



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**COMMITTEE AGAINST TORTURE**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Fourth periodic reports of States parties due in 2000**

**Addendum**

**SPAIN\***

[8 January 2001]

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\* For the initial report of Spain, see document CAT/C/5/Add.21; for its consideration by the Committee, see documents CAT/C/SR.59 and 60 and Official Records of the General Assembly, Forty-sixth Session, Supplement No. 46 (A/46/46), paras. 57 to 86. For the second periodic report, see document CAT/C/17/Add.10; for its consideration by the Committee, see documents CAT/C/SR.145, 146 and 146/Add.2 and Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44 (A/48/44), paras. 430 to 458. For the third periodic report, see document CAT/C/34/Add.7; for its consideration by the Committee, see documents CAT/C/SR.311 and 312 and Official Records of the General Assembly, Fifty-third Session, Supplement No. 53 (A/53/44), paras. 119 to 136.

## **Introduction**

### **1. Geographical, demographic and economic information**

1. General information is given below:

#### **Geographical information**

surface area: 506,000 sq km

length of coastline: 4,830 km

land frontiers: 2,013 km

#### **Population data**

official population: 39,852,651

sex ratio: 48.9 per cent male, 51.1 per cent female

immigrants resident in Spain: 718,952

population under 15 and over 65: 27,743,742

population distribution by area: 23 per cent rural, 77 per cent urban

#### **Economic and demographic data**

gross national product: 93,068,288 million pesetas (1999)

year-on-year change in income per capita: 3.6 per cent (July 1999-July 2000)

public debt per capita: 1,904,500 pesetas (1998)

inflation rate: 2.9 per cent (1999)

unemployment rate: 13.97 per cent (first semester 2000)

economically active population: 51.18 per cent (first semester 2000)

adult literacy rate: 97.2 per cent (1997)

life expectancy at birth: men 74.74 years; women 81.88 years

infant mortality: 5 per 1,000 births

maternal mortality: 0.05 per 100,000 births

fertility rate: 1.1 births per woman

private households: 12,313,000 (1999)

## **2. General political structure**

2. No change. Spain remains a social and democratic State subject to the rule of law as defined by the Constitution of 27 December 1978, taking the political form of a parliamentary monarchy.

## **3. General legal framework within which human rights are protected**

3. Article 10, paragraph 2, of the Spanish Constitution requires fundamental rights and freedoms to be interpreted in conformity with the Universal Declaration of Human Rights. Article 15 prohibits torture and other inhuman or degrading treatment.

4. As established by article 96 of the Constitution, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment forms part of the Spanish domestic legal order, while the various international treaties and agreement on the subject, such as the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, are also valid in Spain.

5. The wording on the subject of torture and ill-treatment in the current Penal Code, which entered into force after amendment on 25 May 1996, has remained unchanged over the past four years.

6. Thus there have been no general changes requiring comment in the legal framework within which human rights are protected.

## **4. Information and publicity**

7. No change.

## **1. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION**

### **Preliminary information**

8. Since Spain signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment there has been a perceptible growth in awareness of and hostility to the crimes of torture and ill-treatment which is reflected in the continuing progress in codifying laws and standards on the subject.

9. Changes in Spanish society, as in the rest of the most developed societies, and the phenomenon, growing if not new, of immigration and the need to deal with people of different nationalities and cultures, are clearly driving the prohibition of torture and the protection of human rights generally into the international sphere.

10. In this sense, Spain can be regarded as being at the normal implementation level along with the rest of the developed countries, and it is a source of great satisfaction that, isolated cases apart, torture and ill-treatment do not occur there. This can be seen from the fact that reports of such practices have ceased or become truly rare - the reports of Amnesty International, for instance, or those of the People's Advocate to the Cortes Generales, where the number of accounts of such cases grows smaller every year and in some years, as far as the Security Forces are concerned, is all but non-existent.

11. The sensitivity of Spanish society to attacks on human dignity and integrity, with torture and ill-treatment arousing particular revulsion, has been recognized by the Spanish authorities which have demonstrated the priority and special interest that these topics command in the regulatory changes they have been introducing over the past few years.

12. One sign of these regulatory changes is the amendment to the Spanish Penal Code in 1995, at the suggestion and prompting of the Committee against Torture, which was discussed in detail in the previous periodic report. After some years of experience in practice it may be said that the amendment has consolidated the Spanish legal order with respect to the crime of torture in a manner which the Spanish Government regards as positive.

13. This being so, the Committee's attention is drawn below to legislation, action and other matters relating to the prohibition on torture that have occurred over the period 1996-2000.

### **Article 1**

14. As pointed out in the third periodic report submitted by the Kingdom of Spain to the Committee on Torture, a new Penal Code has been in effect since 25 May 1996; the changes in the Code were set out at length in that report, which was submitted in November 1996.

15. Since then there have been no legislative amendments altering the profile of torture as a crime or affecting its prosecution, punishment or attendant civil liability. These matters are covered in articles 173 to 177 and 530 to 533 of the Penal Code, which were subjected to rigorous scrutiny in the third periodic report.

16. The current text of these articles reads:

### **“Article 173**

“Anyone who inflicts degrading treatment upon another person, seriously injuring his moral integrity, shall be liable to imprisonment for six months to two years.

**“Article 174**

“1. A public authority or official commits torture if, by abuse of his office and for the purpose of obtaining a confession or information from any person or of punishing him for any act he has committed or is suspected of having committed, he subjects that person to conditions or procedures which by their nature, duration or other circumstances cause him physical or mental suffering, entail the suppression or diminution of his faculties of conscience, discernment or decision-making, or in any other way infringe his moral integrity. The person guilty of torture shall be liable to a term of two to six years’ imprisonment if the infringement was a serious one, and a term of one to three years’ imprisonment if it was not. In addition to the penalties mentioned, the penalty of general disqualification for 8 to 12 years shall be imposed in all cases.

“2. The same penalties shall be incurred, respectively, by authorities or staff of prisons or centres for the protection or correction of minors who commit any of the acts referred to in the above paragraph against detainees, inmates or prisoners.

**“Article 175**

“Any public authority or official who, by abuse of his office in cases other than those included in the previous article, infringes an individual’s moral integrity shall be liable to a term of two to four years’ imprisonment if the infringement was a serious one, and a term of six months’ to two years’ imprisonment if it was not. In addition to the penalties mentioned, the perpetrator shall in any case be liable to specific disqualification from public employment or office for a period of two to four years.

**“Article 176**

“The penalties established in the preceding articles shall be imposed on any authority or official who fails in the duties of his post and allows other persons to perform the acts described therein.

**“Article 177**

“If, in addition to the infringement of moral integrity, the offences described in the preceding articles result in injury or harm to the life, physical integrity, health, sexual liberty or property of the victim or of a third party, those acts shall be punished separately with the penalties attached to them for the offences or misdemeanours committed, except when the former is already specifically punished by law.”

**“Article 530**

“Any public authority or official who, in connection with criminal proceedings, permits, effects or prolongs any deprivation of liberty of a detainee, prisoner or sentenced person, in violation of the constitutional or statutory time limits or other safeguards, shall be liable to the penalty of specific disqualification from public employment or office for a period of four to eight years.

**“Article 531**

“Any public authority or official who, in connection with criminal proceedings, orders, effects or prolongs the holding of a detainee, prisoner or sentenced person incommunicado, in violation of the constitutional or statutory time limits or other safeguards, shall be liable to the penalty of specific disqualification from public employment or office for a period of two to six years.

**“Article 532**

“If the acts described in the two preceding articles were committed as a result of grave negligence, they shall be punishable by suspension from public employment or office for a period of six months to two years.

**“Article 533**

“Any official of a prison or centre for the protection or correction of minors who imposes undue sanctions or restrictions upon prisoners or inmates or treats them with needless severity shall be liable to the penalty of specific disqualification from public employment or office for a period of two to six years.”

**Article 2**

17. The obligation to prevent torture set forth in this article has its counterpart in article 15 of the Spanish Constitution, which states that people may under no circumstances be subjected to torture or to inhuman or degrading punishment or treatment.

18. In this sense, Spanish legislation is entirely consonant with the Convention and the ban on torture, as an absolute and fundamental right, has remained unchanged during the period covered by this report.

19. The features of the crime of torture are communicated to the personnel of the national Security Forces so that they are aware, beyond any doubt or excuse, that torture is illegal and cannot be justified, that they cannot be instructed to act otherwise, and that punishment for failure to obey illegal orders in connection with torture is prohibited.

20. Among the various legal standards, circulars and instructions on this topic, mention should be made of the following:

(a) The Security Forces Organization Act requires officials acting in their professional capacity to prevent any abusive, arbitrary or discriminatory practice entailing physical or psychological violence, while making it plain that obedience to higher authority will in no circumstances constitute a defence in the case of orders to perform acts which are manifestly criminal or contrary to the Constitution or law (art. 5, paras. 2 (a) and 1 (d) respectively).

(b) Similarly, article 6, paragraph 3, of the National Police Force Disciplinary Regulations, approved by Royal Decree 884/1989 of 14 July, categorizes as a very serious disciplinary offence (pursuant to article 27.3 of the Security Forces Organization Act No. 2/1986 of 13 March) abuse of authority or the use of inhuman, degrading, discriminatory or vexatious treatment on persons in one's custody, such conduct rendering the culprit liable to separation from service.

(c) To take another example, Organization Act No. 11/1991 of 17 June, the Civil Guard Disciplinary Arrangements Act, defines as a very serious offence (art. 9, para. 2) abuse of authority or the use of inhuman, degrading, discriminatory or vexatious treatment on persons in one's custody, such conduct rendering the culprit liable to separation from service, i.e. expulsion from the Civil Guard (arts. 10.3 and 17).

(d) The Basque Country Police Act states as follows in article 36 (later elaborated on in instruction No. 29, 1999, from the Office of the Deputy Minister for Security in the Basque Government to all Basque Police Force stations) on "detention":

"1. Members of the Basque Police Force shall have regard for the lives and physical integrity of any individuals they detain or have under their custody, and shall respect their honour, dignity and equal rights.

"2. They shall not inflict, instigate or condone any act of torture or other cruel, inhuman or degrading treatment, nor invoke orders from a superior or special circumstances, such as the threat of war, a threat to national security, or any other public emergency, as a justification therefor."

21. The above general provisions are backed up by instructions, circulars and handbooks intended to govern the actual behaviour of members of the Security Forces when individuals suspected or accused of any kind of offence are detained or held in custody; details of these are given in the commentary in this report on articles 6 and 7 of the Convention.

### **Article 3**

22. The Passive Extradition Act, No. 4/1985, of 21 March, has remained in effect during the period covered by this report; it states, in article 4, paragraph 6, that: "extradition shall not be authorized if the requesting State does not give guarantees that the individual whose extradition is sought will not be executed or subjected to punishment injurious to his bodily integrity, or to inhuman or degrading treatment".

23. Under this article, through direct application of article 3 of the Convention, and irrespective of the extradition treaties that Spain has signed with other countries, the possibility that extradition will be authorized if there is reason to fear that the individual facing extradition might be subjected to torture is ruled out.

24. Developments have taken place during the period covered by this report, such as Instruction No. 3/1998 of 17 November on the treatment of stowaways from the Secretary of State for Security, the fourth section of which specifies that "the Government agent shall check

the report and move promptly to take the individual off if it is found that there has been a breach of the ban on inhuman or degrading treatment, as required by article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms”.

#### **Article 4**

25. Spanish legislation includes the following provisions which have a bearing on the obligation to make torture a criminal offence:

(a) Articles 173 to 177 of the current Penal Code, in a clear sign of determination to stamp out such despicable conduct, make criminal offences not only of torture but of any attack upon any individual’s mental state.

(b) Article 27, subparagraph 3 (c), of the Security Forces Organization Act explicitly prohibits those officials who fall within the scope of the Act from “abusing their authority or using inhuman, degrading, discriminatory or vexatious treatment on persons in their custody”.

(c) Besides listing torture as a serious offence punishable by six months’ to two years’ imprisonment, article 57 of the Penal Code, as amended by Organization Act No. 14/1999 of 9 June, allows the courts or tribunals the possibility of incorporating into their sentences in torture cases one or more of the following bans:

- (i) On approaching the victim, members of the victim’s family or such other persons as the court or tribunal may determine;
- (ii) On communicating with the victim or such members of the victim’s family as the court or tribunal may determine;
- (iii) On returning to the place where the crime was committed or going to the place, if different, where the victim or his family lives.

#### **Article 5**

26. Spain recognizes the status of international crime to which its jurisdiction would indirectly apply which article 5 of the Convention assigns to torture. Article 23.4.g of the Judicial Power Organization Act states that crimes which, under international treaties or conventions, are required to be prosecuted in Spain fall within the jurisdiction of the Spanish courts.

27. Separately, the Act embraces the criteria for attribution of jurisdiction set out in article 5, paragraph 1, of the Convention. Specifically, article 23.1 recognizes the jurisdiction of the State in which the offence takes place, and article 23, paragraph 1, that of the State whose nationality the victim holds.



## Article 6

28. From the moment he is first detained, any individual in Spain has the benefit of the safeguards laid down for that purpose in the Spanish Constitution.

29. Article 17 of the Constitution reads:

“1. Everyone has the right to freedom and security. No one may be deprived of his liberty other than in accordance with this article and in the cases and the form prescribed by law.

“2. Pre-trial detention may not last longer than is strictly necessary to carry out investigations with a view to ascertaining the facts and, in any event, the detainee must be set free or placed at the disposal of the judicial authorities within 72 hours at the latest.

“3. Any individual detained must immediately be informed, in a manner comprehensible to him, of his rights and the reasons for his detention, and may not be compelled to make a statement. The detainee shall be guaranteed the assistance of a lawyer during the police and judicial proceedings within such deadlines as the law shall establish.”

30. The transposition into legislation of these constitutional provisions displays certain features, however, which merit closer attention; they occur for the most part in the Criminal Procedure Act, chapter VI of which governs the exercise of the right to defence, the assistance of a lawyer and the treatment of detainees.

### **Right to defence**

31. The institution of habeas corpus enshrined in article 17, paragraph 4, of the Constitution guarantees that any individual illegally detained will be placed immediately at the disposal of the judicial authorities. Organization Act No. 6/1984 of 24 May, which governs the habeas corpus procedure, recognizes the right of the detainee or his family, the public prosecutor, the People's Advocate or the competent judge acting on his own initiative to request the examining magistrate to consider whether the detention is legal.

32. This gives substance to the detainee's right to have his situation brought promptly to the attention of the judicial authorities, examined, and its legality determined.

### **Right to the presence of a lawyer**

33. The right of individuals deprived of their liberty to the presence of a lawyer is enshrined at the highest level in the Spanish legal order and has a dual thrust, applying both to individuals in detention and to those facing charges in criminal proceedings.

34. As mentioned above, article 17, paragraph 3, of the Spanish Constitution guarantees detainees the presence of a lawyer during police and judicial proceedings within the deadlines which the law establishes, while article 24, paragraph 2, acknowledges the same right in the context of effective protection of the judges and the courts, the intention being to guarantee due process for the accused.

35. There is a special parallelism between the dual constitutional thrust of the right to the presence of a lawyer and the international human rights agreements signed by Spain; on this point, however, the Spanish Constitution is broader and more generous, at least explicitly, than the international agreements are.

36. The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms enshrines the right to due process, laying down the rights of the accused with specific mention of the right to be assisted by defence counsel of his choice, but does not include having a lawyer present among the rights of those in pre-trial detention. The same model is followed, without substantive differences, in articles 9 and 14 of the International Covenant on Civil and Political Rights.

37. The distinction between a detainee and an accused in these international texts is therefore especially important where the right to the presence of a lawyer is concerned; the case law of the European Court of Human Rights bears this out.

38. Article 520 of the Criminal Procedure Act, which gave concrete form to the authorization accorded by the Constitution to set legal deadlines for detainees to have access to a lawyer, recognizes that detainees and accused persons both have free choice of counsel except (art. 527) in those cases, always ordered by a judge, in which the individual is to be held *incommunicado* and effect will be given to the right to the presence of a lawyer by assigning counsel officially.

39. It will be seen from the above that everyone in Spain is entitled from the moment of detention to the presence of a lawyer, and only in cases where owing to exceptional circumstances the court orders the detainee held *incommunicado* will he be unable to exercise the right to free choice of counsel, but he will in any event always be guaranteed the automatic appointment of counsel.

40. Here it must be reiterated that the restrictions imposed by article 527 of the Criminal Procedure Act are always applied subject to the strict authorization and supervision of the judicial authorities, since a detainee may be ordered held *incommunicado* only by a judicial authority in a properly justified resolution.

41. The essence of the right to the presence of a lawyer is, of course, a matter not only of how the lawyer is appointed but of whether the defence is effective, since what the Constitution seeks is to give the detainee the protection of technical assistance by counsel who can furnish professional support and help from the moment of detention onward; objectively speaking, this end is attained with the official appointment of counsel, which guarantees that assistance will indeed be provided.

42. Free choice of counsel is part of the normal right of a detainee to the presence of a lawyer but is not of the essence, since its denial and subsequent mandatory appointment of counsel does not annul the right or render it unenforceable, nor yet rob the detainee of due protection.

43. To be absolutely sure that this safeguard applies and is properly observed, the 1995 Penal Code added a new offence in article 537:

“Any public authority or official who prevents or obstructs the exercise of the right to counsel of a detainee or prisoner, solicits or encourages the latter’s waiver of such counsel or does not inform him immediately, in a manner comprehensible to him, of his rights and the reasons for his detention, shall be liable to a fine of four to ten months and special disqualification from public employment or office for two to four years.”

44. It may thus be concluded that Spanish legislation on a detainee’s right to the presence of counsel is not only not in any way contrary to the international agreements Spain has signed, whose value in interpreting fundamental public rights and liberties is enshrined in article 10, paragraph 2, of the Constitution, but indeed more extensive.

### **Treatment of detainees**

45. Besides the provisions commented on above, special mention should be made of the guarantees of fair treatment available to any detainee in connection with any offence; the following have been formulated and put into effect during the period covered by this report:

(a) An Instruction by the Secretary of State for Security dated 12 May 1997 which regulates in detail the procedure for the preparation of sworn statements;

(b) A Ministerial Order dated 16 December 1997 approving the data form to be used by forensic doctors performing check-ups on detainees. This form has been designed as an objective means of reflecting, among other matters, the medical condition of the detainee, any allegations of ill-treatment and objective information relating thereto. Once completed, the form is delivered to the judge, who may order supplementary expert reports and further tests;

(c) The Standards Handbook for Judicial Police Proceedings, produced at the National Judicial Police Coordinating Commission with assistance from professional judges, magistrates, members of the public prosecutor’s office and of the Security Forces with the aim of laying down basic standards for action by police staff, particularly in instances such as detention which entail specific restrictions on rights and freedoms;

(d) An Instruction by the Secretary of State for Security dated 20 December 1996 regulating the practice of stripping detainees in order to check whether they are carrying in their clothing or concealed about their bodies any dangerous object or incriminating evidence, and laying down the conditions or safeguards required before such action may be taken.

46. Lastly it should be added that in addition to all the above safeguards there is, pursuant to article 6, paragraph 3, of the Convention as regards the detention of individuals in connection with possible acts of torture, the fact that the diplomatic representative of the State whose nationality the detainee holds is immediately notified of such a detention.

#### **Article 7**

47. Pursuant to article 7, if an individual suspected of having committed torture is not to be extradited, Spain will launch the appropriate criminal proceedings subject to the normal standards and safeguards described in the comments on the preceding article.

#### **Article 8**

48. There have been no changes of relevance to the substance of this article. Through direct application of article 8, Spain regards torture as one of those crimes that give rise to extradition under any treaty concluded between States parties, and regards the Convention itself as a treaty in cases where no treaties have been signed; at all events, it recognizes torture as a crime giving rise to extradition.

49. During the period to which this report applies, and more specifically since 1985, the Passive Extradition Act (No. 4/1985 of 21 March), which governs this subject and deals with matters not resolved in the Convention (such as priorities in the event of two or more countries seeking the extradition of a single individual accused of torture) has remained in effect.

#### **Article 9**

50. The international legal assistance called for in this article is governed in Spain by the Criminal Procedure Act, articles 193 and 194 of which designate the diplomatic channel for use in such cooperation pursuant to existing treaties, and in the absence of treaties, pursuant to general governmental policy or the principle of reciprocity.

51. Article 276 of the Judicial Power Organization Act rules that “requests for international cooperation shall be forwarded through the President of the Supreme Court, the High Court of Justice or the National Court to the Ministry of Justice, which shall pass them on to the competent authorities of the requested State ...”.

52. Both Acts have remained in effect during the period covered by this report, but there have been no new developments: this indicates merely that the Spanish Government routinely provides the utmost assistance and judicial cooperation in cases of torture, in accordance with the procedure described above, and with the greatest diligence and efficacy.

#### **Article 10**

53. The obligation on States parties under article 10 to provide education and training on the prohibition of torture is met in Spain by the inclusion of the topic in the various training curricula for staff entrusted with functions to do with the detention, guarding, questioning and handling of individuals deprived of their liberty.

54. A variety of the rules and regulations cited above governing the Security Forces explicitly prohibit torture, and they are studied under the training curricula for Security Forces employees.

55. The ongoing training process in the Security Forces conforms to article 6, paragraph 2 (a), (b) and (c), of the Security Forces Organization Act No. 2/1986 of 13 March, which stipulates that “training shall correspond to the basic principles of practical application and shall be professional and permanent in character”.

56. The objective of professional, permanent training for members of the Security Forces is to prepare police officers to exercise the powers assigned to them by the Spanish Constitution (arts. 104 and 126) and Organization Act No. 2/1986 (arts. 11 and 12), instructing them in subjects and techniques in which they need special knowledge or skills.

57. Among other subjects and topics, the curricula at teaching centres for different grades and jobs include the main international standards of professional ethics, such as:

(a) The Declaration on the Police (Council of Europe resolution 690 of 8 May 1979);

(b) The United Nations Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, 17 December 1979);

(c) The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990);

(d) The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, 9 December 1988);

(e) The Standard Minimum Rules for the Treatment of Prisoners (Council of Europe, Committee of Ministers resolution (73) 5, 19 January).

58. Other noteworthy efforts to spread information about human rights include the distribution to the various units of the National Police Force of 50,000 copies of the “Ten Commandments”, a card setting out the basic principles of professional ethics and detainees’ rights, and 45,000 leaflets recalling the European Convention on Human Rights.

59. Lastly, it should be pointed out that Police and Human Rights Week was celebrated at Police Headquarters between 13 and 19 November this year as part of the Council of Europe “Police and Human Rights 1997-2000” programme and to mark the fiftieth anniversary of the Convention for the Protection of Human Rights and Fundamental Freedoms, which describes at length the role of society and the police in upholding human rights and preventing torture and inhuman or degrading treatment.

60. Annexed to this report as supplements to the comments on this article are the training curricula and programmes of the Training, Promotion, Upgrading and Specialization Centres of the Basic and Advanced Training Division at Police Headquarters.

### **Article 11**

61. The comments on article 6 (paragraphs 29 to 47 above) provide details of amendments to rules, instructions and handbooks on the treatment of individuals subject to any form of arrest, detention or imprisonment which have come about, in part, as a result of the review process which this article requires.

62. Among these new rules and instructions, mention has been made (see comments on article 6) of the following:

(a) The Instruction by the Secretary of State for Security dated 12 May 1997 which regulates the procedure for the preparation of sworn statements;

(b) The Ministerial Order dated 16 December 1997 approving the data form to be used by forensic doctors performing check-ups on detainees;

(c) The Standards Handbook for Judicial Police Proceedings;

(d) The Instruction by the Secretary of State for Security dated 20 December 1996 regulating the practice of stripping detainees.

### **Article 12**

63. Spanish legislation, as has been shown under preceding articles, regards torture as a public crime which can automatically be prosecuted by means of a swift, impartial procedure.

64. In those isolated, exceptional cases, therefore, when a police officer oversteps his authority - and owing to their rarity, such cases are always picked up by the press - not only is he put on trial by the courts but the administration does everything within its power to discharge the associated responsibilities.

65. Cooperation by the Spanish authorities in the investigation of such cases has been recognized on various occasions in the annual reports of the People's Advocate to the Cortes Generales. The 1997 report says (p. 217), on the subject of Security Forces intervention in cases of ill-treatment, that "the degree of cooperation shown by the Administration in the inquiries requested by the institution with a view to the discharge of possible responsibilities is outstanding".

66. In the recent report on the activities of the People's Advocate in 1999, emphasis is laid, in discussing public security and Security Forces intervention specifically, on the cooperation of the Security Forces, with an acknowledgement that "it has been found that both the National Police Force and the Civil Guard have launched investigations or internal inquiries to ascertain the facts, without prejudice to their possible suspension if judicial proceedings should be brought".

### **Article 13**

67. Spanish legislation acknowledges victims' right to lodge complaints that will give rise to the corresponding judicial proceedings.

68. As indicated in the comments on earlier articles, such complaints are rigorously and thoroughly investigated, in conformity with the idea that respect for human rights is a leading concern of the Spanish authorities and that the authorities' goal should be to prevent ill-treatment wherever possible.

69. There has, incidentally, been no amendment of the relevant legislation during the period covered by this report.

### **Article 14**

70. The Spanish Government has long recognized the right of victims of violent crime in general to the support and assistance they need to obtain fair and appropriate reparation or compensation for the physical or mental injury they have suffered.

71. Positive intervention by the State, inspired by the principle of solidarity and in keeping with article 14 of the Convention, is designed to mitigate the effects of such crimes on the victims or their dependents; it takes the form of a variety of standards governing economic assistance for victims and aid in the event of any kind of crime.

72. These standards, although they do not refer exclusively to the crime of torture, include the following which have been in effect during the period covered by this report:

(a) Act No. 35/1995, of 11 December, on aid and assistance to victims of violent crime and crimes against sexual liberty;

(b) Act No. 32/1999, of 8 October, on solidarity with victims of terrorism.

### **Article 15**

73. In accordance with article 117, paragraph 3, of the Spanish Constitution and article 741 of the Criminal Procedure Act, it is up to the Spanish courts to assess and determine the "weight of evidence" in court cases.

74. In so doing they may come to conclude that statements made under threat or duress cannot have probative force if it transpires that those making the statements did so against their will.

75. Reference should be made to a judgement of 17 April 1996 by the Criminal Division of the Supreme Court which, although finding against the applicant, rules that if statements had been made under threat or duress, against the will of the accused, on judicial premises the

evidence would have had to be declared void, since obtaining it would have constituted torture, and “it is essential for democracy in the country and for the survival of efficient and effective constitutional justice that such illegal conduct, a source of shame to anyone who would claim to be a worthy person, should be prosecuted”.

### **Article 16**

76. As required by this article, Spanish legislation also penalizes all acts which, without amounting to torture, can be described as inhuman or degrading.

77. Thanks to the 1995 amendments to the Penal Code, this applies both to torture, in the sense of physical or mental suffering, and to other inhuman or degrading treatment, irrespective of its severity or the reasons for its infliction.



**List of annexes<sup>1</sup>**

- I. Police Headquarters Training Centre. Human rights training content.
- II. Promotion Centre, Police Headquarters Training Division.
- III. Police Headquarters Upgrading and Specialization Centre.
- IV. Civil Guard Headquarters: training activities.

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<sup>1</sup> May be consulted in the secretariat archives.