REPORT ON INSTITUTIONAL VIOLENCE

2021

Irídia_

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INDEX

1. SERVICE FOR ATTENTION AND REPORTING IN SITUATIONS OF INSTITUTIONAL VIOLENCE, IRÍDIA

Irídia's Service for Attention and Reporting in Situations of Institutional Violence (SAIDAVI) offers free legal and psychosocial assistance to people who have suffered institutional violence within the penal system. Institutional violence is used to refer to situations in which public bodies infringe the rights of individuals through the use of physical or psychological force, negatively impacting on their physical or mental well-being. The Service is focused particularly on infringements of rights committed or permitted by law enforcement officials, prison officials and private security personnel, insofar as they carry out their duties in fulfilment of the responsibilities of the State to provide security.

SAIDAVI employs a comprehensive care methodology: it offers psychosocial and legal care to affected individuals, as well as seeking justice and reparation. Depending on the type of case, and if the person so wishes, cases can be handled as strategic litigation, with the aim of influencing and achieving changes in legislation on issues of particular social importance, specifically in the recognition, upholding and safeguarding of human rights.

One of the standout features of SAIDAVI's approach is its inclusion of a psychosocial care perspective in relation to human rights. The infringement of rights, especially in the form of institutional violence, causes damage that has an impact on the day-to-day life and personal and social development of the individuals affected. A psycho-legal focus allows for the provision of psychosocial care during judicial processes, in order to redress as fully as possible, the damage done, as well as to empower affected individuals as citizens in the active defence of their human rights. In addition, and with the aim of improving institutional recognition of the psychological impacts of such violence, the psychosocial team also focuses on the preparation and submission of expert evidence to criminal trials.

The service's communication and advocacy team seeks, in turn, to raise public awareness regarding issues surrounding the infringement of rights, with the aim of achieving truth, justice and reparation, and ensuring that guarantees of non-repetition are fulfilled. In other words, the team seeks official recognition of the damage caused and the corresponding accountability at all relevant levels, be they procedural or political. The aim is to assert the rights of the individuals concerned, to restore their trust in society and its institutions, and to remedy the damage caused. The Service also works to champion the passing and putting into practice of measures to ensure that these situations are never repeated, and which might serve as a demonstration of solidarity with those affected by human rights infringements on an individual or family level.

The Service takes accessibility seriously, and seeks to guarantee the universal right to justice. For this reason, SAIDAVI is completely free to all members of the public. This, naturally, requires significant human and economic resources. It is supported through individual donations, the membership of Irídia, and both private and public funding. To this end, contributions and donations from members of the public have been an essential element in setting up the Service and keeping it going.

SAIDAVI's team in 2021 was composed of six lawyers, two psychologists, a technical coordinator and a director, in addition to two volunteers and five university students undertaking placements with Irídia. A further five members of the Irídia technical, communication and incident teams worked periodically with the Service. Face-to-face meetings were resumed, to the extent that COVID-19 restrictions permitted.

The Service is divided into two permanent branches which work jointly with one other. On the one side are the Advice, Follow-up and Urgent Actions Areas, which provides psycho-legal support and advice to affected individuals in undertaking legal action or in obtaining legal representation and evidence (e.g. checking for video surveillance footage, requesting their preservation, etc.). On the other side, the Service takes on legal cases of particular importance as its own, and transfers these to the Litigation Area. These cases are then handled holistically, from a legal, psychosocial and public outreach perspective.

Pedro Mata ⬇

2. WHAT DID SAIDAVI ACHIEVE IN 2021?

2.1. Cases handled in 2021

Throughout 2021, SAIDAVI received a total of **161 requests for assistance concerning alleged infringements of human rights**. Of these, **62 cases concerned individuals who had suffered institutional violence** which fell within the Service's remit. These requests were met through the provision of legal support and advice, legal representation, psychosocial care and support, outreach and advocacy work, visits to prisons and CIEs (Immigrant Detention Centres), and referrals to other organizations with expertise in these areas.

The number of requests made to the Service has decreased in comparison to the figures recorded in previous years. We believe this is attributable to the COVID-19 pandemic and the consequent restrictions placed on freedom of movement. In other periods, the bulk of complaints received by the Service concerned alleged instances of institutional violence experienced during protests. It is also necessary to take into account the restrictions on visits to CIEs, first applied at the beginning of the pandemic, and which have subsequently made it difficult for human rights organizations to monitor what is going on inside these centres.

Of the 62 requests, **the Service took on the legal representation of 8 cases** of particular importance which fell within its scope. Of these cases, one concerned torture suffered during the Francoist dictatorship; two concerned events that occurred in the exercising of the right to assembly and demonstration; four concerned events which occurred in public space, and one concerned allegations in the context of detention or deprivation of liberty (imprisonment). These 8 cases are in addition to the 60 that the Service had already taken on between 2016 and 2020. Thus, **throughout 2021, the Service was responsible for providing representation in a total of 68 cases**, encompassing 558 legal interventions and 175 psychosocial support interventions, in addition to outreach and advocacy work.

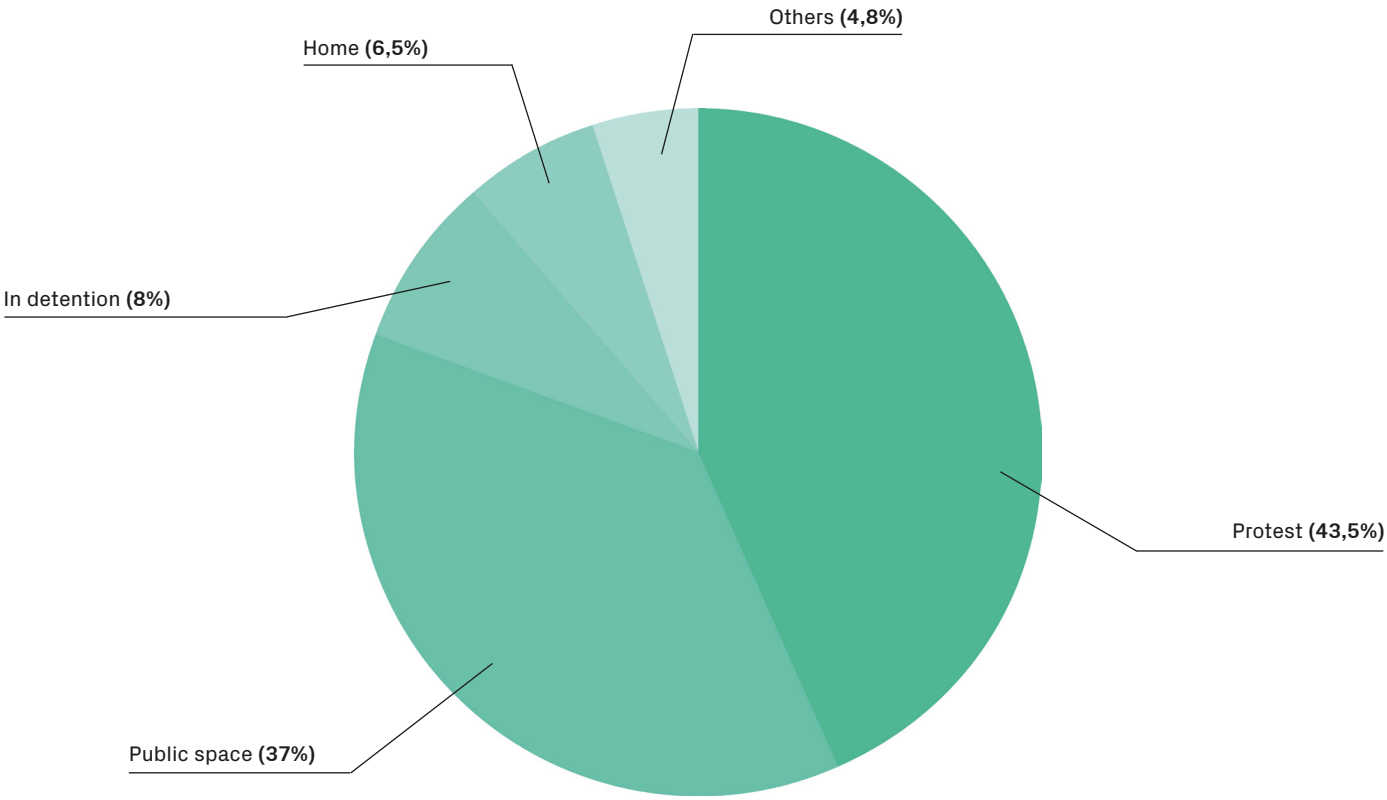
In terms of the remaining 56 requests for which the Service did not provide legal representation, legal advice and monitoring was offered, in addition to periodic psychosocial support. This consisted largely of legal guidance; advice in filing legal complaints, appeals and other criminal proceedings; intervention aimed at obtaining evidence, such as requesting and gathering images, witness statements, and other evidence;

monitoring case progress, and advising on the obtention of legal aid or providing referral to other organizations specializing in victim care services. In total, **264 legal advisory and monitoring interventions** were carried out, in addition to 64 psychosocial interventions, which in the main consisted of the provision of counselling and psychosocial guidance sessions, telephone follow-ups, and report writing.

Of the 62 individuals affected by institutional violence to whom attention was provided, **24 were women, 34 were men, and 2 were gender non-binary**. In addition, in two of the cases, group legal advice was provided. Of the individuals concerned, six were children; nineteen between the ages of 18 and 34 years old; twelve between 35 and 64 years old; two over 65 years old, and twenty-three of unknown age. Regarding the latter, as attention was provided solely by telephone, information about their age was not requested, given that it was not relevant to the service provided.

Of the **62** cases dealt with in total, **4** concerned events which took place in the home; **27**, during protests; **23**, in public space; **5**, in detention (4 in prison, and 1 in a police station); **2**, affecting journalists, and, lastly, **1** regarding torture suffered during the Francoist dictatorship.

Cases attended by the Service 2020



2.2. Ongoing cases

During 2021, SAIDAVI intervened in a total of 68 cases. Of these, **56 remain ongoing, while 12 were closed over the course of the year**. The cases which remain active can be classified as follows: 28 concern the exercise of the right to freedom of expression, information and/or assembly and demonstration; 8 concern individuals in situations of imprisonment; 6 concern events which occurred at the CIE in Barcelona; 2 concern detentions carried out at police stations; 9 concern events which occurred in public spaces; 1 concerns events which occurred during an eviction; 1 events which occurred in the home, and 1 last case linked to legislation on historical memory.

Of the 56 cases handled by the Service which remain open, 19 are in relation to actions taken by officers of Catalonia's regional Mossos d 'Esquadra police corps; 21 to actions taken by officers of the National Police corps (Policía Nacional); 4 to actions taken by local police corps, such as the Guardia Urbana or Policia Local; 8 to actions taken by prison officials; 3 to actions taken by private security personnel, and 1 final

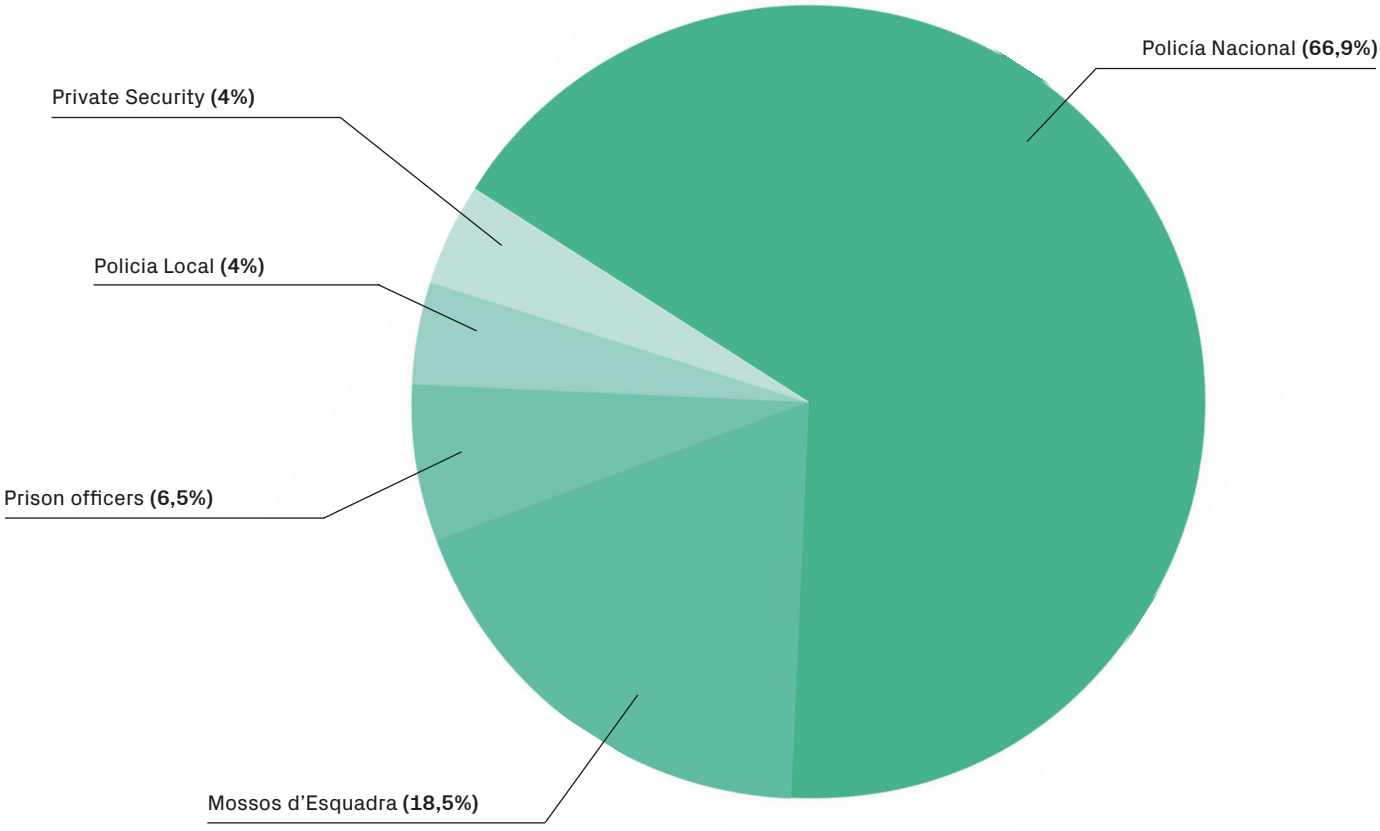
case to actions taken by the Social Investigation Brigade - Francoist Spain's political police force - in the Via Laietana police station in Barcelona during the dictatorship.

In **48 of these 56 cases, claims were filed prior to 2021** (2016 to 2020), and SAIDAVI remains involved in providing legal representation. **The remaining 8 cases were opened in 2021.**

It is worth noting that in 19 of the 56 cases (34% of the total), racially-motivated discrimination is alleged to have occurred. 30% of the claimants represented identify as women (18 cases), 68% as men (38 cases), and 2% as non-binary (1 case).

Over the past year, **convictions were handed down to officers in two of the cases** handled by the Service, one a member of the Mossos d'Esquadra, and the other of the Guardia Urbana of Barcelona. At the end of the year 2021, a total of **124 officers had been investigated**, of whom **23 belonged to the Mossos d'Esquadra, 83 to the Policía Nacional**, and **5 to the Policia Local**. Amongst them, **8 prison officials** and **5 private security guards** were also investigated.

Agents under investigation



The current status of claims undertaken by SAIDAVI between 2016 and 2020, and which remained ongoing throughout 2021, is detailed below:

In 2021, the Service achieved **two convictions**. In the first of these cases, an officer of the Mossos d'Esquadra was convicted of having struck the journalist Jesús Rodríguez, of the newspaper La Directa, on the hand and leg with his baton, while Rodríguez was covering demonstrations against the eviction of the Banc Expropiat social centre.

The Provincial Court of Barcelona handed down a two-year prison sentence to the officer for the crime of causing injury by use of a dangerous instrument, attendant to the aggravating circumstance[1] of the officer's position as a public employee, and the mitigating circumstance of undue delay[2]. The officer, and by extension the Government of Catalonia, were sentenced to the payment of €7,265 in compensation for the injuries caused, which have resulted in lasting damage. The Court highlighted the officer's intent, pointing out that "[the accused] was the only agent to break rank, and only he used his defensive weapon against a specific person, namely, the injured party". Furthermore, the Court refused the exoneration sought by the officer on the grounds that the action was taken in the line of duty[3], considering that "it is not a question of whether or not the officer's actions were proportional, since he should have used the defensive weapon in another way, and should have struck a less vulnerable part of the [claimant's] body. He [the officer] was not authorized to use his defensive weapon. This is not a matter of excess in the officer's [having taken] justified action, but rather of an unjustified act, contrary to the law".

The forcefulness of the sentence is an important step in the fight against the impunity with which, on numerous occasions, police officers and state security agents have assaulted journalists undertaking their professional duties. By extension, it also helps to ensure freedom of information for all members of the public. It should be noted that the brunt of the investigation and the claim itself was borne by members of the public - both the claimant and the photojournalists who recorded events - and by Irídia, as the organization responsible for both the first and the third-party litigation. Currently, a decision by the Supreme Court of Justice of Catalonia is pending regarding an appeal filed by the officer, which has been opposed by the litigants involved.

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1. The Criminal Code provides for certain aggravating circumstances which, insofar as they are found to exist, due to their severity entail a logical increase in the sentence handed down. This is expressly provided for in article 22 of the Criminal Code. The commission of a racially-motivated crime, or with the deliberate intention of increasing the victim's suffering, are considered aggravating circumstances. The commission of a crime while acting in a public capacity is also given this consideration: this was judged to be an aggravating circumstance in the case in question.

2. Article 21 of the Criminal Code provides that, in certain situations, in light of mitigating circumstances related to the offence or the offender, or in light of judicial proceedings, a reduced sentence may be handed down. A significant delay in judicial proceedings can result in a reduced sentence. In this particular case, events occurred in 2016, while the trial took place and sentencing was handed down in 2021.

3. Article 20 of the Criminal Code provides for situations or circumstances that result in no conviction being made, despite proof of the comission of offence, and the identification of the offender. These are circumstances that exempt the perpetrator from criminal responsibility; that is, they take precedence over any potential conviction. Acting in self-defence, or acting in the line of duty, are examples of such exonerating circumstances. In this particular case, it was requested that, although it could be considered proven that the officer had assaulted the victim, and that this could be considered criminal behaviour, no penalty be applied, on the understanding that such conduct was carried out in compliance with the officer's duties. The Provincial Court of Barcelona rejected this request.

Cèlia Atset ⬇

The second of the aforementioned cases, which resulted in the conviction of an officer of the Guardia Urbana, concerns an assault which took place in June 2016. The events occurred shortly before 6 a.m. at the Ciutat Vella police station in Barcelona. The officer involved was convicted of assaulting a racially-minoritized individual as a form of punishment, after the officer –who was off-duty and driving his personal car at the time –and the individual affected, who was riding a bicycle, crashed into each other and began to argue outside the police station.

The officer was given a sentence of 6 months imprisonment and 2 years disqualification for the summary offence of degrading treatment, in addition to the payment of €3,000 in compensation. Nevertheless, the sentence was lighter than that demanded by the Service. The Provincial Court acquitted the defendant of the crime of causing injury and a more serious offence of degrading treatment, with no consideration given to the psychological impact on the affected individual, despite an expert medical report indicating post-traumatic stress. The taking into consideration of such affects by the courts is one of the specific strategic objectives of SAIDAVI, which will continue to work towards the consideration of psychological impacts of institutional violence as quantifiable and assessable injuries for the purposes of sentencing. Finally, it should be noted that this conviction was made possible thanks to the individual detained, while they were in the waiting area of the police station and sensing potential danger, having activated the audio recording function of their mobile phone. Information provided by the Ethics and Internal Affairs Unit of the Guardia Urbana was also essential, insofar as it corroborated the content of the voice recording, as well as the statements of other officers who had contradicted the defendant's version of events. This highlights the importance of internal control mechanisms.

Both sentences, while long overdue, represent a clear step forward in the fight against police impunity in cases of institutional violence.

In 2021, **following the conclusion of judicial investigations, three additional cases were admitted for oral hearing**. One of these cases, focusing on protests which took place in Catalonia in October 2019, is of particular relevance given that the psychological impact on the claimant was taken into account in determining the type of offence alleged to have been committed. Possible racist discrimination in the enforcement of COVID-19 restrictions by police forces forms the background to the other two cases. In one of these cases, two officers of the Mossos d 'Esquadra are charged with assaulting a boy at the front door of his home, while in the other, four officers of the Mossos d'Esquadra are charged with assaulting a boy on the street while carrying out a stop-and-search.

In addition, SAIDAVI filed **an appeal for legal protection to the Constitutional Court (TC)** concerning the infringement of the right to effective judicial protection, the right to freedom of information, and the right to physical well-being, the prohibition of torture and other ill-treatment, and the authorities' corresponding obligation to investigate. To date, the Constitutional Court has not delivered any ruling regarding the infringement of the right to freedom of information in cases where a journalist or other media professional is assaulted or intimidated while carrying out their professional duties. Such rulings have, however, been provided by the European Court of Human Rights (ECHR).

The aforementioned appeal was filed in relation to events which took place on October 16th, 2019, when the journalist S.E. was covering a protest in front of the Ministry of Home Affairs in the city of Barcelona. A large crowd had gathered, and a row of fences had been put in place, separating demonstrators from an operational support unit of the Mossos d'Esquadra known as the Brigada Mòbil, or BRIMO. S.E., who was part of a group of journalists, spent a few minutes taking photographs of both the demonstrators and the police, at a distance of approximately ten metres from the officers. At a certain point, after photographing the officers, S.E. turned back towards the demonstrators (and away from the police unit), and seconds later felt a strong blow to the inside of her left calf, resulting in significant pain. According to the claimant, one of the BRIMO agents, fully aware that she was a journalist - and with the clear intention of injuring her and preventing her from continuing to carry out her professional duties - fired a foam projectile at S.E., in spite of the fact that she was in an area in which only duly-accredited journalists, such as herself, were operating. SAIDAVI presented a legal complaint regarding the case on December 10th, 2019.



Sira Esclasans

On March 31st, 2021, the judge presiding over the investigation called proceedings to a halt and closed the case, on the grounds that the acting officer could not be identified. This was despite the minimum investigative procedures demanded by the litigants –such as the taking of statements from acting officers and eyewitnesses– not having been undertaken. The Provincial Court of Barcelona ratified the decision. On November 23rd, 2021, an appeal was filed to the Constitutional Court, citing an infringement of fundamental rights. At the time of writing of this report, a decision concerning this appeal remains pending.

Of particular importance among the other cases which remain under judicial investigation are **the 13 taken on by the Service following operations by Policía Nacional in Barcelona on October 1st, 2017, in response to the Catalan independence referendum**. Of these, it should be noted that proceedings in the case heard by the Jutjat d'Instrucció, or investigating judge[4], No. 7 of Barcelona will shortly come to a close.

A decision was made by the court to joinder the claims of affected parties, each related to events at a separate polling station, in one overarching case. At the request of Irídia and Omnium Cultural, as third-party litigants, a further decision was reached to press for a change to proceedings concerning the officer who shot Roger Español, taking into account that the injury caused to the claimant is constitutive of a serious offence, and one which could lead to a sentence of up to 12 years in prison. As a result, separate consideration was sought of the intervention of the Policía Nacional on Carrer Sardenya in Barcelona in which Roger Español and others were injured, and that the relevant proceedings be carried out as part of a two-stage trial. The Barcelona Provincial Court ruled in favour of separate consideration in principle, although it has not yet communicated its decision as to whether all possible offences arising from the intervention may be considered at a second stage, or only those affecting Roger Español.

The Court further upheld the prosecution's request for Mossos d'Esquadra officers to provide further clarification in their expert report, in order to determine if members of the unit in question had fired in the direction of Roger Español prior to the shot that caused his injury. This possibility has been repeatedly highlighted by the litigants, with videos and screenshots provided as evidence which point to three possible shots. It remains unknown whether the first of these shots was made using a blank or a projectile; however, the second was made using a projectile, and the third was that which caused injury. Likewise, the Court upheld a request for the Mossos d'Esquadra to provide the location of the firearms officer's hierarchical superiors at the time when these shots were fired.

In addition, a separate request was upheld for two Commanding Officers, responsible for the interventions at the polling stations located at the Mediterranean and Pau Claris schools, to provide evidence under oath. This takes the total number of officers under investigation for events on October 1st 2017 to 64. The past year also saw the beginning of joint work between Irídia and Òmnium Cultural and the Catalan National Assembly (ANC), as third-party litigators, aimed at gathering analysis of audiovisual material in a single expert report regarding events at 16 polling stations under judicial investigation.

4. Translator's note: among a number of possibilities reflected in the literature, the decision was made in the translation of this document to English to use the term "investigating judge(s)", where reference is made in the original text in Catalan to "Jutjat(s) d'Instrucció", in line with e.g. Mullor, Joan Solanes, *Spain, Constitutional Court, judgment nº 69/2001, of 17 March, constitutional. EUI: Centre for Judicial Cooperation* (Florence: 2019).

A number of significant rulings were made by the Provincial Court of Barcelona in relation to the **cases of institutional violence which occurred in the CIE in Barcelona**. The Court reopened investigations into four cases which had previously been dismissed, following appeals lodged by SAIDAVI for the review and overturning of the initial judgement. Two of these relate to mistreatment which occurred during the solitary confinement of two individuals following identification of a positive test or close contact with a positive case of COVID-19. Both individuals described their quarantine and isolation, which lasted for 10 days, as absolutely inhumane and degrading, both in terms of where they were isolated and how they were treated by the officers who guarded them. In both cases, the individuals reported having self-harmed, in addition to having suffered assaults by officers of the Policía Nacional. Both claimants were deported before a statement under oath could be taken from them, despite the fact that SAIDAVI had specifically requested that the duty magistrate suspend their deportation, in order to ensure the completion of investigations.

A third case, which had previously been dismissed without any statement having been taken from the claimant or witnesses, was reopened by the Sixth Section of the Provincial Court of Barcelona, highlighting the responsibility of the courts to provide full judicial protection in cases of ill-treatment and torture. This decision was also made in consideration of the fact that the circumstances of deprivation of liberty in which the offence is alleged to have occurred further impede the gathering of evidence and that, therefore, courts must redouble their efforts when investigating such cases. In addition, the ruling stresses the importance of the claimant's statement - something which, in many cases, is the main body of evidence for the offence - and further highlights several irregularities present in the case. Among these is the presence of video surveillance 'blindspots' within the CIE, with no apparent explanation for these, or the incompleteness of the reports provided by the Centre's medical service. Given the above, this is a landmark decision, and represents a clear application of human rights standards in accordance with both Spanish and international law, as well as established jurisprudence.

A fourth case serves to highlight a common practice of the Public Prosecutor's Office: the avoidance, and even the hindrance, of investigations into allegations of torture and ill-treatment. This case concerns a claim filed by a detainee of the CIE in January 2020 for the offences of degrading treatment and causing injury. Despite the seriousness of these allegations, the Public Prosecutor's Office requested that the investigating judge limit charges to a minor offence, a request that the court duly upheld. Towards the end of the year, the Provincial Court of Barcelona upheld Irídia's appeal against this decision, and ordered an investigation into the Policía Nacional officers identified as having committed the offences of degrading treatment and causing injury. As in the other cases, the detainee was deported shortly after the claim was filed. However, having returned, it has been possible to take their statement in person. Nevertheless, it is particularly concerning that the Public Prosecutor's Office has requested that the provincial sub-delegation be kept informed of proceedings so that, once the trial has been concluded, the claimant can be immediately deported to their country of origin. This is a request aimed at dissuading the person – that is, the victim of the offence - from appearing at the trial. In so far as this would exclude perhaps the most key piece of evidence - the victim's testimony - it paves the way for the acquittal of the officers. It is absolutely intolerable that the bodies which exist to uphold the law should place a question of bureaucracy above the investigation of torture and cruel, inhuman and degrading treatment or punishment.

As regards further offences alleged to have taken place in CIEs, during the past year, 11 officers declared under oath in response to charges relating to events which occurred in September 2017. Four years previously, several individuals had reported having suffered serious assaults in various different areas of the Centre, including rooms and toilets in which there were no video surveillance cameras, as a reprisal for an attempted riot. While under oath, the officers under investigation maintained their innocence, and explained that not only were they not disciplined for their conduct, but were in fact congratulated for their actions on the day of the events in question.

The completion of a number of judicial proceedings **relating to the cases concerning events alleged to have taken place within prisons** has been hampered by a backlog in the Ninth Section of the Provincial Court of Barcelona dating back to mid-2020. 4 out of 8 cases were partially stalled in 2021, pending the resolution of appeals filed before the Provincial Court - and that pertain to this section - against the decision handed down by the investigating judge of the town of Martorell to dismiss charges and bring investigations to a close. Given the resulting deadlock, it is clear that the backlog in the Ninth Section represents an affront to the basic rights of the individuals supported by SAIDAVI. This situation is made all the more serious given that all appeals against decisions made by Martorell's investigating judge are heard in the Ninth Section of the Provincial Court of Barcelona: however, any alleged offences which occur in the Brians 1 and Brians 2 prisons fall under the investigative jurisdiction of the courts of Martorell. As such, this backlog has significantly hindered the reporting of ill-treatment and torture in these prisons, which hold the largest number of inmates in all of Catalonia.

In view of the seriousness of the situation, SAIDAVI has filed motions before the Ninth Section in four of the cases which have been suspended, requesting that the Provincial Court of Barcelona deliver a ruling regarding the appeals, with the aim of reactivating proceedings. Likewise, a request has been made to the Barcelona Bar Association to call on the Provincial Court to remedy the backlog affecting the Ninth Section, and thus avoid delays in investigations into allegations of institutional violence in the Brians 1 and Brians 2 prisons.

Over the course of 2021, 12 cases were closed with no conviction or penalty handed down. This figure is a clear indication of the difficulty in carrying out effective investigations and bringing cases of institutional violence to trial, as set out below, in the section on the infringement of the right to effective judicial protection. Of these cases, 5 are alleged to have occurred in circumstances of deprivation of liberty (3 in relation to prisons, and 2 to CIEs), 6 during protests, and 1 in public space.

Where offences are alleged to have taken place in prisons, cases tend to be dismissed on the grounds of the absence of indirect evidence, that is, evidence beyond the statement provided by the alleged victim. This is a clear hindrance when it comes to breaking the chain of impunity. These are cases in which there are often no witnesses to the offence beyond the prison officials reported to have perpetrated it, nor any images or documentation available which corroborate the allegations. In addition, the victim's statement is often undermined by the unfair stigma attached to prisoners.

In regard to offences alleged to have taken place within CIEs, one of the main obstacles encountered by the Service has been the immediate deportation of the victim following the filing of a criminal complaint. This makes it extremely difficult to continue criminal proceedings, since the key piece of evidence tends to be the testimony of the deportee, with whom it is very difficult to regain contact.

Lastly, offences alleged to have taken place during protests or in public space are beset by the difficulty or impossibility of identifying the officer who committed the offence, or by the supposition of proportional use of force in police intervention. As a result, investigations into many cases are dismissed on the grounds that there is no evidence that any criminal conduct occurred.

2.3. Psychosocial impacts of institutional violence in cases handled by the Service

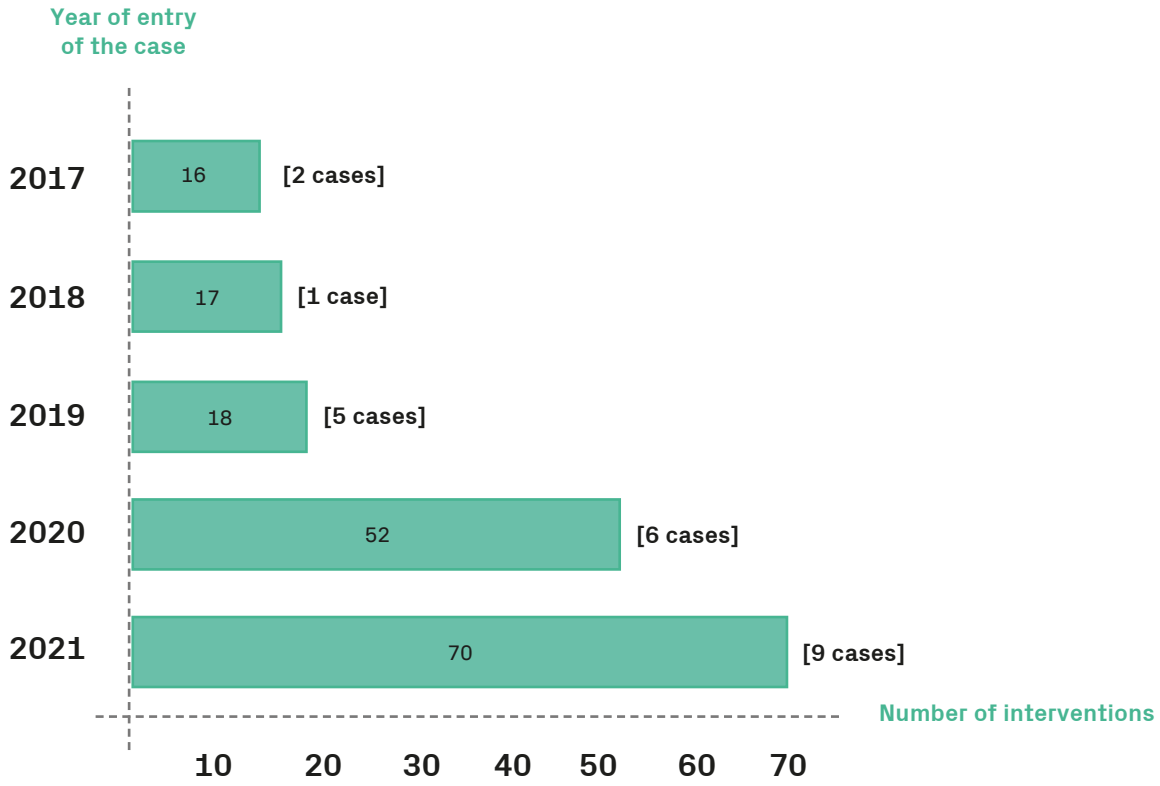
Over the course of 2021, SAIDAVI's **psychosocial team provided assistance on 236 occasions**. This assistance consisted of individual accompaniment sessions, psycho-legal visits, drafting of psychological assessment reports, and support navigating the legal process. On the vast majority of occasions, intervention was limited to individual accompaniment sessions. Of the total of 236, **173 were in relation to litigation, and 63 to cases handled by the Advisory and Monitoring team**. All of this represents a demonstrable increase compared to 2020, and confirms an upward year-on-year trend.

In total, assistance was provided to **38 individuals**. Of these, 31 were directly involved in litigation or in receipt of legal advice and support, while 5 were family members of affected parties. In the two remaining cases, only psychosocial care - without legal representation or advice - was provided.

The graph below shows the cases - organized according to the year in which they were taken on - in which psychosocial assistance and monitoring were required throughout 2021. It can be seen that 41% of the assistance provided corresponds to cases first taken on in 2021, 30%, to cases from 2020, and the remaining 29% to cases from the period 2017 to 2019. It is important to note that, although the bulk of assistance corresponds to cases from 2021, psychosocial support to affected parties is by its nature a long-term undertaking, regularly lasting between one and two years, and even longer on some occasions.

The graph also serves to highlight the psychosocial effects of institutional violence, both in terms of the number of occasions on which help was required (increasing yearly) and in terms of the follow-up carried over from previous years. The latter of these aspects is testament to the significant impact of psychosocial effects in such cases, and that they require specialized and prolonged attention.

Psychosocial interventions carried out in 2021 in cases of strategic litigation, organized according to the year in which case was taken on.



Over the course of 2021, the psychosocial care service provided by SAIDAVI identified the following psychosocial impacts and effects, which are grouped into 3 blocks: **i)** effects related to the nature of the circumstances (events of high emotional impact); **ii)** effects related to the nature of the violence suffered and who caused it (institutional violence), and **iii)** effects related to judicial proceedings and the lack of recognition of institutional violence by the authorities. It should be noted that these various and varying effects are interconnected, and that this division serves merely to give the appropriate weight to and understand the specificities of the full range of psychosocial consequences of institutional violence. Of course, it is also important to highlight other secondary effects that arise a consequence of the violence suffered, such as those affecting people's social and working lives, or legal status within the country.

In the first place, **effects related to the nature of the circumstances** usually appear shortly after suffering violence. They are a consequence of the high emotional impact of the event. The predominant psychological symptoms are acute stress, during the first month, and post-traumatic stress where this continues over a more prolonged period of time. The main manifestations of acute and post-traumatic stress are intrusive thoughts, experiential avoidance, problems concentrating, mood swings, and changes in alertness and responsiveness.

These effects, to a greater or lesser extent of severity, have been noted in a significant number of the cases which the Service has dealt with. The diagnoses of Acute Stress Disorder and Post-Traumatic Stress Disorder are particularly serious and disabling for the individual, and are often aggravated by the lack of attention paid to them when dealing with matters of institutional violence, on top of the deliberate lack of attention given to this type of violence itself. SAIDAVI's psychosocial team uses the Inventory of Post-Traumatic Stress (PCL-5) (Spanish language version) for the screening and detection of acute stress and post-traumatic stress. This is composed of 17 questions, which provide a total score, and 3 further scores broken down by type of symptoms.

In addition to these effects are **those related to the nature of violence suffered, and the causative agent.** These are related to the role of authority figures in causing such violence, and the psychosocial consequences this has. Above all, they are related to the lack of recognition and culture of impunity that characterize how the authorities continue to deal with such cases. The main effects identified are as follows:

- reduced sense of self-worth – the affected person is hindered by the damage caused to their self-esteem and self-conception as a subject deserving of respect and protection – closely linked to feelings of helplessness;
- perceived lack of safety when out in public, due to fear of the presence of security forces;
- rupture of belief in fundamental concepts such as justice and innate human goodness, among others;
- avoidance coping mechanisms that manifest themselves in experiential avoidance, inability to process emotions, and loss of trust in others;
- harm to self-esteem, self-image and sense of self-worth;
- reduced ability for future planning in a variety of areas of the person's life;
- inability to operate: the violence suffered, and everything related to it, becomes the centre of the person's day-to-day life;
- internalization of fear.

Person served by the service during 2021

Valentina Lazo

Hereafter are the **effects related to the judicial process and the lack of recognition of institutional violence by the authorities**. These effects emerge in response to the culture of impunity which envelopes this type of violence, and which is endorsed – tacitly or otherwise – by the authorities and authority figures involved in judicial proceedings. This sense of impunity paves the way for revictimization during proceedings or when appearing in-person at the request of the authorities.

On top of the suffering caused by the violence itself, impunity gravely undermines a whole host of beliefs and values, and destabilizes an individual's relation with society as a whole. In the long run, it results in the chronification of the psychosocial effects of human rights infringements, hinders survivors' coping mechanisms, and inhibits the processing of grief and memory that is needed to recover from the initial damage done. It also causes sufferers to doubt themselves, and to oscillate between regretting having taken legal action, and longing to see justice be done. On a social and community level, it undermines the person's ability to trust the authority figures and bodies involved in delivering justice.

To offset the aforementioned consequences, SAIDAVI's psychosocial team provides support throughout the entire judicial process. On the one hand, this is done to avoid revictimization, and to encourage an appreciation of and investment of judicial proceedings often lacking in restorative character. For this reason, it is essential to provide support in dealing with the harm caused by a culture of impunity, and to offer a reappraisal of the judicial process, in order to identify opportunities for restorative justice. This could take the form, for example, of support from members of the public, or alliances with other individuals or groups who have gone through the same thing. Support in reappraising the situation is a form of protection, and helps prevent revictimization and offset the impact of impunity. On the other hand, explaining how the judicial process works to those affected, in addition to the difficulties of reporting this type of violence, also contributes to protecting them and offsetting the aforementioned harm.

3. INFRINGEMENTS OF RIGHTS

3.1. Unregulated private security

On June 9th, 2021, F.B. went to a shopping centre in Barcelona to exchange a pair of trousers. While in the shop, one of the assistants alerted a security guard, alleging that F.B. had tried to shoplift a pair of trousers. At that point, two security guards made their presence known to F.B., one of whom demanded answers from her. She explained that no theft had taken place, and that she had come to the shop to exchange them for another size. She then showed the assistant the receipt of purchase, dated prior to the day of the events in question. Nevertheless, the security guards ordered F.B. to leave the store. She refused, and demanded that the Mossos d'Esquadra be called to report the mistreatment she had received. She spent half an hour waiting for them to arrive at the establishment, during which time the guards threatened her, telling her that it was better for her to leave, lest something worse might happen to her, and that they would tell the police that it was her who had been insulting them. She was also prevented from using her mobile phone to take videos and photographs of what was happening. Given that the police did not appear to be coming, F.B. decided to leave, at which point the security guards began to follow her through the shopping centre. At one point, they each grabbed her by the arm, while she screamed for them to let her go. They then searched her, even going so far as to pull her shirt up to her breasts in view of other members of the public. They then forcibly took her to a control room within the shopping centre, where they subjected her to verbal and racist abuse, and shoved her against the wall. While attempting to record what was happening on her phone, the security guards tried to wrest it from her, without success. They also confiscated the bags she was carrying, which contained the clothes she had bought in other shops, and emptied them out. The guards then left, locking her in the room without providing any explanation, disregarding her requests for them to let her out. Within a few minutes, F.B., by this point in an agitated state, called a friend to help her and call the police, on account of her being held against her will.

(...) When the Mossos d'Esquadra officers arrived, F.B. was in a state of notable anxiety. The officers asked her to lower her voice and, while they revised the security camera footage, kept her locked in the room and confiscated her mobile phone when she attempted to record them. It wasn't until approximately an hour had passed that the officers opened the door, returned her bags, and told her that she was free to go. She showed them the marks and injuries present on her body, but they told her to go to the doctor and report it later, instead of filing a complaint with them. They also refused to provide her with the names of the security guards - a request she had made in order to be able to file a complaint - alleging that they would identify them later.

As a result of the events, F.B. suffered dermabrasions on both arms, and injuries to her elbow and chest. She also required medication for anxiety, and experienced difficulty sleeping. In the first month after the assault, F.B. suffered acute stress in reaction to her experience and, as a result of the discriminatory treatment and humiliation she suffered, continued to show symptoms of anxiety and altered self-perception over the following months.

The day after events – June 10th – F.B. filed a complaint with the Mossos d'Esquadra. Despite the seriousness of the situation, the investigating judge decided not to take matters further, and used the report provided by the police to press charges against F.B. for the summary offences of causing injury and theft, in addition to charging one of the private security guards with the summary offences of causing injury, threatening behaviour and coercion.

Data on cases taken on by the Service:

This is just one example of the disproportionate actions of private security personnel that came to the attention of SAIDAVI in 2021. Over the past year, the Service received **9 complaints** concerning incidents of this kind.

This is nothing new: in fact, in 2020, a conviction was handed down in a case taken by the Service, concerning an assault committed by a private security guard sub-contracted to work for the national rail network Renfe. The facts of the case, as recognized by the court, are as follows:

"On December 27th, 2015, while D.S.L. was in the process of removing, alongside a number of colleagues and in the exercise of his duties, three or four people (street vendors) from the vestibule of the Plaça Catalunya Renfe station, he was approached by L.N.G., who began recording events on a mobile phone, upon seeing that the group of guards - of which the defendant was a part - and the [other] group of people were engaged in a heated verbal argument. In view of this, the defendant asked L.N.G. to stop recording and, seeing that the respondent ignored this request - and in full knowledge that his action could cause physical harm to L.N.G. - wielded his statutorily-provided defensive weapon against her, striking her on the left hand with which she held the phone, and causing the fracture of the distal phalanx of the first finger of her hand".

Archive

The security guard was sentenced, as the claimant had sought, to 1 year's imprisonment, and the payment of €6,800 in civil liability for having caused injury.

Although the Service had previously dealt with cases of violence by private security guards, those taken on in 2021 appear to have been more serious than in previous years. This violence has occurred, on many occasions, in tandem with violent arbitrary, racist and discriminatory behaviour, and has included unlawful detention.

Of the 9 cases that came to the Service's attention, 6 took place in public transport stations (3 metro and 3 Renfe). Two of the cases concerned victims under the age of 18, while discriminatory behaviour **was an alleged factor in 6 of the 9 cases** (in 5 cases, racial discrimination, and in 1 case on grounds of disability). In 3 of the cases, in addition to the disproportionate action taken, the Service considered that the affected party had been illegal detained, while **in 4 cases the affected party suffered serious physical injuries or psychological damage.**

Figures on the outsourcing of security to private companies

The outsourcing of the security of public spaces and services to private companies has become a common recourse for public authorities, under the auspices of a purported increase in efficiency and value-for-money in service delivery. This practice consists of the transfer of the management of a service previously undertaken by public bodies to a private entity.

According to the 2016 Ombudsman's (Síndic de Greuges) report, there were **12,537 security guards** actively employed by companies providing security services. To appreciate the magnitude of this figure, it may be worth comparing it with the **16,600 officers of the Mossos d 'Esquadra**, or the **10,700 officers of the local police forces** employed during the same period throughout Catalonia.

Regulation of private security

Dependence on private security can interfere or infringe upon the protection of an individual's rights in many ways. The public's rights must be protected both in their interactions with state security forces and bodies, which are public by definition, and with private security personnel. To this end, it is essential that the relevant authorities ensure transparency in the rules and regulations governing the actions of private security guards and companies, and their use in public services and spaces. Likewise, necessary oversight and disciplinary procedures must be put in place to properly deal with incidents of malpractice by security guards in these areas.

In Spain, the use of private security to cover public security duties is regulated by state legislation, specifically, by the Public Procurement Act and the Royal Decree 3/2020, which concern both procurement by public authorities and the outsourcing of services. The activities which can be undertaken by private security companies are regulated by the Private Security and Regulations Act 5/2014 and the Royal Decree 2364/1994. Further legislation also exists in Catalonia, in the form of the Code of Practice for Private Security Services, published as part of Resolution INT/671/2017 on the 27th of March 2017.

Jurisdiction over this matter therefore lies with both state and regional authorities. Nevertheless, powers relating to the authorization, inspection and oversight of private security activities carried out in Catalonia, and the taking of disciplinary action in cases of infringement, lie with the Government of Catalonia[6].

Much of the regulation concerning private security focuses mainly on its outsourcing, the public procurement of companies which provide security services, working conditions, and the necessary coordination between private and public security agents and organizations. In contrast, little reference is made to good practice in terms of safeguarding human rights or members of the public. Article 8 of the Private Security Act[7] establishes a set of guiding principles, which are interrelated with the principles of action outlined

5. Síndic de Greuges de Catalunya, Informe sobre la Seguretat Privada a Catalunya (Catalonia: June, 2016).

6. Relevant legislation: Article 149.1.29 of the Spanish Constitution (CE), which authorizes the State to act in matters of public security; Article 13.1 of the Statute of Autonomy of Catalonia, which establishes the creation of a separate police force; Article 12.2.h) of Law 10/1994, dated July 11th, concerning the police of the Generalitat Mossos d 'Esquadra; Law 5/2014, dated April 4th, concerning private security; Decree 35/2017, dated April 11th, concerning the regulation of the exercise of authority in matters of private security; RESOLUTION INT/490/2016, dated February 5th, concerning the delegation of powers from the Ministry of Home Affairs to the Secretary General of the same ministry, in the resolution of appeals in matters of public safety, private security, violence in and around sports stadia, and public entertainment and recreational activities; RESOLUTION INT/1361/2015, dated June 17th, concerning the delegation of certain sanctioning powers to the Director General of Security, in relation to industrial, commercial and service establishments and facilities that are obliged to adopt security measures; RESOLUTION INT/2110/2014, dated September 10th, which approves the guiding criteria for the application in Catalonia of specific aspects of Law 5/2014, dated April 5th, on private security.

7. Law 5/2014, dated April 4th, concerning private security. Published in BOE No. 83, April 5th.

in Article 30. This article provides, firstly, that private security agents must act in accordance with the Constitution, the Act itself, and the principles of action set forth within this and other relevant legislation, including international law. The same article outlines the correct use of personal data by companies and the need for compliance with the principles of action in terms of "legality, wellbeing, respect, fairness in dealing with members of the public, congruence and proportionality."

In terms of disciplinary action[8], Article 69, Chapter IV, outlines the disciplinary powers available in relation to the breach of this law, while Articles 58 to 62 of the Private Security Act outline the power to intervene and the sanctions applicable in cases of failure to comply with the law. As such, in accordance with the Private Security Act[9], those agents found guilty of an egregious breach of the law may face a fine of between €6,001 and €30,000, and disqualification covering a period of between one and two years. Those found guilty of a serious breach of the law may face a fine of between €1,001 and €6,000, in addition to temporary disqualification during a period of between 6 months and one year. Those found guilty of a minor offence will be issued with a warning, and may face a fine of between €300 and €1,000.

The Private Security Act classifies as egregious the abuse of authority in interactions with the public while in the performance of duties[10] , as well as any engagement in, ordering or tolerance of abusive, arbitrary or discriminatory practices which involve harassment or violence, even where such actions do not constitute a crime. It should nevertheless be noted that private security regulatory standards enshrined in law (Reglamento de Seguridad Privada) predate the Act[11], and the infringements covered by these are not equivalent to those included in the Act. For example, the behaviour defined in the Act as egregious, as described above, is not defined as such in the regulatory standards. In fact, the regulation classifies as serious, rather than egregious, the abuse of authority, arbitrary or violent behaviour towards others, or disproportionate use of force. As per the derogatory clause included in the Act, and in line with legal convention, the stipulations of Act ought to take precedence over those of the regulatory standards. However, this is not always the case in practice, and opens the door to perceptions - including among security professionals themselves - that the legislation is unclear, even on matters as serious as the range of applicable penalties.

This notwithstanding, the Ministry of Home Affairs reported that, in 2020[12], disciplinary action was taken in 66 cases relating to private security services . The Ministry, however, did not provide information on the nature of the infringements which motivated such action, nor how many of these cases resulted in penalization, nor the penalty imposed.

8. This precept was modified by provision 7 of Organic Law 7/2021, dated May 26th, which has been in force since June 16th of the same year, and which derives from the application of the powers laid out in Law 39/2015, October 1st, concerning the common administrative framework of the public sector, and Law 40/2015 concerning the legal governance of the public sector.

9. Article 62, Law 5/2014, dated April 4th, concerning private security. Published in BOE No. 83, April 5th.

10. Article 58.1.h of Law 5/2014, April 4th, on private security.

11. This law is dated April 4th, 2014, while the Private Security Regulations were approved by Royal Decree 2364/1994, these having last been amended in 2010. : http://www.interior.gob.es/web/servicios-al-ciudadano/normativa/reales-decretos/real-decreto-2364-1994-de-9-de-diciembre#Seccion%202%C2%AA%20Personal%20de%20seguridad%20privada

12. Departament d'Interior. *Períodes d'informació prèvia, expedients sancionadors i resolució de recursos de seguretat privada* (Catalonia: 2020), p. 97, table 80.

The Code of Practice for Private Security Services provides guidance regarding how companies should advertise their services, their internal operations, and the necessary requirements which should take precedence in hiring staff[13]. Regarding interactions with members of the public, specific reference is made to the need to "maintain exemplary standards in all dealings with members of the public while carrying out private security duties", including "a non-discriminatory approach and the avoidance of the use of force, as well as taking action to deal with instances of discrimination". It further stipulates that "companies must also ensure the correct management of data concerning members of the public that is subject to data sharing agreements with law enforcement agencies".

Arxiu

Lastly, legislative provision has been made for the establishment of the Joint Coordination Committee on Private Security[14], as well as the Private Security Coordination Council[15], as public bodies responsible for reviewing regulations and working to achieve improvements. Nevertheless, there is a lack of transparency as regards the work of these bodies, with no publicly-available information concerning their activity.

The State's responsibility to ensure oversight of private security services:

The United Nations, in response to the work carried out by the Expert Group on Civilian Private Security Services, has stipulated that, in accordance with the primary responsibility of states to ensure the safety of their citizens, regulation and oversight of the activities of security services are the responsibility of the Government of each Member State[16].

13. Resolution INT/671/2017, dated March 27th, establishing a code of good practice for private security providers.

14. Order INT/315/2011, dated February 1st, regulating the Joint Coordination Committees on Private Security. Published in BOE No. 42.

15. Decree No. 233/1998, July 30th 1998, establishing the Coordinating Council for Private Security

16. Expert Group on Civilian Private Security Services, *Report on Civilian private security services: their role, oversight and contribution to crime prevention and community safety* (Vienna, August 24th, 2011), available online at: UNODC/CCPCJ/EG.5/2011/CRP.1

The Expert Group report published on August 24th 2011[17] also included data from a number of States, including Spain, concerning the use of private security services. In the report, attention was drawn to the fact that some States had indicated the use of such private security services could lead to negative outcomes in the case of operational failures.

According to the Expert Group, in order to be able to provide effective oversight, comprehensive regulation and control mechanisms similar to those that apply to police forces are required, insofar as the police perform a similar role in protecting people's rights, and maintaining law and order. The United Nations report therefore recommends that the State ensure that an effective regulatory body is established to oversee the conduct of private security services, as well as the training they provide[18].

The same report also recommends the establishment of a minimum set of standards for recruitment and selection criteria for private security personnel. These should include, among other stipulations, specific levels of education, and restrictions regarding criminal records and level of training. Finally, it pays particular emphasis to the need to work towards the detection and prevention of any instances of abuse perpetrated by personnel or companies providing private security services, by raising public awareness of the applicable rules, as well as increasing transparency regarding the role and duties of security personnel. Ultimately, the United Nations sustains that private security personnel must be held accountable through three different mechanisms: self-regulation, administrative oversight, and legal responsibility.

In order to be able to provide proper checks and balances on private security companies and the actions of their staff, significantly greater transparency must exist with regard to the implementation of self-regulation and administrative oversight. This, of course, raises several important questions. What internal protocols are implemented by companies awarded large contracts for the outsourcing of security services? What requirements exist for the staff they hire? What internal mechanisms are there for members of the public to register a complaint? What disciplinary action do they take in such cases? Of all of the cases dealt with by the Service, only in one has an internal investigation into events been carried out by the company responsible for service provision[19], and even then, disclosure of the investigation was made by the press. This investigation notwithstanding, no action was taken by the public service provider - in this case, Renfe - against the staff accused by a young man of assaulting him at the Mataró train station, in considering that their actions were appropriate and proportionate. The Service is unaware of any cases having been referred to the courts for judicial investigation, nor of the result of any internal investigation being reported to them, even where criminal behaviour by security personnel could be inferred.

17. Íbid., para. 5.

18. Íbid., para. 30, recommendation "(e)".

19. Press release: "Renfe no prendrà cap mesura contra els vigilants acusats d'agredir un jove a Mataró", Cap Gros, 10 de novembre de 2021, consultat el 9 de març de 2022, https://www.capgros.com/actualitat/successos/renfe-no-prendra-cap-mesura-contra-vigilants-acusats-agredir-jove-mataro_804756_102.html

In terms of administrative oversight of the outsourcing of security services to private companies, clear standards must be established regarding the training provided to staff, prerequisites in the hiring process, and the disciplinary protocols put in place by the companies themselves to prevent misconduct. Likewise, regulatory oversight of companies and private security personnel must be strengthened, so as to ensure that unprofessional or discriminatory conduct is duly investigated and penalized.

Lastly, particularly attention should be paid to the role of police officers and their interactions with private security personnel in instances where force is used, or a detention is made by private security personnel. In such circumstances, it is essential that the police officers take statements from both parties involved – and as part of a criminal complaint, if the person affected wishes to make one - in addition to taking all steps necessary to clarify the facts of the case, such as the immediate requisition of video surveillance footage. In a number of the cases dealt with by the Service, the affected individuals stated that they felt that the police had not taken their version of events seriously, and that the account of the private security personnel involved was presumed to be the truth. In one such case, detailed earlier in the chapter and clearly the result of racial profiling, in which a complaint was made in response to having been subjected to degrading treatment (Article 173 of the Criminal Code), threats (Article 171), coercion (Article 172), illegal detention (Article 163), and in contravention of the basic rights covered by Articles 512 and 510 (2) (a) of the same Criminal Code, the individual affected was allegedly held in a room within a shopping centre for approximately an hour after police officers arrived on the scene.

3.2. Failure to comply with the State's duty to investigate

The right to effective judicial protection is a fundamental right provided for in Article 24.1 of the Spanish Constitution and Article 6 of the European Convention on Human Rights. It refers to the right of every person to have their case heard fairly and publicly by an independent and impartial tribunal, as set out in law, within a reasonable time.

The jurisprudence of the Constitutional Court and the international courts is unanimous in that this right can only be seen to be fully upheld where allegations are met with a full and thorough legal investigation of the facts. Constitutional doctrine regarding the right to effective judicial protection (Article 24.1 CE) also covers proper procedure concerning the prohibition of torture and inhuman and degrading treatment (Article 15 CE). In other words, the already-existing duty of the State to ensure a full and thorough investigation is all the more relevant where allegations of torture, inhuman or degrading treatment, or the causing of physical harm and mistreatment by public employees or security forces and bodies are concerned[20]. Failure to comply with this obligation through failing to investigate allegations of such offences may constitute per se a violation of the prohibition of torture.

20. SSTC 69/2008, June, FJ 2º; 63/2010, October 18th, FJ 2

The European Court of Human Rights (ECHR) has rebuked Spain on 13 occasions for its infringement of Article 3 of the European Convention on Human Rights, concerning the prohibition of torture, as a result of failing to properly investigate allegations. In one of these cases, Spain was also censured for a material violation of Article 3, i.e. on the basis that torture or inhuman or degrading treatment was proven to have occurred. In its various rulings against Spain, the ECHR has reiterated the need "to carry out a full official investigation capable of identifying and holding to account those responsible"[21]. In addressing the State's obligation to investigate cases of torture and ill-treatment, the ECHR directs its considerations to both the judiciary and the executive and legislative branches of government at all levels, given that comprehensive legislation outlawing torture also has a contribution to make in this regard. However, despite these rulings, serious flaws remain in the investigations carried out by the judiciary, and in police accountability and internal auditing.

The infringement of the right to effective judicial protection has been detected at various stages of the judicial proceedings and response of public authorities to cases handled by SAIDAVI, insofar as full and thorough investigations into these cases have not been carried out. Despite the especially serious nature of the litigation taken on by the Service, **the following has occurred in 91% of cases: i)** the court or tribunal has not ensured a thorough investigation of the alleged offences; **ii)** the Public Prosecutor's Office has not taken an active role in encouraging such investigations, or **iii)** the police forces have not provided information of which they were or ought to have been in possession, in order to clarify the facts of the case and identify the officers or employees responsible. The infringement of the right to effective judicial protection, and even of the duty of the State to investigate claims of torture and cruel, inhuman or degrading treatment or punishment by state security forces and agents, may herein be inferred.

3.2.1. Police

The State's obligation to investigate complaints of torture and ill-treatment as part of an overall strategy for their prohibition also extends to its law enforcement and security agencies. Police forces are equipped with the capacity and responsibility to oversee their own actions, and ensure that these are carried out correctly within the law and in full respect of the rights of the public. Even so, the provisions which currently exist come up short in terms of ensuring the investigation and penalization of malpractice and criminal behaviour. These shortcomings were highlighted in the findings[22] presented by Irídia to the Parliamentary Committee on policing on February 18th 2022[23].

21. Sala Martínez and Others v. Spain (02/11/2004)

22. Irídia, *Mancances als mecanismes de control del cos de Mossos d'Esquadra* (Barcelona: fFebruary 2022), available online at: https://iridia.cat/wp-content/uploads/2022/02/Informe-CEMP.pdf

23. Irídia is one of a number of organizations which have appeared before the Committee, which has sat since November 2021 as part of the broader Home Affairs Committee of the Parliament of Catalonia.
Article 3 of the Statutes of the Public Prosecutor's Office.

Of particular concern is the fact that, in the vast majority of cases in which the Service has provided legal representation, neither the colleagues nor superiors of the accused officers have provided information for their identification, nor have superiors carried out official investigations. In cases where the court has required the relevant police department to provide specific information on the operation or action in question, the information provided has at times been less than that requested. Likewise, the unit to which the officer under investigation belongs has on occasion been the same one which has handled these requests, rather than the Internal Affairs Division. It is both concerning and illustrative that in **only 5 of the entire 56 cases in litigation** through 2021 was an **identification of the officers responsible provided by the police.**

Furthermore, **in no case** were precautionary disciplinary measures communicated to the judiciary as having been taken while the criminal proceedings were underway. It is important to note that, from time to time, investigating judges deny requests for information regarding such measures, under the auspices that it is not relevant to the investigation into events. This, together with a general lack of transparency, makes it difficult to know whether or not precautionary disciplinary action is ever taken.

Lastly, it should be noted that in **only 10 of these 56 cases has some type of internal investigation been carried out** by the police force. Of these, **only 2 can be counted as fully internal investigations**. In the other 8 cases, internal investigations were carried out only following a court order.

Victor Serri

3.2.2. Public Prosecutor's Office

The judicial system is without doubt the external guarantor par excellence when it comes to investigating cases of police malpractice. Nevertheless, SAIDAVI has identified clear gaps in efforts to carry out this work and guarantee the rights of victims.

The Public Prosecutor's Office plays a key role in this process. Within the Spanish penal system, it's role is to instigate judicial action for the upholding of law and order, the rights of the citizenry and the public interest. In criminal proceedings, its role is to push the judiciary to take the appropriate precautionary measures and carry out investigations aimed at clarifying the facts of each and every case, as well as ensuring the protection of victims, whether or not they are represented by the prosecution[24].

Be that as it may, in many of the claims filed against police officers and state security employees in which the Service has acted, the willingness of the Public Prosecutor's Office to prosecute has been practically non-existent. On occasion, it has even adopted a defensive stance, opposing the carrying out of investigations, requesting cases be dismissed, or objecting to third-party litigation in the public interest.

The **Prosecutor's Office played a proactive role in encouraging investigation or prosecution in only 3** of the 56 cases handled by the Service in 2021. In contrast, **in 27 of these cases**, it either opposed the full and thorough investigation of allegations, objected to the involvement of private prosecutions in proceedings, or requested the acquittal of the accused in spite of strong evidence of their guilt. Indeed, the Public Prosecutor's Office reluctance when it comes to cases of ill-treatment or torture contrasts with its enthusiasm in prosecuting other alleged offences, many of which are not the focus of any private prosecution.

3.2.3. Judiciary

Courts and tribunals are the necessary guarantors of the right to effective judicial protection, given that they are responsible for carrying out a complete and impartial investigation of the cases which come to court, the criteria for which are set out in constitutional doctrine. It is thus established that an effective investigation cannot being carried out in cases of ill-treatment or torture if the decision is taken to dismiss charges, or reduce charges to a minor offence, where the facts of the case have not been sufficiently established, despite there being adequate and accessible means to do so.

In **35 of the 56 cases in progress during 2021, charges were at some stage dismissed or reduced to a minor offence** prior to the full range of reasonable, available, effective and relevant investigatory procedures having been carried out.

24. Article 3 of the Statutes of the Public Prosecutor's Office.

In 25 of these cases, the Provincial Court subsequently upheld appeals filed by Irídia against the dismissal or reduction of charges, and ordered the investigating court to reopen or reinvestigate the cases in question, precisely so as to avoid infringing the right to effective judicial protection. In a number of the remaining cases, resolution is still pending.

Notably, one of the cases taken on by the Service over the past year was thrown out before basic investigatory procedures - such the taking of statements from the claimant, eyewitnesses and the Mossos d'Esquadra officer responsible for the operation and under investigation - had been carried out. The closure of the case in this manner, without any apparent interest in taking a statement from the alleged victim, has serious consequences for access –or lack thereof– to justice, victims' rights, and the right to effective judicial protection. For this reason, an appeal has been lodged with the Constitutional Court, as is detailed in the chapter concerning active litigation[25].

3.2.4. Bar Association

The right to effective judicial protection is also affected by encroachment on the right to legal assistance and victims of institutional violence's right to defence. In its advisory and monitoring work carried out, the Service has identified that, on numerous occasions, restrictions are placed on the rights of the victim in cases of alleged police brutality[26]. It has also been found that claimants have not always been informed by the courts about the decision to dismiss their claims or close their cases. Despite the legal obligation to do so, the claimants in question were neither notified that proceedings had come to a close, nor where they informed of their right to appeal.

The same is true of those rulings in which charges have been reduced to a minor offence. In many cases, the person concerned was not notified, and was summoned to court without having been able to appeal the reduction of the charges. This is particularly concerning insofar as the presence of legal representation is not required in trials for minor offences. As such, the assignation of a legal representative is a matter of decision for the court itself, if it is so requested by the claimant. When the provision of legal aid is refused, the persons concerned are obliged to face proceedings against police officers alone, with all of the difficulties this entails.

In this sense, the involvement of a specialized legal professional in the lead-up to the filing of a claim, as well as in the filing and judicial investigation thereof, is fundamental in order to correctly gather and safeguard evidence, and to ensure that those who suffer institutional violence are aware of their rights, receive correct legal advice, and have their interests defended. Irídia has long identified the need for the creation of a specific in-court representation service in cases of institutional violence, that is to say, cases in which an individual claims to have been the victim of degrading treatment, torture, sexual violence or coercion,

25. See page 7 of the present report.

26. Provided for in the Citizens' Security Act 4/2015, dated April 24th, in reference to the Victims' Statute.

injury and/or unlawful detention by, at the instigation of, or with the consent or acquiescence of a public official or any other person acting in a public capacity.

This service should be staffed by professionals with specific legal experience in the field, and with psychosocial training, in order to be able to fully address the needs of the affected individual prior to the formalisation of their claim, during the gathering of evidence, in the filing of the claim, and throughout the judicial proceedings which arise from it. As such, this specialized service should offer the necessary expertise to advise and represent persons who have been the victim of such crimes, in addition to offering the possibility of free legal assistance when such cases come to court.

3.3. Lack of attention to the psychosocial impacts of institutional violence

Throughout 2021, Irídia's psychosocial team redoubled efforts to highlight the psychological impacts of cases of institutional violence that have come to court. In these and other cases, the Institute of Legal Medicine and Forensic Sciences of Catalonia (IMLCFC) is responsible for carrying out forensic examinations to determine the relationship between physical injuries and psychological harm, and events and actions as they have been observed and reported. In cases of alleged torture or ill-treatment in detention or custody, forensic doctors are obliged to apply the Forensic Action Protocol concerning these offences which was approved in April 2016. This includes use of the Istanbul Protocol, otherwise known as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the first set of rules to document torture and its consequences, adopted by the Office of the United Nations High Commissioner for Human Rights in 2000), which includes specific guidance on assessing psychological harm.

However, the Forensic Action Protocol on allegations of torture or ill-treatment provided for by the IMLCFC does not include the Istanbul Protocol as a whole, and therefore provides for a significantly less thorough examination of the affected individual. This is particularly true in relation to psychological examinations, to which reference is made in only one section concerning mental wellbeing. There is no specification as to the psychological tests to be carried out, nor to any need to assess other factors such as the individual's social functioning or pre-existing psychological conditions. In addition, the IMLCFC document fails to include the section of the Istanbul Protocol on professional qualification, which sets standards for the experience and training of the professionals qualified to make use of it. Ultimately, the IMLCFC protocol recommends but does not mandate the use of the Istanbul Protocol in cases of allegation of torture or ill-treatment.

The use of the Istanbul Protocol in cases of injury, degrading treatment, unlawful detention or brutality by public or private security personnel is justified regardless of whether torture has or has not been alleged. In the event that it is not possible to fulfil the protocol in a given case, it is nevertheless essential that forensic

examinations provide for the detection and recording of the physical injury and psychological damage caused.

Irídia's psychosocial team has produced 14 reports specifically concerning the psychological impact of institutional violence, and which detail the psychological harm detected during the provision of the psychosocial assistance offered by the Service.

Of these 14 reports, one was provided as part of a referral to a specialized public service provider, two to the organization Sira in order to guarantee the use of the Istanbul Protocol, one as part of a medical tribunal assessment, and the remaining ten as part of court proceedings. The latter of these served to accredit the psychosocial assessment made of the individual(s) affected, as well as to record the consequences, impacts and psychological sequelae they faced as a result. The provision of these documents affords forensic experts more evidence, aiding in their assessment of the psychological harm caused, and the recording of this harm in their reports to the court. Likewise, an Expert Evaluation Report was carried out in collaboration with Sira, and was also submitted to court.

Of course, the express request for and submission of psychosocial reports should not be considered the only prerequisite for forensic psychological examination to be carried out. Proof of injuries is crucial in establishing the crime which has been committed, to the extent that the exacting of physical or mental harm forms part of the legal definition of torture, degrading treatment and injury (which includes psychological harm). In turn, their severity is also decisive in the decision to press charges for minor or for serious offences.

Lastly, and as has been repeatedly observed by the Psychosocial Area team, the fact that psychological harm is not assessed as general practice results in a lack of appreciation of the full extent of the impact of institutional violence. As a result, the seriousness with which the crime is considered is lessened, leading to increased impunity. In turn, this contributes to the revictimization of the individual affected, insofar as their suffering is not fully taken into account in judicial proceedings. This leads to a lack of trust and confidence in the judicial process itself.

Valentina Lazo ⬅

Person served by the service during 2021.

3.4. Public space

23 of the cases handled by the Service in 2021 related to events in public spaces. Of these, 5 concerned restrictions arising from the Covid-19 pandemic. This was less than the previous year, perhaps explained by the fact that restrictions on freedom of movement were less overarching.

In terms of the officers and agents involved, as already mentioned at the beginning of the chapter, there was a notable increase in cases involving private security personnel carrying out surveillance duties, both on public transport and in shopping centres.

8 of the cases relating to events which took place in public spaces also concerned discriminatory behaviour on the part of the acting agents, in the form of ethnic and racial profiling, in addition to discrimination on grounds of sexual and gender identity and mental health problems.

Furthermore, in 5 of the cases considered, the individuals affected were perceived to have interceded in action taken by police officers or security personnel against another person, either by way of direct intervention, or by putting themselves forward as a witness.

3.4.1. Discriminatory conduct

Discrimination in the form of racism, xenophobia, LGBTIphobia or against people with a mental health diagnosis was a factor in a number of cases of police and private security misconduct which came to the attention of the Service throughout 2021. **Evidence of discrimination was uncovered in 8 of the 23 cases involving events in public spaces**. All of the aforementioned forms may be considered aggravating circumstances in the filing of a complaint or suit, as per Article 22 of the Criminal Code.

The existence of discrimination, racism or xenophobia is inferred in cases where the ethno-racial profile of the affected individual is what prompts police or security intervention. This is likewise the case in those in which such a bias prompts a disproportionate use of force. Thirdly, this is also supposed in cases in which acting officers or security personnel have, in referring directly to the ethno-racial profile of the person concerned, made remarks which the person considers degrading or humiliating.

Given the language used, the case presented at the beginning of this chapter provides an example of an intervention underpinned by racial discrimination. In another case, expressions such as "*Ah, you are Bolivian, we are going to get scabies*" were used.

Likewise, discrimination on grounds of mental health was also documented in a number of police or private security operations in 2021. A lack of sensitivity or knowledge and, particularly, the absence of operational protocols in dealing with people with mental health problems can significantly aggravate the impacts of intervention on the individuals involved. In the three such cases that came to the attention of the Service, the

individuals concerned stated to the officers that they had an accredited mental health problem. However, in none of the cases was this circumstance taken into account, insofar as no attempt was made to alter the course of the action taken or to de-escalate the situation. Indeed, in one case, acting officers used this circumstance to increase the suffering of the individual, subjecting them to humiliating and degrading remarks concerning their mental health.

Lastly, one case of police brutality aggravated by discrimination on the grounds of sexual orientation was reported, with the affected individual subjected to insults and degrading comments.

3.4.2. Non-justified action against witnesses of alleged police violence

A total of 5 of the 23 cases regarding events in public spaces concern individuals who became involved in or called into question a police or security operation against a third-party. Those who have approached the Service reported having been consequently subjected to degrading and humiliating treatment, threats, and in some cases physical and verbal abuse by the police officers or security personnel involved.

In all 5 cases, the claimants stated that they had witnessed police officers or private security personnel carry out actions that had seemed disproportionate to them, either because of the number of agents involved, or because they acted in a manner that the claimants perceived as unecessarily violent or aggressive. On several occasions, the claimant had simply taken an interest in the wellbeing of the person or group involved. In each and every case, those concerned reported having been subjected to threats aimed at discouraging them and, in two of the cases, the acting agents ended up causing them injury.

> On October 26th 2021, G.C., who at the time of the events was not yet an adult, was walking near Plaça Catalunya in the city of Barcelona when he saw a Mossos d 'Esquadra police unit. The unit, which consisted of a large number of officers (about twenty), had surrounded three young racially-minoritized boys. Given that such action seemed disproportionate, G.C. stopped in order to have a closer look, believing that this might constitute a case of racial discrimination. At that point, 5 of the officers involved approached him and, in a very aggressive manner, demanded that he show them his identification, and alleged that he had insulted an officer. On the grounds that he would not show them any identification, they threatened to take him to the Juvenile Prosecutor's Office and proferred insults against him, telling him to leave the area immediately.

3.5. Demonstrations and protests

3.5.1. Use of foam projectiles

SAIDAVI continues to uncover cases of human rights infringements in relation to the use of foam projectiles in the maintenance of law and order during demonstrations and protests. Foam projectile launchers were introduced into the armoury of the Mossos d'Esquadra in 2010. Since then - and particularly since 2014, when a ban on the use of rubber bullets by Catalan police came into force - they have been used in a multitude of police interventions. Based on the information provided by officers of the Mossos d'Esquadra, it has not been possible to determine the specific weapon used in any of the cases of injury caused by the use of foam projectiles.

This past year, the Service took on **another case of loss of an eye caused by the impact of a foam projectile** used during a demonstration. This case demonstrates once more the clear injustice of these weapons, their lack of compliance with international standards, the lack of accountability of operational command, the absence of effective traceability mechanisms, and, ultimately, the lack of transparency surrounding the use of these projectiles.

Angel Garcia ⬇

On February 16th 2021, a pro-freedom of speech demonstration took place calling for the release of the imprisoned rapper Pablo Hasel. As demonstrators passed the Via Augusta police station, a number of individuals began to throw objects at the police protecting it, resulting in a series of disturbances. Faced with this, the operational command requested authorization to use foam projectile launchers, receiving permission from the head of the unit based in the CECOR (Joint Coordination Centre) at 20:18:09.

At the time the shots were fired, the claimant was standing beside some bins 22 metres from the police cordon. The force of the impact made her fall backwards. She was helped by several of the people who were in the immediate area, who called an ambulance. At 20:30:22, CECOR was informed that a person had been injured, and alerted the emergency services.

The impact of the foam projectile caused the affected eyeball to burst, necessitating surgical intervention, and resulting in irreversible tissue damage and loss of sight.

Following the delivery of the medical report to the Court, preliminary proceedings were initiated, and a provisional suspension of charges was decreed, pending receipt of further information. In turn, the Internal Affairs division of Mossos d'Esquadra undertook an internal investigation, with the aim of providing information to the aforementioned pre-trial proceedings, and did so some months later. Subsequently, both the affected individual herself and Irídia, as a third-party litigant, presented a claim to the Court. The Service identified two Mossos d'Esquadra agents as potentially being responsible, matching the identifications later found to have been carried out by the Internal Affairs division. Preliminary inquiries into the case remain ongoing, pending further investigative proceedings.

Human rights infringements arising from the use of these projectiles relate to the manner in which these weapons are approved for use without any public debate about their suitability and necessity, nor any external oversight of their use. Evaluation of these weapons is carried out by the Mossos d'Esquadra itself, and solely from a technical perspective. As such, internal analysis and tests do not assess issues such as: the risks to the physical and psychological wellbeing of those who may be directly affected by the use of such weapons; the possible psychosocial impact on friends or family members of affected persons; possible consequences in terms of the exercise of fundamental rights, including the right to assembly and demonstration, or in terms of public perception of the police. The documented use of foam projectiles provides an unfortunate example of how a lack of transparency and external oversight puts public wellbeing at risk and can, in some cases, lead to enduring and irreparable harm.

The Mossos d'Esquadra use two different types of foam projectiles - SIR and SIR-X - the second of which is more harmful. The available documentation leads us to conclude that, despite being aware of the risks of severe injury that the SIR-X projectile can cause, the Catalan Ministry of Home Affairs and the Mossos d'Esquadra police force have authorized their use at distances (20 metres) less than those recommended by the manufacturer (30 metres), in the full knowledge that this can cause serious and absolutely irreversible injury[27]. The aforementioned case from 2021, highlighted in this section of the report, is a specific example of this.

Furthermore, regulation governing the use of these weapons contravenes international standards. The Protocol concerning the use of 40 mm launchers and projectiles, does not comply with international standards governing the use of foam projectiles. The United Nations Guide on the use of less lethal weapons (2020)[28] is clear in this regard, specifying that "kinetic impact projectiles should generally be used only in direct fire with the aim of striking the lower abdomen or legs of a violent individual and only with a view to addressing an imminent threat of injury to either a law enforcement official or a member of the public". The Protocol on the use of 40 mm launchers and projectiles, on the other hand, fails to comply with several of these guidelines. First, it stipulates that “where ammunition is used, it must be fired from the abdomen downwards”, but provides that it can be directed toward the upper limbs in the event that “a person brandishes a projectile object, a heavy object, a knife, etc. and it is certain that the target can be reached”. This latter consideration entails the effective authorization to shoot above the abdomen, placing vulnerable parts of the body, such as the chest or head, at risk. The protocol only provides exception –specifically stating that "no shot may be fired"– in circumstances in which the target is in motion, or in which there are vulnerable members of the public (children, the elderly, etc.) nearby.

These protocols have already led to serious harm. SAIDAVI **has dealt with 4 confirmed cases of serious injuries caused by the impact of a foam projectile to the face or head**. This impact caused 3 individuals to lose an eye (two in October 2019, and one in February 2021), and a fourth patient to suffer cranioencephalic trauma and internal bleeding, in addition to a fractured jaw and skull, resulting in permanent sequelae.

On October 27th 2021, after these cases came to light, the Parliament of Catalonia urged the Government to amend the protocol by means of Resolution 146/XIV concerning the moratorium on the use of viscoelastic projectile launchers by the Mossos d'Esquadra, to ensure that "in no case can projectiles be fired at head height". Unfortunately, this proposed amendment continues to allow these arms to be fired above the abdomen, in contravention of United Nations regulations. Moreover, at the time of writing of this report, the Government of Catalonia has not yet ratified the amendment passed by Parliament.

27. Aquesta qüestió es tracta amb més detall a l’Informe sobre Mecanismes de control del Cos de Mossos d’Esquadra, presentat per Irídia el 18 de febrer de 2022 a la Comissió d’Interior del Parlament de Catalunya. Disponible en línia a: https://iridia.cat/wp-content/uploads/2022/02/Informe-CEMP.pdf

28. Organització de les Nacions Unides. *Guidance on less-lethal weapons in law enforcement* (Guia de les Nacions Unides sobre armes menys letals), (Nova York: Oficina de l’Alt Comissionat pels Drets Humans de les Nacions Unides, 2020). Disponible en línia a: https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

The case dealt with by the Service which has been detailed above highlights, again, the lack of traceability of this type of weapon, and the enormous difficulty in identifying the individual officers responsible for firing them. The Protocol for the use of foam launchers published by the Ministry of Home Affairs does not provide for any oversight that allows for effective traceability. Likewise, there are no technical means to automatically establish traceability, such as the marking of projectiles, or the video and sound recording of each shot fired from any given weapon.

The only provision in the protocol is that "each operative and their commanding officer must be aware of the type and number of projectiles that have been fired during each operation, in addition to the precise time and place of their use. To the extent that it is possible, the effects of these shots should be registered. If necessary, an internal report should be carried out, in line with the parameters explained in point 7" (these parameters have never been made public).

This measure is ineffective in practice, given that, in all the cases known to SAIDAVI, officers and their hierarchical superiors have stated that it is impossible for them to specify the time and place in which the weaponry was used. They have only been able to indicate the number of projectiles used in the course of an operation as a result of carrying out an inventory prior to and following the operation. This renders accountability of individual officers impossible.

3.5.2. Infringement of the right to freedom of information

The right to freedom of information is one of the fundamental rights of any democratic society. As such, the work of journalists must be closely protected, in order to ensure the free and unrestricted distribution of information and ideas concerning matters of public interest, free from censorship, as well as the public's access to such information, as set out in General Comment 34 of the UN Human Rights Committee of 12th September 2011, in relation to Article 19 of the International Covenant on Civil and Political Rights (part 13).

The exercise of this right is particularly important in the context of protests and demonstrations. The work of media professionals is essential in documenting popular protests and social movements, human rights infringements that may occur, and police action - a *watchdog* role, in the words of the European Court of Human Rights (ECHR). However, the work of journalists has been seriously hampered in the aforementioned contexts, both in Catalonia and in Spain as a whole. Organizations and groups such as the Grup de Periodistes Ramon Barnils or the Plataforma por la Libertad de Información (PLI, or Plataform for Freedom of Information) have denounced the conditions holding back media coverage of protests.

SAIDAVI has identified that the right to freedom of information is often infringed by the use of force by police officers against journalists. In recent years, a **number of cases have been reported of journalists who have been assaulted by law enforcement officers while carrying out their professional duties**. The Service took on its first such case in 2016, and a second in 2018. In October 2019, the service provided assistance to five journalists assaulted by police officers, and legal representation in two of these cases.

In 2021 - as previously detailed - the Provincial Court of Barcelona issued a conviction against the officer involved in the first case taken on by the Service in 2016. Also, during the same year, an initial appeal was lodged with the Constitutional Court in relation to possible infringement of the right to freedom of information about the right to effective judicial protection.

Another example of infringement of freedom of information detected by the Service has been the use of the Citizens' Security Act 4/2015, dated March 30th, and better known as the "Ley Mordaza" or "gag law", against media professionals in their coverage of protests. This law has at times been used with the obvious purpose of hindering their professional activities, in particular, the taking of photographs and video footage. On other occasions, officers have sought to have charges brought against journalists for their presence at protests, despite their status as professionals. To date, two media professionals have approached the Service to report having received a fine notice for disobeying an officer of the law (Article 36.6) or for perverting the course of justice (Article 36.4).

On June 30th 2021, at 7.30 pm, the photojournalist M.C. was on the corner of Avinguda 22 de Juliol and Carrer de Sant Cosme, in the neighbourhood of Ca n'Anglada in Terrassa, to cover a deployment of a support unit of the Mossos d'Esquadra.

M.C. took a photograph while observing the unit take up its positions. At that point, one of the officers turned to M.C. in an aggressive and intimidating manner, asking her to show him any photographs she had taken, which she did after identifying herself as a journalist using her a professional ID card. The officer then demanded that she delete the photo, which M.C. refused. In response, the officer threatened to confiscate her camera's memory card if she did not proceed to erase the images.

Shortly thereafter, M.C. approached the unit's operational commander, with whom she had spoken before, while the first officer went to verify her ID in a police vehicle. This second officer likewise instructed her to delete the photograph, under the argument that she had not asked for permission or made herself known to officers before taking it, and that she could use the photograph for illicit purposes.

M.C. was charged with disobeying an officer of the law. After receiving notice of the charge, she appealed. Following a strong public response and a meeting with representatives of the Ministry of Home Affairs of the Government of Catalonia, the photojournalist's appeal was upheld.

3.5.3. Excessive use of force in evictions

The serious, ongoing housing crisis entails not an infringement of the right of access to decent housing, but also other potential infringements, insofar as people are subject to eviction proceedings regardless of their status as at risk of social exclusion.

The various moratoria on evictions decreed in the wake of the Covid-19 pandemic have failed to stop the stream of people thrown out of their homes on a daily basis. In response, numerous groups have been set up to provide support to families in situations such as those described, and which participate in acts of civil disobedience to prevent their eviction without adequate alternative accommodation being in place. These acts of protest are often covered by journalists, who attend the evictions and report on the response of the police.

Riot police are often deployed in large numbers, using force both against those gathered and those being evicted, to ensure that the eviction is carried out.

In 2021, **the Service provided assistance in four cases to people injured** while engaging in acts of peaceful civil disobedience against the eviction of vulnerable residents. In all four cases, the injuries were the result of the force used by police officers. In addition, in three of these cases, the individuals had been charged under the Citizens' Security Act 4/2015, or "gag law". Finally, in one of these cases, the individual was detained and charged with the minor offence of public disorder.

Pedro Mata ⬇

3.6. Prisons

3.6.1.Difficulty in obtaining evidence

Prisons, are by their nature spaces in which special attention must be paid to ensuring the protection of the fundamental rights of those detained. For this reason, it is essential that monitoring be carried out which allows us to analyse what instances of institutional violence occur there, and to set up channels for reporting them.

Prisons are characterized, among other things, by a strong sense of opacity, as well as a habitual lack of collaboration on the part of prison authorities in providing information. As such, it is difficult to obtain evidence that supports allegations of ill-treatment or torture, hindering judicial guarantees of the right to truth, justice and reparation. Generally speaking, inmates face obstacles when requesting access to video camera surveillance in the first instance. As a result, when courts require prisons to provide footage as part of criminal proceedings, the time that has passed means that footage is in many cases no longer available. Likewise, given the nature of prisons and their operations, it is rare for there to be third parties able to provide testimony as witnesses.

These difficulties in obtaining evidence mean that, on many occasions, judicial proceedings go ahead based only on the testimony of the affected individual, with no other evidence to corroborate their account of events. As such, many cases are dismissed due to a lack of evidence. This same lack of evidence often results in prison officers being acquitted in the event of a case coming to trial. The absence of further evidence beyond the claimant's own statement is therefore a significant obstacle in tackling impunity.

Over the course of 2021, **SAIDAVI provided legal and psychological representation in 11 cases** concerning instances of torture or other cruel, inhuman or degrading treatment or punishment in prisons, as well as death in custody.

Three of these cases concerned torture or other cruel, inhuman or degrading treatment committed against detainees by prison staff. In these cases, visits with the detainee were carried out, and the relevant actions taken in order to provide advice and monitoring of their case.

3.6.2. Mechanical restraint techniques

Mechanical restraints such as straps and straitjackets are commonly used in prisons to deal with disturbances, sudden aggressive behaviour by detainees, or conflicts between inmates and a prison officer. This type of restraint has serious consequences in terms of human rights, given the severe impact they have on the mental health of those subjected to them.

Last April, at the end of the 2018-2021 legislature, the Memorandum or 'Circular' 2/2021 was approved, and with it the Protocol for the application of restraints in prisons in Catalonia. These regulations represented the beginning of a paradigm shift on the issue, paving the way for a policy of zero restraint, insofar as the government made provisions for the implementation of alternatives to immobilization and mechanical restraint. To this effect, Memorandum 2/2021 provided for the carrying out of a pilot for the use of padded cells as an alternative to mechanical restraints such as the strapping of detainees to beds, among other measures. Nevertheless, in the last quarter of 2021, and a few months after the introduction of these new regulations, the new Minister of Justice began a process of review of the aforementioned Memorandum, which culminated in February 2022 in the approval of Memorandum 1/2022 concerning the application of coercive means of isolation and mechanical restraint in prisons in Catalonia.

Memorandum 1/2022 does not meet the principle of zero restraint, focusing more on the regulation of coercive means of restraint instead of setting out a roadmap for the introduction of alternative measures to this practice, e.g. the use of padded cells. Likewise, the protocol on restraint approved as part of Memorandum 1/2022 does not establish a maximum time nor indicative duration for the practice of mechanical restraint. Instead, it only stipulates that restraint must be discontinued when the behaviour or circumstances which have motivated its use cease, something which leaves ample scope for its use. Failure to establish a maximum duration seriously affects the rights of detainees, given that the duration of restraint is a key factor in the physical and mental harm it can cause.

Sònia Calvó ←

3.6.3. Solitary confinement

There is ample evidence to suggest that solitary confinement of detainees causes them physical and psychological harm and that, in the case of prolonged isolation, can lead to profound alienation and a phenomenon known as *prisonization*. Situations of prolonged isolation likewise lead to an increased risk of self-harm and suicide.

In this regard, it should be noted that all the cases of deaths in custody that have been taken on by SAIDAVI have occurred in the special confinement wings of Catalonia's prisons (Departaments Especials de Règim Tancat, DERT). Detainees in these wings, which constitute a "prison within the prison", are subject to greater isolation. Over the past year, efforts were made to bring 3 cases of death in solitary confinement to trial, two of which from previous years, and one from 2021. Despite advances in recent years in the regulation of the use of solitary confinement and in suicide prevention protocols, prevention and response mechanisms continue to be insufficient. It is also evident that, when a death occurs in custody, the lack of a thorough investigation both by the courts and by the prison authorities can cause a great deal of suffering to family members. For this reason alone, appropriate protocols for the communication of death or serious injury must be put in place, to ensure that families are adequately informed, and to avoid revictimization and compounding their suffering.

Valentina Lazo

3.7. Immigrant Detention Centres (CIEs)

3.7.1. Regression and restriction of rights, the impact of the pandemic in the Barcelona CIE

There have been significant steps backwards in the safeguarding of the rights of detainees since the outbreak of the Covid-19 pandemic, as was first highlighted in 2020, and again in Irídia's report on human rights violations within the CIE the following year (Informe sobre vulernacions al Centre d'Internament d'Estrangers de Barcelona 2021)[29]. With the pandemic serving as an excuse, a culture of ad hoc decision-making and arbitrariness has taken root among both management at the Centre and the courts responsible for its oversight, to the detriment of detainees and the human rights organizations carrying out monitoring activities.

As an example, in 2021, visits by family members, NGOs and even lawyers were greatly restricted or suspended entirely for months, despite the lifting of COVID-19 restrictions and requests from human rights organizations. Restrictions of this kind increased greatly following a change in the centre's management in March. On two separate occasions, lawyers from Irídia were prevented from visiting detainees, in infringement of the detainees' right to defence.

Restrictions of this kind are a clear infringement of the right to receive visits, the right of detainees to maintain contact with NGOs and human rights defence organizations, and the right to effective judicial protection, as recognized in Spanish legislation covering the rights and freedoms of foreigners (LO 4/2000, art. 62), regulation covering the CIEs (RD 162/2014, art. 16), the Spanish Constitution (art. 24) and the Universal Declaration of Human Rights (art. 10), among others. Monitoring provided by external organizations is also essential in situations of deprivation of liberty. As previously highlighted in the 2020 report on institutional violence, during the same year, several claims were filed for ill-treatment and torture that occurred at times during which detainees were unable to contact relatives and human rights organizations were unable to access the centre.

The role of the investigating judges 1 and 30 of Barcelona in providing oversight of the city's CIE has raised two important issues. The first of these concerns delays in responding to claims and requests filed by human rights organizations, and even by the Delegate Prosecutor for Foreign Affairs. Secondly, over the course of 2021, the courts have issued contradictory decisions on the regulation and restriction of visits to the CIE, creating a situation of legal paralysis in absolute contravention of the rights of those detained therein.

In June 2021, the courts issued a joint resolution re-establishing visiting rights to the CIE, albeit subject to a series of conditions and restrictions. The fact that, until June, NGOs were not allowed access to the centre,

28. Irídia, *Informe sobre vulneracions de drets humans al Centre d'Internament d'Estrangers de l'any 2021* (Barcelona: December 2021). Available online at: https://iridia.cat/publicacions/vulneracions-de-drets-humans-al-centre-dinternament-destrangers-de-barcelona-2021/

and that monitoring could therefore not be carried out, meant that Irídia was the only human rights organizations that, de facto and despite restrictions, was able to visit the centre. During this period, detainees were required to make specific requests to see their legal representatives, so that the latter could be given permission to visit. The fact that other organizations such as Migra Studium or Tanquem els CIEs were unable to undertake monitoring at the Centre also contributed to difficulties in assessing the human rights situation on the inside, and in turn limited opportunities for detainees to report cases of mistreatment to the Service.

3.7.2. Abuse and institutional violence

Irídia's primary responsibility regarding the CIE in Barcelona is in providing a legal response to instances of institutional violence that may occur there. Through ongoing work, monitoring in situ, and collaboration with orgnaizations such as Migra Studium and Tanquem els CIE, Irídia offers legal assistance to anyone who wishes to report degrading treatment or torture, either at the direct request of those detained within the CIE or their relatives, or upon referral from the aforementioned and other organizations.

In the event that the individual in question wishes to file a criminal complaint, they are offered assistance for a period which can last several years, due to the multiple obstacles that stand in the way of bringing these claims to trial. The most common obstacles are the failure to take an initial statement from the affected individual, their own deportation or that of witnesses, and the habitual dismissal of cases by judges following such deportations. The reluctance of the Public Prosecutor's Office to carry out its role in pursuing criminal claims and requesting the judiciary to take precautionary measures ahead of investigation represents a further obstacle. Lastly, the lack of video surveillance or failings in the storage and custody of footage present further difficulties.

Indeed, all currently active judicial proceedings concerning cases of institutional violence in the CIE in Barcelona in which Irídia is providing legal representation have, at one time or another, been the subject of an initial dismissal by the investigating judges in charge of the investigation. It was the Provincial Court of Barcelona that ordered their reopening, upholding the appeals filed by the Service, **with four of these coming during 2021.**

3.7.3. Solitary confinement in CIEs

Unlike in prisons, solitary confinement in CIEs is not subject to precise regulation. The principal regulatory standards are set out in the Royal Decree 162/2014, dated 14th March, through which regulations on the functions and internal operations of detention centres for foreigners were approved. Article 57 of the decree establishes the circumstances which may justify a measure as serious as solitary confinement, among which no justification on medical or health grounds is provided. Nevertheless, following a visit to the CIE in Barcelona, the Ombudsman's 2019 Annual Report highlighted the misuse of the Centre's solitary confinement units for medical isolation, suicide prevention, and temporary restraint. There is further

evidence that solitary confinement has been used in cases of risk of suicide, in the management of the COVID-19 pandemic, and also as a form of penalization.

In this regard, in late 2020, **two individuals reported having been confined for 10 days in inhumane and degrading conditions** –both in terms of where they were isolated and how they were treated by the officers who guarded them– as part of a COVID-19 quarantine. One of those affected registered a criminal complaint after having been isolated 24 hours a day for 10 days, in a very small cell without any type of furniture, bed, sink, or natural light, after having tested positive for Covid-19. Over the course of 2021, it came to light that this person had self-harmed on a number of occasions, including during the 10 days of isolation, and that their mental health was extremely fragile. On one such occasion, the individual in question caused themselves harm by striking their own head with force against the walls and windows of the cell. They were subsequently immobilized on the floor by 7 officials, who applied a mechanical restraint, binding their hands and feet, and placed a helmet with a visor on their head for more than 3 hours.

The detainee was subsequently placed in solitary confinement, despite their mental health situation, and the fact that the Centre's Medical Service warned that such facilities could not be considered satisfactory for carrying out quarantines. In addition, the detainee was subjected to repeated mechanical restraint, despite a lack of the correct means to do so, thus contravening their human rights to physical wellbeing and correct treatment.

This notwithstanding, there are no publicly-available protocols which provide specific instruction on how mechanical restraints are to be used within CIEs. Article 57 of the regulations governing the functioning and internal operations of the CIEs (Royal Decree 162/2014, 14th March) establishes a series of general guidelines in relation to the need for physical restraints to be applied proportionately, where no better course of action is available, and for the shortest duration as is strictly necessary, precluding their use as a disciplinary measure.

Valentina Lazo

4. GOOD PRACTICE

This section highlights some examples of good practice by authorities that emerged during the year 2021. Some of these have long been called for by human rights organizations such as Irídia, Amnesty International, the Observatory on the Penal System and Human Rights (OSPDH), Novact, and Defender a Quien Defiende, and public bodies such as Catalonia's public ombudsman (Síndic de Greuges). It is of the utmost importance that the relevant authorities, at every level, assume the responsibility to defend and safeguard human rights through the constant oversight of their own actions, as well as accountability in case of infringements. Furthermore, auditing carried out by internal and external bodies is also essential. There is room for improvement on many issues. Nevertheless, the following initiatives are worthy of praise:

Appointment of the Examining Committee on Policing in the Catalan parliament.

In its 2020 report concerning institutional violence, Irídia requested that,

"within the framework of the Home Affairs Committee, a Study Committee be created to analyse the control systems of police force that are considered international benchmarks, in order to review the current internal and external control model of the Mossos d'Esquadra police force –and other local police forces– with a view to revising it and introducing changes and/or improvements".

The creation of the Examining Committee on Policing (CEMP) by the Parliament of Catalonia, on November 3rd 2021, represents a milestone, insofar as it gives voice to popular concerns surrounding the role of the police force of the Government of Catalonia –the Mossos d'Esquadra– at government level. Its aim and scope is, in the first place, to analyse and research oversight and evaluation of –and investigation into– police actions, with the possible introduction of independent monitoring and auditing. It also provides for reconsiderations of how policing is carried out in Catalonia, and possible changes to this model. Thirdly, it provides for oversight on the freedom of information and data held by the Ministry of Home Affairs. Lastly, it includes provisions for the analysis of the activities of the police intelligence service of the Mossos d'Esquadra, and the force's monitoring of political activists.

The CEMP is a unique opportunity to implement measures which go above and beyond international human rights standards, and to take action that recognizes the rights of affected individuals to truth, justice, reparation and guarantees of non-repetition.

Establishment of a committee to study institutional and structural racism by the Parliament of Catalonia.

On November 2nd of last year, the Parliament appointed the Examining Committee on Institutional and Structural Racism. This had also been recommended in the aforementioned Irídia report on institutional violence 2020. Irídia recommended that an Examining Committee on institutional racism should be set up, with the possible participation of international experts.

The establishment of the Committee, in addition to efforts by the Ministry of Equality and Feminism to approve legislation outlawing racism in all its forms, is an important step forward. Such legislation will provide scope to appropriately deal with racism in its many forms, such as anti-Gypsyism, Islamophobia, xenophobia, and other forms of racial and ethnic discrimination. It will address the issue comprehensively, taking into consideration both the structural and institutional racism that can be perpetrated by public authorities themselves.

Jordi Borràs

Parliamentary resolution urging the Ministry of Home Affairs to amend the protocol for foam projectile launchers to prevent shots to the head.

On October 27th 2021, a Resolution was approved by the Home Affairs Committee of the Parliament of Catalonia, which established that "in no case may shots be fired at the head". It should be noted that the protocol currently in force indicates that foam projectiles must be fired "from the abdomen downwards", but provides that, in the event that "a person brandishes a projectile object, a heavy object, [or] a knife", these can be directed "against the upper limbs", as long as the shooter is certain of hitting their target. As such, shots fired at head height are not specifically precluded.

Although this new resolution does not meet international standards, it is considered to be a step forward with respect to current regulation of the use of foam projectiles. Nevertheless, it remains unknown whether internal protocols have been modified to meet with the resolution passed by the Parliament of Catalonia.

Pedro Mata

Approval of funds in the 2022 budget to equip foam projectile launchers with cameras.

As part of the Government of Catalonia's annual budget, funds have been made available to place cameras on the foam projectile launchers used by the riot control units of the Mossos d'Esquadra. The aim is to record the sound and images pertinent to the field of vision at the time of their use, in order to be able to evaluate such use *a posteriori*.

While Irídia continues to call for the prohibition of foam projectiles –or the suspension of their use while such prohibition is not adopted– the assignation of funds to improve oversight pending the enforcement of prohibition should be considered a step forward.

Recording of the use of tasers by the Policía Nacional.

The Ministry of the Interior has finally accepted the recommendations of Irídia and Amnesty International that recording be undertaken of the use of electric guns or Tasers by police.

Despite the fact that the protocol governing the use of electric guns dated December 21st 2021 has not been made public, publicly available information indicates that the use of the weapon is tied to the ability to record images[30]. Indeed, in January it was announced that only 150 of the 600 taser guns which had been acquired would be distributed to officers, due to the limited number of cameras available.

Working relationship of human rights organizations with the Ministry of Home Affairs and the Directorate General of the Mossos d'Esquadra.

In order to properly defend human rights, there must be channels of communication with the ministers and heads of governmental departments, particularly with the Ministry of Home Affairs. This was first recommended by Irídia in its 2018 Report on institutional violence. Throughout 2019, a stable channel of communication and working relationship was established between the heads of the Mossos d'Esquadra, Irídia and Amnesty International. Communication channels of this sort enable us to deal with a wide range of challenges which may arise. This communication has continued throughout 2021 as a whole, including following the election of a new government in Catalonia.

30. Antonio Salvador, "Así distribuirá la Policía Nacional las 150 primeras pistolas 'Taser' entre sus jefaturas", *El Independiente*, 28 de gener de 2022, January 28th, 2022, consulted on March 9th, 2022., https://www.elindependiente.com/espana/2022/01/28/asi-distribuira-la-policia-nacional-las-150-primeras-pistolas-taser-entre-sus-jefaturas/

5. RECOMMENDATIONS

The recommendations contained herein make reference to circumstances or practices that have come to the attention of SAIDAVI (Service for Attention and Reporting in Situations of Institutional Violence) through its own and other cases. One initial overarching recommendation to all public authorities is to heed the conclusions and implement the measures recommended by the Ombudsman in its Annual Reports on Policies for the Prevention of Torture in Catalonia, and particularly that of 2021[31].

5.1. To the parliamentary groups of Congress

1) The repeal of all precepts that threaten freedom of expression and the right to assembly, as part of the proposed reform of the Citizens' Security Act 4/2015. In particular, penalties for the publishing images of the security forces must be eliminated, given that these represent a serious infringement of freedom of information, and have been found to contribute to a worrying degree of self-censorship. Further action should be taken to abolish summary and collective deportations, known colloquially as "devoluciones en caliente", which contravene international law. Measures should also be taken to provide independent oversight of the actions of the State's police forces and security services, and to expressly prohibit raids and stops and searches of a racist nature. There should also be an express prohibition on the use of rubber bullets by police and security officers. In addition, the right to spontaneous demonstration without prior communication must be recognized, eliminating the penalization of organizers under breach of the peace regulations. To conclude, it is essential that any such reform does not include modification of article 80 of the Prisons Act to endow prison officers with the status of officers of the law within prisons.

2) Any repeal must include an amendment of Article 131 of Organic Law 10/1995, dated November 23rd, in reference to the Criminal Code, so as to define the crime of torture as an imprescriptible offence, as recommended by the United Nations Committee for the Prevention of Torture on repeated occasions[32].

3) In case it is not included in the Organic Law of reform of the Citizens' Security Act 4/2015, the passing of specific legislation by Congress permitting the establishment of a body which provides independent oversight of the police, should this not be included in any reform of the Citizens' Security Act 4/2015. This body should have the powers to assess the need and suitability of weapons and tools available for police use. It should also play a supervisory role in evaluating police operations and in the creation of protocols for the use of force, as well as the measures taken to prevent its use. In addition, its remit should include the investigation of alleged malpractice or criminal activity, with the ability to act ex officio, and to access all the information necessary for it to complete independent and thorough inquiries.

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31. Síndic de Greuges de Catalunya, *Informe anual del Mecanisme Català per la Prevenció de la Tortura 2021* (CCatalonia: December 2021). Available online at: https://www.sindic.cat/site/unitFiles/8329/Informe%20MCPT%202021_cat_def.pdf

32. See the reports of the United Nations Committee against Torture with code CAT/C/ESP/CO/5, paragraph 22, 2009 and CAT/C/ESP/CO/6, paragraph 9, 2015.

4) In case it is not included in the Organic Law of reform of the Citizens' Security Act 4/2015, given their potential to cause harm, the use of rubber bullets by the State's police forces and security bodies must be outlawed. An Examining Committee must be set up to clarify allegations relating to the use of rubber bullets. It should assess not only the impact caused to members of the public through the use of these weapons, but also the practical application of current mechanisms for the control, evaluation and disciplining of police officers as regards their responsibilities to maintain law and order and provide crowd control.

5) The Government must change the uniform of police officers responsible for maintaining public order (riot police), so that their identification number is clearly visible and distinguishable –both in terms of typography, as well as numbering and size– and ensuring that it clearly appears on three parts of the uniform: on the officer's chest, back, and helmet.

6) The law affecting foreign nationals, known as the Ley de Extranjería, must be amended to put an end to the precautionary use of Immigrant Detention Centres and prolonged detention to deal with cases of deportation and infringement. A process of regularization offering legal status to everyone living in Spain must be set up. Likewise, the validity of deportation orders should be limited to a maximum of two years, without any period of prohibition of entry –which should also be limited– affecting their expiry.

7) Legislation governing the courts responsible for the jurisdiction of Immigrant Detention Centres must be passed, so as to clearly define procedures, timescales and avenues for appeal, as well as to provide clarity to an area currently lacking in any type of meaningful regulation.

8) Efforts must be made to draw up and pass legislation to guarantee, once and for all, the right to effective judicial protection of all those affected by serious human rights infringements during the Francoist dictatorship and the Spanish transition to democracy. This must include:

- the modification, repeal or abolishment of the Amnesty Law;

- the amendment of Organic Law 10/1995, dated November 23rd, concerning the Criminal Code, to expressly include of the principle of international jurisdiction (contained, inter alia, in Article 7.2 of the European Convention on Human Rights, and in Article 15.2 of the International Covenant on Civil and Political Rights);

  the ratification by Spain –still outstanding– of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;

- the amendment of the Criminal Procedure Act, so that existing court rulings on the inadmissibility of prior claims can be reviewed;

- the amendment of the International Treaties Act, to provide specific recognition and implementation of the judgements of the United Nations' Treaty Bodies.

5.2. To the parliamentary groups of the Parliament of Catalonia

1) The establishment, by law, of a body which provides independent oversight of the police. This body should have the powers to assess the need and suitability of weapons and tools available for police use. It should also play a supervisory role in evaluating police operations and in the creation of protocols for the use of force, as well as the measures taken to prevent its use. In addition, its remit should include the investigation of alleged malpractice or criminal activity, with the ability to act *ex officio*, and to access all the information necessary for it to complete independent and thorough inquiries.

Jordi Borràs

2) The use of foam projectiles by the Mossos d'Esquadra must be outlawed, on account of their potential to cause serious injury and death. Even if effective means of oversight and traceability are put in place, the risk of permanent, irreversible injury to those struck with these projectiles in sensitive areas of the body will always exist.

3) The Parliament of Catalonia must provide recognition of those affected by human rights infringements in Catalonia, and take effective action to fully guarantee their right to truth, justice, reparation and non-repetition. A specialized service must be created for the care of those affected by human rights infringements arising from the use of force by police forces, prison officials or private security personnel. This service must ensure comprehensive care which takes into account the multiple harm caused by these infringements, and fight for redress.

4) The Justice Committee must assess the implementation of Memorandum 2/2017, approved by the parliamentary Working Group, in the internal operations of prisons in Catalonia, for the purpose of analysing its enforcement and effectiveness as regards solitary confinement. Likewise, the implementation of Memorandum 2/2021 concerning the Protocol for the use of restraints in prisons in Catalonia must also be evaluated, in addition to the impact the changes introduced by Memorandum 1/2022 may have on the fundamental rights of persons deprived of liberty.

5.3. To the National Governmentt

1) The procedural and operational work of the internal affairs units of the Policía Nacional and the Guardia Civil must be reviewed, so as to ensure their independence in investigating alleged offences of degrading treatment, torture, sexual coercion and violence, causing of injury and/or illegal detention committed by, at the instigation of, or with the consent or acquiescence of an officer of the law or any other person in the exercise of said public duties. Likewise, it is essential that these units be formed of officers with full human rights training, and that they be afforded a high degree of autonomy from the rest of the force. Mechanisms through which members of the public and human rights organizations can report situations of institutional violence must be put in place, allowing for appropriate and rapid action to be taken in order to ensure the safeguarding of evidence. Given the specific nature of such cases, any channel for reporting situations of institutional violence should not be the same as that which that exists for reporting other allegations of mispractice.

2) The use of rubber bullets by police forces and security officials must be outlawed, given their potential to cause harm, their imprecision and unpredictability, and their lack of traceability, all of which entail significant risks for basic human rights and the physical wellbeing of the public.

3) Changes to uniform which have already been carried out within the Mossos d'Esquadra must be introduced for all other police officers and forces responsible for maintaining public order (riot police), so that their individual identification number is clearly visible and distinguishable –both in terms of typography, as well as numbering and size– and ensuring that it clearly appears on three parts of the uniform: on the officer's chest, back, and helmet.

Victor Serri

4) A protocol against ethnic and racial discrimination must be adopted and put into practice by police and security forces, for the purposes of prohibiting and eradicating practices such as ethnic and racial profiling. Requests for identification made to members of the public by police officers must be guided by a series of well-defined protocols for action and justified in writing. Likewise, a training plan must be put in place for police forces to ensure the correct implementation of this protocol in their actions.

5) Rules governing repatriation and transfer of detainees by air or sea which allow for both forced sedation and the use of straps and straitjackets during deportation must be abolished. These rules contravene the prohibition of torture and inhuman or degrading treatment provided for in Article 3 of the European Convention on Human Rights.

6) A permanent translation and interpretation service capable of covering the linguistic needs of all detainees must be installed in Immigrant Detention Centres (CIEs), in order to guarantee their rights to defence, asylum, and health, as well as to ensure the protection of victims of trafficking and minors who, despite their circumstances, find themselves in detention.

7) The Ministry of the Interior must transfer health powers covering the Barcelona-Zona Franca CIE to the Government of Catalonia, in order for the latter to guarantee the health care of those detained therein, ensuring the same level of treatment and care as the general population.

8) A revision of the rules governing solitary confinement within CIEs must be undertaken, with the aim of establishing a system of practice in which its use is limited exclusively to those circumstances in which it is absolutely necessary, clearly stipulating what these circumstances are and the maximum time during which it may be enforced. Furthermore, continuous cell time must also be limited according to strict necessity, and in no case must exceed 24 hours. In addition, cells used for solitary confinement must be brought up to basic standards of decency, and in no case can confinement of this kind be applied for health reasons. Detainees must, in these circumstances, be referred to public health services.

9) A revision of restraint procedures in CIEs must be undertaken. Physical restraint, as recommended by international organizations such as the European Committee for the Prevention of Torture of the Council of Europe, must be conducted in a limited manner, for the minimum amount of time necessary, using the least harmful possible, and must in no case exceed 30 minutes in duration. In any case, efforts must be made to move towards a zero-restraints policy, as is the case in psychiatric facilities.

10) In addition to the number of formal and criminal complaints, convictions and penalties issued, disaggregated data must be published annually concerning internal disciplinary procedures involving officers of the Policía Nacional and the Guardia Civil for the alleged commission of offences of degrading treatment, torture, sexual coercion and violence, injuries and/or illegal detention.

11) Regulations governing the prisons system must be amended and brought up-to-date, bringing to an end the use of solitary confinement as standard practice in high-security prisons, and prohibiting continuous solitary confinement lasting 15 or more days. International recommendations must also be heeded in terms of the mechanical restraint practiced in both the prison and medical environments, as part of a move towards a zero-restraints model.

12) A stable channel of communication must be set up between the Ministry of the Interior and human rights organizations, such as Irídia, Amnesty International, or others. At present, there are virtually no effective and constructive channels of communication between the Ministry and human rights organizations based in Spain.

13) The resolution ratified by the Congress of Deputies on June 1st 2017, in relation to the Via Laietana Police Prefecture in Barcelona, must be heeded. This entails:

a. the transfer of officers based there to another station;

b. the handover of police archives dating back to the Franco regime to the Government of Catalonia, on the recommendation of the Subdirector General of Archives and Museums;

c. the conversion of the building into a centre for the reporting of torture and unpunished crimes committed during the Franco regime, jointly managed by the Government of Catalonia and Barcelona City Council.

14) The headquarters of the Police Prefecture located on Via Laietana in Barcelona, must be made into a memorial and documentary centre, dedicated to the remembrance and study of torture committed by police forces during the dictatorship.

Jordi Borràs ➡

5.4. To the Government of Catalonia

5.4.1. AI Ministry of Equality and Feminism

1) A specialized service must be created for the care of those affected by human rights infringements arising from the use of force by police forces, prison officials or private security personnel. This service must ensure comprehensive care which takes into account the multiple harm caused by these infringements, and promote redress.

2) Appropriate coordination and referral mechanisms should be established between the Agency for Protection and Promotion of Equal Treatment and Non-Discrimination, human rights organisations in Catalonia, and organisations with similar aims.

1) A far-reaching reform of internal investigation and disciplinary procedures of the Mossos d'Esquadra must be carried out. More specifically, the following measures should be taken:

- Internal Affairs (or any successor department) must be provided with full organizational and operational autonomy, sufficient human and technological resources, and a permanent human rights training programme.

- An appropriate channel must be created through which to centralize the handling of all complaints of irregular or potentially criminal activity allegedly carried out by Mossos d'Esquadra officers under the remit of Internal Affairs.

- Internal guidance must be issued to all Citizen Help and Information Offices (OAC) and police stations of the Mossos d'Esquadra on ensuring that all complaints filed against officers of the force are transferred to the DAI efficaciously and in the shortest possible time.

- An internal channel must be set up so that, when the judiciary requests action or information from the Mossos d'Esquadra regarding an alleged offence committed by one of its officers in the exercise of their duties, this is referred to the DAI, and that it is this division that responds to the request, once the relevant checks and investigations have been carried out.

5.4.2. Ministry of Home Affairs

- Provincial offices of the DAI, in addition to an e-mail and telephone service, must be made available to members of the public for the registration of complaints and grievances concerning the Mossos d'Esquadra. The existence of these offices, with a separate corporate branding, should be publicized sufficiently to ensure that the public is aware of them.

- Following a clear assignation of authority to the relevant bodies, working standards and mechanisms for accountability to the Parliament of Catalonia, the Ombudsman and an independent police complaints commission must be established.

- Until such times as an independent body is established, a direct channel should be established between the DAI and human rights organizations in order to bring complaints against officers of Mossos d 'Esquadra to the attention of the DAI, and thus facilitate the prompt initiation of investigations.

- Comprehensive care of affected individuals must be ensured, referring them to the Office for the Care of Victims of Human Rights Violations - pending its establishment - in addition to referral to the appropriate public services.

- The DAI must submit an annual report to the Parliament of Catalonia, indicating the number and the type of infringements reported, and the number and outcome of disciplinary procedures undertaken, including the number of officers expelled from the service as a result, specifying the units to which they belonged.

2) Evaluation must be carried out of the need for and suitability of weapons and tools for police use, in a transparent manner, taking into account not only the technical aspects of such items, but also their possible impact in terms of the wellbeing of members of the public and the exercise of their fundamental rights. This evaluation must be carried out by a newly-created independent body, and must be debated by the Home Affairs Committee of the Parliament of Catalonia prior to the adoption of any weapon or tool for police use.

3) Police transparency policy must meet international standards, ensuring that the public are fully informed and aware of protocols relating to the use of force.

4) An external audit must be carried out on the role of operational command in the oversight and subsequent reporting of improper or potential crime conduct in the use of force carried out by the officers under their watch, with the aim of effectively safeguarding the public's fundamental human rights, as well as ensuring the communication of any improper conduct to the DAI. Should it be found that these obligations are not being met, the appropriate disciplinary measures must be taken.

5) A new memorandum must be issued to all agents of the Mossos d'Esquadra, reminding them that Instruction 16/2013, dated 5th September, and which ratifies the protocol for the use of defensive weaponry, prohibits the striking of sensitive parts of the body and in a top-down direction, and specifies that any such breach will be subject to penalization.

6) A new protocol must be adopted regarding the presence of journalists at protests or in instances of public disorder, clearly safeguarding the right to information, and ensuring journalists are not assaulted, hindered or punished as a result of carrying out their work.

7) Pending the prohibition by Parliament of Catalonia of the use of foam projectiles, effective traceability mechanisms must be established. This includes the geolocation of weaponry and the numbering of projectiles so as to permit the identification of the weapon fired or officer responsible for firing it, as well as the incorporation of a high-quality video and audio recording system, so as to allow for the recording of all instances of use, including nocturnal. All such recordings must be kept on an external server which is inaccessible to officers. In addition, such weapons must only be fired from the waist down, in the exclusive event of an imminent threat of harm to a police officer or a third party, and never for the protection of property. Finally, regulations governing the distances from which such weapons can be fired must take into account the risk assessments carried out by the manufacturer. This notwithstanding, the use of SIR-X projectiles must be immediately discontinued, given the severe injuries caused by their use. In the event that these recommendations remain unadopted, the suspension of use of foam projectiles must be immediately enforced.

8) The Police Identification Number (NOP) system created for the identification of law enforcement officers following the passing of Motion 128/XII in the Parliament of Catalonia must be introduced as a matter of urgency by all relevant support units (Àrea Regional de Recursos Operatius, ARRO). Likewise, a clear order should be issued to all officers reminding them that, in circumstances in which they are required to re-establish law and order, they must wear a specific armband displaying their NOP, which is not the same as the armband used when carrying out normal patrols. Officers should additionally be reminded that they may disciplined internally if they fail to do so.

9) The Mossos d'Esquadra must implement a bespoke GPS location system that always allows for the accurate tracking of the force's vehicles, with specification of the exact time spent in each location, as well as the introduction of a system for the preservation of this data for a minimum duration of one year.

10) The Mossos d'Esquadra must ensure the automatic storage of any images that are recorded in the police stations for a period of 6 months. Video surveillance must also be installed in all police facilities, including the cells in which detainees are held, as well spaces accessible to members of the public, eliminating blindspots. It is particularly important that rooms used for conducting searches are equipped with image and sound recording facilities, as has been implemented at the Les Corts police station.

11) All police vehicles used to transfer detainees - including ARRO and BRIMO vehicles - must be equipped with an image detection, collection and conservation system similar to that used by the Guardia Urbana.

12) An external expert review must be carried out, in consultation with human rights and anti-racist organizations, in order to analyse the hiring practices of, and any ethno-racial discrimination which may exist, within the Mossos d'Esquadra. This review must be afforded scope to make recommendations for the prevention, detection and sanctioning of improper or criminal conduct relating to ethnic and racial discrimination. Based on the results, a protocol for the prohibition and eradication of ethno-racial discrimination in police operations must be introduced. This must include action to guarantee the submission of clear written justification for stops and searches, as is being applied across a number of police forces.

13) Instruction 4/2018 of the Mossos d'Esquadra, which concerns the use of Tasers (DCE), must be modified in order to comply with the recommendations of the Catalan Ombudsman and the standards agreed by the Parliamentary Comission, as well as those established by international regulations. In particular, it is necessary that any protocol for the use of DCEs prevent their repeated and continuous use, fixing the maximum number of times they can be used to no more than two on any one occasion. Likewise, protocols governing the use of DCEs must be modified to stipulate that their use by police be recorded in each and everyone case, as well as to indicate the cases in which they cannot be used, for example, during demonstrations and mass gatherings, and against individuals under eighteen years of age.

14) Police protocols should be reviewed to ensure that medical examinations of detainees are, as a general rule, conducted in private and without a police presence, unless otherwise requested by medical personnel for security reasons. To this end, and as indicated by the Ombudsman[33], the right to private medical examination can only be restricted in exceptional circumstances of dangerous behaviour or risk of harm. Each and every individual has the right to refuse to be examined, and cannot be subject to forced examination.

15) The Mossos d'Esquadra must be encouraged to investigate companies or individuals engaged in the extrajudicial eviction of people holding unofficial residence in property registered under their name, insofar as this may entail coercion or threats aimed at their abandoning said property. Inaction in the prevention of the use of direct or indirect force is tantamount to tolerance of the potentially violence conduct directed against individuals by e.g. security companies, and could therefore be considered as aiding and abetting in the comission of an offence.

16) The Directorate-General of Security (DGAS) must:

- carry out an audit of the crime prevention and legal compliance standards of the private security companies operating in Catalonia;
- evaluate the degree of compliance with human rights standards of private security staff working in Catalonia;
- provide a breakdown within the Ministry of Home Affairs' annual report of the infringements which have resulted in disciplinary action being taken against private security staff, how many of these have resulted in criminal charges, and which type of charges.

33. Síndic de Greuges, *Informe anual del Mecanisme Català per la Prevenció de la Tortura 2021* ..., 119.

5.4.3. Ministry of Justice

1) Memorandum 1/2022, which approves the Protocol for the application of coercive means of provisional isolation and mechanical restraint within prisons in Catalonia, must be revoked. The previous Memorandum 2/2021 must be reinstated.

2) In the event that Memorandum 1/2022 is not repealed, ministers should seek the participation of human rights organizations in the working group responsible for its oversight and for research into alternatives, as part of a move towards a zero-restraints policy. Likewise, the implementation of a pilot project for the introduction of padded cells, as provided for in the previous circular, must be undertaken within a six-month timeframe. Such facilities form part of proven good practice, and are recommended by international human rights agencies as part of a move towards a zero-restraints model.

3) The Department of Justice must normalize the monitoring, prevention and reporting of situations of institutional violence in Catalan prisons carried out by human rights organizations, granting them a special status which facilitates their work, and which guarantees them absolute independence and freedom in carrying this work out, in order to make improvements in the safeguarding of prisoners' rights. In particular, our organization and other similar organizations dedicated to the defence of human rights must be afforded access to prisons in the same conditions as other organizations or companies which provide prison services, religious assistance, or training workshops to prisoners.

4) Where disciplinary measures are taken within prisons, proper procedure must be adhered to, thus ensuring legal protection and effectively preventing the arbitrary use of sanctions. Disciplinary proceedings within prisons must meet the proper standards to which public bodies are held, particularly with regard to basic procedural guarantees such as the right to legal representation during investigations. Likewise, reminder must be made of the obligation to respect the right of detainees to request, insofar as the law permits, the suspension of the application of any penalty by the relevant authorities.

5) A specific body must be set up for the reporting of alleged crimes of degrading treatment, torture, sexual violence or coercion, or injury by, at the instigation of, or with the consent or acquiescence of a public official or any other person acting in a public capacity. Prisoners and their families, as well as human rights organizations, should be able to lodge such complaints with the prison inspection service, ensuring their full and thorough investigation, as well as the safeguarding of evidence.

6) In addition to the number of formal and criminal complaints made, and types of sanctions and convictions imposed in relation to such offences, disaggregated data concerning the alleged commission of crimes of degrading treatment, torture, sexual coercion and violence, causing of injury and/or illegal detention must be published annually.

7) A new communications protocol must be drafted, ensuring that the families of prisoners are adequately informed and kept up-to-date regarding their wellbeing, especially in cases of physical or mental illness. This protocol must serve to ensure that the correct attention is provided by prison staff and other professionals, especially in cases of death in custody. For this reason, the protocol must be jointly drafted with human rights and prisoners' families organizations.

Valentina Lazo

5.5. To Barcelona City Council

5.5.1. Municipal councillors

1) Barcelona City Council must repeal existing measures for the safeguarding of public safety, known as the Ordenança Municipal de Convivència, and replace these with legislation which permits a less punitive management of public space, placing an emphasis on mediation and respect for human rights.

5.5.2. Executive

1) Changes to uniform which have already been carried out within the Mossos d'Esquadra must be introduced for the Emergency Reinforcement Units (UREP) of the Guardia Urbana with special responsibilities for crowd control and restoring law and order, so that their individual identification number is clearly visible and distinguishable – both in terms of typography, as well as numbering and size– and ensuring that it clearly appears on three parts of the uniform: on the officer's chest, back, and helmet.

2) Images recorded in the Guardia Urbana's detention facilities located in the Zona Franca area of the city must be retained as standard for a period of 6 months. Cameras must also be installed in all facilities through which the detainee may pass, ensuring that there are no blindspots.

3) A mediation unit must be created within the Guardia Urbana, whose objective is to reduce conflicts arising from the use of public spaces, particularly in relation to street selling. It is also essential that mechanisms be found to effectively address this activity from a harm reduction perspective, based on criteria of effectiveness, proportionality and respect for human rights.

4) Human rights organizations must be able to effectively communicate proposals and concerns regarding the prevention of institutional violence to the city's Department of Prevention and Security.

5) Disaggregated data must be published annually in relation to legal proceedings initiated against officers of the Guardia Urbana for the alleged commission of offences of degrading treatment, torture, sexual coercion and violence, causing of injury and/or illegal detention. Likewise, the number of disciplinary proceedings initiated in response to allegations of discrimination based on race, gender, sexual orientation, religion, language, opinion, place of birth, place of residence, or any other personal or social condition or circumstance, must be included in the Management Report of the Guardia Urbana (the last of which was published in 2019), in addition to the number of proceedings initiated in response to allegations of the commission or tolerance of, or collusion in, acts of torture or cruel, inhuman or degrading treatment or punishment. Any abusive, arbitrary or discriminatory action which entails physical violence or intimidation must also be recorded. Lastly, the number of disciplinary proceedings that have resulted in penalization, and the nature of the penalization imposed, must also be included.

6) An audit must be carried out by external experts to analyse hiring practices and ethno-racial discrimination within the Guardia Urbana, with the participation of human rights and anti-racist organizations. This audit must be afforded scope to make recommendations for the prevention, detection and sanctioning of improper or criminal conduct relating to ethnic and racial discrimination. Based on its findings, a protocol for the prohibition and eradication of ethno-racial discrimination in police operations must be introduced. This must include action to guarantee the submission of clear written justification for stops and searches, as is being applied across a number of other police forces.

5.6. A To the Public Prosecutor's Office

1) A specialized prosecutor's office for institutional violence must be created, providing oversight of all criminal proceedings relating to degrading treatment, torture, sexual violence and coercion, causing of injury and/or illegal detention committed by public employees. This prosecutor's office must intervene proactively in such proceedings, for the purposes of upholding the rights of the individuals affected.

2) The Public Prosecutor's Office, in its role as guarantor in upholding the law, and in order that justice be done, must play a proactive role in promoting the investigation of allegations of degrading treatment, torture, sexual coercion and violence, causing of injury and/or illegal detention committed by public employees.

3) Specific human rights training must be offered to prosecutors, particularly regarding the Istanbul Protocol, which provides the first set of rules of its kind for documenting torture and its effects.

5.7. To the General Council of the Judiciary

1) Specific human rights training must be provided to judges, particularly regarding the Istanbul Protocol, which provides the first set of rules of its kind for documenting torture and its effects.

2) Guidance must be put in place to ensure that investigating judges carry out a full and thorough investigation into any and all allegations of degrading treatment, torture, sexual violence and coercion, causing of injury and/or illegal detention committed at the instigation of, or with the consent or acquiescence of a public official or any other person acting in a public capacity. In this regard, investigating judges must ensure that they respect the rulings made against Spain by the Constitutional Court and the European Court of Human Rights, in the thirteen cases in which the nation's courts were found to have not properly investigated cases of torture or cruel, inhuman or degrading treatment or punishment.

3) Recommendations must be drafted to ensure the full and thorough investigation of allegations of degrading treatment, torture, sexual violence and coercion, causing of injury and/or illegal detention committed at the instigation of, or with the consent or acquiescence of a public official or any other person acting in a public capacity within Immigrant Detention Centres. In this regard, full investigative procedures must be carried out, particularly given the likelihood of deportation of the affected individual and/or witnesses, and the effect this may have on judicial proceedings.

4) Recommendations must also be drawn up to ensure that the courts can prevent forced evictions of homes in which children live, pending the prior assignation of suitable residential alternatives.

5.8. To the Institute of Legal Medicine and Forensic Sciences of Catalonia (IMLCFC)

1) The standard operating procedure in dealing with allegations of torture or ill-treatment approved in April 2016 by the Board of Directors of the Institute of Legal Medicine and Forensic Sciences of Catalonia (IMLCFC) must be reviewed and brought into practice. This protocol provides for the application of the Istanbul Protocol in cases where a medical professional suspects that torture or ill-treatment has taken place during detention or custody, or where the presiding judge or Public Prosecutor's Office so requests. It is for this reason that specific human rights training, and specifically that which focuses on the implementation of the Istanbul Protocol, must be provided to forensic doctors.

2) Following the example of the Forensic Assessment Unit (UVFI) in investigating allegations of gender-based violence, a specialized unit must be created within the IMLCFC for the investigation of allegations of institutional violence, specifically, those of degrading treatment, torture, sexual violence and coercion, causing of injury and/or illegal detention committed at the instigation of, or with the consent or acquiescence of a public official or any other person acting in a public capacity. In order to deal with cases of institutional violence –especially cases of torture or degrading treatment in detention or custody– more tools and resources, as well more professionals with training regarding human rights infringements, are required.

3) Forensic doctors belonging to the IMLCFC must systematically record the harmful psychological effects of institutional violence in their expert evidence to the courts, quantifying these in an objective and thorough manner. At present, psychological evaluations of this kind are carried out by IMLCFC psychologists. However, there are only two psychologists assigned to the whole of Catalonia; it is therefore recommended that the number of staff who can carry out these evaluations be increased.

4) In cases of deaths in custody, autopsies must be carried out in accordance with the provisions of the Minnesota Protocol (2016)[34] concerning the investigation of suspicious deaths. This protocol, which is included in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, sets out general and specific guidelines on the procedures for investigating potentially unlawful deaths and applies, inter alia, to deaths in custody, as well as to cases in which the State may have acted in disregard of its duty to protect life. It is for this reason that specialist human rights training, and specifically that which focuses on the implementation of the Minnesota Protocol, must be provided to forensic doctors.

Valentina Lazo

34. Office of the United Nations High Commissioner for Human Rights (OHCHR). *Minnesota Protocol on the Investigation of Potentially Unlawful Death* (2016), (New York and Geneva: 2017). Available online at: : https://www.ohchr.org/Documents/Publications/MinnesotaProtocol_SP.pdf

5.9. To the Council of the Illustrious Bar Associations of Catalonia (CICAC)

1) A specific court service must be created to deal with cases of crimes of degrading treatment, torture, sexual violence and coercion, injuries and/or illegal detention committed by public officials or any other person in the exercise of public functions, at their instigation, or with their consent or acquiescence. This service should be staffed by lawyers specialising in the defence of human rights. This is an indispensable channel for addressing the specific needs of those affected by these types of crimes.

2) Specific training must be provided to court-appointed legal aid professionals belonging to the various colleges in Catalonia in matters relating to the investigation of torture and other cruel, inhuman or degrading treatment or punishment.

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