

Criminal Detention in the EU: Conditions and Monitoring

Update of FRA's Criminal Detention Database
(FRANET)

Country: Spain

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Date: 14 April 2024

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Part I: National standards

1. Cells

a. Cell space

Remand and post-trial detention

Spanish law does not contain any provision on available cell space and the size of prison cells, but only provides that the cells are for single occupancy and must have enough space to make them habitable. Standard cell space available to inmates is about 10 m² although it is not under written regulation.

Police custody

The order 1/2024¹ of the Secretariat of State for Security on the Protocol concerning the Custody of Detainees stipulates that the general occupancy criterion will be one detainee per cell, regardless of the maximum capacity of each cell; when the number of detainees is greater than the number of cells, the occupation should be adjusted to the capacity established for each cell. For this distribution, the circumstances of the detainees will be taken into account. These circumstances could be the need of solitary confinement; the need to separate a detainee from others due to dangerousness; the reason for the arrest; detainees belonging to the State Security Forces and Bodies, to the Armed Forces and to the General Secretariat of Penitentiary Institutions; diseases especially in the case of infectious-contagious; mental disorders; sex and age; pregnancy; and other causes that may arise. If all cells available for detainees were occupied, the cell intended for children may be used for full age inmates, with prior authorization from the person in charge of the custody area. If facilities were fully occupied and the admission of more detainees was necessary, the person in charge of custody will communicate it through the established channel in order to initiate the procedures for the inmates' transfer to other dependencies of the same State Security Body. If this is not possible, the collaboration of another Police

¹Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

Body will be requested as well as the collaboration of General Secretariat of Penitentiary Institutions should be requested as well.

Solitary confinement cells have a bed, a toilet and sink, and have a solid steel door that closes from the outside. The purpose of these cells is to separate an inmate from other inmates and reduce their contact with the outside world. In any case, the cell in which the penalty is served must have similar characteristics to the rest of the establishment as stated under Article 42.4 of the Law of Prison. **The calculation requirements spelled out by the CJEU in its Dorobantu ruling**, as they apply to prison cells (that is, a minimum of 3 m² per inmate in multi-occupancy accommodation) are observed: a cell for 2 inmates should be 12 m², a cell for 3 inmates should be 15 m², etc. It could be said that the requirements spelled out in para. 34 of the Commission Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions are observed².

b. Access to natural light and fresh air, cell equipment, furniture, and facilities

Remand and post-trial detention:

The rules are very general. Article 19.2 of the General Penitentiary Law (*Ley General Penitenciaria*, LOGP)³ and Article 14.1 of the Prison Rules⁴ provide that cells must offer the necessary hygienic conditions and be equipped with toilet facilities. Space, natural ventilation, water, lighting and heating must be adjusted to climatic conditions of the town. Article 14.2 of the Prison Rules states that inmates will have the necessary bedding and furniture where they can store their belongings.⁵ Most cells have windows, even though some of them do not. Incommunicado cells do not have windows.

Police custody:

The person responsible for the custody service will ensure that the facilities are in an adequate state of conservation and cleanliness for use, as well as disinfected, disinfected and rat-free. And it must be checked at shift changes, reporting, where appropriate, the incidents so that they can be corrected in a timely manner.

With regard to furniture, the Order No. 1/2024 of the Secretary of State for Security approving the comprehensive procedure for police detention of the General Secretary of Penitentiary Institutions provides that closed regime and solitary confinement cells will have a toilet, a bed without a headboard, and no additional furniture such as tables, chairs or shelves.⁶

c. Video-surveillance of cells

Remand and post-trial detention:

² European Commission, [RECOMMENDATION of 8.12.2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions](#), 8 December 2022.

³ Spain, Head of State (*Jefatura del Estado*), [General Penitentiary Law 1/1979, of 26 September](#) (*Ley General Penitenciaria*), 5 October 1979.

⁴ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁵ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁶ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

Article 4.3 of the Prison rules⁷ refers to the use of information and communication technologies, which should respect the principles of digital security and data protection. According to Articles 6.3 and 6.4 of the prisons rules, the Prison Administration is competent to adopt technical and organisational measures to guarantee the safety of inmates and to process the data necessary to guarantee the integrity of inmates and order and security of the centres. Article 15.2 bis of Law on Prisons prevented the processing of inmates' data from complying with the rules on the protection of personal data. The Organic Law on Data Protection⁸ and the Law 7/2021 applicable to specific data purposes⁹ is also applicable for the prison public administration as the competent authority for data processing (Article 4); imposes the limits that must be observed in such activity, including those of lawfulness and loyalty, specificity, necessity and proportionality in obtaining and processing them, accuracy, temporality and, in any case, inalterability and guarantee that they are being treated appropriately, and disciplinary liability may be incurred for their improper use or handling (Article 6); It also limits the duration of the time that the data can be processed and the deadlines within which they must be reviewed to comply with their accuracy (Article 8). Order No. 4/2022, of 28 July, of the General Secretariat of Prisons of the Ministry of the Interior regulates the processing of personal data obtained by the video surveillance systems found in different penitentiaries¹⁰.

Police custody:

The order 1/2024¹¹ **on the Protocol concerning the procedure for police detention states that detention centres**¹² will have video and recording surveillance systems, aimed to ensure the physical integrity and security of both, the inmates and the officers in the custody of inmates. The recording must be permanently active, regardless of whether or not the agents in charge of custody must maintain permanent control of the cells through video surveillance. The video surveillance systems in no case may allow the visualization of toilet areas, in order to preserve the privacy of the detainees. Upon entering the cells, detainees will be informed in writing of the existence of video surveillance and recording cameras by which they will be constantly monitored.¹³ The recordings will be kept for thirty days from the time they are collected. At the end of this period, they shall be destroyed, unless an

⁷ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁸ Spain, Head of State (*Jefatura del Estado*), [Organic Law 3/2018, of 5 December, on the Protection of Personal Data and Guarantee of Digital Rights](#) (*Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales*), 7 December 2018.

⁹ Spain, Head of State (*Jefatura del Estado*), [Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offences and the execution of criminal sanctions](#) (*Ley Orgánica 7/2021, de 26 de mayo, de protección de datos personales tratados para fines de prevención, detección, investigación y enjuiciamiento de infracciones penales y de ejecución de sanciones penales*), 16 June 2021.

¹⁰ Spain, Ministry of Interior, [Order no. 4/2022, of 28 July 2022, of the General Secretariat of Penitentiary Institutions, which regulates the processing of personal data obtained through the recording of images and sounds by the existing video surveillance systems in the different prisons](#) (*Instrucción nº 4/2022, de 28 de julio de 2022, de la Secretaría General de Instituciones Penitenciarias por la que se regula el tratamiento de datos de carácter personal obtenidos mediante la grabación de imágenes y sonidos por los sistemas de video-vigilancia existentes en los distintos establecimientos penitenciarios*), 28 July 2022.

¹¹ Data means written information, but also data images that are obtained from people through video surveillance systems. The legal concept of data includes images captured by video or photograph.

¹² Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention"](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024

¹³ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention"](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

incident occurs in the course of the custody of a detainee or is related to serious or very serious criminal or administrative offences in the field of public security; with an ongoing police investigation or with an open judicial or administrative proceeding. In these cases, the recording will be kept at the disposal of the competent authorities.

d. NPM assessment

According to the 2023 NPM report¹⁴, in terms of the conditions of the facilities, it was mentioned that as far as the cells of the police stations, cells separate from other detainees are not used in the case of persons with intellectual disabilities. The Secretary of State for Security responded to the NPM's recommendation that the issues will be taking into consideration at the moment of developing a comprehensive procedure for the police custody. The NPM considered necessary to take transitional measures to correct this discriminatory situation.

The NPM made Recommendations for the use of **inappropriate spaces for children with intellectual disabilities** after three visits were carried out in 2023 to juvenile centres. In March 2023, it was detected deficiencies in the facilities: all the windows where the children stay have translucent glass, which allows light to pass through, but does not allow views of the outside. This circumstance, together with the few hours they spend outdoors, made it more painful and difficult for these people to comply with the custodial measures imposed

2. Allocation of detainees

a. Geographical allocation

Remand and post-trial detention:

The location of the centres will be fixed by the penitentiary administration depending of the territorial areas that are designated. It is the Administration who has exclusive competence in the determination of the prison. Penitentiary legislation also allows the inmates can request a transfer to prison for work or family reasons but the granting of the transfer depends on the possibilities of the administration. There is no right of the convicted person to serve his sentence in a prison close to the family environment (Article 3 of the General Penitentiary Organization Act). The Spanish Constitution states that the convicted person does not have the "right" to be assigned to a particular penitentiary, close to the place of habitual residence. If serving time in a penitentiary close to the inmate's social and family environment favours his reintegration, he may serve his sentence in that centre. However, if the prison environment is incompatible with such orientation, the convicted person should not serve his sentence in that prison. Article 25.2 of the Spanish Constitution¹⁵ states: "Custodial sentences and security measures shall be aimed at re-education and social reintegration".

Furthermore, **Article 1 of the General Organic Law on Penitentiaries** states that "The penitentiary institutions regulated in this Law have as their primary purpose the re-education and social reintegration of those sentenced to penal sentences and measures involving deprivation of liberty" (*Las instituciones penitenciarias reguladas en la presente Ley tienen como fin primordial la reeducación y reinserción social de los sentenciados a penas y medidas penales privativas de libertad*), and its **article 12.1** states that "The location of penitentiary establishments shall be fixed by the prison administration within the

¹⁴ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2023*), Madrid, Defensor del Pueblo.

¹⁵ Spain, [Spanish Constitution](#) (*Constitución Española*), 27 December 1978.

territorial areas that are designated. In any case, efforts will be made to ensure that each one has a sufficient number of inmates to meet the needs of the prison and avoid the social uprooting of the convicts" (*La ubicación de los establecimientos penitenciarios será fijada por la administración penitenciaria dentro de las áreas territoriales que se designen. En todo caso se procurará que cada una cuente con el número suficiente de aquellos para satisfacer las necesidades penitenciarias y evitar el desarraigo social de los penados*), it follows that Spanish law determines that inmates must serve their sentence in the place closest to where they have their family roots.

b. Allocation within detention facilities

Remand and post-trial detention:

The order 1/2024 on the Protocol concerning the procedure for police detention states that detention centres¹⁶ stipulates that the general occupancy criterion will be one detainee per cell, regardless of the maximum capacity of each cell. In the case of the number of detainees being higher than the number of cells, the occupation should be adjusted to the capacity established for each cell. For this distribution, the circumstances of the detainees will be taken into account. These circumstances could be the need of solitary confinement; the need to separate a detainee from others due to dangerousness; the reason for the arrest; detainees belonging to the State Security Forces and Bodies, to the Armed Forces and to the General Secretariat of Penitentiary Institutions; diseases (especially infectious-contagious); mental disorders; sex and age; pregnancy; and other causes that may arise. If all cells available for detainees were occupied, the cell intended for children may be used for adult inmates, with prior authorization from the person in charge of the custody area. If facilities were fully occupied and the admission of more detainees was necessary, the person in charge of custody will communicate it through the established channel in order to initiate the procedures for the inmates' transfer to other dependencies of the same State Security Body. If this is not possible, the collaboration of another Police Body will be requested and; if necessary, the collaboration of General Secretariat of Penitentiary Institutions should be requested as well.¹⁷

The criterion of sex is one of those established for the proper internal separation, according to which men must be separated from women, except in certain exceptional cases, which are provided for in prison rules under its Articles 168 to 172), such as the so-called Mixed Departments (*Departamentos Mixtos*), which allow men and women to live together in the same module, but without sharing a cell, although it is also possible for those imprisoned parents, men and women who have a child under 3 years of age in common to live together in the same cell with them in prison.

There are no criteria to separate pre-trial detainees from convicted inmates, or inmates sentenced for serious crimes from inmates sentenced for less serious offences, or first-time offenders separated from recidivists.

Police custody:

There are no differences between these two regimes.

¹⁶ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the comprehensive procedure for police detention](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024

¹⁷ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*) [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention"](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

c. NPM assessment

According to the 2021 NPM report¹⁸, a Recommendations were issued to the General Secretariat of Penitentiary Institutions of the Ministry of the Interior, such as:

- “2- Systematize the collection of data on the distance between the prisoner's home of origin and the penitentiary centre in order to have information that allows documenting this situation of inequality and carrying out the consequent compensatory actions for this circumstance that affects the health and economy of women in prison” (2.- *Sistematizar la recogida de datos de la distancia entre el domicilio de origen de la persona presa y el centro penitenciario para tener información que permita documentar esta situación de desigualdad y realizar las consiguientes acciones compensatorias de esta circunstancia que afecta a la salud y economía de las mujeres en prisión*).

3. Hygiene and sanitary conditions (note – section 11 contains specific questions concerning female detainees)

a. Access to toilets

Remand and post-trial detention:

Toilets and Sanitary facilities are clean, adequate and accessible in most facilities. Each section and courtyard have toilets available. Cells in the most recently built establishments are equipped with a toilet.

Police custody:

There are no differences between these two regimes.

b. Access to showers and warm and running water

Remand and post-trial detention:

Inmates have access to water in their cell. Each cell is equipped with a washbasin. Showers are located in the cells/dormitories. The newest cells are equipped with showers. There is no limit to the number of showers that inmates can take in a week. Inmates complain of a lack of hot water in winter.

Police custody:

There are no differences between these two regimes.

c. Access to sanitary products

Remand and post-trial detention:

The prison administration provides a toiletry pack. It includes personal hygiene products and cleaning products free of charge once a month, such as: soap, toothpaste, condoms, lubricant, razors and shaving foam as stated under Article 308 of the prison rules.

Police custody:

Custodial staff will ensure that detainees are provided with basic hygiene products, such as: toilet paper, soap, towel, feminine menstrual hygiene products, etc. It will be easier for them to go to the toilet to

¹⁸ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\).Spain \(Mecanismo Nacional de Prevención. Informe anual 2021\)](#), Madrid, Defensor del Pueblo. 01/03/2021 General Secretariat of Penitentiary Institutions. Ministry of the Interior

carry out hygiene tasks, including the use of the shower, and their physiological needs when they need it.

d. Hygienic conditions in cells

Remand and post-trial detention:

Beddings are refreshed once a month. Inmates are permitted to wear their personal clothing. The prison administration provides unbranded clothing to those in need. Once a week, inmates can take their washing to the prison laundry. The prison administration gives responsibility to the inmates for the upkeep of communal areas. In the “respect modules”, inmates organize the work themselves. Inmates have a duty to keep their cell clean and well maintained. Cleaning products are provided for this purpose¹. Rubbish is collected every day.

Police custody:

When they spend the night in cells, they must have an officially provided fireproof blanket and mattress, which are clean and in suitable conditions for use.

e. NPM assessment

No available information.

4. Nutrition

a. Quality and quantity of food

Remand and post-trial detention:

Regarding this item, there are no differences between these two regimes.

Article 226 of the Prison Rules states that:

- 1. In all prisons, inmates shall be provided with suitably prepared food, which must meet the dietary requirements of the prison population and the specificities of age, health, work, climate, and customs and, as far as possible, personal and religious convictions.
- 2. The feeding of patients shall be subject to optional control.
- 3. In the centres where children are accompanied by their mothers, the necessary means shall be provided for the feeding of each child in accordance with his or her needs, in accordance with the indications of the medical service. The values of food rations per day will be set annually, distinguishing healthy inmates, young people and nursing rations. Child children of inmates who live with their mothers will be considered justifying cases of nursing rationing. The inmates who are pregnant or breastfeeding their children and the patients with deficiencies will have the right to the nursing ration, as long as the medical services of the Penitentiary centre so dictate. During Christmas, New Year and festivities, double rationing will be justified.¹⁹ Meals consist of a starter, main course and dessert. Inmates are not allowed to cook in their cells or in a shared space. Food products available to buy must be ready to eat and not require cooking²⁰.

¹⁹ Spain, General Secretary of Penitentiary Institutions (Secretaría General de Instituciones Penitenciarias), [Resolution of 21 February 2019, by which the economic allocations for the food of the inmates are updated](#) (*Resolución de 21 de febrero de 2019, de la Secretaría General de Instituciones Penitenciarias, por la que se actualizan las consignaciones económicas para la alimentación de los internos*), 21 February 2019

²⁰ Reg. Penitenciario. [Article 223 \(Prohibición de entrada de alimentos perecederos;](#) Spain, Head of State (*Jefatura del Estado*), [General Penitentiary Law 1/1979, of 26 September](#) (*Ley General Penitenciaria*), 5 October 1979. [Article 21.2](#)

- Article 303 of the prison rules allows the purchase of food products that do not require cooking. All metal packaging is banned. Fresh produce (fruit, vegetables) brought in from outside is prohibited²¹

The General Secretary of Penitentiary Institutions shall annually fix the values of the food rations per day and place of inmate, distinguishing at least the following categories: Healthy inmates. Young inmates. Nursing ration. These values may be different for the different prisons depending on the grouping established exclusively for this purpose. **Article 308 of the Prison Rules. Since May 2021²², the unit values per inmate** to be taken as a reference to calculate the economic endowment for food in Penitentiary Establishments, including the new tax rates that affect them, are set at the following amounts an economic allocation per day and place:

- Group I for the centres with less than 200 inmates, unifying to a single value of €4.30, the three types of rations: healthy inmates, young inmates and nursing rations.
- Group II (Centres with 200 to 500 inmates), unifying the three types of rations to a single value of €3.81: healthy inmates, young inmates and nursing rations.
- Group III (Centres with more than 500 inmates), unifying at a single value of €3.78, the three types of rations: healthy inmates, young inmates and nursing rations.

Notwithstanding the above, the following peculiarities will be taken into account: Child children of inmates who live with their mothers will be considered justifying cases of nursing rationing. Inmates who are pregnant or breastfeeding their children and those who are in **need shall be entitled to the nursing ration, provided that the medical services of the prison so decide. On the festivities of Christmas, New Year's and Our Lady of Mercy, double rationing will be justified.**

Police custody:

The Order 1/2024 for the procedure for police detention sets out that the detainees will be provided with adequate food, taking into account the length of stay in cells and other circumstances that affect each person (medical and religious reasons). In general, three meals a day will be provided, which will be adjusted to the following schedule: Breakfast: between 07:00 and 09:00 hours, Lunch: between 1:00 p.m. and 3:00 p.m. and Dinner: between 9:00 p.m. and 11:00 p.m.²³

b. Drinking water

Remand and post-trial detention:

The access to water is unlimited, free and available in all areas of the facilities.

Police custody:

There are no differences between these two regimes.

²¹ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention"](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

²² Spain, Ministry of Interior, [Resolution of April 9, 2021, of the General Secretariat of Penitentiary Institutions, updating the economic appropriations for the food of inmates](#) (*Resolución de 9 de abril de 2021 de la Secretaría General de Instituciones Penitenciarias, por la que se actualizan las consignaciones económicas para la alimentación de los internos*), 23 April 2021.

²³ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention"](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

c. Dietary requirements

Remand and post-trial detention:

Prison Rules stipulate that the feeding of sick detainees will be subject to medical control and that in the centres, in which children are accompanying their mothers, the necessary means will be provided to feed each child according to their needs and with the indications of the medical service.²⁴

Spanish law prescribes that the administration will provide inmates with a diet controlled by the doctor, suitably prepared and that responds in quantity and quality to the dietary and hygiene standards, taking into account their state of health, the nature of their work and, as far as possible, philosophical and religious convictions. The inmates will have, under normal circumstances, potable water at all hours.²⁵

Article 226 of the prison rules stipulates that special diets required for medical reasons or, as far as possible, personal or religious beliefs, must be available.²⁶

Police custody:

There are no differences between these two regimes.

The detainees will be provided with adequate food, taking into account the length of stay in cells and other circumstances that affect each person such as medical and religious reasons.²⁷

d. NPM assessment

No available information.

5. Time spent outside the cell and outdoors

a. Time spent outdoors

Remand and post-trial detention:

Each prison has its own internal regulatory organization, but, as a general rule, inmates are outside their cells from 8 to 14 and from 16.30 to 21h. Those inmates placed in solitary confinement can spend three hours outside of the cell per day. They are allowed to spend their walking time with another inmate and in exceptional cases, activities can include up to five people. Inmates placed in solitary confinement for disciplinary reasons are initially denied access to cultural or sporting activities. Access is gradually reintroduced to allow the inmates to demonstrate their good behavior. Inmates undergoing sanctions are denied visits from their loved ones. Inmates must be informed of the duration of any ban on telephone calls.

See **Part II: National case-law:** Spain, Supreme Court Judgment No. 352/2023 of May 11, 2023. The requests of inmates requesting ordinary leave must be studied within a maximum period of three months. The Court established a unified doctrine.

²⁴ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

²⁵ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

²⁶ María José Millares Leza. Face-to-face meeting on 19 May 2021. Lawyer. Specialist in Penitentiary Law. Madrid Bar Association.

²⁷ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention"](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

b. Time spent indoors

Remand and post-trial detention:

Each prison has its own internal regulatory organization, but, as a general rule, inmates are outside their cells from 8h to 14h and from 16.30h to 21h.

Police custody:

No applicable.

c. Recreational facilities

Remand and post-trial detention:

Inmates have opportunity for at least one hour of exercise every day in the open air, weather permitting. Even those who are in closed regime can have at least 1 hour, but it always depend on the within each prison rules. In order to facilitate such activities, all prisons have certain installations and equipment, prison yard by module, and those of new creation, have a large sports centre to turn. Since 1991, sport has been addressed through fields of sport, sports areas, modular gyms, etc. Inmates in each prison must request permission to visit these sports areas, so they can't go when they want in their free time.

Police custody:

No applicable.

d. Educational activities

Remand and post-trial detention:

Education is provided in all facilities and for all inmates. Penitentiary Employment and Job Training (*Trabajo Penitenciario y Formación para el Empleo*, TPFE in its Spanish acronym) is part of the Ministry of the Interior. All prison inmates have access to an academic education. Basic education is always available to those who require it. Inmates can also request a higher-level distance-learning course. Those placed in a closed regime or in solitary confinement find it challenging to access education. The prison service implements measures to fight illiteracy through basic literacy training is given to relevant inmates, young people and foreign inmates. Inmates are allowed to pass diplomas and entry examinations. Vocational training is provided and available for all inmates. Vocational training is accessible to the whole inmate population. Courses vary according to the resources available at the prison. Inmates in an open regime can also access these training programmes. Distance courses are available. Inmates can access distance learning via the National University of Distance Learning (*Universidad Nacional de Educación a Distancia*, UNED, in its Spanish acronym). UNED is most active during the summer, when academic activity is at its lowest. Examinations for distance learning courses are held at the establishment. Inmates have access to computers in some facilities. It is possible for inmates to deliver training courses; for example, a theatrical course offered in four prisons in Madrid. Inmates are not remunerated for these activities, but their activity is taken into account for social security.

The prison facilities have a library but not always have a reading room as stated by Article 127 of the Penitentiary Rules. Inmates have access to a television provided in communal areas. Inmates can pay to watch television in their cells. They also have access to a radio if they buy it and have access to the press although they must buy their own newspapers. The prison service allows access to Internet and can access the internet during IT classes although certain websites may have a restricted access as stated under Article 128 of the Prison Rules.

Police custody:

No applicable.

e. NPM assessment

According to the 2021 NPM report²⁸, two Recommendations was address to the General Secretariat of Penitentiary Institutions of the Ministry of the interior asking for:

- “11. Issue the appropriate orders so that in module 10, as well as in the rest of the modules, the activities that inmates can carry out are sufficient and varied to occupy their time and contribute to the normalization of life in prison and preparation for life in freedom” (11.- *Dictar las órdenes oportunas para que en el módulo 10, así como en el resto de módulos las actividades que pueden realizar los internos sean suficientes y variadas para ocupar su tiempo y coadyuvar a la normalización de la vida en prisión y a la preparación para la vida en libertad*)²⁹;
- “3.- Promote therapeutic, treatment, occupational activities or workshops, so that life in prison can be focused on social reintegration and normalization” (3.- *Potenciar las actividades terapéuticas, tratamientos mentales, ocupacionales o talleres, con el objeto de que la vida en prisión pueda estar enfocada a la reinserción social y a la normalización*)³⁰.

6. Solitary confinement

a. Placement in solitary confinement

Remand and post-trial detention:

Article 252 of the Prison Rules sets out that solitary confinement can be ordered as a disciplinary measure in case of commission of serious or very serious misconduct, such as for example threats, assaults, disobedience, insults and disrespect to officials, drunkenness and illegal gambling.³¹ It also used as a preventative measure to protect the life or physical integrity of the inmate and to maintain order in the establishment as in the case of inmates who have committed sexual offences or those who belong to the LGBTI community that can be placed in isolation to guarantee their safety. The judge must approve the solitary confinement order when it exceeds 14 days according to Article 76 of the penitentiary law³². **The inmate cannot be in isolation for more than 42 days consecutively as stated by the Constitutional Court judgment 2/1987³³.** Solitary confinement in a cell will be subject to the conditions of execution provided for in article 254.5 of the Prison Rules, according to which express limitations on certain rights of inmates are established. The prison governor can authorize an inmate being placed in solitary confinement as stated by Article 75 of the General Penitentiary Law without defence or appeal. Spanish General Penitentiary Law sets out that solitary confinement will not be

²⁸ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\).Spain \(Mecanismo Nacional de Prevención. Informe anual 2021\)](#), Madrid, Defensor del Pueblo. Recommendation Number 21002620, 20 May 2021.

²⁹ Spain, National Ombudsman (*Defensor del Pueblo*) Secretaría General de Instituciones Penitenciarias. Ministerio del Interior 21008419. <https://www.defensordelpueblo.es/resoluciones/visita-al-centro-penitenciario-leon-mansilla-de-las-mulas/7/08/2021>.

³⁰ Spain, National Ombudsman (*Defensor del Pueblo*) 20/09/2021 Secretaría General de Instituciones Penitenciarias. Ministerio del Interior. Informe anual 2021: Mecanismo Nacional de Prevención (MNP) Anexo E2. 21008420. <https://www.defensordelpueblo.es/resoluciones/visita-al-centro-penitenciario-de-avila-brieva/>

³¹ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

³² Spain, Head of State (*Jefatura del Estado*), [General Penitentiary Law 1/1979, of 26 September](#) (*Ley General Penitenciaria*), 5 October 1979.

³³ Spain, [Constitutional Court Ruling 2/1987, 21 January 1987](#).

enforceable until it is approved by the supervisory judge when lasting more than two weeks it can last up to 42 days, due to the accumulation of sanctions. However, the Prison rules provides that, in exceptional cases, the duration of this measure may be extended for a maximum of 7 additional days.

Police custody:

Incommunicado detention is an exceptional measure, which can only be taken with reasoned judicial authorization, and when there are reasons of urgent necessity in order to avoid serious consequences that may endanger the life, liberty or physical integrity of any person, or to avoid seriously compromising the criminal proceedings. It shall not exceed a period of five days last as long as is strictly necessary. It's not applicable to inmates under the age of 16.

b. Monitoring of detainees

Remand and post-trial detention:

There is a need for a medical examination of the inmate, prior to its completion, as well as the obligation to monitor it daily to verify that the sanction does not entail harm or sequelae to the health of the inmate, informing the Director of his state of physical and mental health, and in the event of physical or mental affectation, its execution must be suspended or the sanction imposed must be modified, as provided for in Article 43.1 & 2 General Organic Law on Prisons and Article 254.1 & 2 of the Prison Rules.

Police custody:

Regarding this issue, there are no differences between these two regimes.

c. NPM assessment

As far as the solitary confinement, the United Nations Committee declared that³⁴: “the Committee remained concerned about the rules governing solitary confinement as a disciplinary sanction since, the Committee is concerned about information received indicating that, in practice, such rest periods are limited to one or several days and that sometimes the daily number of hours in the yard is increased in order to circumvent the rules in force. Also of concern is the situation of persons with intellectual or psychosocial disabilities deprived of their liberty in solitary confinement. Lastly, the Committee regrets that it did not receive complete statistical information on the application of this disciplinary measure during the period under review (articles 2, 11 and 16)”.

Then it request that “The State party should ensure that solitary confinement is used only in exceptional cases as a last resort, for as short a time as possible (no more than 15 consecutive days) and subject to independent review, and only pursuant to the authorization of a competent authority, in accordance with rules 43 to 46 of the Nelson Mandela Rules. In accordance with rule 45 (2), the imposition of solitary confinement should be prohibited in the case of inmates with mental or physical disabilities when their condition would be exacerbated by such measures”.

In terms of children, it highlighted that “While children under 16 years of age cannot be subject to incommunicado detention, the Committee is concerned that Children between 16 and 18 years of age could be subject to this measure (article 2)”. Then, the Committee urged Spain to consider abolishing

³⁴ UN, Committee against Torture, [Concluding observations on the seventh periodic report of Spain. CAT/C/ESP/CO/7](#), 24 August 2023, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

incommunicado detention and to ensure that all detained persons, in particular juveniles, benefit from all fundamental legal safeguards from the very outset of their deprivation of liberty.

7. Work and education of detainees to promote social reintegration

a. General measures to promote social reintegration

Remand and post-trial detention:

The General Law on Prisons 1979 in its Article 1 provides the legal framework for the social reintegration programs to be developed. The social reintegration measures are coordinated through the Penitentiary Social Council (*Consejo Social Penitenciario*) a consultative body attached to the General Secretariat of Penitentiary Institutions, and through the Local Penitentiary Social Councils, attached to the Penitentiary Establishments and Social Insertion Centres (*Consejos Sociales Penitenciarios Locales, adscritos a los Establecimientos Penitenciarios y Centros de Inserción Social*). The participation of collaborating entities in the penitentiary field is regulated by the Order 2019 on the Intervention of Non-Governmental Organisations, Associations and Collaborating Entities in the Penitentiary Environment³⁵, which defines the procedure to be followed by the entities to carry out their actions in Penitentiary Centres, Open Sections and Social Insertion Centres.

Police custody:

Not applicable.

b. Access to work

Remand and post-trial detention:

Inmates are paid for their work. Inmates are not given an employment contract and their wages are calculated based on hours worked and around €3.20 and €4.50 per hour, what means an average of €200 to €300 per month for non-specialized work, which is below the national minimum wage. **Their income is subject to social contributions as they** are entitled to standard employee benefits and are enrolled in the social security system that gives them state retirement rights. Unemployment benefit is generally minimal and would override the prison leavers' benefit, which is higher and paid out for a longer period of time. Inmates may also receive remuneration for their work, such as discounts on their sentence or the possibility of accessing prison leave. These remunerations are granted by the prison supervision judge and are related to the inmate's good behaviour and participation in social reintegration programs.

Former inmates have the right to request unemployment after their release, as long as they meet certain requirements established by law. To be eligible for unemployment, the ex-convict must have served a sentence of at least six months in prison and have been registered with Social Security during his stay in prison. In addition, one must have lost your job involuntarily and have contributed at least 360 days in the last six years. If these requirements are met, the ex-convict can apply for unemployment benefit, which is financial aid granted to those who have lost their job and are not entitled to unemployment benefits. The allowance is granted for a period of six months and can be extended up to

³⁵ Spain, [Order 2/2019, of 7 February of the General Secretariat of Penitentiary Institutions "Intervention of Non-Governmental Organisations, Associations and Collaborating Entities in the Penitentiary Environment \(Instrucción 2/2019, de 7 de febrero de la Secretaría General de Instituciones Penitenciarias "Intervención de Organizaciones No Gubernamentales, Asociaciones y Entidades Colaboradoras en el Ámbito Penitenciario\)](#), 7 February 2019.

Spain, Ministry of the Interior, General Secretariat for Prison Institutions, Official Website, [Collaboration Entities](#) (Entidades colaboradoras),

a maximum of 18 months. The amount of unemployment benefit for ex-inmates is the same as for any other worker, and depends on the contribution base that the applicant has had during the last six years. In order to be unemployed, the ex-convict must be able to work and actively seek employment. In addition, you must comply with all the obligations arising from your unemployed situation, such as attending training courses or accepting any job offer suitable to your profile.

Rules provide that inmates may leave the facilities to work, be with their family, and receive treatment which will facilitate their social integration. It is called **open regime**. Minimum length of stay in the centre is eight hours per day, except when the inmate voluntarily accepts to be controlled outside by means of telematic devices. Article 87.2 of the Prison Rules sets out that, as a general rule, inmates will enjoy weekend outings from 4 pm on Friday until 8 am on Monday.³⁶

Police custody:

Not applicable.

c. Access to education

Remand and post-trial detention:

All inmates have the right to access to an academic education. Basic education is always available to those who require it. Inmates can also request a higher-level distance-learning course. They can access distance learning via the National University of Distance Learning (UNED) and the exams for distance learning courses will be held at the establishment. In order to prepare them for their release and to facilitate their reintegration into society, vocational training is also accessible to the whole inmate population and those inmates in an open regime can also access these training programmes. The number or type of training courses vary according to the resources available at each prison.

Police custody:

No applicable.

d. NPM assessment

According to the 2023 NPM report³⁷, in terms of recruitment, the NPM noted the improvement in the recruitment of social work and cultural mediation professionals, who are particularly relevant for facilitating social integration and the maintenance of family ties in detention centres for juvenile offenders. The Ombudsman calls for consideration to be given to the possibility of involving sign language interpreting professionals in the development and implementation of such programmes and activities for the hearing impaired, facilitating the adaptation of this group to life in prison. Although it has been indicated by the Prison Administration that the Protocol for the Care of Persons with Disabilities in the Prison Environment already considers the possibility of using the available resources to facilitate special communications for these persons, the fact is that this protocol contemplates many and very varied types of disability, without delving into the specialities that each of these types may present in the prison environment. With regard to the measures taken to facilitate the re-education and social reintegration of persons with hearing disabilities, the General Secretariat of Penitentiary Institutions has stated that, for each person, an individualized treatment programme is drawn up and

³⁶ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

³⁷ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\). Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2023*), Madrid, Defensor del Pueblo.

the necessary means of support are provided to enable him or her to carry it out under the same conditions as the rest of the prison population. However, it does not specify what these means consist of.

8. Healthcare (note – section 11 contains specific questions concerning female detainees)

a. Access to healthcare

Remand and post-trial detention:

The Prison Rules provides that health care is guaranteed for free to all inmates without exception and that this care is equivalent to that which is provided to the rest of the population. Penitentiary establishments will have a medical team integrated by at least one general doctor, a nursing graduate and a nursing assistant, and, periodically, with a psychiatrist and a dentist. The medical-health treatment will always be carried out with the inmate's informed consent. Only when there is a danger to inmate or third parties may a treatment be imposed, being the medical intervention the strictly necessary to save patient's life and without prejudice to requesting the corresponding judicial authorization when this is necessary. (Article 210) The judicial authority will be informed of these actions.³⁸ (Article 209) The Prison Rules provides a periodically assistance by a psychiatrist and a dentist.³⁹ Articles 35 and 209 of the Prison Rules provide that in urgency cases, according to the medical report, the Director of the centre will order to carry inmates to hospital. In such cases, admission will take place in the hospital that is closest to the centre.⁴⁰

Police custody:

Regarding this issue, there are no differences between these two regimes.

b. Availability of medical staff

Remand and post-trial detention:

A primary care team is present in each prison, providing outpatient services. The team consists of at least one general medical practitioner and two nurses. Psychiatrists, dentists and occasionally pharmacists may also be available. Other specialists such as: ophthalmologists, gynaecologists, dermatologists etc. are rarely present. The inmates who may be suffering from certain conditions are taken to hospital.

Critical Views

According to the General Council of the Lawyer in Spain, the greatest problem as far as the medical health attention in Spain is the lack of doctors. Mental illness in prison is one of the serious problems faced by the penitentiary institution. With a shortage of doctors, it is impossible to provide adequate

³⁸ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

³⁹ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁴⁰ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

care, detect problems with medication and even prevent outbreaks that can lead to attacks on other inmates and staff. The medical staff depends on the Secretariat of Penitentiary Services of the Ministry of the Interior, and they become public civil servants under the General Law Prison. In recent years, not even half of the positions were covered.⁴¹

See **Part II: National case-law: Spain**, the issue of the remuneration of medical guards of prison doctors (Supreme Court Judgements 1765/2023 of 21 December and 277/2024 of 21 February).

Police custody:

Regarding this issue, there are no differences between these two regimes.

c. Medical examination upon admission

Remand and post-trial detention:

A medical examination is performed within 24 hours upon admission and carried out on arrival in detention. New inmates undergo blood tests and other medical examinations. A doctor and a nurse review the medical history and carry out a risk assessment: suicide risk, drug use (type of drug, frequency, method of consumption, withdrawal symptoms, etc.), mental disorders. Risk behaviours such as sharing injection equipment, unprotected sex and tattooing are also taken into account. The communicable disease assessment covers infections such as tuberculosis, HIV, HCV, HBV and syphilis. This assessment provides guidance on the appropriate treatment to be provided. There is no provision about confidentiality between the doctor and the inmate. Article 215 of the Prison Rules only provides that the data of the individual medical record will be confidential.⁴²

Police custody:

Article 520 of **Law of Criminal Procedure**⁴³ provides for the right of the detainee to be recognized by a forensic doctor or his/her legal substitute and, failing that, by the doctor of the institution, in which s/he is located, or by any other doctor of the State.⁴⁴ In the event that you are carrying medicines, they will be kept in a different bag in order to have them available to the custodial staff for supply in the event of a medical prescription⁴⁵. The person should be examined by health staff as soon as possible. The dispensing of medicines will only be done by medical prescription, and must be reflected in the Registration and Custody Book. The health care and relevant medical examinations shall be carried out with respect for the privacy of the detained person, guaranteeing in all cases the necessary security

⁴¹ General Council of Spanish Lawyers (*Consejo General de la Abogacía Española*), [Sanidad en prisión un problema sin resolver](#), press release, 25 May 2023.

⁴² Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁴³ Spain, Ministry of Grace and Justice (*Ministerio de Gracia y Justicia*), [Royal Decree of 14 September 1882 approving the Law of Criminal Procedure](#) (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), 17 September 1882.

⁴⁴ Spain, Ministry of Grace and Justice (*Ministerio de Gracia y Justicia*), [Royal Decree of 14 September 1882 approving the Law of Criminal Procedure](#) (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), 17 September 1882.

⁴⁵ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the comprehensive procedure for police detention](#)" (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

measures. A written record of the conduct of such examinations shall be made, describing all the circumstances in which they occurred⁴⁶.

d. Preventive care

Remand and post-trial detention:

Prison Rules provides that health care is guaranteed to all prisoners without exception and that this care is equivalent to that which is provided to the rest of the population. Penitentiary establishments will have a medical team integrated by at least one general doctor, a nursing graduate and a nursing assistant, and, periodically, with a psychiatrist and a dentist. The women's centres will also have the services of a gynaecologist.⁴⁷

Medical-health treatment will always be carried out with the inmate's informed consent. Only when there is a danger to inmate or third parties may a treatment be imposed, being the medical intervention the strictly necessary to save patient's life and without prejudice to requesting the corresponding judicial authorization when this is necessary. The judicial authority will be informed of these actions.⁴⁸ Assistance by a psychiatrist and a dentist is periodically provided.⁴⁹

Articles 35 and 209 of the Prison Rules provide that in urgency cases, according to the medical report, the Director of the center will order to carry inmates to hospital. In such cases, admission will take place in the hospital that is closest to the center.⁵⁰

Police custody:

Upon entering the Detainee Custody Area, the person will be informed in writing of the convenience of reporting any infectious-contagious disease you suffer, in order to activate the corresponding protocol, as well as the possibility of being pregnant or breastfeeding, in the case of women. And it will be also informed on the possibility of making a voluntary declaration, as to whether you suffer from any other illness or are under medical treatment.

e. Specialised care

Remand and post-trial detention:

Article 209 of the Prison Rules regulates the specialized care, which will preferably be provided through the National Health System. If there are with the highest demand consultations efforts will be made to ensure that are provided inside the establishments, in order to avoid the release of inmates. In cases of justified urgency, the specialized care in which case it shall be provided in the hospital closest to the

⁴⁶ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the comprehensive procedure for police detention](#)" (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

⁴⁷ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁴⁸ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁴⁹ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁵⁰ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

prison. The agreements and protocols formalized in the field of public health and health care between the prison public administration and the public health authorities shall establish the conditions of access to outpatient care, hospitalization and emergency care, reflecting the scheduling of days and hours of outpatient care and the procedures to be followed for diagnostic tests.

Police custody:

Persons who, due to their personal physical or mental circumstances, need special attention and protection during the time of their detention and police custody, such as pregnant women, elderly people, sick people or people with physical or intellectual disabilities, etc. In these cases, the rules set out in the action protocol for pregnant women, LGBTI and trans-people, and other people in need of special attention and protection⁵¹.

In the event that any of the detainees **suffers from an infectious-contagious disease**, they will follow the protocols and medical recommendations for the type of disease in question, adopting the necessary measures to prevent its contagion and spread, for which they must be equipped with the necessary material as the case may be.

f. **Treatment of the detainee's choosing**

Remand and post-trial detention:

Regarding this issue, there are no differences between these two regimes. Article 212.3 of the prison rules established that the detainees may request private medical services from professionals outside at their own expense. The request will be approved by the management centre, except when for security reasons it is advisable to limit this right.⁵² Transgender inmates benefit from specific health care. They are authorized to continue or begin hormone therapy after an evaluation by a medical specialist (endocrinologist).

Police custody:

Article 520 of the **Law of Criminal Procedure**⁵³ provides for the right of the detainee to be recognized by the forensic doctor or his legal substitute and, failing that, by the doctor in the institution in which he/she is located, or by any other doctor serving the State or any other Public Administration.⁵⁴ It is not foreseen that the detainee has the right to be assisted by a doctor of his/her choice.

g. **NPM assessment**

In 2023, the United Nations, Committee against Torture the Committee declared its concerned about the shortage of prison doctors, including psychiatrists and clinical psychologists, as well as the difficulty

⁵¹ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the comprehensive procedure for police detention](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

⁵² Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁵³ Spain, Ministry of Grace and Justice (*Ministerio de Gracia y Justicia*), [Royal Decree of 14 September 1882 approving the Law of Criminal Procedure](#) (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), 17 September 1882.

⁵⁴ Spain, Ministry of Justice (*Ministerio de Justicia*), [Royal Decree of 14 September 1882, approving Criminal Procedure Law](#) (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), 17 September 1882.

in filling vacant positions experienced by the Ministry of the Interior. There are also significant shortcomings, such as the lack of doctors on duty, delays in the delivery of health-care services to the prison population, including specialized medical care, and the lack of programmes for treating addiction. The situation of female inmates with psychosocial disabilities who do not receive adequate specialized medical care is a matter of serious concern (articles 2, 11 and 16). And it made a request to Spain to **take the necessary measures to improve the provision of prison health care, including specialized medical care, by ensuring that sufficient medical and health staff are available to provide adequate and timely care to the prison population**⁵⁵.

According to the 2023 NPM report⁵⁶, in terms of medical examination upon admission and for the prevention of the risk of self-injurious behaviour, the NPM considered favourable the progress made in some centres for juvenile offenders in terms of preventing the risk of self-harming behaviour, which includes the registration of registrations and cancellations and the evaluation by psychology and psychiatry professionals of variables such as nationality, knowledge of the language, or whether there has been a migratory process. It is also defined as an advance that they were not housed in the same module as newly admitted people who are serving a sanction of separation from group or are in provisional isolation.

In terms of specialized care, during the year 2022, it has been recommended that the dispensing of psychotropic medication be regulated. Suggestion, in order to facilitate specialized drug abuse treatment programs, and to strengthen addiction intervention with specialized community resources.⁵⁷ (*Sugerencia, con el fin de que se faciliten programas de tratamiento especializado del uso indebido de drogas, y se refuerce la intervención en adicciones con recursos comunitarios especializados*).

According to the 2022 NPM report⁵⁸, certain suggestions were made regarding the need to adopt measures to guarantee as a priority the **adequate health care of older people diagnosed with chronic diseases** and also in relation to the need for specific care measures to be implemented such as: access to specific activities and programs, revision of architectural barriers, specific training of staff. It seeks to contribute to the process of revision of **Order 8/2011**⁵⁹ **of the General Secretariat of Penitentiary Institutions on Comprehensive Care for the Elderly**, which was reported to be in the process of being updated. **On 30 November 2022**, a visit was made to the **Alicante Penitentiary Psychiatric Hospital, and the NPM issued 21 Recommendations to General Secretariat of Penitentiary Institutions of the Ministry of the Interior** (*Secretaría General de Instituciones Penitenciarias. Ministerio del Interior*)⁶⁰.

⁵⁵ United Nations, Committee against Torture, [Concluding observations on the seventh periodic report of Spain. CAT/C/ESP/CO/7](#), 24 August 2023, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵⁶ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\).Spain \(Mecanismo Nacional de Prevención. Informe anual 2023\)](#), Madrid, Defensor del Pueblo.

⁵⁷ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), [2022 Annual report. National Prevention Mechanism \(NPM\).Spain \(Mecanismo Nacional de Prevención. Informe anual 2022\)](#), Madrid, Defensor del Pueblo.

⁵⁸ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), [2022 Annual report. National Prevention Mechanism \(NPM\).Spain \(Mecanismo Nacional de Prevención. Informe anual 2022\)](#), Madrid, Defensor del Pueblo.

⁵⁹ Spain, Ministry of the Interior (*Ministerio del Interior*), [Order 8/2011 of the General Secretariat of Penitentiary Institutions, on Comprehensive Care for the Elderly, which was reported to be in the process of being updated.](#)

Instrucción 8/2011 de la Secretaría General de Instituciones Penitenciarias, de Atención Integral a Personas Mayores, que actualmente se informa que está en proceso de actualización,

⁶⁰ Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Alicante Penitentiary Psychiatric Hospital \(Visita al Hospital Psiquiátrico Penitenciario de Alicante\)](#), Defensor del Pueblo, May 2022.; SALUD MENTAL. [ANEXO A.2, 1.3]

The Recommendations issued and the response received were:

- 5) Guarantee that the official certification of the assessment of the degree of disability for the interned persons obtains (Accepted but not developed);
- 8) To provide women with a disaggregation of profiles according to their health and functional situation, which favours therapeutic and rehabilitative intervention, appropriate to their respective recovery processes (Refused);
- 9) Guarantee a multidisciplinary response with a psychiatric, therapeutic and health implication that assumes that gender-based violence is a serious health problem that affects women and greatly conditions their social reintegration (Accepted but not developed);
- 12) Provide the centre with a protocol for the prevention, detection, protection and care of possible victims of gender-based violence or other types of violence, abuse or harassment in the hospital, which regulates the victim's access to health, psychological and social care, as well as provide continuous training for all staff on gender-based and sexual violence, and in any case, maintaining a proactive attitude to deal with these situations (Partially refused);
- 13) Articulate a protocol for the prevention of suicides and self-injurious behaviours that takes into account the gender perspective, taking into account the differential circumstances that affect women's suicide risk and emotional stability (Accepted);
- 16) Guarantee the right to healthcare information for the patient or his/her legal representative, leaving a record in the medical record; adapt the therapeutic and rehabilitative response taking into account the factor of age and ageing of the resident population, incorporating the gender perspective (Accepted but not developed);

During the same visit and **as far as the contention's issues, it was concluded that** despite the high percentages of gender-based violence reported by the inmates and recorded during the investigations, the NPM concluded that men were the ones who carry out the containments in both hospitals⁶¹. **On 12 December 2022, a visit took place to the Zarza Educational Centre in Murcia and the NPM issued a several Recommendations to the Directorate for Women, Equality, LGBTI, Families, Social Policy and Transparency of the Murcia Region government**⁶² stating “that a registry be established documenting any type of disability of children serving a judicial measure in that Autonomous Community, in order to favor interventions with a gender focus adapted to those who are in a situation of greater vulnerability” (*Que se establezca un registro en el que se documente cualquier tipo de discapacidad de las menores que cumplen una medida judicial en esa Comunidad Autónoma, con el fin de favorecer intervenciones con enfoque de género adaptadas para quienes se encuentran en una situación de mayor vulnerabilidad*)

⁶¹ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), [Persons with disabilities in the 2022 annual report](#) (*Personas con discapacidad en el informe anual 2022*), May 2023.

⁶² Spain, National Ombudsman (*Defensor del Pueblo*), [Annual Report of the Ombudsman 2022: Annexes to the National Preventive Mechanism \(NPM\) Annex B. Resolutions Made by the Ombudsman in 2022 in its Capacity as National Preventive Mechanism \(NPM\). B.1 Recommendations](#) (*Informe anual del Defensor del Pueblo 2022: Anexos del Mecanismo Nacional de Prevención (MNP) Anexo B. Resoluciones Formuladas por el Defensor del Pueblo En 2022 en su Condición de Mecanismo Nacional de Prevención (MNP). B.1 Recomendaciones*), Defensor del Pueblo, May 2022. Number 22005932 point 4.

According to the 2022 NPM report⁶³, the CPT recommended that the Spanish authorities immediately prepare for the transfer of health care from prisons to the National Health Service, as provided for in Law 16/2003. 88. The CPT recommends that the Spanish authorities take **measures to address the current shortage of doctors, including any measures aimed at making prison work more attractive (*El CPT recomienda a las autoridades españolas que procedan inmediatamente a la preparación del traspaso de la asistencia sanitaria de las prisiones al Servicio Nacional de Salud, tal y como prevé la Ley 16/2003. 88. El CPT recomienda que las autoridades españolas tomen medidas para solucionar la actual escasez de médicos, incluyendo cualquier medida destinada a hacer más atractivo el trabajo en las prisiones*)⁶⁴.**

Furthermore, “with regard to **the training of prison staff**, in light of the numerous allegations of provocative behaviour by prison officers, especially in closed regime modules, and their apparent inability to defuse challenging situations, the CPT considers that more emphasis needs to be placed on the development of communication skills, in terms of means of control and containment for prison staff” (*En lo que respecta a la formación del personal penitenciario, a la luz de las numerosas acusaciones de comportamiento provocador por parte de los funcionarios de prisiones, especialmente en los módulos de régimen cerrado, y su aparente incapacidad para calmar situaciones desafiantes, el CPT considera que es necesario hacer más hincapié en el desarrollo de las habilidades de comunicación, en materia de medios de control y contención para el personal penitenciario*).

In terms of preventive care:

- **on 2 July 2021**, a visit was made to the District Police Station **Madrid-Carabanchel**, and the **NPM issued a suggestion to General Secretariat of Penitentiary Institutions of the Ministry of the Interior⁶⁵** asking for “12.- Have a specific protocol for action in case of detecting a possible mental illness or intellectual disability (*Disponer de un protocolo de actuación específico en caso de detectar una posible enfermedad psíquica o discapacidad intelectual*).
- **On 11 February 2021**, it took place a visit to the **Girona Penitentiary Puig de les Basses Center⁶⁶** and the **NPM issued a suggestion to Department of Justice of the Catalonia regional government asking to “4.-Establish the appropriate mechanisms and procedures for the detection of people with intellectual disabilities and behavioural disorders and the possibility of offering them better medical and prison treatment, different from admission**

⁶³ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), 2022 Annual report. National Prevention Mechanism (NPM), Madrid, Defensor del Pueblo.

Spain, (*Mecanismo Nacional de Prevención. Informe anual 2022*), Madrid, Defensor del Pueblo.

Spain, National Ombudsman (*Defensor del Pueblo*) (2021), CPT/Inf (2021) 27, párrafos 86 y 88: 86.; [CPT/Inf (2021) 27], párrafo 106.

⁶⁴ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [Mecanismo Nacional de Prevención. Informe anual 2021](#), Madrid, Defensor del Pueblo; Summary 2021 Annual report. National Prevention Mechanism (NPM).Spain, Madrid, Mecanismo Nacional de Prevención.

⁶⁵ Spain, National Ombudsman (*Defensor del Pueblo*), [Annual Report of the Ombudsman 2022: Annexes to the National Preventive Mechanism \(NPM\) Annex B. Resolutions Made by the Ombudsman in 2022 in its Capacity as National Preventive Mechanism \(NPM\). E.2 Suggestions](#) (*Informe anual del Defensor del Pueblo 2022: Anexos del Mecanismo Nacional de Prevención (MNP) Anexo B. Resoluciones Formuladas por el Defensor del Pueblo En 2022 en su Condición de Mecanismo Nacional de Prevención (MNP). E.2 Sugerencias*), Defensor del Pueblo, May 2022. Suggestion number 21013552.

⁶⁶Spain, National Ombudsman (*Defensor del Pueblo*), [Annual Report of the Ombudsman 2021: Annexes to the National Preventive Mechanism \(NPM\) Annex E2. Resolutions Made by the Ombudsman in 2021 in its Capacity as National Preventive Mechanism \(NPM\). Annex E2. Suggestions](#) (*Informe anual del Defensor del Pueblo 2021: Anexos del Mecanismo Nacional de Prevención (MNP) Anexo B. Resoluciones Formuladas por el Defensor del Pueblo En 2022 en su Condición de Mecanismo Nacional de Prevención (MNP). Anexo E2. Sugerencias*), Defensor del Pueblo, May 2021. Number 20025203.

to the DERT module” (4.- *Establecer los mecanismos y procedimientos adecuados para la detección de personas con discapacidad intelectual y trastornos de conducta y la posibilidad de ofrecerles un mejor tratamiento tanto médico como penitenciario, diferente al ingreso en el módulo DERT*).

- **On 13 October 2021**, a visit was made to the **Sevilla I Penitentiary Centro**, and the **NPM issued a suggestion number 21012575 to General Secretariat of Penitentiary Institutions of the Ministry of the Interior** (*Secretaría General de Instituciones Penitenciarias. Ministerio del Interior*)⁶⁷ asking to “15.- Include in the future reform of the penitentiary establishment the incorporation of individual cells and showers in the centre's infirmary, as well as the adaptation of the same to people with disabilities or reduced mobility” (*Incluir en la futura reforma del establecimiento penitenciario la incorporación de celdas y duchas individuales en la enfermería del centro, así como la adaptación de la misma a personas con discapacidad o movilidad reducida*).

9. Prevention of violence and ill-treatment

a. Protection from violence by prison staff

Remand and post-trial detention:

Article 15 of the **Organic Law 10/2022 on the comprehensive guarantee for sexual freedom**⁶⁸ provides for the need for protocols to be established in prisons to detect and investigate sexual violence, as well as to protect potential victims and process potential complaints. Article 30 also stressed the importance of training public prison employees in transversal gender perspective and comprehensive protection against sexual violence as fundamental elements of their training.

Police custody:

All complaints lodged against police officers about facts and actions that may reveal an alleged violation of the fundamental rights of individuals on the occasion of police action are duly registered in the computer application set out by the Order 1/2022⁶⁹, which created the National Office for the Guarantee of Human Rights (*Oficina Nacional de Garantía de los Derechos Humanos*, ONGADH in its Spanish acronym).

See **Part II: National case-law**: Spain, Judgment of the Constitutional Court 34/2022, of 7 March. An inmate complaint of ill-treatment, application of the doctrine relating to the duty of effective judicial investigation in the face of a complaint of torture suffered in police custody. The judge upheld his remedy.

⁶⁷ Spain, National Ombudsman (*Defensor del Pueblo*), [Annual Report of the Ombudsman 2022: Annexes to the National Preventive Mechanism \(NPM\) Annex B. Resolutions Made by the Ombudsman in 2022 in its Capacity as National Preventive Mechanism \(NPM\). E.2 Suggestions](#) (*Informe anual del Defensor del Pueblo 2022: Anexos del Mecanismo Nacional de Prevención (MNP) Anexo B. Resoluciones Formuladas por el Defensor del Pueblo En 2022 en su Condición de Mecanismo Nacional de Prevención (MNP). E.2 Sugerencias*) Defensor del Pueblo, May 2022.

⁶⁸ Spain, Ministry of the Presidency, Relations with the Courts and Democratic Memory, (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) [Organic Law 10/2022, of September 6, on the comprehensive guarantee of sexual freedom](#) (*Ley Orgánica 10/2022, de 6 de septiembre, de garantía integral de la libertad sexual*), 7 September 2022.

⁶⁹ Spain, National Ombudsman (*Defensor del Pueblo*), [Order 1/2022, of the Secretary of State for Security, which creates the National Office for the Guarantee of Human Rights](#) (*Instrucción 1/2022, De La Secretaría De Estado De Seguridad, Por La Que Se Crea La Oficina Nacional De Garantía De Los Derechos Humanos*), 10 February 2022.

See **Part II: National case-law**: Spain, Judgment of the Constitutional Court 13/2022, of 7 February. An inmate complaint of been subjected to a body search with full nudity during her police detention. The judge upheld his remedy.

See **Part II: National case-law**: Spain, Constitutional Court judgment 12/2022 of 10 October 2022⁷⁰. An inmate alleged ill-treatment suffered under police custody. The judge upheld his remedy. Declare that his right to effective judicial protection without defencelessness has been violated (Article 24.1 of the Spanish Constitution), in relation to his right not to be subjected to torture or inhuman or degrading treatment (Article 15 of the Spanish Constitution).

b. Protection from violence by other detainees

Remand and post-trial detention:

There is a **2021 Protocol on Complaints of Ill-Treatment and Reports of Injuries by Persons Deprived of Liberty of the General Secretariat of Prisons**⁷¹. It seeks to clarify management and unify the way in which complaints are received from inmates of ill-treatment. It stated that complaints may be heard by the management of the Centre. The claim may be made orally or in writing by the person concerned, through prison staff or third parties. It also states that all complaints or complaints of ill-treatment must be duly recorded in the register book of the centre provided for this purpose.

The **Organic Law 10/2022 on the comprehensive guarantee of sexual freedom** (*Ley Orgánica 10/2022, de 6 de septiembre, de garantía integral de la libertad sexual*)⁷² introduced the need to assess the use of a prison treatment program. The obligation to carry out sexual treatment programs in order to access the third degree of treatment in line with Article 36.2 of the Criminal Code⁷³. The implementation of specific programmes for inmates convicted of offences against sexual freedom was defined as requested for the treatment of mental activities carried out inside prisons. The Sexual Assault Control Program (*Programa para el Control de la Agresión Sexual*, PCAS, in its Spanish acronym) aims to increase the awareness of the participant and the scope of the choices he or she makes in relation to his or her behaviour, through his or her participation in multiple individual or group activities. Since the Law 10/2022 on **the comprehensive guarantee for sexual freedom**, the initial classification or progression to the third degree of prison treatment is conditioned ex lege to an express assessment of the situation,

⁷⁰ Spain, Constitutional High Court (*Tribunal Constitucional*), [Judgment 12/2022 of 7 February 2022. Amparo appeal 4703-2019. Brought by Mr. Gustavo Cachcovsky Nin with respect to the decisions handed down by the Provincial Court of Madrid and a court of first instance and order of Arganda del Rey that archived his complaint of ill-treatment. Violation of the right to effective judicial protection without defencelessness in relation to the right not to be subjected to torture or inhuman or degrading treatment: insufficient investigation of a complaint of ill-treatment allegedly suffered in the prison environment \(STC 34/2008\)](#) (*Sala Segunda. Sentencia 12/2022, de 7 de febrero de 2022. Recurso de amparo 4703-2019. Promovido por don Gustavo Cachcovsky Nin respecto de las resoluciones dictadas por la Audiencia Provincial de Madrid y un juzgado de primera instancia e instrucción de Arganda del Rey que archivaron su denuncia de malos tratos. Vulneración del derecho a la tutela judicial efectiva sin indefensión en relación con el derecho a no ser sometido a torturas ni a tratos inhumanos o degradantes: investigación insuficiente de una denuncia de malos tratos que se dicen sufridos en el ámbito penitenciario (STC 34/2008)*), 10 March 2022.

⁷¹ Spain, General Secretariat of Penitentiary Institutions (*Secretaría General de Instituciones Penitenciarias*), [Protocol of ill-treatment and reports of injuries](#) (*Protocolo de malos tratos y partes de lesiones*), 2021.

⁷² Spain, Ministry of the Presidency, Relations with the Courts and Democratic Memory, (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) [Organic Law 10/2022, of September 6, on the comprehensive guarantee of sexual freedom](#) (*Ley Orgánica 10/2022, de 6 de septiembre, de garantía integral de la libertad sexual*), 7 September 2022.

⁷³ classification with third degree of persons convicted of Sex crimes.

which means that is more than five years in prison, a particular assessment on the use of this type of program must be carried out by express legal provision.

Police custody:

No reference is contained on the regulations.

See **Part II: National jurisprudence:** Spain, Constitutional Court judgment 12/2022 of 7 February 2022⁷⁴. An inmate alleged ill-treatment suffered in the prison. The judge upheld his remedy.

c. NPM assessment

In 2023, the United Nations Committee against Torture⁷⁵ declared its “concerned about reports received indicating that a significant number of allegations of excessive use of force and ill-treatment of detainees, including Children, by the police refer to acts or events that occurred at the time of arrest or while the persons were being transported or in police custody. Investigations were also reported to be ineffective. Another cause for concern is the absence of an independent mechanism to investigate allegations of torture and ill-treatment committed by law enforcement officials and the fact that the existing internal investigative bodies, principally the relevant directorates general, lack the necessary independence as they belong to the same structure that employs the alleged perpetrators of such crimes. In this regard, the Committee notes with interest the information provided by the State party on the establishment of the National Human Rights Safeguarding Office”.

In 2021, the United Nations Committee against Torture⁷⁶ stated that “The Committee urges the State party to continue to apply non-custodial measures. In this regard, the Committee draws the State party’s attention to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Inmates and Non-custodial Measures for Women Offenders (the Bangkok Rules). The State party is also **invited to strengthen rehabilitation programmes, including those specifically for persons with disabilities**, and to continue its efforts to implement appropriate measures based on the principles of dynamic security in prisons. The Committee also urges the State party **to review its regulations on the use of mechanical restraints with a view to abolishing this practice**, as recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”.

⁷⁴ Spain, Constitutional High Court (*Tribunal Constitucional*), [Judgment 12/2022 of 7 February 2022. Amparo appeal 4703-2019. Brought by Mr. Gustavo Cachcovsky Nin with respect to the decisions handed down by the Provincial Court of Madrid and a court of first instance and order of Arganda del Rey that archived his complaint of ill-treatment. Violation of the right to effective judicial protection without defencelessness in relation to the right not to be subjected to torture or inhuman or degrading treatment: insufficient investigation of a complaint of ill-treatment allegedly suffered in the prison environment \(STC 34/2008 \(Sala Segunda. Sentencia 12/2022, de 7 de febrero de 2022. Recurso de amparo 4703-2019. Promovido por don Gustavo Cachcovsky Nin respecto de las resoluciones dictadas por la Audiencia Provincial de Madrid y un juzgado de primera instancia e instrucción de Arganda del Rey que archivaron su denuncia de malos tratos. Vulneración del derecho a la tutela judicial efectiva sin indefensión en relación con el derecho a no ser sometido a torturas ni a tratos inhumanos o degradantes: investigación insuficiente de una denuncia de malos tratos que se dicen sufridos en el ámbito penitenciario \(STC 34/2008\)](#), 10 March 2022.

⁷⁵ UN, Committee against Torture, [Concluding observations on the seventh periodic report of Spain. CAT/C/ESP/CO/7](#), 24 August 2023, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁷⁶ UN, Committee against Torture, [Concluding observations on the seventh periodic report of Spain. CAT/C/ESP/CO/7](#), 24 August 2023, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

According to the 2022 NPM report⁷⁷, the NPM continues to perceive a risk that stems from the **current gap between complaints and allegations of various types of abuse experienced in places of deprivation of liberty**: those that are reported, recorded, and investigated and those that manage to evade existing administrative and legal barriers. Therefore, the fact that court rulings on this matter continue to be scarce is a matter for reflection in order to dispel the existing risks stemming from deficiencies in the reporting channel, the availability of means for providing proof, the possible fear of reprisals and delays in carrying out investigations. Investigations into ill-treatment imply the joint effort of the different administrative bodies if we are to bring conclusion of these investigations in dismissals and suspension of criminal proceedings to an end.

The **Constitutional Court Sentence 122/2022** states that there is a special mandate to perform an exhaustive, sufficient and effective investigation into claims of crimes of this kind, making use of all possible useful means of investigation to clarify the facts since it is necessary to enhance guarantees because there are special circumstances in which the citizen is provisionally under the custody of the State. The **Recommendations made by the National Preventive Mechanism** seek to diminish the chances of situations of risk that could lead to ill-treatment in places of deprivation of liberty in Spain going undetected. This would be achieved through use of the following: real and effective reporting channels; suitable means of proof; and protection of potential victims. It meant that records and databases must be improved so that the investigations into allegations of torture and cruel, inhuman or degrading treatment we can analyse how well the administrative bodies in charge of deprivation of liberty are performing their role from a human rights perspective.

The **NPM made Recommendations** aimed at the protection of particularly vulnerable groups⁷⁸:

- “that the provisions of Organic Law 8/2021, on the comprehensive protection of children and adolescents, be applied in prisons, where the consideration of youth is held by persons under 21 years of age” (*que se apliquen las previsiones de la Ley Orgánica 8/2021, de protección integral de la infancia y adolescencia, en los centros penitenciarios, donde la consideración de «joven» la ostentan las personas menores de 21 años*);
- “that the prohibition on applying the protocol on mechanical restraints approved by Circular 1/2022 to people located in ordinary modules who present some mental conditioning or risk of suicide be extended, specifically addressing de-escalation measures to reduce their disruptive behaviour without the need to apply the containment that, if it is absolutely necessary, it must be of a sanitary nature. As a result of the analysis of the restraints practiced, it was observed, for example, that a young inmate had been handcuffed and restrained in a few months or that within six months three inmates included in the suicide prevention protocol were restrained (visit to the Lledoners Penitentiary Centre” (*que se haga extensible la prohibición de aplicar a las personas ubicadas en dependencias psiquiátricas penitenciarias el protocolo sobre contenciones mecánicas aprobado mediante la Circular 1/2022, a las personas ubicadas en módulos ordinarios que presenten algún condicionante mental o riesgo de suicidio, abordando específicamente las medidas de desescalada para chilar su comportamiento disruptivo sin necesidad de aplicar la contención que, en caso de ser eventualmente necesaria, debe revestir*

⁷⁷ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), [2022 Annual report. National Prevention Mechanism \(NPM\). Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2022*), Madrid, Defensor del Pueblo.

⁷⁸ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), [2022 Annual report. National Prevention Mechanism \(NPM\). Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2022*), Madrid, Defensor del Pueblo.

carácter sanitario. A raíz del análisis de las sujeciones practicadas se observó, por ejemplo, que un interno joven¹⁴ había estado en escasos meses esposado y sujeto en tres ocasiones, o que en seis meses figuraban sujeciones a tres internos incluidos en el protocolo de prevención de suicidios (visita al Centro Penitenciario Lledoners).

According to the 2021 NPM report⁷⁹, two Recommendations was address to the General Secretariat of Penitentiary Institutions of the Ministry of the interior asking for:

- "2.- To issue the appropriate orders by the General Secretariat of Penitentiary Institutions so that whenever rubber or aerosol defences of appropriate action are carried, regardless of whether they are used actively or not, their use is reported to the prison supervision court and the corresponding prison supervision prosecutor's office. 3.- In order to unify the formats and improve the completion of the book of investigations and allegations of ill-treatment, and to be able to better process this information, the Administration is urged to incorporate the aforementioned book into the Prison Information System (SIP). In this way, this centralized information could be better processed in instruments such as statistics, rapid access to information, follow-up of investigations, etc" (2.- *Dictar las órdenes oportunas por la Secretaría General de Instituciones Penitenciarias para que siempre que se porten defensas de goma o aerosoles de acción adecuada, independientemente de que se empleen de forma activa o no, se comunique su uso al juzgado de vigilancia penitenciaria y a la fiscalía de vigilancia penitenciaria correspondiente. 3.- Con el objeto de unificar los formatos y mejorar la cumplimentación del libro de investigaciones y alegaciones de malos tratos, y poder tratar mejor esta información, se insta a esa Administración a incorporar el mencionado libro al Sistema de Información Penitenciaria (SIP). De esta manera, se podrían tratar mejor esta información centralizada en instrumentos tales como estadísticas, acceso rápido a la información, seguimiento de investigaciones, etcétera*);
- *and to " Issue the appropriate orders so that in the personal file and in the personality protocol, there is always documentary evidence that the inmates have been informed of their individualized treatment program, as well as of the measures adopted for the involvement of the inmate, always based on the principle of the voluntary nature of treatment and the normalization of life in prison" (1.- Dictar las órdenes oportunas para que en el expediente personal y en el protocolo de personalidad, siempre quede constancia documental de que las personas internadas han sido informadas de su programa individualizado de tratamiento, así como de las medidas adoptadas para la implicación del interno o interna, partiendo siempre del principio de la voluntariedad del tratamiento y de la normalización de la vida en prisión.*⁸⁰

10. Contact with the outside world

a. Visits

Remand and post-trial detention:

⁷⁹ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\).Spain \(Mecanismo Nacional de Prevención. Informe anual 2021\)](#), Madrid, Defensor del Pueblo. 20/05/2021 21002620

⁸⁰Spain, National Ombudsman (*Defensor del Pueblo*) 21008420. 20/09/2021 Secretaría General de Instituciones Penitenciarias. Ministerio del Interior <https://www.defensordelpueblo.es/resoluciones/visita-al-centro-penitenciario-de-avila-brieva/>

Article 42.1 of the General Penitentiary Law establishes that there will be a minimum of two visits per week. Both the General Penitentiary Law⁸¹ and the Prison Rules⁸² enshrine the right to maintain regular communications with family members and others, except cases of judicial incommunicado detention.

It also includes:

- other communications rather linked to humanitarian or communication to family members in the event of death, illness or accident of inmates;
- information to inmates in case of death or serious illness of close relatives or intimate; and
- Communication of inmates to family and lawyer of their admission or transfer of a prison.
- The Article 38.3 and Article 53 of the General Penitentiary Law⁸³ covers the visits by family or close associates and the article 45 of the Prison Rules makes reference to the intimate communications, and the ones with the family and cohabitation.
- The communications with authorities or professionals, such as:
 - Judicial authorities, members of the Public Prosecutor's Office and officials of the Administration of Justice may not be suspended, intervened or restricted by administrative decision;
 - Ombudsman and his deputies that may not be suspended, intervened or restricted by administrative decision;
 - And with diplomatic or consular representatives are covered under Article 49 of the Prison Rules.
- Article 51.3 of the General Penitentiary Law⁸⁴ makes reference to the communications with licensed professionals such as: social workers and with priests or ministers of their religion. Conjugal visits are allowed for LGBTQI+ inmates.

Police custody:

Once the appropriate police proceedings have been carried out and after the police officer responsible for custody has checked the personal security measures, the investigator may authorize the reception of visits from his relatives and friends at the established times.

b. Correspondence

Remand and post-trial detention:

As far as phone communications: the inmate can make calls from the prison centre, but cannot receive them. The inmate bears the costs of the calls he makes. The telephones to be used must have prior authorization, giving you in the first instance a list of telephone numbers. Inmate usually are allowed to make 2 calls per week, the prison rules under its article 47.4 sets a minimum of 5 calls per week. The number varies according to the establishment and the detention regime. Each call is limited to five minutes. Inbound calls are forbidden. Inmates are allowed to call anyone and the inmate must provide details of the people they have selected, including their address, telephone number and the nature of

⁸¹Spain, Head of State (*Jefatura del Estado*), [General Penitentiary Law 1/1979, of 26 September](#) (*Ley General Penitenciaria*), 5 October 1979.

⁸² Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁸³ Spain, Head of State (*Jefatura del Estado*), [General Penitentiary Law 1/1979, of 26 September](#) (*Ley General Penitenciaria*), 5 October 1979.

⁸⁴ Spain, Head of State (*Jefatura del Estado*), [General Penitentiary Law 1/1979, of 26 September](#) (*Ley General Penitenciaria*), 5 October 1979.

their relationship. Unlimited **letters** sent or received. As far as **correspondence through digital means, or other means of communication**, inmates have access to video calls with external contacts when the inmates who have not had any visitors for a period of at least four months. The use of cell phones is not authorized. Inmates are allowed to receive parcels under certain conditions. The number of parcels is limited to two per month, or one per month for first grade inmates.

Police custody:

The person has the right to communicate by telephone with a third party of their choice. It will last a maximum of five minutes. This communication will take place in the presence of an officer of the Security Forces, providing him or her with the use of an official telephone number of the police unit. The detained person must identify the caller, his or her place of residence and provide the telephone number of the person with whom he or she wishes to communicate. The arrested person and the chosen interlocutor shall be informed of the possibility for the officer to cut off the communication, leaving a written record of the reasons that have led to it, if it is noticed that the person gives Orders to destroy or conceal evidence, or to perpetrate or induce the commission of new crimes.

The detainee should be able to communicate permanently with the custodial staff in order to inform them of any incident that occurs in the cell area. Custody officers shall not maintain communications and contacts with detainees, except as are necessary for the performance of their duties.

c. Visits with children

Remand and post-trial detention:

As far as the **children under ten years old**, the Article 160 of the Civil Code⁸⁵ states that the public administration must facilitate the transfer of the children to the penitentiary facility, either by a family member designated by the competent administration or by a professional who will ensure that the children are prepared for such a visit. The visit to a penitentiary must be carried out outside school hours and in an environment suitable for the children. If the **child is over 10 years old**.

d. NPM assessment

The General Secretariat of Penitentiary Institutions recognized that persons with the hearing related disability do not benefit from the increase in the number and duration of telephone calls. 15 8-minute calls per week that can be made by the rest of the prison population. Similarly, it was stated that, although calls through the video booths in the modules have a high cost, the truth is that people with disabilities have their own economic resources derived from the pensions they receive for disability.⁸⁶

According to the 2022 NPM report⁸⁷, despite the fact that prison rules warn about the importance of promoting communications with the outside world, risks of justified restrictions in easily remediable bureaucratic procedures continued to be detected. The high cost of calls continued to limit the use of the video booths that have been installed. The possibility of making free video calls with the *WhatsApp*

⁸⁵ Spain, Ministry of the Presidency, Relations with the Courts and Democratic Memory, (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*), [Royal Decree of 24 July 1889 publishing the Civil Code](#) (*Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil*), Official State Gazette, 24 July 1889.

⁸⁶ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), [2022 Annual report. National Prevention Mechanism \(NPM\).Spain](#) ([Mecanismo Nacional de Prevención. Informe anual 2022](#)), Madrid, Defensor del Pueblo;

⁸⁷ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), [2022 Annual report. National Prevention Mechanism \(NPM\).Spain](#) ([Mecanismo Nacional de Prevención. Informe anual 2022](#)), Madrid, Defensor del Pueblo.

application were maintained for those people who do not have sufficient economic resources within certain centres. This issue was being addressed by the Catalan Administration, which was working on a free corporate application, as well as on a digital literacy programme aimed at interns, the results of which are expected to be satisfactory.

A Recommendation issued was rejected⁸⁸: “That the conditions of telephone communications (video calls) be equated with face-to-face communications, at least for inmates who are unable to communicate in person on a regular basis” (*Recomendacion: Que se equiparen las condiciones de las comunicaciones telefónicas (videollamadas) con las comunicaciones presenciales, al menos para las personas presas que no pueden comunicar en persona con regularidad*).

See **Part II: National jurisprudence**: Spain, Order 840/2021 of the National High Court, Criminal Chamber, Section 1, 4 November 2021. Video calls are only intended as a substitute for family communications due to the pandemic.⁸⁹

11. Special measures for female detainees

a. General conditions of detention for women and girls

Remand and post-trial detention:

All convicts have the duty to work according to their aptitudes, however, pregnant women are exempted from this duty from birth to sixteen uninterrupted weeks later. In case of multiple births time should be extended up to eighteen weeks. Time can be distributed before and after birth at women option, provided that at least six weeks must be enjoyed immediately after childbirth.⁹⁰ Prison Rules set out that isolation sanctions will not be applied to pregnant women up to six months after the termination of pregnancy, nor to nursing mothers and to those who have children with them.⁹¹

The specific services provided to women include: diagnosis early detection of gynaecological cancer and breast in a manner coordinated and legalized with specialized care; indication and follow-up of non-surgical contraceptive methods and advice on other methods of contraception and voluntary termination of pregnancy. In addition, care during pregnancy that includes: uptake of the pregnant woman in the first trimester of gestation and detection of pregnancy risk; and monitoring of normal pregnancy in a manner coordinated and legalized with specialized care, according to the Organization of the corresponding; health service; maternal education, including the promotion of breastfeeding, prevention of urinary continence and the birth preparation.

Police custody:

⁸⁸ Spain, National Ombudsman (*Defensor del Pueblo*) Administración: Secretaría General de Instituciones Penitenciarias. Ministerio del Interior. Respuesta: Rechazada. Queja número: 22018156, 20 December 2022.

⁸⁹ Spain, [Order 840/2021 of the national high court, criminal chamber, section 1, dated 04/11/21](#) (auto 840/2021 de la audiencia nacional sala penal sección 1ª), 4 November 2021.

⁹⁰ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

⁹¹ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

Regarding this item, there are no differences between these two regimes. It is only foreseen that in cases of advanced pregnancy of a woman and for the purpose of immobilization, these exceptional circumstances will be taken into account in order to reduce or modulate this measure.⁹²

b. Separation from men

Remand and post-trial detention:

Prison Rules provide that inmates will be separated within the establishments taking into account, as a matter of priority, the criteria of sex, age and criminal history and that, exceptionally, the management centre, which is the General Secretary of Penitentiary Institutions may establish mixed departments where men and women can be assigned indistinctly, to carry out specific treatment programs or to avoid family breakdown. In any case, full coexistence of spouses who are deprived of liberty will be encouraged unless reasons of treatment, classification, security or good order of the establishment make it inadvisable.

Police custody:

Regarding this issue, there are no differences between these two regimes.

c. Hygiene

Remand and post-trial detention:

Regarding this item, there are no differences between these two regimes.

The distribution of hygienic and disease prevention product sets is provided for women on a monthly basis. The hygiene kit contains: 6 rolls of toilet paper, 1 toothpaste (50 gr.), 1 plastic cutlery, 2 condoms (normal), 2 lubricating gels (water soluble), 1 bottle of bleach (liter), 1 gel (1 liter), 20 normal sanitary towels, and 20 double absorption sanitary towels⁹³. Apart from this kit, they can buy personal hygiene products at the prison commissary.

Police custody:

There are no specific national standards for women in police custody.

d. Healthcare

Remand and post-trial detention:

Prison Rules provide that women's centres will have the periodic services of a gynaecologist and, when children live with their mothers, a paediatrician.⁹⁴

⁹² Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the comprehensive procedure for police detention](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

⁹³ Spain, General Secretary of Penitentiary Institutions (*Secretaría General de Instituciones Penitenciarias*), [Order 13, of October 4 2017, on hygienic lots and disease prevention sets products distributed to inmates monthly](#) (*Instrucción de la Secretaría General de Instituciones Penitenciarias sobre lotes higiénicos y de prevención de enfermedades*), 4 October 2017.

⁹⁴ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

In addition, women's departments will have a unit with obstetric instruments to attend women in cases of childbirth.⁹⁵

Apart from that, there are no specific standards.

Police custody:

With regard to this item, there are no specific standards for women in police custody.

Inmates are allowed to give birth outside prison in the hospitals of the public health network that have agreement with the penitentiary administration.

e. **Pregnancy and women with babies or young children**

Remand and post-trial detention:

Incarcerated mothers are able to live with their children, if they are under three years old.

Women with babies or young children are placed within the “Mothers’ Units” (*Unidades de Madres*), which provided small external apartments for women with children, under the administration of the prison management. There are three such units, in Madrid, Seville, and Palma de Majorca, operating under a semi-open regime. The imprisoned women are under camera surveillance, alarms and monitors. Nurseries are provided in the residences for children. Imprisoned mothers and fathers are able to live with their children, if they are under three years old.

Police custody:

In the case of a pregnant woman will be ordered to be immediately transferred to a health centre for proper examination. This action will be carried out before admission to the detainee custody area, if the woman's pregnancy situation was known before said action.

Among other actions, the medical personnel attending to the woman,

- if she does not object, will be asked to verify the state of pregnancy and to adopt the sanitary and prophylactic measures considered necessary, as well as to indicate whether admission may pose any risk to the health of the future mother or the fetus. If the detained woman is admitted to the cells, the person in charge of the custody shall immediately notify the investigator of the proceedings, so that they can be recorded and proceed in accordance with the provisions of subparagraph;
- Personal searches shall be carried out whenever possible by female personnel who shall take extreme precautions in carrying them out.
- Likewise, whenever possible, the custody and transfers of the pregnant woman shall be carried out by female personnel in safe conditions that do not affect the integrity or health of the future mother or the foetus. Extreme measures will be taken to preserve the health of the woman and the foetus, especially during vehicle transport.
- Once the patient has been admitted to the cells, an attempt shall be made to do so in a single cell with a bathroom. Whenever it will be requested by the pregnant woman, as well as when

⁹⁵ Spain, Ministry of Interior (*Ministerio de Interior*), [Royal Decree 268/2022, of April 12, 2022, amending Royal Decree 190/1996, of February 9, 1996, approving the Prison Regulations](#) (*Real Decreto 268/2022, de 12 de abril, por el que se modifica el Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario*), 13 April 2022.

deemed appropriate by the custody officers, medical assistance shall be required or a transfer to a hospital will take place.

In 2023, the United Nations, Committee against Torture, remained concerned about reports that the prison administration does not give sufficient consideration to the special needs of women inmates in all penitentiary facilities, in particular in the case of those held in units reserved for women in multipurpose facilities. Among the issues brought to the Committee's attention were gaps in sexual and reproductive health services and a lack of appropriate counselling for victims of gender-based violence (arts. 11 and 16). Spain should ensure that the special needs of women deprived of their liberty are met, in accordance with the United Nations Standard Minimum Rules for the Treatment of Inmates (the Nelson Mandela Rules) and the Bangkok Rules⁹⁶.

According to the 2023 NPM report, and as far as the **pregnancy and women with babies or young children**⁹⁷. In 2019, the NPM had recommended that women inmates be registered with pregnancies. It was a **Recommendation not accepted by the General Secretariat of Penitentiary Institutions**. This results in the scant attention paid to a circumstance so relevant to their physical and mental health. Similarly, the prison administration lacks information on the places available to them in mothers' units. **During NPM visits**, inmates complain about the treatment they receive in prisons **during pregnancy, such as lack of attention to their needs** (food, physical exercise, etc.) and lack of preparation for childbirth.

On the occasion of the **visit to the Mothers' Unit of Alicante (Visit 7/2022)**, the NPM became aware of the lack of a protocol for the care of pregnant women, so it recommended its preparation, which was accepted in 2023. The NPM receives **several complaints about lack of privacy due to the presence of the police during childbirth and emotional distress due to the impossibility of family support during subsequent hospitalization**. For this reason, it recommended the elaboration of a protocol to the General Secretariat of Penitentiary Institutions, in coordination with the Ministry of the Interior, to guarantee childbirth without police presence, which was not accepted by the ministry. The Recommendation to guarantee the right of female inmates to the presence of an accompanying person during childbirth and postpartum is still pending. **The NPM recommended** ensuring that inmates in these centres **have adequate facilities to serve their sentences with their children under three years of age in prison**. The General Secretariat of Penitentiary Institutions reported, in 2023, that conditioning works are being carried out so that there are adequate facilities in the Canary archipelago. The NPM stated that the upbringing of children in the Irene Villa Mothers' Unit in the Alicante II Penitentiary Centre, hardly allows the involvement of the father, so the NPM recommended that frequent communication and coexistence measures be articulated to facilitate his involvement. The Administration replied that the study of each case was carried out on a case-by-case basis. **The Balearic and Canary archipelagos and the autonomous cities of Ceuta and Melilla do not have mother units**. The consequence is that, if the inmates do not want to be separated from their new-born baby, they have to be transferred to the mainland, which means separating from their family, including young children.

⁹⁶ United Nations, Committee against Torture, [Concluding observations on the seventh periodic report of Spain. CAT/C/ESP/CO/7](#), 24 August 2023, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁹⁷ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\). Spain \(Mecanismo Nacional de Prevención. Informe anual 2023\)](#), Madrid, Defensor del Pueblo.

According to the 2023 NPM report⁹⁸, and in terms of internal regulations and protocols. The authorities of the autonomous communities of Andalusia, Galicia and Murcia **developed a detailed protocol for the detection of gender-based violence and sexual assault prior to admission to the detention centre for juvenile offenders.** The authorities of the Autonomous Community of Valencia are working along the same lines. The General Secretariat of Penitentiary Institutions assumed that it must remedy **the lack of a protocol for the care of pregnant women**, as well as the lack of inclusion of women in the Comprehensive Care Program for the Mentally Ill in those cases in which circumstances occur that from a clinical point of view demand it. The Administration assumed that the application of coercive means, including the measure of isolation, must be carried out with a gender perspective.

According to the 2023 NPM report⁹⁹, it has been detected that the **lack of available female staff in the modules causes discrimination in the treatment of women inmates**, by preventing their internal separation, their stay in the infirmary or in the admissions department.

The Recommendation to the General Secretariat of Penitentiary Institutions for the adoption of positive actions to increase their number was not accepted

- “In the visits carried out by the National Preventive Mechanism, it has been detected that the lack of available female staff in the modules causes discrimination in the treatment of women prisoners, by preventing their internal separation, their stay in the infirmary or in the admissions department. The Recommendation to the General Secretariat of Penitentiary Institutions for the adoption of positive actions to increase their number was not accepted” *(En las visitas llevadas a cabo por el Mecanismo Nacional de Prevención se ha detectado que la falta de funcionarias disponibles en los módulos provoca una discriminación en el trato a las mujeres presas, al impedir su separación interior, su estancia en enfermería o en el departamento de ingresos. La Recomendación a la Secretaría General de Instituciones Penitenciarias para la adopción de acciones positivas para aumentar su número no fue aceptada).*

The NPM considers that the specific needs of women should be taken into account both in the planning and construction of new prison infrastructure and in existing facilities *(El Defensor del Pueblo considera que se deben tener en cuenta las necesidades específicas de las mujeres tanto en la planificación y construcción de nuevas infraestructuras penitenciarias como en las instalaciones existentes).*

According to the 2023 NPM report¹⁰⁰, and as far as the conditions for the mothers in prison, the National Ombudsman reiterated the Recommendation made in 2022 to the Directorate-General of the Police regarding the need to avoid police presence during childbirth of women deprived of liberty from prisons and who are hospitalized. In its reply, the public administration concerned indicated that the mandatory police custody is carried out from a room attached to the delivery room and never in the delivery room itself. The General Secretariat of Penitentiary Institutions accepted the Recommendation

⁹⁸ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\).Spain \(Mecanismo Nacional de Prevención. Informe anual 2023\)](#), Madrid, Defensor del Pueblo.

⁹⁹ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\).Spain \(Mecanismo Nacional de Prevención. Informe anual 2023\)](#), Madrid, Defensor del Pueblo.

¹⁰⁰ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\).Spain \(Mecanismo Nacional de Prevención. Informe anual 2023\)](#), Madrid, Defensor del Pueblo.

of the National Preventive Mechanism **to draw up a Protocol for the Care of Pregnant Women**. In addition, based on another Recommendation of the mechanism, the same general secretariat is carrying out conditioning works so that there are adequate facilities in the Canary Islands for the serving of sentences for mothers with their children under three years of age in prison.

According to the 2023 NPM report¹⁰¹, a set of Recommendations were issued, such as:

- “That, taking into account the principle of scientific individualization of the penalty, uniformity of criteria be sought in the assessment of the requirements for admission to the family module of the Madrid VI Penitentiary Centre, and that periodic information on these criteria and the places available to the rest of the penitentiary centres dependent on this secretariat be sent, without prejudice to the fact that the updating of the regulations governing this module is assessed¹⁰² (*Que, teniendo en cuenta el principio de individualización científica de la pena, se procure la uniformidad de criterios en la valoración de los requisitos de ingreso en el módulo familiar del Centro Penitenciario de Madrid VI, remitiéndose información periódica acerca de tales criterios y de las plazas disponibles al resto de centros penitenciarios dependientes de esa secretaria, sin perjuicio de que se valore la actualización de la normativa reguladora de dicho módulo*).

According to the 2022 NPM report¹⁰³, a set of Recommendations were address (rejected) to the General Secretariat of Penitentiary Institutions of the Ministry of the Interior asking for:

- “Positive action be taken to increase the number of female officers in prisons with an all-female population” (*Recomendacion: Que se adopten acciones positivas para aumentar el número de funcionarias en las cárceles con población femenina*);
- “That the General Secretariat of Penitentiary Institutions evaluate the protocols and experience of the Ceuta Penitentiary Centre as a pioneer in good treatment in gender matters in order to, where appropriate, generalise the approach adopted by it in the rest of the penitentiary centres”¹⁰⁴ (*Que se evalúen por la Secretaría General de Instituciones Penitenciarias los protocolos y la experiencia del Centro Penitenciario de Ceuta como centro pionero en el buen trato en materia de género a fin de, en su caso, de generalizar el enfoque adoptado por éste en el resto de centros penitenciarios*);
- “That the procedure for police action in the detention and custody of pregnant women, breastfeeding, and young dependent children be set out in the regulations, taking into account the best interests of the child” (*Que se recoja normativamente el procedimiento de actuación policial en la detención y custodia en caso de gestación, lactancia, e hijos e hijas a cargo de corta edad, atendiendo al interés superior del menor*)¹⁰⁵;

¹⁰¹ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2023*), Madrid, Defensor del Pueblo.

¹⁰² <https://www.defensordelpueblo.es/resoluciones/criterios-en-la-valoracion-de-los-requisitos-de-ingreso-en-el-modulo-familiar-del-centro-penitenciario-madrid-vi/> . Fecha: 14/04/2023. Administración: Secretaría General de Instituciones Penitenciarias. Ministerio del Interior, Respuesta: Rechazada, Queja número: 21022352.

¹⁰³ Date: 20/12/2022. Administration: General Secretariat of Penitentiary Institutions. Ministry of the Interior. Answer: Rejected. Complaint number: 22018156; Fecha: 20/12/2022. Administración: Secretaría General de Instituciones Penitenciarias. Ministerio del Interior. Respuesta: Rechazada. Queja número: 22018156

¹⁰⁴ 20/12/2022. administración: Secretaría General de Instituciones Penitenciarias. Ministerio del Interior. Respuesta: Aceptada parcialmente. Queja número: 22018156

¹⁰⁵ Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Provincial Police Station of Burgos](#) (*Visita a la Comisaría Provincial de Policía de Burgos*), Complaint Number 22024575, 29 November 2022.

- “1.- That the pedagogical community approach provided for in the Strategic Plan of the residence be complied with, which allows, within the provisions of the prison system, outings and communication with the outside world to develop the individual and work project of the women and the socio-health and educational care of their sons and daughters, in accordance with article 3 of the Convention on the Rights of the Child, rule 51.2 of the Bangkok Rules and Guideline 45, 46 and 51.2 of the Council of Europe's "Guidelines for the Treatment of Women Sentenced to Custodial Sentences, Non-custodial Sentences and Measures for Women Offenders", Parliamentary Assembly Recommendation 1469 (2000) concerning women and their children in prison, adopted on 30 June 2000” (1.- *Que se dé cumplimiento al enfoque de comunidad pedagógica previsto en el Plan Estratégico de la residencia que permita, dentro de lo previsto en el ordenamiento penitenciario, las salidas y la comunicación con el exterior para desarrollar el proyecto individual y laboral de las mujeres y la atención socio-sanitaria y educativa de sus hijos e hijas, de conformidad con el artículo 3 de la Convención de los Derechos del Niño, la regla 51.2 de las Reglas de Bangkok y la Directriz 45, 46 y 51.2 de las «Directrices para el tratamiento de mujeres condenadas a penas privativas de la libertad, no privativas de la libertad y medidas para mujeres delincuentes» del Consejo de Europa, Recomendación de la Asamblea Parlamentaria 1469 (2000) sobre las mujeres y sus hijos en prisión, adoptada el 30 de junio de 2000*)¹⁰⁶;
- “2.- That a specific health history be implemented for Children since they have lived in the residence for three years and it is decisive information, in accordance with the provisions of Guideline 51 of the "Guidelines for the treatment of women sentenced to custodial sentences, non-custodial sentences and measures for women offenders" of the Council of Europe, Parliamentary Assembly Recommendation 1469 (2000) concerning women and their children in prison, adopted on 30 June 2000” (2.- *Que se implemente una historia de salud específica para menores puesto que durante tres años viven en la residencia y se trata de información determinante, de conformidad con lo establecido en el Directriz 51 las «Directrices para el tratamiento de mujeres condenadas a penas privativas de la libertad, no privativas de la libertad y medidas para mujeres delincuentes» del Consejo de Europa, Recomendación de la Asamblea Parlamentaria 1469 (2000) sobre las mujeres y sus hijos en prisión, adoptada el 30 de junio de 2000*)¹⁰⁷.

According to the 2021 NPM report¹⁰⁸, a set of Recommendations were addressed to the General Secretariat of Penitentiary Institutions of the Ministry of the interior asking for:

- “1.- Incorporate the variable of Roma minority women in the collection of data and the elaboration of statistics (*Incorporar la variable de mujer minoría gitana en la recogida de datos y elaboración de estadística*);
- 4.- Carry out a health diagnosis that serves as a framework for multi-professional intervention on the health of inmate women, addressing prevalent health problems and tutoring whether

¹⁰⁶ Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Irene Villa Mothers' Unit – Alicante Compliance Penitentiary Centre](#) (*Visita a la Unidad de Madres Irene Villa – Centro Penitenciario de Alicante Cumplimiento*), 14 November 2022. Complaint Number 22007641.

¹⁰⁷ Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Irene Villa Mothers' Unit – Alicante Compliance Penitentiary Centre](#) (*Visita a la Unidad de Madres Irene Villa – Centro Penitenciario de Alicante Cumplimiento*), 14 November 2022. Complaint Number 22007641.

¹⁰⁸ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\). Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2021*), Madrid, Defensor del Pueblo.

treatment programs influence the improvement of women's health (*Realizar un diagnóstico de salud que sirva de marco para la intervención multiprofesional sobre la salud de las mujeres internas, abordando los problemas de salud prevalentes y tutorizando si los programas de tratamiento influyen sobre la mejora de salud de las mujeres*);

- 5. - Incorporate the assessment of the history of gender-based violence in the different protocols and semi-structured interviews for the collection of psychosocial and health information (*5.- Incorporar la evaluación de la historia de violencia de género en los distintos protocolos y entrevistas semi-estructuradas de recogida de información psicosocial y sanitaria*).
- 6.- Develop the "Being a Woman" treatment programme, in all its dimensions as it is officially designed in terms of its number of sessions, topics addressed and evaluation, with a multi-professional health, psychological, social and legal team and community resources specialising in women, including its relevance in the Individual Treatment Programme for inmates" (*Desarrollar el Programa de tratamiento «Ser Mujer», en toda su dimensión tal y como está oficialmente diseñado en su número de sesiones, temáticas abordadas y evaluación, contando con un equipo multiprofesional sanitario, psicológico, social y jurídico y con recursos comunitarios especializados en mujer, recogiendo su pertinencia en el Programa Individual de Tratamiento de las internas*);
- 12.- Guarantee the inmates the use of videoconferencing as a regulated and stable form of communication for the maintenance of family ties (*Garantizar a las internas el uso de las videoconferencias como forma regulada y estable de comunicación para el mantenimiento del vínculo familiar*);
- 13.- Give Orders for the periodic explanation to each inmate of their Individual Treatment Program to encourage their involvement and appropriation of it" (*Dar instrucciones para que tenga lugar la explicación periódica a cada interna de su Programa Individual de Tratamiento para favorecer su implicación y apropiación del mismo*)¹⁰⁹;
- "Specific training for custodial staff in detention centres on the specific circumstances and gender needs of detainees" (*Que se realice formación específica para el personal de custodia de los centros de detención sobre las circunstancias específicas y las necesidades particulares en materia de género de las personas detenidas*)¹¹⁰.

12. Special measures for foreign nationals

a. General measures for foreign nationals

Remand and post-trial detention:

Foreign inmates are entitled to free legal aid. Article 89 introduced a substantial modification in the application to individuals, since it applies to any foreign citizen who is in national territory, whether or not he or she is in an administrative situation of legal residence. But they are not allowed to remain in the country after having served their sentence. Foreigners who serve their sentences in Spain are deported after their release. Inmates facing deportation do not benefit from any sentence adjustment.

¹⁰⁹ 01/03/2021 Secretaría General de Instituciones Penitenciarias. Ministerio del Interior.

¹¹⁰ Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Provincial Police Station of Burgos](#) (*Visita a la Comisaría Provincial de Policía de Burgos*), Complaint Number 22024575, 29 November 2022.

Article 57.7 of Law 4/2000 in relation to Article 247 of Regulation 557/11¹¹¹: the law states that expulsion may be refused provided that exceptional circumstances exist and are justified; Alternative expulsion will operate for prison sentences of more than one year. – Possibility of attempting to document foreigners who enter prison undocumented, through social workers and educators, in accordance with the Order of the General Directorate of Penitentiary Institutions of 14 December 2001. Foreign inmates are allowed to work while incarcerated under the same conditions of domestic inmates while demonstrating good behaviour. They can also make calls to their home country, at their own expense. There are no rules restricting visits for foreign inmates. The internal organization of those visits will depend on every establishment. Visits can, in certain establishments, be grouped on the same day, in cases when relatives must make long journeys.

There is a **Framework Plan for Educational Intervention with Foreign Boarders**¹¹², which does not intend to cover all possible and specific actions with this group, but it provides with a general, indicative and flexible framework.

Police custody:

In addition to the guarantees granted to Spanish citizens under Article 520 of the **Law of Criminal Procedure**¹¹³, it the right to the consular office of his country to be informed of his detention and the place of custody in which he is being held at all times, as well as to be visited by the consular authorities, and to communicate with them. If the detained person has two or more nationalities, he or she may choose which consular authorities he or she must inform of being deprived of his or her liberty and with whom he or she wishes to communicate. The right to be assisted free of charge by an interpreter in the case of a foreigner who does not understand or speak Spanish. To have at his disposal, where possible and without undue delay, the written declaration of rights in a language he understands.

In terms of **phone communications**, phone calls made in police custody can only be made to areas within Spain.

In the case of **a foreign citizen arrested for offences against the sexual freedom and indemnity of children**, information will be requested on the criminal and police records of the foreign national in his or her country of origin, using the means and channels of international police cooperation available. It will also be requested if there is an entry on the detained person in the Central Registry of Sex Offenders.

b. Interpretation and translation

Remand and post-trial detention:

¹¹¹ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*), [Royal Decree 557/2011 of April 20, which approves the Regulations of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following their reform by Organic Law 2/2009](#) (*Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009*), 20 April 2011.

¹¹² Spain, Ministry of Interior (*Ministerio del Interior*) (2006), [Framework Plan for Educational Intervention with Foreign Nationals inmates](#) (*Plan Marco de Intervención Educativa con Internos Extranjeros*), Documentos Penitenciarios 4.

¹¹³ Spain, Ministry of Grace and Justice (*Ministerio de Gracia y Justicia*), [Royal Decree of 14 September 1882 approving the Law of Criminal Procedure](#) (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), 17 September 1882.

The Law of Criminal Procedure¹¹⁴ in line with the right to defence, the regulations that protect those who are undergoing a criminal proceedings when they are unable to speak or understand the language in which the proceedings are carried out. Articles 123 to 127 establish with respect to the right to translation and interpretation that the subject has the following rights. The right to an interpreter for certain procedures; the right to a written translation of documents which are essential to ensure the exercise of the rights of defence; This right is recognized in all proceedings in which the presence of the person under investigation or accused is necessary, including police or public prosecutorial questioning and all court hearings, and extends to communications between the person under investigation and his or her lawyer¹¹⁵.

Police custody:

The same rights of the detained person according to the provisions of **Article 520 of Law of Criminal Procedure**¹¹⁶. The members of the State Security Forces and Bodies shall take into account the following clarifications. In the case of telephone communications, if it's a foreign language a translator is necessary, the intervention of an interpreter must be requested, leaving, where appropriate, a record of the delay and/or lack of availability of an interpreter in order to be able to exercise this right.

c. NPM assessment

According to the 2023 NPM report¹¹⁷, a Recommendation was issued stating:

- “that the Prison Administration of the Basque Country adopt the necessary measures to make available to prisons a system of simultaneous interpretation, accessible in all facilities and for any type of procedure, so that all persons can exercise their right to information and assistance, in a broad sense, with due respect for the guarantees of confidentiality and “ (*Recomendación: Que por parte de la Administración Penitenciaria del País Vasco se adopten las medidas necesarias para poner a disposición de los Centros Penitenciarios un sistema de interpretación simultánea, accesible en todas las dependencias y para cualquier tipo de trámite, con el fin de que todas las personas puedan ejercer el derecho a la información y asistencia, en sentido amplio, con el debido respeto a las garantías de confidencialidad e intimidad*).

According to the 2023 NPM report¹¹⁸ and as far as the foreign nationals in prison, it was concluded that liberty and migration are intersecting factors that affect each other, placing the foreign inmate in a situation of greater risk of discrimination, mistreatment and violation of human rights. It also made reference to the 2023 Report of the Attorney General's Office that expressly mentions the issue, what was also stated by some territorial prosecutors' offices about the situation of special vulnerability of these group of population due to multi-causal factors.

¹¹⁴ Spain, Ministry of Grace and Justice (*Ministerio de Gracia y Justicia*), [Royal Decree of 14 September 1882 approving the Law of Criminal Procedure](#) (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), 17 September 1882.

¹¹⁵ Spain, Judgment of the Supreme Court, Criminal Chamber, of 22 February 2023, appeal 10561/2022 (*Sentencia del Tribunal Supremo, Sala de lo penal, de 22 de febrero de 2023, recurso 10561/2022*), 22 February 2023.

¹¹⁶ Spain, Ministry of Grace and Justice (*Ministerio de Gracia y Justicia*), [Royal Decree of 14 September 1882 approving the Law of Criminal Procedure](#) (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), 17 September 1882.

¹¹⁷ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\). Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2023*), Madrid, Defensor del Pueblo.

¹¹⁸ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\). Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2023*), Madrid, Defensor del Pueblo.

According to the 2022 NPM report¹¹⁹, it was stated that despite the fact that prison rules warn about the importance of promoting communications with the outside world, the most affected are foreigners, who have sometimes been denied the call to which they were entitled because they are going outside the national territory.

According to the 2022 NPM report¹²⁰, a set of Recommendations measures as far as foreign nationals were sent to the Directorate-General of the Police of the Ministry of the interior asking for:

- **On 29 March 2022¹²¹**, to have all the necessary medical documentation, previous medical history or medical records of possible previous pathologies, of all the people to be repatriated, including those who come from detention in the 72-hour modality, which allows the medical team of the Central Expulsion Unit and Repatriations sign the corresponding fit-to-travel documents, with all the guarantees, thus certifying that the people to be repatriated do not suffer any pathology or injury, not apparent, that prevents them from flying.
- **On 25 May 2022**, that a protocol or other type of legal instrument be drawn up, in coordination with the General Secretariat of Penitentiary Institutions, to establish the obligation for prisons to send to the health service of the detention centres for foreigners the medical records of those foreigners who come from the prison environment for their expulsion, so that during their stay in the detention centres for foreigners they may receive the medical and pharmacological care they need.
- **On 15 June 2022**, a Recommendation to the Directorate-General of the Police of the Ministry of the Interior was sent asking for:
 - 1.- That the detention centre for foreigners be provided with a Suicide Prevention Protocol and a Trafficking Prevention Protocol, in accordance with the provisions of paragraph 10 of the rules of the European Committee for the Prevention of Torture of March 2019 [2017 CPT/Inf(2017)3];
 - 2.- That a psychological and psychiatric consultation be established in all detention centres for foreigners, in accordance with the provisions of paragraph 9 of the rules of the European Committee for the Prevention of Torture of March 2015 (2017 CPT/Inf (2017)3);
 - 3.- That measures be taken to ensure, where necessary, a face-to-face, telephone or telematic translation service, which facilitates communication between health personnel and inmates, in accordance with the provisions of paragraph 9 of the rules of the European Committee for the Prevention of Torture of March 2017 CPT/Inf(2017)3.;
 - 5.- That consideration should be given to implementing, after containment, a system of "post-incident support" and reviews of incidents that occurred through monitoring, the results of which allow the procedure to be evaluated within a set period of time, following the line of action set out by the European Committee for the Prevention of Torture in paragraph 46 of its report [CPT/Inf(2006)35part];

¹¹⁹ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), [2022 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2022*), Madrid, Defensor del Pueblo.

¹²⁰ Spain, National Ombudsman (*Defensor del Pueblo*) (2023), [2022 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2022*), Madrid, Defensor del Pueblo.

¹²¹ Spain, National Ombudsman (*Defensor del Pueblo*), FRONTEX operation to Tirana (Albania) and Tbilisi (Georgia) (*Operativo FRONTEX destino a Tirana (Albania) y Tbilisi (Georgia)*), Annex B.1. <https://www.defensordelpueblo.es/resoluciones/operativo-frontex-destino-a-tirana-albania-y-tbilisi-georgia/>

- **On 25 November 2022**, the National Ombudsman in its role as National Preventive Mechanism sent a Recommendation to the Directorate-General of the Police of the Ministry of the Interior asking for:
 - 1.- That a space be set up to accommodate families with children, separate from the rest of the adult modules;
 - 2.- That the figure of a person in charge or coordinator be created for each of the Temporary Attention Centres for Foreigners;
 - 8. - Ensure that the individual programme for the implementation of the measure for persons with disabilities contains the necessary adaptations, so that there is no discrimination against persons with disabilities.

- **On 30 November 2022**, the National Ombudsman in its role as National Preventive Mechanism sent a Recommendation to the Directorate-General of the Police of the Ministry of the Interior asking for:
 - 1.- That the necessary measures be taken to establish a system that makes it possible to detect possible serious mental health problems of foreigners, both at the time of admission and during their stay in the Detention Centres for Foreigners (CIE), in order to comply with the provisions of Article 37, paragraph 1.f. of Royal Decree 162/2014, of 14 March, informing the supervisory judge of this circumstance;
 - 2- That the injury reports are completed and signed by the medical practitioner. In their absence at that time in the centre, the inmate must be transferred to a health centre for assessment and treatment.

- **On 23 December 2022**, to the Directorate-General of the Police of the Ministry of the Interior requesting
 - 1. that video surveillance cameras with video and audio recording systems be installed urgently in the locker room of the pre-entry area, in order to prevent ill-treatment and false complaints that may occur, providing a security mechanism to preserve the privacy of the inmates, so that the images cannot be viewed directly, but can be stored in the event that it is necessary to examine them in the face of administrative or judicial complaints;
 - 2.- That the call rooms be modified and that the necessary measures be taken to allow the windows to be opened so that there can be contact between the inmates and their visitors, if they so wish; 3.- That facilities be set up so that asylum-seekers can be separated from foreign nationals who have not submitted an application for international protection, as established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in paragraph 1 (CPT/Inf (2017)3).

According to 2021 NPM report¹²², a Recommendation as far as foreign nationals to the Directorate-General of the Police of the Ministry of the interior asking for:

- “1.- Ensure that, as long as the pandemic is not over, the safety distance is kept in the waiting rooms of airport terminals and that the place has adequate ventilation. Even consider that, if

¹²² Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2021*), Madrid, Defensor del Pueblo.

the weather conditions allow it, the wait for the people to be repatriated is carried out abroad (1.- *Garantizar que, mientras la pandemia no haya terminado, se guarde la distancia de seguridad en las salas de espera de las terminales aeroportuarias y se asegure que el lugar tiene una ventilación adecuada. Valorar incluso que, si las condiciones climatológicas lo permiten, la espera de las personas a repatriar se realice en el exterior*).

- 2.- Guarantee that all foreigners in each repatriation operation, including persons repatriated by "72-hour detention" modality, have the corresponding Fit-to-travel, which ensures that they do not have any pathology that contraindicates their transfer by air (2.- *Garantizar que todas las personas extranjeras en cada operativo de repatriación, incluidas las personas repatriadas por modalidad «detenidos 72 horas» dispongan del correspondiente Fit-to-travel, que asegure que no cuenta con ninguna patología que contraindique su traslado por vía aérea*).
- 3. - Ensure that the new models of vests have mechanisms that allow police identification plates to be fastened properly (3. - *Garantizar que en los nuevos modelos de chalecos se habiliten mecanismos que permitan realizar la sujeción de las placas de identificación policial de forma adecuada*).
- 4.- Guarantee that, in the best interests of the child, all children are placed at the front of the plane, regardless of which country is the one that executes the expulsion, in order to prevent them from witnessing de-escalation manoeuvres in episodes of violence 4.- *Garantizar que, en atención al interés superior del menor, se ubique a todos los menores en la parte delantera del avión, sin importar qué país sea el que ejecute la expulsión, con objeto de evitar que puedan presenciar maniobras de desescalada en episodios de violencia*);
- 5. Ensure that, as far as possible, information is provided in advance to the deportee, so that he or she can prepare for his or her return, in particular by making the necessary contacts both in the host State and in the State of return, and if necessary, to recover his or her personal belongings that will facilitate his or her return with dignity" (5.- *Garantizar que, en la medida de lo posible, se proporcione información de antemano al deportado, con el fin de que pueda preparar su regreso, en particular haciendo los contactos necesarios tanto en el estado anfitrión como en el estado de retorno, y si es necesario, para recuperar sus pertenencias personales que facilitarán su retorno con dignidad*)¹²³

According to 2021 NPM report¹²⁴, a Recommendation as far as foreign nationals in the Ceuta Autonomous City to the Vice-Presidency and Ministry of the Presidency and Institutional Relations asking for:

- "1.- Ensure that all staff in the centre receive the message that ill-treatment, threats and verbal abuse are not acceptable (*Asegurarse de que todo el personal del centro recibe el mensaje de que los malos tratos, las amenazas y el abuso verbal no son admisibles*).
- 2.- Provide the centre with a register of coercive means in which its application is recorded, indicating, together with the name of the child, the coercive means used, the time of initiation and cessation of the measure, the reason for its application and the follow-up by the health personnel (*Dotar al centro de un libro de registro de medios coercitivos en el que quede*

¹²³ National Ombudsman (*Defensor del Pueblo*), [Repatriation operation \(FRONTEX flight\) to Bogota \(Colombia\) and Lima \(Peru\)](#) (*Operativo de repatriación (vuelo FRONTEX) con destino a Bogotá (Colombia) y Lima (Perú)*), Complaint number 21008418, 13 May 2021.

¹²⁴ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2021*), Madrid, Defensor del Pueblo.

consignada su aplicación, con indicación, junto con el nombre del menor, del medio coercitivo empleado, el momento de inicio y cese de la medida, el motivo de su aplicación y el seguimiento por parte del personal sanitaria);

- 3. Adopt the appropriate measures to immediately abandon the practice of shackling inmates to bed (*Adoptar las medidas oportunas para que de inmediato se abandone la práctica de engrilletar a la cama a las personas internas*);
- 4. Suspend the practice of mechanical restraints on persons who are in custody in detention centers for juvenile offenders under its jurisdiction (*Suspender la práctica de sujeciones mecánicas a las personas que se hallan bajo custodia en los centros de internamiento para menores infractores de su competencia*).
- 5. - Provide a video surveillance system with recording, incorporating an audio recording system, in the rooms where mechanical restraints are practiced, to supervise how these means of containment have been developed. Likewise, provide this video surveillance system to the rest of the common areas of the centre, such as the dining rooms, workshops, etc., leaving the children's rooms, the toilet areas and the rooms for family visits safe (*Dotar de un sistema de video vigilancia con grabación, incorporando un sistema de grabación de audio, en las habitaciones donde se practican sujeciones mecánicas, para supervisar como se han desarrollado estos medios de contención. Igualmente, dotar de este sistema de videovigilancia al resto de espacios comunes del centro, como los comedores, talleres, etcétera, dejando a salvo las habitaciones de los menores, las zonas de aseo y las salas de visitas de familiares*)”.

13. Special measures relating to detention of children and young adults/juvenile detention regime

a. Age groups

Remand and post-trial detention:

The age of criminal responsibility in Spain is set at 18 years, but it is from the age of 14 that the commission of acts classified as crimes or misdemeanours in the Penal Code or special criminal laws can be demanded.¹²⁵

A person under the age of 14 is not criminally liable. However, their parents or guardians will have to face a financial penalty as stated by Article 3 of the Organic Law on the Criminal Responsibility of Children.¹²⁶ Article 54 of Juvenile Criminal Responsibility Act stipulates that measures of deprivation of liberty imposed on persons between 14 and 18 years shall be carried out in specific centres for juvenile offenders, different to those provided for adult persons¹²⁷

Young people under 21 years of age and, exceptionally those who have not reached 25 years of age, shall be interned in establishments for young people.¹²⁸

¹²⁵ Spain, Head of State (*Jefatura del Estado*), [Juvenile Criminal Responsibility Act 5/2000, of 12 January](#) (*Ley Orgánica Reguladora de la Responsabilidad Penal de los Menores*), 13 January 2000.

¹²⁶ Spain, Head of State (*Jefatura del Estado*), [Juvenile Criminal Responsibility Act 5/2000, of 12 January](#) (*Ley Orgánica Reguladora de la Responsabilidad Penal de los Menores*), 13 January 2000. [Artículo 3 de la Ley Orgánica de la responsabilidad penal de los menores](#)

¹²⁷ Spain, Head of State (*Jefatura del Estado*), [Juvenile Criminal Responsibility Act 5/2000, of 12 January](#) (*Ley Orgánica Reguladora de la Responsabilidad Penal de los Menores*), 13 January 2000.

¹²⁸ Spain, Head of State (*Jefatura del Estado*), [General Penitentiary Law 1/1979, of 26 September](#) (*Ley General Penitenciaria*), 5 October 1979.

Young people between the ages of 18 and 21 are generally judged under adult law. However, there are exceptional cases in which the process of criminal responsibility of the child applies. Article 69 of the Penal Code¹²⁹.

Police custody:

The children inmates will be separated from those used for adult detainees, avoiding the entry into a cell unless based on their dangerousness profiles. Care shall be taken to ensure that the custodial staff who guard or deal with the detained child are not in uniform. The visits must be allowed by those exercising parental authority, guardianship or de facto guardianship or by the legal representative of the detained child, taking the appropriate precautions to ensure that it does not affect the police investigation¹³⁰.

b. [General measures for detained children and young adults](#)

Remand and post-trial detention:

The Organic Law 8/2021 on comprehensive protection of children and adolescents against violence¹³¹

Law 3/2018, of 11 June, amending the Laws on Mutual Recognition to regulate the European Investigation Order¹³². Its Article 50 refers to the detention and bring to the judicial authority (*Detención y puesta a disposición de la autoridad judicial*). In the case of children, from the age of fourteen, the period for the detained child to be brought to the Central Juvenile Court of the High National Court (*Audiencia Nacional*), is reduced to twenty-four hours, instead seventy-two hours.

At regional level, in February 2021, it was signed an agreement between the Ministry of Tourism, Regeneration and Justice together with the Ministry of Education and Sport (*Consejería de Turismo, Regeneración y Justicia junto a la Consejería de Educación y Deporte*) to guarantee access to education for young people included in the juvenile justice system and inmates in the Juvenile Offender Detention Centres (*Centros de Internamiento de Menores Infractores, CIMI*, in its Spanish acronym)¹³³. It guaranteed schooling of children who meet a measure in the resources of Juvenile Justice, both in one of the 16 CIMI of the Andalusia region and in an open prison regime, especially those who are referred to an educational group. It undertook to provide the spaces, equipment, schedules and support staff necessary to develop the teaching activity with the centre's students and computer equipment and the required connectivity in the internment centres.

Police custody:

Visits must be allowed by persons exercising parental authority, guardianship or de facto guardianship or by the legal representative of the detained Child, taking appropriate precautions to ensure that it does not affect the police investigation, except in cases of incommunicado detention in which the

¹²⁹ [Código Penal](#)

¹³⁰ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the comprehensive procedure for police detention](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

¹³¹ Spain, Head of State (*Jefatura del Estado*), [Organic Law 8/2021 on comprehensive protection of children and adolescents against violence](#) (*Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia*), 4 June 2021.

¹³² Spain, Head of State (*Jefatura del Estado*), [Law 3/2018, of 11 June, amending the Laws on Mutual Recognition to regulate the European Investigation Order](#) (*Ley 3/2018, de 11 de junio, por la que se modifica la LRM para regular la Orden Europea de Investigación*), 12 June 2018.

¹³³ Spain, Andalusian Government (*Junta de Andalucía*), [Justicia y Educación renuevan el convenio para garantizar la escolarización de los menores infractores](#), press release, 3 February 2021.

measures set out in article 509 are applied. Articles 520 bis and 527 of the Code of Criminal Procedure or when it is not advisable in accordance with article 17.2 of the LORPM. The measures taken must be recorded in the register of detained Children¹³⁴. Transfers in vehicles without police badges and with non-uniformed personnel, unless the circumstances of the case and the availability of resources do not allow it. If the Autonomous Communities have their own autonomous police, or, where appropriate, with Attached Units of the National Police, these will be responsible for the purposes of surveillance, custody and transfer of Children detained.

It is possible to order the **incommunicado detention** and **extension of the detention of children** over sixteen years of age, in accordance with the provisions of article 520 bis of the Penal Code when the reason for the arrest is the commission of one of the terrorist offences with the prior knowledge of the Public Prosecutor of the Juvenile Section of the National High Court. Therefore, the Public Prosecutor's Office may be requested to adopt the measure. In the same way, through the corresponding Children Section of the Public Prosecutor's Office, in the cases set out in article 509 of the Code of Criminal Procedure and referred to in point 10.7 of this procedure, incommunicado detention of Children over sixteen years of age may be requested.

c. Separation from adults

Remand and post-trial detention:

As far as precautionary measures and post-trial detention, the Organic Law on the comprehensive protection of children and adolescents against violence¹³⁵ under its article 94 entered an amendment of the Civil Code prohibits the visits of children whose parents are in prison or custody. The text vetoes the establishment of visitation regimes with parents in a situation of prison either provisionally or if they have already been convicted of attacking the life, physical integrity, freedom, moral integrity or freedom and sexual indemnity of the other spouse or their children. It considered children as direct victims of the same violence suffered by their mothers, as written by Spanish law in 2015. The transfers of the children will always be carried out separately from adults.

Police custody:

The detained children must be at police units that comply with basic security measures, paying attention to their specific circumstances, such as dangerousness, incommunicado detention, reason for detention, mental disorder, sex or others, and in any case separate from those used for detainees of legal age, avoiding, if the circumstances of their dangerousness allow it, the entry into cells.¹³⁶

In cases where the detained person is in charge of children, all necessary steps will be taken to avoid situations of risk with respect to them, ensuring that they are left in the care of relatives, friends or, failing that, in charge of the corresponding social services.

¹³⁴ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention" \(Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"\)](#), 16 January 2024.

¹³⁵ Spain, Ministry of the Presidency, Relations with the Courts and Democratic Memory, (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2021) [Organic Law 8/2021, of June 4, 21, on the comprehensive protection of children and adolescents against violence \(Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia\)](#) Official State Gazette, 4 June 2021.

¹³⁶ [Order 1/2017 of the General Security State Secretary of 24 April 2017 on the updating the police action protocol with children](#). Annex, point 4.6.

d. NPM assessment

As far as juvenile detainees, the CPT 2023¹³⁷ report stated that “The Committee is concerned about the imposition of severe disciplinary sanctions on juvenile detainees who have committed very serious offences. In this regard, the Committee is concerned that article 60 of the Organic Law 5/2000 regulating the criminal responsibility of children¹³⁸, and article 65 of Royal Decree No. 1774/2004 of 30 July 2004, allow for de facto isolation in a room for up to seven days, the separation of a child from the rest of the group for up to five weekends or a prohibition on participating in recreational activities for up to two months, among other sanctions (Articles 2, 11 and 16)” “The State party should respect the prohibition on imposing disciplinary measures that constitute cruel, inhuman or degrading treatment, including solitary confinement, on juveniles deprived of their liberty (see rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty).

According to the 2023 NPM report¹³⁹, the NPM made several (5) visits the programme on disability issues within juvenile offenders' centres and police stations as a development of the programme on intellectual disability, and confirmed that all the Recommendations made were accepted, although some of them were not made throughout 2023, the competent Administration responded that they will carry out the appropriate actions to implement each of them.

14. Special measures to protect detainees with disabilities or serious medical conditions

a. Care in detention

Remand and post-trial detention:

In terms of the provision of mental health treatment, psychologists provide occasional consultations in prison. No regular follow-up is possible. The treatments they provide are generally medications. In Spain, there are currently two Prison psychiatric Hospitals PPHS, one in Seville and another one in Alicante provinces. Due to the lack of places in these institutions, some inmates may be referred to general psychiatric hospitals or penitentiaries. Article 60 of the Penal Code provides that after a final judgment, the convicted person is found to be in a long-term situation of serious mental disorder, the Prison Supervision Judge shall suspend the execution of the custodial sentence and should ensure that the inmate receives medical assistance.

There is a comprehensive care program for the mentally ill (*program de atención integral a enfermos mentales PAIEM*, in its Spanish acronym)¹⁴⁰, which aims to promote social reintegration, has a multidisciplinary team, and offers different activities and therapies, as well as courses on self-control and personal autonomy.

¹³⁷ United Nations, Committee against Torture, [Concluding observations on the seventh periodic report of Spain. CAT/C/ESP/CO/7](#), 24 August 2023, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹³⁸ Spain, Head of State (*Jefatura del Estado*), [Juvenile Criminal Responsibility Act 5/2000, of 12 January](#) (*Ley Orgánica Reguladora de la Responsabilidad Penal de los Menores*), 13 January 2000.

¹³⁹ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2023*), Madrid, Defensor del Pueblo.

¹⁴⁰ Spain, Ministry of the Interior (2019), [Protocol For The Implementation Of The Framework Programme For The Comprehensive Care Of The Mentally Ill In Prisons \(PAIEM\)](#) (*Protocolo De Aplicación Del Programa Marco De Atención Integral A Enfermos Mentales En Centros Penitenciarios*), Secretaría General de Instituciones Penitenciarias Dirección General de Coordinación Territorial y Medio Abierto.

Police custody:

Persons who, due to their personal physical or mental circumstances, need special attention and protection during the time of their detention and police custody, such as pregnant women, elderly people, sick people or people with physical or intellectual disabilities, etc. In these cases, the rules set out in the action protocol for pregnant women, LGBTI and trans-people, and other people in need of special attention and protection¹⁴¹.

b. Continuity of care**Remand and post-trial detention:**

No information is available.

Police custody:

No information is available.

c. Reasonable accommodation and accessibility**Remand and post-trial detention:**

Prison facilities are adapted to the needs of prisoners with disabilities. To facilitate an early detection of cases of inmates suffering different levels of disabilities or the assignment to departments or centres without architectural limitations, and its referral to specialized entities and the processing of official certificates, there are collaborations with the following entities: Federation of Associations of Deaf blind People of Spain (*Federación de Asociaciones de Personas Sordociegas de España*, FASOCIDE, in its Spanish acronym), the State Confederation of Deaf People (*Confederación Estatal de Personas sordas*, CNSE, in its Spanish acronym) and Full Inclusion for the care of people with intellectual disabilities (*Plena Inclusión para la atención de personas con discapacidad intelectual*), as well as the Federation of Associations of People with Physical and Organic Disabilities of Madrid (*Federación de Asociaciones de Personas con Discapacidad Física y Orgánica de Madrid*, FAMMA-COCEMFE-Madrid, in its Spanish acronym), for the care of physical and organic disabilities.

There is a programme that supports prisoners with mental or physical disabilities provided in partnership with the Spanish Confederation of Organisations for Individuals with Mental Disabilities (*Confederación Española de organizaciones a favor de las Personas con Discapacidad Intelectual*, FEAPS)¹⁴². It aims at early detection of disabilities, allocation to specially adapted and certified units or facilities. The programme also provides for support for prisoners with intellectual disabilities, in order to preserve their autonomy. In Spain, there are two prison facilities, in Segovia and Estremera, where there are specific units adapted for people with disabilities.

¹⁴¹ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the comprehensive procedure for police detention](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024. Annex III.

¹⁴² Spanish Confederation of Organisations for Individuals with Mental Disabilities (*Confederación Española de organizaciones a favor de las Personas con Discapacidad Intelectual*, [Intervention guide for people with intellectual disabilities affected by the prison penal system](#) (*Guía de intervención para personas con discapacidad intelectual afectas por el régimen penal penitenciario*), Madrid, FEAPS.

Police custody:

In the case of telephone communications, if it's a person who is deaf or auditory disability, as well as other persons with language difficulties, the intervention of an interpreter must be requested, leaving, where appropriate, a record of the delay and/or lack of availability of an interpreter in order to be able to exercise this right.

d. NPM assessment

According to the 2023 United Nations Committee against Torture¹⁴³, and as far as the use of coercive measures in psychiatric care, it stated that "45. The Committee regrets that it did not receive additional information from the State party on allegations that physical, mechanical and chemical means of restraint have been used for the treatment of persons with intellectual or psychosocial disabilities without their informed consent. It has also not received information on the lack of an independent mechanism to monitor mental health facilities, as noted in the observations made in 2019 by the Committee on the Rights of Persons with Disabilities,¹⁴⁴ Articles 11 and 16)".

According to the 2023 NPM report¹⁴⁵, several Recommendations were issued, such as: "That the gender perspective be incorporated into the comprehensive care program for the mentally ill (PAIEM)" (*Que se incorpore la perspectiva de género en el programa de atención integral a enfermos mentales (PAIEM)*)¹⁴⁶.

According to 2021 NPM report¹⁴⁷, the NPM recommended to:

- "7.- Carry out programs with health promotion activities that act on the health problems detected as prevalent and strengthen the rights, participation and empowerment of women inmates with a view to social reintegration (*7.- Llevar a cabo programas con actividades de promoción de la salud que actúen sobre los problemas de salud detectados como prevalentes y fortalezcan los derechos, la participación y el empoderamiento de las mujeres presas de cara a la reinserción social*);
- 8- Address the specialized treatment of drug abuse and cessation of drug abuse of women inmates from a comprehensive approach, taking into account their possible previous victimization, the special needs of pregnant women and women with children in the centre, and the diversity of their cultural traditions (*8.- Abordar el tratamiento especializado del uso indebido de drogas y deshabituación de las mujeres presas desde un enfoque integral, teniendo en cuenta su posible victimización anterior, las necesidades especiales de las mujeres embarazadas y las mujeres con niñas/os en el centro y la diversidad de sus tradiciones culturales*);
- 9- Address the high consumption of medications from the addiction treatment program, generating therapeutic alternatives such as anxiety management, sleep habits, greater physical

¹⁴³ UN, Committee against Torture, [Concluding observations on the seventh periodic report of Spain. CAT/C/ESP/CO/7](#), 24 August 2023, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁴⁴ UN, Committee on the Rights of Persons with Disabilities, [Concluding observations on the combined second and third periodic reports of Spain*CRPD/C/ESP/CO/2-3](#), paras. 29 and 30, 13 May 2019.

¹⁴⁵ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe Anual 2023*), Madrid, Defensor del Pueblo.

¹⁴⁶ Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Ceuta penitentiary centre](#) (*Visita al centro penitenciario de Ceuta*), 20 December 2022, General Secretariat of Penitentiary Institutions. Ministry of the Interior.

Answer: Accepted. Complaint number: 22018156.

¹⁴⁷ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2021*), Madrid, Defensor del Pueblo.

01 March 2021 General Secretariat of Penitentiary Institutions. Ministry of the Interior.

and work activity to the consumption of medications (9.- *Abordar desde el programa de tratamiento de adicciones el alto consumo de medicamentos, generando alternativas terapéuticas como -el manejo de ansiedad, hábitos de sueño, mayor actividad física y laboral- al consumo de medicamentos*);

- 10- Guarantee the accessibility of inmates to psychiatric and psychological care that takes into account gender issues (10.- *Garantizar la accesibilidad de las internas a la atención psiquiátrica y psicológica que tengan en consideración las cuestiones de género*);
- 11- Regulate the work carried out by the support inmates of the Suicide Prevention Program, both in terms of training in terms of gender and remuneration, guaranteeing their supervision by professionals and their emotional relief" (11.- *Regular la labor realizada por las internas de apoyo del Programa de Prevención de Suicidios tanto en su vertiente formativa en materia de género como en la retributiva, garantizando su supervisión por profesionales y su desahogo emocional*)."

15. Specific measures to protect detainees with special needs or other vulnerabilities

a. Protection of LGBTI detainees

Remand and post-trial detention:

The same considerations as stated for the trans-detainees group will apply (section 14.b of this report).

Police custody:

In all cases, the person's statements regarding their sexual orientation, gender identity or sex characteristics will be respected, regardless of the sex that appears on their identity documentation. In any case, the person's statements regarding their sexual orientation, gender identity or sex characteristics will be respected, regardless of the sex that appears on their identity documentation, if they have one, especially with respect to trans people, taking special consideration in relation to the discrepancy that may be observed in the gender expression or identity of the detained person in relation to the data contained in their documentation. All police actions carried out will be carried out taking into account the known or manifested sexual identity or gender expression. (Pg.70 and 71).¹⁴⁸

During their stay in the detainee custody area, they will be ensured, as far as possible, to remain in an individual cell. If this is not feasible, it will be guaranteed that their stay is as appropriate as possible in accordance with the known or manifested gender identity or expression.

b. Protection of trans-detainees

Prison policy related to trans-people is regulated through an order published in 2006 by Penitentiary Institutions¹⁴⁹. In the event that a person has not yet been legally considered with the gender that corresponds to them, they can request to be taken into account as trans in order to access a different section/module. In the case of trans-women they will be transfer to the women one; and in the case of

¹⁴⁸ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention"](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

¹⁴⁹ Spain, Ministry of Interior, [Integration of Transgender People in Prison](#) (*Integración Penitenciaria de personas transexuales*), Dirección General de Instituciones Penitenciarias, 9 March 2006.

trans men, to a men one. In order to do this, a medical and psychological assessment is required, in addition to the person socially identifying as trans.

At the moment of the personal records, a maximum respect for the sexual identity, gender expression and sexual characteristics of the registered person should be followed, which must be taken into account, especially in the case of trans people. The consent of the person concerned to the search by police officers of either sex shall be recorded in writing.

Police custody:

The same considerations as stated for the LGBTI group will apply (section 14.a. of this report).

c. Protection of other vulnerable detainees

Remand and post-trial detention:

There is no differentiated information on this regard.

Police custody:

It refers to persons with special care and protection needs due to their unique physical or mental conditions, such as advanced age, illness, physical, intellectual or sensory disability.

In these cases, the necessary measures shall be taken to ensure that the detained person receives the attention appropriate to his or her characteristics so that his or her rights and protection are not diminished in any way.

Those necessary measures may be:

- Facilitate accessibility to the necessary facilities and services, for which purpose they will be offered the assistance they require;
- b) Have sufficient time to meet their physiological needs;
- c) To facilitate the accessibility of immediate information to the detained person, by means of easy reading, whether these documents are written, voiced, in Braille, through pictograms, by video-graphic means, etc.;
- d) Employ, if necessary, personnel who are familiar with sign language, Braille or other communication systems necessary for proper communication with the detainee;
- e) Provide prompt health care to vulnerable persons in need of chronic medication, in order to guarantee their right of defence, especially when it is related to their mental health;
- f) Any other measure that may be necessary to reconcile his or her situation of deprivation of liberty with the physical, mental or intellectual characteristics of the person detained, both in custody and in transfers.

d. NPM assessment

According to the 2022 NPM report¹⁵⁰, a set of Recommendations were address to the General Secretariat of Penitentiary Institutions of the Ministry of the interior asking for:

- “3.- That the participation of social entities for the integral promotion of the Roma community be enhanced, with attention to cultural diversity, in accordance with Guidelines 46 and 54 of

¹⁵⁰ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\). Spain \(Mecanismo Nacional de Prevención. Informe anual 2021\)](#), Madrid, Defensor del Pueblo.

the "Guidelines for the treatment of women sentenced to custodial sentences, non-custodial sentences and measures for women offenders" of the Council of Europe, Parliamentary Assembly Recommendation 1469 (2000) concerning women and their children in prison, adopted on 30 June 2000" (3.- *Que se potencie la participación de entidades sociales de promoción integral de la comunidad gitana, desde la atención a la diversidad cultural, de conformidad con las Directrices 46 y 54 de las «Directrices para el tratamiento de mujeres condenadas a penas privativas de la libertad, no privativas de la libertad y medidas para mujeres delincuentes» del Consejo de Europa, Recomendación de la Asamblea Parlamentaria 1469 (2000) sobre las mujeres y sus hijos en prisión, adoptada el 30 de junio de 2000*)¹⁵¹.

According to the 2021 NPM report¹⁵², a Recommendation was issued in relation to Roma women as particular vulnerable group, such as:

- "1.- Incorporate the variable of Roma minority women in the collection of data and the elaboration of statistics" (*Incorporar la variable de mujer de minoría gitana en la recogida de datos y elaboración de estadística*).

16. Specific measures to address radicalisation in prisons

a. General measures to prevent radicalisation

Remand and post-trial detention:

Those inmates who in one way or another are related to jihadist-type radicalisation are divided into three groups¹⁵³: those convicted of terrorist offences (Group A), protagonists of proselytizing or recruiting behaviour (Group B) and radicalised or at risk of being radicalised in prison (Group C).¹⁵⁴

There is an order regulating a **Program for the Prevention of Radicalization in Prisons**¹⁵⁵ to prevent Islamist radicalization. It establishes a set of measures for the detection and prevention of radicalization processes of Muslim inmates. The objectives of this program are: to avoid processes of recruitment;

¹⁵¹ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2021*), Madrid, Defensor del Pueblo. [Visit to the Irene Villa Mothers' Unit – Alicante Penitentiary Center Compliance](#) (*Visita a la Unidad de Madres Irene Villa – Centro Penitenciario de Alicante Cumplimiento*), Recommendation Number: 22007641, 14 November 2022.

¹⁵² 01/03/2021 Secretaría General de Instituciones Penitenciarias. Ministerio del Interior

Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National 3.- That the participation of social entities for the integral promotion of the Roma community be enhanced, with attention to cultural diversity, in accordance with Guidelines 46 and 54 of the "Guidelines for the treatment of women sentenced to custodial sentences, non-custodial sentences and measures for women offenders" of the Council of Europe, Parliamentary Assembly Recommendation 1469 \(2000\) concerning women and their children in prison, adopted on 30 June 2000.](#) *Mechanism (NPM).Spain* (*Mecanismo Nacional de Prevención. Informe anual 2021*), Madrid, Defensor del Pueblo.

¹⁵³ Spain, Ministry of the Interior (*Ministerio del Interior*) [Order 8/2014, of July 11, 2014, regulating the "New Program for the Prevention of Radicalization in Prisons"](#); La Instrucción 8/2014, de 11 de julio, reguladora del "Nuevo Programa para la prevención de la radicalización en los establecimientos penitenciarios", 11 July 2014.

Spain, Ministry of the Interior, [Order 2/2015, of 10 February, establishes a set of measures for the detection and prevention of radicalisation processes of Muslim inmates](#) (*Instrucción 2/2015, de 10 de febrero, establece un conjunto de medidas para la detección y prevención de procesos de radicalización de internos musulmanes*), 19 February 2015.

¹⁵⁴ Spain, Ministry of the Interior (2021), [Research project on processes of violent radicalisation](#) (*Proyecto de investigación sobre procesos de radicalización violenta*), Documentos Penitenciarios 29, UNED, a IIPP y a la Secretaría de Estado de Seguridad.

¹⁵⁵ Spain, Ministry of the Interior (*Ministerio del Interior*) [Order 8/2014, of July 11, 2014, regulating the "New Program for the Prevention of Radicalization in Prisons"](#) (Instrucción 8/2014, de 11 de julio, reguladora del "Nuevo Programa para la prevención de la radicalización en los establecimientos penitenciarios), 11 July 2014.

Spain, Ministry of the Interior, [Order 2/2015, of 10 February, establishes a set of measures for the detection and prevention of radicalisation processes of Muslim inmates](#) (*Instrucción 2/2015, de 10 de febrero, establece un conjunto de medidas para la detección y prevención de procesos de radicalización de internos musulmanes*), 19 February 2015.

recruitment and radicalization of Muslims inmates in prisons, by observing, detecting and monitoring their behaviour in prison; to preserve the internal security of prisons, to prevent violent acts against personnel in the service of the prison administration and to assist in the maintenance of orderly coexistence in the establishments; prevent the commission of terrorist acts or support for terrorism once released; and to promote comprehensive action against the phenomenon of jihadist radicalization.

There is also a 2015 **National Strategic Plan to Combat Violent Radicalization** (*Plan Estratégico Nacional de Lucha Contra la Radicalización Violenta*, PEN-LCRV, in its Spanish acronym)¹⁵⁶. It is a plan based on the early detection of violent radicalism in order to neutralize it, focusing on communities, groups or individuals who are at risk or are most vulnerable to radicalization. The program has **three functional areas**:

- First, the area of prevention, where the aim is to generate trust and social legitimacy to prevent radical ideologies from spreading among the population.
- Secondly, there is an area of surveillance, where initial radicalisation processes are observed and monitored before they continue to evolve.
- Finally, there is an area of action in which groups or individuals carry out or collaborate in radical or violent actions are monitored.

There is a specific intervention program for treatment of people who have a crime linked to violent radicalization of jihadist that is called workshop "Between Cultures" (*Entre culturas*) for Penitentiary Centers (2023)¹⁵⁷. It designs psychosocial activities and programs in which this group can interact and participate with people of other cultures, religions and races.

b. Risk assessments

Remand and post-trial detention:

The Order 3/2018¹⁵⁸ developed the first version of an instrument for the assessment of the risk of violent radicalism in prisons (**Detection of Violent Radicalism of Jihadist aetiology, DRAVY-1**), based on tools already existing. It defines a set of indicators distributed into three scales: violence in general, violence of jihadist aetiology, and radicalism. Since 2021 an improved and third version is in place, the so called DRAVY-3¹⁵⁹. It seeks to determine the danger of certain inmates and also to be an instrument to evaluate the effectiveness of the intervention. Every six months the risk of criminal recidivism or repetition of behaviours that have taken an inmate to prison is assessed. The evaluation is carried out by prison staff, especially by psychologists and the heads of security service.

¹⁵⁶ Spain, Ministry of the Interior (*Ministerio del Interior*) [National Strategic Plan to Combat Violent Radicalization](#) (*Plan Estratégico Nacional de Lucha contra la Radicalización Violenta*)

¹⁵⁷ Spain, Ministry of the interior (*Ministerio del Interior*), [Workshop Between Cultures for Penitentiary Centers](#) (*Taller Entre Culturas para Centros Penitenciarios*), Documentos Penitenciarios 33.

¹⁵⁸ Spain, Ministry BRIEFING PAPER: Consideraciones sobre el Protocolo de prevenció , detecció i intervenció de processos de radicalització islamista en Catalunya (PRODERAI), of the Interior (*Ministerio del Interior*), [3/2018 Prison Service Order against Islamist radicalization in prisons](#), (*Orden de Servicio. 3/2018. Instrumento de evaluación del riesgo de radicalismo violento*), 16 February 2018.

¹⁵⁹ González-Álvarez, José Luis, et al. (2022), [A Theoretical, Empirical, and Methodologically Based Instrument to Assess the Risk of Violent Jihadist Radicalization in Prisons: The DRAVY-3». *Terrorism and Political Violence*, .](#)

There are also control and monitoring groups made up of public civil servants working in different prison centres who are in charge of intelligence issues that are under the supervision of the head of services and who report to the director of those centres.

c. Training of staff

At regional level, there are examples of actions such as in Catalonia, the Secretary of Criminal Measures, Reintegration and Attention to the Victim (SMPRAV) designed a program to combat Islamist radicalisation through the training of prison staff, which is called **Protocol for the prevention, detection and intervention of Islamist radicalisation processes (PRODERAI** in its Spanish acronym)¹⁶⁰ and it's organized as a one-day seminar and the content is basically training about terrorism Islamic or Islamist. It includes a course on critical thinking that is not mandatory but that can be chosen within the entire training offer that they have and lasts 20 hours; it teaches critical thinking to work so that staff can work with inmates. Other initiatives are promoted by prison workers' one of the largest unions ACAIP,, organized training courses through the DERAD and TRAINING AID projects to train professionals who deal with people on the front line radicalized or radicalized acts that could commit violent acts.

Police custody:

There is no differentiated information on this regard.

d. Deradicalisation measures

Remand and post-trial detention:

Within the legal framework provided by the Order 2/2016 Framework Programme for Intervention in Violent Radicalization with Islamist Inmates,¹⁶¹ there is a particular **DALIL Programme for Intervention in Processes of Violent Radicalisation of a Jihadist Nature**¹⁶², which a specific treatment programme that contemplates the development of several psychological and social intervention units. The general objective is to prevent and prevent those who carry out the programme from carrying out unlawful or unlawful behaviours related to violent radicalisation of jihadist ideology, enhancing the personal development of each participant through training in psychosocial intervention skills and techniques. The Program consists of 12 intervention units plus the inter-culture workshop (*Entre Culturas*).

The **twelve units of therapeutic approach** are:

- Therapeutic Alliance and Motivation for Change
- Identity
- Narratives
- Family
- Emotions
- My Conduct
- Empathy
- Values

¹⁶⁰ Observatory for the Prevention of Violent Extremism (*Observatorio para la Prevención del Extremismo Violento*) (2019), [BRIEFING PAPER: Considerations on the Protocol for the Prevention, Detection and Intervention of Islamist Radicalization Processes in Catalonia, Barcelona](#), PRODERAI.

¹⁶¹ Spain, Ministry of the Interior (*Ministerio del Interior*), [Order 2/2016 Framework Programme for Intervention in Violent Radicalisation with Islamist Inmates. October 27](#) (2016 *Instrucción 2/2016 Programa marco de intervención en radicalización violenta con internos islamistas*), 25 Octubre 2016.

¹⁶² Spain, Ministry of the Interior (*Ministerio del Interior*) (2023), [DALIL Programme for Intervention in Processes of Violent Radicalisation of a Jihadist Nature: DALIL Programme](#) (*Programa de intervención en procesos de radicalización violenta de carácter yihadista: Programa DALIL*), Documentos Penitenciarios 32.

- Efficacy
- Resilience
- Relapse prevention
- Closing & Follow-Up

The participants are those **inmates who in one way or another are related to jihadist-type radicalisation are divided into three groups**¹⁶³.

Police custody:

There is no differentiated information on this regard.

17. Inspections and monitoring¹⁶⁴

a. Inspections

Remand and post-trial detention:

In accordance with the Royal Decree 734/2020¹⁶⁵, the prisons inspection functions are assigned to the **Sub-Directorate General of Analysis and Inspection under the General Secretariat of Penitentiary institutions** (*Instituciones Penitenciarias*, IIPP in its Spanish acronym) under the competence of the Ministry of the Interior. Its functions extend to everyone prisons within the Spanish territory except the regions of Catalonia and the Basque Country¹⁶⁶. Inspectors carry out visits programmed or without previous notice to prisons. The Judges of Executions (*juzgados de vigilancia penitenciaria*) also has inspection competencies as stated under Article 76 of the Law on Prisons and the Criminal Code.

Police custody:

There is no differentiated information on this regard.

b. Access to detention facilities by national authorities

Remand and post-trial detention:

¹⁶³ Spain, Ministry of the Interior (*Ministerio del Interior*) [Order 8/2014, of July 11, 2014, regulating the "New Program for the Prevention of Radicalization in Prisons](#) (*Instrucción 8/2014, de 11 de julio, reguladora del "Nuevo Programa para la prevención de la radicalización en los establecimientos penitenciarios*), 11 July 2014.

Spain, Ministry of the Interior, [Order 2/2015, of 10 February](#), establishes a set of measures for the detection and prevention of radicalisation processes of Muslim inmates (*Instrucción 2/2015, de 10 de febrero, establece un conjunto de medidas para la detección y prevención de procesos de radicalización de internos musulmanes*), 19 February 2015.

¹⁶⁴ It applies the right of access to police premises, which include: police stations; security force installations; pre-trial detention centres; prisons for convicted persons; facilities for Children; confinement centres for immigrants; transit zones at international ports; centres for asylum-seekers; psychiatric institutions; and places of administrative detention.

¹⁶⁵ Spain, Ministry of Territorial Policy and Public Service (*Ministerio de Política Territorial y Función Pública*), [Royal Decree 734/2020, of August 4, 2020, which develops the basic organizational structure of the Ministry of the Interior](#) (*Real Decreto 734/2020, de 4 de agosto, por el que se desarrolla la estructura orgánica básica del Ministerio del Interior*), 5 August 2020.

Spain, Presidencia del Gobierno, [Royal Decree 33/1986 of 10 January 1986 approving the Regulations on the Disciplinary Regime of Civil Servants of the State Administration](#) (*Real Decreto 33/1986, de 10 de enero, por el que se aprueba el Reglamento de Régimen Disciplinario de los Funcionarios de la Administración del Estado*), 17 January 1986.

¹⁶⁶ In Spain, there are three prison public administrations. The National Central State one and the ones applied in the Autonomous Community of Catalonia and the Basque Country, which exercise executive powers in prison matters in accordance with the provisions of Article 79 LOGP.

The Ombudsman of each Autonomous Community as well as the National ombudsman does not have any limitation, they can access the detention facilities at any time and without previous notice according to the Articles 19.2 and 22 of the Organic Law for the Spain NPM¹⁶⁷.

In other cases, such as national or regional parliamentarians, an authorization should be issued by the Director of the particular detention centre. There is no specific protocol for it, it will be granted on a discretionary basis.

Police custody:

There is no differentiated information on this regard¹⁶⁸.

c. Access to detention facilities by international bodies

Remand and post-trial detention:

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment, or the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and other international organisms as the European CPT as well as the National Preventive Mechanisms network have free access to visit places of detention and examine the treatment of people held there¹⁶⁹.

The members of the European Parliament as well as the national deputies and senators may visit the prisons after requesting an authorization to Penitentiary institutions, under the Ministry of the Interior article 49 of the Prison rules.

Police custody:

Regarding this issue, there are no differences between these two regimes.

18. Access to remedy

a. Legal remedies

Remand and post-trial detention:

An inmate can appeal the decision of the Inspection Service of the Administration to the Judges of Execution. The decision of the Judge of Execution can be appealed to the Provincial High Court, then, its decision to the High Court of Justice of Autonomous Community. This new decision can be appealed to the Supreme Court.

In case of the solitary confinement, in the event that any of these activities or rights are prohibited, the inmate may file a complaint appeal with the Prison Supervision Court.

¹⁶⁷ Spain, Head of State (*Jefatura del Estado*), [Organic Law 3/1981 of 6 April 1981 on the Ombudsman](#) (*Ley Orgánica 3/1981, de 6 de abril, del Defensor del Pueblo*), 7 May 1981.

¹⁶⁸ [Spain, Secretariat of State of Security \(*Secretaría de Estado de Seguridad*\), Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention" \(*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*\)](#), 16 January 2024.

¹⁶⁹ <https://www.ohchr.org/en/treaty-bodies/spt;> [Spain, Secretariat of State of Security \(*Secretaría de Estado de Seguridad*\), Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention" \(*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*\)](#), 16 January 2024.

Police custody:

Any person under the police custody has the right to request access only to the elements of the proceedings that are essential to challenge the legality of the detention or deprivation of liberty and their right to Habeas Corpus, by providing, where appropriate and for this purpose, the Habeas Corpus application form established for this purpose by the Directorates-General of the Police and the Civil Guard.

In accordance with legal and jurisprudential criteria, **the Habeas Corpus procedure may be requested by:**

- (a) A person deprived of liberty, his or her spouse or a person united by a similar affective relationship, descendants, ascendants, siblings and, where appropriate, in the case of minors and incapacitated persons, their legal representatives.
- (b) The Public Prosecutor's Office.
- (c) The Ombudsman.
- (d) The detainee's lawyer.
- (e) It may also be initiated ex officio by the competent judge.
- Once the procedure has been initiated, the police officer responsible for the arrest shall notify the competent judicial authority without delay and shall proceed with the proceedings.

b. Legal assistance**Remand and post-trial detention:**

A lawyer can assist the inmate in the preparation of their defence. The lawyer is not permitted to be present at the disciplinary committee. Inmates have access to a legal aid centre and several regions' law schools offer legal aid to inmates, in collaboration with the Legal-Penitentiary Assistance and Guidance Services (*Servicios de Asistencia y Orientación Jurídico-Penitenciaria*, SOAJP, in its Spanish acronym). According to Article 51.2 and on the Article 48 of the Penitentiary Law¹⁷⁰, the communications of the inmates and the confidentiality of meetings with defence lawyer are respected. They should be expressly named in relation to criminal matters and the procurators representing them are held in appropriate departments and may not be suspended or intervened except by order of the judicial authority and the suspected of terrorism. The oral and written communications provided under the Penitentiary Law may be suspended or treated accordingly by the director of the establishment, informing the competent judicial authority.

Police custody:

The presence of the lawyer will be effective as soon as possible. The detained person shall freely appoint a lawyer, and if he fails to do so, he shall be assisted by a court-appointed lawyer. Law enforcement officials will not make any recommendations about the lawyer to be appointed other than informing of their right. The name of the appointed lawyer will be immediately communicated to the Bar Association. The appointed lawyer will go to the detainee custody area as soon as possible, always within a maximum period of three hours from receipt of the order. If he does not appear within this period, the Bar

¹⁷⁰ Spain, Head of State (*Jefatura del Estado*), [General Penitentiary Law 1/1979, of 26 September](#) (*Ley General Penitenciaria*), 5 October 1979.

Association will appoint a new lawyer on duty who must appear as soon as possible and always within the period indicated, in accordance with Article 520 of the Law on Criminal procedure.

c. Request and complaints

Remand and post-trial detention:

Inmates may appeal against disciplinary sanctions. The inmate has three working days, starting from the day when they receive notification of the sanction, to present their defence in writing or to appear before the investigator and testify verbally.

Police custody:

Any incident that occurs during detention must be recorded in the report drawn up for that purpose, without prejudice to its entry in the corresponding detainee record and custody book¹⁷¹.

See **Part II: National case-law:** Spain, Second Chamber of the Constitutional Court. Judgment 164/2021 of 4 October 2021. Amparo appeal 1264-2020. Related to the right to information of the inmate in a penitentiary.

d. Independent authority

Remand and post-trial detention:

Those appeals against disciplinary sanctions should be entered before the prison governor, who informs the judicial authority. A copy in a sealed envelope is returned to the inmate. Every disciplinary sanction is delivered by a collegial body: the disciplinary committee. Article 276 of the prison rules requires the disciplinary committee to be presided over by the prison governor and to consist of the following people: the deputy director of security, an in-house lawyer, a head of department and a representative of the prison staff that should be chosen on an annual basis.

Police custody:

All complaints filed against police officers about facts and actions that may reveal an alleged violation of the fundamental rights of individuals on the occasion of a police action, and that meet the requirements established in the aforementioned order are duly registered in the computer application set out in **Order 1/2022, of the Secretary of State for Security, establishing the National Office for the Guarantee of Human Rights** (*Oficina Nacional de Garantía de los Derechos Humanos*, ONGADH in its Spanish acronym)¹⁷².

e. NPM assessment

According to the 2023 NPM National Report¹⁷³, two Recommendations were issued stating:

- “That an interdisciplinary team be established to ensure that there are effective and confidential reporting channels in prisons, so that persons deprived of liberty can report ill-treatment, whether physical or mental, without fear of reprisals, considering the possibility of having a mediator in this team to guarantee the impartiality and neutrality of the process. The existence

¹⁷¹ Spain, Secretariat of State of Security (*Secretaría de Estado de Seguridad*), [Order No. 1/2024 of the Secretary of State for Security approving the "comprehensive procedure for police detention"](#) (*Instrucción núm. 1/2024 de la secretaria de estado de seguridad por la que se aprueba el "procedimiento integral de la detención policial"*), 16 January 2024.

¹⁷² Spain, National Ombudsman (*Defensor del Pueblo*), [Order 1/2022, of the Secretary of State for Security, which creates the National Office for the Guarantee of Human Rights](#) (*Instrucción 1/2022, De La Secretaría De Estado De Seguridad, Por La Que Se Crea La Oficina Nacional De Garantía De Los Derechos Humanos*), 10 February 2022.

¹⁷³ Spain, National Ombudsman (*Defensor del Pueblo*) (2024), [2023 Annual report. National Prevention Mechanism \(NPM\). Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2023*), Madrid, Defensor del Pueblo.

of this team will contribute to the collection of evidence for a better investigation and protection of the person who alleges to have been the victim of inappropriate treatment” (*Que se establezca un equipo interdisciplinario que garantice que en los centros penitenciarios existan canales de denuncia efectivos y confidenciales, para que las personas privadas de libertad puedan denunciar malos tratos, sean estos físicos o psíquicos, sin miedo a represalias, valorándose la posibilidad de contar en este equipo con la figura de un mediador o mediadora para garantizar la imparcialidad y neutralidad del proceso. La existencia de este equipo coadyuvará en la obtención de pruebas para una mejor investigación y protección de la persona que alega haber sido víctima de un trato inadecuado*).

- And “That the model for the registration of manifestations of ill-treatment approved by Order 1/2018 be extended, in order to incorporate the data relating to the means of evidence sent (video surveillance, injury reports, reports or records, etc.) to the courts, in order to proceed with the investigation of the allegations, indicating the corresponding relevant data such as the date or the reason why they have not been brought to justice disposal. The aim is to strengthen the right of defence of persons deprived of liberty, access to essential evidence and to provide greater objectivity to the processes of investigating ill-treatment” (*Que se amplíe el modelo de registro de manifestaciones de malos tratos aprobado mediante la Orden 1/2018, con el fin de incorporar los datos relativos a los medios de prueba remitidos (video-vigilancia, partes de lesiones, informes o registros, etc.) a los tribunales, con el objeto de proceder a la investigación de las alegaciones, con indicación de los correspondientes datos relevantes tales como la fecha o el motivo por el que no se han puesto a disposición. El objetivo es reforzar el derecho de defensa de las personas privadas de libertad, el acceso a las pruebas esenciales y dotar de mayor objetividad a los procesos de investigación de malos tratos*)

According to the 2022 NPM National Report¹⁷⁴, in terms of situations of risk identified by the NPM in relation to the **reporting, recording and investigation of allegations of ill-treatment**, the NPM continued to identify deficiencies that sometimes hinder the proper investigation of allegations of torture and ill-treatment. There were no real, effective, confidential and independent reporting channels that allow persons deprived of their liberty to report ill-treatment and be protected from reprisals. Allegations and complaints of ill-treatment were then usually known at the insistence of some family members or civil society organizations that manage to make them visible. In general, there were limited to situations of physical abuse when the abuse is of such magnitude that it cannot be concealed. Indirect knowledge of these situations only makes it difficult to obtain the scant evidence and determines that investigations into allegations of ill-treatment usually end in dismissal and archiving of the proceedings without having carried out all the steps that could have been relevant, as indicated in STC 12/2022¹⁷⁵, which referred to insufficient investigation of a complaint of ill-treatment allegedly

¹⁷⁴ https://www.defensordelpueblo.es/wp-content/uploads/2023/06/Informe_2022_MNP.pdf

¹⁷⁵ Spain, Constitutional High Court (*Tribunal Constitucional*), [Judgment 12/2022 of 7 February 2022. Amparo appeal 4703-2019. Brought by Mr. Gustavo Cachcovsky Nin with respect to the decisions handed down by the Provincial Court of Madrid and a court of first instance and order of Arganda del Rey that archived his complaint of ill-treatment. Violation of the right to effective judicial protection without defencelessness in relation to the right not to be subjected to torture or inhuman or degrading treatment: insufficient investigation of a complaint of ill-treatment allegedly suffered in the prison environment \(STC 34/2008\)](#) (*Sala Segunda. Sentencia 12/2022, de 7 de febrero de 2022. Recurso de amparo 4703-2019. Promovido por don Gustavo Cachcovsky Nin respecto de las resoluciones dictadas por la Audiencia Provincial de Madrid y un juzgado de primera instancia e instrucción de Arganda del Rey que archivaron su denuncia de malos tratos. Vulneración del derecho a la tutela judicial efectiva sin indefensión en relación con el derecho a no ser sometido a torturas ni a tratos inhumanos o degradantes: investigación insuficiente de una denuncia de malos tratos que se dicen sufridos en el ámbito penitenciario (STC 34/2008)*), 10 March 2022.

suffered in the prison environment. In addition, the NPM continues to note the lack of unalterable registers in which complaints or allegations and allegations of ill-treatment during detention and custody are recorded, so that the intervening agencies can carry out adequate follow-up. Delays in judicial investigations also continue to be a problem, compromising the right to a judicial process without undue delay (Article 24.2 EC), in relation to the right not to be subjected to torture or inhuman treatment.

In 2022, NPM issued a recommendation to the Guardia Civil General Directorate stating that:

- “That the appropriate measures are taken to ensure that the recordings are kept for a minimum of 30 days and that, when complaints or allegations of ill-treatment are registered or incidents of any kind occur with people in the custody of the Guardia Civil, the extraction and conservation of the images without a period of destruction is immediately guaranteed, making them, where appropriate, available to the competent authorities, in order to **facilitate the investigation of any allegation of misconduct by custody officers**, as well as to ensure the **protection of officials against unfounded complaints**, both in detention areas and during the conduct of judicial or forensic facilities. *(1.- Que se tomen las medidas oportunas a fin de que las grabaciones se conserven durante un mínimo de 30 días y que, cuando se registren denuncias o alegaciones de malos tratos o se produzcan incidentes de cualquier tipo con personas bajo custodia de la Guardia Civil, se garantice con carácter inmediato la extracción y conservación de las imágenes sin plazo de destrucción, poniéndolos, en su caso, a disposición de las autoridades competentes, con el objeto de facilitar la investigación de cualquier alegación de comportamientos indebidos por parte de los agentes de custodia, así como garantizar la protección de los funcionarios ante denuncias infundadas, tanto en áreas de detención como durante la conducción a dependencias judiciales o forenses)*¹⁷⁶.

According to 2021 NPM report¹⁷⁷, the NPM recommended to the General Secretary of the penitentiary centres to:

- “5. To issue the appropriate orders by the General Secretariat of Penitentiary Institutions, so that the corresponding prison supervision prosecutor's office is always and immediately communicated, in a similar manner and at the same time as it is made to the judicial authority, all the coercive means applied and all the reports of injuries issued by a given prison” *(5.- Dictar las órdenes oportunas por la Secretaría General de Instituciones Penitenciarias, para que siempre y de forma inmediata se comuniquen, a la fiscalía de vigilancia penitenciaria correspondiente, de forma análoga y en el mismo momento que se haga a la autoridad judicial, todos los medios coercitivos aplicados y todos los partes de lesiones emitidos por una determinada prisión)*.¹⁷⁸. Also **two Suggestions were address to the General Secretary of the penitentiary centres** to: “Properly complete the Book of Complaints and Allegations of Ill-Treatment, reflecting all the information necessary for those responsible for the prison to have

¹⁷⁶ Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Command of the Civil Guard of Cantabria \(Santander\)](#) (*Visita a la Comandancia de la Guardia Civil de Cantabria (Santander)*), 28 July 2022. Complaint number 22005768.

¹⁷⁷ Spain, National Ombudsman (*Defensor del Pueblo*) (2022), [2021 Annual report. National Prevention Mechanism \(NPM\).Spain](#) (*Mecanismo Nacional de Prevención. Informe anual 2021*), Madrid, Defensor del Pueblo. 01/03/2021 Secretaría General de Instituciones Penitenciarias. Ministerio del

¹⁷⁸Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Sevilla II Penitentiary Center](#) (*Visita al Centro Penitenciario Sevilla II*), 20 May 2021.

effective knowledge of them” ¹⁷⁹ (6.- *Cumplimentar convenientemente el Libro de denuncias y alegaciones de malos tratos, reflejando toda la información necesaria para que se pueda tener un conocimiento efectivo de las mismas por parte de los responsables de la prisión*);

- *and to “3.- To duly complete the book of allegations and complaints of ill-treatment, reflecting all the information necessary so that those responsible for the prison, the management centre and the supervisory bodies can have effective knowledge of them” (3.- Complimentar convenientemente el libro de alegaciones y quejas de malos tratos, reflejando toda la información necesaria para que se pueda tener un conocimiento efectivo de las mismas por parte de los responsables de la prisión, del centro directivo y de los órganos de vigilancia*¹⁸⁰.

¹⁷⁹Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Cadiz Puerto I Penitentiary Center](#) (*Visita al Centro Penitenciario Puerto I (Cadiz)*), complaint number 21005001, 23 July 2021.

¹⁸⁰Spain, National Ombudsman (*Defensor del Pueblo*), [Visit to the Segovia Penitentiary Center](#) (*Visita al Centro Penitenciario de Segovia*), complaint number 21021236, 17 December 2021.

Part II: National case-law

Spain, [Supreme Court Judgment No. 352/2023](#) (*Sentencia del Tribunal Supremo, Sala de Penal, nº 352/2023*), 11 May 2023.

Thematic area	5. Time spent outside the cell and outdoors; a. Time spent outdoors
Decision date	11 May 2023
Reference details	Spain, Supreme Court Judgment No. 352/2023 (<i>Sentencia del Tribunal Supremo, Sala de Penal, nº 352/2023</i>), 11 May 2023.
Key facts of the case	<p>An inmate of the prison of Dueñas in Palencia province lodged a complaint against the six-monthly study of permits: a request for his application for leave to be examined every 3 months was rejected by the Prison Supervision Court and by the Provincial Court of Palencia based on organizational reasons of operation of the centre.</p> <p>The inmate alleged that the six-monthly study of permits is contrary to prison treatment and that being able to appeal to the Prison Supervision Judge only twice a year is a deprivation of the right to access the fundamental right to effective judicial protection recognized in article 24.1 of the Spanish Constitution.</p> <p>The inmate's request was supported by the Public Prosecutor, since neither the Law on Prisons nor the Prison Rules establish a specific deadline for studying the successive requests for release permits of convicts.</p>
Main reasoning/argumentation	Leave is not an automatic right, but is closely linked to prison treatment. Neither the Penitentiary Law nor the Prison Rules indicate a specific periodicity for the study of applications for leave. They only establish the maximum annual limit of days of leave (36 days for those classified in the second degree) and their distribution, as a general rule, in the two calendar semesters of the year, granting up to 18 days in each of them.
Key issues (concepts, interpretations) clarified by the case	Cassation appeal for the unification of doctrine in matters of prison monitoring and inspection. It resolved on the period within which the prison permits that inmates request from the prisons management centres must be studied. It excluded those requests that are of an extraordinary nature, in which case the prison will justify the period of resolution on an individual basis.
Results (sanctions) and key consequences or implications of the case	The permits of inmates admitted to prisons must be reviewed within a maximum period of 3 months. Therefore, after this judgment the practice of some prisons that were studying the permits of persons deprived of liberty on a quarterly or even six-monthly basis were null and void.
Key quotation in original language and translated into English with reference details	“Applications from inmates admitted to prisons requesting ordinary leave must be studied within a maximum period of three months, except for those requests that are of an extraordinary nature, in which case the prison will justify the resolution period on an individual basis” (<i>Las solicitudes de los internos ingresados en centros penitenciarios pidiendo permisos ordinarios deberán ser estudiadas en un plazo máximo de tres meses, salvo aquellas peticiones que tengan carácter extraordinario, en cuyo caso el centro penitenciario justificará el plazo de resolución de forma individualizada</i>).

Thematic area	9. Prevention of violence and ill-treatment. Protection from violence by prison staff
Decision date	10 October 2022
Reference details	<i>(Sala Segunda. Sentencia 122/2022, de 10 de octubre de 2022. Recurso de amparo 5923-2020. Promovido por don Abdelmalik Abderrazak Abdeselam respecto de los autos dictados por la Audiencia Provincial de Málaga y un juzgado de primera instancia e instrucción de Estepona decretando prisión provisional. Vulneración del derecho a la tutela judicial sin indefensión en relación con el derecho a no ser sometido a torturas ni tratos inhumanos o degradantes: investigación insuficiente de una denuncia de torturas o tratos inhumanos o degradantes que se dicen padecidos bajo custodia policial (STC 34/2008), 10 October 2022.</i>
Key facts of the case	Amparo appeal nº 5923-2020. Promoted by Mr. Abdelmalik Abderrazak Abdeselam with respect to the orders issued by the Malaga Provincial Court and a court of first instance and investigatory of Estepona issuing a provisional detention.
Main reasoning/argumentation	<p>It stated that there is a special mandate to perform an exhaustive, sufficient and effective investigation into claims of crimes of this kind, making use of all possible useful means of investigation to clarify the facts since it is necessary to enhance guarantees because there are special circumstances in which the citizen is provisionally under the custody of the State.</p> <p>It referred to the doctrine on the need for a sufficient and effective investigation of allegations of ill-treatment alleged to have been suffered in police custody.</p>
Key issues (concepts, interpretations) clarified by the case	<p>Violation of the right to judicial protection without defencelessness in relation to the right not to be subjected to torture or inhuman or degrading treatment.</p> <p>Insufficient investigation of a complaint of torture or inhuman or degrading treatment alleged to have been suffered in police custody (STC 34/2008).</p>
Results (sanctions) and key consequences or implications of the case	<p>It was decided to partially uphold the application for the amparo appeal lodged by Mr. Abdelmalik Abderrazak Abdeselam.</p> <p>To declare that his right to effective judicial protection without defencelessness as stated by Article 24.1 of the Spanish Constitution was violated, in relation to his right not to be subjected to torture or inhuman or degrading treatment as stated by Article 15 of the Spanish Constitution.</p> <p>To restore him to his rights and to request the Estepona Court of First Instance and Investigation No. 2 of to take the appropriate steps to provide the appellant with the appropriate judicial protection in relation to his complaint concerning the torture or ill-treatment he claimed to have suffered in police custody.</p>
Key quotation in original language and translated into English with reference details	<p>“the right to effective judicial protection of a person who claims to have been the victim of torture or inhuman or degrading treatment requires a reasoned decision based on the law and in accordance with the absolute prohibition of such conduct, which must take into account the seriousness of the breach of that prohibition and the type of judicial activity necessary to preserve it, given its difficult detectability and the special dependence on this judicial activity on the indemnity of the dignity of the person, which is the central object of protection of the prohibition” (<i>el derecho a la tutela judicial efectiva de quien denuncia haber sido víctima de torturas o de tratos inhumanos o degradantes exige una resolución motivada y</i></p>

	<i>fundada en Derecho y acorde con la prohibición absoluta de tales conductas, en que se ha de tener en cuenta la gravedad de la quiebra de esta prohibición y el tipo de actividad judicial necesaria para preservarla, dadas su difícil detectabilidad y la especial dependencia respecto de dicha actividad judicial de la indemnidad de la dignidad de la persona, objeto central de protección de la prohibición).</i>
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Spain, [Supreme Court Judgment No. 1765/2023](#) (*Sentencia del Tribunal Supremo, Sala de Penal, nº 352/2023*), 21 December 2023.

Thematic area	8. Healthcare. b. Availability of medical staff
Decision date	21 December 2023
Reference details	Spain, Supreme Court Judgment No. 1765/2023 (<i>Sentencia del Tribunal Supremo, Sala de Penal, nº 352/2023</i>), 21 December 2023.
Key facts of the case	<p>The appeal concerns the judgment of 3 November 2021 of the Fifth Section of the Contentious-Administrative Chamber of the National High Court, which dismissed appeal no. 80/2021 filed by Ms Eburne against the judgment handed down by the Central Administrative Court no. 9 of 31 March 2021, Procedure No 110/2019.</p> <p>The right to be paid the same amount as the rest of the hours that make up their working day, at the same price paid to them for each hour of ordinary work, counting from the four years prior to the date of the administrative claim and until 2 May 2019 when retirement was supposed to be reached, which amounted €33,746.29. The claim contained the request of the main application and the second ground of appeal, on the recognition of the appellant's right to be paid for the hours of on-call health care according to the value of the ordinary hour of work.</p>
Main reasoning/argumentation	<p>The question with Cassational interest for the jurisprudence was to determine whether, in the context of the on-call duties carried out by the health personnel of penitentiary institutions, it is appropriate or not to remunerate the value of each hour of prison health guard in accordance with the value of the ordinary hour of work.</p> <p>The appellant requested to be null and void the Administrative Resolution dated on 21 June 2019 and issued by the General Secretariat of Penitentiary Institutions of the Ministry of the Interior and therefore to recognize the appellant Ms. Eburne, as a civil servant of the Prison Health Staff:</p>
Key issues (concepts, interpretations) clarified by the case	It referred to the Directive 2003/88/EC, without prejudice to the fact that the judgment must be extended to others if so required by the debate finally engaged in the appeal (art. 90.4 LJCA).
Results (sanctions) and key consequences or implications of the case	The appeal in cassation lodged by the procedural representation of Ms Eburne against the judgment of the Contentious-Administrative Chamber of the National High Court of 3 November 2021 was dismissed. The appellant was discharged of any costs.
Key quotation in original language and translated into English with reference details	"...The answer to the question of objective cassational interest must be that there is nothing to prevent health guards in penitentiary institutions from being paid by means of the productivity supplement, plus additional rest time..." (<i>la respuesta a la cuestión de interés casacional objetivo debe ser que nada se opone a que las guardias sanitarias en las instituciones penitenciarias sean retribuidas mediante el complemento de productividad, más un tiempo de descanso añadido...</i>).

Spain, [Judgment of the Constitutional Court 34/2022, of 7 March](#) (*Sentencia del Tribunal Constitucional 34/2022, de 7 de marzo*), 7 March 2022

Thematic area	8. Prevention of violence and ill-treatment. a. Protection from violence by prison staff
Decision date	7 March 2022
Reference details	Spain, Judgment of the Constitutional Court 34/2022, of 7 March (<i>Sentencia del Tribunal Constitucional 34/2022, de 7 de marzo</i>), 7 March 2022
Key facts of the case	<p>The decisions issued by the Provincial Court and a Granada investigative court, which agreed to the provisional dismissal of a complaint of ill-treatment, was taken before on an amparo appeal the Constitutional Court.</p> <p>At the Arganda del Rey (Madrid) court, after hearing the complainant and the accused officials, and in view of the medical report sent by the establishment, decided to provisionally dismiss the proceedings and close the proceedings, as the commission of the offence did not appear to be duly justified.</p>
Main reasoning/argumentation	<p>The Constitutional Court recalled that there is a special mandate to carry out an exhaustive, sufficient and effective investigation in relation to allegations of crimes of torture, so that judges are obliged to exhaust all possibilities of inquiry that may be useful to clarify the facts, since it is necessary to protect the guarantees due to a special situation in which the citizen is provisionally in the physical custody of the State.</p> <p>The Constitutional Court considered that the judge should have heard the statements of the applicant, the police officers involved in the incidents, the identified witnesses, the doctor and the court-appointed lawyers. It should also have obtained any documentation that might have been available in the preliminary proceedings initiated against the applicant for the acts that led to her arrest.</p>
Key issues (concepts, interpretations) clarified by the case	<p>It was applied the doctrine relating to the duty of effective judicial investigation in the face of a complaint of torture suffered in police custody (STC 34/2008, of 25 February, and ECHR "López Martínez v. Spain", 9 March 2021).</p> <p>An inmate complaint of ill-treatment, application of the doctrine relating to the duty of effective judicial investigation in the face of a complaint of torture suffered in police custody.</p> <p>It argued that insufficient consideration had been given to the fact that the complainant was placed in the isolation unit of the prison and that, immediately after the events complained of, he was subjected to a temporary isolation measure with straps.</p> <p>In the same vein, the court rejects the use of the delay in the filing of the complaint as evidence contrary to the existence of the criminal acts. The penitentiary delayed ten days in sending the complaint to the duty court, which leads the court to think that there may have been some resistance to the collaboration of the prison administration in clarifying the facts.</p> <p>In addition, according to the criterion of the Constitutional Court in the judgment, it maintained that the three officials and a head of service who had acknowledged having gone to the cell where the events had taken place should have been summoned to testify as witnesses, and requested an extension of the documentation provided by the centre on the variety of medical assistance and reports that were alleged to have taken place. Inmates who may have been</p>

	auditory witnesses to the events could also have been called. The investigation, the high court concluded, was closed when reasonable suspicions of the commission of the crime had not been dispelled and despite the existence of sufficient means to clarify it.
Results (sanctions) and key consequences or implications of the case	The judge upheld his remedy. And order the retroaction of the proceedings at the time of the pronouncement of the first of the annulled judicial decisions so that another one respectful of the fundamental right recognized can be issued.
Key quotation in original language and translated into English with reference details	“The Court, having found that in the face of the complaint of treatment prohibited by Article 15 EC there was not a sufficiently effective judicial investigation, since, although the judicial inquiry was undertaken and had some content, it was closed without having exhausted the means still available to dispel possible doubts, concludes that the present application for the amparo appeal should be upheld for infringement of the right to effective judicial protection (Article 24.1 EC) and in relation to the right not to be subjected to torture or inhuman or degrading treatment (Article 15 of the Spanish Constitution)” <i>(El Tribunal, una vez apreciado que frente a la denuncia de tratos prohibidos por el art. 15 CE no se produjo una investigación judicial suficientemente eficaz, ya que, aunque se emprendió la investigación judicial y tuvo cierto contenido, se clausuró sin haber agotado los medios aún disponibles para despejar las posibles dudas, concluye que procede la estimación del presente recurso de amparo por vulneración del derecho a la tutela judicial efectiva (art. 24.1 CE), en relación con el derecho a no ser sometido a tortura o tratos inhumanos o degradantes (art. 15 CE)).</i>

Spain, Constitutional High Court (*Tribunal Constitucional*), [Judgment 12/2022 of 7 February 2022](#).

Thematic area	8. Prevention of violence and ill-treatment. a. Protection from violence by prison staff
Decision date	7 February 2022
Reference details	Spain, Constitutional High Court (<i>Tribunal Constitucional</i>), Judgment 12/2022 of 7 February 2022 . Amparo appeal 4703-2019 . Brought by Mr. Gustavo Cachcovsky Nin with respect to the decisions handed down by the Provincial Court of Madrid and a court of first instance and Order of Arganda del Rey that archived his complaint of ill-treatment. Violation of the right to effective judicial protection without defencelessness in relation to the right not to be subjected to torture or inhuman or degrading treatment: insufficient investigation of a complaint of ill-treatment allegedly suffered in the prison environment (STC 34/2008 (Sala Segunda. Sentencia 12/2022, de 7 de febrero de 2022. Recurso de amparo 4703-2019. Promovido por don Gustavo Cachcovsky Nin respecto de las resoluciones dictadas por la Audiencia Provincial de Madrid y un juzgado de primera instancia e instrucción de Arganda del Rey que archivaron su denuncia de malos tratos. Vulneración del derecho a la tutela judicial efectiva sin indefensión en relación con el derecho a no ser sometido a torturas ni a tratos inhumanos o degradantes: investigación insuficiente de una denuncia de malos tratos que se dicen sufridos en el ámbito penitenciario (STC 34/2008), 7 February 2022.
Key facts of the case	The applicant complained that she had been subjected to a body search with full nudity during her police detention. The Provincial Court of Badajoz decided to provisionally dismiss the case, considering that the facts denounced did not allow the perpetration of an attack

	<p>on moral integrity to be duly justified. It maintained that the police officer who carried out the body search should have been summoned in an adversarial and contradictory statement and, depending on the outcome of that investigation, should have made a well-founded ruling on whether or not additional expert evidence should be carried out on the audio files that the applicant recorded during her stay at the police station.</p>
<p>Main reasoning/argumentation</p>	<p>The Constitutional Court appreciated the reluctance of the prison administration to provide the medical reports in its possession in relation to the facts under investigation; and an absence at the stage of the judicial investigation and certain contradictions between the statements about the applicant's physical situation. In addition, the Court stated that the adoption of the investigative measures leading to its possible clarification should have been pursued.</p> <p>He criticizes the rejection of the testimonies of other inmates because, although it is true that they were not present, the court was informed that they heard what had happened.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>It was applied the doctrine contained in STC 34/2008, of February 25, and included in STC 166/2021, of October 4, on the duty of effective judicial investigation in the face of a complaint of torture, inhuman or degrading treatment that is said to have been suffered in police custody.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The Constitutional Court granted the appeal.</p> <p>And order the retroaction of the proceedings at the time of the pronouncement of the first of the annulled judicial decisions so that another one respectful of the fundamental right recognized can be issued.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>"In response to the allegation of torture and ill-treatment of the prisoner, there was no effective judicial investigation, and although there was a judicial investigation, it was closed when reasonable suspicions persisted that the crime had been committed and adequate and available means were available to clear it up" (<i>frente a la denuncia de torturas y malos tratos del interno, no se produjo una investigación judicial eficaz, y que pese a que sí hubo investigación judicial, se clausuró cuando persistían sospechas razonables de que el delito se había cometido y se contaba con medios adecuados y disponibles para despejarla</i>).</p>

Spain, Spain, Constitutional Court (*Tribunal Constitucional*), [Second Chamber. Judgment 164/2021 of 4 October 2021. Amparo appeal 1264-2020](#)

<p>Thematic area</p>	<p>5. Time spent outside the cell and outdoors; a. Time spent outdoors</p>
<p>Decision date</p>	<p>4 October 2021</p>
<p>Reference details</p>	<p>Spain, Spain, Constitutional Court (<i>Tribunal Constitucional</i>), Second Chamber. Judgment 164/2021 of 4 October 2021. Amparo appeal 1264-2020 (<i>Sala Segunda. Sentencia 164/2021, de 4 de octubre de 2021. Recurso de amparo 1264-2020</i>), 4 October 2021.</p>
<p>Key facts of the case</p>	<p>Brought by Mr. Hassan Ashini with respect to the orders issued by the Provincial Court of Santa Cruz de Tenerife, a prison supervision court of the Canary Islands, dismissing his complaint about the prison treatment he received.</p> <p>The management of the prison in which the applicant for was serving his sentence rejected his request for the production of the reports on which the refusal to grant</p>

	<p>him an exit permit had been based. Both the prison supervision court and the Provincial Court ratified the administrative decision.</p>
<p>Main reasoning/argumentation</p>	<p>The decision to refuse to provide the requested information was not based on a normatively predetermined reason, nor did it take into account the special needs for guardianship generated by the situation of a prisoner.</p> <p>The judgment stated that the right to effective judicial protection is activated when the access to public information of the inmates of a prison is compromised, since they are in a clear imbalance with respect to the administration, making it essential to safeguard access to documentary sources through a restrictive interpretation of the causes of exception established in the laws. Furthermore, the argument of possible reinstatement being deficient of the right in the jurisdictional phase to avoid ruling on the complaint of its previous injury in administrative proceedings.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>The right to information of the inmate in a penitentiary centre.</p> <p>Violation of the right to effective judicial protection, since the judicial decisions that do not adequately weigh the right of access to administrative information by denying the inmate consultation of the reports, which served to deny him an exit permit.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>It granted the appeal based on the violation of the right to effective judicial protection.</p> <p>It declared null and void, and order the retroaction of the proceedings to the time prior to the pronouncement of the first of them, so that the prison supervision court may issue a new decision respecting the right to effective judicial protection as stated under the Article 24.1 of the Spanish constitution in connection with the right of access to administrative information of Article 105 b) of the of the Spanish constitution.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>“... we must conclude that the Order of the Provincial Court, and the orders of the Court of Penitentiary Supervision confirmed by it, do not satisfy the basic needs of protection of the right of access to public information of persons who are deprived of liberty in a penitentiary, since they adhere to the specious argument of the possible restoration of the right in the jurisdictional phase. through the publicity of the procedure, in order to avoid ruling on the complaint of his previous injury in administrative proceedings, the immediate reparation of which was the true object and purpose of the complaint, while alluding to reasons of security, preservation of the purposes of the processing and exclusion of the abusive exercise of the right which, although in the abstract could justify the denial of access because they refer to public interests worthy of protection and protected in the law, do not appear connected, by a serious argumentative effort, with the circumstances of the appellant and the case ...” (<i>hemos de concluir que el Auto de la Audiencia Provincial, y los autos del Juzgado de Vigilancia Penitenciaria confirmados por aquel, no satisfacen las necesidades básicas de tutela del derecho de acceso a la información pública de las personas que se hallan privadas de libertad en un centro penitenciario, pues se atienden al especioso argumento del posible restablecimiento del derecho en fase jurisdiccional, a través de la publicidad del procedimiento, para evitar pronunciarse sobre la denuncia de su previa lesión en vía administrativa, cuya reparación inmediata era el verdadero objeto y fin de la queja, al tiempo que aluden a unas razones de seguridad, preservación de los fines del tratamiento y exclusión del ejercicio abusivo del derecho que, aunque en abstracto podrían justificar la denegación del acceso por referirse a intereses públicos dignos de protección y amparados en la ley, no aparecen conectadas, mediante un esfuerzo argumental serio, con las circunstancias del recurrente y del caso planteado).</i></p>

Spain, National High Court (*Audiencia Nacional*), [Order 840/2021 of the national high court, criminal chamber, section 1, dated 04/11/21](#)

Thematic area	10. Contact with the outside world
Decision date	4 November 2021
Reference details	Spain, National High Court (<i>Audiencia Nacional</i>), Order 840/2021 of the national high court, criminal chamber, section 1, dated 04/11/21 (<i>Auto 840/2021 de la audiencia nacional sala penal sección 1ª</i>), 4 November 2021.
Key facts of the case	<p>On 24 May 2021, the Central Court for Children in Prison Surveillance issued an order rejecting the inmate's appeal at the Malaga II Archidona Penitentiary Centre for failing to provide him with a video call in December 2020.</p> <p>An appeal for reform and a subsidiary appeal was filed against this decision by the inmate, and the Central Court issued an order on 30 June 2021 dismissing the appeal for reform.</p> <p>Then, an appeal was filed against the previous order where the inmate requested authorization to make the video call corresponding to the month of December 2020.</p> <p>The appeal was forwarded to the Public Prosecutor's Office, which requested that the appeal be dismissed.</p>
Main reasoning/argumentation	<p>Video calls are only intended as a substitute for family communications due to the pandemic.</p> <p>The appellant may request family communications, as have the other inmates, but has not done so.</p>
Key issues (concepts, interpretations) clarified by the case	<p>The Court explained that communication by video call is not an alternative form of communication between inmates and their families provided for in cases in which family members have difficulty going to the prison.</p> <p>Video calls were envisaged as a way of replacing family communications when they were suspended due to measures that have suppressed physical contact of people and internal communications with people from outside due to the pandemic. Therefore, when face-to-face communications are authorized again, video calls cease.</p>
Results (sanctions) and key consequences or implications of the case	The appeal was dismissed. The appellant was not discriminated against on this ground, but was subjected to the rule applied to the other inmates.
Key quotation in original language and translated into English with reference details	<p>"The complaint and appeal examined are identical to those resolved by this chamber in RAA 211/2021, order of April 22, 2021; RAA 399/2021, order of 9 June 2021, and RAA 542/2021, order of 16 September 2021 and RAA 667/2021, order of 13 October 2021. In all these orders, the Chamber has explained that communication by video call is not an alternative form of communication between inmates and their families intended for those cases in which family members have difficulty going to the penitentiary, as appears to be the case with the appellant" (<i>La queja y recurso examinados son idénticos a los resueltos por esta sala en RAA 211/2021, Auto de 22 de abril de 2021; RAA 399/2021, auto de 9 de junio de 2021, y RAA 542/2021, Auto de 16 de septiembre de 2021 y RAA 667/2021, Auto de 13 de octubre de 2021. En todos esos autos ha explicado la sala que la comunicación a través de vídeo llamada no es una forma alternativa de comunicación entre los internos y sus familiares prevista para aquellos casos en los que los familiares tienen dificultades para acudir al centro penitenciario, como parece que es el caso del apelante</i>).</p>

