



Report of Various Size – Fieldwork research (FRANET)

Criminal Detention in the EU – Conditions and Monitoring

Country Report Spain

FRANET Contractor: Institute of International Migrations. University Pontifical Comillas

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Final Submission: June 2018

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INTRODUCTION

The main problem in relation to Criminal Detention in Spain is that the wording of the law is expressed in a very general way, and in addition, in some cases, the consequences of non-compliance are not detailed. For example, nothing is stated about the size of the cells in law only that they must have enough space to be habitable.

The provision for toilets located in cells is not included in Organic Penitentiary Law but was incorporated in the approved Prison Rules from which this law is developed. General Penitentiary Law foresees that the cells be for one person exclusively, but the single-cell principle has never been achieved and, as a result, cell toilets in Spain are separated by just a curtain.

Forecasts are established but then there are always exceptions to them, for instance: despite a provision for the location of toilets inside cells, one can also find the following provision: *“When they are not available in the cell itself, the shower services will operate daily during the courtyard time, extending the established time by ten minutes in these cases. After sports activities, the use of showers will be facilitated without prejudice to the above.”* Penitentiary Institution Instruction 17/2011 on Intervention Protocol and Rules in Closed Regime.

Most articles of law are written from the point of view of the demands or duties of the prisoners and not of their rights. Thus, personal grooming is required, but the right to a daily shower is not clearly established. A clear example is the existing regulations on prison security that are only aimed at protecting the personnel employed, but not the prisoners.

Some law provisions grant the Prison Administration the right to establish rules on certain aspects of life in prison. For example, Penitentiary rules provide: “Standards of cleanliness and hygiene established by the management centre will be observed”. This fact, together with the generalist drafting of the law, can contribute to certain abuses, even if it is not the general guideline.

Attention should be drawn to the limited regulation regarding the conditions and habitability of the cells in which the detainees are held. Furthermore, measures are not always implemented because of a lack of resources, so that for this not to remain a mere declaration of good intentions, it is necessary to ensure material resources.

Finally, it is to be noted that Spain has a system for monitoring the complaints of prisoners by a Prison Supervision Court. These judges decide at the first instance. In practice, most of petitions are rejected (few judges to a greater number of prisoners) Once the prisoner's complaint has been dismissed by this judge, in some cases it is possible to appeal to another jurisdictional instance (Provincial Court), in which there is a greater possibility that prisoner's appeal is upheld (Carmen Gortázar, practising criminal lawyer. No. 22.678 Bar Association of Madrid).

1. Cell space

- a) What is the national standard for cell space available to prisoners in m²? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- b) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- c) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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a) Standard cell space available to prisoners is 10 m².¹ Spanish law does not contain any provision about the size of prison cells, and only provides that the cells are for single occupancy and must have enough space to make them habitable.²

b) No. There are no different provisions for different detention regimes in this respect. Article 13.1 of Prison Rules only provides that each prisoner will have his or her own cell, unless its dimensions and conditions of habitability allow the housing of more than one person, while respecting their intimacy, in which case sharing a cell may be authorised at the inmate's request.³

Although law text provides one prisoner per cell, generally, cells are for two inmates.⁴

Spanish Constitutional Court ruled that although it is true that both article 19.1 of General Penitentiary Law and article 15 of the Prison Regulations establishes in general terms that each inmate will occupy an individual cell, law also admits the possibility of coexistence of several inmates in the same cell for temporary lack of resources or other reasons, without this being seen as a violation of the aforementioned precepts of the penitentiary legislation, which do not enshrine a subjective right to room or individual cell.⁵

Despite the drop in the prison population of the past years, **the excessive occupation** observed in many Spanish CP has implied an almost generalized breach of the legal mandate 'one prisoner per cell'; in few exceptional cases, cells are doubled and in some cases inhabited by three, four or even more inmates.⁶

C) Recomendación no formal del Mecanismo Nacional de Prevención de la Tortura: "Aunque en las visitas ha podido comprobarse que se ha reducido el número de celdas ocupadas por más de dos internos y que a menudo son los propios presos los que desean estar acompañados, las administraciones penitenciarias deberían adoptar las medidas necesarias para que pueda cumplirse el citado principio celular, salvo en caso de que sean los propios internos los que quieran compartir celda, en cuyo caso debería establecerse un máximo de dos internos por celda. Aún continúan existiendo celdas con más de dos internos en el CP de Alcalá de Guadaira (Sevilla)".⁷

¹ Daunis Rodríguez, Alberto. "Prison occupation. Hypothesis about the prison population in Spain" (Ocupación carcelaria. Hipótesis acerca del descenso de la población penitenciaria en España). Revista de Estudios Penales y Criminológicos, Universidad de Santiago de Compostela Vol. 36, page Available at: <http://www.usc.es/revistas/index.php/epc/article/view/3359>

² Spain, Head of State (Jefatura del Estado)(1979), General Penitentiary Law 1/1979, of 26 September (Ley General Penitenciaria) Press release, 5 October 1979, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1979-23708>. Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento General Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

³ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento General Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

⁴ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

⁵ Constitutional Court Ruling 195/1995, of December 19, available at <http://hj.tribunalconstitucional.es/en/Resolucion/Show/3049>

⁶ Preventive Mechanism against Torture. Annual Report 2014, page 66. Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2016/02/NPM_annual_report_2014.pdf

⁷ Mecanismo Nacional de Prevención de la Tortura. Informe Anual. 2016 Pag 79 y 80, available at: https://www.defensordelapueblo.es/wp-content/uploads/2017/04/Informe_Anual_MNP_2016.pdf

Non formal recommendation of Spain's National Preventive Mechanism against Torture: "Although, during our visits, we ascertained that there are less cells occupied by more than two inmates and that often the prisoners themselves are the ones requesting a cellmate, the prison administrations should adopt the necessary measures in order to achieve said "single-cell principle", unless the inmates themselves wish to share cell, in which case there should be a maximum of two inmates per cell. There are still cells with more than two inmates in Alcalá de Guadaíra (Sevilla) penitentiary centre.⁸

2. Sanitary Facilities

- a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do prisoners have access to these facilities without undue delay, even during the night? Do these facilities offer privacy to prisoners who use them?
- b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities offer privacy to prisoners who use them?
- c) Is the provision of cleanly sanitary facilities regulated by any legal instrument such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
- e) *Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

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a) Article 14.1 of Spanish Prison Rules provide for the location of toilets inside cells.⁹

Privacy is not entirely guaranteed when toilets are only **separated by a curtain**.¹⁰

b) Generally access to showers is daily. Privacy is not entirely guaranteed when they are only separated by a curtain.¹¹

c) Clean sanitary facilities are regulated in only three articles. Article 19 of General Penitentiary Law sets that "The Administration will provide prisoners with items of personal hygiene free of charge"¹²

⁸ Spain's National Preventive Mechanism against Torture. Annual Report 2016, pages 79 and 80. Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf

⁹ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento General Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

¹⁰ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

¹¹ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

¹² Spain, Head of State (Jefatura del Estado)(1979), General Penitentiary Law 1/1979, of 26 September (Ley General Penitenciaria) Press release, 5 October 1979, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1979-23708>.

Article 222 of Prison Rules provides that “At the time of admission, each prisoner will receive the items and products necessary for their personal hygiene”.¹³

Article 221 of Prison Rules sets that “Standards of cleanliness and hygiene established by the management centre will be observed.”¹⁴

General Penitentiary Instruction 13 provides the distribution of hygienic and disease prevention products set to inmates monthly:

Hygiene kit for Men (monthly)

- 6 toilet paper rolls.
- 1 toothpaste (50 gr.).
- 3 Razors (double blade).
- 1 Plastic cutlery
- 4 Condoms (2 extra strong and 2 normal).
- 2 Lubricating gel (water soluble).
- 1 Bottle of bleach (1 liter).
- 1 Gel (1 liter).
- 1 Shaving cream.

Hygiene kit for Women (monthly)

- 6 rolls toilet paper.
- 1 toothpaste (50 gr.).
- 1 Plastic cutlery
- 2 Condoms (normal).
- 2 Lubricating gel (water soluble).
- 1 Bottle of bleach (liter).
- 1 Gel (1 liter).
- 20 Normal sanitary towels
- 20 Double absorption sanitary towels¹⁵

Standards of cleanliness and hygiene cannot vary from one centre to another. The Management Centre/management Board is the General Secretary of Penitentiary Institutions. Prison system is highly centralized (visiting hours, prisoners' rights, how transfers are made). Every prison depends on the Central Government, except those of Catalonia, which depend on the Autonomous Community of Catalonia since 1984.

¹³ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

¹⁴ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

¹⁵ Spain, General Secretary of Penitentiary Institutions (Secretaría General de Instituciones Penitenciarias) (2017), Instruction 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), available at <http://www.derechopenitenciario.com/comun/fichero.asp?id=1411>

Even that, General Penitentiary Law and Royal Decree approving Prison Rules are applied in all the prisons (those of Catalonia and those of the rest of Spain).¹⁶

With regard to short term deprivation of liberty at police facilities, Instruction of the Secretariat of State of Security Forces provides that custody staff will ensure that detainees have access to basic hygiene products (toilet paper, soap, towel, etc.). Access to toilets will be provided when detainees so need. For this, depending on the infrastructure and resources of the detention centre, each unit must determine the conditions for the custody of detainees so that access to toilets may be respected in conditions of safety.¹⁷

d) Generally there are no different provisions for different detention regimes regarding this issue, even though article 93.1 5º of Prison Rules includes a provision for prisoners in Special Departments of the Closed Regime which does not exist in the other prison regimes and that specifies that the Board of Directors will elaborate the norms of internal regime on laundry services, hairdressing, **showers**, distribution of meals, and the cleaning of cells and common dependencies.¹⁸

The Board of Directors is different in each prison but is subject to the hierarchy principle of the Justice Administration, depending on the General Secretary of Penitentiary Institutions which is a Department of the Ministry of the Interior since 1996 (before that year it was a Department of Justice Ministry). There is a prison inspection travelling through prisons in Spain.¹⁹

When they are not available in the cell itself, the shower services will operate daily during the courtyard time, extending the established time by ten minutes in these cases. After sports activities, the use of showers will be facilitated without prejudice to the above.²⁰ The time extended from is the 3 or 4 hours a day going out to the courtyard that law establishes for these inmates (3 hours in case of closed centers regime, and 4 for Special Departments)²¹

e) Recomendación no formal del Mecanismo Nacional de Prevención de la Tortura: La existencia de inodoros en el interior de las celdas colectivas no resulta aceptable ni con relación a la falta de intimidad que esta ubicación implica para los detenidos, ni para el resto de detenidos que deben de

¹⁶ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

¹⁷ Spain, Secretariat of State of Security (Secretaría de Estado de Seguridad) (2015) Instruction 12, of 1 October 2015, on the Protocol concerning the Custody of Detainees by the State Security Forces (Instrucción de la Secretaría General de Instituciones Penitenciarias sobre custodia de detenidos por las Fuerzas de Seguridad), available at: https://www.defensordelpueblo.es/wp-content/uploads/2016/03/Instruccion_12_2015.pdf

¹⁸ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

¹⁹ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

²⁰ Spain, General Secretary of Penitentiary Institutions (Secretaría General de Instituciones Penitenciarias) (2011), Instruction 17, on Intervention Protocol and Rules in Closed Regime (Instrucción de la Secretaría General de Instituciones Penitenciarias sobre Protocolo de Intervención y Normas en Régimen Cerrado) available at: http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/instruccionesCirculares/CIRCULAR_17-2011.pdf

²¹ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

soportar malos olores, tal como se pudo comprobar en las dependencias de la Policía Foral de Pamplona (Navarra).²²

Non formal recommendation of Spain's National Preventive Mechanism against Torture: "Toilets inside communal cells is not acceptable, not only due to the lack of privacy involved but also out of respect for other detainees (smells), as was the case in Regional Police facilities in Pamplona (Navarre)".

3. Time out of cell

- a) What is the national standard set for time per day/week spent by prisoners outside of their cells:
 - a. Outdoors (within the boundary of the prison)?
 - b. Indoors in the common area?
- b) Are sports or other recreational and educational facilities available to prisoners? If so what types?
- c) Is time spent in cells regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
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a) There are no common provisions for all prisoners. Time outside cells is regulated according to the different detention regimes (open, semiopen, closed)

Average time out of cell in **semi-open regime** turns to be about 14 hours in cell: prisoners leave their cells at 7.30 or 8 a.m. o'clock in the morning, they stay in the prison yard or in activities, have lunch, return to their cells for about two hours, they go out again, around 7.30 p.m. they have dinner and return to the cell until next morning. Therefore, they are in the cells for about 14 hours.²³

The **closed regime**, although there are some differences depending on people and prisons, is based on the isolation and control of the prisoner: 20/21 hours in cell; pat-downs with a frequency that oscillates between 1 or more times a day and once a week; searches of cells with the same frequency; several headcounts per day and one at dawn; transfer with shackles inside the prison, absence of treatment activities; just 2 or 3 hours out of the cell in a small yard 25 meters long by about 8 meters wide.²⁴

b) Article 24 of Penitentiary Law sets that Educational, sociocultural and sports training activities are determined by the Board of Directors, based on individualised programmes prepared by the treatment boards.²⁵

²² Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2016, página 46. Available at: https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Anual_MNP_2016.pdf

²³ Lorena Nieto Serrano. Telephone interview on 26 June 2018. Lawyer. Specialist in Penitentiary Law. Madrid Bar Association.

²⁴ Julián Carlos Ríos Martín. Telephone interview on 26 June 2018. Lawyer. Lecturer in Criminal Law at Comillas Pontifical University. (ICADE).

²⁵ Spain, Head of State (Jefatura del Estado)(1979), General Penitentiary Law 1/1979, of 26 September (Ley General Penitenciaria) Press release, 5 October 1979, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1979-237087>

Sport activity has a great importance in the penitentiary centres. In some, as in Topas, there is a module dedicated to those who play sports. There is a federated football team whose opposing teams have to go to play to prison. Sports monitors, not always are part of the staff of the centre, belong to NGOs. Programmed departures is another important activity "destined to those inmates who offer guarantees of making a correct and adequate use of them.

Volunteer organizations that collaborate in the treatment of inmates usually participate in programmed departures. Normally the duration of these outings does not exceed two days, however, in some centers, such as those in Brieva or El Dueso, the route to Santiago de Compostela has been organized annually with groups of inmates. In Brieva, for example, they do it in six days (25 kms per day) on pilgrimage from Sarria (Lugo) with 10 inmates accompanied by 4 social workers and other volunteers who participate with great motivation.

NGOs collaboration is paramount in the management of these activities. Its entry into prisons is one of the most important changes in the evolution of the Spanish prison system. As for the activities, we find that although the offer seems to have improved, the truth is that the participation rates are not massive. The School is the one with more participants, others are the labor training and leisure-oriented activities such as painting or ceramics, sports, workshops or paid work. The most popular occupation of inmate's hours is going to the gym, even there are centres that do not have it.²⁶

Article 131.1 of Prison Rules provides that in accordance with the guidelines set by the management centre and the needs detected by the Prison Treatment Board, the most appropriate cultural, sports and support activities will be programmed to achieve the integral development of the inmates.²⁷

c) There are no common provisions for all regimes, just the general assertion included at article 25.2 of General Penitentiary Law according to which time will be distributed in such a way as to guarantee eight hours a day for rest at night, and time for the prisoners' spiritual and physical needs, rehabilitation treatment sessions, and work and cultural training activities.²⁸

There are cultural, educational and sports activities in all prisons, but some prisons give greater importance to activities than others. Concrete activities depend on each prison. In some prisons there is a swimming pool, in some others, films are shown. Access to education exists in all prisons, prisoners can go to school, study law or the specialty they choose. As for sports activities, they vary from one prison to another, for example The Real Madrid has a lot of presence in prisons, given that the Real Madrid Foundation collaborates with prisons.²⁹

d) *Open regime*: Article 86.1 and 86.4 of Prison Rules provides that inmates may leave the establishment to work, be with their family, receive treatment which will facilitate their social integration, and that the minimum length of stay in the centre is eight hours a day, except when the inmate voluntarily accepts the control of his or her presence outside the centre by means of telematic devices. Article 87.2 of Prison Rules sets that as a general rule they will enjoy weekend outings, at most from 4 pm on Friday until 8 am on Monday.³⁰

Semi open: Articles 77.1 and 77.3 of Spanish Prison Rules only provides that eight hours of night rest, with a minimum of two hours to devote to their own affairs, and enough time to attend cultural and therapeutic activities and maintain contact with the outside world will be guaranteed. It is added that the Board of Directors will

²⁶ Julián Carlos Ríos Martín. Telephone interview on 26 June 2018. Lawyer, Abogado. Lecturer in Criminal Law at Comillas Pontifical University. (ICADE). Alberto Aguilera²³

²⁷ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

²⁸ Spain, Head of State (Jefatura del Estado)(1979), General Penitentiary Law 1/1979, of 26 September (Ley General Penitenciaria) Press release, 5 October 1979, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1979-23708>

²⁹ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

³⁰ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

approve monthly the calendar of activities of the prisoners affected, in case this does not affect all the inmates of the centre.³¹

Closed regime: This regime includes two model systems:

1.- Closed Centres regime (for those convicts who show a manifest maladjustment to the common regimes): Article 94.1^a of Prison Rules sets that the inmates will enjoy a minimum of four hours a day going out to the courtyard. This number of hours **can** be extended up to three hours more for scheduled activities.

2.- Special departments: Article 93.1.1^a of Prison Rules provides that inmates will enjoy a minimum of three hours a day going out to the courtyard. This number of hours **can** be extended up to three more hours for scheduled activities.³²

e) Regimen cerrado: “Con carácter general se observó en los centros visitados una deficiente aplicación del Programa Específico de Intervención en Régimen Cerrado (PIRC), con una limitada o incluso inexistente realización de actividades, con ausencia de datos actualizados del Programa Individualizado de Tratamiento (PIT). También es común en estos departamentos, además de la limitada oferta de actividades, una escasa atención terapéutica o rehabilitadora y reducida actividad de escuela”.³³

Closed regime: “Generally speaking, the visited prisons indicated a low rate of application of the specific Programme for Intervention in a Closed Regime (PIRC), with limited or even nil activities, the absence of updated data in the individualised Treatment Programme (PIT) or initial valuation files or progress evaluation. A vast majority of the inmates interviewed did not know what the Programme was or had been informed about the possibility of participating in it”.³⁴

Recomendación no formal del Mecanismo Nacional de Prevención contra la Tortura: “En particular, la insuficiencia de personal dedicado al tratamiento de los internos (psicólogos, educadores, monitores ocupacionales, monitores

deportivos, etc.), dificulta en la práctica poder llevar a cabo una verdadera reinserción. Los responsables del tratamiento de los CP manifiestan a menudo que solo gracias a la colaboración desinteresada de las numerosas ONG que cooperan con instituciones penitenciarias se pueden llevar a cabo muchas actividades fundamentales para la rehabilitación e intervención psicosocial con los internos, incluido el propio PAIEM en muchos centros” “

Non formal National Preventive Mechanism against Torture Recommendation: “In particular, insufficient staff for the treatment of inmates (psychologists, educators, recreational supervisors, sports coaches, etc.) makes it difficult in practice to achieve actual reintegration. CP treatment managers often claim that it is only thanks to the voluntary collaboration of many NGOs, cooperating with prison institutions, that they are able to carry out many fundamental activities for inmate rehabilitation and psycho-social intervention, including the PAIEM itself at many prisons”.³⁵

³¹ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

³² Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

³³ Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2016, página 67. Available at: https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Anual_MNP_2016.pdf

³⁴ Spain’s National Preventive Mechanism against Torture. Annual Report 2016, page 67. Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf

³⁵ Spain’s National Preventive Mechanism against Torture. Annual Report 2016. Page 74. Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf

4. Solitary confinement

- a) What is the national standard set regarding solitary confinement? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- b) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- c) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

Please cite any relevant sources

a) Articles 42 and 43 of Spanish General Penitentiary Law provides that solitary confinement will not be enforceable until it is approved by the supervisory judge when lasting more than two weeks. However, there are cases in which it is possible to agree on the immediate execution of the sanction when the duration does not exceed two weeks.

The prisoner in solitary confinement will enjoy two hours a day of solo walking.³⁶ Same provision is included in articles 233, 235, 236.3, 253 and 254.5 of Prison Rules³⁷

The fulfilment of isolation sanctions in a cell lasting more than 42 days is considered degrading treatment, as has been declared by the Constitutional Court³⁸

b) Sanctioning regimes are common to the different prison regimes³⁹

Recomendación formal del Mecanismo Nacional de Prevención contra la Tortura de 15 de octubre de 2015: "Elaborar para todos los centros penitenciarios un protocolo de actuación médica en casos de aplicación de medios coercitivos de cumplimiento de la sanción de aislamiento, en el que se precise en qué debe consistir y en qué momento debe realizarse el reconocimiento médico inicial y posterior seguimiento médico de los internos, así como el contenido de los informes que se deben elaborar por los facultativos médicos, en línea con el criterio de esta institución manifestado en el parágrafo 187 del *Informe anual 2014 del Mecanismo Nacional de Prevención de la Tortura*".⁴⁰

Formal Recommendation of National Preventive Mechanism against Torture of 15 October 2015: "To produce, for all Prison Facilities, a medical response protocol which shall apply during the use of restraint measures or solitary confinement, and which specifies when the initial medical examination of the inmates and subsequent follow-up should be carried out and what these should involve, as well as the content of the reports which should

³⁶ Spain, Head of State (Jefatura del Estado)(1979), General Penitentiary Law 1/1979, of 26 September (Ley General Penitenciaria) Press release, 5 October 1979, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1979-23708>

³⁷ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

³⁸ Constitutional Court Ruling 2/1987, of 21 January 1987, available at: <http://hj.tribunalconstitucional.es/pl/Resolucion/Show/734>

³⁹ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

⁴⁰ Informe Anual 2015 del Mecanismo Nacional de Prevención de la Tortura. Página 101. Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/03/NPM_Annual_Report_2015.pdf

be prepared by medical staff, in line with the criteria of this institution stated in paragraph 187 of the *Annual Report 2014 on Spain's National Preventive Mechanism against Torture*.⁴¹

Recomendación no formal del Mecanismo Nacional de Prevención contra la Tortura: “En suma, el régimen cerrado presenta unas condiciones de dureza intensa, que se agravan en el caso de aplicación de las previsiones contenidas en la **Orden de Servicio 6/2016 de la SGIP** que se detalla a continuación. La Orden de Servicio 6/2016, de 10 de agosto de 2016, del Subdirector General de Tratamiento y Gestión Penitenciaria de la SGIP, sobre «Medidas de seguridad específicas para el control de internos incluidos en FIES 1 CD destinados en departamentos de régimen especial» tiene por objeto «la intensificación de las medidas de seguridad previstas en la normativa penitenciaria» de aquellos «internos que han protagonizado incidentes de carácter muy grave al intentar, directa y gravemente, contra la integridad física» de otros internos o de funcionarios o trabajadores del centro. Entre las medidas especiales de seguridad contempladas se encuentran las siguientes: salida al patio solo, ubicación en una galería del módulo de aislamiento en la que no se encuentre ningún otro interno, contacto mínimo con funcionarios y otro personal, cambio de celda de forma periódica, etc. No se establece ningún posible recurso ni plazo temporal máximo para la aplicación de estas medidas. El resultado, por tanto, es el total aislamiento del interno”.⁴²

Non formal Recommendation of National Preventive Mechanism against Torture: “In short, the closed regime indicates conditions of great hardship, which are aggravated when applying the provisions contained in SGIP Service Order 6/2016, described below. Service order 6/2016, of 10 August 2016, issued by Generally Deputy Manager for Treatment and Prison Management (SGIP) “on Specific security measures to control inmates covered by FIES 1 CD, assigned to departments under a special regime” aims to “intensify the security measures foreseen in prison regulations” for “inmates playing a leading role in very serious incidents, by directly and seriously harming the physical integrity” of other inmates or prison officers or workers”. These special measures include the following: alone time in the courtyard, assignment to a confinement Ward gallery where there are not other inmates, minimum contact with public officers and other staff, periodic change of cell, etc. There is no possible appeal or maximum time limit for application of these measures, consequently resulting in the inmate’s total isolation.”⁴³This second Recommendation is referred to General Secretary of Penitentiary Institutions Service Order 6/2016, of 10 August 2016, on Specific Security to control inmates covered by FIES 1 CD assigned to departments under a Special Regime. So it is referred to a specific regulation on some prisoners within the FIES group (in particular, FIES 1 CD). The issue affected now by this order has been subject to legal discussion in Spanish courts. FIES (acronym of Ficheros de Internos de Especial Seguimiento) Files on Inmates Under Close Observation is a system of files created by the Spanish Prison Administration for a greater control and surveillance of these prisoners, depending on the type of crime committed, their prison trajectory or their integration in criminal organizations. There are different categories under the F.I.E.S row. FIES 1 CD (Direct Control) is referred to inmates considered especially conflictive and dangerous, who have carried out very serious regimental alterations endangering life or integrity of officials, other inmates or personnel outside the institution. It was not created as a penitentiary regime, but as a database. FIES files are not still regulated by law⁴⁴.

It is important to note that Instructions and Service Orders lacks of obligatory force for third parties; in addition, they do not have nature of legal norms.⁴⁵

⁴¹ Spanish National Preventive Mechanism against Torture. Annual Report 2015 page 101, available at:https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Informe_Anuar_MNP_2015.pdf

⁴² Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2016, página 68. Available at: https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Anuar_MNP_2016.pdf

⁴³ Spain’s National Preventive Mechanism against Torture. Annual Report 2016. Page 68. Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf

⁴⁴ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

⁴⁵ Víctor Manteca Valdelande. (May 2015). Internal regulatory instruments of Public Administrations (Instrumentos reguladores internos de las Administraciones Públicas). Actualidad Administrativa, nº 5, Sección Práctica Profesional, Editorial LA LEY, available at

The application of the FIES regime implies a differentiation of regimes, within the closed regime, with restrictions of rights. This differentiation was not contemplated by the legislator and it is made using a hierarchically insufficient way.⁴⁶The principle of legality (article 25.2 of Spanish Constitution) implies that certain contents may only be enacted by a law and the modification was made through a Royal Decree⁴⁷

On March 17, 2009, the Supreme Court issued a judgement declaring null the FIES regulation established on Instruction 21/96, of December 16, ruling the FIES 1 group, on the ground that an instruction cannot affect rights and duties of the inmates because it lacks of the guarantees of legal standards.⁴⁸

Instruction 21/96 allowed inmates to stay up to twenty-one hours a day locked in the cell, alone, without having contact with any other person, stated that "prisoner will have breakfast and dine alone." The food will be facilitated through a trapdoor, without opening the door. Never more than two prisoners may go out into the courtyard together and they may never occupy adjacent cells (which implies their total isolation and absolute solitude) Each time the officials appear and the prisoner is in his cell, he must be placed at the back of the cell with visible hands (except in the hours of night rest). Officials must carry out hourly guard tours, during which they will turn on the lights or shine their flashlights inside the cell. All inmates are searched every day at the entrance and exit of the cell. In practice, it involves at least four daily searches. On March 17, 2009 the Supreme Court issued a judgement declaring null the referred Instruction, during the five years elapsed between the complaint against the Instruction and the judgement. The General Directorate of Penitentiary Institutions issued a new Instruction, 6/2006, in which was expressly replicated the text of Instruction 21/96.⁴⁹

Instruction 6/2006 is not in force since 2011. After Supreme Court declared the nullity of Instruction 21/96, there was a modification on the Royal Decree on Penitentiary Rules (Decree 419/2011, of 26 of March 2011) in order to provide regulatory coverage to FIES files. So Penitentiary Rules were modified by an amendment to article 6 with the following text: "Prison administration may establish files of inmates in order to guarantee the security and good order of the establishment, as well as the integrity of the inmates. It is guaranteed that FIES files does not imply a different (more strict) treatment for prisoners included in this files from the one that is determined to them by penitentiary regulation". However, these modifications continue being criticized because it is considered that the principle of legality (article 25.2 of Spanish Constitution) is still infringed, since the moment that this principle implies that certain contents may only be enacted by a law and the modification was made through a Royal Decree.⁵⁰

5. Access to healthcare

http://guiasjuridicas.wolterskluwer.es/Content/Documento.aspx?params=H4sIAAAAAAAAAEAMtMSbF1jTAAAKMDQxNjE7Wy1KLizPw8WYMDQ1MDEwMLkEBmWqVLfnJIZUGqbVpiTnEqAHkm_LU1AAAAWKE

⁴⁶Julián Carlos Ríos Martín "Files on Inmates Under Close Observation. Analysis of Regulatory Regulations, Grounds for their Illegality and Exclusion from the Legal System" (Los ficheros de internos de especial seguimiento (FIES). Análisis de la Normativa Reguladora, Fundamentos de su Ilegalidad y Exclusión del sistema legal

⁴⁷ Julián Carlos Ríos Martín. Telephone interview on 12 June 2018. Lawyer, Abogado. Lecturer in Criminal Law at Comillas Pontifical University. (ICADE).Alberto Aguilera23

⁴⁸ Available at <http://www.derechopenitenciario.com/comun/fichero.asp?id=2056>

⁴⁹ FIES Regime: Incidence of the Supreme Court Judgement of 11.03.2009. (Regimen FIES: Incidencia de la Sentencia del Tribunal Supremo de 11.03.2009). M^a Pilar Sánchez Álvarez. Lawyer. Available at: https://www.google.es/search?ei=dXclW_rlBMirU8XnscAH&q=Incidencia+de+la+Sentencia+del+Tribunal+Supremo+de+11.03.2009.+M%C2%AA+Pilar+S%C3%A1nchez

⁵⁰ Paula Paz Costa. Grado en Derecho 2015-16. Fundamental rights in the penitentiary system: The F.I.E.S regime. Los derechos fundamentales en el sistema penitenciario: El régimen F.I.E.S. Available at https://dugi-doc.udg.edu/bitstream/handle/10256/14237/Paz_Costa.pdf.pdf?sequence=1

- a) What is the national standard with regard to access to medical services in prisons? (E.g. do prisoners have prompt access to medical services within prisons or externally? Do prisoners have access to dentists and opticians?)
- b) Are there any special provisions relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly prisoners, the mentally ill, drug addicted prisoners etc.)
- c) Is access to healthcare in prisons regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes.
- e) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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a) Spanish law provides that medical health is guaranteed to all prisoners without exception and that this medical health is equivalent to that which is provided to the rest of the population. Penitentiary establishments will have a health 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 centers will also have the services of a gynaecologist. Efforts will be made to ensure to be present within prison those medical services whose demand is highest.⁵¹

Even that, the situation of deaf prisoners has been revealed to the Prison Secretariat by the Ombudsman, and the Secretariat have been holding meetings with organizations involved in hearing disabilities, currently continuing the proceedings.- Spanish Ombudsman alerted the General Secretary of Penitentiary Institutions about the situation of prisoners with auditory impairment. This Secretary has held meetings with organizations and associations involved. These conversations continue for the signing of a possible agreement in this regard.⁵²

b) Article 209.2 of Prison Rules provides that specialized assistance will preferably be ensured through the National Health System.⁵³

On 23 January 2016, General Secretariat of Penitentiary Institutions promulgated the Instruction on Penitentiary Attention to the Internals entering Medical Treatment which involves special suffering.

When a prisoner is undergoing chemotherapy, a recent transplant, or is in rehabilitation as paraplegic or other similar situations, regulation provided in article 86.4 of Penitentiary Rules shall be applied to him/she. This article provides the possibility of being controlled by telematic devices with his explicit consent, so the prisoner just stays in prison only for some controls or interviews⁵⁴

⁵¹ Spanish Ombudsman Annual Report 2017, page206

Available at https://www.defensordelpueblo.es/wp-content/uploads/2018/03/Informe_anual_2017_vol.I.1_Gestion.pdf

⁵² Spanish Ombudsman Annual Report 2017 page 206, available at https://www.defensordelpueblo.es/wp-content/uploads/2018/03/Informe_anual_2017_vol.I.1_Gestion.pdf

⁵³ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

⁵⁴ Spain, General Secretary of Penitentiary Institutions (Secretaría General de Instituciones Penitenciarias) (2011), Instruction 3/2006, of 23 January, on medical treatment which involves special suffering (Instrucción de la Secretaría General de Instituciones Penitenciarias sobre Atención penitenciaria a enfermos en Tratamiento medico de Especial Penosidad)

Psychiatric assistance depends on the agreement signed between the prison and healthcare administrations. Usually, psychiatrists visiting prisons handle a small number of appointments, generally focusing on updating prescription drugs and, exclusively, for those patients forwarded by the prison doctor. In other instances, no psychiatrist visits the CP, which is why, if this assistance is needed, inmates need to leave the prison.⁵⁵

General Secretariat of Penitentiary Institutions promulgated Instruction 8/2011, on "Comprehensive Care for the Elderly in the Penitentiary Environment" to improve the care of inmates over 70 years of age who present relevant pluripathologies, and those of any age with incapacitating processes or illnesses. This instruction addresses to all inmates over 70, to those over 60 who have an important multipathology and to inmates of any age who suffer a disabling disease. The objectives of this instruction are: the granting of the open regime in cases when inmates are not serving a sentence for very serious crimes, set an establishment for older inmates who do not have a family network in order to provide comprehensive support and adopt measures in all centers to improve socio-educational care and the quality of care of these elderly people.⁵⁶

This Instruction is not applied often. There are flagrant cases of elderly people over 70 years of age who remain in prison in difficult conditions. Regimental measures to improve habitability conditions are not observed. In fact, existing studies concerning the elderly in prison have concluded that it is necessary for Penitentiary Institutions to hire or appoint specialised personnel for psychomotricity, geriatric sports, or socio-cultural tasks; specific hours for seniors; specific hygienic elements such as nappies; expediting the processing of prosthetic requirements, etc.⁵⁷

Instruction on General Intervention plan on Drugs in the Penitentiary Institution provides a coordinated action of Security and Health prison areas to prevent the introduction of drugs inside prisons; it also includes a series of different actions for drug addiction treatment, considering the measures and programs recommended by the office for Europe of the WHO and the United Nations Office on Drugs and Crime. In addition it considers the creation of a commission to monitor the intervention plan on drugs. It also foresees an awareness and information campaign for all prison professionals⁵⁸

c) Access to medical services in prisons is provided in Article 36.1 of General Penitentiary Law⁵⁹

Available at: <http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/instruccionesCirculares/i-3-atencion-internos.pdf>

⁵⁵ Spain's National Preventive Mechanism against Torture. Annual Report 2016. Page 73. Available at:

https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Anual_MNP_2016.pdf

⁵⁶ Spain, General Secretary of Penitentiary Institutions (Secretaría General de Instituciones Penitenciarias) (2011), Instruction 8/2011, of 28 June, on Comprehensive Care for the Elderly in the Penitentiary Environment (Instrucción de la Secretaría General de Instituciones Penitenciarias sobre Atención integral a las personas mayores en el medio penitenciario) Available at: http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/instruccionesCirculares/CIRCULAR_8-2011.pdf

⁵⁷ **Luis Velázquez González.** "Elderly Persons in Prison: An Invisible Reality" (Los mayores: una realidad invisible). Subcommittee on Penitentiary Law of the General Council of Spanish Law. Available at: <http://www.abogacia.es/2016/05/05/mayores-en-prision-una-realidad-invisible/>

⁵⁸ Spain, General Secretary of Penitentiary Institutions (Secretaría General de Instituciones Penitenciarias) (2011), Instruction 3/2011, of 2 March 2011, on General Intervention Plan on Drugs in Penitentiary Institutions (Instrucción de la Secretaría General de Instituciones Penitenciarias sobre el Plan General de Drogas en las instituciones Penitenciarias) Available at: <http://www.institucionpenitenciaria.es/web/portal/documentos/instrucciones/index.html?pagina=5>

⁵⁹ Spain, Head of State (Jefatura del Estado)(1979), General Penitentiary Law 1/1979, of 26 September (Ley General Penitenciaria) Press release, 5 October 1979, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1979-237087>

Additionally, Provision Six of Law on cohesion and quality of the National Health System provides for the transfer of the services and health institutions dependent on Penitentiary Institutions to the Autonomous Communities for their full integration into the corresponding autonomous health services.⁶⁰

The Association for Human Rights of Andalusia (APDHA) has been denouncing the situation of penitentiary health and the problems that prisoners often have in order to have access to healthcare for more than ten years. One of the reasons that explains the dysfunctions of the system is that the primary care health network of prisons is isolated and managed by the General Secretariat of Penitentiary Institutions (SGIP). Health services urgently need to be transferred to the Autonomous Communities for full integration into the corresponding regional health services, as established in Law 16/03.⁶¹

d) There are no different provisions; medical services access is common to the different prison regimes

e) “La consulta médica en estos departamentos en ocasiones se realiza desde el exterior de la celda, a través de la puerta de barrotes, lo que impide el contacto directo con el interno y vulnera el derecho a la intimidad y la confidencialidad entre médico y paciente. La Administración debería garantizar que los médicos pudieran prestar atención sanitaria en unas condiciones de seguridad adecuadas, salvaguardando los referidos derechos de los internos”.⁶²

““Doctor’s visits in these departments are occasionally held outside the cell, through the barred door, preventing direct contact with inmate, in breach of the right of privacy and doctor-patient confidentiality. The Administration should guarantee that all doctors are able to provide healthcare in adequate security conditions, upholding inmate rights”.⁶³

“Los centros penitenciarios siguen sin disponer de una consulta de psicología clínica pues, aunque en los equipos de tratamiento se cuenta con psicólogos, el número de estos y la carga de trabajo hace imposible que se pueda desarrollar una consulta como tal”.⁶⁴

“Penitentiary Centres still lack clinical psychological assistance; although psychologists belong to the treatment teams, assistance as such cannot be provided given that they are few in number and are over-worked”⁶⁵

6. Special measures in place to protect juvenile prisoners.

⁶⁰ Spain, Head of State, Provision Six of Law 16/03 on cohesion and quality of the National Health System, of 28 May, (Ley de cohesión y calidad del Sistema Nacional de Salud) Press release, 29 May 2003, available at: Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2003-10715>

⁶¹ Safety in Prison. Association for Human Rights of Andalusia. (**Sanidad en Prisión**. Asociación pro Derechos Humanos de Andalucía). Available at: <https://www.apdha.org/sanidad-en-prision/>

⁶² Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2016, página 67. Available at: https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Anual_MNP_2016.pdf

⁶³ Spain’s National Preventive Mechanism against Torture. Annual Report 2016. Page 67. Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf

⁶⁴ Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2016, página 73. https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Anual_MNP_2016.pdf

⁶⁵ Spain’s National Preventive Mechanism against Torture. Annual Report 2016. Page 73 Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf

- a) Are there any legal instruments, such as a legislative act, internal prison regulations, manuals, policy papers etc. regulating the separation of juvenile prisoners from adults? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)
- b) What age category falls under this specific juvenile prison regime?
- c) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- d) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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a) There is a special law for minors that states a completely different criminal procedure and penitentiary system to the ordinary one. Accordingly, article 54 of this law foresees 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 persons who have reached the age of majority.⁶⁶

Besides the above, article 9.2 of ordinary penitentiary law states that young people under 21 years of age and, exceptionally, those who have not reached 25 years of age, shall be interned in apartments for young people.⁶⁷

Article 173.1 of Prison Rules sets that type of living of this apartments must focus on an intensive educational action⁶⁸

b) Article 14 of Juvenile Criminal Responsibility Act sets that centres regulated by the Juvenile Criminal Responsibility Act are basically for persons under the age of 18, and for those over that age in the following cases:

-When the minor on whom a measure of those established in this Act has been imposed reaches the age of majority, the fulfilment of the measure will continue until the proposed objective of the sentence for which it was imposed has been achieved.

-In the case of a closed regime measure, and the minor reaching the age of eighteen years without having completed its fulfilment, the Judge of Minors, hearing the parties, may order in a motivated resolution that compliance is carried out in an ordinary adult penitentiary centre, if the behaviour of the person does not meet the proposed objectives of the sentence.

-When the measures in a closed regime are imposed on anyone who has reached twenty-one years of age or, having been previously imposed, have not been completed when reaching that age, the Judge of Minors (Juez de menores) shall order its fulfilment in a penitentiary centre in accordance with the general regime for adults,

⁶⁶Spain, Head of State, Juvenile Criminal Responsibility Act 5/2000, of 12 January (Ley Orgánica Reguladora de la Responsabilidad Penal de los Menores) Press release, 13 January 2000, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2000-641>

⁶⁷ Article 9.2 of General Penitentiary Law 1/1979 of 26 September (Ley General Penitenciaria), Press release, 5 October 1979, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1979-23708>

⁶⁸ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

unless, exceptionally, the judge considers it convenient for the minor to stay at the juvenile centre considering it is convenient to the objectives proposed in the sentence.⁶⁹

c) For young people over 18 (included in the adult penitentiary system), article 176 of Prison Rules provides different modules or departments applicable to different detention regimes (open, semi-open, closed etc.) Article 99.1 of Prison Rules provides the inmates will be separated inside the Establishments, taking into account, as a priority, the criteria of sex, age and criminal history and, with respect to convicts, the treatment requirements. Article 99.4 sets that young people under twenty-one may only be transferred to adult departments when authorized by the prison Treatment Board, informing the Prison Supervision Court. So, the coexistence of young prisoners with old ones is allowed with these requirements. Article 176 of Prison Rules sets that youth departments will be diversified into different types according to whether the interns assigned to them are classified in open, semi-open or closed regime.⁷⁰

In some centres, there are absolutely separated departments for young prisoners up to 21 years of age. In special circumstances inherent to the personality of the inmate, this can be extended until 25 years. These departments do not exist in every prison⁷¹

Different Regimes apply to every prisoner. These departments do not exist in every prison, and when they do, usually young people in these departments are classified in semi-open regime⁷²

d) “En el examen de los expedientes disciplinarios y demás documentación se detecta, respecto del aislamiento provisional, que en algunas ocasiones había sido aplicado como medio de contención, aunque en el expediente disciplinario se comprobó que esa situación era definida y documentada como una medida cautelar de separación del grupo, sin tener en cuenta que las medidas cautelares se acuerdan y aplican en el marco y durante la tramitación de un expediente disciplinario, pero nunca para justificar una acción que se ha llevado a cabo antes. Esta deficiencia se ha podido comprobar en El Madroño (Madrid), Maliaño (Cantabria), El Limonar (Sevilla), Monteledo y Montefiz (Ourense), que han aceptado las Sugerencias realizadas para modificar esa forma de actuar”.⁷³

“In the examination of disciplinary files and other documentation it is detected, with respect to provisional isolation, that on some occasions it had been applied as a restraining measure, although in the discipline file was found that this situation was defined and documented as a precautionary measure of separation from the group, without taking into account that precautionary measures are agreed and applied in the framework and during the processing of a disciplinary proceedings, but never to justify a action that has been carried out before. This deficiency has been check in El Madroño (Madrid), Maliaño (Cantabria), El Limonar (Seville), Monteledo and Montefiz (Ourense), who have accepted the Suggestions made to modify this way of acting”.⁷⁴

⁶⁹Spain, Head of State, Juvenile Criminal Responsibility Act 5/2000, of 12 January (Ley Orgánica Reguladora de la Responsabilidad Penal de los Menores) Press release, 13 January 2000, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2000-641>

⁷⁰ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

⁷¹ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

⁷² Julián Carlos Ríos Martín. Telephone interview on 12 June 2018. Lawyer, Abogado. Lecturer in Criminal Law at Comillas Pontifical University. (ICADE).Alberto Aguilera23

⁷³ Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2016, página 85. https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Anual_MNP_2016.pdf

⁷⁴ Spain’s National Preventive Mechanism against Torture. Annual Report 2016. Page 85 Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf

“La inexistencia de registros informatizados y detallados de quejas y peticiones, incluidas las de atención sanitaria, que permita durante la visita una rápida fiscalización y valoración de, por ejemplo, tiempos de respuesta, clases de quejas, reiteración, soluciones dadas, etc. es generalizada en los centros visitados, así como la costumbre de no entregar a los menores una copia fechada y sellada de la petición o queja presentada, con la excepción de El Madroño (Madrid), en el que se les facilita un justificante de la presentación y en Monteledo (Ourense), donde cuentan con un Libro registro en el que se puede hacer un seguimiento de las quejas interpuestas y el formulario de queja o petición tiene un apartado en el que se hace constar cómo se han resuel ⁷⁵ “The absence of computerised and detailed records of **complaints and requests**, including healthcare -that would allow a fast audit and appraisal, for example, of response times, types of complaint, repetition, solutions granted, etc.- is generalised amongst the visited institutions, as well as the habit of not providing the young offenders a dated and stamped copy of each request or complaint submitted. The only exception is El Madroño (Madrid), where a filing receipt is provided, and Monteledo (Ourense), where there is a Register Book to follow up the complaints already filed; furthermore, the complaint or request form has a section to describe how the matter was resolved”. Spain’s National Preventive Mechanism against Torture.⁷⁶

7. Special measures in place to protect prisoners from violence

- a) Are any special measures in place to protect prisoners against violence, including sexual violence? (E.g. are prisoners supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do prisoners have access to a complaints mechanism?)
- b) Are there any special measures in place to protect LGBTI prisoners, who are particularly vulnerable to violence/sexual violence?
- c) Are these measures regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- e) Please, provide a link to the National Preventive Mechanism’s reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English) These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of--designated-npmb-by-regions-and-countries/>

Please cite any relevant sources

a) Internal prison security is regulated by penitentiary laws, but no special provisions for prisoners’ safety exist. Articles 65, 66, 67, 68, 69, 70 and 71 of Spanish Prison Rules provides among the security measures are the observation of prisoners, prisoner counts, registers, interventions, cell changes, controls. For specific security reasons, a complete strip search can be authorised by the head of services. Proportional use of coercive methods such as physical force, rubber fenders, appropriate action aerosols and handcuffs are authorised when there is no other less burdensome way. ⁷⁷

⁷⁵ Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2016, página 68. Available at: https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Anual_MNP_2016.pdf

⁷⁶ Spain’s National Preventive Mechanism against Torture. Annual Report 2016. Page 83. Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf

⁷⁷Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

Instruction 15/2011 of the General Secretary of Penitentiary Institutions on the Behaviour Normalisation programme. It foresees a programme of mediation in conflicts. It was firstly implemented in the penitentiary centre of Madrid III (Valdermoro), thanks to the initiative of Julián Ríos and his team from Comillas University (Madrid).⁷⁸

Instruction 16/2011, on Individualized Care Protocol for Inmates, allows inmates to have specific attention to their demands and avoid situations of conflict that may affect the safety of prison staff. Individualized Care Protocol for Inmates: the aim of this protocol is to set strategies that improve individual attention to inmates. For this purpose a catalogue will be written explaining to the inmates the role of each of the officials in order to help channelling their requests in an appropriate manner. An individualized attention schedule is established for the inmates. The hours of attention are extended to the afternoons, and it is provided the setting of a deadline for attending the requests. Material and human resources are also reorganized to care for inmates.⁷⁹

Instruction 6/2017 of the General Secretary of Penitentiary Institutions on Implementation Measures related to Specific Protocol of Action against Assaults in Prisons establishes preventive strategies to detect at an early stage the risk situations for the physical integrity of the penitentiary personnel through the better knowledge of the inmate population.⁸⁰ Although it is only directed at the prevention of aggressions by prisoners on prison officers. In any case, this instruction recalls the behaviour normalisation programme aimed at the most controversial prisoners established by Instruction 15 of 2011 with the aim of reducing antisocial behaviour and promoting prosocial considerations that can help these prisoners to integrate more effectively by developing attitudes of respect. The instruction also recalls the Individualised Care Protocol for Inmates, established by Instruction 16/11, which allows inmates to have specific attention to their demands and to avoid situations of conflict that may affect the safety of prison staff.⁸¹

b) Instruction 7/2006 of the General Secretary of Penitentiary Institutions on the Penitentiary Integration of Transgender Persons considers a procedure which has been established to advance in their normalised social integration. It is provided that with the mandatory reports on medical and psychological assessment and the recognition of the psycho-social gender identity, transsexuals without an official sex identity will be able to access modules and conditions of internment appropriate to their condition. Nevertheless, there are no specific special protection measures in case of aggressions.⁸² The referred Instruction does not provide a special module for transsexuals, but the right to be assigned to a module in accordance with their psycho-social gender identity⁸³

⁷⁸Instruction 15/2011 of the General Secretary of Penitentiary Institutions on the Behaviour Normalisation programme. Available at:

http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/instruccionesCirculares/CIRCULAR_15-2011.pdf

⁷⁹ Instruction 16/2011 of the General Secretary of Penitentiary Institutions on Individualized Care Protocol for Inmates, available at:

http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/instruccionesCirculares/CIRCULAR_16-2011.pdf

⁸⁰ Instruction 6/2017 of the General Secretary of Penitentiary Institutions of 5 September 2017 on Implementation Measures related to the Specific Protocol of Action against Assaults in Prisons. Available at:

http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/instruccionesCirculares/I-6-2017-Protocolo_agresiones.pdf

⁸¹ Instruction 16/2011 of the General Secretary of Penitentiary Institutions on Individualized Care Protocol for Inmates, available at:

http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/instruccionesCirculares/CIRCULAR_16-2011.pd

⁸² Instruction 7/2006 of the General Secretary of Penitentiary Institutions on the Penitentiary Integration of Transgender Persons, of 9 March 2006, available at:

<http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/instruccionesCirculares/I-7-transexuales.pdf>

⁸³ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justicia area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad

c) Articles 65 to 72 of Prison Rules provides regulation to protect prisoners from violence⁸⁴

Regarding detainees, article 5.3.b of Organic Law on Security Forces, provides that members of the Security Forces will watch over the life and physical integrity of the people they detain, or who are in their custody, and will respect the honour and dignity of these people.⁸⁵

d) No different provisions for this item.

e) Recomendación de 24 de noviembre de 2016. "Impartir formación específica sobre las especiales características del régimen cerrado a los funcionarios que vayan a prestar o estén prestando servicio en departamentos de este tipo."⁸⁶

Formal Recommendation of 24 November 2016. To arrange specific training on the special features of the closed regime, for public officers actually or potentially providing this service on facilities of this kind.⁸⁷

8. Responsible authorities

- a) **What authority is responsible for the provision of additional information requested under Article 15 of the EAW Framework Decision?** (Please specify whether there a central authority deals with these requests, if yes, please provide contact details, such as the name of the institution, a website, physical and email addresses, and a telephone number. In the absence of a central authority, who deals with those requests?)
- b) What authority is responsible for monitoring conditions of detention and putting forward recommendations?

Please cite any relevant sources

a) The Central Criminal Investigation Court judge is the authority of additional information requested under Article 15 of the EAW Framework Decision, in accordance with Article 15 of Organic Law complementing the European Arrest Warrant Act.⁸⁸

Contact details: Juzgado Central de Instrucción de la Audiencia Nacional
Calle Garcia Gutierrez, 1 28004 Madrid
<http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Audiencia-Nacional/>
Telephone number: 00-34- 91 400 70 53

y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900

⁸⁴ Spain, Ministry of Justice and Interior (Ministerio de Justicia e Interior) (1996) Royal Decree 190/1996, of 9 February, approving Prison Rules (Real Decreto 190/1996, de 9 de febrero, por el que se aprueba el Reglamento Penitenciario) Press release, 15 February 1996, available at: <https://boe.es/buscar/act.php?id=BOE-A-1996-3307>

⁸⁵ Spain, Head of State (Jefatura del Estado) (1986) Organic Law 2/1986, of 13 March, on Security Forces, (Ley Orgánica de Fuerzas y Cuerpos de Seguridad) Press release, 14 March 1986, Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1986-6859>

⁸⁶ Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2016. Página 123. Available at: https://www.defensordelpueblo.es/wp-content/uploads/2017/04/Informe_Anual_MNP_2016.pdf

⁸⁷ Spain's National Preventiv Mechanism against Torture. Annual Report 2016. Page 121A Available at: https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf

⁸⁸ Spain, Head of State, (Jefatura del Estado) (2003) Organic Law 2/2003, of 14 March, complementary to Law on the European Arrest Warrant (Ley Orgánica 2/2003, de 14 de marzo, complementaria de la Ley sobre la Orden Europea de Protección y Entrega) Press release, 17 March 2003, Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2003-5450>

b) The Spanish Ombudsman (Defensor del Pueblo) is the authority responsible for monitoring conditions of detention and putting forward recommendations. In addition to its own functions, Spanish Ombudsman (Defensor del Pueblo) performs the specific function as National Preventive Mechanism, in accordance with Organic Law 1/2009 of 3 November 2009. This law introduces a single final disposition in accordance to which it is provided that The Spanish Ombudsman shall exercise the functions of the National Mechanism for the Prevention of Torture ⁸⁹

When firming Organic Act 2/2003, dated 14th March, complementing the European Arrest Warrant Act, Spain decided to assign National Preventive Mechanism functions to the Ombudsman, unlike other countries. For example France decided to create a new body as the General *Controller* of Places of Deprivation of Liberty. It is a question of internal organization of work. ⁹⁰

⁸⁹ Spain, Head of State, (Jefatura del Estado) (2009) Organic Law 1/2009 of 3 November, complementary to law of reform of the procedural legislation for the implementation of the new judicial office by which Organic Law 6/1985, of July 1, of the Judicial Power is modified (Ley Orgánica complementaria de la ley de reforma de la legislación procesal para la implantación de la nueva oficina judicial por la que se modifica la ley Orgánica 6/1985, de 1 de Julio, del Poder Judicia) Press release, 4 november 2009, available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2009-17492>

⁹⁰ Andrés Jiménez. Fact-to-face meeting on 29 May 2018 with the Chief of the Security and Justice area of The Spanish Ombudsman. Former coordinator of Spanish National Preventive Mechanism against Torture 2010-2017. (Jefe de Seguridad y Justicia del Defensor del Pueblo. Ex coordinador del Mecanismo Nacional de Prevención de la Tortura 2010-2017) Paseo Eduardo Dato 31. Madrid Telephone number: 00-34- 91 432 7900