Report on institutional violence 2020

Irīdia_

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1. The SAIDAVI

Irídia's Service of Attention and Denunciation in situation of Institutional Violence (SAIDAVI) offers free legal psychosocial assistance to people who suffer situations of institutional violence in the framework of the Catalan penal system. That is, those situations in which public institutions violate the rights of individuals trough exercise of physical or psychological force, generating an affectation to the physical, psychological and/or moral integrity. Specifically, the service covers violations of rights committed or allowed by agents of security forces, prison officials or private security agents, when they act by delegation of security functions that are the responsibility of the State.

SAIDAVI uses an innovative methodology: it provides psychosocial and legal attention to the affected person and seeks to carry out a process of justice and reparation. In turn, depending on the typology of the case and when the person so wishes, the cases are approached from the perspective of strategic litigation, with the aim of influencing and achieving changes in legislation on issues of particular importance to society that allow progress in the recognition, protection and guarantee of human rights.

One of the specificities of SAIDAVI is the inclusion of the psychosocial perspective in human rights care. The violation of rights, and especially institutional violence, generates damages that have an impact on the life and individual and social development of the affected ones. Psycho-legal work allows psychosocial support to be carried out within the framework of legal proceedings, promoting the development of the stage of mitigation of damage, reparation and empowerment of people as active citizens in the defence of their rights. In addition, in order to generate an institutional recognition of the psychological impacts of violence, the psychosocial team prepares reports upon legal request.

In turn, communication and advocacy work focuses on certain problems and situations that involve violations of rights with the aim of carrying out real processes of truth, justice, reparation and ensuring the implementation of guarantees of non-repetition. In other words, the aim is the recognition of the situation experienced and the clarification of responsibilities at different levels –not only criminal, but also political–, recognizing the rights of those affected, restoring confidence in society and institutions, repairing the damage caused, promoting the existence and/or implementation of guarantee mechanisms to avoid its repetition, and showing solidarity towards social violations that materialize in individual and/or family situations.

The starting point of the service is accessibility and social inclusion, seeking to guarantee the universal "right to the right". For this reason, SAIDAVI is completely free of charge for the whole population, which implies a great effort in human and economic resources and is supported by private donations, Irídia's social base and private funding, in addition to public funding. In this sense, contributions and donations from the public were an essential element for the creation of SAIDAVI and continue to be so for its sustainability and continuity. The need for a free service for the population is tangible every year; since the birth of SAIDAVI in January 2016, the number of people served has been growing, being particularly important in those years when social mobilization has been more intense.

During 2020, SAIDAVI's work has been particularly marked by the context derived from the COVID-19 pandemic. On the one hand, from the Plataforma Defender a Quien Defiende, of which Irídia is a member, the campaign #AlarmaConDerechos was promoted to identify, make visible, assess and denounce violations of rights by the security forces in actions motivated by health restrictions. On the other hand, the methodology of the service has also had to adapt to these restrictions, reducing in-person assistance and prioritizing attention by telephone or e-mail.

Jordi Borràs ⬇

In 2020, the SAIDAIVI team was made up of 8 part-time people and one full-time person dedicated exclusively to the project, and 5 people dedicated partially to the project as members of the management team and the technical area. In addition, it is worth mentioning the voluntary collaboration of 6 people during 2020, 5 of whom have done their university internships in Irídia, for a total of more than 2,000 hours of volunteering in the whole year.

The Service is structured in two areas that work together and in permanent coordination. On the one hand, the Area of Advice, follow-up and urgent actions, where psycho-legal assistance is provided to accompany and advise the affected person to file a complaint or to obtain legal assistance, as well as to secure all the existing evidence (check if there are video surveillance images, request their conservation, etc.). In certain particularly representative cases, the service assumes the litigation as its own, passing it to the Litigation Area and dealing with it in an integral way from the legal and psychosocial side, as well as from the communication and incidence.

2. What has the SAIDAVI done in 2020?

2.1. COVID-19 and institutional violence

The declaration of the state of alarm in Spain on 14 March due to the COVID-19 pandemic, and the police management of it, have been decisive in terms of institutional violence during 2020. In a context in which rights and freedoms have been restricted and in which the vulnerability of the most disadvantaged people and groups has increased even more, violations of rights by security forces have increased in places where people are deprived of their liberty and in the street and have even occurred in private homes.

The management of the pandemic in prisons and in the Centres for the Internment of Foreigners (CIE), in particular in the CIE of Barcelona, has led to restrictions on the visits of close people, human rights organisations and groups and lawyers; isolation has been undertaken as a quarantine measure without any specific regulation on its conditions and, in many cases, the necessary measures to prevent contagion in the different centres have not been guaranteed.

On the other hand, although there have been fewer street protests than in recent years and, consequently, fewer cases of institutional violence in these contexts, the restrictions imposed have also led to an increase in human rights violations in the public street. Police management of the pandemic to enforce measures of confinement has facilitated a disproportionate use of force by security forces, and disproportionately increased the imposition of administrative sanctions (over a thousand in just over three months), detentions or arrests that could be considered arbitrary on many occasions.

For this reason, between the months of March and June, Irídia has carried out tasks of monitoring the actions of the police and security forces throughout Spain, through the campaign *#AlertaConDerechos (#AlertWithRights)*, carried out by the platform *Defender a Quien Defiende (Defend Who Defends)*.

On the other hand, the state of alarm has led to various changes in SAIDAVI's work methodology in order to adapt it to the health restrictions, especially during the months from March to June. In this sense, the workers began to carry out their tasks by means of teleworking and the visits and assessments were carried out by telephone or by video calls. Furthermore, in relation to the open legal proceedings, during that period the procedural deadlines were suspended due to the work stoppage of the courts, which led to a slowdown in cases and a subsequent accumulation of work from the beginning of June onwards.

In relation to the psychosocial impact of the pandemic, the restrictions have been accompanied by a feeling on the part of the public that the regulations were not clear and that the sanctions, on many occasions, were arbitrary. Not knowing whether the right thing is being done and the constant perception of being at risk of being sanctioned has increased the feeling of defencelessness and vulnerability. This fact, linked to the pandemic itself, in which the appearance of new health regulations and the permanent fear of contagion has generated feelings of anguish and hyper-alertness in a large part of the population. If we add to the emotional exhaustion inherent to the context situations of violation of rights with aggressions and/or humiliations by police officers, the feelings of helplessness, fear, anger and despair shoot up.

The aggressions that have taken place inside the homes have been particularly serious on an emotional level. At a time of confinement, when the population spent many, many hours indoors and when the home, more than ever, was becoming a place of security, also in terms of health, being assaulted in the home completely undermines the perception of feeling safe in a place of security. In addition, there is the thought of being easily located and susceptible to further aggression if the agents decide to show up again, which makes it difficult to decide to denounce for fear of reprisals. This fear is added to the fear of being sanctioned in the event of travelling to file a complaint, which has made access to justice more difficult.

Today, we are faced with an emotionally worn-out population, whose lives have been paralysed from one day to the next and who have had to adapt to a reality that was unimaginable until recently. Months of sustained stress marked by confinement, fear of illness, restrictions on daily life, grief processes, economic difficulties, social isolation and a profound uncertainty about the future, have generated enormous emotional tension, both individually and collectively. The impossibility of creating spaces to unburden feelings, to share and channel unrest, makes the pressure increasingly difficult to sustain.

2.2. Cases attended by the Service in 2020

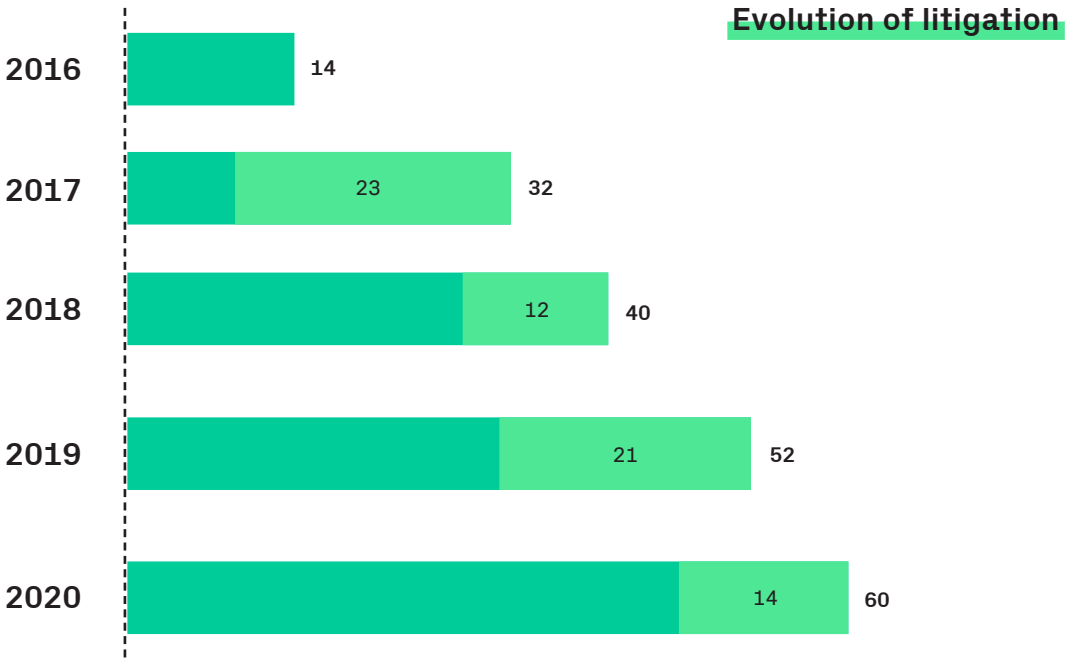
Throughout 2020, SAIDAVI received a total of **186 requests for action in response to alleged human rights violations.** Of this total, **96 cases have been from people who have suffered situations of institutional violence** that fall within the scope of action of the Service. These requests were dealt with by providing legal assistance and advice; legal defence; psychosocial care and support; communication and advocacy actions; visits to prisons and the CIE; and referrals to other organisations with expertise in specific areas.

Considering the records of previous years, the number of applications to the Service has fallen, a fact that we attribute to the health context and the measures taken to manage the COVID-19 pandemic. The declaration of the state of alarm in March and the resulting confinement, in addition to other restrictions on movement and the meeting of groups of more than a certain number of people, have meant that the number of mobilisations and their dimensions have been much lower than in previous years, when institutional violence in the context of protest has accounted for the largest number of complaints and attention from the Service. On the other hand, the Barcelona CIE was closed from 20 March to 5 October, which is another reason for the reduction in the number of cases attended to by the Service.

On the other hand, between the cases that have reached SAIDAVI through the channels established in the framework of the #AlertaConDerechos campaign and those that have arrived through the usual entry channels, a total of **60** cases have been dealt with as a result of police actions throughout Spain in relation to health restrictions, **19** due to disproportionate use of force, arbitrary arrests and detentions, and **41** due to the imposition of administrative sanctions.

Sònia Calvó ⬇

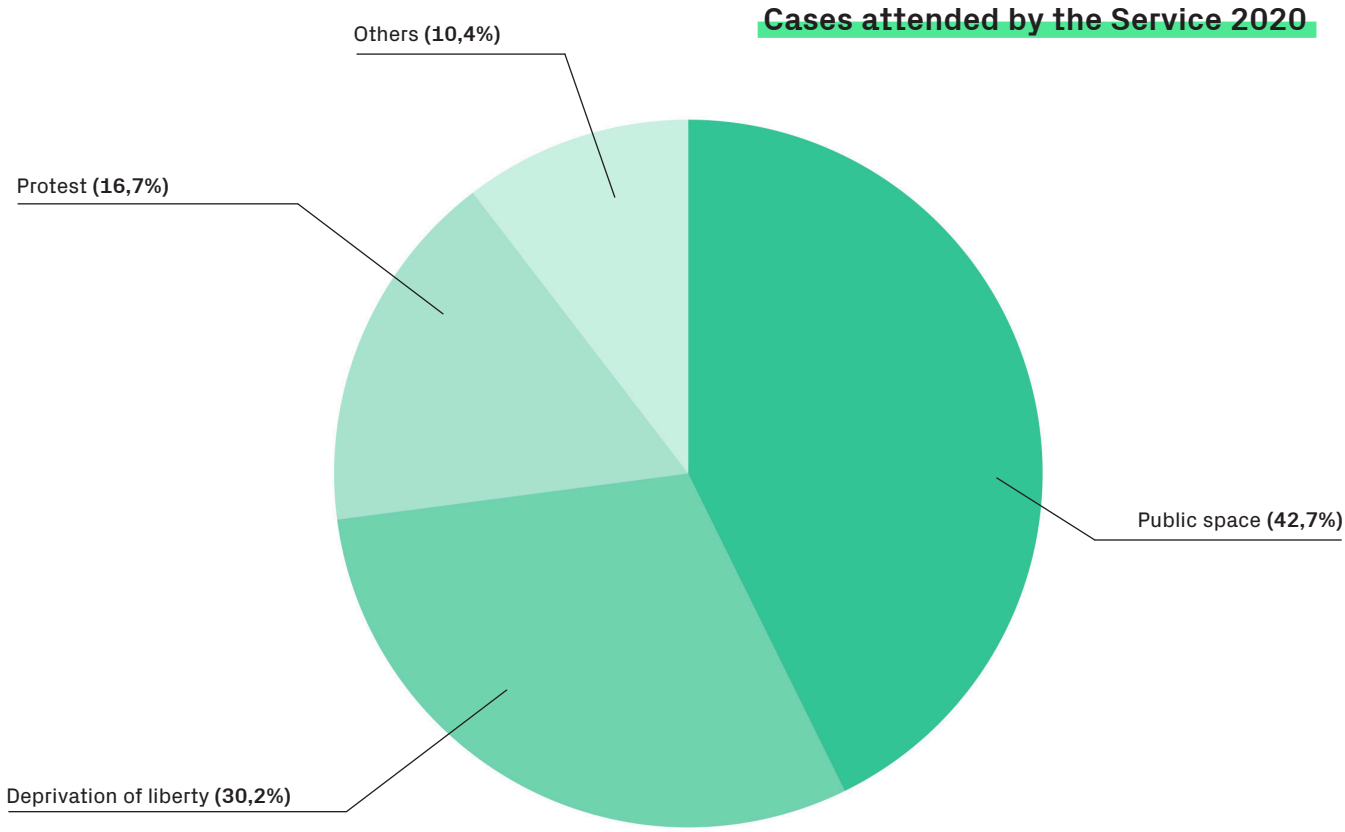
Of the 96 applications received that were cases of institutional violence and, therefore, fell within the scope of the Service, the Service **has assumed legal representation in a total of 14 cases.** Of these, 3 were in the context of exercising the right to freedom of expression, information and/or assembly and demonstration and 11 in the context of detention and/or deprivation of liberty (CIE, prison and police custody). In addition to these 14 cases, there were 46 cases that were filed between 2016 and 2019 and which were taken up as litigation by the Service. Thus, **over 2020, the Service provided legal representation in 60 cases**, involving a total of 375 legal actions combined with psychosocial support, with a total of 125 psychosocial actions carried out, as well as communication and advocacy actions.



In the remaining 82 cases, for which the Service has not provided legal representation, the actions have consisted of legal advice and follow-up, as well as occasional psychosocial actions. The tasks carried out by the Service consist mainly of legal guidance, preparation for filing complaints, appeals and other criminal proceedings; carrying out actions aimed at securing evidence, such as requesting and collecting images, testimonies and other means of evidence; the monitoring of the filed complaint and advice on how to obtain a lawyer and/or referral to other specialised entities with victim services. In total, **221 legal counselling** and follow-up actions have been carried out, to which **42** counselling and psychosocial orientation sessions must be added.

With regard to the profile of the people targeted, of the total of 96 people attended to for having suffered situations of institutional violence that fell within the scope of the Service, **25 were women and 71 were men**, including one transgender man. Among the people attended there were **7 minors**, 38 people between 18-34 years old, 28 people between 35-64 years old, four people over 65 years old and, finally, 19 people whose age was not recorded, as the service was provided by telephone and the information was not requested as it was not relevant to the service provided.

Of the 96 cases dealt with, **16** were in the context of protest, **41** in public spaces, of which 18 were in the context of COVID-19 restrictions, **29** cases in the context of deprivation of liberty (15 in prison, 8 in CIE and 6 in police custody) and **10** cases in other contexts, mainly in contexts of homelessness or in homes.



*Of the total number of cases (96) dealt with by the Service during 2020, **19.8%** were due to situations of violence on the part of the State security forces in relation to the application of health restrictions by COVID-19.*

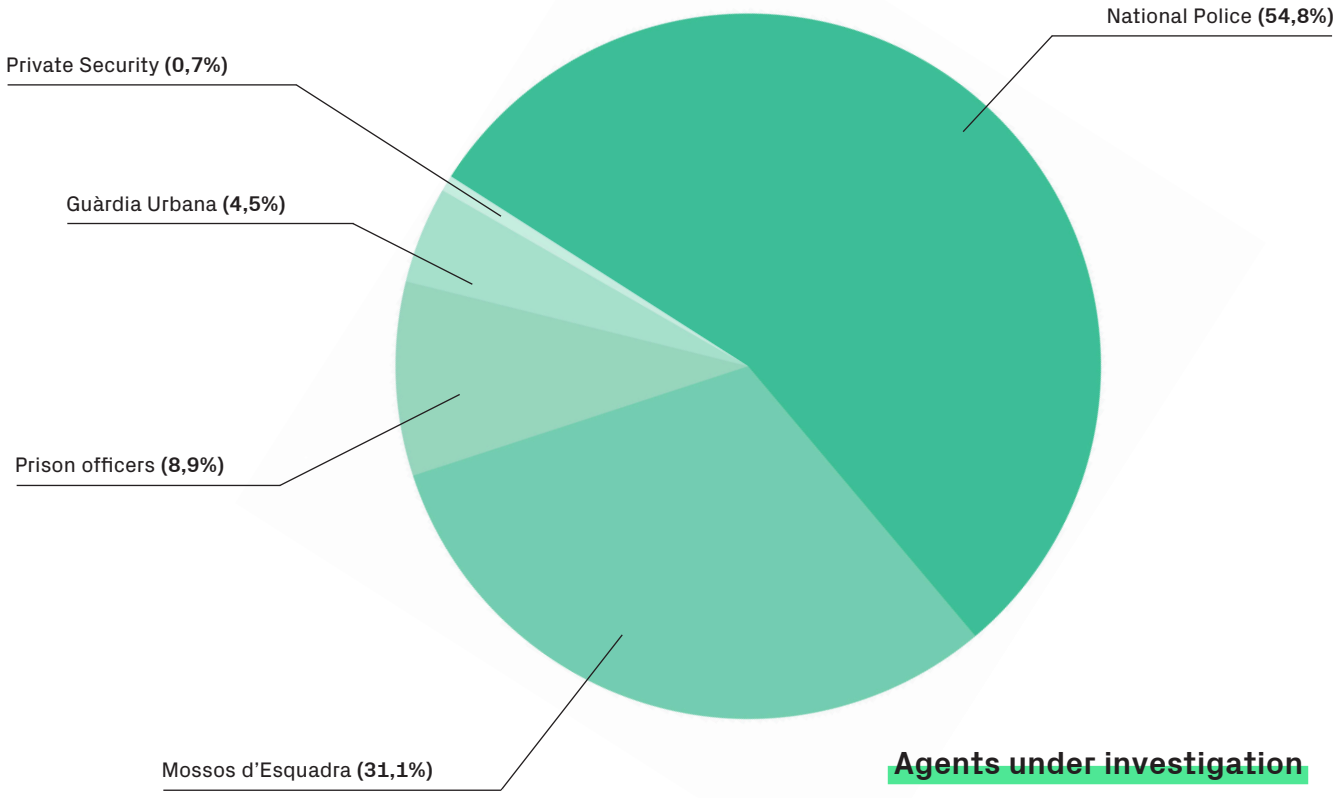
2.3. Current litigation

In addition to the litigation arising this year, Irídia's lawyers continue to work on the legal representation of **46 cases initiated in previous years** (2016 to 2019), which have not yet been completed. Of these cases, 32 have to do with the context of exercising the right to freedom of expression, information and/or assembly and demonstration (13 of them related to the 1 October massacres); another 10 in the context of detention and/or deprivation of liberty (CIE, prison and police station), 3 in public space and one related to an eviction. Of these 46 cases, three were closed during the year.

In total, between initiated cases in 2020 and initiated cases in previous years, SAIDAVI has litigated this year in a total of **60** cases, of which **33** are cases in the context of protest, **9** in prison, **8** in CIE, **3** in police custody, **5** in public space and 1 during an eviction and **1** in a home.

A remarkable fact is that of the total number of cases represented by the Service, 37% of the people represented are racialised or migrants, and 23% of people identify themselves as women, while 77% identify themselves as men.

With regard to the State security forces involved in the incidents, **there are a total of 135 agents under investigation –of which 42 are agents of the Mossos d'Esquadra (Catalan police), 74 of the National Police and 6 of the Guàrdia Urbana (municipal police)–, 12 prison officers and 1 member of private security forces.** Of these, 26 of the cases represented are National Police officers, 21 cases are Mossos d'Esquadra officers, 3 cases are Guàrdia Urbana or local police officers and, finally, 9 cases are prison officers, and 1 case is a member of a private security corps performing security duties in public spaces.



Agents under investigation

The following information highlights the status of various litigation cases taken on by SAIDAVI:

In relation to the 13 cases assumed as a result of the police operation of 1 October in Barcelona, it should be noted that several important decisions are awaiting resolution by the Provincial Court of Barcelona. Firstly, the request by the Public Prosecutor's Office to shelve most of the events that took place on 1 October, considering that only 8 specific episodes of the entire day in Barcelona should be investigated or tried. All the accusations opposed this request, which was not granted by the examining magistrate and is now awaiting a decision by the Third Courtroom.

Secondly, the requests made by the majority of the accusations to summon the high commanders under investigation who ordered and supervised the raids from the coordination centre are still pending resolution: the Chief Commissioner of the Provincial Information Brigade of the Superior Prefecture of the National Police of Catalonia, with TIP 18564, Juan Manuel Quintela; the Head of the General Information Commissioner of the National Police of Catalonia, with TIP 19196, and the Chief Commissioner, Head of UIP,José Miguel Ruiz Igúzquiza, as well as all group leaders who acted in all schools. This request was denied by the examining magistrate and is pending resolution by the Provincial Court.

Jordi Borràs ⬇

Finally, it is necessary to mention the scene at the Ramon Llull School, where on 9 March, the experts who drew up the expert report confirming the identity of the shotgun that shot Roger Español, previously identified by Irídia the previous year, were heard in testimony. Likewise, on 1 October 2020, a writ was presented to the Court requesting the transformation of the proceedings into ordinary proceedings, as it was considered that the injuries suffered constituted a crime of injury that caused the disablement of a major organ, and therefore carried a penalty of between 6 and 12 years in prison (art. 149.1 of the Criminal Code). By means of the interlocutory ruling of 20 January 2021, the judge denied this request on the grounds that it is a crime of imprudent injury, a decision that has already been appealed directly to the Provincial Court and is pending resolution.

On the other hand, in relation to the cases arising from the protests of October 2019, SAIDAVI is litigating 14 cases. Of these, 6 are due to foam bullets or rubber bullets, 7 due to police baton attacks or other aggressions with an impact on moral integrity and 1 due to a police van. Three of these victims were journalists. It should also be noted that there are a total of 35 agents under investigation, 3 from the National Police and 32 from Mossos d'Esquadra. All these cases are currently in the investigation phase or awaiting administrative resolution, with some investigative measures still pending.

In relation to cases of institutional violence in the CIE, SAIDAVI is currently litigating 8 cases, for which there are 14 agents under investigation. One of the most noteworthy cases in this 2020 period actually dates back to 2017. This year, the Provincial Court of Barcelona has ordered to reopen the investigation into the allegation of abuse and injury to three inmates by agents of the National Police for an attempted escape from the Centre for the Internment of Foreigners in Barcelona (CIE), after the judge in charge of the control of the CIE had closed the case without carrying out the minimum diligences necessary to clarify the facts. Among the investigation diligences carried out since the reopening of the investigation, stands out the identification of 11 of the agents involved, as well as the beginning of their statements under investigation and the witness statement of the nurse who attended to the victims of violence. In relation to the cases of imprisonment, there are 12 civil servants under investigation in 9 cases.

During 2020 we have received the condemnatory sentence, as decided by the affected person, in which the Investigating Court number 17 condemned a private security guard of the Renfe (Spanish National Railway Network) to 1 year in prison for a crime of injury and the payment of 6,800 euros in concept of civil liability. In the proven facts of the sentence, it is stated that *"On 27 December 2015 when D.S.L. was evicting, along with other colleagues and in the exercise of his duties, three or four people (manteros) from the lobby of the Renfe station of Plaza Cataluña, L.N.G. approached the place and began to record this action with his mobile phone when he saw that the group of guards of which the accused was part and the group of people were arguing shouting. In view of that, the accused asked Ms N to stop recording and, seeing that the defendant ignored this request, and knowing that his action would affect the bodily integrity of L.N.G., he wielded his regulation defence against her, striking her on the left hand with which he was holding the phone, causing her to fracture the distal phalanx of the first finger of her hand."*

Victor Serri ⬇

3. Violations of rights

3.1. Failure of the State to fulfil its 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, and refers to the right of everyone to a fair and public hearing, within a reasonable time, by an independent and impartial tribunal established by law.

The right to effective judicial protection will only be satisfied if there is an effective and sufficient investigation of what has been denounced, and this has been interpreted by the Constitutional Court and international bodies. The jurisprudence has been consistent in determining that it is a violation of the right to effective judicial protection if the investigation (judicial investigation) is not opened or closed when there are reasonable suspicions that a crime of torture or inhuman or degrading treatment has been committed, and when these suspicions are revealed as being capable of being clarified [1].

Constitutional doctrine circumscribes the procedural aspect of the prohibition of torture and inhuman and degrading treatment (art. 15 Spanish Constitution) within the framework of the requirements derived from the right to effective judicial protection (art. 24.1 Spanish Constitution). That is to say, the duty of effective and sufficient investigation by the State must be reinforced in cases of complaints of torture, inhuman or degrading treatment and actions against physical and moral[2] integrity by public officials or security forces; and the failure of the State to comply with this obligation may constitute a violation of the prohibition of torture in itself, by the procedural fact of not investigating it.

The European Court of Human Rights (ECHR) has condemned Spain on 12 occasions for violation of article 3 of the European Convention on Human Rights concerning the prohibition of torture, in its procedural aspect, in other words, for not having properly investigated complaints in this area. In one of these cases, there was also a conviction for violation of article 3 in its material aspect, i.e., considering torture or inhuman or degrading treatment to be proven. In the different convictions in Spain, the case law of the ECHR reiterated that it is necessary "that an effective official investigation should be carried out, which should lead to the identification and punishment of the people responsible"[3]. For this reason, the ECHR criticised that a dismissal of the case is ordered without carrying out the appropriate tests (including the interrogation of the agents involved, the proceedings for their identification or the declaration of witnesses who could clarify the facts and the punishment of those possibly responsible[4]), when it is plausibly alleged to have been a victim of ill-treatment by agents of the State[5].

1. STC (Constitutional Court Judgment) 37/2017, FJ (legal basis) 4
2. SSTC 69/2008, of June, FJ 2º; 63/2010, of 18 October, FJ 2º
3. Martínez Sala and others c. Spain (02/11/2004)
4. Otamendi Egiguren c. Spain (STEDH, 16 October 2012, num. 47303/08) Etxebarria Caballero c. Spain (7 October 2014, num. 74016/12)
5. Ataun Rojo c. Espanya (7 October 2014, num 3344/13) o B.S. c. Spain (STEDH, 24 de juliol 2012, claim num. 47159/08)

The obligation to investigate lies with the state, meaning the entire judiciary, but also all levels of administration (the executive) and the legislature to the extent that adequate anti-torture legislation is also an effective mechanism. However, despite repeated condemnations, there are still serious shortcomings in the investigations carried out by the judiciary or in the accountability and internal investigations by the police forces. With regard to the litigation represented by the Service, violations of this right have been identified at different stages of the judicial process or at the internal administrative level, given that effective and sufficient investigations are not carried out. It should be borne in mind that the cases that the Service takes on as litigation are particularly serious cases and, nevertheless, in more than 81% of them, one of the following situations has occurred at some point in the investigation: the court or tribunal has not guaranteed an effective investigation of the facts reported, the public prosecutor has not taken an active role in promoting this investigation, or the police forces have not provided information that they should have (or directly have) to clarify the reported facts and identify the responsible agents or officials. These situations may amount to a violation of the right to effective judicial protection and even a violation of the State's duty to investigate allegations of torture and cruel, inhuman or degrading treatment or punishment by State agents.

Bru Aguiló

3.1.1. Police

The obligation of the State to investigate complaints of torture and ill-treatment, as part of the prohibition of torture, also includes the police and security forces. The fact that the same police forces do not facilitate the investigation in cases of denunciations of crimes that would have occurred in their actions constitutes a real breach in the mechanisms of the State against impunity. Despite some successes, in the majority of cases, internal investigations are not carried out thoroughly and effectively. Of particular concern is the fact that in the vast majority of cases represented by the Service, neither colleagues nor superiors provide information to identify the perpetrators, nor have official investigations been initiated by superiors. Likewise, images recorded at police stations (unless there is a request from the individual or a previous complaint) or by the agents themselves, which would help to clarify the facts or those responsible for them, are not provided in a timely manner. In cases in which the court requests the corresponding police department to provide specific information on the operation or on the action reported, it has been identified that on occasions much less information is provided than that requested by the court. It is worrying and representative of all of the above that of the total of **60 litigations** in progress during 2020, **only in 3 cases has the police itself been able to identify the agents responsible.**

3.1.2. Public Prosecutor's Office

The role of the Public Prosecutor's Office in the Spanish criminal justice system is of great importance, given that its mission is to promote judicial action in defence of the law, the rights of citizens and the public interest protected by law. Within the framework of criminal proceedings, the Public Prosecutor's Office has the function of urging the judicial authority to adopt the appropriate precautionary measures and to carry out the proceedings aimed at clarifying the facts, as well as to ensure the procedural protection of the victims, whether or not there is a particular prosecutor. In fact, the inactivity of the Public Prosecutor's Office in cases of mistreatment or torture contrasts with the prosecutorial activity it has in other crimes, in which on many occasions there is no particular accusation in the proceedings.

In this sense, therefore, in proceedings brought against civil servants or agents of the State security forces that are represented from Irídia, in many cases the prosecuting role of the Public Prosecutor's Office is practically non-existent or even adopts a defensive stance, in many cases, the prosecutor's role as accuser is practically non-existent or even adopts a defensive stance, opposing the carrying out of investigative proceedings, requesting the dismissal of the proceedings or opposing the appearance of the public prosecutor's office. In only **3 of the 60 litigations** in progress in 2020, it has been detected that the Public Prosecutor's Office is acting proactively in requesting that investigative proceedings be carried out in favour of the facts denounced by the victim. On the other hand, **in 31 of the litigations**, the Public Prosecutor's Office has opposed the carrying out of an exhaustive and effective investigation of the facts reported or has opposed the appearance of the public prosecutor.

[6] Artículo 3 del Estatuto Orgánico del Ministerio Fiscal

Valentina Lazo

3.1.3. Judiciary

One of the main guarantors of effective judicial protection must be the courts and tribunals themselves, so that an effective investigation of the alleged facts is carried out. Constitutional doctrine establishes that an **effective judicial investigation** does not take place when, faced with a complaint of torture or ill-treatment, the judicial bodies decide to close the proceedings (or to process the case as a minor offence) when the reality of the alleged facts has not yet been sufficiently clarified and there are reasonable and available means to dispel possible doubts in this regard. In **35 of the 60 cases** in progress in 2020, proceedings have at some point been closed before all reasonable, available, effective and relevant investigative steps have been taken.[7]

In **24** of these cases, the Provincial Court upheld the appeal lodged against the dismissal and ordered the proceedings to be reopened to the court of first instance precisely in order to avoid violating the right to an effective investigation. In some of the remaining cases, a decision is still awaited.

7. Requirements set by the jurisprudence of TC STC 34/2008, of 25 February, SSTC 34/2008, of 25 February, FJ 7°; 52/2008, of 14 April, FJ 5°; and 107/2008, of 22 September, FJ 2°. STC 69/2008, of 23 June, FJ 5°

3.1.4. Bar Association

In the advisory and follow-up phase carried out by the Service, it has been identified that on numerous occasions there is a restrictive application of the victim's rights[8]. One of the issues detected is that, on many occasions, the Courts do not inform the victims of the decisions to close the case or to convert it to a minor offence, which makes it very difficult to follow up. In relation to cases of transformation to a minor offence, the decision is not notified, but rather the summons to trial, and it is common that the assignment of ex officio legal representation -once it has been requested- depends on the will or dynamics of the Courts themselves. On many occasions, this is denied on the grounds that it is not obligatory and, therefore, the complainants find themselves alone in proceedings against police officers. This judicial procedure suffers from the shortcomings already mentioned in previous sections -insufficient investigation and inactivity or opposition from the Public Prosecutor's Office- and therefore leads to the acquittal of the officers in the best of cases, or to their being closed in the preliminary phase without there having been an effective investigation of the facts denounced. In this sense, the intervention of a specialised lawyer in the moments prior to the filing of the complaint in order to preserve evidence, in the filing of the complaint and throughout the procedure that begins with it, is fundamental so that victims of institutional violence can know their rights, receive correct legal advice and see their interests safeguarded.

3.1.5. Psychological impact of the failure to comply with the duty to investigate re-victimization

Having analysed the different administrations that intervene in cases of institutional violence, it is necessary this year to emphasise the impact of the lack of effective investigations on the victim herself, as this is a particularly worrying fact. To investigate is to validate the affected person's account, therefore, it is an acknowledgement by the administrations of the experience lived. The mechanisms for reporting situations of institutional violence should contribute to the reparation of the victim. However, the Service has identified that the lack of effective mechanisms and investigation is not contributing to making this reparation effective and is also generating a situation of defencelessness that contributes to the revictimization of the aggravated person, which accentuates the psychological impact of institutional violence and adds new discomforts.

In the cases monitored by Saidavi, several situations have been detected that can lead to re-victimization. Firstly, the fact that the proceedings are shelved due to lack of evidence or that they are held up and take longer than usual to be resolved makes it difficult for the victim to integrate their experience, as their story is not validated by the administration and is often questioned. On the other hand, it has also been detected that during the procedure, the different legal operators are not very close to the victims and their needs, and they feel questioned or insecure about their own procedure. This generates helplessness, as well as increased anxiety and other trauma-related symptoms when there are legal requirements throughout the procedure. In some cases, this can lead to the victim wanting to leave the legal proceedings.

8. Provided for in Law 4/2015, of 27 April, on the Statute of the Victim.

Secondly, the impact of the lack of recognition and effective validation of the victim's version generates feelings of guilt and helplessness and also makes the victim's narrative invisible. It is necessary to start from the fact that the agent who exercises violence has a role of power in relation to the person assaulted, as he or she is part of a state security force. If the victim's story is not investigated, it is not being validated and, therefore, the victim's version is questioned a priori. The asymmetry of power is thus reflected in the investigation procedure and in the legitimacy of the account of the parties involved. This questioning generates feelings of humiliation, fear, learned hopelessness and distrust of institutions, as well as a certain questioning of what has been experienced, making it difficult to integrate the experience, an aspect that generates discomfort and can chronicle the impacts of this type of violence.

The feeling of defencelessness and the rethinking of the concept of security must be added to the aspects present as a result of revictimization. If there are no real mechanisms for investigating and repairing the harm caused, the person's basic beliefs are affected, especially in relation to the concepts of security and defencelessness. Basic beliefs are aspects of identity that contribute to the construction of the worldview; therefore, when they are affected, they can generate a questioning of the self and an identification of the person as a victim.

Finally, it is important to highlight that re-victimization increases, deepens and psychological impacts of institutional violence can even become chronic, especially when the impacts contribute to the development of traumatic, anxiety and depressive disorders. These situations usually occur in cases with a higher degree of aggravated vulnerability if re-victimization is generated.

In addition to not guaranteeing a real process of truth, justice and reparation - which is what failure to investigate an allegation of torture or ill-treatment implies - the affected person is not given the necessary assistance (psychological and legal). This is particularly serious and worrying, both from the perspective of the State's failure to fulfil its obligations, and because of the psychological and psychosocial effect that this has on the person, chronicling the process of recovery from situations of institutional violence.

For this reason, Irídia's psychosocial team carries out individual monitoring throughout the legal proceedings, with the aim of avoiding or minimising reoffending and generating real reparation processes. The psychosocial care service includes accompanying the victim during the different legal requirements, informing them through the lawyer about changes and novelties and adapting the legal language so that it is understandable to them. In individual accompaniment, we work on the psychological impacts derived from the situation of institutional violence and contribute to the construction of an empowering and non-victimising story, narrated by the person herself. However, it should not be forgotten that this task should be assumed by the Administration, as it has been the cause of the harm. The reparation of the damage by the State is essential in this type of process, as it has been generated by the State itself. In this sense, the acknowledgement of the story of the people affected is an essential aspect of reparation, as well as the establishment of preventive measures aimed at seeking the truth, reparation and non-repetition.

3.2. Invisibilization of the psychosocial impact of institutional violence

During 2020, the psychosocial team of Irídia has continued working to raise awareness of the psychological impact of institutional violence throughout the judicial process. We value very positively the work of the forensic medical staff of the IMLCFC (Institute of Legal Medicine and Forensic Sciences of Catalonia) in charge of carrying out forensic examinations to determine the relationship between physical and/or psychological injuries and the events denounced, as well as the impact caused. In cases of suspicion of torture or ill-treatment during detention or custody, forensic doctors are obliged to apply the Protocol for Medico-Forensic Action against torture or ill-treatment approved in April 2016. This protocol includes the use of the Istanbul Protocol, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the first set of rules for documenting torture and its consequences, adopted by the Office of the United Nations High Commissioner for Human Rights in 2000). In this regard, the Istanbul Protocol contains a specific section to assess psychological injuries.

However, the Medico-Forensic Action Protocol for allegations of torture or ill-treatment foreseen for the IMLCFC does not reflect the entirety of the Istanbul Protocol, carrying out a much less exhaustive examination of the person, especially in the psychological examination section, where there is only a section on mental state and the psychological tests administered are not specified, nor are other aspects such as social functioning and current psychological complaints. Furthermore, it does not include the section on professional qualifications where the experience and training of the professional administering the Istanbul Protocol is indicated. Finally, the Medico-Forensic Action Protocol for allegations of torture or ill-treatment recommends the use of the Istanbul Protocol in case of allegations of torture or ill-treatment but does not make it mandatory.

In cases of institutional violence where there is not specifically a situation of torture or ill-treatment, it would also be appropriate to apply the Istanbul Protocol. In the case that it is not possible to carry out the protocol in all cases, it is essential that in forensic examinations the psychological impacts and injuries are detected and recorded in the forensic examination. The fact that this is not applied as a general practice makes invisible the injuries and impacts that institutional violence generates in a significant number of cases. Moreover, making them invisible contributes to the re-victimization of the victim, by making invisible and ignoring the suffering derived from institutional violence throughout the judicial process.

For all these reasons, this year the psychosocial team of Irídia has drawn up 10 reports which include the psychological impacts detected in the psychosocial accompaniment carried out by the Service. These reports contribute to the judicial procedure so that a forensic psychological expert can be approved and thus be able to accredit the impacts resulting from the aggression. In fact, and precisely because of the reports presented, three forensic psychological examinations have been carried out. Also, in collaboration with Sira (Network of Therapeutic, Legal and Psychosocial Support), an Expert Assessment Report was drawn up and submitted to the judicial proceedings. In all three cases, the conclusions include and determine the psychological impacts caused by the reported aggression. This fact demonstrates the importance of being able to systematically record these impacts, so that they do not remain invisible throughout the legal proceedings.

However, it should not be necessary to present psychosocial reports or to expressly and repeatedly request it in order to carry out the forensic psychological examination. Proving these injuries is a determining factor for the qualification of the crime, given that physical or mental suffering is one of the elements of the criminal offence of torture, of the crime against moral integrity and of the crime of (psychological) injury. In turn, its severity will also be a determining factor in its classification as more or less serious or even as a minor offence in the case of the crime of injury.

Jordi Borràs ⬇

3.3. Centre for the Internment of Foreigners (CIE)

3.3.1. Ill-treatment

Irídia's work at the Centre for the Internment of Foreigners (CIE) in Barcelona is mainly focused on legal assistance in the event of possible situations of institutional violence, either by direct request to the Service by the detainees themselves or by referral from organisations such as Migra Studium or Tanquem els CIE ("Close CIE" in English).

The year 2020 has been marked by the COVID-19 pandemic at all levels, especially in places of deprivation of liberty such as CIE. In fact, as soon as the state of alarm was decreed, it was questioned how the associated confinement measures could be complied with in a place like this, where people share cells in groups of up to 6 people and which, despite being a public facility, has a private health care system, from which there have been numerous complaints in recent years.

Despite the fact that the CIE was temporarily closed due to the pandemic for more than six months, in 2020, the Service filed **6 complaints** against National Police officers in charge of custody at the Centre **for situations of institutional violence.** This represents an increase compared to previous years, as **4 cases** were dealt with in 2019 as a whole. In total, therefore, **8 cases of institutional violence** are being represented before the courts, taking into account cases opened in previous years and other cases that have been closed mainly because the victim of aggression has been deported without being able to continue with the criminal proceedings. In all the cases that are represented, the detainees report physical aggressions by the agents, as well as abusive and/or degrading treatment.

Of particular concern have been the conditions in which people have been detained at the CIE once it was agreed to reopen in October 2020. In less than a week, there was an outbreak of COVID-19 at the Centre -at least 8 positive people- and it was agreed to quarantine and isolation in cells without any furniture or services, being closed 24 hours a day, all alone. Due to the desperation of the situation, some of the inmates ended up self-harming, which is why they were attacked by the officers who were guarding them, according to the inmates' account.

3.3.2. Difficulties in exercising the right of defence

Expulsions and deportations

One of the great difficulties in reporting and investigating the assaults that take place in CIEs is that the victims and witnesses of these assaults are expelled a few days after the incident or within a few weeks. This means that when the complaint is filed, in many cases, the administration is already finalising the steps for the expulsion of the assaulted person or, in the worst cases, the expulsion has already been carried out, making it impossible to initiate criminal proceedings to investigate the facts. Thus, the speed with which the administration acts to expel the person in question contrasts with the judicial pace of criminal proceedings to investigate serious crimes such as torture or other cruel, inhuman or degrading treatment or punishment. There is no specific channel to convey these complaints quickly to the courts, so when the case is handed over to the corresponding court and the court agrees (or not) to initiate the investigation procedure, weeks may have passed.

For this reason, the Service acts as quickly as possible when it becomes aware of a case of this nature, and urgent precautionary measures are requested. Specifically, the Duty Court is requested to agree to the precautionary suspension of the victim's expulsion, at least until the corresponding statement has been taken as pre-constituted evidence, among other issues. Despite the fact that the Dean's Office of the Barcelona Courts has sent recommendations in this regard, in which Irídia has participated, in none of the complaints filed during 2020 have the urgent measures requested to guarantee the evidence of the facts and the course of the proceedings been agreed by the police courts, nor has the deportation of the person concerned or witnesses been suspended as a precautionary measure. As a result, we have confirmation of the **deportation of at least 2 people** in the days immediately following the filing of the complaint of mistreatment, as well as of **3 other people who were also deported** without having made a statement or having been visited by a forensic doctor to analyse the injuries they were denouncing.

Difficulty in accessing the CIE

It is necessary to point out that several lawyers from Irídia have had difficulties accessing the CIE of the Zona Franca in Barcelona during the months of October and November 2020 to meet with inmates who wanted to denounce aggressions. On one of the occasions, they were directly prevented from entering by the Director of the Centre. It is still being clarified whether there was some kind of direct indication from the Supervisory Courts to limit the entry of lawyers and other external personnel into the CIE or whether it was the exclusive decision of the Director of the Centre.

In any case, preventing the entry of a lawyer who has been called by an inmate (or alerted by human rights organisations carrying out visits to the Centre) to denounce a possible case of torture and/or ill-treatment, in a particularly sensitive context inside the CIE, is a violation of the right to effective judicial protection and could even imply obstruction of justice, as well as a violation of article 3 of the European Convention on Human Rights, which obliges the State to investigate torture and ill-treatment.

In response to this situation, a complaint was lodged with the CIE Supervisory Court, which issued a new resolution suspending the agreement used until then regarding visits by lawyers and human rights organisations to the CIE and specifying the following requirements for these visits to take place: *"it will be necessary to provide the detainees with forms, petitions or the appropriate documents so that they can personally state their wish to meet with a specific lawyer, detailing the specific purpose of the interview, as well as the urgency or the non-adjournable nature of the interview. Once this request has been presented with the specific details of the lawyer, the Director of the Lawyer must facilitate access to the details of the lawyer who has been appointed".*

Nonetheless, it will be necessary to see the effectiveness of a measure of this type, bearing in mind that in many cases there is a language barrier that affects the persons held in the CIE and that in practice may hinder the exercise of this fundamental right. Likewise, as these are temporary stays, it is difficult, if not practically impossible, for detainees to know the specific contact details of the lawyers who may visit them. Likewise, requiring the detainees to put in writing the reason for the visit, which could be complaints of institutional violence or abuse, is an obstacle to the right to legal representation and even to the confidentiality that governs the relationship between the lawyer and the persons represented.

Valentina Lazo ⬇

Difficulty in the task of representation

One of the existing obstacles in criminal proceedings investigating allegations of ill-treatment at the Barcelona CIE is that the examining magistrates sometimes make it difficult for the lawyers of the complainants to represent them in the criminal proceedings by questioning formal elements, even though they generate total defencelessness for the complainant, who in most cases is already deported.

In one of the complaints filed during the year 2020, the complaint was filed in the name of the inmate together with a designation signed by the same person with the seal of the Centre, and the lawyer of Irídia was appointed to the proceedings. Subsequently, the Investigation Court dismissed the case and when they wanted to lodge the corresponding appeal against the dismissal, the Court did not allow it, claiming that the designation of the inmate, who was deported, was not enough, and requiring a power of attorney to represent him.

Irídia considers that not allowing representation by the mere designation of the inmate and demanding a power of attorney (or apud acta) is a formal impediment that violates the inmate's right to effective protection and infringes the effective right of access to the courts, causing an evident material defencelessness, as she could not intervene in the proceedings and, therefore, could not appeal a decision as transcendental as the dismissal order.

Finally, in the specific case denounced, the Court finally acknowledged the violation and allowed Irídia to be represented. It should be noted, however, that the case was suspended by this issue for almost a year.

3.3.3. Isolation

Unlike what happens in the penitentiary regime, the characteristics of isolation in the CIE are not regulated: there are no regulations on the causes that motivate such a serious measure as isolation, nor under what conditions it should be carried out. However, there is evidence that isolation has been used in cases of suicide risk, in the management of the COVID-19 pandemic, and also as a punitive measure. Specifically, during the months of October and November, **8 people were isolated** at the same time in areas of the CIE that have yet to be determined. The **2 inmates for whom a complaint has been lodged** describe absolutely inhuman and very degrading quarantine conditions, both in terms of the space where they were held and the treatment they received from some of the officers guarding them, to the point of self-harming without receiving the necessary medical assistance.

"I spent ten days in isolation in a room in the CIE that I cannot locate inside the centre. The room had no furniture, no chair, no bed where I could sit or lie down. Nor did it have any table or shelves. There was no light either. There was only one window. I spent 24 hours of those 10 days locked in that room without contact with any other inmate, sleeping and eating on the floor. I could only go out to go to the toilet when I asked the officers and if they agreed to open the door to let me go.

On some occasions, I had to relieve myself through the window as the officers would refuse to let me out to go to the toilet. I lost track of time, being unable to place when all the incidents I experienced in solitary confinement took place. During these 10 days, without being able to say on which day or at what time, I have been assaulted twice by the police. The first aggression I received was at the beginning of the solitary confinement. As a result of the isolation I was living in, locked up all day, unable to talk to anyone, without a bed to lie on, feeling that I was being treated in a degrading and inhuman way, I took the plastic knife they gave me to eat with and I self-harmed. Causing cuts all over my body.

When the officers realised this, they entered the room telling me to calm down, grabbed my arms behind my back, pinning me down, and then started punching and kicking me. While some of them grabbed me, the rest of them beat me. I cannot discern how many officers were in the room at the time, but I know that there were two of them wearing protective headgear. In the following days, still in solitary confinement, they took my food and threw me out, showing absolute contempt for me and for the very delicate situation that all the inmates in the CIE experience, and even more so for those of us who are separated and only within the isolation of a detention centre such as the centre for foreigners. I complained, I told the officers that I was being treated like a dog and this caused them to enter the room and beat me again. As on the previous occasion, they grabbed my arms behind my back, pinning me down, and when two or three of them had me pinned down, the rest of them punched and kicked me".

The complainant was deported on 1 December 2020 from the Barcelona CIE to Algeria together with a group of 30 other people. The deportation was carried out without the competent examining magistrate's court having agreed to the requested measures of taking his statement and having him visited by a forensic doctor as a matter of urgency, as well as the precautionary suspension of his deportation until the necessary investigative proceedings could be carried out, which once again represents a serious violation of the right to effective judicial protection.

3.3.4. Health

A particularly noteworthy issue is the fact that the health care of detainees in the CIE is provided by a private company, outside the public health care system. The private management of the health care of detainees hinders transparency and accountability, a fact that in some cases has led to irregular practices.

As an example of this statement, we highlight a specific case in which the Provincial Court of Barcelona, in a resolution of 19 December 2020, states that the medical report made by the health service of the Centre to the inmate denouncing the abuse did not include any type of injury *"which casts doubt on the completeness of the examination and its compliance with the requirements of the Istanbul Protocol"*. Likewise, in the same case, the doctors who recognised the detainees were not identified, and only the generic reference CIE Barcelona Medical Service appeared, an issue that the Provincial Court described as irregular practice.

3.3.5. Space of opacity

The figure of the Supervisory Court of the CIE is provided for in Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration (known as the Foreigners' Law). Specifically, Article 62.6 stipulates that *"the competent judge for the control of the stay of foreigners in internment centres and at the border detention centres will be the examining magistrate of the place where they are located, with the designation of a specific magistrate in those judicial districts where there are several of them. This Judge will hear, without further recourse, the petitions and complaints made by the inmates in all matters affecting their fundamental rights. Equally, he/she may visit the centres when he/she is aware of any serious incompliment or when he/she considers it convenient."*

However, although in some cases the existence of this figure has led to changes and compromises in the rights of inmates, in other cases this has not been the case. The fact that there is no specific regulation of the supervisory boards, in terms of procedure or terms, for example, ends up leading to the task having a particularly personal and unregulated component in the exercise of this function, with notable differences between supervisory courts, even within the same judicial party.

In the specific case of Barcelona, the competent Control Courts are Barcelona's Investigation Courts 1 and 30, and they are an example of the aforementioned anomaly. Indeed, for years, human rights organisations have been witnesses to the inactivity of one of the two courts, the 30th, which rarely responded to the complaints submitted and, when it did, it was late and ineffective. Recently, there has been a change in the head of Investigation Court 30, with a different magistrate, who has been responding to certain complaints.

Valentina Lazo

However, and precisely in the context of the pandemic, it can be affirmed that the actions of the Barcelona CIE control courts have not been as expected, with direct repercussions on the rights of detainees. Specifically, on 16 October 2020, Irídia and Migra Studium filed a joint complaint requesting the precautionary closure of the CIE due to the announcement that several people had been infected with COVID-19. Likewise, it was also requested that, in the event of not ordering the closure, the competent court should issue protection measures in the framework of the pandemic, as had been done by the Supervisory Courts of other judicial districts. In this regard, reference was made to resolutions such as those of Murcia or Las Palmas de Gran Canaria, where the control judges had issued resolutions placing conditions on the internment of migrants in these centres, taking into account the particularly exceptional nature of the pandemic.

Likewise, the Barcelona City Council also filed two complaints requesting measures, following the preparation of two reports by the Barcelona Public Health Agency, which stated that adequate sanitary measures (especially quarantine) could not be guaranteed inside the Centre.

A month later, on 13 November, Irídia and Migra Studium presented a new complaint to the Control Court, denouncing the conditions of isolation of the inmates who had tested positive for COVID-19, attaching one of the complaints presented. In the complaint, it was requested that urgent measures should be taken to ensure that, in the event of a positive test for COVID-19, the people would be transferred to a suitable place where they could be quarantined, and that an investigation should be launched into what had happened in the CIE in relation to the conditions of isolation during the pandemic. It is necessary to underline that the inmates stated that they had been locked in a cell without a bed or any type of furniture, having to sleep and eat on the floor, without electricity and with difficulties to go out to relieve themselves, also denouncing aggressions and humiliating treatment.

This inactivity on the part of the supervisory judges represents a clear lack of defence for the detainees and is a clear cause for concern on the part of human rights organisations, given that this is the jurisdictional body that is the guarantor of their rights.

3.4. Public space?

The measures adopted in the context of the health crisis caused by the COVID-19 pandemic have particularly affected the right to freedom of movement, to the point of practically suspending this fundamental right and establishing strong control and persecution mechanisms.

The uses to which public space has hitherto been put have been severely restricted, limiting people's ability to interact with their surroundings, carry out activities and enjoy the public highway. Thus, with the declaration of the State of Alarm and the approval of RD 463/2020, freedom of movement was limited by a general prohibition, with the provision of specific authorisations for taxed reasons. Subsequently, the general prohibition affected certain time bands, maintaining the prohibition of groups of people and the possibility of carrying out certain activities in public spaces.

These restrictions did not affect everyone in the same way, but had a much more severe impact on those people who are vulnerable, highlighting the existing structural inequalities and giving rise to multiple situations of discrimination. A clear example of this was the situation of many factory workers, some of whom were forced to confine themselves to the houses where they worked. Another example were the workers who did not have their employment situation regularised and whose rights were not guaranteed, among others, to sick leave or unemployment, or who could not even accredit that their displacement was justified for work-related reasons, being subjected to administrative sanctions.

On the other hand, the lack of clear guidelines for State security forces in sanctioning non-compliance with the restrictions often led to an arbitrary use of the administrative right to impose sanctions. In this sense, during the first months after the declaration of the State of Alarm, the Service was aware of several situations in which the State security forces had administratively denounced people without support for not being confined, even though these people did not have a room where they could be confined; or the sanctioning of sex workers for being in public spaces, even though they were moving to go and carry out their work.

Throughout the year, the Service has also been made aware of situations in which people, despite being in one of the situations provided for in RD 463/2020, have been administratively sanctioned by the state security forces.

This high degree of arbitrariness was accompanied, on many occasions, by a disproportionate use of force by the State security forces, with particularly serious situations being detected in which force was used with the aim of punishing or chastising people, even going so far as to invade specially protected areas, such as private homes.

3.4.1. Disproportionate use of force

Throughout 2020, 41 people approached the service requesting advice and/or assistance in situations of institutional violence in public spaces. Of these, 18 were related to situations arising from the application of the mechanisms for controlling mobility restrictions by COVID-19.

The lack of clear criteria explained to the population in relation to the administrative and penal consequences of non-compliance with the confinement or sanitation measures adopted, on the one hand, and the lack of clear directives to the State security forces in the sanctioning of non-compliance with the restrictions, on the other; has led to an arbitrary use of administrative sanctioning rights, as well as a disproportionate use of force by the agents in charge of applying the control mechanisms.

Various situations reported by the people concerned have been particularly serious, especially those in which the State security forces have used force with the aim of punishing or punishing the person.

> *"On 11 April 2020, J.O. and A.J., aged 16 and 17 respectively, were walking along Passeig Lluís Companys when they met some friends and stopped to greet them. At that moment, a van from the Regional Area of Operational Resources of the Mossos d'Esquadra stopped next to the youngsters and about five officers got out and asked the two youngsters for their documents. The young men handed over their documents and, seeing that the officers were only asking them for identification (despite the fact that there were many more people in the area walking around like them), they asked why they were being identified, and the officers replied that they were the police and could do so. The two youths reproached the officers for their action, at which point the officers, in an attempt to teach them a lesson for questioning the police, beat and insulted one of the youths, and then searched the two youths, kicking their legs with their feet and threatening to take them to the police station".*

3.4.2. Inviolability of domicile

The article 18.2 of the Spanish Constitution regulates the right to the inviolability of the home, establishing that "the home is inviolable. No entry or search may be made without the consent of the owner or judicial resolution, except in cases of flagrant crime".

The home is a space in which each person lives without necessarily being subject to social conventions and exercises his or her most intimate freedom. The inviolability of the home means that this space is exempt from any outside invasion or aggression, whether from another individual or from a public authority.

In spite of the above, during 2020 the Service was directly aware of 4 particularly serious situations of home invasions by State security forces, even though none of the legal grounds for doing so were met.

"In the early morning of 18 April 2020, O.G.D. was at home making a video conference with his friends in Romania, on the occasion of Easter celebrations in his country. His flatmate, W.J.B., and his partner, M.I., were sleeping in one of the rooms of the house. At around 4.30 a.m., 6 officers of the Barcelona Guardia Urbana arrived at his home, who, without explaining why, asked Mr. O.G.D. to leave the house and identify himself. After a brief discussion, the officers booed Mr. O.G.D., grabbed his mobile phone and threw it against the wall, breaking it. They then went into the house and attacked Mr. O.G.D., hitting him several times and then took him into custody. Mr. O.G.D. lost consciousness at that moment, waking up a few hours later in a cell with a body full of blows and bruises, in pain, with his left leg swollen and unable to move it, his wrists also swollen and having urinated and defecated on himself, feeling strongly humiliated, without knowing where he was or why he was there.

Mr. W.J.B. and Mrs. M.I. woke up when the police knocked on the door of their home. A few minutes later, they heard Mr. O.G.D. screaming for help. Frightened, they got up to see what was happening and when they tried to leave the room they found two officers of the Guardia Urbana guarding the door, who did not let them leave and did not give them any explanation as to why they were taking Mr. O.G.D. into custody. One of the officers hit Mr. W.J.B.'s leg several times with the police baton, forcing him to sit on the bed in the room and preventing him from coming out to help his companion."

3.4.1. Use of firearms on public roads

On 21 November 2020, a corporal of the Guardia Urbana of Barcelona fired two shots at a homeless person, one of which hit him in the abdomen. As a result of the shots, the person was admitted to hospital as an emergency patient and was still in hospital at the time of publication of this report (March 2021).

The action carried out by the officer in question was particularly worrying, as a firearm was used in a hasty manner, without any progression in the use of force, and in a vital area that has put the life of the person concerned at risk. Furthermore, the images do not show an imminent risk to the officer's life that could justify drawing and using a firearm against a person.

Despite the disproportionality and seriousness of the facts, it is particularly worrying that the Guardia Urbana has not removed the officer in question from his duties, as a precautionary measure until the facts have been clarified in court.

Bru Aguiló

3.5. Prisons

Prisons, as places of deprivation of liberty, are places where special attention must be paid to the protection of fundamental rights. During the year 2020, the SAIDAVI has represented **10 cases** (3 of which were taken on this year) that have taken place in prisons, either for situations of torture or other cruel, inhuman or degrading treatment or punishment, or for cases of death in prison. In this sense, one of the elements that is important to highlight is the great opacity that surrounds the prisons, as well as, on many occasions, the lack of collaboration on the part of the administration, which makes it difficult to file the necessary complaints in order to process the corresponding criminal proceedings and for these to result in a process of truth, justice and reparation for the harm caused. In addition, the severe restrictions that have been implemented in prisons as security measures by COVID-19 have made monitoring and communication with prisoners even more difficult, as they have become even more isolated from society and their loved ones.

During the year 2020, the Service received **7 complaints** of torture or other cruel, inhuman or degrading treatment of persons deprived of liberty by security officers, and in **3 of these cases, legal representation has been provided**, initiating the corresponding legal proceedings for events that took place in Brians 1 and Mas d'Enric penitentiary centre. With regard to the other 4 complaints, the case has been assessed and followed up.

3.5.1. Coercions

In two of the cases, the inmates reported that the aggression or disproportionate use of force was carried out with the aim of obtaining a confession and a withdrawal of a complaint. In the third case, according to the prisoner, the assaults denounced were carried out with the aim of punishment, applying mechanical restraint as a punitive measure and in conditions contrary to the protocols.

Furthermore, according to the inmates' accounts, in all cases, similar patterns of action are followed: the authorities direct the inmate to rooms or areas where there is a lack of video surveillance cameras, and that is where the aggression takes place. **In all three cases, the interns have been sanctioned because of the reported facts.** In other words, the inmates have suffered a double victimisation: firstly, for the abuse and harassment they witnessed, and secondly for the subsequent penitentiary sanction, which has resulted in a sentence of imprisonment in the DERT or a forced transfer to another penitentiary centre.

3.5.2. Lack of effective complaint mechanisms

Firstly, it should be noted that in three of the cases that have reached this year 2020, the prison itself reported the inmate's complaint to the Catalan Ombudsman. Nonetheless, the lack of effective investigation carried out by the penitentiary centre itself in order to clarify the facts and those responsible for them is particularly worrying, as it was limited to providing the documentation requested by the Court once the complaint had been filed.

In the accompaniment of inmates who wish to report acts of violence in prison, it has been detected that there continues to be a lack of exhaustive and effective investigation by the examining magistrates. Cases are detected of complaints that are either filed without carrying out essential investigative procedures, or are processed as minor offences, despite the fact that the facts could constitute crimes of torture or offences against moral integrity. A clear example is that, in two of the three cases assumed in 2020, the examining magistrate agreed to dismiss the case before having carried out all the reasonable, available, effective and pertinent investigative measures.

Finally, the SAIDAVI identifies as a serious violation the lack of adequate mechanisms for inmates to denounce situations of institutional violence in prison and the fear of reprisals that they may suffer. Issues that hinder the reporting and investigation of allegations of torture and cruel, inhuman or degrading treatment or punishment.

Valentina Lazo ⬇

3.6. Protest

3.6.1. The right to protest in the context of the health crisis caused by COVID-19

There is no doubt that the health crisis caused by COVID-19 has also affected the right to protest, especially the right to assembly and demonstration. The declaration of the state of emergency has not suspended the right to assembly and demonstration, but it has entailed limitations in its exercise, and has also led to the development of imaginative protest actions adapted to the current pandemic situation. For this reason, compared to previous years, the number of protest cases dealt with by the Service has been considerably reduced.

However, it is worth remembering that the right to assembly and demonstration, together with the right to freedom of information and expression, allow the rest of the rights to be claimed, becoming an essential mechanism for political participation, even in times of pandemic. For this reason, in the current complex context, the right to protest must continue to be guaranteed and protected, exercising joint responsibility with regard to the necessary protection measures.

In this sense, on 14 April 2020, Clément Nyaletsossi Voule, current Special Rapporteur on the right to freedom of peaceful assembly and of association, recalled that:

> "No country or government can solve the crisis alone; civil society organizations should be seen as strategic partners in the fight against the pandemic. [...] It is imperative the crisis not be used as a pretext to suppress rights in general or the rights to freedom of peaceful assembly and of association in particular. [...] It is vital in this context that States' responses to the crisis take citizens' demands fully into account, and that States take measures to adopt more democratic governance structures, to enhance rights protection and fulfillment, to reduce inequality, and to ensure that the transition to greener and more sustainable energy sources receives increased support and attention"[9].

With regard to the exercise of the right of assembly and demonstration in Spain, during the first state of alarm, a serious situation of legal uncertainty was identified, with disproportionate limitations being detected in relation to its exercise and disparate pronouncements by the competent administrations and courts. This fact was highlighted in the report Protection of rights during the state of alarm 2020[10] produced by the platform Defender a quien Defiende, of which Irídia is a member. Thus, for example, for the commemoration of Labour Day on 1 May, the Constitutional Court upheld the decision of the High Court of Justice of Galicia regarding the prohibition of a protest in Galicia due to health issues and the risk of contagion.

9. https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E%E2%80%8B
10. http://defenderaquiendefiende.org/wp-content/uploads/2020/08/Defender_a_quien_defiende-5-1.pdf

A restrictive position, that of the Constitutional Court, but which did not entail a general ban on holding rallies and demonstrations. On the other hand, the High Court of Justice of Aragon considered that the prohibition agreed by the competent authority (in this case, the Delegation of the Spanish Government in Aragon) was not legitimate because the right to assembly and demonstration is not suspended, and that there are less restrictive measures (such as forcing the use of tanned vehicles, the use of masks, etc.) that allow the right of assembly and demonstration to be exercised.) that allow the right of assembly and demonstration to be compatible with health measures. Specifically, it established (Sentence 151/2020 of 30 April):

> "It is more than reasonable to consider that a situation of health crisis such as the one we are going through at the moment may imply such a serious alteration of the free exercise of citizens' rights and freedoms, or of the normal functioning of institutions, that it is reasonable to think that the most appropriate way to restore such normality of exercise may be the state of exception.
>
> (...) In this way, there will be the possibility of limiting citizens' movements to a greater or lesser extent, but never to impede the free exercise of the right to demonstrate. As I said, if the exceptional state contemplates the possibility of suspending the free movement of citizens, leaving the right of assembly untouched, it is clear that an exceptional state of much lesser intensity, such as this one, cannot affect this right. Neither does the Royal Decree expressly mention this fundamental right, as it would have liked to affect it, nor will it ever be able to do so, in accordance with the content of article 11 of the LOAES." (FJ 3).

Likewise, the report also highlighted other actions that could have a dissuasive effect on people participating in protest actions. One of these actions is the identification and threat of administrative sanction and/or misinformation on the part of law enforcement officials. In this sense, arbitrary identifications and the impossibility of carrying out actions in public space, not only for protest but also for assembly, were also presumed. In the vast majority of cases, all those present were identified or, arbitrarily, some of them, based on the article of the Citizen Security Law, which punishes the supposed promoters and organisers of demonstrations who have not complied with the requirement of prior notification[11].

[11] Some of the examples that we included in the report and that have been made public in the media are:
– ***Editorial.*** **(2020). Mossos police agents identify a boy concentrated in Paeria square in defence of "life before capital".** ***Nació digital*** **[online]. 27 May 2020. [Date of reference: March 2021].** https://www.naciodigital.cat/lleida/noticia/38746/mossos/identifiquen/noi/concentrat/placa/paeria/defensa/vida/abans/capital#.Xs53XxLj87c.whatsapp
– ***Editorial. (2020).*** **"They treated us like criminals": the "surprising" action of the police in a protest for public health in a working class neighbourhood of Madrid.** ***Público*** **[online]. 30 May 2020. [Date of reference: March 2021].** https://www.publico.es/tremending/2020/05/30/twitter-nos-trataron-como-a-delincuentes-la-sorprendente-actuacion-de-la-policia-en-una-protesta-por-la-sanidad-publica-en-un-barrio-obrero-de-madrid/
– ***Editorial.*** **(2020). Tension in a protest in the Gràcia neighbourhood because a Mossos agent tries to prevent it.** ***Vilaweb*** **[online]. 19 May 2020. [Date of reference: March 2021].** https://www.vilaweb.cat/noticies/manifestacio-gracia-estat-alarma-mossos/

3.6.2. Excessive and disproportionate use of force in the stripping of weapons

The Service is concerned about the excessive and disproportionate use of force in deportations, which have continued to be carried out despite the current pandemic situation. These arrests sometimes affect people in a particularly vulnerable situation, despite the adoption of some regulations to deal with these situations.

During 2020, the Service dealt with the case of a family with minors in a situation of vulnerability, who were stripped of their habitual residence by means of a particularly disproportionate and abusive use of force, an action that could be criminal.

> *"On the afternoon of 26 May 2020, agents of the Mossos d'Esquadra, without any court order, allegedly tried to evict the family with a very violent attitude, with insults and shouting, allegedly without success. The following day, Mossos agents returned to the home to have them leave the house, and some of them would have headed directly towards one of the parents with the intention of requisar-le the mobile phone from his hands, because he was recording the police action, at which point he would have been reduced with blows and grabbing him by the neck."*

Another case of excessive and disproportionate use of force detected by the Service was the stripping of the Casa Buenos Aires in Vallvidrera, which took place on 28 October 2020. In the police action during the stripping, moreover, it was detected that there were agents of the BRIMO of the Mossos d'Esquadra who were not properly identified with the new Police Operational Number (NOP)[12].

During the Som Defensores operation –of which Irídia is a member–, which was activated in the protests called during the afternoon of the day, the Network of Observers of Rights Violations in the Context of Protest detected an irregular use of the police force, with police beatings from top to bottom, directly on the demonstrators' heads[13].

Bru Aguiló ⬇

12. https://twitter.com/centre_IRIDIA/status/1321419404115103744?s=20
13. https://twitter.com/SomDefensores/status/1321552541012938754?s=20

4. Best practices

In this section we wish to highlight some of the good practices carried out by the competent administrations that have been agreed or approved during 2020. Some of these have been long advocated by human rights organisations such as Irídia, Amnesty International, the Observatory of the Penal System and Human Rights, Novact, Defender a Quien Defiende or public institutions such as the Catalan Ombudsman. It is considered essential that the Administration, whatever it may be, assumes that the protection and guarantee of Human Rights is a task that requires a constant review of its own mechanisms and a purging of responsibilities in the event of violations. Likewise, the audit work carried out by internal and external bodies is also essential. There are still many issues to be improved, but the following initiatives stand out as positive ones:

Change in the identification of the riot police of the Mossos d'Esquadra (Mobile Brigade, BRIMO)

On 12 November 2019, the Catalan Parliament passed a resolution calling on the Catalan Government to change the typography of the NOP number and to include it on the front and helmet, while keeping it on the back of the uniform. This measure will make it much easier to identify the perpetrators of irregular conduct and, therefore, to establish who is responsible. At the same time, it has a preventive effect, as it sends out a message of zero tolerance for irregular conduct.

Subsequently, the Ministry of Home Affairs undertook to comply with the measure approved by Parliament, initiating the procedures to be able to exchange the necessary elements of the corresponding uniforms. The new identification system was made public on 15 October 2020. Irídia considers that, although the numbers incorporated into the helmet are small in size, the implementation of the new system is perfectly in line with the resolution of the Parliament of Catalonia.

This new identification system has been fully incorporated into the Mobile Brigade since October. It has yet to be incorporated into the uniforms of ARRO units. Sources from the Department of the Interior have reported that it will be implemented during the first half of 2021.

Jordi Borràs ⬇

Relationship of the General Management of the Police and the police command with human rights organisations

In order to carry out the task of defending human rights, it is essential to have channels of communication with the political and technical managers of the different departments, especially with the Department of the Interior. This is why it was included as a recommendation in the 2018 SAIDAVI report. During 2019, a stable communication and work link was established between the heads of the Mossos with Irídia and Amnesty International. The fact of having a channel of communication makes it easier to address the different problems that have arisen.

Implementation of the new camera system in prisons

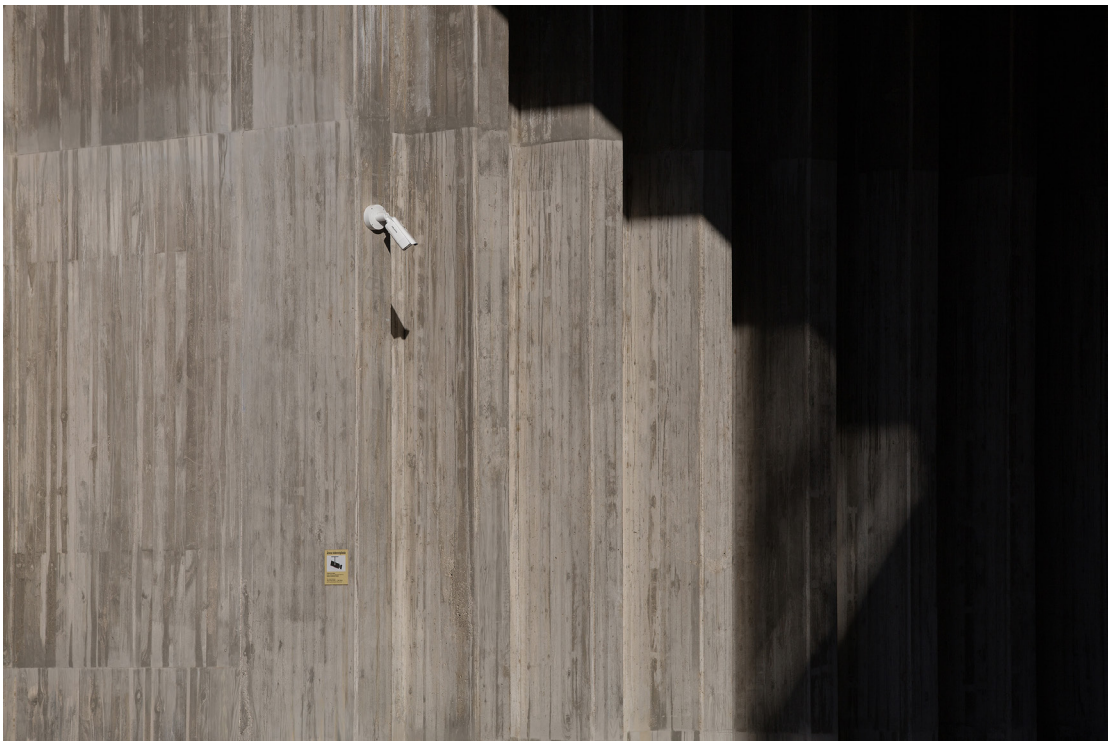
In February 2020, the Ministry of Justice announced the implementation of a plan to improve the video surveillance camera system in prisons, which is considered a major step forward in the protection of human rights. This system guarantees the recording of images and the monitoring of activity in all provisional confinement cells, containment cells and prison areas. The Secretariat of Penal Measures, Reinsertion and Victim Support will install the new devices progressively over two years. One of the most important elements is the decision that the images will be kept for a period of 6 months after registration.

In August 2020, the Department of Justice announced that a hundred video surveillance cameras had already been installed in the Brians 1 and Ponent prisons. In a second phase, which will begin in June 2021, Justice plans to complete the installation of these new cameras in the rest of the isolation cells, containment cells and prison wards, so that all the penitentiary centres of the Generalitat have the same video surveillance system. At present, there is no video surveillance system in the holding cells of Dones and Quatre Camins prisons, nor in the detainment rooms of Dones, Quatre Camins, Brians 2, Joves and Lledoners. On the other hand, they do have all the containment cells in Catalonia, but only those of Puig de les Basses and Mas d'Enric, and now also Ponent and Brians 1.

Analysis of images by a different police force as an investigative procedure.

In December 2019, the Investigating Court number 26 opened preliminary proceedings into a complaint of mistreatment at the Barcelona CIE by agents of the National Police, agreeing to various investigative actions that Irídia, together with the injured party, had requested in the initial complaint. Among the actions requested and agreed upon was the commissioning of an investigation of the facts by the Mossos d'Esquadra. The fact of entrusting a different police force with the investigation of a situation of abuse seeks to guarantee the independence, efficiency and speed of the investigation. In this specific case, the investigation resulted in an exhaustive report by the Mossos d'Esquadra that analysed more than 200 hours of different cameras from the Centre on the day of the reported events.

Carles Palacio



Psychological expert reports with the framework of criminal proceedings

Psychological expert reports are an essential element in complaints in which allegations of torture or ill-treatment are investigated. However, it is not easy for these reports to be carried out within the framework of these judicial proceedings following the Protocol for Medico-Forensic Action against torture or ill-treatment. This year, the Service has insisted on the need to carry them out in various proceedings in which it was considered appropriate. Based on the psychosocial reports submitted by Irídia, during 2020, 3 psychological examinations were carried out by the Psychology Unit of the IMLCFC to assess the psychological damage caused by the aggression received by the person in active cases of SAIDAVI.

This is considered a positive development, although it is necessary to insist that in all cases of allegations of torture or other cruel, inhuman or degrading treatment or punishment, the examining magistrates should officially coordinate the preparation of forensic medical reports on the application of the Protocol for Medico-Forensic Action against torture or ill-treatment, which is included in the Istanbul Protocol.

Stable and direct communication system with the Unit of Deontology and Internal Affairs of the Guàrdia Urbana

Our organisation has a stable channel of communication with the Unit of Deontology and Internal Affairs of the Guàrdia Urbana. The aim is to be able to communicate reports of cases of institutional violence that may involve officers of the Guàrdia Urbana, and thus facilitate the rapid action of the administration to preserve evidence, with special emphasis on the preservation of video surveillance images.

Meeting with the Management of the Institute of Legal Medicine and Forensic Sciences of Catalonia (IMLCFC):

During 2020, a meeting was held with the IMLCFC management to share impressions, challenges and needs. During this meeting, the approval of training in the Istanbul Protocol for forensic doctors by forensic specialists in 2021 was conveyed to Irídia. On her return, Irídia stressed the need to revise the Protocol for Medico-Forensic Action against torture or ill-treatment in order to specify the mandatory use of the Istanbul Protocol and to ensure that it is in line with that established by the United Nations High Commissioner for Human Rights. On the other hand, concern was expressed about police presence in forensic examinations in the context of deprivation of liberty; challenges in the management of this aspect were discussed and raised. The aspects presented were collected, with a commitment to change or evaluate them by the IMLCFC.

The Public Prosecutor's Office supports an appeal because it considers that there might be an offence against moral integrity

In one of the cases represented by the Service, the Public Prosecutor's Office requested an appeal filed by Irídia against a decision of the Investigation Court, in which it was agreed to transform the preliminary proceedings that were being followed into a trial for a minor offence. The appeal was based, on the one hand, on the existence of sufficient evidence of criminality with regard to the commission of a crime against moral integrity and, on the other hand, on the obligation of states to investigate complaints of situations of degrading treatment. The Public Prosecutor's Office supported this petition, requesting that the appeal to be upheld. In the end, the appeal was upheld and, at present, the facts continue to be investigated under the preliminary proceedings procedure. This fact demonstrates the importance of proactive action on the part of the Public Prosecutor's Office in cases of allegations of torture and ill-treatment which, unfortunately, is still very exceptional.

In relation to penitentiary centres: involvement of the Secretary of Penal Measures, Reinsertion and Victim Support (SMPRAV) in investigations or complaints from inmates

The Service has detected a certain involvement of the Secretary of Penal Measures, Reinsertion and Victim Support (SMPRAV) of the Ministry of Justice in the investigation of reports of abuse and violation of rights in Catalan prisons. This appreciation is concrete in the fact that in two of the cases assessed this 2020, a positive response has been given by the SMPRAV regarding the custody of video surveillance cameras. In another case in which the Service has provided advice, the SMPRAV has detected an interest in the status of the person deprived of liberty who reports a situation of abuse, which has materialised in a visit to the prison and in contact with the human rights organisations that act in defence of the rights of the person making the complaint.

Valentina Lazo

5. Recommendations

The recommendations in this section refer to situations or practices that have been identified from the experience and cases dealt with by SAIDAVI. Nevertheless, and as a general recommendation addressed to all public institutions, it is necessary to take into account the conclusions and implement the measures recommended by the Catalan Ombudsman in the different Annual Reports of the Catalan Mechanism for the Prevention of Torture, especially the one of 2020.

5.1. To the parliamentary groups in Congress

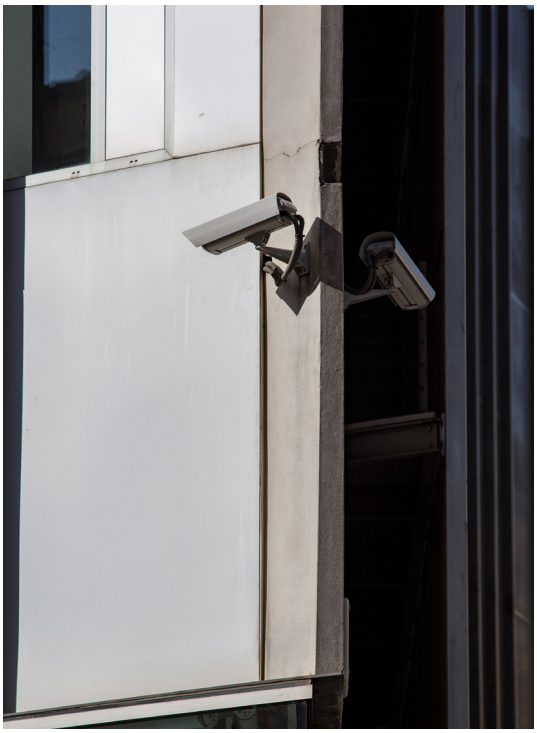
a. That they proceed to the urgent repeal of the reform of the Penal Code carried out in 2015 and that they repeal Organic Law 4/2015, of 30 March, on the protection of public safety. It is essential that this reform repeals those precepts that violate freedom of expression and assembly, such as the crimes of sedition, offences against the Crown and glorification of terrorism, among others. At the same time, it is necessary to open a process to reform the Penal Code and the Law on Citizen Security mentioned above on the basis of criminal guarantees and through dialogue with human rights organisations.

b. That the prohibition of the use of rubber bullets by State security forces and police be agreed, in view of their potentially harmful effects.

c. That the Government be urged to change the uniform of police officers with public order management functions of the security forces (riot police) so that the identification number is easily remembered and visible -both in terms of typography, numbering and size- and that it is displayed in three visible places: on the trunk, both on the front and on the back, and on the helmet.

d. That an amendment of the Alien Act be made to abolish the use of Centres for the Interment of Foreigners and thus put an end to the half-term deprivation of liberty as a precautionary measure in cases of expulsion and sanction.

e. That a law regulating the Jurisdiction of Control of the Centres for the Interment of Foreigners be passed, regulating the procedures, terms and means of appeal, as well as all matters related to a jurisdiction that is currently completely unregulated.



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f. That the necessary legislative initiatives be promoted and approved to definitively guarantee the right to effective judicial protection for all those people who suffered serious human rights violations during the dictatorship and the transition, among others:

- Modify, repeal or annul the Amnesty Law.

- Amend Organic Law 10/1995, of 23 November, on the Criminal Code, expressly incorporating the principle of international legality (contained, among others, in Article 7.2 of the European Convention on Human Rights and Article 15.2 of the International Covenant on Civil and Political Rights).

- Promote the ratification of the Convention on the imprescriptibility of war crimes and crimes against humanity, which is still pending in Spain.

- Amend the Criminal Procedure Act so that final court rulings on the inadmissibility of complaints filed to date can be reviewed.

- Modify the Law on International Treaties so that there is a specific mechanism for recognising and executing the decisions of the United Nations Treaty Bodies.

5.2. To the parlamentary groups of the Parliament of Catalonia

a. That within the framework of the Home Affairs Committee, a Study Committee be created to analyse the control systems of police forces 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.

b. That the Committee on Justice assess the application of Circular 2/2017, of the closed regime in penitentiary centres in Catalonia, which was approved as a result of the Working Group of the Parliament of Catalonia on the solitary confinement regime, in order to analyse the degree of implementation as well as the effects it is having.

c. That a Study Commission on institutional racism be set up, with the participation of specialised agents at the international level. In this sense, the creation of this committee was approved in July 2020, it was set up and two sessions were held, but with the call for elections the activity was suspended.

5.3. To the Spanish Government

a. To review the mechanisms and functioning of the internal affairs units of the National Police and the Guardia Civil so that they work independently in cases of continuing allegations of institutional violence. Likewise, it is essential that these units are made up of officers properly trained in Human Rights and that they are provided with mechanisms to have a higher degree of autonomy in relation to their own bodies. That a specific mechanism for reporting situations of institutional violence be established for the public and for human rights organisations that allows them to act appropriately and with sufficient speed to ensure that the evidence is preserved. The mechanism for denouncing situations of institutional violence should not be the same general channel that exists for denouncing other situations, given the specificities involved in this type of case.

b. That the prohibition of the use of rubber bullets by State security forces and police be agreed, given their potential for harm.

c. Implement the necessary changes, as have been implemented in the Mossos d'Esquadra corps, to the uniform of police officers with public order management functions of the security forces (riot police) so that the identification number is easily remembered and visible -both in terms of typography, numbering and size- and that it is in three places: on the trunk, both on the front and back, and on the helmet.

d. That a protocol against ethnic-racial discrimination in police actions be generated and implemented so that this type of police practice is prohibited and eradicated, incorporating mechanisms of action that entail the clear justification of any identification through forms, as is being applied to different police forces.

e. That «the rules for repatriation and transfer of detainees by air or sea», which allow both forced sedation and the use of straps and straitjackets for deportation, be repealed, as these rules are contrary to article 3 of the European Convention on Human Rights.

f. That the disaggregated data relating to situations of institutional violence for which internal investigations have been opened be published annually, as well as the number of complaints, denunciations, convictions, sanctions and the type of sanctions.

g. That a reform of the Penitentiary Regulations be drawn up to update the prison system, specifically suspending solitary confinement as a regime of life in the first level of penitentiary and prohibiting solitary confinement sentences of more than 15 days. It is also necessary to introduce international recommendations on mechanical restraint at both prison and medical level, with the aim of achieving a model without mechanical restraint.

h. Generate a channel of communication between the Ministry of the Interior and organisations that work for human rights, by holding a meeting with organisations such as Irídia, Amnesty International and others. At present, there are practically no effective and constructive channels of communication between the Ministry of the Interior and human rights organisations in Spain.

5.4. To the Catalan Government

a. That the Civil Rights Office, opened by the Catalan Government during the last legislature, be provided with sufficient budget and structure, with the aim of creating a tool accessible to citizens so that they can report situations of civil rights violations and that they can be dealt with by professionals in the field. Likewise, this Office should be present in all the provinces of Catalonia.

5.4.1. To the Ministry of Home Affairs

a. To review the mechanisms and functioning of the Internal Affairs Division (DAI) and the Services Evaluation Division (DAS) of the Mossos d'Esquadra so that they work independently on cases involving allegations of institutional violence. It is also essential that these units are staffed by officers properly trained in human rights and that they are provided with mechanisms to have a higher degree of autonomy in relation to the force. It is also essential that a mechanism for reporting situations of institutional violence be established specifically for the public and for human rights organisations, so that they can act appropriately and with sufficient speed to ensure that the evidence is preserved. The mechanism for reporting situations of institutional violence should not be the same general channel for reporting other situations, given the specificities surrounding this type of situation.

b. That the protocols for sanctions and precautionary measures in cases of institutional violence be revised to ensure that, when there are clear indications of police malpractice or the commission of a crime, the officer does not continue to carry out the same tasks and perform the same job.

c. Disaggregated data should be published annually on situations of institutional violence for which internal investigations have been opened, as well as the number of complaints, allegations, convictions, sanctions and types of sanctions.

d. That disaggregated data be published annually on the sanctions imposed under Organic Law 4/2015, of 30 March, on the protection of citizen security, broken down by the totality of the typology of infractions. Currently, in the annual report of the Ministry of Home Affairs, they are only broken down into "Consumption of toxic drugs, narcotics or psychotropic substances", "Possession of weapons" and "Others". It is necessary to also indicate the other offences, especially serious ones, such as disobedience or resistance to law enforcement officers.

e. That the instructions of the Mossos d'Esquadra in relation to the use of tasers be modified in order to comply with the parameters derived from the commission created in the Parliament of Catalonia as well as those established in international regulations.

f. That a protocol against ethnic-racial discrimination in police actions be generated and implemented so that this type of police practices are prohibited and eradicated, incorporating mechanisms of action that entail the clear justification of any identification through forms, as is being applied by different police forces.

g. That the Ministry of Home Affairs publish the Instructions for the use of all police weapons. Currently, only those instructions that have been published by different police unions are public. In particular, it is essential to publish the Instruction regulating the use of foam projectile launchers.

h. That it be agreed that the images recorded in the police stations of the different police forces, especially the Mossos d'Esquadra, be kept for a period of 6 months.

i. That video-surveillance cameras be installed in all police vehicles transporting arrested persons, with a system of detection and collection of images like that of the Guardia Urbana, especially the vans of the anti-riot units ARRO and BRIMO, given that they are sometimes also used for this type of transfer.

j. That police protocols be reviewed, both in Mossos police stations and in the City of Justice, so that medical visits of persons deprived of liberty are carried out in private and without police presence, following international recommendations on the matter.

k. To promote the investigation by the Mossos d'Esquadra of those companies or people who are dedicated to the extrajudicial expulsion of people who live without title in their homes, generating frameworks of possible coercion or threats with the aim of getting them to leave their homes as soon as possible. Failure to prevent the use of direct or environmental force is to tolerate an activity in which violence is used against people by security companies or similar and could be considered a crime of action by omission.

l. That a protocol be drawn up for evictions and evictions in which the intervention of law enforcement officers is prohibited if there are minors in the home. Likewise, the protocol should prohibit extrajudicial evictions by the police, guaranteeing that in all cases they will be carried out under judicial order, ceasing to apply the current interpretation of flagrante delicto, since in any case the crime of usurpation is minor and is a disproportionate measure that may violate the fundamental right to the inviolability of the home and the right to private and family life.

5.4.2. To the Department of Justice

a. That the Department of Justice normalise the work of monitoring, preventing and denouncing situations of institutional violence in Catalan prisons carried out by human rights organisations, granting them a specific status that favours their work with absolute independence and freedom, while respecting the rights of prisoners.

b. That, when disciplinary sanctions are imposed in prison, the guarantees inherent to the administrative procedure are complied with, so that the arbitrary use of sanctions as punishment is effectively prevented, and defencelessness cannot be generated. To ensure that the prison disciplinary regime complies with the principles of the sanctioning power of public administrations, especially with regard to basic procedural guarantees, such as the right to legal counsel during the investigation of the proceedings. Likewise, the right of inmates to request the suspension of enforcement by the administration when the requirements established by law are met must be respected.

c. That a specific mechanism for reporting situations of institutional violence be established for prisoners and their families and for human rights organisations, increasing the guarantees to act appropriately and with sufficient speed to preserve the evidence. The mechanism for reporting situations of institutional violence should not be the same general channel that already exists, given the circumstances surrounding this type of situation.

d. That the protocols for sanctions and precautionary measures in situations of institutional violence be revised to ensure that, in cases where there are clear indications of police malpractice or the commission of a crime, the officer does not continue to carry out the same tasks or remain in the same place of work.

e. That disaggregated data be published annually on situations of institutional violence for which internal investigations have been opened in relation to the number of complaints, denunciations, convictions, sanctions and types of sanctions.

f. That a Communication and Attention Protocol be drawn up for the families of prisoners so that they can be informed of the condition of their family members in an adequate manner, especially in cases of physical or mental illness, and so that they are correctly attended to by the professionals of the penitentiary centres, especially in relation to cases of death in prison.

g. That the regulations on immobilisation and mechanical restraint in prison be reviewed in depth, with the application of the principle of ultima ratio and the creation of general and specific prevention protocols. The administration should implement the necessary measures to avoid having to immobilise and restrain persons deprived of their liberty by mechanical means. It is also essential to point out that mechanical restraint should be an exclusively health measure and, therefore, the monitoring, supervision and termination of the measure should be exclusively based on medical criteria indicated by health personnel and not subject to regimental measures. If applied, mechanical restraint should have a minimum duration, always communicated to the Prison Supervision Court. Under no circumstances may mechanical restraint be punitive in nature. In any case, the prison administration should tend towards a policy of Zero Restraint, as is currently being implemented even in psychiatric centres.

Valentina Lazo ⬇

5.5. To the Barcelona City Council

5.5.1. To the plenary session

a. That the Government of Barcelona City Council repeal the Ordinance on measures to promote and guarantee citizen coexistence and replace it with a regulation that manages public space from a perspective that is not exclusively punitive and that places emphasis on mediation and respect for human rights.

Bru Aguiló

5.5.2. To the Government team

a. To implement the necessary changes, as have been implemented in the Mossos d'Esquadra, in the uniform of police officers with special functions of the Guàrdia Urbana UREP (Emergency and Proximity Reinforcement Unit), so that the identification number is easily remembered and located -both by the typography and by the numbering and size- and that it is in three visible places: the trunk, both on the front and on the back, and on the helmet.

b. That it be agreed that the images recorded in the police stations of the Guardia Urbana be kept for a period of 6 months.

c. That a mediation unit be created within the Guardia Urbana with the aim of reducing conflicts in the public space and, in particular, in relation to street vending. It is also essential that mechanisms be found to manage the phenomenon from a perspective of harm reduction based on criteria of effectiveness, proportionality and respect for human rights.

d. That the Prevention and Security Area of the City Council improve the mechanisms for relations with human rights organisations that allow them to complement public policies on the prevention of institutional violence within the police force.

e. To review the mechanisms and functioning of the Unit of Deontology and Internal Affairs of the Guàrdia Urbana (UDAI) so that it works independently in cases of continuing allegations of institutional violence. Likewise, it is essential that these units are made up of officers properly trained in Human Rights and that they are provided with mechanisms to have a higher degree of autonomy in relation to the police force. Also, a specific mechanism for reporting situations of institutional violence should be established for the public and for human rights organisations to enable them to act appropriately and with sufficient speed to ensure that the evidence is preserved. The mechanism for denouncing situations of institutional violence should not be the same general channel that exists for denouncing other situations, given the specificities of this type of situation.

f. That the protocols for sanctions and precautionary measures in cases of institutional violence be revised to ensure that, in cases where there are clear indications of police malpractice or the commission of a crime, the officer does not continue to carry out the same tasks or return to the same place of work.

g. Annual publication of disaggregated data on situations of institutional violence for which internal investigations have been opened, as well as the number of complaints, denunciations, convictions, sanctions and the type of sanctions

h. That a protocol against racial and ethnic discrimination in police actions be generated and implemented so that these types of police practices are prohibited and eradicated, incorporating mechanisms of action that entail the clear justification of any identification through forms, as is being applied by different police forces.

5.6. To the Prosecutor's Office

a. The creation of a specialised prosecutor's office for institutional violence to supervise all processes related to institutional violence and to intervene in these processes in a proactive manner, defending the rights of people who have been victims of this type of situation.

b. That it be ensured that the Public Prosecutor's Office plays a proactive role in the promotion of investigations in cases of institutional violence, as guarantor of legality, so that the corresponding responsibilities are investigated. Especially in those proceedings in which there are a large number of victims, such as the case opened at Investigation Court number 7 for the events of 1 October.

c. That specific training be offered to prosecutors in the field of human rights and, specifically, in relation to the Istanbul Protocol, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is the first set of rules for documenting torture and its consequences.

d. That the Public Prosecutor's Office, as a public guarantor of the special interests of minors, should not request in the penal sphere the removal of allotments in those cases in which minors are living. In any case, to take appropriate action with regard to other legal operators in order to prevent minors from facing evictions or evictions involving the use of force by law enforcement units.

5.7. To the General Council of the Judiciary

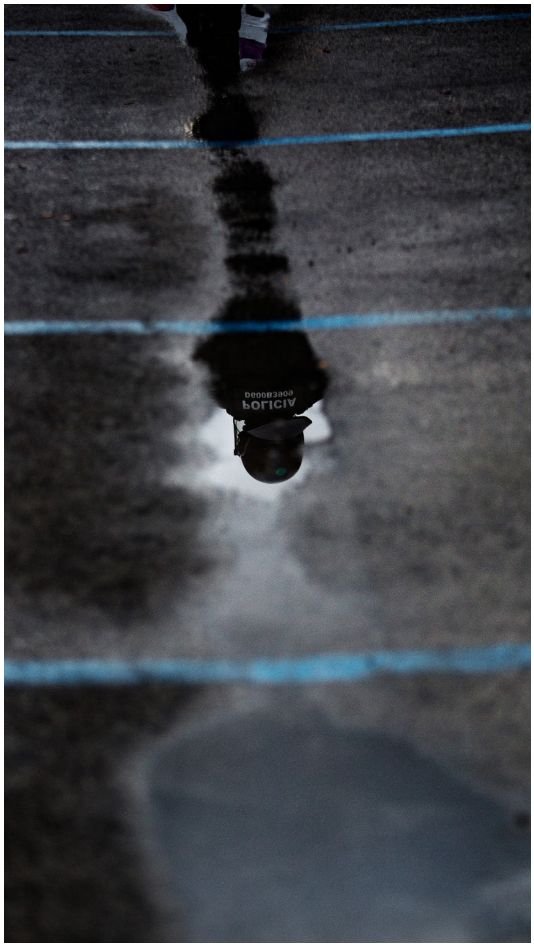
a. That specific training be offered to judges on human rights and, specifically, on the Istanbul Protocol, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is the first set of rules for documenting torture and its consequences.

b. That effective mechanisms of action and recommendations be established for all the courts of the State so that, when they receive a complaint about a possible situation of torture or other cruel, inhuman or degrading treatment or punishment, their objective is to offer adequate treatment to the potential victim and to investigate the facts in a thorough and efficient manner. They should also act swiftly with regard to the preservation of evidence.

c. That an action protocol be drawn up to ensure that crimes related to institutional violence that take place inside CIEs are investigated in a thorough and efficient manner. In this regard, it is necessary to ensure that the necessary investigation procedures are carried out, especially taking into account the high probability of deportation of victims and witnesses in this type of situation, which makes it difficult or impossible to continue the judicial process.

d. That the relevant actions be taken to prevent the eviction of minors without having previously guaranteed alternative housing, and especially, that minors face situations of evictions or disenfranchisement in which public order units participate using force.

e. That recommendations be adopted to ensure that the examining magistrates carry out exhaustive investigations in cases of allegations of torture or ill-treatment, guaranteeing that the necessary investigative procedures are carried out. In this sense, it must ensure that the requirements established by the Constitutional Court and the twelve condemnations of Spain by the European Court of Human Rights for failing to properly investigate cases of torture or cruel, inhuman or degrading treatment or punishment are respected.



Carles Palacio

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

a. To review and apply the Protocol of Medico-Forensic Action against 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). This protocol provides for the application of the Istanbul Protocol in cases where the forensic physician suspects torture or ill-treatment during detention or custody, or when the judicial authority or the Public Prosecutor's Office so requests in the course of a judicial proceeding. For this reason, it is necessary to offer specific training to forensic doctors in the field of human rights and, specifically, in the application of the Istanbul Protocol.

b. The creation of a specific unit within the Institute of Legal Medicine and Forensic Sciences of Catalonia (IMLCFC), specialised in the assessment of cases of institutional violence, along the same lines as the Integral Forensic Assessment Unit (UVFI) in cases of gender violence. In cases of institutional violence, especially in cases of torture or ill-treatment in situations of detention or custody, where there is a clear situation of vulnerability, more tools and resources are required, as well as professionals trained in the field of human rights violations.

c. That the forensic doctors of the Institute of Legal Medicine and Forensic Sciences of Catalonia (IMLCFC), systematically collect the psychological impacts resulting from institutional violence, torture or ill-treatment when carrying out the forensic expert examinations required by the court, quantifying the damage in an objective and complete manner. At present, these psychological assessment reports are carried out by psychologists from the IMLCFC. However, there are only two psychologists to cover the whole of Catalonia and, therefore, it is recommended that the number of staff who can carry out assessment reports be increased.

5.9. To the Council of Distinguished Bar Associations of Catalonia

a. The creation of a specific duty rota to deal with cases of institutional violence, made up of lawyers specialised in the defence of human rights. This is a necessary channel to attend to the specific needs that this kind of crime generates.

b. That specific training be given to the lawyers of the Criminal Court and Assistance to Detainees of the different Catalan Bar Associations in matters relating to the investigation of torture and other cruel, inhuman or degrading treatment or punishment.

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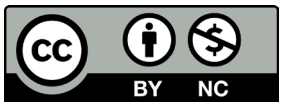

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Report on institucional violence 2020

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