



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

Distr.: General
25 November 2009

Original: English

Committee against Torture
Forty-third session

Summary record of the 914th meeting

Held at the Palais Wilson, Geneva, on Friday, 13 November 2009, at 10 a.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Fifth periodic report of Spain (continued) (CAT/C/ESP/5; CAT/C/ESP/Q/5 and Add.1 and Add.1/Corr.1)

1. *At the invitation of the Chairperson, the members of the delegation of Spain resumed their places at the Committee table.*
2. **Ms. García** (Spain) said that her Government was determined to show zero tolerance towards any cases of torture and ill-treatment, which could in no way be mitigated by the need to protect citizens and the democratic system from the terrorist attacks to which Spain had been subjected for many years. The Government made use of all available means consistent with the rule of law and ensured due guarantees for persons suspected of terrorist crimes. That very week, the ruling of the European Court of Human Rights confirming the ban on the organization Batasuna on account of its links with the terrorist organization ETA had become final; that constituted invaluable support for Spain's struggle against terrorism.
3. **Mr. Ortiz de Urbina** (Spain) said that the elements defining torture and ill-treatment in the Convention were covered not only in article 1, but also in articles 174 and 175 of the Criminal Code. In recent years, those articles had been applied in many decisions. Between 2002 and 2009 the Supreme Court had heard 34 cases relating to such offences, and more than 250 police and prison officers had been convicted in the same period in Spanish courts; that showed that judges were determined to punish any excesses by such officers. Thus, his delegation would like to know where the Committee had obtained the information according to which between 2003 and 2008 there had been only two convictions for such offences.
4. With regard to the difference between more or less serious cases of torture or ill-treatment, he said that for the Spanish legislature all forms of torture or ill-treatment were serious, as could be seen from the fact that they all carried prison sentences, which could not be replaced by fines. Less serious cases applied solely to ill-treatment resulting from moderate use of force in situations in which an officer had begun an action within a legitimate framework. For example, in its ruling of 25 September 2009, the Supreme Court had considered the case of a person who had been handcuffed too firmly, which had been painful for a short time but had not produced any injury.
5. A question had also been asked about whether the term used by Spanish legislation "authority or public official" was compatible with the concepts employed in international instruments on the prevention of torture. He assured the Committee that, in that area as well, the relevant Spanish legislation complied with the requirements of the Convention. The definition of authority or public official in article 24 of the Criminal Code referred to the idea of participation in public functions, and thus included not only public officials strictly speaking, but any individual acting in an official capacity or who participated in a public function. Articles 16 and 27 to 29 of the Criminal Code covered punishments for the actual and attempted commission of, and complicity in, all offences, and thus included acts of torture and ill-treatment.
6. Courts in Spain made extensive use of the Convention to interpret specific elements of the definition of such offences. For example, the recent ruling by the Supreme Court of 30 September 2009 had drawn on the Convention and other international instruments to interpret the term "moral integrity". The definition of terrorism in the Criminal Code was fully in conformity with international instruments. Any offence committed in pursuance of terrorist goals was regarded as an aggravating circumstance.

7. Concerning legislative provisions governing incommunicado detention, he noted that, in its ruling of 11 September 1987, the Constitutional Court had pointed out that incommunicado detention, ordered in accordance with the conditions prescribed by law, served to protect values embodied in the Constitution and enabled the State to comply with its constitutional duty to ensure the security of citizens. The provisions on incommunicado detention contained many legal safeguards: for it to be imposed, a court must give reasoned grounds within 24 hours, and the situation of the detainee must be constantly monitored by the judge who authorized the incommunicado detention or by the investigating judge at the place of detention. Pursuant to article 17.2 of the Constitution, incommunicado detention could not last longer than the time absolutely necessary for conducting an investigation to establish the facts; it could not exceed 72 hours. In the case of persons who were members of, or connected with, armed groups or terrorist organizations, the Constitution allowed incommunicado detention to be extended for another 48 hours, provided that during the first 48 hours of detention a request was made to the judge and the judge authorized the extension within the next 24 hours, giving grounds. Once the detainee had been brought before the judge, the latter could impose another five days of incommunicado detention, and the detainee then became a prisoner. It had been suggested that extending the period of incommunicado detention might in itself be an inhuman punishment or ill-treatment, but in the course of 2009 there had not been a single case of incommunicado detention exceeding five days.

8. With regard to legal aid for detainees, the Committee had questioned the provision whereby an incommunicado detainee must be provided with a court-appointed lawyer. In its ruling of 11 December 1987 confirming that requirement, the Constitutional Court had referred to the major difference between legal assistance during the detention phase and during the trial phase. In the trial phase, legal assistance was of the utmost importance, and it was essential that the detainee trusted the lawyer; hence, the detainee must be able to choose a lawyer freely. In the much shorter detention phase, the assistance of a lawyer was intended to ensure that the detainee's constitutional rights were respected, that the detainee was not subjected to any act or treatment incompatible with his or her dignity, that the detainee was not coerced into making a confession, and that the detainee received counselling on the conduct of the investigation, *inter alia*, in relation to the right to remain silent. By definition, statements made by the detainee to the police could not serve as evidence. The Constitutional Court had also stressed that, once the period of incommunicado detention was over, the detainee had the right to choose a lawyer.

9. For all those reasons, the Court had found that a court-appointed lawyer helped prevent torture and guaranteed the rights of detainees just as effectively as a freely chosen lawyer, and it had recalled that the European Court of Human Rights had come to the same conclusion in a ruling in 1980. He reminded the Committee that Spain had witnessed terrorist attacks which had caused over 1,000 deaths, and it needed effective prevention measures. That could never excuse torture or ill-treatment, but it did justify the existence of a system of incommunicado detention accompanied by guarantees. If an investigation of a highly organized terrorist group was to be successful and future attacks forestalled, other members of the organization must be prevented from learning that such an investigation was under way. In order to establish a proper balance between the need to prevent terrorist attacks and the rights of detainees, legislation provided that a court-appointed lawyer must be selected by the Bar Association and must meet strict professional requirements.

10. Indigent detainees were assisted by a court-appointed lawyer not only during the investigation phase but throughout the trial, and no one had ever contended that that violated the fundamental right to legal assistance. Restrictions on allowing the court-appointed lawyer to meet with the detainee in private were due to the highly organized nature of terrorist groups and the possibility that members of such groups might threaten or

coerce the court-appointed lawyers, forcing them to act as carriers of information, the disclosure of which would jeopardize the success of an anti-terror operation.

11. In relation to medical care by a physician of choice, forensic doctors had access to all detainees, and not just those in incommunicado detention. Eminently qualified to detect signs of torture or ill-treatment, forensic doctors were selected by means of a public competition. Neither the judge nor the government authorities could choose which forensic doctor should examine a particular detainee. Forensic doctors were bound by the ethical precepts of their profession and did not take orders from the judge or the authorities. Although the Istanbul Protocol was not compulsory, Spanish physicians implemented its recommendations. In order to standardize human rights reports, the Government's human rights plan included a measure to have the Ministry of Justice formulate a protocol which would define minimum medical examinations and areas to be covered. Signs of external violence detected in the course of a medical examination must be recorded in the section of the report on injuries, and the case was subsequently forwarded to the judge. The detainee was then re-examined by a forensic doctor and a new medical report was drafted.

12. Any detainee, including an incommunicado detainee, who exhibited injuries which could not be attributed to detention or who claimed to have such injuries, must be immediately transferred to a health centre for examination. Following the 2003 reform of the Criminal Procedure Act, any incommunicado detainee who so requested had the right to be examined by a second forensic doctor appointed by the competent judge or the court. The human rights plan established that the appropriate reforms must be undertaken to ensure that the incommunicado detainee was examined not only by a forensic doctor, but also by another physician from the public health service, to be appointed by the national mechanism for the prevention of torture. At present, three of the six courts responsible for investigating offences of armed groups allowed detainees to be examined by physicians of their choice. The forensic doctor must visit the detainee at least once every eight hours and whenever considered necessary. The protocol provided four conditions for a physician of choice to be present: the detainee must request it; they must converse in Spanish; questions must relate exclusively to the health of the detainee and the conditions of incommunicado detention; and reports must be kept confidential as long as incommunicado detention continued.

13. Thus, it could not be said that Spain had not adopted effective measures to prevent ill-treatment of incommunicado detainees. The presence of a forensic doctor was just as effective for the detection and prevention of torture as that of any other physician, if not more so. In addition, the use of forensic doctors entailed definite advantages for the success of operations to prevent terrorist violence.

14. The right of detainees to communicate with family members might likewise be restricted if such contact was liable to interfere with the investigation. Judges investigating cases involving terrorism must inform the families of detainees of their place of detention and any later transfers.

15. On a question about the situation of detainees prior to the judicial ruling on incommunicado detention, he said that a detainee remained incommunicado until the judge issued a ruling, which must take place within 24 hours. The judge could question the detainee at any time either personally or through an appointed representative. The entire regime of incommunicado detention was under judicial supervision. The judge must give a reasoned explanation for approving incommunicado detention and could personally assess the situation of the detainee at any time.

16. With regard to the evidentiary value of statements made during incommunicado detention, he said that the ruling of the Supreme Court of 4 December 2006 had established that statements validly made to the police could be evaluated by the court prior to their

being included in the oral hearing. On no account did that imply that such statements alone were sufficient to overturn the presumption of innocence. It merely meant that statements by the police were subject to the same rules as statements by other citizens when considered by the court together with all the other evidence. That said, in its ruling of 2 March 2009, the Supreme Court had determined that a judge must always remain sceptical with regard to any evidence for the prosecution. The fact that in the past three years there had been only five cases in which the ruling of regional courts had been challenged before the Supreme Court was testimony to the moderation with which the courts had made use of that possibility.

17. With regard to video recordings of incommunicado detainees, the human rights plan made provision for giving effect to the recommendations of international human rights bodies, including the Committee against Torture, to produce continuous video or audio-visual recordings of incommunicado detainees at police stations. The law enforcement authorities were implementing all judicial decisions of the National High Court regarding such recording of incommunicado detainees. To that end, modern video-surveillance equipment had been installed in public areas and areas used for statements and interviews. Today, more than 50 per cent of police stations and Guardia Civil stations were equipped with cameras.

18. It was worth noting that the provisions for incommunicado detention were less stringent in Spain than in other European countries. In France, the investigating judge could deny requests to persons in pretrial detention for up to four years. In Germany, incommunicado detention could last as long as a person was in prison. In the United Kingdom, it could last as long as 28 days.

19. As to the questions on compensation awarded to persons who had suffered ill-treatment during detention, he said that Spain was one of the few countries in Europe in which cases concerning compensation were dealt with in the same criminal proceedings so as to speed up a settlement. In the rare cases in which only administrative sanctions were imposed, the victim had a right to compensation for improper functioning of the administration.

20. With regard to internal investigations of law enforcement officials for cases of torture, the usual procedure was for the complaint of torture to be lodged with a judge, who ordered the case to be investigated by a unit other than that of the person complained of.

21. Spain's extensive experience with terrorism meant that the care of victims of violent crimes, in particular victims of torture and ill-treatment, was given close attention in terms of psychological and psychiatric treatment.

22. **Ms. García** (Spain), referring to a question on the impact in prisons of the "Parot doctrine" (CAT/C/ESP/Q/5/Add.1, paras. 220–228), said that the doctrine had been applied to a particularly serious case of serial homicide committed by members of ETA and concerned the manner in which several prison sentences were to be served when a number of serious offences had been committed, such as terrorist acts and homicides. The Criminal Code provided that in such cases, sentences were to be served consecutively in descending order of gravity, with two sentences of maximum duration being enforced. The total time served could not exceed three times the length of the longest sentence imposed and could not exceed 30 years. The Supreme Court had ruled that those limits did not constitute a new and separate penalty, but were merely limits on the maximum amount of time which sentences could be served.

23. The doctrine was important in that it affected the way in which the reduction of sentences through labour was calculated under the 1973 Criminal Code, pursuant to which one day of sentence was replaced by two days of work; the time thus accumulated was taken into account when granting release on parole. If the maximum sentence was

considered to be a new and separate sentence of 30 years, the benefits would be applied to that single sentence, from which one day would thus be deducted for two days of work. However, if the legal maximum sentence which could be served was not equivalent to a new and separate penalty and did not prevent the serving of successive penalties, the benefit would be applied to each of the sentences being served.

24. There was an ongoing debate on how to interpret the rule in the Criminal Code: maximum enforcement as a new and separate sentence, or maximum enforcement as a limit compatible with the successive enforcement of the sentences imposed. Both interpretations were beneficial to the offender, but the doctrine of the new and separate sentence was even more beneficial, especially in the case of the commission of several very serious crimes. However, any interpretation particularly beneficial to the worst offenders would offend the basic sense of justice of the victims and of the public at large, in addition to distorting the retributive and preventive purposes of punishment. In the view of her Government, a method for applying the rule that a maximum length of sentence must be served could not be described as torture or cruel, inhuman or degrading treatment, because it already comprised a way of shortening the sentences. At issue was a point of interpretation by the Supreme Court, and it was necessary to follow its ruling that the remedy of *amparo* could be applied for. The objective of punishment was not only social reintegration but also prevention, and the preventive aspect would have no effect if all homicides after the first one could go unpunished, yet that would happen if the Parot doctrine was not applied. The maximum length of sentences continued to apply even for the worst offenders.

25. The National High Court was situated in Madrid and exercised jurisdiction over the whole of the country. In its report of October 1986, the European Commission of Human Rights had recognized its ordinary jurisdiction, based on a decree-law, and the fact that it was composed of judges appointed by the General Council of the Judiciary. Its status had been recognized repeatedly by both the Supreme Court and the Constitutional Court. Constitutional Court rulings Nos. 199/87, 153/88 and 56/90 reaffirmed that the legislature could reasonably decide, subject to certain conditions and taking into account the nature of cases, their subject matter, their location and their importance for a particular social group, that the investigations and trial should be undertaken by a centralized judicial body, for instance in the case of terrorist acts. Article 117.3 of the Constitution stipulated that the exercise of judicial authority in judicial proceedings was vested exclusively in the courts and tribunals established by law, in accordance with the rules of jurisdiction and procedure established in various legal enactments. The Constitutional Court had therefore ruled that the existence of the National High Court did not breach the Constitution. Special courts could not be set up after the commission of a crime but a court already established by law and endowed with the requisite jurisdiction was entitled to hear cases referred to it.

26. **Mr. Rodríguez**, (Spain), replying to a question about overcrowding in prisons, said that cells were designed for occupation, if necessary, by two inmates. With regard to the 175 per cent occupancy rate, he announced that the inauguration of new prisons had reduced that figure to 141 per cent, although there had been a significant increase in the number of prisoners. Since June 2004 four new prisons had come into operation and two existing prisons had been expanded and renovated. Approximately 4,312 new cells out of a total of 5,170 were already occupied. There were 21 new social reintegration centres, with a total of 2,206 cells, 2,157 of which were occupied, and a special unit for mothers. The allocation for penitentiary facilities in the 2010 budget had been increased by 5.39 per cent.

27. With regard to the dispersal of the many prisoners who were members of armed gangs, two circumstances had to be taken into account under the legislation in force when assigning a prisoner to a particular prison. One was prison security. There had been repeated escapes and attempted escapes by members of such gangs. Moreover, members of the ETA terrorist group impeded the rehabilitation and proper treatment of inmates by

issuing threats and by ordering the social exclusion of the relatives of inmates who resisted gang discipline. The other circumstance was inmates' personal development. Former members of armed gangs were required, under article 9 of the Criminal Code, to make an explicit statement renouncing their former conduct, abandoning violence and apologizing to their victims. In his view, that was not harassment but a demonstration of humanity.

28. Prisoners did not enjoy a general right to remain close to home. However, it was recognized by law as a possible requirement in individual cases, where rehabilitation would be served by placing the inmate close to his or her social environment.

29. The dispersal of prisoners was a legally recognized option which respected the rights of all. According to paragraph 11 of the Guidelines on human rights and the fight against terrorism, adopted by the Council of Europe in 2002, the imperatives of the fight against terrorism could require that a person deprived of his or her liberty for terrorist activities should be submitted to more severe restrictions than those applied to other prisoners, in particular with regard to the separation of such persons within a prison or among different prisons, on condition that the measure taken was proportionate to the aim to be achieved.

30. Drug consumption in prisons had declined and a number of internationally approved preventive and damage-reduction programmes were producing initial results. Preventive measures had also been taken over the past 10 years to reduce the incidence of HIV/AIDS and hepatitis C among inmates. Spain had received three awards from WHO in 2009 for its sound health practices in prisons.

31. As a result of a suicide prevention plan introduced in 2005, prison suicides had declined by 50 per cent.

32. The liberal provisions for private visits had contributed to a reduction in sexual violence in prisons. The design of new wings in women's prisons complied with international recommendations for the prevention of such offences. Sexual harassment of detainees by police officers and prison staff was an isolated phenomenon and was strenuously combated by those in positions of authority. The case that had occurred in an internment centre in Málaga in 2006 had led to charges against seven police officers, who had been subjected to disciplinary action the same year. They had been provisionally suspended at the time and remained suspended. The responsible Chief Inspector had also been charged and provisionally suspended but the suspension had been lifted by a judicial decision. The victims had benefited from the security measures provided for by article 59.4 of Organization Act No. 4/2000 on the rights, freedoms and social integration of foreigners in Spain. As a preventive measure, the custodial services relating to women detainees had been reinforced by the presence of national police officers on all shifts.

33. Prison health staff, including doctors and psychologists, were informed about the Istanbul Protocol and human rights during their initial training course. They were provided with investigation manuals and other documents concerning torture and other cruel, inhuman and degrading treatment and studied relevant European prison rules. If a detainee complained of ill-treatment or injuries that might have been caused by a public official, the doctor was required to carry out an examination and report it in the inmate's medical record. If injuries were detected, a report was compiled. The original was sent to the competent judicial authority and a copy was presented to the detainee. Decisions to separate inmates with infectious diseases were based on the technical criteria applied by prison medical staff.

34. There was no special police unit responsible for overseeing persons in incommunicado detention. Subject to the consent of a judge, any police station could decide, if circumstances so required, to place an arrested person in incommunicado detention. All members of the law enforcement agencies therefore received training in detention practices and the rights of detainees.

35. There had been no mass detention of irregular migrants in Spain. The Ministry of Internal Affairs had ordered that police operations should aim solely at achieving objectives consistent with Act No. 4/2000. The repatriation of 96 Senegalese nationals had been conducted, as in all cases, with their full knowledge, and their human rights had been scrupulously respected at all stages. During the journey, the customary security measures for deportation by air had been applied in accordance with civil aviation norms. No incidents had occurred. Following disembarkation, some had refused to enter the coaches provided and the Senegalese police had intervened. The authorities of the two countries had dealt with that incident to the entire satisfaction of both.

36. Taser weapons were not used by the State or autonomous police forces. Their use by private persons was also prohibited by law. Specially authorized officers were allowed to possess and use such weapons in accordance with specific regulations. Local and municipal police forces enjoyed considerable regulatory independence in accordance with the Constitution and the statutes of the autonomous regimes.

37. **Mr. de Barandica** (Spain) said that his Government had undertaken an exhaustive investigation of allegations that some airports had been used since 2002 for extraordinary renditions and had concluded that no United States aircraft had used Spanish military bases for such purposes. The Spanish authorities had also made it clear to the United States Government that it could not use civilian airports for CIA rendition flights. All data concerning military and civilian flights had been communicated to the competent judicial authority, namely the National High Court. The outcome of the Government's investigations had been published. The Minister for Foreign Affairs had appeared before Parliament in November 2005 and December 2008 to provide detailed information on the subject, and had also addressed the European Parliament in 2006 and provided all relevant information to the Council of Europe. The Government's position was unequivocal. It condemned the use of such methods and emphasized the need to respect international human rights law in all counter-terrorism activities.

38. The Government had reacted differently to the reports of two United Nations Special Rapporteurs because of their different mandates and the different substantive content of their reports. It had disagreed with some conclusions in both cases but it had cooperated fully with the Special Rapporteurs, who were independent and sought to comply strictly with their mandates. He referred the Committee to the duly recorded official reaction of the Spanish authorities.

39. With regard to diplomatic assurances, the National High Court had decided to make the extradition of the Russian citizen Murat Ajmedovich Gasayev conditional on a commitment by the Russian Federation not to sentence him to death or life imprisonment and to consent to international monitoring of his conditions of detention. The National High Court had concluded that his situation should be monitored by a person designated by the United Nations Committee against Torture or the Council of Europe's Committee for the Prevention of Torture. As neither Committee had designated a monitor, the National High Court had entrusted the task to the Spanish Embassy in Moscow. The Russian Federation had agreed to all the terms. The diplomatic staff were joined during their visits to the detainee by physicians and members of the detainee's family. A focal point was designated in the Embassy who could be contacted at any time by the family and Mr. Gasayev's defence counsel. The Russian prosecution service and Ombudsman had cooperated fully. Visits had taken place in February, March, April and July 2009 and Mr. Gasayev had been released on 28 August. He had enjoyed the same rights as other detainees. His cell had been under video surveillance 24 hours a day and he had had a television, a refrigerator and a shower. He had not complained of ill-treatment or inadequate medical treatment for his chronic hepatitis. He had warmly thanked the Spanish Embassy for its assistance.

40. With regard to the compatibility of the system of diplomatic assurances with article 3 of the Convention, the Spanish authorities took such decisions on a case-by-case basis in the light of the provisions of the Convention.

41. **Mr. Fernández-Cid** (Spain) said that expedited procedures for dealing with applications for asylum at border crossings were regulated by the recently adopted Act No. 12/2009 on the right to asylum and subsidiary protection, under which applications could be denied or declared inadmissible. The applicant was notified within two days and had two days to request a review of the decision. Such a request entailed suspension of the procedure, which could be extended to 10 days at the request of UNHCR. The Act also permitted recourse to other remedies available under Spanish law, namely the reconsideration or administrative complaint procedures. Applications were rejected where there was no ground for providing international protection, where one of the legal grounds for exclusion was applicable or where the application was manifestly groundless. However, article 18 of the Act also provided basic guarantees such as the requirement that the application for international protection should be recorded, that free legal assistance and the services of an interpreter should automatically be provided, that the submission of the application should be communicated to UNHCR and entail the suspension of any return, expulsion or extradition procedure, and that the applicant should have access to his or her file and to health care and social services.

42. Agreements on the assisted return of unaccompanied minors had been concluded with Senegal in 2006 and Morocco in March 2007. The agreement with Senegal had been ratified by both parliaments and that with Morocco was pending ratification. Both agreements were based on international principles and norms and the relevant provisions of the Convention on the Rights of the Child. The best interests of the child were the primary guiding principle in all cases. The agreements provided for action to prevent illegal immigration of unaccompanied minors, the adoption of assistance and protection measures, particularly in Spain, and the assisted return of the minors to their families or to reception centres in the countries of origin. Since the entry into force of the agreement with Senegal in July 2008, no Senegalese minors had been returned to their families or any public institution. There had been only 13 cases of repatriation in 2007.

43. Responding to a question concerning detention centres for minors in the Canary Islands, he explained that they were not detention centres but rather internment centres for at-risk minors. They, in turn, were not to be confused with reception centres for unaccompanied foreign minors. The Government had taken a series of measures to deal with the large influx of juvenile immigrants to the Canary Islands and the strain they placed on the relevant protection services. In the period from December 2006 to February 2008, it had carried out a programme involving the transfer of some 510 unaccompanied foreign minors from the Canary Islands to other autonomous communities on the Spanish mainland. In December 2008, the Ministry of Labour and Immigration and the then Ministry of Education, Social Policy and Sport had concluded an agreement with the Autonomous Community of the Canary Islands that outlined action for dealing with the influx of minors. During the period 2006 to 2009, the Government had provided 43,350 euros in financial assistance to the Canary Islands in order to address the issue.

44. The juvenile internment centres did not specifically concern unaccompanied foreign minors. Such centres operated on a closed, semi-open or open basis. There were also a number of therapeutic internment centres that operated on a closed or semi-open basis. The decision to place a minor in an internment centre was taken by a judge after consideration of several factors relating to the minor's situation, such as the lack of family protection or the existence of specific behavioural problems. All actions taken with regard to such minors were governed by the principle of the best interests of the child, were based on reports by the relevant child protection services and followed a precautionary measure in respect of

the minor. Such measures were taken in compliance with Act No. 1/1996 on the legal protection of minors, which stated that the best way to guarantee the protection of such minors was to promote their treatment as independent subjects of law. The Act also recognized as a matter of priority that training should be provided to educators and professionals who dealt with young people, in order to ensure the most appropriate intervention in each particular case.

45. On the question of alternatives to placing minors in internment centres, a standard intervention protocol was currently being formulated jointly by the Commission of Directors-General for Children's Affairs of the Autonomous Communities, the Monitoring Centre for Children and the Autonomous Communities. Other efforts included the organization of public information and awareness-raising campaigns designed to strengthen the family, studies aimed at preventing and dealing with family conflicts and the development of a parenting manual that would be used in outreach programmes for parents' associations and social organizations working with at-risk minors.

46. Spain was a party to the Convention on the Rights of the Child and, in accordance with article 3 of that Convention, provided for the best interests of the child in all its policies concerning children. Minors without family protection were placed under the guardianship of the State through the child protection authority in the relevant autonomous community. However, on attaining a prescribed age, minors could request a hearing, or when they had attained a certain level of maturity, they could request the appointment of a representative of their choice, instead of the State, to defend their rights. In the case of unaccompanied foreign minors, article 35 of the bill amending the Aliens Act, which was currently under consideration in Parliament, provided that minors aged 16 to 18 had the right to take part in repatriation proceedings on their own behalf or through a representative appointed by them. The bill would extend that prerogative to minors under the age of 16 who demonstrated sufficient discernment and who expressed wishes contrary to those of their legal guardian. In such cases, a judicial adviser was appointed to assist the minor. The bill stated in its preamble that it was in the minor's best interests to be reunited with their family or placed under the guardianship of the relevant child protection authority in their country of origin, provided that adequate conditions for their protection could be ensured. Spanish legislation allowed private institutions to manage juvenile internment centres but only under the supervision of the Government and the Juvenile Prosecution Service.

47. **Mr. Blázquez** (Spain), responding to a question concerning the impact of immigration laws on violence against irregular women immigrants, said that Spain considered gender violence to be a cross-cutting priority for all three branches of government, and had consequently given it due prominence in its human rights plan. Since the adoption of Act No. 1/2004 on comprehensive protection against gender violence, the Government had taken a number of steps to deal with the problem. Firstly, pursuant to Royal Decree No. 2,393 of 30 December 2004, from 2005 to the present it had granted temporary residence permits on the basis of exceptional circumstances or for humanitarian reasons to a total of 1,287 female foreign nationals from countries outside the EU who had been able to prove that they had been victims of violent offences. Secondly, in 2009 the Government had approved a gender violence prevention and protection plan for women immigrants, allocating to it a budget of more than 11 million euros.

48. Given that immigrants accounted for approximately 12 per cent of the total population and that the average number of foreign victims accounted for 29.9 per cent of all victims of gender violence, women immigrants were clearly over-represented. However, they were also over-represented among those requesting and receiving assistance and protection as a result of such offences.

49. It was generally agreed that Act No. 1/2004 on comprehensive protection against gender violence had been effective, given that there had been a decrease of 5 per cent in the

average number of victims following its adoption. Further proof of the success of the Act was the exponential increase in the number of complaints lodged and proceedings instituted, as well as the mere fact that data had been collected on the issue. When Spain assumed the European Union presidency in 2010, one of its aims would be to promote the collection of data on gender violence throughout Europe as an effective means of coordinating action to combat that social scourge.

50. A special unit for cases of gender violence had been set up in the Public Prosecution Service, and in 2008 some 113,500 women victims of such violence had benefited from judicial protection measures. In a number of cases, women had withdrawn their complaints after having lodged them. In the prevention and awareness-raising plan that had been approved by the Government, considerable emphasis had been placed on the need to lodge complaints and maintain them. The tendency to withdraw complaints could be corrected only through the design of policies to provide comprehensive social assistance and protection to victims so as to ensure their safety and enable them to rebuild their lives.

51. The case of Ms. Sylvina Bassani was unfortunate, having resulted from a systematic dysfunction. The Government could only express regret, while simultaneously taking the necessary measures to prevent a recurrence. Ms. Bassani had died, but her case was just one of some 113,500 cases and could not be interpreted as meaning that the entire system was flawed. It did, however, prompt the Government to develop new standards of quality and security for women victims of gender violence. In 2009, the Government had installed within the Ministry of Equality, the Ministry of the Interior and the Ministry of Justice, an advanced electronic surveillance system for monitoring removal orders and tracking abusers. The system provided for the protection of the 3,000 most serious cases and had required an investment of 5 million euros.

52. Given that the issue of compensation for victims of gender violence was a very technical issue, it would be preferable to provide the Committee with a written report on that subject.

53. With regard to racist and xenophobic violence, which had been referred to by various members of the Committee, the human rights plan explicitly provided for the development of a strategic plan for citizenship and integration and a bill on equal treatment and non-discrimination. Its goal was to extend those efforts to all levels of society and to address all forms of discrimination. The State Secretariat for Security had taken action to combat and dismantle violent juvenile gangs with xenophobic, homophobic or racist attitudes. The recent adoption of Instruction No. 6/2009 was particularly noteworthy in that it would allow the ongoing monitoring of the groups currently active in Spain, and of the Internet sites used to incite racist, xenophobic and homophobic violence. In that connection, he announced that, on 11 November 2009, Ms. R. Williams had been received by the Minister for Foreign Affairs, Mr. Miguel Ángel Moratinos, who had offered her a public apology on behalf of the Government.

54. Racial statistics were particularly sensitive, and were classified as protected information under article 14 of the Constitution and specific legislation for the collection and processing of data. As such, they were not recorded.

55. Persons with disabilities were protected under the Constitution, and Spain had thus for some time been committed to promoting equal opportunity and universal accessibility for persons with disabilities. Spain had ratified the Convention on the Rights of Persons with Disabilities and, in cooperation with social organizations of persons with disabilities, had established the relevant organs for its implementation.

56. **Ms. García** (Spain) said that the amendment to article 23.4 — which concerned universal jurisdiction — of the Judiciary (Organization) Act had been adopted by Parliament on 15 October 2009 and had been published in the *Boletín Oficial del Estado* on

4 November 2009. It had thus become part of Spanish positive law. The purpose of the amendment had been to rationalize universal jurisdiction and to improve its application in court procedure, while respecting the provisions of international conventional and customary law. It had been necessary to adapt Spain's legislation to the principle underlying universal jurisdiction, which was that all States in the international community should share the burden of prosecuting persons committing the most serious crimes. The majority of cases filed pursuant to universal jurisdiction in Spain had been dismissed, owing to the fact that Spain had not been considered the appropriate forum for effective prosecution, either because of the whereabouts of the suspected perpetrators or the availability of evidence.

57. The amendment extended the *ratione materiae* of universal jurisdiction by introducing a specific reference to crimes against humanity. It also included an express reference to international humanitarian and international human rights instruments, which meant that cases of torture and war crimes would henceforth be included in the provisions of Spanish law relating to universal jurisdiction. Regarding the fact that Spanish courts could not hear cases of universal jurisdiction if proceedings in relation to those cases had been instituted elsewhere, it was the courts themselves that determined whether or not such proceedings were under way. The possibility existed for a civil society organization or individual citizens to bring a class-action lawsuit before the Spanish courts; those brought by associations of human rights defenders had played an active role in cases brought pursuant to universal jurisdiction. After taking into account the amendment, Spanish legislation remained the most progressive in the world with regard to universal jurisdiction.

58. Since 2006, more than 14 million euros had been spent on activities relating to historic memory, many of which concerned exhumations of mass graves, which were a matter of priority. Exhumations were undertaken only with the consent of the families of the victims that requested them. The 2010 general budget would allocate an additional 2 million euros exclusively to exhumations. The decision by Judge Baltasar Garzón not to assume jurisdiction over the cases of the disappeared in the Spanish Civil War had resulted in the distribution of the cases among the territorial courts. They, in turn, had declared that they were not competent to hear those cases. The cases had then been referred to the Supreme Court, which would decide which judge was competent to hear them and what charges were to be brought. Considerable progress had been made on the matter: once the territorial courts had closed the criminal cases involving offences committed under the Franco regime, responsibility for matters of exhumation and identification had subsequently been entrusted to the Government. The fact that those activities were handled outside the courts made for a more flexible procedure that placed the emphasis on reparation for the victims. Budget allocations took the form of public aid used to fund the exhumation and identification requests submitted by associations.

59. Article 15 of the 1978 Constitution expressly stipulated that the death penalty had been abolished, apart from as established under military law for a state of war. In 1985, Spain had abolished the death penalty in all circumstances. Moreover, Spain supported the idea of a world free of the death penalty, which it considered to be cruel and inhuman punishment. In its human rights plan, together with the elimination of torture, it had introduced the goal of the universal abolition of the death penalty. Spain proposed that 2015 should be set as the deadline for a global moratorium on the death penalty – an idea that had the personal support of the Prime Minister. The abolition of the death penalty would be one of Spain's priorities during its presidency of the EU in the first half of 2010. Special emphasis would be placed on the abolition of the execution of minors or persons with disabilities and on a universal moratorium on all other death sentences.

60. **The Chairperson**, speaking as First Country Rapporteur, said that he very much appreciated the fact that the State party never raised the issue of terrorism in order to justify torture and praised its renewed commitment to adhere strictly to article 2 of the Convention.

61. Turning to the issue of convictions for torture, he said that, although he had been impressed by the fact that 250 people had been convicted during the reporting period, it was very important to publish the names of those convicted and the sentences they had received, given that concerns had been expressed to the Committee by NGOs that pardons were automatically linked to punishments for torture. It would be interesting to have information concerning sentences imposed and served so that the question could be given due coverage in the Committee's report.

62. Since no reply had been forthcoming to the question whether the statute of limitations applied to the offence of torture in Spain, he would welcome clarification of the point. He also asked whether the definition of torture in Spain covered the notion of acquiescence or whether it only referred to direct participation.

63. Regarding incommunicado detention, an issue raised by the Committee on several previous occasions, he said that he would study the 1987 ruling of the Constitutional Court referred to by the delegation. Nevertheless, he wanted to raise the issue of detainees' access to lawyers and doctors.

64. With respect to lawyers, he pointed out that it was unanimously accepted within the international community that the accused should have the right to communicate with his or her lawyer in private. Even in Spain some judges had expressed support for measures that would alter restrictions preventing incommunicado detainees from enjoying the same rights as other detainees. However, reports to the Committee from civil society organizations indicated that detainees could not consult in private with officially appointed lawyers. The argument that the practice protected lawyers from coercion or extortion was not satisfactory, since there were other options available to States governed by the rule of law to ensure the protection of lawyers.

65. Turning to the issue of doctors, he was pleased to note fresh developments resulting from the National Mechanism for the Prevention of Torture and initiatives by individual judges to allow trusted doctors to be present during incommunicado detention. However, it was clear from reports reaching the Committee that the presence of trusted doctors was not subject to any judicial procedure and not systematically authorized by judges. Moreover, in cases where authorization had been granted, a number of circumstances hindered doctors in their work. Since authorizations were granted 24 hours after the start of the detention period, it was impossible for doctors to be present during the first forensic examination. In addition, doctors were prevented from taking the instruments they needed into the examination room. Since the State party was concerned that doctors could be involved in terrorism, he drew its attention to a number of good practices which existed in other countries.

66. Noting that 50 per cent of police facilities had audio-visual recording equipment, he said that it would be interesting to know how long it would be before 100 per cent were equipped.

67. Regarding civil claims for compensation, it would be useful to have information concerning the level of proof required.

68. With respect to the matter of Senegal and the repatriated irregular migrants, he said that the Committee had received reports indicating that they had not been informed of their destination, contrary to the information provided by the delegation. He asked the delegation to clarify the matter.

69. Regarding the issue of diplomatic guarantees, he had taken note of the Government's position that it would not participate in illegal activities such as extraordinary rendition. However, there were points that needed further clarification concerning diplomatic protection. There were two schools of thought on the question, some people arguing that diplomatic protection violated article 3 of the Convention, while others said that it did not as long as strict criteria were applied. He therefore wanted to know what criteria the State party applied.

70. **Mr. Gaye**, Second Country Rapporteur, commending the delegation on its efforts to provide detailed information on a number of issues, said that it was nevertheless often difficult to assess the statistics because they were not sufficiently disaggregated. There were, for example, no figures concerning prosecutions of torture; it would be very useful to have information on that point.

71. Turning to the issue of minors, he raised the question of child migrants in holding centres in Spain and also the more general point about the family and social problems facing minors in child protection centres. He welcomed information provided by the delegation indicating that measures had been introduced to reduce overcrowding and other problems, but he would appreciate specific information on their impact. He expressed concern about reports that minors tended to be kept in isolation cells and that drugs were administered forcibly. It was generally recognized that coercive measures were not the right approach with vulnerable children and that it was better to try to help them become more stable socially, rejoin their families and reintegrate into society. He urged the State party to consider alternative measures that were not coercive.

72. While welcoming the reduction in the number of deaths in prisons, he was still concerned about two issues. Firstly, he would like to know whether deaths reported as suicides were in fact suicides, and secondly, in the case of violent deaths that were not suicides, he wished to have clarification as to whether investigations had been conducted, since the information provided by the State party suggested that there had not been any.

73. Regarding his question about article 14 of the Convention relating to compensation for victims, he wanted to know whether the responsibility of public authorities in Spain was governed by written regulations or by a praetorian system, as in France, because the treatment given to victims could differ according to the type of system used.

74. With respect to taser weapons, he noted the delegation had qualified its written reply, which had categorically stated that tasers were not used by Spanish law enforcement officials, by indicating that certain local police forces did use such weapons. He would welcome clarification of the issue because information available to the Committee indicated that tasers were dangerous.

75. **Ms. Kleopas**, while recognizing that it was important to comply with EU guidelines concerning torture, said that the State party should also comply with the Committee's jurisprudence, particularly in relation to article 2 of the Convention.

76. Regarding the issue of how the State party ensured the independence of investigations, the Committee was concerned that allegations of torture against police officers were investigated by fellow officers, a procedure that called into question the impartiality of such investigations.

77. On the question of delayed investigations, which were contrary to the Convention provisions requiring States parties to investigate cases promptly, she referred to the case of Sergio L.D., who, following his arrest during a demonstration in Barcelona in 2002, had filed a complaint of torture. As she understood that the case was still pending, she would be grateful if the State party could provide further information.

78. **Mr. Gallegos Chiriboga**, referring to the issue of the Guantánamo detention centre and CIA flights, said that democratic countries had succumbed to using measures which were in clear breach of the Convention. Although the Committee welcomed moves to dismantle the centre, it reiterated its position that those responsible for violations should not go unpunished, since impunity would only lead to the offence being recommitted.

79. **Mr. Wang Xuexian**, commending the delegation on the amount of information provided, requested clarification of two points. Regarding incommunicado detention, he said he wondered what would happen to detainees if investigation of their cases could not be completed within the five-day period permitted for such detentions. Concerning the Amnesty Law, he wanted to know if the State party had ever applied the law to perpetrators of torture.

80. **Ms. Belmir**, referring to the issue of minors in holding centres, said she would like to have further clarification concerning the use of isolation cells and the forcible administration of psychotropic substances. She also expressed concern about the procedures used in the special courts to try terrorist cases and also about the description of detainees as prisoners, which suggested a presumption of guilt. The conditions of incommunicado detention, such as no access to a lawyer of choice, meant that it was very difficult to ensure fair trials and she urged the State party to adopt internationally recognized standards.

81. **Ms. Sveaass**, referring to the conditions under which an external doctor might examine a detainee, said that she had noted that doctors had to speak Spanish and that reports must remain confidential until the detainee was no longer being held incommunicado. On the question of only Spanish being allowed, she wondered why authorized interpreters could not be used in cases involving foreign nationals or young Basques who were perhaps not fluent Spanish-speakers. She expressed concern about reports that the Guardia Civil was involved in serious acts of torture against Basques. She also requested information concerning the case of Ms. Cristina Valls Fernández and urged the State party to use the Istanbul Protocol in asylum procedures to prevent torture.

82. **Ms. Gaer** said that she would appreciate clarification on three specific points. The delegation had said that video recordings were made in all public areas of detention facilities, but she wanted to know whether they were made in private areas such as interview rooms and cells, or whether such recording was intended. Concerning the Russian returnee case, it would be interesting to know how soon after his return the first visit had taken place. On the question of statistics concerning race and ethnicity, she had not understood whether or not race was documented and would therefore welcome clarification.

83. **The Chairperson** stressed that the delegation was welcome to continue the discussion by providing further written replies.

84. **Mr. Garrigues** (Spain) thanked the Committee for its consideration of his Government's report and expressed the hope that the information provided by the delegation would enable the Committee to base its conclusions on a better knowledge of his Government's implementation of the Convention.

The meeting rose at 1.05 p.m.