manage the conflict without reaching the point of physical fixation.

That is why it is necessary that de-escalation measures be protocolized and carried out by a multidisciplinary team properly trained and capable in conflict resolution. The reason for it, and all the measures taken prior to mechanical fixation, must be recorded: verbal containment, environmental measures, whether voluntary pharmacological treatment has been offered to the inmate to reduce their anxiety, and which professional has applied the measures.

Additionally, after a fixation episode, regardless of any punishment measures levied against the inmate, it is necessary to engage in dialog and establish a

multidisciplinary follow-up plan unique to that person, to understand the reasons for their outburst and attempt to keep the situation from repeating. According to the heads of the Catalan Autonomous Ministry of Justice, that has yet to happen.

From a more general standpoint, there are a few prevention measures that are already being put into practice in the Catalan penitentiary system, but that must be reinforced:

- Evaluation of each individual entering the penitentiary or juvenile justice system to detect the problems that could arise for them in ordinary regime of the center.
- Practical and theoretical training for center regime personnel should be mandatory. At minors’ centers, training for private security personnel who also participate in fixations (despite the Mechanism’s recommendations against it) should also be mandatory.
- Analysis and research with indicators on fixations and immobilizations. This notwithstanding, it is worth noting that among the abundant statistical figures of penitentiary and rehabilitation services offered by the Catalan Autonomous Ministry of Justice, there are no data on fixations and immobilizations applied.³

Fixation triggers and procedures

The 2017 NPM Guide clearly and precisely outlines the conditions, including those of infrastructure for procedures that must be respected when performing a regimental mechanical fixation. All agents and authorities who participate in the practice of regimental fixations of individuals deprived of liberty in Catalonia must comply with them.

In Catalonia, the reasons that could lead to the regimental immobilization of a person are taken up in penitentiary regulations, while the procedure to carry them out is described in a circular that was published

³ See http://www.gencat.cat/justicia/estadistiques_serveis_penitenciaris/ (latest visit: 14 December, 2018)

by the Directorate General of Penitentiary Services in 2005. Both rules, according to the experts consulted by the CMPT, can be modified and updated, although the circular is in the possession of the authorities of the Government of Catalonia (Generalitat).

Perhaps one of the most objectionable parts of the circular is the part that orders mechanical fixation to be applied with the inmate prone (face-down), instead of face-up, as is done in medical practice. Therefore, the medical mechanical fixation conditions for the individual's safety are not met in regimental mechanical fixation. The regimental reasons to justify the former option (higher degree of control) do not justify keeping the rule in place, given the risks this implies for the inmate's health. Therefore, this point of the circular must be changed as soon as possible.

Experts also agree that neither the initial immobilization nor the subsequent fixation can be of a punitive nature, but rather must respond to a situation of risk for the individual themselves or for others. Thus, to the question of how long mechanical fixation, or any other coercive resource, should last, the unanimous response is that it must be for the time strictly necessary, as established in applicable penitentiary law (Art. 45.3 of the General Penitentiary Organic Law - LOGP, and Art. 72.1 of the Penitentiary Regulations - RP).

Despite these examples of consensus, the experience of the Catalan Ombudsman and the CMPT, after having analyzed reports from inmates and official documentation, does not dispel the concern that some immobilizations and fixations are applied with punitive purposes resulting from disruptive conduct. This is behavior that can give rise to other coercive measures, such as provisional isolation, disciplinary punishment and even regressions of degree, but that in no case would justify mechanical fixation. This would be the

case, for example, of passive resistance which, according to the General Penitentiary Organic Law (LOGP) may bring about a coercive measure, but that would not justify an immobilization or mechanical fixation.⁴

Along the same lines, the CPT Report states that "the resort to mechanical fixation for regime purposes in the prisons visited retains clear punitive elements" and provides a number of examples (CPT Report, pp. 40 and 48).

Furthermore, the prolongation of the fixation measure beyond a few minutes, often for hours, does not always appear properly justified. The CMPT has observed on several occasions that restrained individuals are temporarily released from certain fixation elements (to eat or attend to their physiological necessities) and that, despite behaving normally at that time, they are restrained again once the activity is over. In some cases, the restrained persons have fallen asleep, a clear indication that any agitation they may have shown has completely disappeared. In fact, in some juvenile facilities, it has been observed that fixation lasts all night, during which time the minor sleeps restrained.

Although the need and duration of each mechanical fixation must be evaluated individually, it can be stated that in the penitentiary and juvenile justice centers of Catalonia there are still an excessive number of immobilizations followed by mechanical fixation, due to their punitive nature, and which last much longer than is essential.

In some cases, resorting to pharmacological fixation can be considered, as long as there is no contraindication, as it is less damaging to the rights of the person receiving it than mechanical fixation. Such action can only be taken by a qualified health care practitioner, and implies prior knowledge of the individual's medical history.

⁴ Article 45.1 of the aforementioned Organic Law states that only the coercive resources established in the following cases may be used: a) to prevent acts of escape or violence of inmates; b) to prevent damage by inmates to themselves or others; c) to overcome the active or passive resistance of inmates at the orders of the penitentiary staff. It also states that the use of coercive measures is aimed at re-establishing normality, and must only last as long as is strictly necessary.

Role of medical personnel

Mechanical fixation can have consequences for the physical and mental health of individuals. Therefore, it requires close supervision of medical personnel. The indications and contraindications of the measure must be known.

The current rules for mechanical fixation procedures in the regimental setting establish an initial medical exam as soon as fixation is applied, and later, unless any circumstance requires it to be done more frequently, follow-up checks are performed at two-hour intervals.

The purpose of medical interventions in mechanical fixation is two-fold. On one hand, to determine whether the measure is indicated or contraindicated; in other words, whether it can be applied in light of the medical conditions of the fixated person. From this perspective, medical personnel could order the reversion of recently-applied fixation in the event it is contraindicated for medical reasons. This could be the case of the individual having a heart condition, or because it is not indicated and is a punitive measure in response to disruptive conduct or transgression in which there is no agitation or risk of aggressiveness toward themselves or others.

On another note, medical personnel must supervise the conditions of fixation and the physical and mental consequences that could be derived: if fixation affects the wrists, they develop sores, there is risk of thrombosis, signs of anxiety, etc. In this second realm of possibilities, medical personnel can recommend changes in the conditions of fixation (loosening straps, changing positions, etc.), or their termination. Medical personnel can also propose a pharmacological measure that reduces the duration of mechanical fixation. Further, it is important that medical monitoring of post-fixation physical and mental sequelae be performed.

All of the foregoing must be recorded in the individual's computerized medical record, depending on the type of medical service. There is a follow-up form delivered to

department heads and the l'Institut Català de la Salut (Catalan Medical Authorities - ICS), to whom the penitentiary health care services report, and who monitors all of the fixations applied in all penitentiary and juvenile justice centers.

In the CMPT's opinion, medical services must take a more proactive role in supervision, from a medical vantage point, of mechanical fixations. Oftentimes, follow-up reports (at two, four, eight hours, etc.) simply state that the inmate is calm, with no mention of whether they consider it necessary for the fixation measure to continue. The CMPT believes that medical personnel should make a specific statement (and record it in the relevant record) regarding the appropriateness of the fixation and recommend its termination once it has been ascertained that the patient is no longer agitated.

The CMPT believes that due to the risks it entails for individuals' health, mechanical fixation should be an exclusively medical measure. Although the initial physical immobilization must continue to be regimental, the follow-up, supervision and termination of the fixation measure must correspond exclusively to the medical criteria indicated by medical personnel and predicated on regimental measures.

There must be regular evaluations of mechanical fixations by medical personnel, using indicators on the practice, recording, quality and safety of the intervention.

Judicial guarantees

Every immobilization and, if necessary, fixation, comes with a set of supervision channels that are clearly established in the regulations in force.

Aside from the medical supervision mentioned previously, with follow-up by the ICS, center security personnel must permanently monitor the fixation. This supervision can be performed in physical presence or through systems of video surveillance. Additionally, in situ supervision must be duly documented, as well as filmed and audio-recorded.

Currently, all cells where fixations are applied in Catalan prisons have video-filming equipment, but many still lack audio capabilities. Recordings on the fixation procedure are kept for one month, time enough, in the CMPT's opinion, for them to be reviewed by competent authorities if there are any doubts regarding the proper application of a fixation measure.

Documentary and graphic records of the fixation are essential for the guarantee resources activated subsequent to fixation. These resources are of an institutional as well as judicial character.

From the institutional standpoint, both center administration as well as inspection services should analyze each fixation to determine its appropriateness and proportionality.

As for judicial monitoring, Article 45.2 of the LOGP and Article 72.3 of the RP indicate that the administration of the penitentiary facility must immediately notify the penitentiary supervision judge of the application and termination of coercive measures, with a detailed description of the events leading to the use of fixation, and circumstances that make its maintenance advisable.

Once this notification has been received, the penitentiary supervision judge is considered informed, and must advise penitentiary center administrators of their agreement or disagreement with the measure. In case of disagreement with the measure applied, the judge must order the termination of the mechanical fixation.

Supervision judges unanimously maintain certain basic criteria when handing down rulings on this subject matter, such as: (a)

non-use of fixation if anti-judicial behavior is suspected, (b) use only in critical situations (Art. 45, LOGP), (c) non-use as a covert, or advance punishment, (d) no routine or systemic use, and (e) sufficiently-grounded need so as to not incur in a violation of constitutional rights, and therefore, criminal liability.⁵

The CMPT has observed that the practice of notifying the supervision court of the fixation measures once they have already been terminated is common in the penitentiary centers of Catalonia. In other words, notifying of the implementation and termination of the measure, as well as of any possible incidents that may have occurred while the measure was being imposed, at the same time. This way, the role of the penitentiary supervision court is merely testimonial, and is limited to validating the measure implemented once it has been terminated.

Clearly, it is materially impossible to send notice of the measure's implementation in the initial moments, while the individual is being immobilized. However, from the time in which the person has been restrained, the competent judicial authority must be notified. It cannot be justified from any standpoint of the guarantee of rights that mechanical fixation that lasts several hours not be communicated to the penitentiary supervision court until it has concluded, a notification that is made in most cases after one or several days.

On another note, the documentary analyses conducted by the CMPT reveal succinct, standardized reports that make it difficult to determine whether the initial circumstances justifying the restraint measure actually took place.

⁵ An arbitrary or incorrect use is against the prohibition of ill-treatment featured in Article 6 of the LOGP, and Article 4.2.a) of the RP, and may even constitute a crime of torture or against moral integrity (Art. 173-175, Criminal Code) or against constitutional guarantees (individual freedom, Art. 533, Criminal Code).

III. MANAGEMENT OF ECONOMATS AND PRODUCTIVE LABOR IN PENITENTIARY CENTERS

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A recurrent complaint on the visits of the CMPT Team to the penitentiary centers of Catalonia is about the excessive price of the products sold in the economats, especially those considered of basic necessity. This is a complaint expressed by inmates in all of the centers of Catalonia, and that is associated with the management of economats by the CIRE (Center for Reinsertion Initiatives), a public company dependent on the Catalan Autonomous Ministry of Justice. This is true to such an extent that the only center where inmates felt that the prices of the economat were aligned with their purchasing power was the Model de Barcelona prison, the only center where the economat was not managed by the CIRE.

Furthermore, over the course of the visits, it has occasionally been observed that the conditions in which the activity is conducted in the production workshops, also managed by the CIRE as a reinsertion resource, do not always appear to be the most appropriate. Despite the many positive effects of access to workshops by inmates (remuneration, productive occupation of time, reinsertion, etc.), there are some aspects of the management of this service that appear to be of concern from a labor rights point of view, including, but not limited to, alignment of salaries received by inmates with the time actually worked in production or auxiliary activities.

Price of products in penitentiary center economats

The first matter addressed in this chapter is not new. In 2013, the Catalan Ombudsman launched an ex officio action to analyze the prices of products in CIRE shops, comparing them to the prices for the same products sold in other penitentiary centers where the CIRE did not have this role. It was found that indeed, at penitentiary centers where the shops were managed by the CIRE, the prices were higher than those of other centers. Some products were even found to be more expensive than in shops outside the

penitentiary, which contravenes the terms of the LOGP.

At that time, in early 2014, the managing director of the CIRE announced that all product prices would be revised, and it was decided to lower the price of certain articles. Although the prices have been lowered, as the CMPT has been able to confirm in the annual price tables for the period from 2013 up to the present, in numerous cases it has not been enough to meet the terms of the regulations.

In response to the investigation conducted this year, the managing director of the CIRE alleged two reasons to justify the current prices:

1. On one hand, the products that can be purchased in the CIRE shops are supplementary in nature, and not products of basic necessity.
2. On the other, the comparative study carried out by two members of the Follow-up Committee and two members of the company awarded the contract would demonstrate that the price of the average shopping basket for the shops is within the overall average shopping basket prices in the municipalities where centers are located.

Furthermore, in the report sent to the Catalan Ombudsman it is also stated that, from 2013 to 2018, the prices of certain products had been reduced, and that the Follow-up Committee had made the commitment to continue working in this direction. In line with these actions, it is relevant that the most significant price reduction over the highest number of products took place in 2013, coinciding with the suggestions made by the Catalan Ombudsman within the ex officio action 7463/2013.

This year, it must not be overlooked that the legislation grants inmates the right to purchase and consume products by their own means through the economat service. This right is recognized in the second section of Article 24 of the Organic Law 1/1979, of 26 September, on general penitentiary regulations, which specifically states that “Under no circumstances may

prices be higher than those in effect in the municipality where the facility is located.”

As stated in the report written by the director of the CIRE, and pursuant to the terms of Article 298 of the penitentiary regulations, “economats of penitentiary facilities are a service provided by the penitentiary institution to inmates that allows them to have a system with which to purchase products of a supplementary nature to those provided by the penitentiary administration.”

The reference to products being of a supplementary nature should not imply, in and of itself, acceptance that prices be equal to or even, in some cases, higher than those for the same products outside the penitentiary center. From the report sent, it was concluded that nearly half (47%) of the items in the average shopping basket of inmates correspond to automatically-dispensed products (including hot and cold beverages) and those sold through a “cashier window” (generic food, hygiene and other products).

The act of resorting to these supplementary products can be attributed, mainly, to the three reasons most frequently argued by the penitentiary population in the interviews held with the CMPT Task Force:

1. Insufficient quantity in the portions served at meal times, with no possibility for second helpings, and little variety of menu options.
2. Reduction, both in frequency and number of products, in hygiene packs.
3. The prison population buys economat products to improve their quality of life inside the penitentiary center.

This year, the Catalan Ombudsman has also drawn up a comparison of prices of products sold in CIRE shops, and prices of the same products sold in large shopping centers and national supermarket chains, and has found that in many cases the prices are similar or even higher.

This notwithstanding, the comparison of products has not been without difficulty, as on some occasions the products did not

have the same format or characteristics. Nevertheless, the examples specified in the annex to this chapter are quite significant.

Given the foregoing conditions, and considering the precariousness often suffered by the penitentiary population, the suggestion was made to the Administration that it firmly back a model which avoided prices of products sold in the CIRE shops surpassing those set by major supermarkets in the municipalities where the penitentiary centers were located.

For this reason, it has been recommended that the Administration make an urgent, downward revision in the prices of all products, especially those of basic necessity, such as feminine hygiene products.

Following this recommendation, the Catalan Autonomous Ministry of Justice made it known that, as of January 2019, with the new tender for product supply underway, both the CIRE and the Ministry had proposed major cuts in the prices of a selection of top-selling products which, in some cases, could reach 20%. Furthermore, as regards compliance with the legal price limit, in the new tender, the Follow-up Committee has established objective criteria meant to objectify it based on evidence existing on the market, and that will take as a reference the average price from a minimum number of retail outlets (same brand, format, weight/volume), including at least one generic brand reference and prices from an exclusively on-line distributor (this excludes products on sale, or any subjected to special commercial promotions). Following this criteria, a total or partial annual review of the official price list in force will be conducted.

Alignment of salaries to work shifts of individuals incarcerated in penitentiary centers

For the salaries of inmates, the report prepared by the director of the CIRE stated that remuneration for inmates who work in auxiliary service tasks is calculated taking the minimum interprofessional wage as a reference, so that the salary is set

proportionally to the number of hours truly worked and the performance achieved.

This notwithstanding, from the performance of production tasks and auxiliary services, the correspondence received by the Catalan Ombudsman and the visits made by the Catalan Ombudsman's Security Department and the Mechanism to penitentiary centers, it can be concluded that inmates work more hours than they are truly contracted for, and for which contributions are made in their name to the Social Security system. This complaint (extension of the work day beyond what was initially contracted) is reiterated by inmates who perform auxiliary service tasks, in central kitchens of the centers as well as the kitchenettes of the residential modules.

The special penitentiary occupational relationship is regulated by the terms of Royal Decree 782/2001, of 6 July. Specifically, article 17.3 of this legal text establishes that the work schedule, within the limits legally established for the work day, is that necessary for the proper development of the productive activity, and section 4 of the same precept states that, pursuant to a prior agreement with the workers, the director of the penitentiary center can modify the work schedule when exceptional production circumstances require it.

Similarly to the terms for productive work, the exceptional modification of the work day for inmates working in auxiliary service must be taken into account to credit an amount proportional to the overtime worked beyond the standard work day.

In the event that the exception is the rule, as inmates claim in most cases, their contract should be modified for contributions to be

made in their name to Social Security for the hours they truly work performing the tasks that they have been assigned.

Therefore, the penitentiary administration must establish a thorough control system over the time that inmates working in auxiliary services spend in their respective workplaces. For this reason, the Administration should install time clocks in facilities such as the central kitchen and kitchenettes of residential modules, so that inmates can certifiably accredit the hours they work there, which must coincide with the hours for which they contribute to the general Social Security regime.

With regard to this matter, the CIRE's response was that it is conducting an internal audit, the results of which will be sent to a joint work group. This group, made up of the Directorate General of Penitentiary Services and the CIRE itself, will analyze and evaluate the current situation and propose the corrective measures most appropriate to regularize the situation of inmates working in auxiliary services. Therefore, the matter is still unresolved, and the CMPT will have to follow up on it in coming months.

Furthermore, as regards women deprived of liberty, it has been observed that the same sexist limitations that exist in society are reproduced in prison. This is true both as regards the type of work they do inside the centers (kitchen, cleaning, sewing, handling and laundry), which are less qualified than the jobs assigned to men, as well as lower salaries. Additionally, it should be noted that the job offering is lower, as the penitentiary population is mostly male, and women's prisons do not have as many spaces specifically for them, especially workshops.

IV. INSTITUTIONAL SCOPE

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Advisers Council and Task force of the Mechanism

This year, there have been no new additions to the Advisers Council or the Task Force of the Mechanism, still made up of the Catalan Ombudsman or person to whom he delegates this role, an adviser to the institution, Mar Torrecillas, and three external experts appointed by the Advisers Council: José María Mena, Olga Casado and David Bondia.

In the case of the Advisers Council, Eva Labarta's departure of last year was seconded this year by that of Santiago Redondo, for professional reasons. The Parliament of Catalonia has been notified of these departures to proceed to their replacement.

Institutional relations

Throughout the year, several institutional meetings have been held to discuss matters of relevance for the Mechanism.

- Meeting with the UN Work Group on the rights of adolescents (February 21) with various members of the Catalan Ombudsman and of the CMPT at which among other topics, ethnic profiling by law enforcement agencies was discussed.
- Meeting with several heads of the Directorate General of the Police (April 18). The deputy general, Jaume Saura, and adviser Mar Torrecillas attended a demonstration of the operation of conducted energy devices (CED, Taser pistols) in the Central Police Station of Sabadell. At that demonstration, information was provided on the technical characteristics of the CED and the intervention procedure in accordance with the rules included in the instruction regulating their use.
- Meeting with the group "Afectats 1 d'octubre" (The Affected of October 1) the Deputy Ombudsman and adviser Mar Torrecillas, where a number of problems suffered by individuals who suffered institutional violence on the day of October 1, 2017 were discussed.

- Meeting of the Catalan Ombudsman and the general deputy with the Catalan Autonomous Minister of Home Affairs, Miquel Buch (June 14). The main recommendations of the CMPT to the Autonomous Ministry of Home Affairs were discussed.

- Meeting of the Catalan Ombudsman and the Catalan Autonomous Minister of Justice, Esther Capella, and the General Director of Penitentiary Services, Amand Calderó (July 9). The main recommendations of the CMPT to the Autonomous Ministry of Justice were discussed.

- Meeting of the Deputy General with the general director of police, Andreu Martínez, and intendants Joaquim Bayarri and Josep Codina (July 27). The main recommendations of the CMPT to the Directorate General of the Police were discussed.

- Meeting of the deputy general with the Directorate General of Penitentiary Services (September 21) on direct access of the Catalan Ombudsman to the Sistema de Informació del Sistema Penitenciari Català (Catalan Penitentiary Service Information System - SIPIC).

Special mention is deserved by the meeting of the Catalan Ombudsman and his deputies, with the rest of the team members with the Delegation of the Committee for the Prevention of the Torture of the Council of Europe, who visited Catalonia this year September 6-13. At the meeting, held at the Catalan Ombudsman's offices the day before the official visit began, attendees discussed matters of interest to the CPT that had been addressed by the CMPT in prior years, and also in this report, such as the situation of special departments in penitentiary centers, the access of detainees to essential information and the situation of unaccompanied foreign minors in provisional centers.

Commemoration session for the Day in Support of Victims of Torture Respect for human rights, and immobilization and mechanical fixation of persons deprived of liberty

For the 6th consecutive year, the Mechanism held a working day on occasion of the International Day in Support of Victims of Torture, June 26. This year, the matter of immobilizations and mechanical

fixations was explored from a fundamental rights perspective. The purpose of the conference was to convene a panel of experts in the theory and practice of mechanical fixation, from the health care as well as regimental realms, to discuss a number of issues that have to do with the prevention, enforcement and recording of immobilization. Participating in the proceedings were Pedro Domínguez, assistant general director of Penitentiary Centers and Management; Javier González, head of Educational Centers Service of the Directorate General of Criminal Law Enforcement in Community and Juvenile Justice settings; Concepció Solé, doctor and director of the Puig de les Basses EAPP, and Josep Arimany of the Col·legi Oficial de Metges de Barcelona (Official Doctors' Association of Barcelona). The discussion was chaired by Olga Casado, doctor and member of the CMPT Task Force.

Throughout the day, discussion centered on measures to avoid applying mechanical fixations, the most appropriate procedures to perform them, how long they should last, the role of medical and nursing services, the risks they entail for health and the documentation and guarantee resources exists to safeguard individuals' rights.

Around 50 people took part in the conference, after which the CMPT drew up a number of considerations and recommendations, featured in this report.

Training

On April 17, an additional session of the training cycle on the Istanbul Protocol for health care professionals of penitentiary centers was held. The initial cycle ran from late 2016 to late 2017. This time, the session was geared to medical personnel of juvenile justice centers. Olga Casado and deputy general Jaume Saura directed the activity, which was held at the headquarters of the Catalan Health Care Institute.

Annual conference of the National Association of Civilian Oversight of Law Enforcement (NACOLE)

From September 30 to October 4, in St. Petersburg, Florida (USA), the 24th Annual Conference of NACOLE was held. NACOLE is the association that groups the civic committees in charge of supervising law enforcement agencies (police forces and penitentiary systems) in the United States. The deputy general, Jaume Saura, was invited to participate as an international expert. He took part in a round table discussion, where he explained the practical and institutional operation of the Catalan Mechanism for Prevention of Torture, as well as the main recommendations made in recent years.

V. VISITS MADE: METHODOLOGY

1. Methodology

Throughout 2018, the Task Force of the Catalan Mechanism for Prevention of Torture carried out a total of 47 visits to 45 different centers, which can be broken down as follows:

- Stations of the Police of the Generalitat – Mossos d’Esquadra: 12
- Local/municipal police stations or guàrdia urbana (municipal, mainly traffic, police): 14
- Penitentiary centers: 6
- Intensive educational residential centers: 2
- Juvenile justice educational centers: 2
- Therapeutic communities: 3
- Mental health centers: 1
- Geriatric and social-health care centers: 5

Most of these were follow-up visits, as can be seen in the fact sheets. The only initial visits were made to social-health care and geriatric centers, and a local police station.

Some of the centers were visited twice. This is the case of the Brians 1 Penitentiary Center, where two visits were made for the team to familiarize itself with different departments, which due to their size, required more than one day’s work.

As in prior years, the Task Force drew up a quarterly work program of visits, and has ensured that the types of center, and the detention sites visited, were diverse, and covered the entire Catalan geography. This was the case of practically all of the visits, except those made to geriatric and social-health care centers, which have been limited to the Barcelona metropolitan area or its surroundings.

This year, priority was still attached to centers of liberty deprivation, because of the importance of maintaining presence and constant supervision there through the follow-up visits, as well as police

stations and minor internment centers, which stood for a majority of the visits.

It must be noted that, for yet another year, and from a resource optimization standpoint, on some visits planned to police stations, the team has used a single trip to simultaneously visit facilities of autonomous community police and the local police.

The visits to centers have been carried out in conditions of normality and, as is common practice of the CMPT, they have been made unannounced, during the day. The exception was the first visit to Brians 1, which was announced because it was meant to visit and familiarize the team with the new mixed department of the semi-open module unit at that penitentiary center, on which the Catalan Ombudsman had previously opened an ex-officio action.

The visits were directed by the Catalan Ombudsman or deputy to whom he delegated the task. Visits to minor internment centers were led by the Deputy Ombudswoman for Children’s Affairs, to whom the Ombudsman delegated the task. Visits to penitentiary centers and minor centers were participated in by certain advisers from the Public Safety Department and the Children’s Affairs Department, respectively.

As for how the visit sites were chosen, the information provided by civil society organizations, news in the media or cases being handled by the Catalan Ombudsman’s office were taken into account in certain cases. Most of the minor internment centers visited had cases open with the Catalan Ombudsman.

Certain visits were made with a more specific goal, such as the visits to the Font Fregona Center, which for some time has been the object of a special follow-up on the compliance of the measures proposed by the CMPT and the Catalan Ombudsman.

In general terms, the attitude of the management and personnel of the centers visited before the presence of members of the CMPT Team was polite and cooperative. That said, the situation was different on visits to geriatric and social-health care centers, where the work of the CMPT is still

not well known enough. At first, when they were told about the torture prevention duties assigned to the CMPT, they were surprised to receive the visit. Nonetheless, once all the necessary explanations were given, there was clear cooperation to provide access to diverse information, records and documents. There have even been cases in which, when it was not possible to access this material during the visit, it has been provided to the Task Force later.

Only one incident was recorded. On the CMPT's visit to the municipal police of Lleida, a police officer did not believe the validity of the official certificate for the visit that is always prepared, and delivered to management of the facility or presented at the reception desk. Later, the Local Council of Lleida notified the Ombudsman that measures were taken to duly notify all staff members of the police station, in order for them to facilitate entry of the CMPT without delay.

On some visits, it was not easy to access audio or video files. This was the case of the visit to the municipal police station in Lleida, where access to the audio of the recording of the period in which the Task

Force was in the detainee custody area was not possible due to technical issues. Later, as the request to deliver the audio recordings was processed more than one month after the visit, the Task Force was informed that the recordings were not kept and had been destroyed. This matter gave rise to the launch of an ex officio action by the Catalan Ombudsman, through which the appropriate recommendations have already been made.

Visits to centers—specifically the penitentiary and minor internment centers—also focused on interviews with individuals and minors held there, guards or educators working there, and medical personnel.

Overall, throughout the visits to penitentiary centers, 53 interviews of inmates were conducted, in addition to the interviews of the various professionals who work there. Complaint forms, or ex officio actions, have been opened whenever complaints have been received on episodes of abuse or irregular actions, or any other situation in which the Catalan Ombudsman could intervene. At minors centers, 63 interviews were conducted with young residents, and 11 with professionals.

**VI. COMPLIANCE STATUS OF
RECOMMENDATIONS MADE IN PRIOR
YEARS**

VI. COMPLIANCE STATUS OF RECOMMENDATIONS MADE IN PRIOR YEARS

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VI. COMPLIANCE STATUS OF RECOMMENDATIONS MADE IN PRIOR YEARS

1. Instructions on the use of stun guns

In 2016, the Catalan Ombudsman presented a monographic report on the equipping of Catalan law enforcement agencies with stun guns. The study pointed out the lack of regulation and control of these weapons, and put forth a number of elements that must be taken into account for the parliamentary debate prior to their eventual authorization. Through this report, the Catalan Ombudsman urged the executive to suspend the use of stun guns by all police officers of Catalonia until the debates were concluded.

At the time that report was written, of the 213 local police forces in Catalonia, 31 had, as official equipment, at least one stun gun. On the other hand, the Mossos d'Esquadra still did not have them.

With regard to the regulation, on February 17, 2016 the proposal was formalized to create, within the Home Affairs Committee of the Parliament of Catalonia, a work group to study the conditions of use for conducted energy devices (CED's). The regulation of conducted energy devices by the police is pending assessment for their usage. The Committee, in a meeting held on March 2, 2016, adopted Agreement 2/XI of the Parliament of Catalonia, to create the aforementioned working group. Within the framework of this working group, the Catalan Ombudsman presented the report.

As a result of the tasks accomplished by the working group, the Committee approved eight conclusions that implied, among other items, that the Government of Catalonia equip the Mossos d'Esquadra with CED's as a new working tool; that strict regulations be drawn up on the use of the pistols, and delivered to law enforcement agencies, in addition to a standardized working protocol, and that the guns incorporate technological elements that enable a written, computerized record of all elements regarding their use.

In 2017, the Police of the Generalitat–Mossos d'Esquadra (PG-ME) purchased 134 yellow CED's made by Taser, model X2. At the same time, it drew up the procedure regulating the use of the CED's by the PG-ME, as a tool forming part of the police equipment. The

procedure determines the situations in which it can be used and establishes the action and the operative management process for the use of CED's. Last, training is provided to the individuals eligible to use these devices.

Body-worn cameras were also acquired, and the procedure for their use began to be developed. Once the training on the use of these devices is taken, validation is received from the Video Surveillance Control Committee for use of body-worn cameras by the PG-ME.

The deputy general and an adviser to the Catalan Ombudsman attended a demonstration of the operation of conducted energy devices (CED's) in the Central Police Station of Sabadell. At that demonstration, information was provided on the technical characteristics of the CED and the intervention procedure in accordance with the rules included in the instruction regulating their use. Instruction 4/2018 regulates the usage, and Instruction 5/2018 regulates the body cameras.

Instruction 4/2018, aside from modifying the existing instruction on the use of police weapons and tools to incorporate CED's in the catalogue of tools of the PG-ME, is based on the conclusions approved on July 6 in the framework of the Home Affairs Committee, and the recommendations taken up in the report delivered to Parliament by the Catalan Ombudsman.

Instruction 4/2018 determines the situations in which CED's can be used, and establishes the action procedures. Regarding this issue, the Catalan Ombudsman has made two suggestions for improvement: the first refers to point 5.3, on the cases in which the use of CED's is prohibited or limited, in that the range of non-use be expanded to children and adolescents, and not just children up to twelve years of age as is currently in force, in the understanding that the actions of public administrations for prevention, care and protection, under Law 14/2010, of 27 May, are geared both to children and adolescents. Further, Law 14/2010 takes up the best interest of the child or adolescent (indistinctly) as a

fundamental, guiding principle of public administrations.

In response to the first suggestion, the Directorate General of Police (DGP) has responded that it will take it into account to study the feasibility, although it is clear that it is not always possible to determine the age of adolescents in situations of risk.

The second refers to point 6.1, on general actions to be taken when a stun by this tool is delivered to another person. The instruction specifically states “that whenever possible, the development of the action must be recorded, and video must be recorded of the part of the body where the CED has been applied.” The Catalan Ombudsman has suggested the term “whenever possible” be replaced by “at all times”, as a general criterion for action.

As for the second suggestion, the DGP informed the Catalan Ombudsman that this version of the draft was chosen in consideration of situations in which, due to circumstances beyond the control of the police officer, the action is not filmed or recorded.

Consequently, with relation to the evaluation and later modification, if necessary, of Instruction 4/2018 in the terms established in the aforementioned suggestions, the DGP informed the Ombudsman that this would be done once the CED implementation period had passed, to detect other improvement needs for work procedures related with these devices by the PG-ME. Therefore, the necessary follow-up must be carried out.

On another note, Instruction 4/2018 includes a number of new additions, such as informing the person who has received a discharge, and notifying a family member or the person designated by the affected party, and also informing the judicial authority by the pertinent police report procedure whenever the CED is used on a person.

Aside from the basic safety rules that must be followed in any context, the CED’s also have measures and technological features that block repetitive, continued use, and that facilitate traceability and control following use, enabling prevention of any possible

excesses or abuse. Likewise, it is written that the PG-ME must have a system of records that guarantees identification of the persons who have had access to the devices and the circumstances in which they have been used.

Nonetheless, the objective is to prevent an imminent, irreparable “greater evil”. The only conditions in which to use these devices are when there is a patently serious risk for the life or safety of the officers or other persons. Before using a stun gun, it will be necessary to have attempted all prior possibilities of dialog, negotiation and mediation, in addition to clearly warning the person posing the threat that this instrument will be used if they do not change their attitude. In the event they are used, and fired (the discharge has a maximum duration of five seconds, which can be reduced) the goal will be for the person not to fall to the ground, because that is when they could suffer injury.

Instruction 5/2018, regulating the body-worn camera, also establishes directives for use and actions that must be observed when they are used. The recording device is very small (it is worn on the chest), and records audio and video. The camera has a pre-recording feature that lets the user keep the pictures and sounds recorded two minutes prior to the time when the device is activated. This way it is possible to have all of the information on the action taken.

The device also has security systems and mechanisms to guarantee traceability, and whenever it is used and the acts recorded could constitute serious or very serious criminal or administrative violations, judicial authorities will be notified.

The operational deployment of the Tasers is linked to the roll-out of the AED’s (automatic external defibrillators) with the proper training for their use. This deployment, financed by the DIPSALT health administration of the provincial councils is initially focused on the Police Region of Girona. The rest is in a tender process to purchase the DEA’s. Therefore, plans call for the deployment of Tasers throughout the rest of Catalonia once the defibrillators are available.

The pilot projects for consolidation of the proper operation of the CED and body-worn

cameras began in June, 2018. The locales where the pilot projects were conducted were the police stations of the Gironès, Pla de l'Estany, Selva Litoral, Alt Empordà-Figueres regions, the Regional Area of Operational Resources and the duty officers of the Girona Police Region.

The tests concluded on the night shift of July 1, 2018, and in this period the devices were not used. Therefore, the aforementioned devices are considered operational since that time. Outside the test period, on July 19, 2018, at 18:32 h., officers from the Selva Litoral police station used a CED. The device was used in acoustic warning mode with no need to launch the electrodes or the electrical discharge. The warning turned out to be effective, as the person reduced their aggressiveness. Along with the use of the CED, footage was also filmed with the body-worn cameras, and no notable incidents were recorded. Pursuant to the protocol, the pertinent court was informed through the police report proceedings.

Later, information was received regarding another incident in Salt in which the stun gun was also used, but apparently it was not filmed because the body-worn camera was faulty. Furthermore, on the last visit of the CMPT to the Girona police station (September), the team was informed that the camera had been broken since then and had not yet been repaired.

When the Catalan Ombudsman made a query on the matter to the DGP, they responded that the intervention had been considered correct, although they acknowledged that due to a handling error of the body-worn camera, it was not possible to film the police actions. According to the information provided, when the incident began, the duty officer of the unit that had the CED and the body-worn camera was in the detainee custody area of the District Police Station of Girona (ABP Girona), supervising the entry of a detainee into a cell.

At that time, the aforementioned unit was called to the incident in Salt to back up police officers who had the task of arresting a man who had attacked his wife and daughter, was showing an aggressive, threatening attitude, and attempting to leave the scene. Shortly

before arriving on the scene, the officer wearing the body-worn camera, who thought it was in pre-filming mode, pressed the button to film the police intervention. However, what he actually did was activate the pre-filming mode, as the camera was off at the time. When the officer using the body-worn camera arrived at the ABP Girona, he pressed the button of the camera again, to stop the recording. But actually, he began filming, and recovered the two minutes of pre-recording that the device features. What is more, those two minutes contained footage of another police intervention, and therefore it was not possible to film any footage of the police intervention with the stun gun.

It was made clear that the circumstances in which the stun gun was used complied with the terms of the protocol in force, as it was a situation of risk for the lives and safety of third parties and the police officers on the scene. Nonetheless, the error committed with the use and handling of the body-worn camera must be taken into account, in light of other possible situations in which this could come about and in which it may be necessary to use a stun gun.

With regard to the use of stun guns by local police forces, following the formation of the aforementioned work group, in March 2016 the Directorate General of the Public Safety Administration requested that all local police forces of Catalonia inform on the use of this sort of instrument. The information provided at that time revealed the following data: 35 local police forces had this material, with a total of 60 units.

As a consequence of the work group's report, the Department deemed it appropriate to establish certain guidance criteria to facilitate the regulation and standardization of the use by all local police forces of Catalonia, just as the Catalan Ombudsman had already recommended. Once this was completed, work was begun to draw up a protocol establishing guidance criteria to regulate the use of Taser guns by members of the local police forces of Catalonia.

The protocol was approved by Resolution INT/2789/2018, of 23 November, which includes aspects relative to the use of the instrument, theoretical knowledge on the

working procedures and ethical rules, and theoretical-practical rules on the use of AED's. However, it is worrisome that some of the aspects that the Catalan Ombudsman and the Mechanism had been critical of have remained in the procedures, for example that the weapon not be excluded at a general level from use in adolescent minors, but rather only in minors under twelve, and only "whenever the intervening officers can ascertain this condition".

As for the appropriateness of creating a registry of the units in service in the local police forces of Catalonia, which the Catalan Ombudsman had proposed to the department, they responded that they now have this information, considering that they have been requesting it from local police forces for two years. The department believes that the legislation in force only refers to the requirement to provide the number and characteristics of the firearms in the local police's possession. This is without prejudice to the fact that, in implementation of the legal provision of Article 25 bis of Law 4/2003, of 7 April, on the organization of the public safety system of Catalonia, at the time of drafting the Registry Regulations of local police forces, this information was indicated as mandatory.

Therefore, despite the fact that the legislation in force does not make this reporting mandatory, the Department has analyzed its suitability along the lines that the Catalan Ombudsman had suggested. Still and all, the CMPT has recommended that guidance criteria be drawn up for the use of Tasers by local police forces.

2. Rights of detained persons recognized within the framework of the EU: article 520 LECrim and the new N01 form

This year, a significant new develop has come about in the interpretation of Article 520 of the Criminal Procedure Rules (LeCrim) regarding the rights of detainees and their legal defense to access the documents that justify their detention.

In the reports of recent years, the CMPT had recommended to the Directorate General of Police that it interpret Article 520 of LECrim in a manner aligned with Directive 13/2012 of

the EU, and that therefore, with all necessary cautions to safeguard the sub judice aspects of the proceedings and protect victims and witnesses, the defense of the detainee be provided access not only to the information on the reasons for detention but also the full content of the police report.

Last year's report featured commentary on a ruling of the Second Chamber of the Constitutional Court that provided protection to a detained citizen, whose attorney had been denied access to the Guàrdia Civil police proceedings. This year a second judgment, in this case in the First Chamber, has made it possible for the Constitutional Court (CC) to hand down an in-depth interpretation of the scope of rights recognized in Article 520 LECrim, pursuant to European legislation (STC 21/2018 of 5 March 2018).

In application of this judgment, the Directorate General of Police has made certain modifications to the record of constitutional rights (form N01) and police operations, of which the Catalan Ombudsman has been notified as a response to case no. Q-5531/2016. The most significant elements of these changes are:

- The person detained must be given sufficient information on the reasons for their arrest. This sufficiency must be interpreted, as the Constitutional Court has ruled, not only in terms of provisionally identifying and qualifying the criminal offense the detainee is suspected to have committed, but also the "objective information that enables establishment of a logical connection between the conduct of the suspect and the investigated fact."
- The detainee must duly petition for access to the desired elements of the proceedings.
- This access must be produced "in an effective manner, by exhibition, delivery of copy or any other method that, while guaranteeing the integrity of the proceedings, allows the detained person to know and verify, themselves or through their attorney, the objective bases for their deprivation of liberty".
- The CC has stated that this "does not grant a right of access to the complete content of

the police proceedings taken up in the police report” and that “the determination of the elements essential to challenge the legality of the detention is case-based.

In light of these considerations, the new form N01 features various changes, including a section for the police to provide a provisional judicial qualification of the events providing the basis for the detention and, as an autonomous right, the “right to access the elements of the proceedings that are essential to challenge the legality” of the detention.

The recognition and manifestation of this right on the form must be perceived, initially, as positive, as they fulfill the recommendations of the CMPT and the judgment of the CC. This notwithstanding, there are certain elements of the instructions on police procedures that could give rise, in some cases, to contraventions of the letter and spirit of European Union law.

- The detainee must state which specific elements of the police proceedings they want access to (the form says: “I wish to exercise the right to access to the elements of the police proceedings that refer to...”). Considering that the detained person has no way to accurately know which documents the police have to justify their detention, this request must be interpreted in the broadest possible sense to avoid falling into a de facto denial of the right to access. For example, the detained person must be able to access “the complaint” or “testimony of witnesses” without having to specify the names, if the detained person does not know them. Notwithstanding this, if there are documents that the detainee is not aware of (for example, photographs, expert reports), it will be difficult to request them and the material impossibility of accessing them could be considered an attack on the guarantor role of Directive 13/2012.

- The new form, following the indications of the 7th legal ground of Judgment 21/2018, asks that the petition for elements of the police proceedings to be accessed be “justified”. This is another requisite that could constitute an insurmountable barrier to the effective exercise of the right, unless it is interpreted as a mere formality. The

detained person must be able to state that they wish to access the documents “to confirm that the detention is compliant with legality” without having to justify the reasons why they consider one or another document to be relevant for these purposes a priori, without having examined them.

- One aspect of potential conflict in the exercise of the right of access to elements that justify the detention will be the case-based determination of whether the information requested is relevant or not. This decision is up to the acting agents, but the detainee can challenge it in the examining court. The general criteria for denial proposed by the CC are clear and reasonable (“information or parts of the police of the police report that refer to third parties, other offenses, or open lines of investigation must not be provided”), but its case-by-case evaluation can be complex, and police practice must be closely followed.

- The CC provides three options for access to these elements. “exhibition, delivery of copy or any other method that allows the detainee to know and verify the objective bases for their deprivation of liberty”. The key is that the access be provided “in an effective manner”. The DGP’s memorandum lists the three options, but seems to prioritize the latter (“any another method”) as it states: “Therefore, it could also be a brief report in which only the specific information necessary to know the reasons for the detention, without revealing other details that could go beyond this information.” The CMPT believes that generalizing this option would be a legal fraud that would newly distort the purpose of Directive 13/2012. Further, it could scarcely be understood to provide effective access to the elements that justify the detention. It is necessary to access original documents, not summaries written by whoever made the arrest.

On the Mechanism Task Force’s visits to PG-ME stations made as of May, 2018, it confirmed that the N01 form is already operative. Most of the police leadership interviewed in police stations visited informed that they had not yet received any petition for access to the information and documentation. In the case of the PG-ME stations of Barcelona and Girona, where

there have been a number of petitions, they stated that under no circumstances had access to the documents requested been denied. In any case, the CMPT will continue to supervise to ensure the most guarantee-based interpretation of Article 520 of the LECrim and Judgement 21/2018, respecting the European legal framework as regards the right to defense at all times.

3. Rights and guarantees of women in penitentiary centers of Catalonia

This year, the CMPT Task Force made another visit to the Women's Penitentiary Center and women's modules of some penitentiary centers that have them. The visits were meant to perform a general follow-up of recommendations made in prior years.

Two visits were made to the Brians 1 PC. The first was to familiarize the team with the new Semi-open Module Unit, following news appearing in the media, according to which a mixed-gender module had been opened in the Semi-open Regime Unit (SRU) of the Brians 1 Penitentiary Center that housed inmates serving sentences for crimes against sexual liberty.

First, according to information provided upon the first visit and that sent later by Directorate General of Penitentiary Services, the SRU is not a mixed-gender department. In fact, neither the inmates housed in this unit have matrimonial or similar bonds, nor does the SRU operate as a therapeutic unit, along the lines of Article 115 PR, which are the characteristics of mixed departments, pursuant to the terms of Articles 168 and following of the PR.

The unit was opened in early 2018, and houses male and female inmates with itineraries of furloughs through the third-degree prison regime, or 100.2 PR. The measure was in response to an instance of gender-based unfairness because the women in the same penitentiary situation were inmates inside prison walls and therefore, at entrances and exits had to go through all of the formal control procedures.

The operation of the unit is comparable to an open section or open center, in which

inmates leave in the morning according to their prison regime, and only return to spend the night.

The day of the visit, the CMPT found that all of them spend the nights in different areas and separated spaces with gates that block access to the cells. The only spaces that they share are the cantina, exercise yard and economat. In the case of the exercise yard, the women have the choice of whether or not to use it. In fact, the CMPT was informed, and this is taken up in reports from the women themselves, that they were offered the possibility to use another, smaller exercise yard, separated from male inmates, and they chose not to.

Therefore, on the controversy and reports by a trade union on the fact that in the men's wing there were inmates serving sentences for crimes against sexual liberty, the female inmates stated that they had no objections. To the contrary, they stated that they knew them previously because they had already shared other activities before living in the same mixed-gender module and they had not experienced any trouble.

Nonetheless, to ensure legal security for the operation of the unit, and the civil servants working there, the managing director issued a resolution that complies, on one hand, with the need to facilitate conditions of compliance with the sentences being served by female inmates in a trust and self-government regime, according to the degree of classification and prison regime they enjoyed, while guaranteeing the conditions of security and order of the facility, and on the other, to guarantee service of the sentence in conditions of effective equality between women and men.

On its second visit, the team targeted the new functional and architectural changes being carried out in the Women's Department, that had already been announced. As stated in the section on conclusions and recommendations of the visit information sheet, the CMPT left with a positive opinion of the way the organization of the module attended to the needs of female inmates. Specifically, the fact that the women's closed-regime department (DERT) had been relocated to the ground floor. Nonetheless,

once the works are complete, and the new functional plan of the unit is implemented, a proper follow-up must be conducted, without ceasing to pay continued attention to possible complaints that may be filed by female inmates, or that the CMPT Task Force may collect on its successive visits to the center.

On another note, the CMPT Task Force expresses its concern for the suicides that have taken place in Brians 1 while female inmates were in closed regime. The last inmate to commit suicide hanged herself in her cell. It is worth noting that the two known cases were discussed and were the object of a specific point in the Catalan Ombudsman's 2018 Annual Report.

The team made its fourth visit to the Women's Penitentiary Center. The center continues to face the same problems that have been described in recent years. New developments have been described in the fact sheet of the first visit, which is why they are not repeated in this section. In any event, following the CMPT visit, we were informed of the new gender perspective program that had been begun last April, and that was to be implemented in all other penitentiary centers with women's departments.

According to information received, the Directorate General of Penitentiary Services (DGSP) is implementing a specific program entitled "Gender-based Violence Survivors", meant to replace the previous one, entitled "Eva". They hold four weekly sessions that last one hour and forty-five minutes. For interventions with victims of violence or abuse, they have the cooperation of organizations such as Associació Creació Positiva, Àmbit Prevenció, El Safareig and the Federació d'Associacions Gitanes de Catalunya.

It is worth noting that for some time the CMPT has emphasized the need to carry out actions aimed at all women who have suffered situations of violence and are in a context of vulnerability, as well as those who wish to develop aspects related with protection and empowerment before the situations of violence and abuse they have survived, many of whom or not aware, or have not begun to take awareness of this, as

is observed in the interviews.

Nonetheless, more information has been requested on this program and its implementation in the rest of women's departments.

Last, it must be noted that the DERT of CP Ponent was not visited this year. Nonetheless, the DGSP has informed on observations they have made, as the CMPT already had, of the unsuitable atmosphere created in this department when there is only one woman, or when there are two who have incompatibilities. In such cases, the Administration acknowledges that this situation can make for a punishment added to their prison regime due to the lack of common activities. Additionally, they hold the opinion that eliminating it would have an even more negative effect on the treatment of inmates classified as first degree, as it would imply the transfer to a different penitentiary center with the consequent impact on their family relations.

Therefore, to reduce this impact, the DGSP makes known the need to resort to application of Circular 2/2017, on closed regimes, to shorten the term as much as possible and boost the principle of flexibility with the application of 100.2 PR.

Therefore, the conclusion is that along the lines of all other special departments, the necessary follow-up must be conducted, and confirm that mechanisms of flexibility are established that guarantee the proper, appropriate intervention to work on specific aspects of regression and provide continuity to specialized intervention programs prescribed for the affected individuals.

4. Closed-regime departments

Throughout 2018, the CMPT continued to supervise the situation of these departments and living conditions of inmates incarcerated there. With this goal, the special departments at Quatre Camins Youth Penitentiary Center, the CP Brians 1 women's and men's departments and that of Puig de les Basses.

As in prior years, the visits have focused

on inspection of the facilities and the performance of interviews, of inmates as well as the administrators in charge of these units.

In the case of the CP Joves, the interviews did not reveal any specific complaints about this module, beyond the general ones common to all centers visited such as the prices of the CIRE products. Furthermore, none of the accounts from first-degree or solitary confinement inmates revealed that they had been subject to mistreatment by guards.

Nonetheless, the CMPT continued to observe the practice of performing a medical exam at the inmates' request when they are being punished. The CMPT believes that this practice must be corrected. It is necessary to protocolize medical care, as it cannot be limited in any case to asking the inmate if they are well. It must be ensured that the person isolated over so many days is in condition sufficient to withstand the punishment.

As for the DERT of the Puig de les Basses PC, the main observations and conclusions derived are taken up in the visit information sheet. The CMPT confirmed that Circular 2/2017, on closed regime, is applicable in this department. Further, they have drafted their own specific operational program, and have a multidisciplinary leadership team to apply it.

As for the DERT of the Brians I women's penitentiary center, the CMPT can confirm that it is not true that the Women's One DERT had been closed, as had been claimed, but rather for some time there were no women housed in it. Prison personnel stated that they were in the midst of an analysis and review period covering many work processes, which involved reorganizing and redefining the Women's One area and its special department. In general terms, the idea is to convert the DERT into an ordinary-regime area like the rest of the Women's One floors, that will enable an improved classification of inmates, and intervention with smaller groups. Later, the infirmary area would be converted into a behavior stabilization and intervention area. At that time, when the works are

completed, the current DERT will be closed.

As for the Men's Brians 1 PC DERT, the visit information sheet includes the main findings taken from inmate interviews. They made relevant mention of the lack of intervention, in that, although they have activities planned every day, the professionals do not always attend. This shows the limited intervention in this department in fulfillment of the mandatory elements taken up in the new Circular 2/2017, on the closed regime.

In some cases, inmates have reported a maximum of one or two days, in which to carry out some type of activity (educational or sport-related). Another complaint encountered once again was on the lack of proper medical care while they are in this regime, in that medical personnel merely ask, from outside the cell, how they are feeling. In this area, the CMPT has emphasized the importance of medical care to avoid cases of individuals with physical or mental disabilities in this prison regime. In the same vein, another recurrent complaint has to do with the poor quality of the meals.

The CMPT intends to continue visiting these departments and interviewing the inmates being housed there.

5. Relations between local police and Mossos d'Esquadra

Since 2014, the CMPT has been recommending that local police forces desist from transporting detained persons and that, through the relevant agreements, they transport them directly to a PG-ME facility.

Through public safety and police coordination and collaboration agreements signed between the Catalan Autonomous Ministry of Home Affairs and local councils with local police forces, the duties that police forces that depend on different administrations perform in the same municipality are coordinated. Some of these agreements were signed long ago. Therefore, in cases in which the CMPT's recommendation is to close the local police

custody area, the modification is suggested. The positive cooperation between both police forces is clear in these cases, but it is also evident that these agreements can vary widely from one territory to another.

Of the 14 stations visited, five were visited for the first time and the rest were follow-ups. With respect to compliance with the recommendations made in prior years, most have been fulfilled. It was confirmed that the improvements had been completed, and the deficiencies detected on prior visits had been remedied. This is the case, for example, of the Territorial Units of the municipal police in the Ciutat Vella and Eixample Districts (Barcelona), and those of l'Hospitalet de Llobregat and Castell-Platja d'Aro. Others, such as that of Palamós, that was visited this year, have also confirmed that they accept and will implement them.

As for the recommendation made to the local councils for the local police to cease in their custody duties of detainees, a diverse array of responses are still being received. In any event, the local councils have agreed to convey the recommendation to local security councils to study the proposal and establish new protocols, at least for detainees over which the local police is not competent to complete the procedure, such as cases of crimes of against authority and traffic safety violations. This is the case of the municipal police of l'Hospitalet de Llobregat.

Whatever the situation, all law enforcement agencies pledged that detainees' stay in their facilities would be as brief as possible.

There are municipalities, such as Montornès del Vallès, in which it was found that the cell used for custody is no longer used, and the procedure for interaction with the PG-ME has been revised. This has resulted in new instructions that set the criteria that govern the actions of the Local Police as concerns the transport, custody and reception of detainees in the Granollers ABP.

In other cases, such as the local police of Valls, which accepted the recommendation to close the custody area and transfer detainees to the PG-ME of the same municipality, the CMPT found the custody

area had not been closed yet. In that case, they are waiting for the legal department of the Directorate General of the Public Safety Administration to sign off on the agreement. In the meantime, the local police continue to hold in custody persons detained for crimes against authority and against traffic safety.

Nonetheless, while the local councils evaluate the feasibility of the recommendation, the CMPT recommends they equip detainee custody areas with the necessary security elements, for detainees as well as custody agents. This is the case of the Palamós and Castell-Platja d'Aro local police forces, to whom it has been suggested that they expand the area under video surveillance, for it to cover all of the spaces through which the detained person passes.

In the area of detainee rights, the CMPT found once again that the only right systematically exercised when the detained person is under local police custody is the right to receive medical care. In some cases, the exam is performed as an obligation imposed by the PG-ME to receive the detainee, as a guarantee of the physical conditions in which this person comes to them. This exam still takes place immediately after the detention, and right before the detainee is taken to local police facilities.

On another note, it was still found that this manner of proceeding is not standardized throughout the entire territory of Catalonia and that, in certain police regions, such as Girona or the city of Barcelona, Mossos police stations are more flexible when it comes to receiving persons detained by local police forces. That is why the Mechanism is reiterating that there must be a general agreement between the PG-ME and local police for the medical exam to recover its purpose as a right of the detained person.

The medical exams are now conducted with custody agents present in the medical area. On the other hand, the CMPT Task Force found, for another year, that the manner in which some local police forces proceed in the transfer of detainees to a medical center for their exam is diametrically opposed to the position

taken by the DGP. In these cases, the decision is made based on the medical criteria of the medical personnel attending the individual. This is the case of the Palamós, Castell-Platja d'Aro and Palafrugell local police forces. The CMPT will continue to insist for the PG-ME to comply with these standards of this subject matter in their daily practice.

In the area of respect for detainees' rights, it was found that there are local police stations where the detainee is informed of their right to make a telephone call to notify another party of their detention, but they are also told that this right does not become effective until they arrive at a PG-ME facility. This is the case of the municipal police of Barcelona (GUB Territorial Unit of Ciutat Vella and l'Eixample). who have protocolized the initial proceedings with the detainee in their station headquarters, later transferring the individual to the les Corts precinct once they have finished, or the GUB Investigation Unit in Zona Franca.

The Municipal Police follow the same procedure for communication of the detention to the bar association. Those receiving the detainees are responsible for calling the bar. That is why the CMPT reminded them again that the communication must take place as of the time at which the detention is performed, and that the first legal aid must be provided in the initial hours of the detention, which may coincide with the period in which the person is still under custody of the Municipal Police. This is also the case of the l'Hospitalet de Llobregat Municipal Police.

To the contrary, the local police forces that do notify of the detention from the time it takes places acknowledge that the attorneys go directly to the PG-ME station.

The CMPT will continue to reiterate the need to immediately close all custody areas that do not meet the tangible detention conditions that respect detained persons' rights, or any area in which full compliance with the rights recognized in Article 520 LECrim cannot be given. As for the rest, municipal authorities must analyze their cases to determine whether it is efficient to maintain these facilities, and if there are PG-ME stations in

the same or neighboring municipalities, refrain from opening new local police custody areas.

6. Istanbul Protocol in the police and medical-forensic realms

The 2015 Annual Report of the Catalan Mechanism for the Prevention of Torture featured a special chapter on applicable criteria of the Istanbul Protocol for medical personnel. The Istanbul Protocol was mostly unknown to professionals and institutions responsible for detained persons deprived of liberty, and this had a highly negative impact on the effectiveness of abuse complaints filed in the competent jurisdictional bodies.

In 2016 and 2017, the Catalan Autonomous Ministries of Justice and Health, and the Institute of Legal and Forensic Medicine approved measures to promote knowledge and usage of the Istanbul Protocol through a number of training courses.

On its visits, the CMPT continues to find that medical exams of persons deprived of liberty are still performed in the presence of the police or other custody agents. This is a systematic practice in emergency care facilities and PG-ME stations. This is also true for the medical-forensic exam carried out in the City of Justice. Even on occasions when a physician has asked to examine the detained individual in private, the request has been refused by Mossos d'Esquadra agents.

Following the international recommendations and those of this mechanism, it is necessary to insist that the medical exam be done in private, without presence of custody personnel in the medical area or within sight or earshot, unless there is justified suspicion of risk and the medical professional so requests it. In such situations, written record must be made of the circumstances in which the exam takes place, the presence of other individuals, and the physical restraints applied to the detained person.

In response to the CMPT's recommendations, on one hand, the Secretariat of Relations with the Justice Administration has stated the following:

- In the cell area, not only detained persons, but also penitentiary inmates, receive medical care. These actions are generally to provide psychiatric care. For this reason, in addition to rooms in which to provide health care, there are other rooms suitable for holding interviews. It was found that in the medical examination rooms there were sharp and pointed medical instruments, and a wide variety of medication that could be elements of risk for staff members as well as detained persons.

- The team was told that the Institute of Legal Medicine and Forensic Sciences of Catalonia has a medical-forensic action protocol for cases of alleged torture and mistreatment, and although they guarantee that the health care interventions are performed in a suitable space, prepared for such purpose, with respect for detained persons and in the presence of agents, they showed their willingness to cooperate in the establishment of a specific circuit or protocol that would guarantee performance of examinations of detained persons alleging to have been tortured or abused without the police being present.

Furthermore, they also stated that they would be willing to work on the establishment of new security mechanisms, such as installation of a panic button.

On another note, the Directorate General of Police does not rule out the evaluation of this scenario in the near future. Still and all, at this time, the operation continues to be the same, and they justify it by the fact that custody and guarding of the detained person, despite the intervention of medical professionals to examine them, is the sole and exclusive responsibility of the police officers. Their belief is that the agents must be alongside the detained person at all times, never letting them out of their sight. To sum up, it is a matter of concurrence of two fundamental rights: the right to privacy and the right to safety, which occurs during the medical examination of detained persons. Nonetheless, in the understanding of the importance that the Protocol has, the CMPT will continue to insist on this recommendation in the reports it writes up on each visit carried out.

Last, the team found that, in this effort to maintain the necessary balance between the right to privacy of detained persons and security, most local police forces visited expressed that the criteria of the medical personnel prevailed, and that therefore, if the medical professional requests it, the police do not remain during the medical exam.

As for medical reports, since the beginning of this year, the new ICS communiqué on lesions is posted in the ECAP. It takes up the minimums that should be featured in the evaluation of an individual alleging to have received abuse. Nonetheless, there are still medical reports that lack the description of the events and an appropriate and complete description of injuries. Therefore, it is necessary to insist on the improvement in medical report quality for detained individuals and the injuries they present following Istanbul Protocol standards.

In the case of the medical-forensic action protocol for allegations of torture or abuse, the Mechanism observed that it had not been applied in the case of a detained individual who had filed a complaint of abuse. The Institute of Legal and Forensic Medicine was urged to supervise its use and review its application.

7. Facilities providing immediate services to migrant minors

The Law on rights and the opportunities of children and adolescents establishes the duty of the organization responsible for child protection to provide immediate services to unaccompanied minor migrants while the Prosecutor's Office performs the age determination process (art. 110).

For years, this immediate service was provided in the custody and detention facilities of the Barcelona and l'Hospitalet of Llobregat City of Justice, though the adolescents were not detained. In 2010, the Catalan Ombudsman indicated that this area had major shortcomings for the care of children who were the object of the Administration's actions in the realm of protection.

On visits by the Catalan Ombudsman as well as the CMPT, team members found

that in the same facilities and rooms that were separate but contiguous, the detention area handled reform minors, generally children and adolescents already housed in juvenile justice centers and who had to come to court, together children under protection, generally children and adolescents who are victims of abuse, children and adolescents under guardianship who had escaped from protection centers, and unaccompanied minor migrant children and adolescents. These children and adolescents, victims of traumatic life histories, were attended to and made to wait, for periods that could exceed 24 hours before they were assigned the necessary resources, in cells or rooms that had the same characteristics as the cells used for the custody of detained adolescents or those deprived of liberty.

At given times, for example in the months of September and October, 2017, the Catalan Ombudsman found on his visits to this facility that at least in some cases, there were children who had been on those premises for over 100 hours, without showering, changing clothes or brushing their teeth, with the lights always on for security reasons, eating the same diet (muffins, juices and omelet or tuna sandwiches), without ever going outside or seeing natural light, and not knowing when they would be able to leave. Furthermore, outside these facilities, in the basement waiting room of the F Building (Prosecutor's Office), there were also numerous children with mattresses on the ground, in completely unsatisfactory conditions. The lack of vacancies at the first-line care facilities, which had no openings, meant that these children could remain up to four or five days in these facilities.

This minor custody and detention space was located in the basement of the F Building. It was cold and had little natural light. The exits were shielded by metal grilles and guarded by members of the Mossos d'Esquadra police corps.

In light of this situation, the affected administrations, in cooperation with the Municipal Governments of l'Hospitalet de Llobregat and Barcelona, worked to find an alternative to this area near the City of Justice. They were unsuccessful. Over 2017,

actions were taken to sectorize the space, and other facilities of the City of Justice were temporarily conditioned.

Last, the pressure resulting from the arrival of unaccompanied minors was so high that different governmental agreements of the Council of Chief Judges of Barcelona and the Court of Administrative Affairs denied the use of any other space in the City of Justice. The last Government Agreement 977/2018 of the chief judge of the single-judge courts of the Barcelona judicial district ruled to prohibit the overnight use of the Prosecutor's Office waiting room, and any other facility of the City of Justice. This prohibition came with a modification in the care circuits for migrant minors without family members of reference, that avoided concentrating the service in the City of Justice and without using the minor detention space for these purposes.

Among others measures, it was ordered that the identification tasks be carried out in stations of the Mossos d'Esquadra, not only in the Oficina d'Atenció al Menor (Minor Services Office - OAM) in the City of Justice. However, the lack of sufficient beds has led to a situation in which, during the month of September, 2018 there have been minors who have spent the night in these police stations, as they did previously in the detention area of the City of Justice, until resources for their immediate care are found.

This lack of sufficient beds has also meant that during the summer of 2018 there have been migrant children who have stayed in the offices of the DGAIA, because they do not have an alternative resource either. It is worth noting that once their identification by the Mossos d'Esquadra is complete, these children are referred directly to other resources, not necessarily those for first-line care, while they await medical tests, if necessary.

One of the problems is that there are not enough beds to cover the pace of arrivals. Further, there is not a consolidated emergency protection service for migrant children without family members of reference who require immediate care. Rather, provisional measures have been implemented to temporarily cover this need, such as shelters

(Barcelona, Manresa, Vic, Coma-ruga, etc.), camp dormitories, etc.

The DGAIA, with the support of the Catalan Autonomous Ministry of Justice, is searching for appropriate spaces to prepare, in the short and mid-term, an emergency shelter center for unaccompanied minor migrants, in an area near the City of Justice, that would operate as a fully-equipped facility that enables the essential screening and orientation of the protected minors, through police identification and booking services, and their later remanding into custody of the Juvenile Affairs Prosecutor's Office, once they are summoned.

The DGAIA plans for the emergency protection service for minor migrants without family members of reference to provide emergency protection to these children, in addition to lodging, food and health care, carry out the initial identification and documentation actions, as well as the localization or communication with family members, and referral to ordinary resources from the service portfolio, or to first-line care centers of the protection system, once their ages are determined.

Their stay in this emergency resource must last until their status as minors is confirmed, in case there are any doubts. Once their status as minors is confirmed, these children must be cared for by first-line care centers, or shelters, for the work-up of each individual case.

8. Admissions into geriatric centers of elders who are not legally incapacitated but cannot freely express their will

Last year's report took note of the fact that the Catalan Autonomous Ministry of Labor, Social Affairs and Families, following recommendations of the Mechanism, had issued Instruction 1/2017, on the liberty to enter and remain in a residential establishment by those individuals who cannot freely express their will, although they have not been legally declared incapacitated.

This instruction stipulated that the owner of the residential establishment or its technical

director on their behalf had the obligation to notify judicial authorities or the prosecutor's office of the admission of all individuals with a cause for modification of their capacity, but who did not have their capacity legally modified, when they were unable to freely express their will to be admitted to or remain in the residential center.

This instruction enabled fulfillment of the terms of Article 225.2.2 of the Civil Code of Catalonia ("In the event of de facto guardianship over a person of full legal age, in which there is cause for incapacitation, if this person is housed in a residential establishment, the owner of the residential center must notify the judicial authorities or prosecutor's office within a period of 72 hours from the beginning of the guardianship"). This provision contradicts sections 3 and 4 of Article 7, Decree 176/2000, on the regulation of the Catalan Social Services System.

Over the course of his visits to geriatric centers made this year, it has been confirmed that this instruction was repealed a few months after its approval, in December, 2017. The new instruction restores the previous regime, with the consideration as a "voluntary admission" any which is validated by a family member or de facto guardian, when the admitted person is not legally incapacitated, but has clearly lost the faculty to autonomously make such decisions.

According to reports received, this step back was caused by the complaints of some courts of first instance, specialized in incapacitations, due to a considerable increase in their workload.

In fact, the 2017 report already stated that Instruction 1/2017 had brought about the effect of an exponential increase in notifications of non-voluntary admissions in these courts. Considering that this could cause an overload of case files in these courts, and significant delays in processing them, it was suggested to the Catalan Autonomous Ministry of Justice and the High Court of Justice of Catalonia that they make the necessary provisions to handle them. However, it seems that the response of the public administration and the judiciary has been to prioritize the proper

order of judiciary offices, above the guarantee of vulnerable individuals' rights.

Consequently, the CMPT reiterates that it is necessary to fulfill the terms of the Civil Code of Catalonia and recover Instruction 1/2017. This means equipping the courts of first instance specialized in incapacitations with the resources necessary to perform their duty and guarantee the rights of elderly individuals admitted into geriatric centers who cannot freely express their will.

9. Effects of the closure of the Model de Barcelona prison

In the last annual report, the effects of the closure of the Model de Barcelona prison were discussed. This year, the Catalan Ombudsman has not received any complaints related with the process of inmate and civil servant relocation, or possible impacts derived from closure of the center.

Nevertheless, the Ombudsman did receive the DGSP's response to the recommendations made:

As regards those of a general nature:

- There are plans for the progressive closure of the penitentiary centers remaining in the city, and the creation of new facilities in the Zona Franca, which will house female, pretrial custody and open-regime inmates.
- It has not been necessary to seek alternative facilities, such as the CIE that the Catalan Ombudsman had proposed, because the penitentiary centers' capacity for absorption was sufficient.

As regards those of a specific nature:

- In the process of inmate relocation, criteria of family relations were applied, their opinion was taken into consideration, and their individualized treatment programs, the continuity and following of production workshops were respected.
- As a result of the agreements reached by the Transport Committee, the eliminated schedules or services, as well as the modified

routes to the Brians 1 and 2 penitentiary centers, and the Quatre Camins and Youth penitentiary centers, were re-established. The number of coaches and seats was also designed to extend this service to the staff of Men's PC relocated to penitentiary centers outside the municipality of Barcelona and the number of stops was increased pursuant to the requests of trade union organizations.

It was underscored that at this time the Administration is providing a staff transportation service to penitentiary centers that is adjusted to service schedules. It is tracking their usage and incidents, and keeping up permanent dialog and communication with trade union organizations.

- In 2017, the budgetary allocation to the inmate support item from the working capital was increased. The plan was to cover the increase in the amounts to pay in the concept of aid to inmates and their families, as well as possible aid to relatives of inmates transferred from the Men's PC to cover travel expenses.

- The video-conference project was also implemented and progressively rolled out in 2017, with the effective entry of nearly all penitentiary centers and all bar associations of Catalonia. In 2018, actions are being carried out to implement the video-communication program in the Ponent, Youth and Women's penitentiary centers, as well as in juvenile justice educational centers.

- Two agreements were formalized as a result of talks with trade union organizations with representation on the sectorial bargaining committee for administrative and technical personnel.

Based on this information, the Catalan Ombudsman's interventions are considered complete, trusting that the new facilities planned will be built as soon as possible, and with the understanding that during the closure of the old ones, the necessary measures will be adopted to do so in an orderly, unhurried manner, with transparency and participation of different affected actors, trade union negotiation, and no dismissals.

VII. CONCLUSIONS AND RECOMMENDATIONS

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1. In relation to the monographic topics addressed in this year's report, the following conclusions and recommendations bear mention.

A) On mechanical fixations: an in-depth revision of the instruction in force is necessary, so that it tends toward a policy of zero fixations, and boosts general and specific prevention protocols.

In this context, due to the risks it entails for individuals' health, mechanical fixation should be an exclusively medical measure. The follow-up, supervision and termination of the measure must correspond exclusively to the medical criteria indicated by medical personnel and not predicated on regimental measures. For this reason, the fixations that are performed must be of minimal duration, limited to the time in which the immobilized person is in an altered state, and must be exclusively monitored by medical staff.

Furthermore, the instruction must strengthen judicial guarantees, so that the penitentiary supervision court be notified of the measure's application from the very beginning.

B) The CIRE must urgently revise (downward) the prices of all products it sells, especially those of basic necessity, such as those for feminine hygiene.

Furthermore, the penitentiary administration must establish a thorough control system over the time that inmates working in auxiliary services in penitentiary centers spend in their respective workplaces. Specifically, the Administration should install time clocks in facilities such as the central kitchen and kitchenettes of residential modules, so that inmates can certifiably accredit the hours they work there, which must coincide with the hours for which they contribute to the general Social Security regime.

2. On the CMPT's visits to police stations and penitentiary centers, it has observed the meager information existing on the exercise of the right to communicate with

consular authorities by foreign individuals deprived of liberty. This communication with the consulate is supported by the Vienna Convention of 1963 on consular relations (in force in Spain since March 5, 1970). The convention states that one of the consular duties is "helping and assisting nationals, both individuals and bodies corporate, of the sending State;" (Art. 5. e). From there forward it configures a right of communication of foreign individuals deprived of liberty:

Articles 36. Communication and contact with nationals of the sending State:

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action."

Following publication of the two organic laws modifying Article 520 of the Criminal Procedure Rules, new rights have been recognized for detained or imprisoned individuals that affect communication with their consulates. Article 520 of the Criminal Procedure Rules establishes along these lines that:

2. The detained or imprisoned individual must be immediately informed, in a manner comprehensible to them, of the deeds they are accused of and the reasons that have caused their deprivation of liberty, as well as the rights they have, especially the following:

[...]

e) The right to inform a family member or other chosen person of the detention and place of custody where the individual is being kept at all times. Foreigners are entitled to have the above-mentioned circumstances communicated to their country's consular post.

3. If the detainee is foreign, the consul of their country must be notified of their detention and their place of custody, and their communication with consular authorities will be permitted. In the event that the detainee has two or more nationalities, they may choose which consular authorities to notify that they are deprived of liberty, and with whom they wish to communicate.

4. If the minor or disabled detainee is a foreigner, their detention must be communicated to the consul of their country *ex officio*."

Therefore, pursuant to international commitments, and according to the new draft of Article 520 LECrim, there are three possibilities for communication between consulates and detained or imprisoned foreigners:

1) **Mandatory:** If the detained or imprisoned foreigner is a minor, or legally incapacitated, their consulate must be notified of this situation.

2) **Optional,** or, whenever the detained or imprisoned individual so requests it:

a) They may request to have the consular office of their country notified of their situation;

b) The right of the person to be visited by the consular authorities of the respective countries, and to communicate and maintain correspondence with them (pursuant to the new draft of paragraph g of Article 520.2 LECrim) may be determined.

On the multiple visits made this year, it was observed that in police stations, whether they are local or of the PG-ME, the staff does not always properly inform detained foreigners on these rights. Additionally, there is not a directory with all of the telephone or fax numbers of individuals with responsibilities in consular affairs in Catalonia to be able to fulfill the voluntary exercise of the right to communicate with them, or the right of individuals to be visited as soon as possible, or the obligation to notify consular authorities if the detainee is under 18 or is legally incapacitated. Nor are detainees with double nationality (when one of them is not Spanish) informed of their right to choose, if they so desire it, which consular authority they want to notify of their detention.

As for penitentiary centers, it has been observed that they only inform (and not in a detailed manner) the affected parties of these possibilities to give notice of the situation and to be visited by the consular authorities at the time they are admitted into prison. On the other hand, throughout the time in which they serve their sentence, foreign inmates have trouble exercising these rights.

For all these reasons, recommendations are made to the Catalan Autonomous Ministries of Justice and Home Affairs:

- That a reminder be sent to police station and penitentiary center leadership on the rights of foreign individuals regarding communication with their consulates.

- That they request creation of a directory with contact information for the heads of the various consular posts located in Catalonia to be able to contact them if a

foreign individual in a situation of detention or imprisonment requests it, or to communicate the detention of a minor or incapacitated individual.

Furthermore, the Mechanism will notify the consular authorities accredited in Catalonia of these conclusions, and urge them to cooperate with local authorities to make effective the right to communication held by foreign individuals deprived of liberty.

3. In 2017 the CMPT made several visits to **centers housing minors deprived of liberty**. Specifically, the team made three visits in the juvenile justice realm, two educational centers and one therapeutic unit, two visits to intensive educational residential centers, and two visits to therapeutic centers that make up a single residential unit. The team also visited a day center for adolescents, which had previously been a therapeutic center, and had changed its purpose at the time of the interview.

With regard to juvenile justice centers, higher occupancy was detected, and the Mechanism expresses its concern for how this circumstance may affect the educational task carried out in these centers, which have changed from an educational and reintegration dynamic to a more disciplinary intervention. The CMPT reiterates the need to continue efforts that guarantee professionals can carry out their work in the right conditions, both in terms of occupational conditions as well as training, support, evaluation of workplace hazards, internal and external supervision and accompaniment. Likewise, the CMPT detected the need to continue improvement of the application of fixations and disciplinary measures, with application of all the guarantees established in the legal system.

At the intensive educational residential centers that were visited, the most noteworthy aspect, especially in one of the centers, was the admission of unaccompanied migrant adolescents, derived from the shortcomings in care center capacity, and the consequent distortion of the duties of the center due to this circumstance, in addition to the fact that it is an inappropriate resource for the needs of the adolescents

who do not require this type of center. In the case of a center that had gone from caring for adolescents with mental disabilities to being an intensive educational residential center, the Catalan Ombudsman was able to observe the difficulties arising from this transition and the need to adapt the resources to guarantee the educational intervention they need.

On visits to therapeutic centers, the team observed the need to improve supervision and follow-up of the intervention in adolescents who suffer behavior disorders, in some cases associated with substance use. These centers have a significant percentage of adolescents under guardianship of the DGAIA, which makes it necessary for the intervention to be geared to promoting their physical and psychological recovery. The DGAIA, as guardian of these minors, must ensure that this intervention is performed at all times. In addition to this dependency, the Catalan Autonomous Ministry of Health authorizes these centers and makes the pertinent inspections. The Catalan Autonomous Ministry of Education also provides the educational service to these centers, and must guarantee its quality.

Although the CMPT will not attempt to evaluate the technical methodology applied in these centers, according to the conclusions drawn from the information gathered on recent visits and the interviews conducted, shortcomings have been observed, that may constitute rights violations of the adolescents housed there. To this end, the Catalan Ombudsman has sent a report to the Catalan Autonomous Ministry of Labor, Social Affairs and Families and Catalan Autonomous Ministry of Health.

Furthermore, the Catalan Ombudsman believes that the intervention carried out may not be compatible in some cases with the right to identity, privacy and dignity of the children, in addition to the right to maintain bonds and relationships with family members. Likewise, the educational intervention assumes that it is not allowed to establish relationships of intimacy and trust or friendship, and when it is suspected that this sort of relationship is forming, it is punished.

The corrective measures are also inappropriate, as many of them do not come with the necessary guarantees (knowledge of violating behaviors, heterogeneity and lack of objectiveness, ambiguity and subjectivity as regards the duration, etc.). In some cases, these measures affect the amount of food and the utensils used, and represent a separation from the daily dynamic. They can even mean separation from educational, or any other, activity. Application of corrective action can also mean suspension of family visits. Adolescents in correction become consumed by inactivity and a high level of unease.

Educational activities are insufficient and they are carried out with a lack of monitoring by the Administration. On the other hand, it was observed that much of inmates' time is devoted to tasks of cleaning, cooking and maintenance of the center.

Situations already reported by the CMPT continue to come about: incorrect application of fixations and participation of inmates when applying them, disproportionate punishments and use of inappropriate instruments, non-compliance with documentary requirements.

Furthermore, there is a lack of specific work on situations of abuse suffered by the children before admission to the centers, of male violence and the approach to and specific treatment of substance use/dependency situations, so that the right to physical and emotional recovery is not guaranteed. Insufficient relationships with the figure of reference (EAIA) in the case of children under guardianship were also detected.

Therefore, the CMPT recommends an immediate evaluation of the new Master Plan for General Action.

Therefore, the Catalan Ombudsman asks, on one hand, that the necessary measures be taken so that the rehabilitation treatment of adolescents admitted to centers does not make for a violation of the fundamental rights under any circumstances; and, on the other, that a group of expert psychologists and psychiatrists reevaluate the suitability of the specific measures applied, according to the greater interest of the adolescent, and

in keeping with the type of cognitive-behavioral therapy indicated in these centers, as they involve a conflict with the exercise of fundamental rights.

After these considerations were conveyed to DGAIA management through the Secretariat for Childhood Affairs and Family, the Catalan Ombudsman has been made aware that following a visit to the centers by DGAIA personnel, and having corroborated that certain actions are inadmissible from the standpoint of children's rights, and the framework project of the DGAIA centers, the Secretariat for Children's Affairs has ordered the opening of inspection proceedings of the affected centers, and has ordered the immediate cessation of all practices not compatible with children's rights. Likewise, the Catalan Ombudsman has asked the Catalan Autonomous Ministry of Health for information on the follow-up done on therapeutic interventions, especially the supply of medication. The Ombudsman has asked the Catalan Autonomous Ministry of Education for information on the operation of the school unit.

4. **Other recommendations**, based on the follow-up of matters discussed in prior years, such as:

Police of the Generalitat-Mossos d'Esquadra

4.1 Adjustments must be made to the instructions for use of CED's (Taser stun guns), specifically, that their use on children and minors under 18 be prohibited, and that an audiovisual record of their use is always guaranteed.

4.2. There must be assurance of the most guarantee-based interpretation possible of Article 520 of the LECrim and Judgement 21/2018 of the CC, respecting the European legal framework as regards the right to defense at all times.

Therefore, it is not possible to require a detainee or their legal representatives to make a specific petition for the documents they wish to access, because these persons may not know which documents the police have, or an exhaustive justification of the reasons for their request. Furthermore, priority must be given to the delivery of a

copy of the documents in which the police proceedings are detailed, and not just reports or summaries written by the law enforcement agencies.

4.3. As regards the right to medical care during detention, it is necessary to insist that the medical exam be done in private, without presence of custody personnel in the medical area or within sight or earshot, unless there is justified suspicion of risk and the medical professional so requests it. In such situations, written record must be made of the circumstances in which the exam takes place, the presence of other individuals, and the physical restraints applied to the detained person. This recommendation must also be extended to local police forces and the custody area of the City of Justice, as concerns the visits made by the Institute of Legal Medicine.

Local police

4.4 The CMPT continues to reiterate the need to immediately close all local police custody areas that do not meet the tangible detention conditions that respect detained persons' rights, or any area in which full compliance with the rights recognized in Article 520 LECrim cannot be ensured. As for the rest, municipal authorities must analyze their cases to determine whether it is efficient to maintain these facilities, and if there are PG-ME stations in the same or neighboring municipalities, refrain from opening new local police custody areas.

Situation of women in penitentiary centers

4.5 A gender perspective must be integrated into the criminal enforcement system, implementing public policies that take into account the differences between the

realities of men and women as they serve their sentence. It goes without saying that the penitentiary system is an area in which gender inequality manifests itself in an evident way, and places women in unequal living conditions in aspects such as work, interior classification, architectural conditions of centers and specific treatment programs. Spain is among the countries in the European Union with the most imprisoned women of the total inmate population, and Catalonia also has one of the highest percentages of imprisoned women. Therefore, women must be given a voice, and their situation made visible through specific measures addressed to these needs.

Furthermore, along the lines of all other special departments, for women's DERT's it must be confirmed that mechanisms of flexibility are established that guarantee the proper, appropriate intervention to work on specific aspects of regression and provide continuity to specialized intervention programs prescribed for the affected individuals.

Geriatric centers

4.6. In light of the irregular performance of the Catalan Department of Welfare on the matter of admission into geriatric centers by elderly persons who are not incapacitated, but who cannot freely express their will, the CMPT finds itself with the need to insist on compliance with the terms of the Civil Code in Catalonia, recover Instruction 1/2017 and equip the courts of first instance specialized in incapacitations with the resources necessary to work as a guarantor of rights for elderly persons housed in geriatric centers who cannot express their own will.

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