REPORT OF THE CATALAN MECHANISM FOR THE PREVENTION OF TORTURE

DECEMBER 2019

SÍNDIC

EL DEFENSOR DE LES PERSONES

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I. INTRODUCTION

1. INTRODUCTION

This report contains the activities of the Catalan Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (MCPT) throughout 2019. This is the ninth report presented to the Parliament of Catalonia in accordance with the stipulations of article 74 of Law 24/2009, dated 23 December 2009, on the Catalan Ombudsman.

This year, 42 centres were visited, one of them twice, a similar figure to previous years. Most of the visits (22) were to police stations, primarily the different local police forces (19) in Catalonia which have holding areas for detainees. Visits were also made to seven prisons, one of them (Mas d'Enric Prison) twice. Furthermore, with regard to adolescents, two juvenile justice centres, four centres for unaccompanied foreign adolescents, one therapeutic community and one intensive education residential centre were also visited. Finally, two geriatric residences and three residences for individuals with disabilities were visited.

The Mechanism's action protocol has maintained the characteristics outlined in previous years and is based on prior preparation by the team, no forewarning of the visit and, since most of the facilities are well known by the Mechanism, confidential interviews with individuals deprived of their freedom, as well as with staff, treatment teams and the management of the centres or units visited, if needed. The conclusions and recommendations based on the visit are forwarded to the administration in charge and to the centre itself.

As usual, this report includes the datasheets for each centre or unit visited which contains the main observations and conclusions drawn by the team, as well as the consequent recommendations.

Furthermore, this report also presents a monographic study resulting from the visits made by the team as well as the research and debate in a workshop that the Catalan Ombudsman holds every year on the United Nations International Day in Support of Victims of Torture. This year, it examined the public administrations' response to comprehensive care of the elderly or individuals with serious or incurable illnesses in prisons. This response should entail not only the prison perspective but also health and social welfare, as well as implementation of the precepts of the Penal Code and the Prison Regulation (PR), which stipulate release for terminally ill individuals, as well as the relevant jurisprudence of the European Court of Human Rights. The goal is to overcome the customary invisibility of both groups, who have social realities and specific needs which are seldom covered by the current prison system, beyond their receiving appropriate social and healthcare when needed.

After that, this year's report provides a detailed account of the status of compliance with the most important general recommendations formulated in previous years' reports, following the methodological strategy embarked upon in the 2016 report. In this sense, it reports on the new developments throughout 2019 in terms of inmate management and productive work at prisons, which was the monographic subject examined last year; the rights and guarantees of women in the prisons of Catalonia; the status of lock-down departments; implementation of the Istanbul Protocol in the field of policing and forensic medicine; new developments around the use of stun guns; and spaces that provide immediate care for immigrant children.

Throughout 2019, as a follow-up to the study and recommendations in the monographic section of the 2018 report, the Mechanism team has analysed physical restraint practices on each visit to prisons and juvenile justice centres by viewing the video surveillance cameras and analysing the relevant files. The outcome of this study will become a monographic report which is expected to be issued in the first few months of 2020.

The institutional section reports on visits by public bodies that defend human rights, both on the scale of the United Nations (Rapporteur for Minority Rights) and

Ombudsman's Offices (Slovenia, United Kingdom, Croatia). This section also reports on the seventh consecutive International Day in Support of Victims of Torture, as mentioned above, as well as the participation of MCPT members in different domestic and international training activities

Just like every year, the report ends with the main conclusions and recommendations gleaned from the visits and studies conducted this year.

II. THE ELDERLY OR SERIOUSLY ILL WHO ARE DEPRIVED OF THEIR FREEDOM

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INTRODUCTION

The visits by the team of the Catalan Mechanism for the Prevention of Torture to prisons pay particular attention to especially vulnerable groups because they are deprived of their freedom. The most invisible among them are the elderly, some of whom have organic or mental health problems which hinder them from adapting adequately to the prison environment, and individuals with serious incurable illnesses. In fact, from the standpoint of the intervention of public authorities, the elderly have always been lost in the system as efforts have been invested in other population segments.

In this context, the Catalan Mechanism for the Prevention of Torture devoted the seventh annual workshop dovetailing with the commemoration of the International Day in Support of Victims of Torture to examining the situation of the elderly or individuals with serious incurable illnesses.

Therefore, the purpose of this chapter of the report is to examine the public administrations' response to the comprehensive care of these individuals, which should entail not only the prison perspective but also health and social welfare, as well as implementation of the precepts of the Penal Code and the Prison Regulation (PR), which stipulate release for terminally ill individuals, as well as the relevant jurisprudence of the European Court of Human Rights. To craft these reflections, this monograph is based on the talks and conclusions of the workshop, as outlined in the institutional section of this report.

The goal is to overcome the customary invisibility of both groups, who have social realities and specific needs which are seldom covered by the current prison system, beyond their receiving appropriate social and healthcare when needed.

PREVIOUS CONSIDERATIONS

The elderly

The ageing of the demographic pyramid, an outcome of longer life expectancy, is reflected in the prison population. The number of elderly persons in prison has increased in recent years. Indeed, according to official figures from the Catalan Health Institute (ICS), in late 2018 the mean age of Catalan prisoners was 39.1, lower than in the rest of Spain (39.7) but higher than the other countries in the European Council (35.9). This figure has risen in recent years (it was around 36 one decade ago), and the tendency is towards an ageing of the prison population.

Likewise, in absolute terms, according to data from the Secretariat of Penal Measures, Rehabilitation and Victim Care (SMPRAV), on 31 December 2018 there were 265 individuals aged 61-70 (17 women) and 85 over the age of 71 (2 women). In contrast, in 2007, for example, there were 172 people between the ages of 61 and 70 and 51 inmates over the age of 71. This increase is particularly pronounced if we bear in mind that the prison population has decreased in recent years. In late 2018, there were 8,367 people imprisoned in Catalonia, which is a rate of 110.9 per 100,000 inhabitants, one of the lowest in the past two decades. However, it is also true that the number of elderly persons deprived of their freedom in the Catalan prison system is low in both absolute terms and percentages, which contributes to rendering them even more invisible and hampers a holistic examination of their situation.

It should be noted that the definition of *old age* or *elderly* varies according to the reference framework used. There is currently broad consensus in accepting the age of 65 as the beginning of old age, dovetailing with retirement age. However, active life expectancy has far exceeded this threshold. Nonetheless, old age is not defined by chronological age but by the sum of physical, functional, mental and health conditions.

It should also be noted that there are discrepancies around the age which constitutes elderly between the United Nations and Europe. Thus, the United Nations states that old age begins at 70, while in Europe it begins at 65. Likewise, in penal and prison terms, an elderly person is defined by the term *septuagenarian*.

The explanation of the presence of the elderly in prison primarily reflects the criminological profile of these inmates, who have mainly committed violent crimes and crimes against sexual freedom in the case of men. Most of these crimes come with strict sentences, which, once in prison, entail the obligation to undergo specific treatment programmes if the inmates want to enjoy any prison benefits. According to figures from SMPRAV, of the 91 people over the age of 70 currently in prison, 32 are there for crimes against sexual freedom (primarily sexual abuse or aggression against minors under the age of 16) and 17 for violent crimes (mainly murder and homicide).

The seriously ill

In terms of the concept of the *seriously ill with an incurable disease*, the Supreme Court jurisprudence deems that it should not be interpreted in such a restrictive sense that it could be confused with a person who is *dying or close to death*. In this sense, it is important to cite Ruling 48/1996, dated 25 March 1996, in which conditional freedom was attained via article 60 PR by a person afflicted by “a serious, incurable coronary disease with symptoms with unpredictable consequences, for whose treatment the prison atmosphere is inappropriate as it negatively affects the pathology because of the anxiety inherent in the deprivation of freedom [...], negatively affecting the prison stay with a worsening of the patient’s health, thus shortening his lifespan, even though there is no imminent risk of loss of life”.

In a similar sense, if the interpretation of illness is not restricted to the terminal stage, Ruling 4540/1991, dated 12 September 1991, of the Second Courtroom of the Supreme Court, declared: “In any case, the stance taken by the Judge Magistrate of Prison Supervision seems to be in line with the literal tone of the precept (full-blown AIDS with a prognosis of death in the short term clearly meets the two requirements, as it is an illness that is both extremely serious and incurable), as well as with its humanitarian purpose such that it would enable the release to be moved up to a date prior to imminent death, as perhaps the purpose of this article in the Regulation should be interpreted not as ill prisoners who may be released from prison just to die outside it; instead, allowing them to remain free for some period prior to the time of death seems more in line with the spirit of this provision.”

Among the people deprived of their freedom in Catalonia, there is a higher prevalence of certain illnesses than in society as a whole. The most frequent ones include high blood pressure, diabetes, anxiety disorders, personality disorders, etc. On the other hand, even though the number of cases has dropped over the years, 55% of the people with HIV in prisons are over the age of 40 (in Catalonia, 29%). In fact, regardless of the age factor, HIV and chronic hepatitis C are much more prevalent in prison than in society as a whole.

Despite the jurisprudential interpretations, the MCPT’s visits to prisons and specifically to infirmaries found that the administration classifies these inmates in the third degree of treatment via application of article 104.4 PR and for the purposes stipulated in article 196 PR mentioned in cases of risk of death or a prognosis of death in the near future, that is, when these ill persons are in the terminal phase of a disease or when death is foreseeable with reasonable certainty in the short term.

LEGAL FRAMEWORK AND STATUS OF PRISONS IN CATALONIA

The conditional release of septuagenarians or individuals with incurable illnesses, in both the compliance (art. 92 CP 196.1 and 196.2 PR) and suspension (art. 91 CP, 196.1

and 2 PR) modalities, requires the third-degree classification of prison treatment and good behaviour. Furthermore, in each case, the circumstance allowing the request for conditional release to be submitted must be accredited (being age 70 while serving the prison sentence or diagnosed with a very serious illness with incurable suffering), without the need to have served three-fourths, two-thirds or half of the sentence.

In the event of conditional release because of age, Circular 1/2017 from the now-defunct Directorate General of Prison Services on the management, execution and tracking of conditional release, stipulates that this circumstance must be accredited via a birth certificate or medical report issued by the professionals from the prison where the person is an inmate.

Finally, in the case of conditional release in the suspension modality, when the inmate's life is clearly in danger because of age or illness, in order for it to be accredited by the forensic physician's report and the prison's medical social services, the Prison Supervision Court may agree on the individual's conditional release with no other proceeding than the request from the final prognosis report, without previously progressing to the third degree of prison treatment.

On the other hand, at the proposal of the treatment board, the supervisory centre may initially classify or go on to classify very seriously ill patients with incurable illnesses in the third degree of treatment in accordance with article 104.4 PR and for the purposes stipulated in article 196 PR, which takes this legal requirement from the Penal Code and outlines the medical or social reports which must be included in the proceeding. In particular, in social matters, it adds that the conditional release proceeding must contain a social report which states the inmate's admission into an institution or association if they have no family ties or support outside prison. Furthermore, it orders the Administration to guarantee that it will provide external social support when the prisoner does not have any. In medical matters, the reports must indicate the fatal prognosis in the short or middle term.

Even though from a legal standpoint, article 508.1 of the Law on Criminal Prosecution enables a person to avoid being imprisoned in the case of precautionary measures by stipulating that "the judge or tribunal may determine that the accused party's provisional prison sentence should be carried out in their home, with any surveillance measures needed, when imprisonment poses a serious danger to their health because of illness".

According to figures from the SMPRAV, since 2018 there have been 19 classifications of or progressions to the third degree because of incurable illness, 5 of whom were over the age of 70. In terms of conditional releases corresponding to article 196 PR, there have been 23 since 2018, 11 of whom were over the age of 70.

For its part, on some of its visits to prisons in recent years, particularly in their infirmaries, the MCPT team has found the presence of the elderly or prisoners with very serious and incurable illnesses, which leads us to assume that the legal provisions outlined above are not always respected.

One example is an inmate in Lledoners Prison who progressed to the third degree of treatment in accordance with article 104.4 PR. At the time of initial classification, he was located in the Hospital Pavilion in Terrassa suffering from a haematological illness which, according to the medical reports, could have had a very negative prognosis in the short-to-middle term. Nonetheless, when he was released from the hospital, the San Joan de Vilatorrada primary health care team issued a new report which stated that although the haematological diagnosis was confirmed in the hospital release appointment, there was no conclusion on the patient's life prognosis, and it requested that the patient's evolution and response to treatments be evaluated in order to develop this prognosis. Bearing this information in mind, the supervisory centre moved him back to the second degree of treatment

because it believed that the patient did not meet the health requirements which underpinned the aforementioned article.

The case study gave rise to a resolution in which the Catalan Ombudsman suggested that prior to the decision of moving the inmate back to the second degree, another less restrictive alternative should have been sought and at least the flexible regimen in article 100.2 PR, among other measures, should have been included within his applicable working plan, based upon the patient's recovery in an outside facility. The tracking of the case closed when information was received that the inmate had begun to receive permits, his state of health had improved considerably, and the team plans to once again move him up to the third degree of treatment.

THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights has not issued an opinion on cases against Spain with regard to possible violation of rights due to depriving individuals of freedom according to their age or health. However, its jurisprudence on other countries can be considered an "interpreted effect of the judgements" and the Prison Supervision Court, the administration and the other stakeholders involved in the prison system should be familiar with and apply it.

The casuistic nature of European jurisprudence does not hinder us from reaching general considerations based on different de facto situations addressed by the European Court of Human Rights through recognition, in the European Convention on Human Rights (ECHR), of the right to life and the ban on torture and other forms of abuse, given that the right to health is not explicitly recognised in the Convention. Nonetheless, the scope of protection of the right to health of individuals deprived of their freedom should exist in seven specific areas:

1. Medical care for detainees with physical pathologies: It states that the ways in which medical treatments are provided, the conditions of transfers to receive care, depriving access to medicine and the lack of an adapted diet, which is often incompatible with life in prison, may entail a violation of article 3 of the ECHR[1] (cases: Mouisel vs France, Tekin Yeldiz vs Turkey, Serifis vs Greece, Testa vs Croatia, VD vs Romania, Gülay Cetin vs Turkey, among others) and of article 2 of the ECHR,[2] in that the states are not meeting their positive obligations (case: Tarariyeva vs Russia).

2. HIV-positive individuals: The lack of medical care for a detainee who is HIV-positive, imprisoning them in areas that are less than ideal, and the state expelling them after completion of the prison sentence if they cannot receive quality healthcare in their home country may entail a violation of article 3 of the ECHR (cases: Aleksanyan vs Russia, Martzklis vs Greece, D vs the United Kingdom, among others).

3. Treatment of the elderly deprived of freedom: Imprisoning elderly people, depending on the prison conditions, may entail a violation of article 3 of the Convention. In the case of Farbtuhs vs Latvia, the plaintiff stated that because of his age and illness, coupled with the inability of the prisons in his country to offer him the care he needed, holding him in prison entailed a violation of the European Convention on Human Rights. The European Court of Human Rights stated that delaying his release, despite the existence of a favourable report from the prison warden as well as several reports from medical services, was incompatible with the provisions of article 3 of the ECHR. In the case Contrada (no. 2) vs Italy, the Court ruled that the country had violated article 3 of the ECHR since, despite the age and health of the plaintiff (certified in several different official medical reports), it did not agree to a house arrest system which would have allowed him to receive the treatment which he could not receive while imprisoned in a prison until too much time had passed.

[1] "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".
[2] "Everyone's right to life shall be protected by law".

4. Treatment of individuals with disabilities: Imprisoning individuals with disabilities in centres without adaptations, which cannot meet their needs or with infirmaries that are not prepared may entail a violation of article 3 of the ECHR (cases: Price vs the United Kingdom, ZH vs Hungary, Arutyunyan vs Russia, DG vs Poland, among others).

5. Treatment of individuals with mental problems: Imprisoning individuals who require psychological treatment, when there is a risk of suicide, or keeping them in isolation, may entail a violation of article 3 (cases: Rivière vs France and Dybeku vs Albania, among others) or article 2 in that the states are not meeting their positive obligations.

6. Treatment of drug addicts: Failing to provide treatment for individuals experiencing withdrawal or not providing replacement therapies during imprisonment or arrest may entail a violation of article 3 of the ECHR (cases: McGlinchey vs the United Kingdom and Wenner vs Germany).

7. Treatment before statements in courts or police stations: Failing to provide a proper diet before oral statements are made in court may be considered a violation of article 3 of the ECHR (case: Moisejevs vs Latvia).

This jurisprudence is directly applicable to this case, above and beyond the provisions stipulated in the internal laws, by virtue of the contents of article 9.3 of the Spanish Constitution (SC) (regulatory hierarchy) and article 10.2 SC (interpretation of rules on human rights matters).

ADAPTING THE SYSTEM TO AN AGED OR SERIOUSLY ILL POPULATION

The traditional model defining crime in Western societies refers to young, urban, violent males who have committed crimes against property. Consequently, prison infrastructures have been built, in Catalonia as well, to meet the needs of this model, and they are only poorly and slowly being adapted to the transformations. In particular, the conception of the prison as an institution does not match the needs of an ageing population, nor especially of individuals who need special care because of the organic and often mental health deterioration associated with age.

The most important international norms do not mention the existence of specialised institutions for the elderly, as they do for the mentally ill and youths.

The United Nations' minimum rules for prisoner treatment in section 8 refer to the classification by categories. However, in the case of the elderly, this reference is generic, unlike for the mentally ill, in that it stipulates that they should not be imprisoned.

Likewise, the 1987 European Prison Rules establish criteria for distributing prisoners in prison establishments which should bear in mind not only their judicial or legal status but also the particular requirements of their treatment, their need for medical care, their sex and their age (Rule 11.1). It stresses the need for there to be separate establishments or different sections within a given establishment in order to facilitate implementation of the different treatment regimens or prisoner categories. They also stipulate that prisoners suffering from mental illnesses should be transferred to specialised institutions or civilian hospitals (Rule 26.2). Rule 22.1 also mentions prisoners' retirement and the fact that retired prisoners cannot be obligated to work (Rule 105.2).

However, Recommendation R (98) 7, on the ethical and organisational aspects of healthcare in prison, dated 8 April 1998, does devote a section to the elderly. It states that prisoners with serious physical disabilities and elderly prisoners should be guaranteed a normalised lifestyle, and that the establishments where they live should be adapted to do away with architectural and structural barriers.

Furthermore, section 51 adds that in the case of an incurable prognosis, the prisoners should be transferred to appropriate institutions.

With Organic Law 1/1979, the general prison law, nursing homes disappeared, since article 11 only provides the following as special establishments: hospitals, psychiatric centres and social rehabilitation centres. The Prison Regulation stipulates several special forms of implementation yet fails to stipulate specific units or departments for elderly prisoners.

In Catalonia, with the exception of the geriatric ward in Barcelona's Model Prison, we find that there are no specific units or modules for the elderly in Catalan prisons. Not even the new prisons built in Catalonia have plans to standardise their location or living conditions, facilities or services. Thus, elderly prisoners live in modules with low conflict levels but in prison facilities that usually have obvious accessibility issues, with the exception of prison infirmaries. However, the infirmaries' capacity is limited, and they can become saturated with people who are not ill per se but are simply elderly individuals with some kind of physical or mental disability.

Even though healthcare treatments are similar to what is offered outside prison, other specific therapeutic options available in the community for certain illnesses, such as comprehensive treatment units for chronic illnesses, rehabilitation programmes, palliative cures and cognitive stimulation programmes, are not available in prison infirmaries, and this has taken its toll on the health of these individuals.

Indeed, within the prison system, infirmaries are units where prisoners adapt to ordinary life, and therefore patients are expected to recover in order to continue their prison sentence and work plan. They are not designed for permanent situations subordinated to the proposals of a physician, as opposed to multidisciplinary prison evaluation teams, which is what happens when an elderly person or individual with a serious illness is admitted because they cannot be anywhere else.

Secondly, the guidelines of prison work are not properly adapted to elderly prisoners, whose functional capacity is not well-conserved or who have much more fragile, delicate health. The elderly often fail to properly understand the demands of training programmes, scheduling pressures, internal displacements, living with other prisoners, noise and even the roles of professionals. That is, the principles of re-education and reinsertion are not easy to carry out because the standardisation of the system obliviates the specific needs of this population.

Thirdly, the relatively low number of older prisoners means that the elderly are dispersed among the different prisons in Catalonia, given that proximity to the family is prioritised. This dispersion, in turn, means that there is too little critical mass to create spaces and programmes specifically targeted at this group, and the lack of a framework programme means that each prison acts based on the resources available to them. Furthermore, proximity to family or a social circle does not always exist, and older prisoners often receive few visits from family members and friends, who are also elderly and may have mobility issues.

Circular 1/2017 states that in both cases (age/illness) and in either of the two modalities, it is important to connect prisoners with social resources or facilitate their access to the economic benefits to which they may be entitled.

It also states that for prisoners who have no family or social network to care for them, the provisions contained in Law 12/2007 on social services, dated 11 October 2007; Law 39/2006, dated 14 December 2006, on the promotion of personal autonomy and care for dependent persons; and the regulations on the portfolio of social services should be borne in mind.

In line with the above, the circular also specifically calls for the necessary

coordination among the medical social services in the facility and the professionals on basic prison social service teams in situations of conditional release for incurable illness in which the interested party needs to be admitted to a social-healthcare facility.

CONCLUSIONS AND RECOMMENDATIONS

The data and recommendations outlined above lead to the conclusion that legal and prison operators need to make considerable improvements for septuagenarians or individuals with serious illnesses and incurable suffering.

Even though inside prisons these individuals may have healthcare as good as what they could find on the outside, it is also true that prisons should not become geriatric or social-healthcare wards simply because of a lack of community resources. Instead, better interaction is needed among the Catalan prison system and the social and healthcare systems (social services, social-healthcare services, geriatric services) so that because of either age or health, this group is provided care outside the prison to the extent possible.

Likewise, while following the legal mandate and the jurisprudence of the Constitutional Court, improved sensibility is needed among the treatment boards and supervisory courts to grant third degree or flexible regimens to individuals suffering from serious or incurable illnesses, without waiting until their death is imminent.

Based on all the above, the Catalan Mechanism for the Prevention of Torture recommends the following actions:

- To adopt a framework comprehensive care and intervention programme for the elderly.

- To promote and encourage third-sector entities that care for the elderly to partner with prisons and provide support and continuity outside prisons, especially when prisoners are released. There are good practices of this which could be used as models.

- To promote the open regimen modalities called for by the Prison Regulation which enable the elderly or individuals with physical or cognitive deterioration to be referred to other institutions, including social-healthcare facilities.

- To encourage implementation of the existing conditional release mechanism for reasons age or illness.

III. INSTITUTIONAL SPHERE

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THE MECHANISM'S ADVISORY COUNCIL AND WORKING TEAM

This year there were no new additions to the Mechanism's Advisory Council or working team, which is still comprised of the Ombudsman or the person they delegate; an advisor from the institution, Mar Torrecillas; and three external experts appointed by the Advisory Council, namely José María Mena, Olga Casado and David Bondia.

There are two vacancies on the Advisory Council of which the Parliament of Catalonia has been apprised so it can fill them.

INSTITUTIONAL RELATIONS

Throughout the year, several institutional meetings were held which discussed important matters for the Mechanism.

- Representatives of Irídia and Amnesty International (14 January). Stun guns and the identification format of members of the mobile brigade corps (BRIMO) were discussed. Several criticisms and recommendations were added to those made by the Catalan Ombudsman with regard to the use of stun guns. In terms of identification, the actions taken so far are still considered insufficient given that the numbers being used are overly long and difficult to remember.

- United Nations Special Rapporteur for Minorities (18 January). The discussion topics were the rights of foreigners deprived of their freedom, specifically the issue of securing permits when their status is irregular, and the difficulties to legalise documentation because of the lack of support from the Administration. Likewise, it was stressed that foreigners are over-represented in first- and second-degree regimens in Spanish prisons.

- Foreign Affairs Commission of the Barcelona Bar Association (13 March). This meeting once again discussed the issue of the rights of foreigners deprived of their freedom, as well as the circular that the Department of Justice is apparently preparing on this matter.

- Anti-Fraud Office of Catalonia (2 April). At this meeting, a joint study of the functioning of public procurement of the Centre for Reinsertion Initiatives (CIRE) was discussed.

- Ombudsman of the Republic of Slovenia, Peter Svetina (14 May). The goal of this visit was an institutional exchange to learn how the two Ombudsman's Offices work and what their competences encompass according to the legal system in force. Special emphasis was placed on the Catalan Mechanism for the Prevention of Torture and the functioning of the children's area of the Catalan Ombudsman.

- Ombudsman of the United Kingdom, Rob Behrens (3 July), on a study visit to the Catalan Ombudsman. Experiences and good practices of both offices' mechanisms to prevent torture were shared.

- Representatives of Irídia and SIRECOVI (17 September). The issue of deaths while in prison custody was discussed, particularly in terms of the information provided to families and the rigour needed in confidential investigations of this kind of incident.

- Professor Diane Crocker, from Saint Mary's University of Canada (16 October), who, along with different universities in Canada and Argentina, is participating in designing an international project with the goal of documenting the particularities and access conditions to prisons and holding centres for foreigners by researching this matter in different countries (Canada, Argentina and Spain). The initiative emerged from concern over the difficulties that several universities in Canada have encountered for decades in accessing prisons to conduct academic research. The existence of prison institutions governed by different administrations (as in Canada and Quebec) is an issue that particularly interests them, and therefore they decided to include the situation of Spain and Catalonia in the project.

- Ombudsman of Croatia (28 October), on the occasion of the visit from the

Ombudsman's Office to Slovenia. The Catalan Ombudsman and the office manager met with the Croatian Ombudsman, Lora Vidovic, to share experiences on how the National Mechanism to Prevent Torture works.

- Members of the SIRECOVI team (7 November) visited to analyse working methodologies on visits to prisons and the processing of any complaints which may arise from these visits, if applicable.

- Ethics Code Committee of the Official Physicians' Association of Barcelona (14 November) to discuss prisoners' healthcare and the MCPT's recommendations on implementing the Istanbul Protocol.

Still pending is a meeting with the Consul General of the United Kingdom and the consular corps committee accredited in Barcelona to discuss the measures proposed in the MCPT's 2018 report in relation to consular assistance for individuals who are arrested and deprived of their freedom.

Workshop to Commemorate International Day in Support of Victims of Torture. The Elderly or Individuals with Serious Illnesses who are Deprived of their Freedom

For the seventh year in a row, the Mechanism organised a workshop around the United Nations International Day in Support of Victims of Torture. This time, it was held on 1 July and focused on the situation of the elderly or individuals with serious illnesses who are deprived of their freedom.

The purpose of the workshop was to examine the public administrations' responses to the issue of the elderly and heavily dependent persons who have greater difficulty adapting to the prison environment, as well as individuals with chronic or terminal illnesses.

Participants included Viqui Molins with the talk "Support and Assistance for the Elderly and Individuals with Serious Illnesses in Prisons"; David Bondia, with the talk "Rights of Individuals with Serious Illnesses who are Deprived of their Freedom in the Jurisprudence of the European Court of Human Rights"; Susanna Solé, with the talk "The Elderly in the Catalan Prison System"; and Joan Garcia, with the talk "The Right to Healthcare of the Elderly who are Deprived of their Freedom".

Around 35 people participated in the event, after which the MCPT drew up considerations and recommendations contained in this report.

TRAINING

The Deputy General Manager, Jaume Saura, was invited to participate as an international expert in the colloquium entitled "Proportionnalité, droits fondamentaux et juges" (at the University of Neuchâtel, Switzerland, on 21 and 22 November), where he outlined the recent practical and institutional functioning and main recommendations of the Catalan Mechanism for the Prevention of Torture, in particular those referring to the use of coercive means (physical restraint, first degree prison sentences) and how these measures' lack of proportionality can lead them to become torture or abuse.

IV. VISITS MADES IN 2019

1. METHODOLOGY

In 2019, a total of 43 visits were made to 42 different sites, distributed as follows:

- Catalan Government (Generalitat) – Mossos d'Esquadra police stations: 3
- Local/municipal police or city police stations: 19
- Prisons: 8 visits (7 centres)
- Geriatric centres: 2
- Residences for individuals with disabilities: 3
- Centres for minors:
  - Intensive education residential centres: 1
  - Initial reception centres for unaccompanied children: 4
  - Juvenile justice education centres: 2
  - Therapeutic communities: 1

The visits to different centres took place without incident, and, as usual, they were made without forewarning at any time of the day, preferably in the morning, with the exception of the local police, where they were often made in the afternoon. The positive attitude among the persons in charge of the centres visited and their staff and their willingness to cooperate with the members of the MCPT team is worth highlighting, even in the case of geriatric or disability centres, which are not very familiar with the role of the MCPT in this field.

Yet another year, it is important to stress that more than one site was visited on the scheduled days for visits to local and regional police stations with the aim of optimising resources.

We also strove to ensure that we visited the widest range of centres possible, even though most of them were located in the province of Barcelona.

The visits were led by the Ombudsman or the delegated deputy. Just as in previous years, the same methodology was followed of forwarding the conclusions and recommendations to the competent administrations after each visit. Likewise, a section on the visits made has been included in the report which has a datasheet for each site with a brief description of the centre, any observations made and the recommendations that were forwarded and photographs of some of the spaces visited, if applicable.

Three follow-up visits were made to the Catalan Government (Generalitat) police – Mossos d'Esquadra stations (henceforth PG-MEs). Thus, the Catalan Ombudsman can now say that it has visited all the PG-MEs at least once, although one basic police area has yet to be visited.

With regard to tracking the recommendations formulated based on the visits, and specifically the problem of the foul odours in some holding areas of detainees visited, we found that actions had been taken to improve this situation, with the understanding that in some facilities with a larger number of detainees, these maintenance and cleaning tasks have to be improved. In terms of the cleaning and maintenance tasks, we noted an improvement in the state of the cells compared to previous visits, as in the case of Cerdanyola.

In relation to the recommendation formulated to renew the coordination and cooperation agreements with the local police on matters involving the custody and transfer of detainees, it is clear that these agreements vary from place to place and therefore operate differently. Nonetheless, after the visits, the MCPT continues to recommend that the protocols be changed so that the local police cease holding detainees in custody.

With regard to the recommendation that medical appointments be conducted without the presence of the police, on the visits the opinion expressed by the Directorate General of Police (DGP) was that police officers are in charge of the custody of the detainees, and therefore if the medical appointment takes place under these circumstances, the agents must be present for the safety of the detainee,

the medical staff and agents themselves, counter to the Istanbul Protocol.

In relation to the blankets that are given to detainees, there are still a few police stations, such as the one in Cerdanyola, where there is a protocol that they be used ten times, but it was found that most of the PG-MEs apply the criterion of changing them after they have been used four times.

Finally, the visit to the third police station, the Ciutat Vella basic police area, is unique in that it focused on an identification room, a place where people are deprived of their freedom of movement even if are not formally detained. We took advantage of the visit to inquire into the case of a young man who died while in this room, on which the Catalan Ombudsman opened an official action.

This year, no one deprived of their freedom was interviewed at the police stations because in almost all of them there were none or they were asleep.

In relation to local police stations, the majority were first-time visits. In the follow-up visits, all had fulfilled the recommendations previously formulated, including the city police of Tarragona and the local police of Arenys de Mar and Cerdanyola, which is a positive step.

Just as in previous years, we continued to find a highly varied casuistry among the different local police stations. Thus, there are towns that have a local police force but no holding area in the station; instead, they transfer detainees to the Mossos d'Esquadra stations corresponding to their region. Examples include the local police in Matadepera and Sentmenat. Others do have a holding area with issues that must be rectified because they guarantee the safety of neither the detainees nor the holding agents, such as in the local police station in Castellar del Vallès, or they have issues that cannot be fixed and thus their closure was recommended, as in the local police station in Pineda de Mar. There are also local police stations which have no holding area, and if they detain someone, they make the person wait in one of the offices or rooms in the station as the initial police proceedings are drawn up. Among the visits conducted this year, examples of this situation include the local police stations in Viladecans and Santa Susanna.

Given this, the MCPT has continued to recommend that the holding areas of local police stations be closed down and that the agreements for the PG-ME to take charge of detention from the very start be revised. This practice means that there are some local police stations which are receptive to conveying the recommendation to the local safety boards so they can study the proposal and establish new protocols, while the majority promise to rectify the issues detected and decrease the amount of time that detainees remain at their station while the police proceedings needed to later transfer them are drawn up.

Regarding the action guidelines on complete fulfilment of article 520 of the Law on Criminal Prosecution, we also found different ways of acting. The majority provide the detainee with a telephone so they can make the phone call to which they have the right. Regarding notifying the Bar Association of the detention, unless the detainee has entered the detainee holding area for a crime against road safety, the majority report that they do not notify the Bar Association of the detention or if they do, this right takes effect in the Mossos d'Esquadra stations.

It is noteworthy that the city police of Barcelona have approved a new operating procedure on honouring detainees' right to a lawyer's assistance, thus fulfilling one of the MCPT's recurring recommendations aimed at guaranteeing that these rights are effectively and efficiently exercised from the first moment that the city police officers of Barcelona detain a person.

Regarding medical care for detainees, we found that some local police stations view this as a right – such as the local police of Calella – while others have turned it into a duty and transfer the detainee regardless of whether a medical appointment is either objectively necessary or requested by the detainee, as in the local police of Gavà. On the other hand, regarding whether or not a police officer is present while the detainee receives medical care, we found that this is not standard throughout Catalonia and that while most local police stations are flexible,

there are some which have officers present, just like the Mossos d'Esquadra, such as the local police of Canet de Mar.

In terms of prisons, we visited the following prisons: Brians 1 and 2, Mas d'Enric (twice), Ponent, Puig de les Basses, Quatre Camins and the Youth Prison.

One new aspect of the visits this year was that part of the team focused on examining the recordings of the restraints carried out by the prisons and juvenile justice centres in 2019 as part of the study that the MCPT is conducting on the use of physical restraint with psychiatric restraints in prisons and juvenile justice. If it was not possible to view the videos of the restraints in situ, a copy of the recorded images was later requested.

Another new aspect this year is that the team stayed to eat at some of the prisons, given that one of the inmates' complaints is the quality of the food. In Brians 2, the team stayed to eat and recorded a repeated complaint from the inmates that the steak is tough and inedible, given that it is cooked hours earlier and later heated up before being served.

Otherwise, the visits once again focused on interviewing individuals deprived of their freedom. On the visits to prisons, a total of 64 interviews were held with inmates, most of them individual, although several were held in a group.

One of the recurring complaints from the interviews is still the price of items in the CIRE commissaries. The Monitoring Committee in charge of managing the commissary service is committed to continue working on this issue in order to lower the prices of items, given that even now, despite all the actions taken, the prices are still high compared to the reference prices outside prison.

In the interviews held, we found that the treatment by staff is generally appropriate, although there are several exceptions. Behaviours involving verbal abuse, disparaging language, slaps, disproportionality and excessive rigour in immobilisations by certain specific staff members were reported in Ponent and Brians I Prisons.

In the case of women, and specifically in the working area of Ponent Prison, there are still complaints of the type of work performed in the sense that the most qualified jobs are assigned to the men and the women are paid less. There are also complaints that fewer jobs are available and some destinations are set aside exclusively for men.

In terms of the facilities, some prisons have spaces that need repairs to rectify issues and improve inhabitability, such as Brians 2. The Secretariat of Penal Measures, Reinsertion and Victim Care has invested in Brians 2, as the prison with the most urgent problems. On the other hand, even though at the time of the visit the construction underway on the women's module in Brians 1 was not yet completed, we later found out that in October the Lock-Down Regimen Detention Department had been moved to the ground floor of the module.

There are once again infestations of insects and rodents at Quatre Camins Prison, even though the prison has a disinfection, fumigation and rodent extermination service. Thus, the MCPT continues recommending that actions to combat these plagues be stepped up, particularly in the summertime.

At Ponent Prison, the women's Special Lock-Down Regimen Department has ceased being used to serve life sentences and now is only used for short sentences, in fulfilment of an MCPT recommendation.

With regard to geriatric centres, La Trinitat and Mossèn Vidal i Aunós nursing homes were visited, which keep patients during the day and offer day care. The focus of these visits was once again oversight of the facilities, the residents' living conditions, the activities, restraints and clinical records.

We found that the typical resident profile encompasses individuals with severe cognitive deterioration or mental disorders that require intense care, which renders it necessary to increase the current professional-to-patient ratios in these centres.

With regard to the facilities, we found that the evaluation is not entirely correct in the Mossèn Vidal i Aunós nursing home, and that

maintenance and improvements need to continue. No dysfunctions or anomalies were detected in other operational aspects.

This year we visited three centres for individuals with disabilities. One is Can Serra Residence for Individuals with Profound Psychological Disabilities, a residential home which substitutes for the family home and provides comprehensive care to individuals with intellectual disabilities, with or without additional mental health problems, who need overall support in their daily life activities. The management at this centre clearly stated that the ratio of professionals has to be adapted to its current needs.

Another centre is the Joan Trias Residence, which, unlike the previous one, is a residence with an occupational and job insertion service; it essentially houses individuals with physical disabilities and also seeks to replace the home with different services to assist in the users' everyday activities.

Finally, we visited Sant Salvador Residence for the Elderly with Physical Disabilities, which, as its name indicates, is a centre where individuals with severe physical disabilities live. It is a cutting-edge facility in terms of the structure and care model because it fosters users' autonomy and independence in a friendly, adapted care environment. Nonetheless, several refurbishments and improvements are needed.

All the visits to internment centres for minors followed up on the recommendations made on previous visits and focused on interviews with the minors residing at the centres, along with the management and staff that provide services, doctors and treatment. Thirty-six interviews were held at the centres visited, some of them in groups. We also examined the medical records of some of the interviewees, especially those living in therapeutic centres.

The visits were part of a monitoring process aimed at overseeing and improving the living conditions and treatment of the children and adolescents admitted to these centres, given that through these visits and interviews we can identify the problems and propose improvement actions, in the working conditions of the educational staff as well. At the same time, the centres visited and some of the situations explained on the visits have also been the subject of actions by the Catalan Ombudsman.

A total of 8 centres were visited: 2 juvenile justice educational centres, 4 centres for unaccompanied foreign minors, one intensive education residential centre and one therapeutic community.

The visit to the juvenile justice educational centres focused on interviewing the youths and viewing the recordings of the latest immobilisations conducted with psychiatric restraints. In practice, only one was viewed because these videos are automatically erased after one month.

The visit to Can Rubió Intensive Education Residential Centre was based on a complaint received by the Catalan Ombudsman from the representatives of the centre's staff, who stated that the centre was experiencing serious violence with daily incidents.

For the first time, we visited three initial reception and comprehensive care centres for unaccompanied adolescent immigrants and one emergency protection centre for these youths, although at the time this report was being written the Administration had closed the latter. They have many aspects in common, one of which is the need to prioritise the processes to regularise the administrative status of the youths cared for, especially when they reach adulthood, as well as the processing of documentation, along with the need to establish a maximum stay in these centres, which were designed for temporary stays. Nonetheless, this issue is the subject of study and follow-up by the Catalan Ombudsman, and it has been discussed in the extraordinary report entitled La situació dels infants migrants sense referents familiars a Catalunya (The Situation of Unaccompanied Children Immigrants in Catalonia), September 2018. (http://www.sindic.cat/site/unitFiles/5630/Informe_MENA_2018.pdf)

Finally, the MCPT visited the Valldaura Therapeutic Community in the town of Olvan for the second time. This centre has also been the subject of an action by the Catalan Ombudsman in view of the different diagnoses among the fostered children and adolescents living at the centre and the educational project and pedagogical programming conducted there.

V. STATUS OF COMPLIANCE WITH THE RECOMMENDATIONS FORMULATED IN PREVIOUS YEARS

V. STATUS OF COMPLIANCE WITH THE RECOMMENDATIONS FORMULATED IN PREVIOUS YEARS

1. Management of canteens in prisons
2. Rights and guarantees of women in prisons in Catalonia
3. Special or lock-down departments
4. Istanbul Protocol in the field of the police and forensic medicine
5. Instructions on the use of stun guns
6. Spaces that provide immediate care for unaccompanied immigrant children

V. STATUS OF COMPLIANCE WITH THE RECOMMENDATIONS FORMULATED IN PREVIOUS YEARS

1. MANAGEMENT OF CANTEENS IN PRISONS

The report of the Catalan Mechanism for the Prevention of Torture submitted to the Parliament of Catalonia in 2018 included a section on the management of canteens in prisons in Catalonia and particularly emphasised the prices of the items inmates could buy there.

As reflected in that report, the MCPT suggested that the Administration resolutely choose a model which prevents the prices of products sold in CIRE commissaries from exceeding the prices set by the large supermarkets. Consequently, it requested that an urgent review be undertaken and the prices of all products be lowered, especially those classified as staples, such as feminine hygiene products among others.

In view of the suggestions made by the Catalan Ombudsman, the Department of Justice reported that in January of this year, with the new tender for the supply of products, a substantial price decrease on a range of the top-selling and most in-demand products was proposed, and that this decrease could be up to 20% of the current price in some cases.

In order to track this issue, in the fourth quarter of 2019, the Department of Justice was asked for a report on the measures taken to fulfil what it had communicated one year earlier.

In response, the management of the Centre for Reinsertion Initiatives (CIRE) reported that the new tender that had entered into force in 2019 was declared null and void by the CIRE procurement body because of a lack of bidders.

Subsequently, a new tender for a new contract to serve the CIRE commissaries in all the prisons in Catalonia was issued, which was also declared null and void because of a lack of bidders. Therefore, the current contract is still in force via extension.

The fact that two different tenders were declared null and void led the prison commissary management model to be redefined. The new model entails two goals: first, the Administration will purchase the products that will later be sold in the commissaries, and secondly, the Monitoring Committee will be the body that sets the prices of the products based on an analysis of market conditions, primarily for products which are in heavy demand, and applying a gender perspective.

The latest tender published on the public procurement platform of the Catalan Government in the last quarter of 2019 stipulated the criterion of a decrease in product prices, as the CIRE management promised. In this new tender, the prices of products sold at the CIRE commissaries in prisons have decreased an average of approximately 20%.

The Administration expects the new management model of the CIRE commissaries to be uniformly implemented in all the prisons of Catalonia during the first half of 2020, as long as the tender is successfully awarded.

The latest communication from the Department of Justice reports that the sole bid submitted in the tender is currently in the analysis phase.

The CIRE management has promised to report on the result of the tender and provide the new list of prices of the products sold at prison commissaries in order to confirm the substantial price decrease.

The Mechanism will continue to be watchful of the Administration's actions in order to ensure that the provisions of the second paragraph of art. 24 of the General Prison Law 1/1979, dated 26 September 1979, is fulfilled; that is, under no circumstances will the products sold in prisons be more expensive than the customary prices in the town where the prison is located.

2. RIGHTS AND GUARANTEES OF WOMEN IN PRISONS IN CATALONIA

It is common knowledge that little attention has traditionally been paid to the situation of women in prison and that the gender perspective, which enables the conditions of discrimination and inequality in a largely male context to be rendered visible and identified, has been ignored.

It is a reality that prison laws are still discriminatory against women. One example of this, as the MCPT has stated in its reports, is that in view of the lack of facilities specifically for women, they all live in the same space or module within a given prison designed by and for men. Another example is the unequal treatment still perceived in their limited access to paid jobs, professional training or recreational activities.

Organic Law 3/2007, dated 22 March 2007, on the actual equality of women and men, refers to the need "for special consideration of cases of double discrimination and the unique difficulties encountered by women, who are particularly vulnerable, as well as those pertaining to minorities, immigrant women and women with disabilities". The majority of the female prison population could be considered particularly vulnerable.

On the other hand, Law 17/2015, dated 21 July 2015, on the actual equality of women and men, contains specific measures in certain spheres, and specifically section six discusses justice and social policies. Thus, article 54 of the law asks penal services and centres to incorporate the gender perspective in their treatment, rehabilitation and socio-labour insertion programmes for inmates.

Between 2008 and 2010, the now-defunct Directorate General of Prison Services conducted a study on the incidence of male violence against women who are inmates in prisons. Once the high prevalence of this phenomenon had been detected, along with the need to implement interventions geared at empowering female victims of male violence, the EVA programme (a recovery programme for women who have suffered from male violence) was established. Several editions of this programme have been held at the Women's Prison of Barcelona and Brians 1. However, there is no proof that it has been held at the others but instead only that the issue is being addressed in a more transversal fashion.

The Gender Perspective and Equity in Prisons Programme was not published until 2018; it is targeted at the prison population and reflects the intervention model promoted by the Secretariat. However, the implementation of the programme and the prison population's evaluation of it remain to be seen.

Nonetheless, no other programme or action plan for women and men in prisons that includes positive actions to eradicate discrimination against and victimisation of women has been implemented, so an institutional response that fulfils and implements Law 17/2015 is needed.

Even though the Department of Justice states that the figure of the gender referent has existed in prisons since 2009, in practice there is no information on how this figure has materialised during this period.

In terms of the follow-up visits to prisons with women's modules, we found that the issues observed on the previous visit to Mas d'Enric Prison had been rectified. Regarding fulfilment of the recommendations made based on the previous visit, the Department reports that the prison management has posted an informative note on the bulletin board in the women's department about the way the laundry service works (the day laundry is collected and delivered, the procedure, etc.) and has notified the inmates of this policy.

Regarding the recommendation to hire all the treatment professionals needed, reportedly the inmates currently have a stable multidisciplinary team assigned to the women's module for both individual and group care.

Regarding the recommendation on standardising the frequency with which bedspreads and blankets are washed in order to ensure optimal hygiene, the prison management has reportedly changed the

frequency with which bedspreads and blankets are washed such that bedspreads are currently washed once a month and blankets with the turn of the seasons.

Finally, regarding the recommendation on conducting a specific intervention programme on gender violence for women victims, this kind of intervention has reportedly been conducted. It is held individually every time the need is detected in one of the inmates. Therefore, nothing specific is apparently being done for all the women as a group.

Regarding the women's module in Brians 1, and specifically the Special Lock-Down Regimen Department, on the previous visit it was recommended that the centre be monitored given that it was at a time of review and changes. As mentioned above, even though construction was not finished at the time of this year's visit because of a budgetary shortfall, the space was refurbished between August and October.

Regarding the MCPT's acceptance of the assignment to assess the effects that merging the men's and women's infirmaries may have, it was found that the location is appropriate given that the women are in a wing separate from the department. The only negative element which needs improvement is that even though structural reforms of the prison's design are not possible, refurbishing the furnishings and the supplies in the doctor's offices is essential because they are quite antiquated.

Regarding the visit to the women's module in Puig de les Basses, on the previous visit no specific recommendations were made, and none are made now either. As an improvement, the inmates mentioned that one of them has secured a job that has traditionally been occupied by men (cartwright).

Regarding Ponent Prison, we should highlight its fulfilment of the recommendation formulated by the MCPT on eliminating the Special Lock-Down Regimen Department after discovering its unacceptable environmental situation. At first, the Secretariat believed that eliminating it would have an even greater negative impact on the treatment of first-degree inmates, since it would mean transferring them away from the prison, which would affect their family ties. However, on this year's visit, the MCPT found, and the director corroborated it, that it is currently only used for short sentences to prevent women from spending too much time by themselves and unengaged in activities.

Regarding the issue of access to the job market, in the specific case of Ponent, measures do not seem to have been adopted because the inmates are still complaining about the kind of work they perform at the prison in the sense that the jobs are less skilled and more poorly paid than the men's jobs. Furthermore, they complain that the range of available jobs is smaller, in addition to the fact that some sites only offer jobs to men. Therefore, actions should be taken to guarantee actual equality between men and women in the sphere of work.

3. SPECIAL OR LOCK-DOWN DEPARTMENTS

In 2019, the MCPT continued to oversee the status of these departments and the living conditions of the inmates there based on statements collected during the visits. With this goal in mind, the special departments in Quatre Camins, Joves, Puig de les Basses, Mas d'Enric and Brians 1 (Men's) prisons were visited.

In Quatre Camins Prison, more specifically in MR-5 (inmates being punished), no complaints of potential abuse were heard. We can glean from the interviews that the interactions with the staff are appropriate. However, we did find a higher presence of inmates with psychiatric pathologies in the Special Lock-Down Regimen Department, a fact which the staff also mentioned.

In Puig de les Basses Prison, there were no complaints with the service provided in the Special Lock-Down Regimen Department in terms of interactions with the prison surveillance staff, although some interviewees independently described possible cases of verbal abuse and excessive rigour in immobilisations by specific staff members, which has led to the launch of

the corresponding grievance.

In view of this situation, the MCPT continues stressing that complaints about abuse should undergo rigorous investigation to determine whether there is a disproportionate use of physical force in certain restraints. The Administration's response is that certain complaints about possible abuse are investigated to ascertain whether or not they are true and to determine whether there has indeed been irregular behaviour on the part of the staff. However, we know of no cases in which the Administration has concluded that there has been irregular behaviour, so these incidents must continue to be rigorously investigated, exhausting all the means available.

In terms of the Ponent Special Lock-Down Regimen Department, despite the reminder from previous years that wearing identification is obligatory, staff without identification were still seen, despite the insistence that this rule be followed.

The staff of this Special Lock-Down Regimen Department also stated that new inmates with psychiatric pathologies have been added.

In terms of the women's Special Lock-Down Regimen Department, even though the space was not eliminated as the MCPT recommended, there was a change in that it is no longer used for first-degree sentences but only for some punishments.

In terms of the Mas d'Enric Special Lock-Down Regimen Department, on the second visit we saw that the recommendation made on the first visit to adopt measures to lower the number of first-degree inmates had been fulfilled. In fact, this reduction was quite significant.

In terms of the Brians 1 Special Lock-Down Regimen Department, this time the inmates' stories included no complaints about the issue of medical care or treatment by the staff. The complaints related to abuse and excessively rigorous treatment refer to the staff in other modules, and in terms of medical care, they all agreed that these medical appointments are routine. It should be borne in mind that the MCPT has recommended that the regulation medical appointments cannot become a routine step devoid of content but instead should be proactive. After the visit, we were told that since last October, the Special Lock-Down Regimen Department for women has been moved to the ground floor.

Regarding the recommendation made based on the previous visit on the need to take measures to fulfil Circular 2/2017 on the lock-down regimen, this time the inmates interviewed stated that there are enough activities.

4. ISTANBUL PROTOCOL IN THE FIELD OF THE POLICE AND FORENSIC MEDICINE

The 2015 annual report of the Catalan Mechanism for the Prevention of Torture (MCPT) contained a specific chapter on the rules for applying the Istanbul Protocol for healthcare staff. Both professionals and institutions in charge of detainees or persons deprived of their freedom were largely unaware of the Istanbul Protocol, and this had very negative effects on the efficacy of the complaints about abuse lodged before the jurisdictional bodies with authorities on this matter.

This report's recommendations mentioned both the importance that medical check-ups for detainees or persons deprived of their freedom be conducted privately and the need to properly fill out the medical reports following the quality standards of the Istanbul Protocol in cases of allegations or suspicions of abuse.

In 2016 and 2017, the Department of Justice, the Department of Health and the Institute of Legal and Forensic Medicine adopted measures to promote familiarity with and use of the Istanbul Protocol via several training courses.

On the visits conducted by the MCPT, we continued to find that medical check-ups of persons deprived of their freedom were often conducted in the presence of the police or another holding area staff member. This practice is systematic in emergency care facilities and police stations in the PG-ME, as well as in forensic medicine check-ups at the

Justice Compound (Ciutat de la Justícia). Even when a medical staff member has asked to check the detainee in private, they have been refused by the agents of the Mossos d'Esquadra police.

Following the international recommendations and those of this Mechanism, we must stress that medical appointment should be held in private, without the presence of holding area staff in the medical area or in areas with visual and auditory access to it, with the sole exception of cases in which there are justified suspicions of risks and the healthcare staff requests it. In this situation, there should be a written record of the circumstances in which the check-up takes place and the presence of other people, as well as any physical restraint of the detainee.

The Directorate General of Police justifies the presence of police officers by stating that despite the presence of staff authorised to conduct the check-up, the custody and surveillance of the detainee is the sole and exclusive responsibility of the police agents.

Therefore, this is a situation in which two fundamental rights clash: the right to privacy and the right to safety. Nonetheless, just like other international bodies which understand the importance of the Istanbul Protocol, the MCPT continues to stress the recommendation that medical appointments be private.

On the other hand, in this effort to maintain the necessary balance between the detainees' right to privacy and the right to safety, we found that the majority of local police stations visited said that the judgement of the medical staff prevails and therefore that the police are present during the medical check-up if the medical staff requests it.

With regard to the detainee's right to medical care, the MCPT has observed that even if the detainee waives this right, they are often transferred to a healthcare centre for a medical check-up and corresponding medical report. However, the MCPT recommends that the detainee's decision on whether or not to exercise their right to healthcare be respected.

In the majority of cases, the medical report is delivered to the police agents regardless of whether or not the detainee exercises their right to healthcare. It is important to remember that the report should be personally handed to the detainee, even if they are being held in police custody. The MCPT recommends that it be delivered in a sealed envelope and that instructions on the inmate's treatment, cure and precautions during their detention be given to the police.

With regard to medical reports, since early 2018 the new communiqué on injuries issued by the Catalan Health Institute has been posted in the ECAP, which contains the minimum content of evaluations of persons who allege abuse. Despite this, we still find medical reports which do not contain a description of the facts or an appropriate or complete description of the injuries. Therefore, it is important to emphasise the need to improve the quality of the medical reports of detainees and the injuries they have sustained following the standards of the Istanbul Protocol.

5. INSTRUCTIONS ON THE USE OF STUN GUNS

Almost three years have elapsed since the Catalan Ombudsman presented a monographic report on the Catalan police forces being equipped with stun guns and the proposal was formalised to create a working group within the Interior Commission of the Parliament of Catalonia to study the conditions under which Conducted Energy Devices (CEDs) are used.

In 2017, the Police of the Catalan Government – Mossos d'Esquadra – acquired 134 Taser CEDs and drew up a procedure that regulates the use of both CEDs and Personal Recording Devices (PRDs). In 2018, stun guns started to be used in the Girona Police Region. The pilot tests to consolidate the proper use of CEDs and PRDs started in mid-June of that year and ended in July. On 9 July, their implementation throughout the rest of Catalonia began, and CEDs started to be distributed as automated external defibrillators (AEDs) were delivered.

Since they were implemented, several technical incidents have occurred, and even though their implementation is not yet complete, the Catalan Ombudsman believes that there is no reason why a preliminary

evaluation cannot be conducted and aspects that should be corrected and/or improved cannot be evaluated.

The Directorate General of Police reports that as of 4 April 2019, there had been seventeen police actions in which a CED was used, all of them justified and in accordance with the criteria stipulated in Instruction 4/2018. Improper use was not detected in any of the cases.

For this reason, the Catalan Ombudsman has forwarded several considerations to the Directorate General of Police stating that the first phase of implementation could be considered a testing period for the proper use of these devices, and that improvements should be made within the ensuing follow-up and evaluation phase to determine whether CEDs meet the operating needs and whether the objectives set are being met. The Catalan Ombudsman believes that this protocol enables continuous improvements to be made in the management of police resources for public order that the PGME (Police of the Catalan Government – Mossos d'Esquadra) has available to it, and that it allows internal rules to be adapted and transformed.

It has also clearly asserted the need to share the follow-up report which may be issued and the results gleaned from it. Likewise, in order to guarantee accountability, in addition to any internal mechanisms that may exist, the Catalan Ombudsman stresses that an independent mechanism should be set up with the authority to investigate any complaints over potential improper or abusive use.

In response, the Directorate General of Police believes that in order to conduct an overall evaluation, more results of actions using CEDs are needed. Furthermore, it is also awaiting the implementation of CEDs in the Western Pyrenees and Eastern police regions.

In the meantime, civil society entities like Amnesty International and Irídia have broached this institution to request the suspension of the use of these devices as well as the publication of its internal rules on the use of CEDs.

In response to questions from the Catalan Ombudsman, the DGP reports that several meetings have been held with these entities to explain the functioning of CEDs, and they have also responded to all concerns and provided the clarification on the use of these devices requested. It also states that Instruction 4/2018, which the Catalan Ombudsman has asked to be made public, may be consulted in the Department of the Interior offices.

Regarding the use of CEDs by local police forces, the latest information we have is that the protocol stipulating the guiding criteria to facilitate the regulation and standardisation of their use by the local police forces in Catalonia has been approved.

Given this, the Catalan Ombudsman has launched a new official action aimed at updating and fleshing out the available information with the motive of the 2016 monographic report. Within this framework, an information request was sent to each of the town halls of Catalonia that has a local police force asking questions on the main changes that have taken place in the two years since the conclusions of the Working Group of the Parliament of Catalonia were published. So far, several town halls have yet to respond, which is why no further action has been taken on this issue.

6. SPACES THAT PROVIDE IMMEDIATE CARE FOR UNACCOMPANIED IMMIGRANT CHILDREN

In 2019, the MCPT oversaw the status of unaccompanied immigrants in immediate care facilities.

In recent years, as the number of unaccompanied immigrant children has increased and this phenomenon has become more complex to manage, the Catalan Ombudsman has highlighted the numerous issues that affect primary care and protection, as well as the need to draw up a comprehensive plan to improve the care of unaccompanied immigrant children.

Specifically, the Catalan Ombudsman has requested that this plan have contingency measures to respond to the current number

of unaccompanied immigrant children arriving, especially by creating places in initial reception centres, and that it also address the structural issues currently found in the protection system, such as the lack of family foster facilities for immigrant children (less than 1%), the overcrowding of centres, the existence of an immediate care circuit which does not take the child's condition into sufficient account and tends to apply measures related to the control of migratory flows, the lack of policies to promote immigrant children's return to their families according to their higher interest, the issues in the provision of mental health programmes for unaccompanied immigrant children, the Directorate General of Attention to Children and Adolescents' (DGAIA) delay in taking over stewardship and processing the documentation, and issues in the release from protection and mentoring systems in the transition to adult life, among others.

In this vein, in 2019 the main changes affected both the number of unaccompanied immigrant children arriving and the implementation of some of the measures requested.

On the one hand, after a period (2015-2018) of steep annual increases in the number of unaccompanied immigrant children arriving, in which the number of new cases attended was twice that of the previous year, in 2019 this trend stabilised, such that we now have a volume similar to 2018. Despite this, the number of unaccompanied immigrant children arriving in 2019 was 6,238 by September, 29.6% more than December 2018.

In this sense, however, we should note that new places to care for unaccompanied immigrant children continued to be created in 2019, albeit at a slower pace than in 2018. All told, by September 2019, 1,224 new places were created, especially in initial reception centres (437) and transitional facilities (assisted living flats, youth residences, etc.), while 2,196 were created in 2018. Despite this moderation in the pace at which places were created, we should add that in September 2019, 3,621 places were already assigned specifically to caring for unaccompanied immigrant children, 26.4% more than in December 2018.

Finally, in 2019 the Department of Labour, Social Affairs and Families announced to this institution a change in the foster model which used hotels, hostels and summer camps on an emergency basis in 2018 in favour of smaller flats where social integration projects could be undertaken and the youths could be given personalised care.

To this end, this year the immediate care mechanism has been put into place to prevent youths from spending too much time at police stations and to provide adequate attention upon their arrival before moving them to emergency centres and initial reception centres.

VI. CONCLUSIONS AND RECOMMENDATIONS

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Just as in the reports from previous years, this last section contains the main conclusions gleaned from the monographic topic this year (1), as well as from the visits to prisons (2 and 3), police stations (4), residential centres for minors (5) and social-healthcare centres (6).

1. With regard to the monographic topic covered in this year's report, all public juridical and prison operators need greater awareness of septuagenarians or persons with serious incurable illnesses. Regarding septuagenarians, even though inside prisons these individuals may have medical care comparable to the outside, it is nonetheless true that the lack of access to specific therapies existing outside prison has negative repercussions on the health of the inmates. On the other hand, prisons should not become geriatric or social-healthcare wards simply because of a lack of community resources. Instead, better interaction is needed among the Catalan prison system and the social and healthcare systems (social services, social-healthcare services, geriatric services) so that because of either age or health, this group is provided care outside the prison to the extent possible.

Furthermore, a considerable improvement in the treatment boards and supervisory courts is needed so that third degree or flexible regimens are granted to individuals suffering from serious or incurable illnesses, without waiting until their death is imminent, following the legal mandate and the jurisprudence of the Constitutional Court.

2. With regard to the prisons visited this year, in addition to the particular recommendations made to each of them, we should mention the following general conclusions and recommendations:

- Based on the interviews conducted, we can generally ascertain that the interaction with staff is appropriate and proper, even though complaints were lodged about the excessive rigour and abusive treatment by some staff members in two of the prisons visited.

- On different visits, the team met staff members who were not visibly wearing their identification numbers. All staff members should wear proper identification at all times.

- There is an insufficient number of video surveillance cameras, especially in the oldest facilities. An effort should be made to install more so that they cover the more conflictive areas where inmates and staff interact. Likewise, the length of time that the images are saved should be extended to at least 30 days, audio should be added and images which may be used as proof should always deposited and viewed by the respective prison directors.

- In the small women's modules (Ponent, Mas d'Enric, Puig de les Basses), there are frequent complaints about the lack of job and salary opportunities compared to men. This should be checked and, if needed, rectified.

- In some facilities, maintenance issues were found that were serious enough to be considered abuse in themselves (inhabited cells with leaks, blocked toilets, cockroaches and rodents, etc.). Investments must be made to guarantee that the facilities are liveable.

- Inmates' participation in the job training and reinsertion activities offered by the centre should be encouraged, more of these activities should be offered, they should be diversified, and the activities targeted at women should not be limited to traditionally female jobs.

- As mentioned in the follow-up section, despite the CIRE's commitment to lower the prices of some products in their commissaries, inmates are still complaining about them. The price-lowering policy should be continued and adapted to the social and economic reality of individuals who are deprived of their freedom.

3. Even though, as mentioned above, the MCPT will present a monographic report on this issue, it is important to recall that

physical restraint should be an exclusively health-based measure and therefore the monitoring, supervision and conclusion of the measure should follow exclusively medical criteria indicated by the healthcare staff and should not be subordinated to prison measures. When they are used, restraints should last as briefly as possible and be limited to the immobilised person's altered state, and they should be supervised exclusively by the healthcare services. Under no circumstances can physical restraint be punitive. Likewise, the supervisory circuits (cameras with audio stored at least one month) should be improved, the role of the Prison Supervisory Court should be strengthened, and it should be notified of the restraint as soon as it occurs.

4. In the sphere of the police, the recommendations made in previous annual reports which have not yet been accepted by the Department of the Interior and some town halls bear repeating.

- Following international recommendations (Istanbul Protocol) and this recommendation from the MCPT, it is worth stressing that medical appointments, as the right of the detainee, should be conducted privately without the presence of the police, with the sole exception of situations in which there are justified suspicions of risk and the healthcare staff requests it. In this case, it is essential to leave a written report of the circumstances under which the check-up is conducted and the presence of other people. Any physical restraint of the detainee (handcuffs) renders a proper medical check-up impossible. They should always be removed, save very exceptional circumstances which must be outlined in the medical report.

- Likewise, it should not be forgotten that a medical appointment is the right of a detainee, not a "guarantee" of the police forces that participate in detention and custody. The practice of having a detainee seen by a doctor against their will solely because the police force has to turn them over to another force which requires it is a violation of their rights.

- For years, the Mechanism has recommended that the action protocols of the local police stations and PG-MEs in the detention circuit be reviewed. As a general rule, no matter what force detains a person, the PG-ME is in charge of custody because it is the judicial police force and has to bring the detainee before the judicial authorities. Therefore, in the case of local police stations which have no holding area, keeping detainees on site should be avoided because they do not have the guarantees they need for this transfer, even if it lasts just minutes. In the case of local police stations with holding areas, it is important to assess whether it would be more efficient to lock up and transfer detainees to the basic police area of the corresponding PG-ME from the very start. There are three basic criteria in this regard, in addition to other considerations:

  - the local police station's capacity to guarantee all the detainee's rights in conformance with article 520 of the Law on Criminal Prosecution, including attorney services within the first three hours of detention, a personal phone call, potential communication with a consulate, etc.;

  - having decent facilities for detainees (separation of men, women and children, for example) that are safe for both the agents and the detainees (with a gun safe outside the custody area) and with all the guarantees (comprehensive video surveillance circuit); and

  - going through the municipal facilities lengthens the total number of hours under police custody which the detainee would otherwise not spend there.

5. With regard to centres that house minors, it is essential to distinguish the type of centre:

5.1. Initial reception centres for unaccompanied immigrant children and emergency centres. These centres are different than other centres since they were created by taking advantage of facilities initially designed for other purposes, the majority of them being summer camps designed for short recreational stays.

Generally speaking, many maintenance issues and unrepaired defects caused by

use were found. Likewise, the level of dirt and neglect of some centres is noteworthy, albeit not in all, as stated in the corresponding reports.

The professionals also mention that some inappropriate individuals are being held at the centre, such as adolescents with mental health problems or disruptive behaviours. Likewise, flaws in the circuits were found (excessively long stays), along with major delays in processing the stewardship and residence permits because the different services are overworked.

For this reason, the recommendations in relation to these centres are:

- To carry out the actions needed to guarantee the centre's maintenance and to repair any defects that arise over time, as well as to comply with the basic safety rules.

- To guarantee that unaccompanied immigrant adolescents with mental health problems or more disruptive behaviours have access to intensive education residential centres, therapeutic centres and other alternative facilities that allow their educational needs to be more appropriately protected.

- To guarantee that the DGAIA takes stewardship as soon as a situation of vulnerability is detected and never later than the three-month timeframe established in the framework protocol, and that the documentation needed to regularise their situation is processed without the need to exhaust the entire nine months provided for in the Immigration Laws.

- To guarantee that the centre meets the EQUAR-E quality standards in specialised residential care published by the Ministry of Health, Social Services and Equality in 2012, especially in terms of the physical conditions, the provision of human resources and coverage of the basic physical needs of the adolescents living there.

- To comply with the maximum stays in initial reception centres and emergency centres, if they are designed as facilities for temporary stays.

- To process the documentation as quickly as possible, without the need to exhaust the entire nine months provided for in the Immigration Laws, and to guarantee that they have their residence authorisation, especially when they reach adulthood, so that their status is not irregular upon release.

- To guarantee the centre's embeddedness with the region and acceptance by its neighbours to prevent interference with the educational development of the adolescents living there.

With regard to the emergency protection centre visited, the team positively assessed the activities conducted and the relationship with the environs (a centre in the city of Barcelona), where the resident adolescents participated in a range of activities in facilities and entities. However, the centre is currently closed, and the users have been transferred.

5.2. Several problems related to the educational staff at the Can Rubió intensive education residential centre were found, which contradict the change in the type of centre (it went from being a therapeutic centre to an intensive education residential centre). This has led to noncompliance with the ratios, shortages in the psychological and nursing staff, and stepped-up security. Likewise, the centre's facilities need a structural refurbishment. Both the Catalan Ombudsman and the MCPT have made recommendations on different issues, and the Administration has told the Catalan Ombudsman that it is studying and assessing the situation of the facility as a whole and its feasibility as an intensive education residential centre.

5.3. With regard to juvenile justice centres, the two centres visited this year had a high level of occupancy, which in some cases is verging on overcrowding. In this sense, some rooms in Can Llupià have been adapted so that they can fit up to six people.

The high number of adolescents and young adults per room has a negative effect on the principle of individualised care which should govern juvenile justice interventions, and it also negatively affects the right to privacy of the adolescents and

young adults who are serving sentences in these centres.

It should be borne in mind that even if the ratio of professionals to residents attended remains the same, the individual nature of intervention goes beyond the tutor and encompasses the relationships between the minors living at the centre and all the professionals, as well as the way they are treated. Individualised care is at odds with overcrowding and should instead enable an affective, educational relationship to be developed with the adolescents and young adults. From this vantage point, individualised care of the adolescents and young adults is attained by creating smaller units, since groups with fewer youths enable each one's individual needs to be better met, and with regulations focused on the resident, not the centre, such that the organisational and operational rules are justified by better care of the adolescents' and young adults' needs, not by group control.

The Catalan Ombudsman recommended that smaller centres be created, especially those in which lock-down measures are implemented, along with geographically balanced centres which would make it possible to fulfil the right to have a facility near home. In response to these recommendations, the Department of Justice has informed the Catalan Ombudsman that given the increase in the number of adolescents living at these centres since the last quarter of 2018, it is weighing the need to increase the number of places through a plan with three urgent measures.

Based on the interviews with the inmates, we found the need to improve the practice of physical restraints, both the situations that lead them to be used (in some case it is not the last resort) and the way the security staff carry them out. Better oversight by the centre's educational staff and management is needed. Likewise, we recommend ongoing training of the centre staff on the rights of children and suitable, dignified treatment, along with training for the security staff on how to undertake restraints to ensure that they are applied with full respect for the physical integrity (safety) and rights of the adolescents.

The Secretariat of Penal Measures, Reinsertion and Victim Care, which oversees both prisons and juvenile justice centres, should assess why the immobilisations are done by specialised public servants in prisons while staff from private security companies without specific training do them in juvenile justice centres. In any case, it is worrisome that within the same administration, the treatment of minors is less guaranteed than the treatment of adults in a comparable situation.

5.4. Finally, with regard to the therapeutic centre visited, there is a wide range of profiles of adolescents and adults residing there (severe intellectual disabilities, milder depression, addiction). On the other hand, the average stays are longer.

With regard to intervention, what stands out is a lack of adequate work on affective-sexual relationships. In terms of the way the prevention of unwanted pregnancies and the prevention of sexually transmitted diseases are addressed, no condoms are provided, and the girls are forced to get a contraceptive implant.

We recommend that stays at the centre be guaranteed to be as brief as possible and that the necessary judicial authorisations and forensic evaluations establishing that the therapeutic residential facility is the best facility in the higher interest of the adolescents sent there be made available. Likewise, a study should be conducted of the different diagnoses found among the children and adolescents living in the centre to determine whether the facility meets the diverse range of needs of those children and adolescents, as well as to consider proposals that there may be a more suitable facility.

With regard to the intervention, we recommend that the educational programme and individual pedagogical plan for the children living in the centre include affective-sexual training from a feminist perspective. Likewise, information on all contraceptive methods should be guaranteed to prevent unwanted pregnancies, including the indications and counterindications of each method, and specific circuits and their corresponding facilities must be established.

6. Finally, with regard to the five social-healthcare residences visited this year (two of them geriatric and three devoted to individuals with physical and intellectual disabilities), we can stress the need to improve and maintain these centres' infrastructures in those where this work has not been done recently. In particular, it should be borne in mind that the kind of people living geriatric residences has changed over time, such that right now they serve more as social-healthcare centres than nursing homes. In this sense, the Department of Labour, Welfare and Families should be sensitive to this change and adapt the type and ratios of professionals at these centres to this new reality.

SÍNDIC

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