



**COORDINADORA PARA LA PREVENCIÓN
DE LA TORTURA**

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REPORT TO THE COMMITTEE AGAINST TORTURE

ON THE SPANIARD GOVERNMENT ANSWERS TO THE CAT QUESTIONS FOR THE 5TH PERIODIC REPORT

2009 October

The following Report is a Resume in English of the complete Report in Spanish made to help de CAT members to understand the reality that our *Coordinadora para la Prevención de la Tortura* is denouncing. In this resume we include all figures and tables that you can find in the complete Report as well as all the quotes and references to annexes to enlarge information with concrete cases, testimonies and documents. However the quantity of information is so broad that we have had time for translating into English this Resume.

We also want to underline that we present our Reports (the complete Spanish one as well as the English resume) as a critic to the Spanish Government answers to de CAT questions (document CAT/C/ESP/Q/5/Add.1), thus we follow the same structure and we use the same numeration and references of issues, though we do not answer to some of the questions because they do not fit within our *Coordinadora* daily work.

Being born in 2004 November, nowadays the *Coordinadora* is configured by the following Associations:

- *Acció dels Cristians per l'Abolició de la Tortura (ACAT)*
- *Alerta Solidària*
- *Asociación APOYO*
- *Asociación EXIL*
- *Associació Catalana per la Defensa del Drets Humans*
- *Associação Contra a Exclusão pelo Desenvolvimento*
- *Asociación Contra la Tortura*
- *Asociación para la Defensa de los Derechos de la Infancia*
- *Asociación Libre de Abogados*
- *Associació Memòria Contra la Tortura*
- *Asociación Pro Derechos Humanos de Andalucía (APDHA)*
- *Asociación de Solidaridad y Apoyo a los Presos de Aragón (ASAPA)*
- *Behatokia (Euskal Herriko Giza Eskubideen)*
- *Centro de Asesoría y Estudios Sociales (CAES)*
- *Centro de Documentación Contra la Tortura (CDDT)*
- *Comissió de Defensa del Col.legi d'Advocats Barcelona*
- *Comité Anti-Sida de Lugo*
- *Concepción Arenal*
- *Coordinadora Antirrepressiva de Gràcia*
- *Coordinadora Contra la Marginación de Cornellá*
- *Coordinadora de Barrios de Madrid*
- *Coordinadora Estatal de Solidaridad con las Personas Presas (CESPP)*
- *Esculca (Observatório para a defesa dos direitos e liberdades)*
- *Eskubideak (Euskal Abokatuen Elkarte)*
- *Etixerat (Euskal Errepresaliatu Politikoen Elkarte)*
- *Federacion de Asociacions de Loita contra a Droga*
- *Federación Enlace - Fundación Érguete*
- *Gurasoak*
- *Grupo 17 de marzo (Sociedad andaluza de juristas para la defensa de los DDHH)*
- *Independientes*
- *Institut Drets Humans de Catalunya*
- *Justicia i Pau*
- *Movemento polos Dereitos Civis*
- *Observatori del Sistema Penal i els Drets Humans de la UB (OSPDH)*
- *PreSOS Extremadura*
- *PreSOS Galiza*
- *Rescat*
- *SalHaketa (Bizkaia)*
- *SalHaketa (Araba)*
- *Sos Racisme Catalunya*
- *Torturaren Aurkako Taldea (TAT)*
- *Santurtziko Torturaren Kontrako Taldea*
- *Subcomisión de Penitenciario*
- *Xusticia e Sociedade*

PRELIMINARY QUESTION:

In several answers the Government appeals to the Human Rights National Plan (PNDH), passed as Parliament Act in 2008 December, as his solution to problems. We want to point out on that topic that the PNDH has received a lot of critics from different Human Rights Associations.¹ Our *Coordinadora* made public an “Open letter” to the Government Political Vice-President, Miss Fernández de la Vega entitled “*Comentarios al borrador del Plan Nacional de Derechos Humanos*”² with our main critics: First, this PNDH has not been discussed with Human Rights Associations. Second, the PNDH does not include clear objectives, or measures, or budgets nor timing for the next years though it is supposed to do so. Third, there is no concrete measure to avoid or persecute tortures as a result of the Government statement that says that torture does not exist in Spain. For these reasons we consider the PNDH a declaration on intentions and not a real Law (as it is supposed to be). Even more, there is a Parliament resolution that obliged the Government a concrete program to developed the PNDH with timings, budgets, objectives and measures before 2009 October 1st, but nothing has been done on that question, though the own Government accepted this resolution.³ Thus, our critics to the PNDH presented last year are today the same but stronger.

QUESTION – 1: ON POLICIAL CUSTODY

State Secretariat for Security Instruction 12/2007, from September 14th, on State Security Forces required behaviours to guarantee under custody people’s rights was a theoretic advance on that issue. This Instruction means a unification of Security Forces internal rules, its adaptation to international and national legislations and the incorporation of innovations such as video recordings on police dependencies that must look for reducing or disappearing tortures and ill-treatments to detainees. But, two years after their implantation, in practice Instruction 12/2007 is not fulfilled: nowadays, police corps do not inform detainees about their right for *habeas corpus*, and they do not spend in police dependencies the less possible time before being carried to the Judge, and there are a lot of police dependencies with no video recording.⁴

1.a.- Detainees under Incommunicado Detention, as it is said in the Criminal Procedure Act (LECr) arts 520bis and art 527, have seriously restricted their rights: Right to a personal legal council is limited by LECr art. 527: “*Held incommunicado detainees or prisoners could not ensure this chapter rights, except those in article 20, with the following modifications: a) Their lawyer will always be an office one; b) They will not have the right of a previous interview with their lawyer as it is said in article 6.c, what it means, the public lawyer will interview with the detainee when formalities are fulfilled.*”. This lack of communication with a trust lawyer and the fact that the interview have to be hold after police formalities are fulfilled means detainees defencelessness and a serious danger of tortures or ill-treatments. It also means the impossibility of an immediate denunciation on Court as detainees are never going to have a private interview with their lawyers until Incommunicado Detention is over.

1.b.- On 2006 December 13th National Audience 5th Court Titular Instruction Judge Mr Baltasar Garzón, established several rules to prevent tortures and ill-treatments to detainees under Incommunicado Detention, among them, the possibility of being visited in police stations by a medical doctor elected by the detainee. Such measure is only

¹ A Manifiesto from Catalunya’s Associations can be seen in: <http://www.descweb.org/?q=es/node/248>

² We present this letter as ANNEX num. 1.

³ See Parliament Constitutional Commission Sessions’ Diary of 2009 June 17th.

⁴ A full exam of Instruction 12/2007 can be seen in ANEX num. 2.

applied when the detainee's lawyer asks for it and only three Judges (Baltasar Garzón, Fernando Andreu y Santiago Pedraz) over six within the National Audience have accepted this measure. During the 2007-2009 period in 169 incommunicado detention cases the "Trust doctor" has been demanded but it has been accepted only 77 times (a 45'6%) and being denied the other 92 times. Over these 77 visits, 30 cases torture and ill-treatments have been denounced. In all visits the National Audience Forensic Doctor has partner the "Trust doctor", and has carried out the medical exploration. Thus, the trust doctor has been only an observer of the official Forensic exploration. It has been pointed out by the "Trust doctors" that the forensic explorations have been sometimes followed by security cameras⁵ and, one time, policemen opened the room door, breaking forensic exploration confidentiality and lobbing detainees and trust doctors.⁶

1.c.- *Vid. Supr.* about Instruction 12/2007.

1.d.- Spain has made public through its Human Rights National Plan (PNDH) that "*legal and technical measures would be taken to accomplish the recommendations of Human Rights Organizations to record on video or other audiovisual systems all the permanence time within police dependencies of detainees under incommunicado detention*". On this issue two questions have to be pointed out: firstly that after the National Audience new rules on Incommunicado Detention (see 1.b), the National Police Corp has reported to that Court that it is impossible to record incommunicado detention period as result of a lack of technical resources.⁷ Though they knew it was impossible, National Audience Judges have gone on ordering those video recordings without any other consideration. Secondly, in 2005 December, the Basque Government Interior Counsel (the regional equivalent to the Interior Ministry) established a protocol to record detainees stays within police dependencies to avoid tortures and ill-treatments. This protocol has not been made public, thus they are unknown the technical sources used in it. Furthermore, these recordings are not available to the detainees' lawyers when they have asked for them after a torture complain.⁸ Finally, the new Basque Interior Counsellor, Rodolfo Ares, has stayed that these recordings are no necessities and useless, ignoring the recommendations of the International Institutions (such as the CAT ones), as well as the Basque Parliament accord on this issue.

1.e.- The National Audience, the attendant Court over these situations, uses to accept declarations under incommunicado detention as "*fuerza de prueba*" (circumstantial evidence) and not as "*prueba de cargo*" (conclusive evidence). Thus, the detainee's declaration alone is not enough for a guiltiness sentence. It is needed an "*elemento corroborador*" (confirmation element) as proving evidence of the declaration veracity. This confirmation element must be objective and external to the own declaration. But this jurisprudence has been changed by the Supreme Court 1215/2006 sentence of 2006 December 4th that accepts detainees' declarations under incommunicado detention as proving evidences if Constitutional rights have been read to detainee, and if the statement has been made in presence of the public lawyer, and if the detainee's declaration is confirmed during the trial with the intervening police agent's statement.

⁵ In the Guardia Civil police station in Tres Cantos

⁶ In the Canillas General Information police station of the National Police.

⁷ This happened during Iker Agirre Bernal's detention by the National Police in Port Bou in 2007 January 25th. His complaint is been carried in the 14th courtroom of Barcelona's First-instance Court as Preliminary proceedings 5397/07.

⁸ This happened after Manex Castro Zabaleta detention by the *Ertzaintza* (Basque police) in Villabona on 2009 March 1st.

That means that declarations obtained under incommunicado detention could be used as only evidence to support a culpability sentence, although the detainee denied it in Court and although the detainee could denounce that this declaration was obtained through torture or ill-treatment. The lack of a judicial investigation about the torture complain before the sentence is firm closes the circle of this system. This means that torture and ill-treatments under incommunicado detention are a part of the investigation and trial of “terrorism crimes”. In fact the Basque Parliament passed a non-law proposal asking to the “*National Audience to suspend and archive all juridical formalities where torture or incommunicado detention had been applied*”.⁹

QUESTION – 2: ON INCOMMUNICADO DETENTION

The LECr establish in arts. 520bis and 527 which rights are restricted to people under incommunicado detention with “terrorism crimes” accusations as the right to a trust lawyer, the right to notify the detention to their relatives as well as the place they are under custody, or the right to a private interview with their lawyers. Incommunicado detention can last a maximum of 72 hours that can be demur other 48 hours. Furthermore, after these 120 hours in the police station, the Judge can establish incommunicado imprisonment for other 8 days after the last legal changes.¹⁰

In the 2002 to 2008 period 656 people have been arrested under incommunicado detention. Of these, 445 denounced torture and ill-treatments (67’8%) and 310 presented a judicial complain (47’2%). Of total detainees under incommunicado detention, 67 (10’2%) lasted less than 48 hours and 589 (89’8%) lasted more than 48 hours hold incommunicado. 38 people (5’8%) lasted under incommunicado imprisonment after being in Court with no possibility of interview with a trust lawyer. In this period of incommunicado imprisonment we have no torture complains, but we are sure that this time is enough for previous under police custody torture evidences or signals to disappear. You can see figures on that point in the next table:

YEAR	DETAINEES HELD INCOMMUNICADO			TORTURE ALLEGATIONS			JUDICIAL COMPLAINTS		
	Women	Men	Total	Women	Men	Total	Women	Men	Total
2002	27	156	183	18	112	130	14	84	98
2003	62	86	148	22	71	93	13	48	61
2004	18	56	74	15	41	56	8	22	30
2005	16	46	62	16	36	52	13	27	40
2006	1	19	20	1	3	4	1	3	4
2007	11	63	74	2	43	45	0	30	30
2008	24	71	95	19	46	65	14	33	47
TOTAL	159	497	656	93	352	445	63	247	310

On that base we stay that the persistence of the incommunicado detention supports the systematic use of torture, that it is denounced by a 67’8% of detainees under this regime. We also stay that there is proportionality between the intensity of torture techniques and the time lasted under incommunicado detention and imprisonment.

⁹ Basque Parliament Non-law Proposal of 2006 December 1st.

¹⁰ Organization Act 15/03 of 2003 November 25th.

Checking the presented testimonies and denounces, we have evidenced the use of physical violence, asphyxiation techniques, exhaustion techniques, sensorial aggression or privation techniques, psychological methods as threatening and humiliations. We want to point out the gender discrimination used during torture sessions that use to have a bigger sexual character with women as rape simulations or sexual penetrations with different tools are used as torture techniques.¹¹

But in many cases, when the torture complaint is presented during declarations in the National Audience, Judges use not to order enquiries because it is not the competent Court. Later or, in the proper First-instance Court complaints are not accepted because they have been presented late.¹² Only a 33'8% of the complaints are open with ordered enquiries. Only a 29% of the complainants have been asked to declare in Court. A 54% of allegations have been closed with no order enquiry. Prosecutors' Office does not use to order any enquiry and, as norm, ask for allegations close or suspension. No policeman or Guardia Civil has been convicted and only a 10% of the accused officials have been charged. In most cases Courts even refuse officials' identification enquiries.¹³ In the following table you can see the complaints that are been enquired nowadays an in which Courts they are:

	WOMEN'S COMPLAINTS	MEN'S COMPLAINTS	TOTAL	%
Bilbao	2	8	10	9'52%
Gasteiz	1	2	3	2'85%
Donostia	1	15	16	15'23%
Iruñea	2	11	13	12'38%
Madrid	7	31	38	36'19%
Others	2	4	6	5'71%
Constitutional Court Appeal	4	10	14	13'33%
ECHR, Strasbourg	1	4	5	4'76%
TOTAL	20	85	105	100%
%	16'66%	83'33%	100%	100%

QUESTION – 3: ON TERRORISM CHARGES:

It must be remembered that UN Committee for Human Rights in its Report for the 5th period on Spain has stayed that the definition of terrorism in Penal Code articles 572 to 580 has a potentially excessive reach that could violate several Human Rights.¹⁴ The Spanish Government rejected this conclusion staying that the Committee observations were unbalanced because they were based on distorted opinions, and they ignored the Government oral and written contributions.¹⁵ In a similar way to the Committee, the Special Rapporteur on the promotion and protection of Human Rights and fundamental Freedoms while countering terrorism has expressed his worries about the Spanish against-terrorism legislation.¹⁶

¹¹ See the ANNEX num. 4.

¹² This happened to José Javier Oses. Arrested in 2007 November 21st, he presented his allegation during his declaration in Central Criminal Court num. 3 with Judge Fernando Grande Marlasca. But the complaint was not opened, a year later when he moved to other Court to confirm the complaint it was not accepted. See ANNEX num. 13.

¹³ In ANNEX num 3 you can see several cases. You can also see in our annual Reports David Brum Martinez case (arrested in 2003 November 18th whose complaint was examined and closed by 29th courtroom of Madrid's First-instance Court as Preliminary proceedings 1766/2004) or Jon Otegi Eraso case (arrested in 2002 October 8th and whose complaint was carried on 8th courtroom of Madrid's First-instance Court as Preliminary proceedings 4084/2003).

¹⁴ As it can be seen in CCPR/C/ESP/CO/5, paragraph 10.

¹⁵ As it can be seen in CCPR/C/ESP/CO/5/Add.1, in page 2.

¹⁶ As it can be seen in A/HRC/10/3/Add.2.

Again, the Spanish Government answer to this report rejected the opinions and recommendations of the Special Rapporteur that questioned the Spanish legal framework.¹⁷ The Government answers confirm that nothing has been done to solve this problem or to implement the International Institution recommendation as they do not accept them. On the other hand Penal Code articles 572 to 580 are used in a broader sense nowadays. In the last summer, the exhibition of ETA prisoners' photos by their relatives has been forbidden and charged as terrorism extolling. The own Special Rapporteur, Mr Martin Scheinin, has criticized this measure in a public conference last October. His opinion was immediately answered by the Basque Government.¹⁸

QUESTION – 4: ON SEXUAL ABUSES UNDER STATE CUSTODY:

The issue of sexual abuses to women under State custody worries us very much. On this reason the Government answer to the Committee contains two main problems: firstly it recognizes that there are no concrete measures for protecting imprisoned women from abuses because “*no professional will tolerate this behaviour without acting and denouncing*”. But when these abuses have been reported or denounced by imprisoned women, prison guards' behaviour was to attack the complainants and to protect their workmates. Some times the complainant women have suffered reprisals, as it happened with the four women that denounced sexual harassment in Nanclares de Oca prison in 2005.

Secondly, the Government answer speaks only about women in Prison, but other women under State custody have denounced sexual abuses in Foreigners Internment Centres (CIE), Minors Internment Centres, Police Stations, etc. Though these women are not imprisoned, they are Freedom deprived and under State custody. By being so, they should be included in this paragraph. On that base, our *Coordinadora* has known about 81 women denouncing sexual harassment or abuses or rape under State custody from year 2000 to 2008. In the same period, 2 transgender people and 47 men presented similar complains, in total, 130 people. More information about each case can be seen in ANNEX num. 4.

QUESTION – 5: PROLONGED ISOLATION:

On 2009 March 17th, the 5th courtroom of the Supreme Court sentenced that the General Direction of Penitentiary Institution Instruction 21/1991 must be abolished.¹⁹ This Instruction “*On security, control and prevention rules for conflictive inmates*” established the Inmates Kept under Close Supervision (FIES) system and regulates the daily life of long-term isolated inmates. One of the reasons of the Supreme Court sentence was that for a daily life regulation an Instruction is not enough and a Parliament Act is needed. However the current FIES system is regulated by the Instruction 06/2006, which also attack the spirit of the Supreme Court sentence. In this new Instruction, five types of FIES are established, and it is FIES-I (Direct Control) the one that confirms the isolated imprisonment in isolated cell, with only 2 or 3 hours per day out of cell and other restrictions that could last for years.²⁰

¹⁷ As it can be seen in A/HRC/10/G/2, pages 3-4.

¹⁸ See Basque Press on 2009 October 6th: *El Correo, Gara, Público...*

¹⁹ Appeal to the Supreme Court 9576/2004 presented by the Association “*Madres Unidas contra la Droga*” as result of the 2001 allegation.

²⁰ As ANEX num. 5 we present the FIES-I procedures for Madrid-VII penitentiary centre. We also present a manual for prison guards, in use nowadays, speaking on FIES-I where it is said that FIES though it is not legally recognized is use in practice, and the current FIES' Instruction 06/2006.

But out of the FIES system, isolation is used in prisons as punishment in base of LOGP art 42 and art 43, and Penitentiary Regulation (RP) art 72 and art 243. It must be pointed out that disciplinary solitary confinement is preventive, thus it is used from the very beginning of the sanction proceeding, though this one could end closed without evidences. Even more, Human Rights Associations working on this issue believes that imprisonment isolation is largely used with no control as far as this Associations are not allowed to visit isolation cells and departments within prison. Thus we have no control on those areas which represent the majority of the 14'7% of torture complaints compiled by the *Coordinadora* in our reports. It is also impossible to independent forensic doctors to get within the isolation departments to exam the complainant inmates. For some inmates isolation is not only a temporary punishment but a daily way of live within the "closed regime" o 1st penitentiary degree which means a prolonged isolation. In a 2002 study on this issue it was found out that the continuous isolation time for this inmates is 36 months (though legislation stays a maximum of 40 days of solitary confinement). The majority of closed regime inmates were also FIES-I. They use to have 2 or 3 prison transfers each year. They use to have problems or suspensions of their visits, etc.²¹

In conclusion, we can stay that the prolonged solitary confinement still exists in the Spanish penitentiary system. It means for imprisoned people a restriction of their Rights and an attack against their physical and psychological health and it also means a breach of the own Spaniard legal framework.

QUESTION – 7: ON FOREIGNERS DEPORTATIONS:

COLLECTIVE DEPORTATIONS: it has been reported by several Human Rights Associations that there have been several collective deportations in cooperation with Morocco, Mauritania and Mali police forces.²² Furthermore, Spanish National Policemen ill-treatments have been denounced by deported foreigners. In other cases, foreigners were expelled without knowing that they were been deported, as the own Police Unions has recognized.²³

ILL-TREATMENTS DURING DEPORTATION: There are a lot of testimonies of ill-treatments during deportation. As example we attach to this report an annex with different testimonies of people beaten by policemen in Barajas Airport and in Madrid CIE when they refused to get into the airplane to be deported.

²¹ This study was published: RÍOS MARTÍN, J. C. & CABRERA CABREA, P. J. *Mirando al abismo: El Régimen Cerrado*. Madrid, Edit. Universidad Pontificia de Comillas y Fundación Sta. María, 2002.

²² See the APDH-Andalucía Reports: *Derechos Humanos en la Frontera Sur 2008*, <http://www.apdha.org/media/fronterasur2008.pdf>; *Derechos Humanos en la Frontera Sur 2007*, <http://www.apdha.org/media/informeinmigra07.pdf>; *Derechos Humanos en la Frontera Sur 2006*, <http://www.apdha.org/media/fronterasur2006.pdf>; *Derechos humanos en la Frontera Sur 2005*, http://www.apdha.org/index.php?option=com_content&task=view&id=236&Itemid=45; and International Amnesty Reports "*Nadie quiere tener nada que ver con nosotros*" *Arrestos y expulsiones colectivas de migrantes a quienes se ha negado la entrada en Europa* <http://www.amnesty.org/es/library/asset/AFR38/001/2008/es/4d77fa38-49f0-11dd-9394-c975c4bd488d/af380012008spa.pdf>; *España y Marruecos: Falta de protección de los derechos de las personas migrantes. Ceuta y Melilla un año después* (octubre de 2006, Índice AI: EUR 41/009/2006). And CEAR Reports *La situación de las personas refugiadas en España - Informe 2009* <http://www.cear.es/files/Informe%202009%20de%20CEAR.pdf>; *La situación de los refugiados en España, INFORME 2007* <http://www.cear.es/upload/Informe%202007%20de%20CEAR%20.pdf>.

²³ See 2006 June 4th press: http://www.elpais.es/articuloCompleto/elpepiesp/20060604elpepinac_7/Tes/ or http://www.abc.es/20060604/nacional-nacional/sindicatos-policiales-reconocen-senegaleses_200606040315.html

INCIDENTS DURIN SEA RESCUES: We have also received denounces of ill-treatments during sea rescue operations with foreigners in bouts intercepted by Guardia Civil's patrol-ships before landing in Spain. In 2007 January 30th 372 people within the *Marine I* were towed a Spanish Coast Guard ship to the Mauritanian Coast where Spanish policemen interrogated them and imprisoned them with no legal counsel and no rights recognition.²⁴ Several times, immigrants have died during rescue operations, as it happened in 2007 July 18th when 88 people died drown in the sea an only 48 were rescued near Canarias Islands coast. A internationally known case is the Laucling Sonko's one: this Senegalese man died close to the Ceuta's coast after he was intercepted by a Guardia Civil's patrol in Spanish home waters and abandoned in Moroccan home waters with his lifeboat disabled a hundred metres away from the coast. His family has started a civil action against the Spanish State which has been allowed by the CAT in 2008.²⁵

ASYLUM RIGHT: As immigrants who are deported are no informed of their civil rights, the asylum right has been hardly restricted. As the Spanish Commission of Refugees Aid reported in 2007 asylum petitions have went down from 9.490 in 2001 to 5.297 in 2007. In 2006 only the 3'72% of the claimants were recognized as refugees. In 2008, the 91'39% of the claims was rejected.²⁶

QUESTION – 8: NON ATTENDED MINORS DEPORTATION:

Although the Spanish Government stays that non attended immigrant minors' rights are guarantied, there are more than a hundred sentences from different Courts denying this affirmation as they order to suspend the repatriations decided by Governor's delegations. Many times these judicial suspensions come when the repatriation has been carried out. It is also false the Government affirmation that stays that immigrant minors are listened by the Administration. Again it has been by judicial sentences that minors have seen some of their rights recognized or age recognition trials ordered. Many times, even original passports' information about age are ignored to carry out the deportation process on the base that the minor is not so.²⁷

Finally, it has been also reported that many minors deported to Morocco are abandoned in Moroccan police stations where is well known that they could be punished or fined by illegal exit of the country. A high percentage of these repatriations are carried out without informing to minors' relatives or governmental authorities.

QUESTION – 10: ABOUT PRESCRIPTION IN TORTURE OFFENCE:

Torture offence is regulated in Criminal code (CP) 2nd book, 7th title, article 174 as an ordinary crime, thus it will prescribe, following the CP art. 131, when 15 years have passed. However, as we have said before, much times tortures and ill-treatments are prosecuted as misdemeanours or minor offences ("*faltas*" in Spanish) and no as offences or felonies ("*delitos*" in Spanish), then they could prescribe in 6 months.

In our annual reports we have got the following figures on Security officer condemned on different offences and minor offences since 2002 October to 2008 October:

²⁴ See the Report "*Marine I - El gobierno español responsable de la violación de los derechos humanos*". APDH-Andalucía,

http://www.apdha.org/index.php?option=com_content&task=view&id=171&Itemid=63

²⁵ This demand was withdrawn by Cadiz Provincial Audience in 2008 October.

²⁶ See CEAR Reports quoted before.

²⁷ See ANEX num 6. There you are several sentences as examples.

CRIME TOPOLOGY	Total
Torture and Ill-Treatments Offence	15
Injuries Offence	106
Offence against moral integrity	18
Sexual offence & Rape	10
Illegal Detention & injuries	13
Other offences (negligent injuries, perjury, coercion, etc.)	9
Homicide	1
Reckless homicide	2
Recklessness caused death minor offences	7
Injuries minor offences	159
Other minor offences (humiliating treatment, ill-treatments, etc.)	14
TOTALS	350

But what we are really speaking about here is torture impunity: it is very difficult to carry out a torture offence trial. When it is done, it takes a lot of years as inquiries are delayed and allegations confirmed. Finally, if the punishment is inferior to two years of imprisonment and the charged has no previous criminal record, he is not going to prison. Sometimes the same Court that passes sentence asks for pardon in the same decree. Other times, Politic personalities ask for pardons and Governmental authorities give then on their own. The final result is that beyond prescriptions, torture is an unpunished crime in Spain.

QUESTION – 11: ON PENALTIES DISTINCTIONS IN TORTURE OFFENCE:

First of all, it has to be pointed out that, usually, torture complaints are processed in first instance courts as injuries or coercion offences and not as torture ones. This situation has been recognized by the General Public Prosecutors' Office in his 2007 annual memorandum.²⁸ Secondly, since Criminal Code included in its article 173.1 a punishment of six months to two years of imprisonment by offences against moral integrity and humiliating treatment, the number of trials on torture offence has decreased drastically as the number of security officers convicted on humiliating treatment offence has risen.²⁹

However, we are worried about the Judicial system behaviour on this issue because we have seen several cases of Courts asking for pardon for convicted police officers as it happened with the Supreme Court sentence 1081/2006 of November 3rd that asked for pardon for two National policemen convicted with the minimum punishment because it was too much rigorous. Even worse, the 14th First-instance criminal court of Valencia stayed in a 2005 September closing file sentence that "complaints are looking for attacking the daily work of Public Security Forces". It also stayed that "Human Rights are used as a denouncing argument by those whose behaviour has been the first in attacking others' Human Rights".³⁰

QUESTION – 12: ON TORTURE COOPERATION OFFENCE:

The Criminal Code article 176 stays that the same punishment that for torture and ill-treatment offenders would be impose to those officers or authorities that had

²⁸ See "Memoria de la Fiscalía General del Estado, año 2007", pages 997-998 in <http://www.fiscal.es>

²⁹ As an example, in 2008 December the Provincial Audience of Palma de Mallorca refused to charge two policemen on torture, but it did it on illegal detention and injuries.

³⁰ See Coordinadora para la Prevención de la Tortura Report of 2006, page 270 in: <http://www.prevenciontortura.org/spip/documents/2006-InformeCPT.pdf>

allowed or not denounced them. But the number of charges on this offence is getting down year by year as it can be proved on the General Public Prosecutors' Office statistics and memorandum.³¹

OFFENCES	2004	2005	2006	Total
Humiliating treatments	596	515	436	1547
Tortures	78	73	35	186
Offences against moral integrity	103	43	55	201
Failure on duty to prevent tortures	79	3	--	82
TOTAL	856	634	526	2016

We can not present official figures for 2007 and 2008 because these memoranda have changed their structure and they do not give concrete figures now. However, we know about judicial sentences in which some policemen who are proved that were present during torture sessions are found not guilty of any offence because they “do not beat” the detainees.³²

QUESTION – 15: ON SECURITY FORCES AGENTS FORMATION:

It must be pointed out the lack of Human Rights formation among Security Forces agent though Government is staying in other sense. As example, we have several cases of psychiatric diseased people killed by policemen or prison guards as they failed on the management of violent situations.³³

As we will see later, in the Spanish prison system there are a lot inmates with psychiatric maladies who end in long-term isolation as the guards have no other possibility for controlling their behaviour. Prison guards lack of formation is specially worrying, specially for managing psychiatric inmates crisis.

On the other hand, the formation that some Security officer do receive is how to manage on torture trials and in court statement to avoid punishment: last 2009 March 1st, the newspaper *El Punt* spoke about a congress organized by a Local Policemen Union (SPPME-Cat) within which there was trial simulations and roll-playing to “avoid mistakes in testifying in Court” about torture complaints.³⁴ Sabadell's Senior Judge and Prosecutors' office chief guided the course. Our *Coordinador* presented a claim about this course to the General Judiciary Council (CGPJ) and another one to the General Public Prosecutors' office in 2009 April 23rd. Both claims were closed without enquiries.³⁵

QUESTION -16: ON THE ISTANBUL PROTOCOL:

Within the Human Rights National Plan (PNDH) is stayed that continuous formation should be given to forensic doctors. That means, implicitly, that only forensic doctors will have this formation and that no other doctor would receive this formation on National Sanitary System or Universities. Thus, when a complainant asks for examination in the Public Sanitary System, doctors have not a proper formation on the Istanbul Protocol or any other way of management with these situations. On that base, those medical reports use to be rejected on trial as they have no value as evidence. This means defencelessness for torture victims. It is also difficult for lawyer to have access to doctors specialized on Istanbul Protocol.

³¹ See <http://www.fiscal.es>

³² As it happened in a sentence from the 21st courtroom of Barcelona Provincial Audience in 2009 May.

³³ You can see several cases on our 2008 annual Report, pages 34, 60 and 193.

³⁴ This course information can be seen in the Union web: <http://www.sppme-cat.com/?p=565>

³⁵ You can see both claims an official answers in ANNEX num. 7.

Thus, though it is a Governmental duty to give a proper formation on the Istanbul Protocol to all doctors in National Sanitary System, the PNDH has no mention to this point. Even more, there is no mention to give this formation to doctor within the Penitentiary Sanitary System, though these doctors are supposed to trial all detainees when they are carried to prison. Even worse, in the last years penitentiary doctors have received more formation in bureaucratic management than in Human Rights protocols or medical new technologies.³⁶ In sum, the lack of formation and material resources cut off the possibilities for the Istanbul Protocol application as it has been recognized by the European Committee on Torture Prevention 2005 visit to Spain.³⁷

QUESTION – 17: PRISON OVERPOPULATION:

In its answer to question 17 the Spanish Government, surprisingly, ignores the own Spanish legislation when he presents a table with a “*Tasa operativa*” (operative rate) of 2 people by cell. It has to be underlined that the General Penitentiary Organization Act (LOGP) stays in its article 19.1 that “*every inmate will accommodate in individual cells*” if there is no medical indication to other accommodation. Thus, the figures that must be attended from the Government statistics are those of the “*Tasa óptima*” (optimum rate) which are not credible if we attend to the Prison Guards Union ACAIP report from 2008 June speaking about an occupation of a 175%.³⁸

Comparing Government and Union rates we have the following table:

PENITENTIARY CENTRE	OCUPATION	OPERATIVE	OPTIMUN	ACAIP FIGURES (2008 June)
		RATE (2 people/cell)	RATE (1 person/cell)	
A LAMA	1949	0,90	1,56	
ALBACETE	330	1,04	2,41	306 --- 226%
ALBOLOTE	1873	0,88	1,53	
ALCALA DE GUADARIA	166	0,72	1,25	
ALCAZAR DE SAN JUAN	103	0,84	1,42	
ALGECIRAS	1640	0,78	1,37	
ALICANTE CUMPLIMIENTO	1056	1,05	1,71	1123 --- 236%
ALICANTE II -VILLENIA	1316	0,86	1,59	1384 --- 191%
ALICANTE PSIQUIATRICO	393	1,09	1,18	
ALMERIA	1046	1,03	1,54	1098 --- 193%
ARRECIFE	289	1,11	1,75	218 --- 275%
AVILA	207	0,68	1,07	
BADAJOS	815	0,83	1,40	892 --- 227%
BILBAO	332	1,26	2,98	382 --- 332%
BONXE	442	0,79	1,28	
BURGOS	620	0,91	1,85	579 --- 216%
C.I.S. HUELVA	93	0,34	0,62	
C.I.S. MALAGA	115	0,28	0,40	
C.I.S. MALLORCA	162	0,55	0,94	
C.I.S. SEVILLA	267	0,72	1,26	
C.I.S. VALENCIA	467	1,20	2,56	
C.I.S. VICTORIA KENT	523	1,23	1,72	
CACERES	539	0,86	1,52	
CADIZ-PUERTO II	783	1,00	1,94	
CASTELLON	811	0,90	1,56	
CASTELLON II	1434	0,69	1,15	

³⁶ See ANNEX num. 8 “Comentarios de la Sección de Derechos Humanos de la Asociación Española de Neuropsiquiatría”.

³⁷ See <http://www.cpt.coe.int/documents/esp/2007-30-inf-eng.htm>

³⁸ See Report “[Masificación en los Centros Penitenciarios españoles a fecha 27 de junio del 2008](http://www.acaip.info/acaip.html)” in: <http://www.acaip.info/acaip.html>

CEUTA	276	0,96	1,80	287 --- 358%
CORDOBA	1860	0,86	1,50	
CUENCA	114	0,73	1,37	142 --- 240%
DAROCA	540	0,80	1,55	
EL DUESO	601	0,91	1,46	
HERRERA DE LA MANCHA	516	0,84	1,45	
HUELVA	1626	0,80	1,40	
IBIZA	132	0,96	1,71	139 --- 278%
JAEN	738	0,89	1,51	744 --- 212%
LA MORALEJA- DUEÑAS	1611	0,83	1,40	
LAS PALMAS	1347	1,04	1,86	1464 --- 228%
LEON	1759	0,84	1,42	
LOGROÑO	411	0,94	1,48	
MADRID I - ALCALA DE HENARES	573	0,84	1,25	
MADRID II- MECO	1061	0,88	1,44	1118 --- 260%
MADRID III - VALDEMORO	1242	0,74	1,31	1460 --- 205%
MADRID IV - NAVALCARNERO	1285	0,83	1,50	1422 --- 189%
MADRID V- SOTO DEL REAL	1852	0,87	1,54	1860 --- 184%
MADRID VI - ARANJUEZ	1690	0,90	1,60	
MADRID VII-ESTREMER	1642	0,82	1,37	
MALAGA	1809	1,02	1,91	1997 --- 238%
MELILLA	285	0,82	1,64	
MONTERROSO	499	0,67	1,09	
MURCIA	905	1,28	1,93	1075 --- 333%
NANCLARES DE OCA	712	0,86	1,26	
OCAÑA I	576	0,83	1,47	609 --- 234%
OCAÑA II	582	1,03	1,38	
ORENSE	435	0,82	1,42	
PALMA DE MALLORCA	1742	0,89	1,47	
PAMPLONA	249	0,94	1,96	255 --- 255%
PUERTO DE SANTA MARIA I	219	0,56	1,12	
PUERTO DE SANTA MARIA II	---	---	---	918 --- 300%
PUERTO DE SANTA MARIA III	1604	0,79	1,36	
SAN SEBASTIAN	360	0,99	2,24	
SANTANDER	182	1,21	2,48	
SEGOVIA	552	0,74	1,17	
SEVILLA	1468	0,94	1,58	1837 --- 222%
SEVILLA II-MORON	1330	0,64	1,08	
SEVILLA PSIQUIATRICO	184	1,64	2,43	
SORIA	164	0,78	1,27	
STA. CRUZ DE LA PALMA	70	0,99	4,31	
STA. CRUZ DE TENERIFE	1598	0,95	1,57	1611 --- 207%
TEIXEIRO-CURTIS	1763	0,86	1,40	
TERUEL	172	0,75	2,29	
TOPAS	1749	0,86	1,46	
VALENCIA	2362	0,87	1,50	2598 --- 190%
VALLADOLID	524	0,76	1,20	
VILLABONA	1481	0,89	1,52	
ZARAGOZA-ZUERA	1787	0,82	1,45	
TOTAL	64010	0,86	1,47	61.191 – 177%

As several new prison have been opened in the last year as new imprisoned people has get within prison, we can suppose that nowadays prison occupation could be between 165% and 175%. But over all two questions must be stressed:

- a) The Spanish Legislation on this issue (LOGP art. 19.1) is being unaccomplished as the policy of 2 inmates per cell has been institutionalized.
- b) Nowhere is explained by the Government the number of square metres per inmate within prison. This must be the base for the occupation calculation as the European

Rules for Penitentiary Treatment stays a minimum of 7 m² per inmate. Probably if we apply this standard the Spanish prisons overpopulation will rise up.

Even more, this Governmental statistics do not includes the Catalunya figures of inmates which were 10.407 in 2009 July.³⁹ Taking in consideration Catalunya's figures the *Space I* inquiry of the European Council, Spanish overpopulation is confirmed as it can be seen in the following table:⁴⁰

YEAR		TOTAL NUMBER OF PRISONERS	PRISON POPULATION RATE PER 100.000 INHABITANTS	TOTAL CAPACITY OF PRISONS	PRISON DENSITY PER 100 PLACES
2002	SPAIN (total)	50.994	126,2	45.320	112,5
2003	SPAIN (total)	55.244	135,8	48.420	114,1
2004	CATALONIA	7.922	120,0	6.922	114,4
2004	REST OF SPAIN	51.302	144,1	38.811	132,2
2004	SPAIN (total)	59.224	140,3	45.733	129,5
2005	SPAIN (total)	61.269	142,4	45.811	133,7
2006	SPAIN (total)	64.120	146,1	45.811	140,0
2007	CATALONIA	9.395	130,3	8.800	106,2
2007	REST OF SPAIN	57.072	150,2	59.859	143,2
2007	SPAIN (total)	66.467		68.659	

QUESTION – 19: ON MINORS CENTRES

In theory there are three different types of centres: reform centres (criminal system), protection centres (social protection system) and psychiatric internment centres (healthcare system). The first problem is that there are no adequate funding and resources for developing the three systems and for this reason confusions among them are frequent. Thus, minors on protection can be found in reform centres, as well as minors with psychiatric maladies, or minors with crime punishments in protection or psychiatric internment centres.

This confusion works against the fulfilment of the current legislation and the solution of minors' problems. Coexistence and social education and integration are very difficult or impossible in this context. Concretely the administration of psycho-drugs within the reform centres is generalized although these minors could have no psychiatric maladies (in the Juslibol Centre, in Aragon, three cases of psychiatric medication to healthy minors have been denounced as it can be seen in ANNEX mun. 9).

QUESTION – 20: ON PRISONERS DISPESION AND REMOTENESS:

The Special Rapporteur on Torture Mr. Van Boven visited Spain in 2003 and presented his report in 2004. In his recommendation "H" he said that Basque prisoners should be guaranteed their social relations with relatives and his social rehabilitation, what it means not to be far away from their communities.⁴¹ This recommendation has been not fulfilled and there is no intention to do so as it has been stayed by the Penitential policy maximum authority Miss Mercedes Gallizo (Penitentiary Institutions

³⁹ Figures on Catalunya prison populetion can be found in:

<http://www20.gencat.cat/docs/Justicia/Documents/ARXIU/BS%20SSPRJJ%201%20sem%202009.pdf>

⁴⁰ See Report in:

http://www.coe.int/t/e/legal_affairs/legal_co%2Doperation/prisons_and_alternatives/Statistics_SPACE_I/List_Space_I.asp#TopOfPage

⁴¹ See report E/CN.41/2004/56/Add.2, recommendation "H".

General Secretary).⁴² This Basque prisoners' remoteness is not only a problem of ETA members imprisoned, as a result of this against-terrorism policy no prison in the Basque country has closed regime dependencies. Thus, every inmate qualified as first penitentiary degree is moved out of the Basque country, which means a double-punishment. As example, in 2004 more than 50% of the Guipuzkoa (one of the Basque country provinces) inmates were in prisons out of the Basque country.

But remoteness is not only a problem for Basque inmates or terrorism related prisoners, it is a problem for a large part of imprisoned population as it is used as an undercover punishment. We know about FIES prisoners that in a 10 years period have been moved through 20 different prisons. Some times prisoners are carried to prisons located more than 500kms away from their families or communities though the LOGP stays that they must be as close as possible to their origin communities to aid for inmates social insertion. Other problem on this issue is inmates' defencelessness: in theory (LOGP art. 77) Penitentiary Surveillance Courts (JVP) must regulate and allow prisoners' transfers from prison, but they use not to do so and declare themselves non competent on this issue.⁴³

QUESTION – 22: ON DETAINEES AND PRISONERS SEPARATION AND HEALTH:

Police Stations' dungeons don't use to have sanitary or minors separated areas. Thus, only in case of emergencies detainees are carried to Hospitals' Custody Units. Usually, detainees do not have a Forensic examination. For being so, their lawyers have to ask for it. As there is no forensic or medical examination during the detention period, there is no separation on the base of health situation.

Once in prison, the LOGP in its article 16 stays that prisoners must be immediately and completely separated on the base of gender, age, criminal behaviour physical and mental situation and in base of their treatment. In practice, the separation is gender based and on the base of the behaviour toward Penitentiary Institution. Thus HIV+ and Hepatitis C+ inmates use to coexist in the same cells and departments with healthy inmates. Preventive isolation is used only in tuberculosis cases (and lastly in A-influenza cases). But Spanish Prisons' inmates have a lack of health that worries us: 18% of imprisoned population is VIH+; 38% is Hepatitis C (VHC)2+ and a 40% has a psychiatric malady or dual pathology as the own Institution recognizes. Furthermore, sanitary assistance is not equal to the one of the National Sanitary System. There is a lack of specialized doctors. Prison doctors are prison officials with no organic relation with the National Security System. There is one sanitary professional (doctors, nurses or auxiliaries) per 56 inmates and one psychologist per 310 inmates. In several prisons there is no doctor during weekends (as it was denounced by Sevilla II Prison inmates on 2009 August). Part of the problem comes from the fact that de Sanitary System in Spain is developed by the Regional Governments while the Penitentiary System is a Central State one (except for Catalunya). To solve this question the National Sanitary System Quality and Cohesion Act 16/2003 of May 28th was passed in the National Parliament. This Law established that the Penitentiary Sanitary System must be absorbed by the regional Sanitary Systems. Nowadays this Law has not been fulfilled and the situation of the Penitentiary Sanitary System is even worse than in 2003.⁴⁴

⁴² As example, see her declarations in *El País* of 2005 September 16th: “ETA prisoners' dispersion is not doing to end”.

⁴³ See, as example, ANNEX num. 10, from Zaragoza's 1st JVP.

⁴⁴ There are several reports on that issue, for example the APDH-A one on Andalucía's Prisons Sanitary service: http://www.apdha.org/index.php?option=com_content&task=view&id=596&Itemid=31; or the

QUESTION – 23: TORTURE FIGURES:

In its answer to this question, once again the Spanish Government stays that the Human Rights National Plan (PNDH) will create a data base on under custody people’s complaints, because it does not exist yet. But the PNDH is a project and not a reality, so we are waiting for that data base. On the other hand, in its answer the Government presents a few number of “ill-treatment” denounces within prison, but he avoids speaking about torture.

However, later on, in its answer to question number 28, the Government presents a table recognizing that between 2003 and 2007 there were 3604 sentences by torture.⁴⁵

	TORTURE CONVICTED	MEN	WOMEN
2003	1212	1138	74
2004	405	370	35
2005	597	527	70
2006	450	388	52
2007	940	869	71

Once again, figures given by Government are different from Human Rights Associations, General Public Prosecutors’ Office and even the figures reported by the same Government in other reports.⁴⁶ However is surprising to see this table given by the same Government that systematically denies the existence of torture.

As **Coordinadora para la Prevención de la Tortura**, we have our own sources and since 2004 we present annual reports on torture with the following figures:

	COMPLAINANTS
2003	580
2004	917
2005	682
2006	659
2007	689
2008	576
Total	4.103

We present as ANNEX num. 11 different tables on geographic dispersion of complaints, denounced police corps, victims typology, judicial evolution of complaints, etc.⁴⁷

Speaking about the Government answer to question 23, we want to underline that he only presents figures on National Police and Guardia Civil cases and forgets that local police corps and regional police corps (that sums a 42% of the complaints that we have complied) are also State Security Forces, what it means a Spanish State responsibility. Something similar happens with prison complaints, where the

UNAD one on the Drug question within prison: www.unad.org/upload/29/04/Estudio_prisiones_II.pdf ; or the questions related by the Asociación Española de Neuropsiquiatría in ANNEX num. 8.

⁴⁵ See CAT/C/ESP/Q/5/Add.1, page 95

⁴⁶ In its previous report to CAT, the Government recognized 89 complaints between 2002 and 2006 as you can see in CAT/C/ESP/5.

⁴⁷ To see complet reports visit our web page: www.prevenciontortura.org

Report 2004: <http://www.prevenciontortura.org/InformeCPT.pdf> ;

Report 2005: <http://www.prevenciontortura.org/informe2005/Informe2005.pdf> ;

Report 2006: <http://www.prevenciontortura.org/spip/documents/2006-InformeCPT.pdf>

Report 2007: http://www.prevenciontortura.org/Informe2007/INFORME_CPT_2007.pdf

Report 2008: <http://www.prevenciontortura.org/spip/documents/Informe-2008.pdf>

Government report do not includes Catalunya prisons figures. If it is true that the Catalunya Government is the only one competent for Catalan prisons, it is also evident that Catalunya is part of the Spanish State. In fact, the Catalan Government has recognized the existence of tortures in the Quatre Camins prison in Barcelona, after 2004 April 30th riot.⁴⁸

QUESTION – 24: DEATHS UNDER CUSTODY:

In our annual reports we also present under custody death figures, including those deaths that have happened on the streets during police actions (we present a list of cases as ANNEX num. 12). However, Government given figures are uncompleted on the same base that happens in other parts of their report: he does not include Catalunya prisons or local and regional police corps. The cases presented in our annual reports are:

	NATIONAL POLICE & GUARDIA CIVIL	LOCAL & REGIONAL POLICE CORPS	IN PRISON	IN MINORS CENTRES	TOTAL
2003	23	11	32	1	68
2004	18	6	51	2	77
2005	15	9	44	1	69
2006	17	8	38	0	63
2007	14	7	36	3	60
2008	16	3	36	1	56
TOTAL	103	44	237	8	393

In this table we also presents the 8 cases of minor that have died in Reform centres, which did not appear on Government figures.

About imprisoned people’s deaths this table presents the cases that we have known from our own resources (normally death inmates’ cellmates or relatives). Thus official figures show us the hiding of cases, because the Government has not made public these figures till the CAT has asked for them. However, the 645 deaths recognized by the Government for the 2006-2008 period, have two critics to be done: first, Catalunya prisons’ deaths are not included (though they were 174).⁴⁹ Second, Government figures only include prisoners’ deaths within prison, but not in hospitals or during penitentiary permissions, though the Catalunya’s Government does recognize. Taking on these considerations, we can make with the official figures de following table of imprisoned people’s deaths:

	INMATES UNDER CENTRAL GOV. CUSTODY	INMATES UNDER CATALUNYA’S GOV. CUSTODY		TOTAL
	<i>WITHIN PRISON</i>	<i>WITHIN PRISON</i>	<i>OTHER PLACES</i>	
2006	218	15	36	269
2007	202	29	37	268
2008	225	19	38	282
TOTAL WITHIN PRISON	645	63	-	708
TOTAL	645	63	111	819

⁴⁸ First-instance Court 3rd courtroom of Barcelona has charged 9 prison guards on torture offence. Among them, Prison’s Director and Medical vice-director.

⁴⁹ Official figures for Catalunya can be seen in : www20.gencat.cat/portal/site/Justicia/menuitem.cc15117be9e6a1b6bd6b6410b0c0e1a0/?vgnnextoid=d3ecf31f87203110VgnVCM1000008d0c1e0aRCRD&vgnnextchannel=d3ecf31f87203110VgnVCM1000008d0c1e0aRCRD&vgnnextfmt=default and www20.gencat.cat/docs/Justicia/Documents/ARXIUS/BS%20SSPRJJ%201%20sem%202009.pdf

From the Catalunya's figures we know that per each 10 deaths within prison, there are 8 inmates dying in hospitals and another 9 in other places. That means that per each 10 inmates dying within prisons there are 17 dying out of prison. We wonder about the proportion for Central Government penitentiary system. We don't think that Catalunya's prisons are worse than Central Government ones, but we have no official data to do a real comparison on that issue.

QUESTION -25: ON TORTURE COMPLAINTS ENQUIRIES:

M.A. Zaoundi was arrested in 2006 January with I. ben Othman and M. Samadi in Vilanova I la Geltrú (Barcelona). The three denounced tortures during their declaration in the 5th Courtroom of the Central Instruction Court. In a new declaration in 2007 January they confirmed their complaints, but the Court did no enquiry on these complaints. After detainees' lawyer asked several times for it, in 2008 May the Court ordered to open a researching file about the those complaints, that was accepted in the First-instance Court num. 1 in Madrid (preliminary proceedings 1206/09). It was on early 2009 that a forensic examination was done to the complainants (4 years after the tortures were developed).⁵⁰ Similar to this case, you can find in the Coordinadora's Reports the W. Lotfi one (arrested in Burgos on 2007 October 24th)⁵¹ or Y. Guemereg one (arrested in Barcelona in 2005 June 15).⁵²

In all these cases we find the same pattern:

1st.- JUDGES RETICENCE TO START ENQUIRIES: as it happened with M.A. Zaoudi, a complainant declaration on Court is not enough to start the judicial process. Sometimes torture descriptions and denounces are not written in the declaration record. Even more, as the European CPT recognized in his Report on Spain "*even if such prima facie evidence of ill-treatment is submitted in writing to an investigating judge, an effective investigation would not necessarily follow*".⁵³

2nd.- DENIAL OF EVIDENCES TRIALS: In 2004 November 2nd, the Human Rights European Court of Strasburg condemned the Spanish state to compensate 15 people who denounced to had been tortured by Guarcia Civil officers in 1992 on the base that their complaints were not promptly and efficiently investigated. In fact, the lack of efficiency came out the denial to practice several evidence trials asked by complainants' lawyers. It was especially serious that no accused officer was called for testifying. A broader list of cases can be seen in ANNEX num. 13. Other times, when evidence trials are not denied, they are delayed, as it happened with B. Larrondo, arrested by Guardia Civil in 2004 and whose declaration was ratified in 2008 July.

3rd.- DELAYS IN DETERMINATE THE COMPETENT COUT: Sometimes there are conflicts between different courts about which one is the competent one to proceed. These conflicts are specially frequents when the Against-terrorism Law is applied because de National Audience, which is the only one competent on terrorism crimes, it is not on torture offences. Even more, when incommunicado detention is applied, all detainees are carried to Madrid, while torture sessions could start on detention place, could go on during the travel to Madrid and the following complaints could get lost in territorial conflict on courts competencies. This happened to Mr. Zaoudi as well as to I. Uria,

⁵⁰ See ANNEX num. 13, were you can find the complaints.

⁵¹ Preliminary proceedings 1.533/2009 in 34th courtroom of Madrid First-instance Court.

⁵² Preliminary proceedings 2.411/2006 in 12th courtroom of Madrid First-instance Court.

⁵³ <http://www.cpt.coe.int/documents/esp/2007-30-inf-eng.pdf>

arrested in Donostia in 2003 February 20th whose complaint was presented in Madrid, confirmed in Donostia and finally closed in Madrid.

4th.- DELAYS AS RESULT OF FILES LOST AND WAYWARDNESS: There are several examples of judicial proceedings misplaced during years when not definitively lost: First-instance Court of Sabadell got lost preliminary proceedings 957/07 where a woman accused several local policemen by ill-treatments. A judicial proceeding against several National Policemen started in 1994 November got misplaced till 2007 in the 23rd courtroom of Madrid First-instance Court.

5th.- PROCEEDING MISTAKES, NULLITIES AND PRESCRIPTIONS: As a result of the delays and lack of evidence trials, many preliminary proceedings are closed in base to time expiration without entering to evaluate de facts. In other cases it is because files were lost or because proceedings were mistaken, the result for enquiries is to be declared null. This happened with the previously described case of Sabadell Court. On prescriptions, as it was said before, if the charge is on torture, it has not prescription, but if it is in humiliating treatment (v.gr.), prescription is taken in three years, and as we have seen legal proceedings in these cases use to delay for years.

6th.- DELAYS IN SETTING DATE FOR TRIAL AND PASS SENTENCES: Even when proceedings are ended and evidences accepted, a new delay time appears when setting the date for the trial.⁵⁴ Complaints presented in 2001 and before are still waiting for trial date nowadays. And even more, once the trial is ended, it is needed to wait for the sentence, as it is happening with trials celebrated in 2008 whose sentences have not been passed yet. Later on, it will be time for appeals... Thus, a torture complaint could take more than 10 years to be fulfilled, if it is.

QUESTION – 28: ON RACIST BEHAVIOURS, RACIAL DISCRIMINATION & RACIAL VIOLENCE:

Police Officers aggressions with a xenophobic or racial background have been compiled in the annual reports of the *Coordinadora*. Here we the following figures:

IMMIGRANTS’ COMPLAINTS AGAINST POLICE AGENTS

	COMPLAINANTS	% OVER YEAR’S TOTAL COMPLAINANTS
2004	47	6,0%
2005	133	19,0%
2006	109	17,9%
2007	102	14,8%
2008	84	14,5%
TOTAL	475	

On that figures we want to comment that in many occasions immigrants that have suffered police violence do not want to complaint, specially if they have no legal documentation or official visa, because they fear about been expelled from the country. Thus, these figures are less than the real ones.

QUESTION – 27: ON COMPLAINANTS PROTECTION:

Government has done nothing to protect tortures victims and complainants. On the other hand, at least 3 complaints have been presented against torture complainants for perjury, libel and calumny of Security forces and cooperation with armed band.

⁵⁴ See ANEX num. 13 where appears a list of celebrated trials.

This last accusation was held against Martxelo Otamendi, director of *Berria* newspaper and against Unai Romano whose photography with his disfigured face is well known. It was argued by Prosecutor's Office that their torture complaints were part of ETA strategy as a form of cooperation with this armed band. Both files were finally closed.⁵⁵ Within prison complainants have even less protection. As example, after the torture sessions in Quatre Camins prison in Barcelona after the 2004 April 30th riot, torture complainants went on living with the charged guards and they still are under their custody.⁵⁶

Even more, Human Rights defenders have been also charged for perjury, libel and calumny of Security forces and cooperation with armed band. This happened to Julen Larrinaga and Aiert Larrarte, lawyers of the TAT (Association Against Torture) were charged on libel and calumny after a press conference in which they refer the tortures suffered by Ibon Meñika-Orue in 2006 April. In 2009 May, when the trial was over, both lawyers were exonerated, but Ibon Meñika-Orue was charged on perjury and false testimony. Those examples show us how torture victims have to suffer threats and coactions if they present complaints and how they could be charged on libel or perjury if they decide to make public their allegations. Thus, prisoners' solidarity groups as *Gestoras pro-Amnistía*, ASAPA or PreSOS Galiza have received denounces, as well as Human Rights Associations as APDH-Andalucía or ACT. We are so worried about this issue that in 2008 the *Coordinadora* presented a report about the criminalization of Human Rights defenders after their support to torture victims and complainants.⁵⁷

QUESTION – 28: ON TORTURE VICTIMS COMPENSATIONS:

As we said on question 23, the Spaniard Government denies the existence of torture (though in his report he recognises the existence on 3.604 criminal convictions on torture). Our *Coordinadora* has reported about 235 sentences with a total of 335 officers convicted for the 2003-2008 period as it can be seen in ANNEX num. 11. Based on these judicial sentences we want to stress that penalties are unimportant for the responsible officers, as you can see on the following table:

TORTURE AND ILL-TREATMENTS CONVICTED OFFICERS

	2003-2004	2005	2006	2007	2008 ⁵⁸	TOTAL
NATIONAL POLICE	22	18	8	21	13	82
GUARDIA CIVIL	17	4	9	4	6	40
LOCAL POLICE	39	25	39	49	17	169
REGIONAL POLICE	3	8	8	10	10	39
PRISON GUARDS	0	0	1	0	1	2
OTHERS	0	0	0	0	3	3
TOTAL	81	55	65	84	50	335

On the torture compensations issue, we can only say that there has been no advance since International Amnesty made public its report "*España, acabar con la doble injusticia: víctimas de tortura y malos tratos sin reparación*" in 2004, denouncing that torture victims received no compensation.⁵⁹

⁵⁵ See ANNEX num. 3.

⁵⁶ See ANNEX num. 3.

⁵⁷ This Report, entitled: "*Descalificación, obstrucción y criminalización de las actividades de organismos sociales y profesionales que denuncian torturas en el Estado español*" is presented as ANNEX num. 14.

⁵⁸ Provisional figures: they do not include figures from 2008 annual report, published in 2009 May.

⁵⁹ <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI?CMD=VERLST&DOCS=1-10&BASE=SIAI&SEPARADOR=&TITU=&INAI=EUR4100604>

QUESTION – 29: ON INDEMNIFICATION RIGHT:

It is true, as the Government says, that within the Spanish legal framework compensation to victim as “civil responsibility” is part of the punishment in a criminal sentence. The exception to this rule is that the victim has the right to ask for a separate civil action against the offender. Other possibility is that within the criminal trial the offence could be proved but none is identified as responsible. Then, the victim can present a civil action against the State for economic reparation as the State is responsible for offences committed under his custody. But this is theory. In practice is very difficult to win a civil action against the State and when they are, the economic compensation use to be low. Even then, Governmental authorities use to appeal against these compensations.

We have some examples of these situations: in 2008 January the 3rd courtroom of the contentious-administrative Basque Jurisdiction Supreme Court passed a sentence obliging the Basque Government to pay 36.000 € as civil action’s compensation to the Italian citizen M.M. who lost the right eye as result of an impact of a rubber ball shot by the *Ertzantza* (regional police). The criminal proceedings ended before without conviction sentence. In 2008 February the 2nd courtroom of the contentious-administrative Basque Jurisdiction Supreme Court passed a sentence obliging the Home Department of the Basque Government to pay 1.200 € to a person who suffered injuries during his detention in 1998. The criminal trial on this case was closes due to formal defects though de 5th courtroom of the Criminal Court of Donostia’s Judge worried it in the sentence. One important case is the Mikel Iribarren one, as the European Court on Human Rights of Strasbourg recognized in 2009 January his right to be compensated by the injuries caused by the impact of a smoke bomb shot by National Police in Pamplona in 1991.⁶⁰

Something similar happens with compensations to relatives of people deaths under State custody. Taking figures from the *Coordinadora* last report (2008) we find out that 24 civil actions have been taken against the State responsibility: 22 has been closed with no compensation, and 2 has been closed with a 5.000 € and a 35.000€ compensation respectively.⁶¹

QUESTION – 30: ON TORTURE VICTIMS REHABILITATION:

In Spain, there is no public service to physical or psychological aid or rehabilitation for torture victims. There are conventions with NGOs (as International Amnesty or CEAR) made by different hospital departments, as the Psychiatric Department of *La Paz* Hospital in Madrid. In his answer to this question the Government speaks about the Sexual Offences and Violence Victims attention offices, but these offices are specialized in sexual or familiar violence and focused in economic and legal assistance. Even more, the economic assistance is tied to a conviction sentence confirming the aggression (what, as we have seen, is difficult to obtain in torture cases). But even when torture victims come from abroad and their complaints are not against the Spanish State, they have the same problems to have recognised their torture victim status to obtain an asylum or an economic, medical or psychological assistance.

Thus the Violence Victims attention offices are not a suitable tool to develop the torture victims’ rehabilitation.⁶² Even more, within the Human Rights National Plan no consideration has been taken to assist torture victims in their rehabilitation.⁶³

⁶⁰ ECHR-Strasbourg 3rd Section sentence of 2009 January 8th on demand num. 36777/2003.

⁶¹ See our report in <http://www.prevenciontortura.org/spip/documents/Informe-2008.pdf>

⁶² See AEN report in ANNEX num. 8.

⁶³ See ANNEX num. 1.

QUESTION – 34: ON “TASER” TYPE WEAPONS:

The Government answer to this question is out of reality. Firstly because is public and well known that several Local policies use TASER type weapons in Catalunya, Valencia, Canarias, Murcia and Asturias.⁶⁴ The first local police in use TASER weapons was in Arona, Tenerife in 2001. Nowadays, the majority of Canarias local police corps uses these types of weapons.⁶⁵ In 2007 December there were 340 TASER type weapons in local police corps around Spain. Even more, though these weapons could be non-regulatory, they are sometimes used by Police agent during service as many others like kubotan, electric or extendible batons, etc.⁶⁶

A notorious case happened in Roquetas de Mar (Almería) Guardia Civil’s station when Juan Martínez Galdeano died in 2005 July 24th beaten by Guardia Civil agents (some of them were out of service) with non regulatory weapons like stun electric batons and electric defences as it was recognized in the judicial sentence.⁶⁷ Thus, been regulatory or non regulatory weapons, TASER and other electric weapons are used by members of security forces during their services and out of them.

QUESTION – 38: ON THE CONVENTION OPTIONAL PROTOCOL 2006 RATIFICATION:

This *Coordinador* totally disagree with the Government answer to this question in the way that there has been a participating process with civil society to carry out the National Preventive Mechanism (MNPT). In fact, last 2009 June 16th, the Government Vice-President stayed in the Parliament Constitutional commission that the MNPT was going to be included within the Ombudsman Office and it will have an assistance council with civil society members. This decision was passed by Government against the civil society agreement (within which our *Coordinadora* took part) asking for a MNPT who were a new and State powers’ independent Institution who could supervise all judicial or police institution of custody (something that de Spaniard Ombudsman is not).

It is true that there was a “Contact group” configured by Governmental authorities, academic and civil society members that have no new meetings since 2007 December. Even more, within this group, civil society proposals were ignored by Governmental representatives. As an example, our *Coordinadora* has asked several times for a new meeting to the Justice Ministry, who answered us that the consulting process will be opened again once the Parliament Act would be done. What it means, the MNPT is going to be imposed after the last delay. We present as ANNEX num. 15 a chronology of the so called by Government consulting process and some documents in relation to it.

⁶⁴ It has been denounced several times by International Amnesty since 2005 as it can be seen in his webpage: <http://www.es.amnesty.org/noticias/noticias/articulo/amnistia-internacional-pide-al-gobierno-que-las-fuerzas-de-seguridad-no-utilicen-pistolas-paralizant/> and in the Spaniard written press in 2007: http://www.elperiodico.com/default.asp?idpublicacio_PK=46&idioma=CAS&idnoticia_PK=445418&idseccio_PK=1021

⁶⁵ See:

http://www.elperiodico.com/default.asp?idpublicacio_PK=46&idioma=CAS&idtipusrecurs_PK=7&idnoticia_PK=402788

⁶⁶ There are several cases of non regulatory weapons used by security services in our annual reports as the 2006 January 12th one, the 2007 May 19th one, the 2008 May 9th one or the 2008 December 10th.

⁶⁷ For a case description see ANNEX num 3. The mentioned sentence is from 1st courtroom of Criminal section of Supreme Court num. 891/2008 passed in 2008 December 11th.

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