REPORT ON INSTITUTOINAL VIOLENCE 2023

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Irídia_

2023

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About us

Irídia – Center for the Defense of Human Rights is a non-profit organisation that works to promote and defend human rights, especially civil and political rights. The aim of our work is to raise human rights standards as they apply to use of force by police, institutional racism, migration, historical memory, deprivation of liberty and the defence of civil liberties.

Our methodology is based on the combination of strategic litigation, psychosocial support, research, transformative communication and political advocacy, carried out using an intersectional feminist approach, in order to encourage changes in the practices and policies of public institutions, in legislation and in the legal precedent set by courts and tribunals.

Until 2022, Irídia's strategic litigation was largely channelled through one of our organisation's principal services: the Service for Attention and Reporting in Situations of Institutional Violence (SAIDAVI). Through this service, we provide legal representation in cases in which police officers, prison officials and private security agents – where the latter fulfil legally delegated duties in the provision of public safety – infringe the rights of individuals through the use of physical or psychological force, to the detriment of their physical and mental wellbeing and inalienable human dignity. This relates particularly to cases of torture and/or ill-treatment that occur within the criminal justice system. As such, our annual Reports on Institutional Violence have highlighted the work carried out under the umbrella of the Service, drawing attention to human rights infringements and making specific proposals for change addressed to the public authorities responsible, to one degree or another, for the issues involved.

Despite the progress made in recent decades in the investigation and prevention of torture and ill-treatment, these infringements persist in Catalonia, as do a host of practices and procedures, on the part of both the police and the judiciary, that hinder their eradication. Those which represent an erosion of civil liberties and limit the scope for grassroots activism and campaigning, such as infiltration by undercover police officers and the continued lack of sufficient mechanisms to eradicate it from police practice, are a particular cause of concern. Furthermore – and despite the remarkable work of dedicated organisations in Catalonia, as well as the advances made in legislation – the acts of torture committed by police forces during the Franco dictatorship remain unpunished.

The present report includes the main concerns arising from the different litigations in which Irídia has worked during the year 2023.

Following the approval of Irídia's Strategic Plan 2023-2025, the decision has been taken to introduce strategic litigation as a tool for change in these and other lines of work. Our objective is to ensure public authorities respect and uphold human rights and, where infringements may occur, provide mechanisms to guarantee justice, truth, redress and non-repetition. This is especially the case where human rights infringements are committed by those responsible for ensuring the safety of those living in Catalonia.

This current Report on Institutional Violence in Catalonia brings together the main concerns arising from the litigation which Irídia worked on over the course of the year 2023, and is divided into nine chapters. The first chapter provides information related to SAIDAVI and the cases dealt over this past year. The second chapter gathers information on the strategic litigation taken on both via the Service and in relation to Irídia's lines of work on historical memory and the defence of civil liberties.

The third chapter presents the main shortcomings in the oversight of police and security officers as observed between January and December 2023, while chapters four, five, six and seven summarise the most important aspects of Irídia's different lines of work over the same period. The final sections of the Report offer a series of good practices and recommendations addressed to a range of institutional actors.

Ahead of the content of the Report on Institutional Violence 2023, we wish to acknowledge those who have suffered such violence and who have decided to take the necessary step of speaking out and reporting it, so often in the hope that others are not affected. It is through these actions that it has been possible to encourage public debate and social and political intervention aimed at ensuring authorities take the steps required to provide redress for and eradicate these human rights violations. Lastly, we would like to thank all of Irídia's partners and associate members for their support, without whom our work would not be possible.

Interview at Irídia headquarters - Borja Lozano

01

Irídia's Service for Attention and Reporting in Situations of Institutional Violence (SAIDAVI)

1.1. What is SAIDAVI

The Service for Attention and Reporting in Situations of Institutional Violence (SAIDAVI) is a free service offered by Irídia which provides legal and psychosocial support to those who have suffered torture and/or ill-treatment in Catalonia at the hands of police officers, prison officials or private security personnel who carry out legally delegated duties in the provision of public safety.

SAIDAVI employs a comprehensive care methodology in handling these cases: it offers psychosocial and legal support to affected individuals, as well as seeking justice and redress. Depending on the circumstances, and if the person so wishes, cases can be handled as strategic litigation, with the aim of influencing and achieving changes in legislation and protocols, thus ensuring the recognition, upholding and safeguarding of human rights.

The service's work in engagement and advocacy seeks, in turn, to raise public awareness on issues surrounding the infringement of rights, with the aim of achieving truth, justice and reparation, and ensuring that guarantees of non-repetition are fulfilled. In other words, our team seeks official recognition of the damage caused and the corresponding accountability at all relevant levels, be they procedural or political. As such, we aim for the recognition and assertion of the rights of the individuals concerned, to restore their trust in society and its institutions, and to remedy the damage caused. The Service also works to champion the passing and putting into practice of measures to ensure both accountability for and prevention of such infringements, as a demonstration of solidarity with those affected on an individual or family level.

In 2023, SAIDAVI's team was made up of six lawyers, three psychologists, a technical coordinator and a director, in addition to two university students undertaking placements with Irídia. The members of Irídia's engagement and advocacy team and those working in the organisation's sustainability area also contributed to the Service.

Access to justice is first and foremost for the Service, which seeks to uphold the universal right to justice. For this reason, it is completely free-to-access for all members of the public. This requires significant human and economic resources which are met by private donations, the associate members of Irídia and other sources of private and public funding. In this regard, the contributions and donations made by members of the public continue to be an essential part of ensuring the sustainability and continuity of the Service, and were key in enabling the SAIDAVI team to provide support throughout 2023 in the cases detailed in the following sections.

1.2. The importance of combined psychological and legal support from the outset

The main objective of the initial support provided by SAIDAVI is to help the affected person overcome their sense of feeling lost and alone following the incident. With this in mind, a non-revictimising space is created in which the person can discuss their experience free of judgement, according to their emotional and other needs. For service users, the perception that their version of events is afforded both legitimacy and credibility forms a huge part of redressing the harm caused.

Institutional violence entails specific psychosocial effects, among the most significant of which are changes in the beliefs of those affected, their outlook on the world and on the criminal justice system, as well as in relation to impunity and revictimisation, not only on an individual but also on a collective scale.

These effects are often hidden, and those affected often do not associate their sense of malaise with how they were treated at the hands of the authorities, leading to misunderstanding of their emotional reaction or even going so far as to blame themselves. The presence of a psychologist from the first visit onwards allows us to place an emphasis on this, affording space to discuss the person's feelings and to observe how events have affected the different facets of their life (work, friends, finances, etc.), with consideration from an individual, family and community perspective. In addition, service users are provided with tools to manage their emotional difficulties, with the legal support offered to them informed by an appraisal of their psychosocial needs.

Legal advice is a fundamental resource in combatting feelings of helplessness and reducing anxiety in the face of an undertaking that the majority of the population know little to nothing about.

A combined psychological and legal approach enables joint work between lawyers and psychologists with the aim of ensuring that harm is minimised, redress is provided, and individuals' capacities as citizens active in the defence of their rights are strengthened.

The activities of the lawyer and the psychologist involved in the case are intertwined, and their work is carried out together to ensure the person's voice can be heard. The lawyer then undertakes an initial legal feasibility assessment, evaluating the evidence both available and required – video surveillance footage, for example – and the steps taken thus far. They also provide information to the person regarding their rights, how the criminal complaints process works, deadlines and procedures, and repercussions and alternatives. The psychologist helps the person to express and validate their emotions, paying attention to their verbal and non-verbal cues, and providing emotional support if necessary. In addition, they undertake an initial assessment of the psychosocial impacts of the case, sharing knowledge about these with the person, and explore the person's expectations and personal resources.

For those who have experienced institutional violence, their sense of control over their own life is often significantly undermined. Therefore, it is important that they are able to feel that options are available to them to choose from. The fact of being able to see oneself as an active participant in the process is, in itself, restorative. The person's needs and the availability of resources must be prioritised at all times to ensure a process which is both sustainable and capable of delivering redress.

As such, an appraisal of a range of non-judicial options is offered, including reporting the incident to the relevant ombudsman or public authorities, and providing support to the person should they choose to explore these.

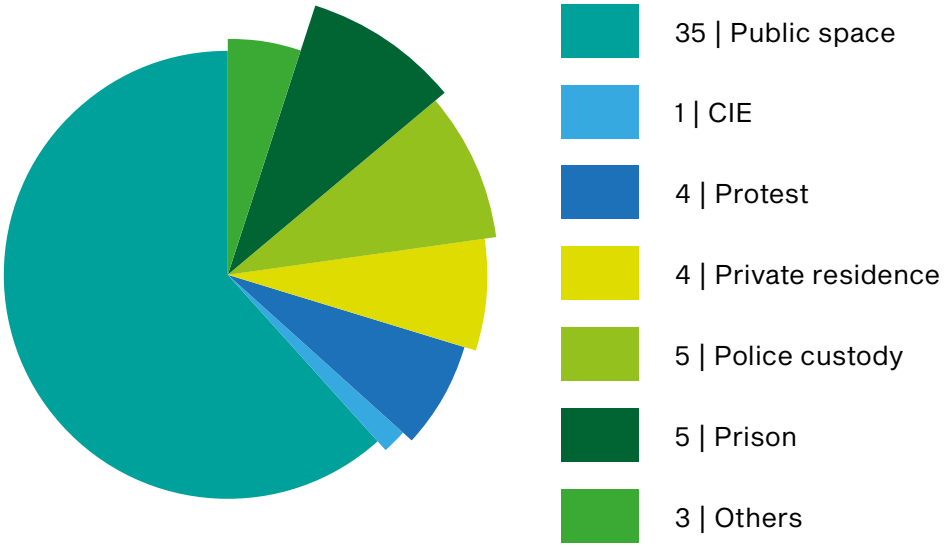
1.3. SAIDAVI service users in 2023

Over the course of 2023, **146 people turned to SAIDAVI to report cases of human rights infringements**. Of this total, **55 people and 2 groups had suffered institutional violence**, with their cases falling within the scope of the Service; the rest, where appropriate, were referred to other organisations and services for support. Where appropriate in the cases taken on by the Service, an initial psycho-legal interview was carried out, with legal advice and psychosocial support provided, in addition to and engagement and advocacy work. In the case of persons deprived of liberty, visits were made to prisons and the Immigrant Detention Centre (CIE) located in Barcelona.

Of the 55 people affected, 20 were women, 34 were men, and one of unrecorded gender. In terms of the age of those to whom support was provided: one was under the age of eighteen at the time of the events in question; 24, between eighteen and thirty-four years old; 16, between thirty-five and sixty-four years old, in addition to a further 14 whose age is unrecorded, with support having been provided by telephone without request for this information, insofar as it was considered irrelevant.

Of the 57 cases dealt with, 35 concerned the conduct of police or private security officers in public spaces; 5, human rights infringements in prisons; 5, in police custody; 4, in private residences; 4, during protests and demonstrations; one, in the CIE, with 3 further cases arising in other circumstances.

In at least 13 of the cases handled in 2023, discriminatory conduct on the part of police was identified during initial consultation: in 9 cases, this concerned racism; in 3, LGBTI-phobia; in one case, both, and in one further case, on grounds of the person's physical disability. It is nevertheless important to note that often, for a variety of reasons, those affected do not discuss the discrimination they have faced at the outset of the support process and, as such, the real figure may be higher.



Cases handled in 2023 according to the context in which they occurred

Source: Authors' work, based on data from the SAIDAVI database

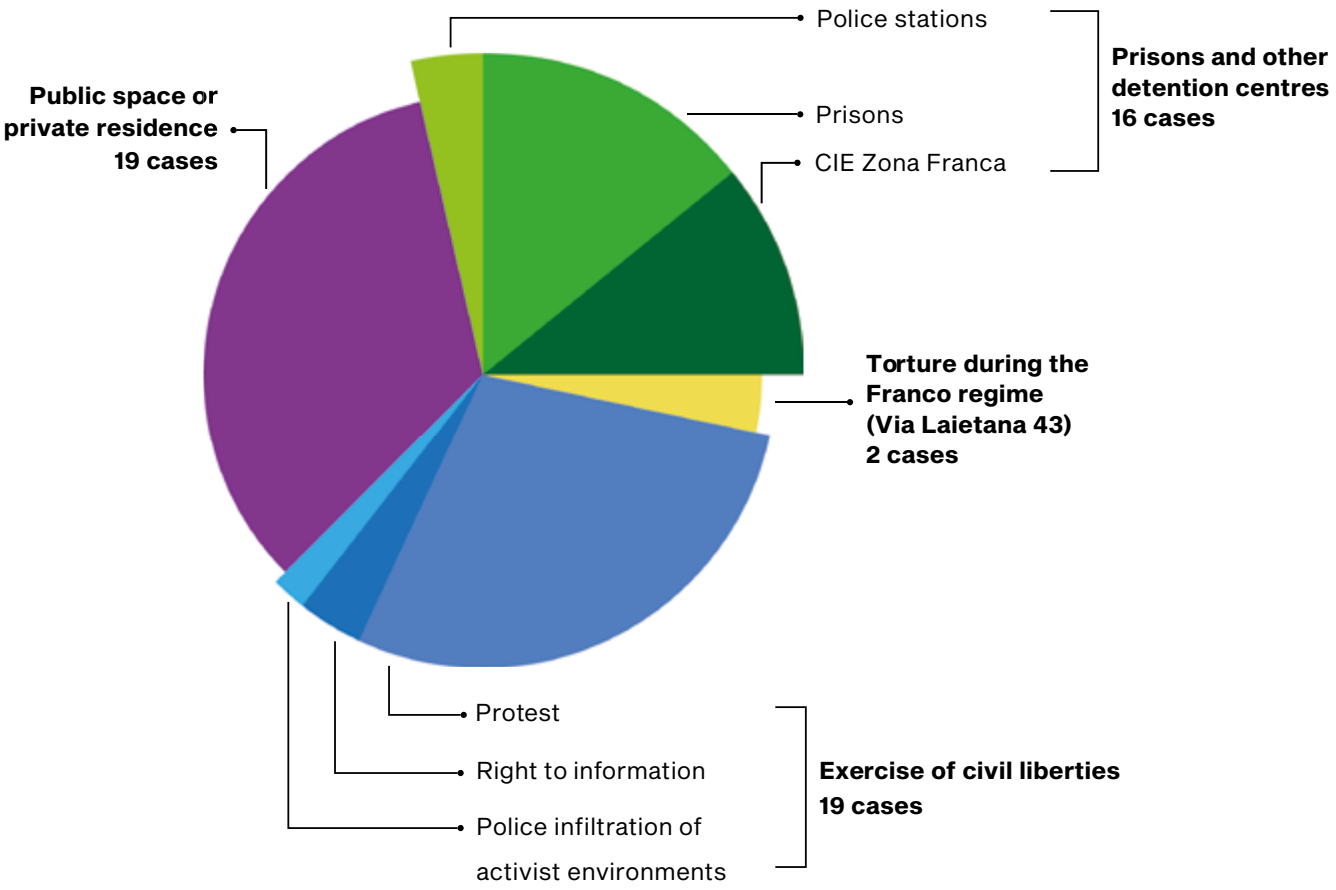
02

Strategic litigation and institutional violence

2.1. What is strategic litigation?

Strategic litigation is the identification and prosecution of cases of rights violations as a means of defending human rights. Based on an individual case, the aim is to bring about broader social change. Strategic litigation is therefore a tool for prevention and non-repetition through which oversight and accountability mechanisms can be established, in order to ensure effective redress and the state's compliance with its obligations to provide this.

From a psychosocial perspective, it is important that the affected person feels supported throughout the judicial process, in order to avoid revictimisation and reduce the distress that can arise from this. Irídia places the affected person at the centre of the litigation, working with them and those around them to achieve positive and lasting social change, upholding their right to truth, justice and redress as a central pillar of this work.



Litigation brought by Irídia during 2023 according to context

Source: Authors' work, based on data from the SAIDAVI database

2.2. Litigation carried out by Irídia

Irídia took on a total of 56 cases as litigation in 2023. These are detailed below according to the context in which they occurred:

During 2023, 7 of these 56 cases came to a close; as such, by the end of the year, 49 cases remained open. Of these, 9 were first taken on in 2023. These include 3 cases concerning rights infringements in public spaces, 3 concerning the exercise of civil liberties, 2 concerning detention and imprisonment, and one concerning historical memory. The remaining 40 cases were taken on in previous years, with judicial proceedings continuing into 2023: one of these cases was first taken on in 2016; 4, in 2017; 4, in 2018; 9, in 2019; 7, in 2020; 8, in 2021, and 7 in 2022.

20 of the 49 cases relate to instances of racism, in terms of explicit comments, conduct by police officers, or the wider context of institutional racism. This represents 40.81% of the total, an increase compared to the previous year, in which racist discrimination was identified in 33.33% of cases.

It is considered noteworthy that in 20 of the 49 cases, there is a racist component, either because there is explicit verbalization, or because the manner in which the police action was carried out is racist, or because the events occurred in a context of institutional racism. This is in 40.81% of the cases, indicating an increase with respect to the previous year, when the racism component was identified in 33.33% of the cases.

Of the 49 cases, 42 resulted in a criminal complaint being brought, with the remaining 7 resulting in claims for damages against the Government of Catalonia and/or the Spanish Government.

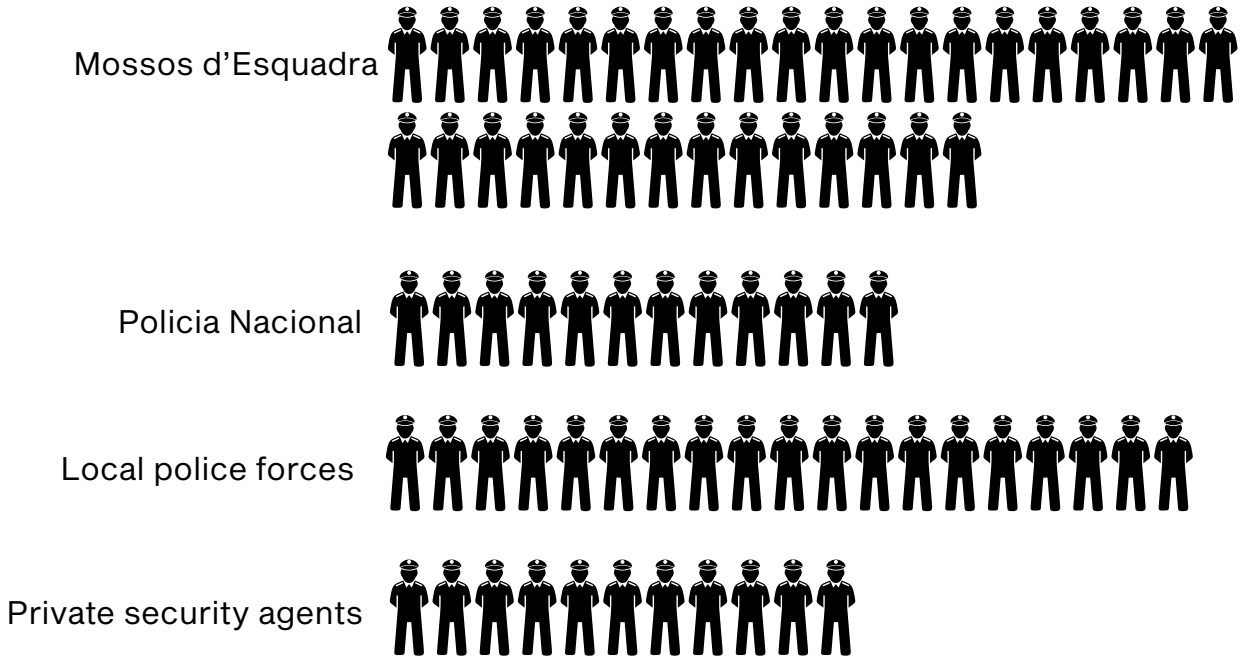
Of those against whom a criminal complaint was made for involvement in the incidents which motivated legal action in which Irídia provided representation to those affected and/or acted as a third-party litigant in the public interest, a total of 156 were police officers or security personnel. Of these, 82 are or were placed under investigation, with 34 belonging to the Mossos d'Esquadra (Catalan police), 12 to the Policía Nacional and 19 to local police forces, in addition to 10 prison officials and 7 private security guards. Cases have been brought against 74 officials, who are now awaiting trial or formal charges being brought against them. This figure includes 14 Mossos d'Esquadra officers, 51 Policía Nacional officers, 4 officers from local police forces, and 5 private security agents.

Perpetrators charged in cases brought by Irídia

Source: Authors' work, based on data from the SAIDAVI database

156 agents or officials charged in a criminal proceeding

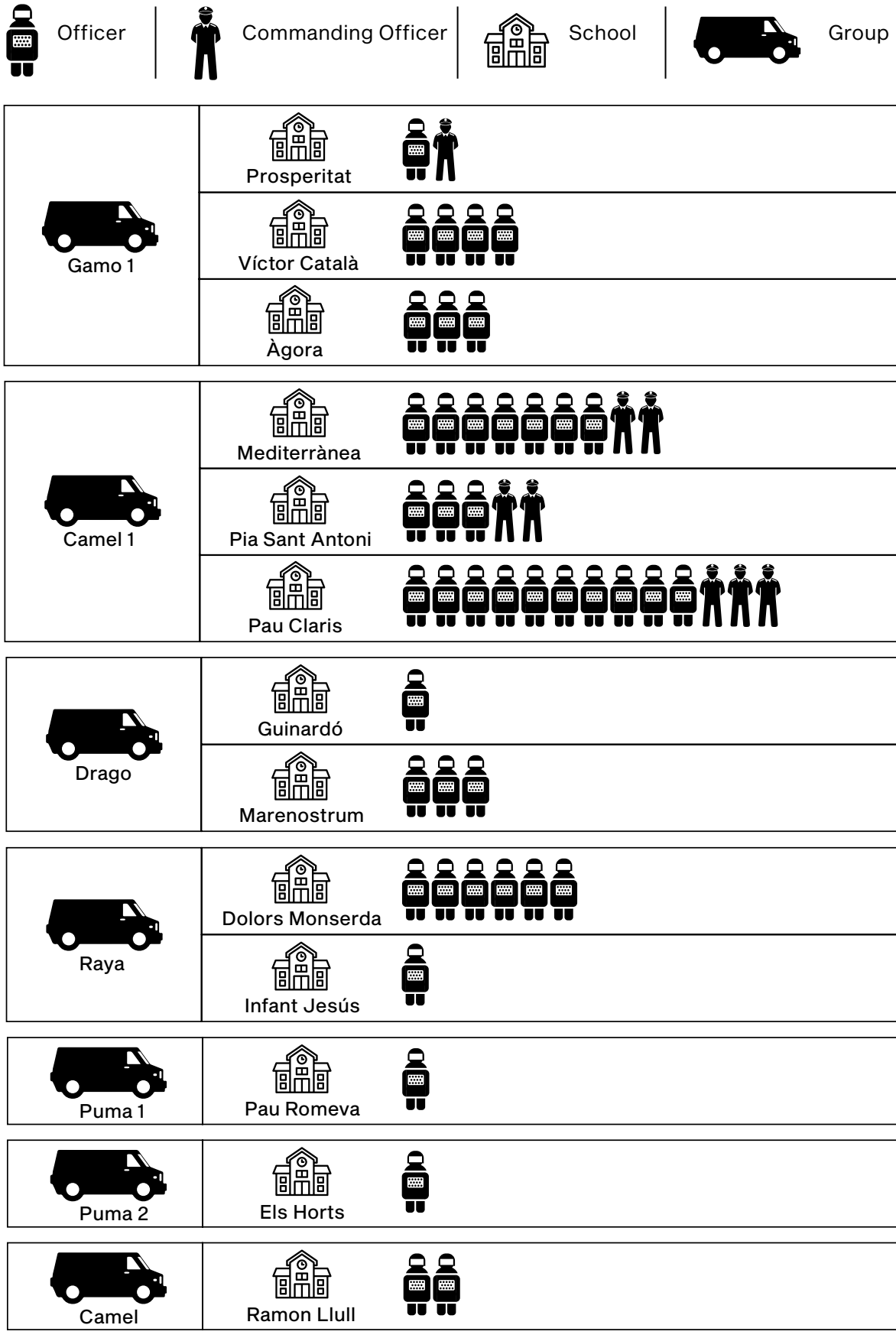
82 perpetrators investigated:



74 perpetradors acusats o en tràmit d'acusació :

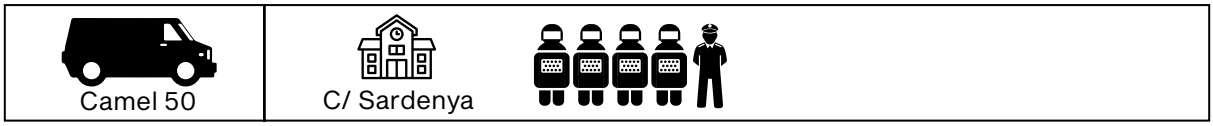
Number of agents involved in the primary proceedings concerning the 1st of October case, against whom formal charges have been brought pending trial.

Source: Authors' work, based on data from the SAIDAVI database



Number of officers involved in the Carrer Sardenya investigation (affected parties: Roger Español and others) against whom formal charges have been brought pending trial.

Source: Authors' work, based on data from the SAIDAVI database



2.3. Milestones in strategic litigation

The following milestones highlight the progress made over the course of 2023 in the legal action taken:

1 Reopening of cases

The Provincial Court upheld the appeal filed by Irídia in two cases, ordering them to be reopened after they had been dismissed without full investigations having been carried out.

2 Closure of judicial investigations resulting in cases proceeding to pre-trial phase

During 2023, investigating judges considered that there were sufficient indications to continue to the pre-trial phase in six of the criminal complaints brought.

3 Trial

In three cases, formal criminal charges were brought by the courts and a date for trial set.

4 Sentencing

In 2023, the sentence handed down – although it did not bring about a criminal conviction, owing to the lack of appropriate action taken by the authorities – upheld the version of the victim, which had been denied by both the Mossos d'Esquadra officer accused and their command officer, and by the Government of Catalonia itself.

5 Identification

An officer responsible for firing foam rounds was identified for the first time.

03

Lack of police accountability in Catalonia

The **absolute prohibition of torture** includes the duty of the state to prevent cases of torture1 and ill-treatment[2] from occurring, and to seek prosecution should they occur. This obligation also entails the duty to legislate for and implement effective oversight of police and other security forces[3].

The whole or partial absence of such oversight is the root of **impunity**. Impunity arises when instances of human rights infringements go uninvestigated, perpetrators are not held accountable, and appropriate redress is not available to those affected[4].

Criminal prosecution is an essential part of ensuring accountability in cases of institutional violence, and of addressing the impact caused by such violence. Wherever there is a lack of investigation into and/or dismissal of a criminal complaint – as a result of the impossibility of identifying the agents involved, or due to negligence in the custody of video surveillance footage, for example – the right to a fair trial of those affected is infringed, resulting in revictimisation that can cause serious psychosocial harm. On top of the suffering caused by the violence itself, such impunity gravely undermines a whole host of beliefs and values, and in turn undermines public confidence. In the long run, this results in the chronification of the psychosocial effects of human rights infringements, hinders survivors' coping mechanisms and inhibits the processing of grief and memory that is needed to recover from the initial damage done.

1 The obligation to carry out a full and thorough investigation is the means by which the rights to life and the prohibition of torture, as well as the right to effective remedy, are protected by law. (Articles 2, 3 and 13 of the ECHR, the application and interpretation of which can be found in a considerable number of rulings issued by the European Court of Human Rights). There are several protocols and guidelines for the carrying out of proper investigations, such as the Minnesota Protocol, the Istanbul Protocol, the Nelson Mandela Rules, the Bangkok Rules and the Berkeley Protocol. These practical guides are complemented by a range of legal texts, jurisprudence and the doctrine of international and regional bodies that set out the basic principles governing the effective gathering of documentation and investigation.

2 In the exercise of their duties in enforcing the law, state institutions (including the police, prisons, and private security companies performing public safety duties) are bound by two rights crystallised in various international and regional treaties and declarations: the right to life and the prohibition of torture and cruel, inhuman or degrading treatment or punishment (inter alia: the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. In this regard, the HRC has specified in General Comment no. 20 that the prohibition of torture and ill-treatment "relates not only to acts that cause physical pain but also to those that cause mental suffering in the victim". Human Rights Council, Joint report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the proper management of assemblies (A/HRC/31/66) (United Nations, 4 February 2016). Available at: https://undocs.org/en/A/HRC/31/66.

3 The purpose is to ensure that those responsible are held to account and disciplined, combatting impunity and offering elements for review of the practices employed, and that improper practice is not repeated (among others: United Nations Economic and Social Council, Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions -1989/65- of 24 May 1989, par. 9. Available at: https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/executions.pdf).

4 International human rights law recognises the right of victims of human rights violations to effective remedy, and this is enshrined in the majority of international and regional treaties (Article 2 of the International Covenant on Civil and Political Rights; Articles 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 16 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 39 of the Convention on the Rights of the Child; and, Article 13 of the European Convention on Human Rights). This right includes the right to equitable and effective justice, adequate, effective and prompt redress, and access to information regarding their case and the redress mechanisms available. Several international bodies have placed special attention on victims and have stipulated the importance of their protection, as well as redress and participation in the course of investigations (among others: Declaration on the Fundamental Principles of Justice for Victims of Crime and Abuse of Power -A/RES/30/34-, United Nations, 29 November 1985). See par. 4-7, and Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 13

Oversight and accountability are also essential for the prevention of torture and ill-treatment. It must be borne in mind that one of the main causes of misuse of force, torture, ill-treatment or death in police custody is impunity. In the words of the Special Rapporteur on extrajudicial, summary or arbitrary executions, this entails "the failure to properly investigate, prosecute, convict and punish police responsible for extrajudicial executions or other human rights abuses"[5].

In light of the above, this report will proceed to detail and analyse the shortcomings in police oversight and accountability detected in 2023, focusing on internal oversight and investigation and, specifically, the identification of officers and their hierarchical superiors. It will also address the role of the Public Prosecutor's Office and the courts in hampering the provision of legal support, as well as the ponderousness of legal proceedings, deportations and the Istanbul Protocol.

5 Philip Alston, Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Study on police oversight mechanisms (A/HRC/14/24/Add.8) (United Nations, 28 May 2010), p. 16.

3.1. Internal oversight of police forces

Case title: **Use of taser resulting in death**

Location: **Badalona**

Case summary:

On 26 November 2021, A.C. 's mother called the emergency services to report that her son was in a serious state of agitation at their home in Badalona. A.C. was inside a locked room, alone, and in possession of two knives. Operators dispatched an emergency medical services team and Mossos d'Esquadra officers, with a number arriving at the property where A.C. and his mother were. A.C.'s altered state was a result of an underlying and already-diagnosed mental health problem both certified in his medical records and known to the officers dispatched on the day, since it was not the first time that emergency services had been sent to respond to an incident involving A.C. Despite this, it was the police rather than the medical professionals who entered the property, without any attempt being made to deescalate the situation through discussion with A.C. and the provision of in situ psychological support.

During the response, a total of six electrical shocks were made using a Conducted Energy Device (CED).

The agent in possession of the CED applied two initial shocks as a means of incapacitating A.C., each of these lasting five seconds, after which he fell to the ground. The agent then applied two further shocks, at which point the knives were removed from A.C.'s possession and he was physically restrained. Finally, with A.C. passive on the ground and several officers applying physical restraint, two more shocks were applied, resulting in a total of six being made.

As a consequence, A.C. went into cardiorespiratory arrest within the property and was transferred to hospital, where he died the next day.

In the police report, the Mossos d'Esquadra officers stated that they had suspicions that A.C. was under the influence of narcotic substances, since they knew that he was a habitual user of drugs.

Details for consideration:

- A.C.'s mother sought criminal charges in the wake of the death caused by use of CED in order to ensure a full and thorough investigation. Nevertheless, the charges were dismissed and the case closed a year later, without the necessary steps having been taken to clarify the facts and seek accountability.
- In its ruling dated 22 September 2023, Section 8 of the Provincial Court of Barcelona upheld the appeal filed by Irídia and agreed to reopen proceedings, urging that a full and thorough investigation be carried out.
- The ruling pointed to serious deficiencies in oversight of police conduct, especially with regard to the internal report provided by the Mossos d'Esquadra, which the Provincial Court considered to have failed to analyse the specific circumstances that led to the use of the CED, and the need and appropriateness of said use.
- The autopsy report concluded that the death of A.C. occurred following CED discharge, which resulted in a series of physical effects to a person who was in a state of agitated delirium and had consumed psychoactive substances.

This case serves to demonstrate, even where police conduct results in death, the lack of an adequate internal investigation and accountability sought by hierarchical superiors. It also shows how these shortcomings in oversight and accountability have a real impact on the right to justice and redress of those affected, going so far as to lead to the closure of a criminal investigation without basic investigative procedures having been carried out. As a result, family members have been unable to find answers, support or any form of redress, either from those responsible or from the authorities, more than two years after the death of A.C.

The Spanish Constitution sets out the mission of the country's police and security forces as involving the "protection of the free exercise of rights and liberties and the guaranteeing of the safety of citizens"[6]. The use of force by the police is governed by comprehensive legislation and regulated according to the basic principles of action[7] set out in the range of different laws covering police forces. The police are bound by legislation **to uphold the principles of consistency, appropriateness and proportionality** in the use of the force at their disposal[8], and to "ensure the physical welfare and safety of those they detain or who are in their custody and uphold [their] honour and dignity"[9]. These principles also demand "the fulfilment of their duties with absolute political neutrality and impartiality and, consequently, absent of any discrimination based on race, religion or opinion"[10], and the prevention of "any abusive, arbitrary or discriminatory practice that entails physical violence or broader abuse"[11]. In addition, the police are bound by the various regulations that constitute international human rights law, which sets out basic standards and principles of action in the use of force.

The highlighted case is an example of how, even in a police action resulting in death, there is a lack of control by hierarchical superiors and a deficient internal police investigation.

Internal oversight is that which is set within police forces themselves. As a system, this normally functions on the basis of an internal chain of command, internal reporting and investigation systems, as well as disciplinary frameworks for the punishment of officers' conduct which runs contrary to regulations. The proper functioning of internal oversight is essential in precluding impunity, insofar as it enables access to restricted information and ensures the establishment of facts and accountability from the very beginning of the events, in addition to preventive measures and the guarantee of non-repetition. As such, this section of the report focuses on the deficiencies detected with respect to internal oversight, based on the litigation undertaken over the course of 2023.

6 Article 104.1 Spanish Constitution.
7 As laid out in the Policing Act and, in the case of Mossos d'Esquadra, in Act 10/1994 11 July and subsequent legislation.
8 Section C, Art. 5.2 LO 2/1986.
9 Section B, Art. 5.3 LO 2/1986.
10 Section B, Art. 5.1 LO 2/1986.
11 Section A, Art. 5.2 LO 2/1986.

3.1.1. Identification of BRIMO, ARRO and public safety unit officers

Between September and December 2023, on at least eight occasions during the course of protests and related events, a significant majority of the Mossos d'Esquadra officers on public duty failed to properly display their Police Operational Number (NOP, in Catalan) on the back of their protective gear or uniform, or – in the case of public safety unit officers – had their unique identification number hidden under their bulletproof vest.

Ruling 8/2020, dated 16 October, *concerning the use of the Police Operational Number by riot police (BRIMO) and officers belonging to the Regional Areas of Operational Resources (ARRO)*, was a step forward in that it stipulated that the identification number of officers engaged in public order duties should be visible from all angles (from the front, back and on both sides of the police uniform). The aforementioned ruling was issued following pressure from grassroots activists and human rights organisations who had for years raised concerns regarding the need for officers to show identification not only on the back but also on the front of their protective clothing and helmets, and to ensure that this was both visible from a safe distance and easy-to-remember, by use of a short code.

As mentioned in last year's report, as a result of Ruling 3/2022, dated 28 April, this measure was also extended to ARRO officers, given their involvement in the fulfilment of public order duties in conjunction with BRIMO officers. Although this particular ruling came into force in 2022, the obligation to display the NOP on the back of police uniforms dates back to 2013, and is stipulated in Ruling 16/2014, dated 4 September, in which the technical characteristics of the NOP of officers attached to the BRIMO and ARRO divisions were set out.

In addition, on 8 February 2022, the Catalan Ministry of Home Affairs reported that the roll out of the new NOP to all public order units of the Mossos d'Esquadra force had been completed and that, by mid-March 2022, all ARRO personnel would also carry this new identification number. It was claimed that the officers would be able to be identified using this new number when fulfilling public order duties, during the course of which, owing to operational necessity, they would be required to wear protective clothing that impeded the visualisation of their unique professional identification number (TIP).

One of the safeguards to ensure prevention of and accountability in cases of excessive use of force by police officers is **proper identification**. The fact that the NOP or TIP of officers performing public order duties are not visible constitutes a serious breach of current regulations and renders it impossible to identify the officers in question (one of the root causes of impunity). In at least four of the eight cases identified, use of force was made by Mossos d'Esquadra officers.

The Mossos d'Esquadra was the first police force to ensure the visibility of officers' identification numbers within a **360°** radius, making it a pioneer and exemplary in comparison to other police forces in Spain. As such, it is only proper that the force continues to take steps forward in ensuring greater transparency and respect for human rights, in order to guarantee public trust. For this reason, measures must be taken to ensure that previous cases are not repeated, as well as to comply with existing regulations that dictate that the NOP be visible within a 360° radius and at a distance of at least 1.2 metres. This also covers the TIP in the case of public safety officers.

Police acting without proper identification at a demonstration in support of the Palestinian people, 27 November 2023 - Àxel Miranda

3.1.2. Commanding officers

The principles of hierarchy, subordination and that obeying orders cannot act as justification for criminal conduct are among the basic principles governing the actions of the police in Spain[12]. It is important to note that, in terms of responsibility, the current disciplinary framework governing the Policía Nacional, the Mossos d'Esquadra and local police forces is clear in that "those who cover up the commission of a very serious or serious offence, and superiors who tolerate it, shall also be considered to have committed an offence, lesser in degree"[13]. In the case of crimes involving torture or which otherwise contravene a person's inviolable right to dignity as set out in Spanish law (integridad moral), the offence is considered as being of the same degree for the purposes of punishment[14]. As such, existing legislation censures and punishes the participation, by action or omission, of hierarchical superiors in the criminal conduct of officers under their command. This responsibility on the part of commanding officers in relation to both their own actions and those of the officers under their command is total as regards the use of force.

Firstly, they must ensure that the planning of police operations is made according to governing principles, among which the principle of precaution is particularly noteworthy. This means that "law enforcement operations and activities are to be planned and conducted while taking all necessary precautions to prevent or at least minimize the risk of recourse to force by law enforcement officials and members of the public, and to minimize the severity of any injury that may be caused"[15].

Secondly, during operations, commanding officers are responsible for ensuring that the principle of necessity is met[16]. Thirdly, commanding officers are obliged to take action in the case of conduct by officers under their command which may constitute an offence or breach of duty, reporting this to their respective commanding officers and/or to the body responsible for internal oversight.

Failure to do so by commanding officers renders accountability extremely difficult, and in many cases means that judicial investigations are unable to proceed when the officer who has committed a criminal offence cannot be identified. This is the reality which Irídia has faced in the action we have taken concerning institutional violence exercised by police forces. Indeed, **in not a single case among the 37 cases** brought against the police **has a commanding officer identified the acting officer concerned**. Moreover, there is no record **of any formal internal investigation having taken place as a result of a report by the commanding officer in any of the cases in question.**

Through Irídia's work, it has also become clear that, on occasion, commanding officers not only fail to exercise their legal duties to provide oversight, but in fact act in 'defence' of officers who are under investigation or on trial.

12 Art. 5.1 Section d) LO 2/ 1986 and Art. 11 Act 10/1994.

13 Art. 5 LO 4/2010 and Article 71 Act 10/1994.

14 This is provided for in article 176 of the Criminal Code, which establishes that "the penalties, as respectively established in the preceding Articles [relating to such offences committed by public officials] shall be imposed on the authority or officer who, in breach of the duties of his office, were to allow other persons to perpetuate the deeds foreseen therein". LO 10/1995, 23 November, Criminal Code.

15 Office of the United Nations High Commissioner for Human Rights. Guidelines; paragraph 2.6

16 This determines that police officers may only use force when strictly necessary and to the extent required for the performance of their duties, using only the minimum unavoidable force for the legitimate purpose of law enforcement, and ceasing to do so when such use is no longer necessary. This would appear to suggest that, in enforcing the law, no reasonable alternative to the use of force exists in such circumstances. As such, officers should try to deescalate situations by, among other things, seeking to peacefully resolve them whenever possible. (Office of the United Nations High Commissioner for Human Rights. Guidelines; paragraph 2.9.).

Case title: **False complaint and testimony by Mossos d'Esquadra officers in contravention of the fundamental right to information and the safety of journalists**

Location: **Barcelona**

Case summary:

The events in question date back to 25 May 2016, during a demonstration in the Gràcia neighbourhood of Barcelona at which the journalist Jesús Rodríguez was injured by an officer, while another police officer suffered a rupture of their Achilles tendon, for which a criminal complaint was brought against the journalist Isidre García.

The case against Isidre Garcia was brought rapidly, with a trial held in March 2019. Garcia was accused of throwing a piece of fencing at the officer in question, for which prosecutors demanded a sentence of 4 years in prison and damages of 69,055 euros. Over the course of the trial, it was proven that no one had thrown any fencing against the officer, and that their injury was a consequence of a preexisting condition affecting the tendon, and unrelated to any blow suffered that night. This informed the judge's decision to absolve Isidre Garcia of any offence, which was made final after the officer's legal team chose not to appeal.

Despite this unequivocal acquittal, two years later, the same officer – this time in conjunction with Sergeant TIP 7828 – again alleged that they had been injured that night as a result of the impact of a piece of fencing thrown by a man wearing a reflex camera hanging around his neck. On this occasion, the officers testified as witnesses for the defence, in order to exonerate another officer who had been accused of striking Jesús Rodríguez. This was in spite of the officers being instructed of their obligation to tell the truth, the existence of a final ruling which established that no one had thrown any fencing at them, and the fact that their injury had nothing to do with any impact on the night in question.

Despite efforts to see them exonerated, the BRIMO officer was sentenced to 2 years in prison, in addition to suspension from police duty and disqualification from holding office for the duration of the sentence.

In 2023, Irídia filed a complaint against officer TIP 2208 and sergeant TIP 7828 for lodging false criminal complaint and providing false testimony against Isidre Garcia, and for false testimony against Jesús Rodríguez. This complaint has been upheld pending investigation.

Details for consideration:

- The Mossos d'Esquadra officers are under investigation for allegedly lodging a false criminal complaint and false testimony.
- This case involves journalists carrying out their work during a demonstration. As such, the events in question have an impact which goes beyond the individual sphere, and directly concerns the right to information.
- This serves to highlight the current risk to the fundamental right to information, and to journalists' safety especially, as well as the need to protect their professional role as "watchdogs of democracy".

3.1.3. Role of internal police investigations and disciplinary divisions

An essential part of internal police oversight are the divisions responsible for ensuring the investigation and punishment of police malpractice in an **impartial, timely and exhaustive** manner. Their effectiveness and transparency offer a positive contribution to public trust in the police[17]. By contrast, any lack of action, effectiveness or transparency shown by these divisions bestows a significant sense of impunity where police misconduct is concerned, both in terms of public perception and that of police officers themselves.

In the case of the Mossos d'Esquadra, 2023 saw reform of internal disciplinary procedures, with the Internal Affairs Division replaced by the General Commissariat for Internal Investigation and Disciplinary Affairs[18], reporting directly to the Directorate General of Police. This Commissariat is responsible for ensuring the prevention and investigation of alleged activities of an illegal nature or contrary to the values and professional ethics of the force which could incur disciplinary or legal action; gathering confidential information and establishing the identity of the alleged perpetrators; supporting the General Directorate and the rest of the police forces which form part of the Police System of Catalonia in disciplinary matters; overseeing disciplinary investigations; applying disciplinary measures, and monitoring criminal proceedings where police personnel are involved.

This oversight can be carried out ex officio or at the request of police command, as well as in response to complaints or grievances filed by members of the public or other organisations.

In the majority of legal cases concerning the Mossos d'Esquadra to which Irídia was party in 2023, no internal investigation into the matters subject to judicial investigation had been carried out. The primary obstacle in ensuring justice in such cases arises where the investigating judge denies Irídia's application to the court to request that the Directorate General, the Internal Affairs Division or hereupon the General Commissariat confirm before the court whether or not any internal investigations have been carried out or any disciplinary measures drawn up with respect to the officer or officers under investigation. Such applications have been repeatedly denied on the understanding that said confirmation is not relevant to investigations.

This control task may be carried out ex officio or at the request of the superior, as well as by complaints or denunciations filed by citizens or by other institutions.

One procedure which has been agreed upon is to request the Mossos d'Esquadra to provide specific information on the operation or action which is the subject of complaint. Nevertheless, **in certain cases, significantly less information has been provided than that which was requested by the court.** In others, **the same unit to which the officer under investigation belongs has handled the request**, in lieu of the department responsible for internal investigations[19]. Indeed, the Internal Affairs Division (hereupon the General Commissariat), where requested to provide information or carry out an investigation, has focused more on the conduct of the complainant than on the identification and/or investigation of the officer or officers against whom the complaint has been made.

It is both worrying and indicative of the above that **in only 13 of the 37 legal cases involving police officers underway in 2023 had some form of internal investigation**

17 Goldsmith, A. (2005). Police reform and the problem of trust. Theoretical Criminology.

18 Art. 146 DECRET 57/2023, de reestructuració de la Direcció General de la Policia, https://dogc.gencat.cat/ca/document-del-dogc/?documentId=955582 (in Catalan)

19 Art. 152 and 150, DECRET 57/2023, de reestructuració de la Direcció General de la Policia, https://dogc.gencat.cat/ca/document-del-dogc/?documentId=955582 (Catalan)

been carried out. Of these, in only **4 cases had investigations been initiated ex officio**, with the rest occurring only following a court order. **In 12 cases, the investigations concluded that the perpetrator could not be identified or that no criminal conduct** had taken place. In only one case were the **minimum requirements of a sufficient and thorough investigation** into the events and those responsible met.

It is particularly worrying that, **in 10 of these cases, the internal investigation focused more on the supposed improper conduct of the complainant than on that of the accused officers.** In addition, **internal disciplinary measures were taken in only one case** while investigations were underway.

Case title: **Loss of testicle (male, 18 years old) following foam round impact**

Location: **Carrer de la Fusteria, Barcelona**

Case summary:

In December 2018, an 18-year-old boy was struck by a foam projectile launched by a BRIMO officer during a demonstration against the Council of Ministers of the Spanish Government being held in Barcelona. The impact caused him serious injury that required emergency surgery, eventually resulting in him losing a testicle.

Details for consideration:

- Once the complaint was filed, and at the request of the prosecution, the court called the Directorate General of Police to provide information. The Internal Affairs Division, acting at the time, provided visual evidence recorded by officers at the time of the injury, as well as reports in which five firearms officers were identified, but refused to identify the officer responsible for firing the shot in question.
- Irídia, with the assistance of an external expert, analysed the same evidence provided and managed to pinpoint both the shot and the officer.

All in all, t**he internal investigations carried out by the police are not sufficiently thorough**, even when the sanctioned use of force is concerned, including the use of highly dangerous and potentially lethal weapons. It remains to be seen whether the restructuring of the General Directorate of Police carried out in 2023 brings with it any improvements in the internal investigations carried out by the Mossos d'Esquadra.

3.1.4. Private security

Private companies are playing an increasingly significant role in providing security in public spaces. Private security guards are present in many public-facing roles – particularly on **public transport** – and, on more than a few occasions, have resorted to use of force. The outsourcing of security services by public authorities, in many cases with the aim of reducing costs, raises multiple problems from a human rights perspective, including the difficulty in establishing effective public oversight, opacity in terms of the contractual agreements made with private security companies, and the lack of training of private security personnel in matters related to human rights and the principles guiding the use of force.

In recent years, an increasing number of individuals have approached Irídia to report having been victims of violence at the hands of private security personnel. This is particularly worrying given that **the prohibition of torture and ill-treatment is absolute and applies both to public officials and any other person acting in a public capacity** at the instigation or with the consent or acquiescence of said officials[20].

To this end, it is essential that the relevant authorities ensure oversight and accountability in cases of malpractice by private security personnel carrying out these duties. This includes ensuring transparency in the rules and regulations governing the actions of private security guards and companies, and their use in public services and spaces.

In Spain, the use of private security to fulfil public safety duties is regulated by nationwide legislation, specifically, by the Public Procurement Act and the Royal Decree 3/2020, which concern both procurement by public authorities and the outsourcing of services. The activities which can be undertaken by private security companies are regulated by the Private Security Act 5/2014 and the Royal Decree 2364/1994, the latter lapsed since 2014. Further legislation also exists in Catalonia, in the form of the Code of Practice for Private Security Services, published as part of Resolution INT/671/2017 on 27 March 2017. Jurisdiction over this matter therefore lies with both state and regional authorities. Nevertheless, powers relating to the authorisation, inspection and oversight of private security activities carried out in Catalonia, and the taking of disciplinary action in cases of infringement, lie with the Government of Catalonia.

The aforementioned regulations do not specifically sanction the use of force by private security personnel, and refer only to the guiding principles[21] and protocols[22] limiting this activity. As such, these regulations are thoroughly inadequate when it comes to ensuring proper accountability in case of malpractice and existing self-regulation and oversight.

The lack of transparency concerning the current protocols governing the use of force, weapons, detention, handcuffs and communication of incidents to the police by both private security companies and the authorities has led to a situation of impunity. Currently, the only means of accessing the content of these protocols is through a court order, since – despite the requests made by human rights organisations – the General Directorate of Police has refused to make them public.

For the first time in our litigation involving private security, Irídia was able to access one of these protocols in 2023. This is the "Procedimiento Operativo Multipunto" (Multipoint Operating Procedure) which, very succinctly, establishes a series of obligations that private security personnel must comply with, in this case, when carrying out duties for the national rail network (RENFE). Among these, private security personnel are obliged to fill out a service report known as a "Parte de Servicio". They are also obliged to fill out a "Hoja de Incidencia", or incident report, that must accompany the service

20 Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, in force since 26 June 1987 and ratified by Spain.
21 Article 8 of the Private Security Act 5/2014, 4 April.
22 Article 30 of the Private Security Act 5/2014, 4 April.

It is necessary to improve the supervision and control of private security companies and personnel to ensure that abusive and discriminatory behavior is duly investigated and sanctioned.

report following notification to and intervention by the so-called C24H – 24 Hour Security Centres – should any incident take place. In each and every one of our cases concerning private security personnel, as part of the force's own investigations into events, the Mossos d'Esquadra failed to request either of these forms.

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

Lastly, particular attention should be paid to the failings of police officers in their engagement with private security personnel in instances where force is used or a detention is made by said personnel. In such circumstances, it is essential that officers take statements from both parties involved – including as part of a criminal complaint, if the person affected wishes to make one, or if it appears that an offence has taken place – in addition to taking all steps necessary to clarify the facts, such as the immediate requisition of video surveillance footage, the request for medical reports or the submission of a police report which includes any and all evidence constitutive of the offences of causing injury or unlawful detention, the latter in view of any breach of acting guidelines by private security guards.

3.2. Role of the Public Prosecutor's Office

The Public Prosecutor's Office plays a key role in the Spanish criminal justice system. Its duty is to instigate judicial action as means of upholding the rule of law, the rights of the citizenry and the public interest. In criminal proceedings, its role is to push the judiciary to take the appropriate precautionary measures and carry out investigations aimed at clarifying the facts of each and every case, identifying the perpetrators of any offence, as well as ensuring the protection of victims whether or not they are represented by the prosecution. Indeed, the Public Prosecutor's Office's reluctance when it comes to cases of torture and ill-treatment contrasts with its enthusiasm in prosecuting other alleged offences, many of which are not the focus of any private prosecution.

Article 3 of the Statute of the Public Prosecutor's Office establishes its duties across the range of existing jurisdictions. Among these is ensuring the **protection of victims and injured parties,** and the provision of aid and assistance to them. Nevertheless, in many of the cases in which Irídia has provided legal representation, the Public Prosecutor's Office – far from fulfilling its duties as a guarantor of the public interest – has failed to act or has even acted against the person who has filed a complaint regarding the conduct of police officers or private security personnel. On occasion, it has even adopted a defensive stance, opposing the carrying out of investigations, requesting cases be dismissed or objecting to third-party litigation in the public interest.

The figures regarding the actions of the Public Prosecutor's Office in 2023 continue to show a worrying trend. **The Public Prosecutor's Office played a proactive role in encouraging investigation or prosecution in only 3 criminal cases** of the 42 handled. By contrast, in **21 of these cases**, it either **opposed full and thorough investigation into the allegations**, objected to the involvement of private prosecutions in proceedings or requested the dismissal of charges and the acquittal of the accused in spite of

strong evidence of their guilt. **In the remaining cases**, the Public Prosecutor's Office p**layed no more than a passive role.**

In this report, three case types are explored in more detail. First among these are cases in which the Public Prosecutor's Office has taken a proactive role in opposing investigations and the reopening of cases, or has requested that the case in question be closed.

Its actions regarding the main proceedings in what is known as the 1-O case – in reference to complaints concerning police actions on the date of the Catalan independence referendum – are in a sense paradigmatic, in that, throughout the pre-trial investigation phase, the Public Prosecutor's Office filed several requests expressing its opposition to even the most modest of inquiries. Among these is an extensive written request for the provisional dismissal of the case, alleging the legitimacy and proportionality of the action taken by the Policía Nacional throughout the day in question – relying on the sentencing of several pro-independence leaders by the Supreme Court in 2019 – and denying that any infringements of fundamental rights had taken place, arguing that, in any case, only a small number of minor injuries could be attributed to police action. On repeated occasions, the Public Prosecutor's Office has backed appeals and requests made by the legal representatives of the officers under investigation, and has opposed those presented by both private and third-party litigants. More recently, with summary proceedings against 47 police officers for their conduct at a range of polling stations across Barcelona already agreed to, the Public Prosecutor's Office lent its support to the majority of the appeals filed by the officers' legal defence teams, with the aim of achieving the dismissal of the case. Only in the case of 5 officers did the Public Prosecutor's Office challenge the appeals made by the defendants and support bringing the case to trial.

The figures for the role of the Public Prosecutor's Office in 2023 continue to be very worrying. Of the 42 criminal litigations, only in 3 has the Prosecutor's Office played a proactive role in promoting the investigation or indictment.

Second are the cases in which the Public Prosecutor's Office, far from supporting investigations or acting in a prosecutory capacity, has acted in defence of officers accused or under investigation. Among these is the trial of a BRIMO officer charged with striking a demonstrator, Francesc, with a police baton. Maintaining that the officer's conduct fell within the scope of operations – in spite of the strict protocolary prohibition of delivering blows to the head[23] – the Prosecutor's Office claimed that it could not be determined with sufficient certainty whether or not the protester had moved his head in such a way that he struck it against the baton wielded by the officer.

Third are the cases in which the Public Prosecutor's Office has failed to act entirely, representative of which is a complained filed for torture in the Brians 1 prison. Such failure to act means that the burden of the accusation falls exclusively on the victim, even where allegations concern torture or other cruel, inhuman or degrading treatment or punishment, in contravention of the duty of the state to ensure their full and thorough investigation.

23 Art. 3.1 of Ruling 16/2013, 5 September, on the use of weapons and defensive equipment by police: "In no case should [these] be used downwardly or against vital areas of the human body such as the head".

Case title: **Allegations of torture in Brians 1**

Location: **Brians 1 Penitentiary Centre (CP Brians 1)**

Case summary:

On 21 March 2020, four prison officers employed in CP Brians 1 assaulted M.K., beating him and throwing him to the ground, and restraining him with a knee to the neck, during a formal visit to the administrative office. The officers insulted him, making racist comments and threatening retaliation for an incident that had taken place two days earlier in the prison. He was placed in an isolation unit, where he was stripped naked and beaten again. He spent three days without contact with others, beginning a hunger strike which lasted for eight days, during which time he was unable to leave his cell. Subsequently, one of the officers, threatening and physically assaulting him, forced him to sign a written document in which he confessed to participating in the incident that had taken place two days earlier in the prison. Finally, M.K. was transferred to the Lledoners Penitentiary Centre.

Details for consideration:

- This incident was reported to the courts on 12 August 2020 as part of a complaint for the crimes of torture, coercion and causing injury. M. K. had previously lodged a complaint with the Catalan Ombudsman concerning CP Brians 1. Even so, the Prosecutor's Office failed to take any action.
- The investigating court concluded its review a month after the complaint was brought, closing the case without carrying out the appropriate investigations. The Public Prosecutor's Office objected to the appeal made by the private prosecution against this decision.
- Three years after the events in question – and in view of the state's duty to investigate complaints of torture – the Provincial Court upheld the appeal, ordering the reopening of the case and the carrying out of the investigations requested by the private prosecution.
- In spite of this, the Public Prosecutor's Office has taken no action whatsoever, failing to support a full and thorough investigation or participate in the hearings to which the officials under investigation have been called to give evidence.

3.3. Role of the courts

Courts and tribunals are a means of safeguarding the fundamental rights which underpin any and all democratic, law-abiding nations, which have the obligation to uphold the right not to be subjected to torture or inhuman or degrading treatment. The prohibition of torture is absolute, that is, it must be complied with at all times and in all circumstances. As a result of this absolute prohibition, the criminal justice system has an essential obligation to investigate allegations of torture thoroughly and effectively. Constitutional doctrine[24] establishes that an effective judicial investigation cannot be carried out in cases of alleged torture or ill-treatment if the decision is taken by the judicial authorities to dismiss charges or reduce these to a minor offence, where the facts of the case have not yet been sufficiently established, despite there being adequate and accessible means to do so. Spain has been found guilty of violating Article 3 of the ECHR on thirteen separate occasions, twelve times for failing to investigate allegations of torture, and twice for having committed crimes of torture and ill-treatment[25]. At the heart of

24 (STC 224/2007, of 22 October; STC 34/2008, of 25 February); or more recently, SSTC 12/2022, of 7 February 2022, 13/2022, of 7 February 2022 and 34/2022, of 7 March 2022).

25 The first of these rulings was handed down on 2 November 2004, in the case of Martínez Sala and others v. Spain, followed by: Irribaren Pinillos v. Spain, 8 January 2009; Sant Argimiro Isasa v. Spain, 28 December 2010; Beristain Ukar v. Spain, 8 March 2011; B.S. v. Spain, 24 July 2012; Otamendi Egiguren v. Spain, 16 October 2012; Etxebarria Caballero v. Spain, 7 October 2014; Ataun Vermell v. Spain, 7 October 2014; Arrabatiel Garcindia v. Spain, 5 May 2015; Beortegui Martínez v. Spain, 31 May 2016; Portu Juanena and Sarasola Yarzbal v. Spain, 13 February 2018; González Etayo v. Spain, 19 January 2021; López Martínez v. Spain, 9 March 2021].

Case title: **Assault of a minor by private security personnel**

Location: **Plaça de les Glòries, Barcelona**

Case summary:

Z.S. (16 years old) was assaulted by private security personnel acting on behalf of Transports Metropolitans Barcelona (TMB) after having left a nearby metro station. Two security guards chased him and, having caught up with him, one of them threw him to the ground, striking him with their baton, and pressing him against the ground by the neck. The security guard persisted in the latter action despite pleas from Z.S. that he was choking him. Thereafter, the guards handcuffed him and detained him until Mossos d'Esquadra officers arrived at the scene. Z.S.'s partner witnessed the attack and managed to record it on video. Z.S. filed a complaint as a result.

Details for consideration:

- Despite the seriousness of the allegations, the investigating judge limited investigations to a minor offence. In such circumstances, it is impossible to ascertain whether the offences of torture, illegal detention or contravention of Z.S.'s inviolable right to dignity may have been committed by the security personnel in question.
- Z.S. – who was unable to avail of legal assistance at the time – was not properly notified of the decision to initiate investigations into a minor offence. Similarly, he was not assigned a duty lawyer to provide him with legal assistance, despite the seriousness of the complaint and the fact that he was a minor.
- After Z.S. contacted Irídia, a request was made for reinvestigation on new grounds so that the incident could be properly investigated. The Court refused this request, alleging that it should have been made by Z.S. when he was notified that investigations into a lesser offence were being undertaken, despite him only having received notification to attend court without legal representation in place.
- With the trial for a minor offence underway, a reinvestigation of the case was again requested and subsequently rejected by the investigating court, which also resulted in acquittal.
- urrently, an appeal has been lodged to take the case to the Constitutional Court for the infringement of fundamental rights, specifically, the right not to be subjected to torture or other inhuman or degrading treatment, and the right to effective judicial protection.

the matter, all of the cases are significantly similar in that they centre on the failure of the judicial authorities to uphold Article 3 of the ECHR, as a result of having not carried out a full and thorough official investigation.

In terms of the failure of the courts to ensure effective investigation, of the total of 42 criminal cases underway, **in 2, the complaint has been dismissed** prior to any investigations being carried out; in **6 cases**, the complaint has been investigated, but **as a lesser offence** (notification of which has been provided to the complainant in only one case), and, in **20 cases**, **the case has been dismissed** without exhaustive investigations being carried out.

In other words, in **28 of the 42 cases (66.66%)**, a decision was made to either dismiss the complaint or investigate it as an allegation of a lesser offence without having exhausted all reasonable, available, effective and relevant investigative avenues.

In **17** of these 28 cases, **the Provincial or Constitutional Court has upheld the appeals filed by Irídia** against the dismissal or reduction of charges, ordering the investigating court to reopen or reinvestigate the cases in question, with all the significant procedural delays this entails. In **10 cases, a final decision remains pending**; in **1**, the dismissal of charges has been ratified.

This case stands as a clear example of the infringement of the right of victims to effective judicial protection that results from enduring shortcomings on the part of the courts responsible for this in cases of institutional violence. The decision to treat matters as a lesser rather than a potentially serious series of offences – the latter approach being more befitting of the duty to uphold the rule of law – led to the case proceeding without proper legal assistance in place, and meant a full and thorough investigation was not carried out. Moreover, the complainant's right to effective remedy following reporting of the infringement of his rights in both the first and second instance was violated.

3.3.1. Difficulties in obtaining legal assistance

The fundamental right to effective judicial protection and to a fair trial is recognised as warranting the highest possible protection in the national, regional and international legislation governing the safeguarding of human rights, which judicial authorities in Spain are duty-bound to comply with. In cases where the right to effective judicial protection overlaps with the right not to be subjected to torture or inhuman or degrading treatment, investigations must be carried out as thoroughly as possible, without there being the slightest doubt of all avenues having been exhausted.

The principal element of the right to effective judicial protection is access to justice, that is, that anyone who considers that their rights have been infringed can demand that a judge or court take reasonable action in response. Although this does not necessarily imply that said action fully addresses their concerns, it nevertheless must represent effective remedy, particularly as regards any human rights infringements caused by the actions of those undertaking official public duties.

In legal proceedings concerning minor offences, a date for trial may be set without sufficient time for exhaustive judicial investigations to be carried out. In addition, in such proceedings, the **presence of a legal representative** is not mandatory, meaning that the victim – or even the defendant – presents their case directly before the court, regardless of their degree of awareness or ignorance of criminal procedure and the rights that they have within this. The Criminal Procedure Act provides for the right to a lawyer when appearing before the court during such proceedings. However, if the person does not have the financial means to obtain legal representation on their own, and approaches the Free Legal Assistance Commission to request one ex officio, judicial authorisation is required in order to approve their request. This is a de facto hindrance in obtaining legal representation and, therefore, in practice, may constitute a violation of the right to effective judicial protection. The elimination of the requirement of judicial authorisation in the obtention of free legal representation for those who do not have the financial means to do so otherwise could contribute to a more comprehensive safeguarding of the right to effective judicial protection.

A lack of legal representation can have further consequences if, in addition, the victim is not notified of the court's decision to bring investigations to a close – where the facts of their complaint are considered not to constitute a criminal offence – or to initiate proceedings for a minor offence. The absence of notification of such decisions means that victims are not only left unaware of the outcome of their complaint, but are also unable to challenge them. The serving of notice to attend a hearing concerning a minor offence, without communication of the judicial ruling behind this, may also constitute a violation of the right to an effective investigation, insofar as the person is not made aware of the reasons behind the court's categorisation of the offence, thus hindering the possibility of challenging this decision.

In addition to these two aforementioned factors, prior to the filing of a complaint, there is also a **lack of appropriate legal advice and representation** focused on requesting the preservation of the evidence required to ensure a thorough judicial response, and on informing those affected of the steps that must be taken and the matters that must be assessed.

In light of the above, Irídia has long identified the need for the creation of a **specific in-court representation service in cases of institutional violence**. This proposal was endorsed in the *Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia*[26], which urged the Government of Catalonia to create "a specialised legal aid duty office staffed by the various bar associations across Catalonia".

Specialised legal assistance, provided by lawyers with knowledge of the full range of requirements pertaining to procedure of this nature, is essential in ensuring that those affected by institutional violence are aware of their rights, receive the correct legal advice and have their interests safeguarded.

The availability of a lawyer to guarantee effective judicial protection is a fundamental right that forms part of the duty of states, under international law, to ensure a full and thorough investigation into allegations of torture, inhuman or degrading treatment, the causing of physical or other harm to a person, or any resulting contravention of their inviolable right to dignity by officials and/or officers responsible for enforcing the law.

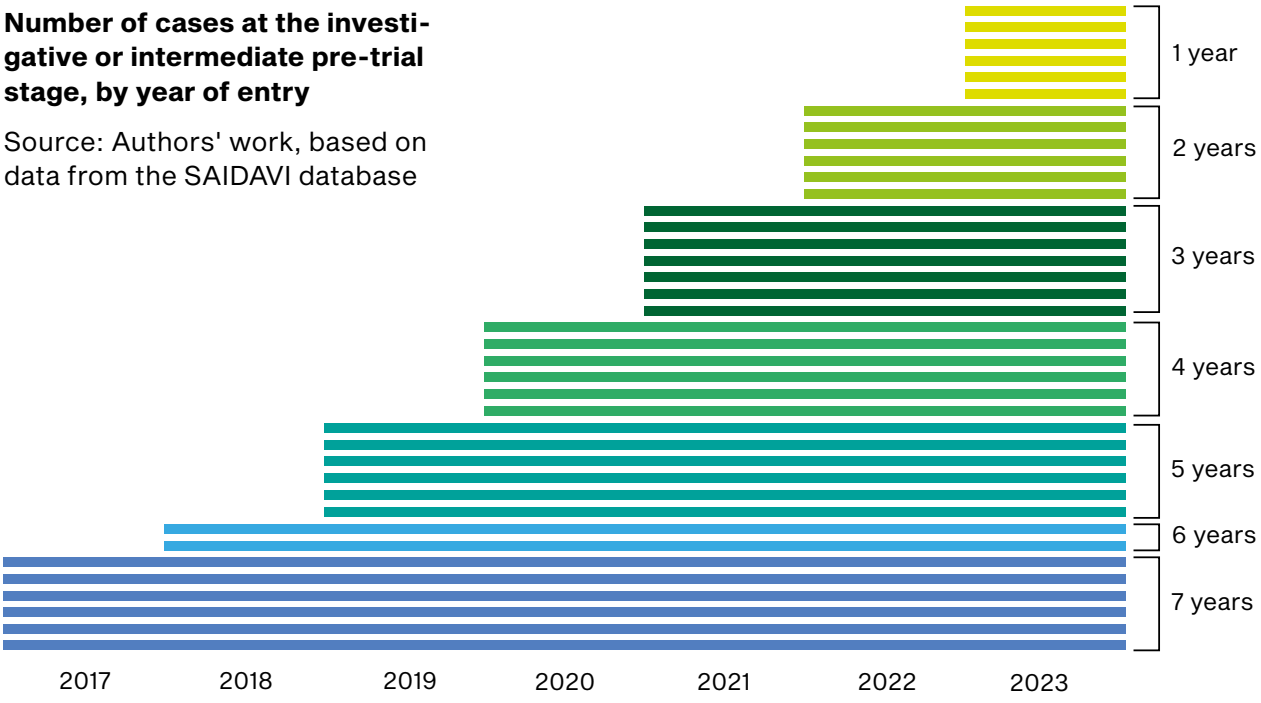
3.3.2. Slowness in court proceedings

Another obstacle in ensuring courts can act to offer external oversight is the characteristically long duration of legal proceedings once they reach this stage, in part due to case overload, but also as a result of delays related to the complexity of the litigation in question. Where such cases have reached trial, **sentencing has been handed down five years after the facts on three occasions, and four years on another.**

Of the 35 cases still at the investigative or intermediate pre-trial phase in 2023, 3 were initiated six years previously; 2, five years before, 6, four years before; 6, three years before; 7, two years before, and 6, the year previously, in 2022. Only 5 of the total number of active cases were filed in 2023.

Number of cases at the investigative or intermediate pre-trial stage, by year of entry

Source: Authors' work, based on data from the SAIDAVI database



26 BOPC No. 460, 20 December 2022.

In other words, court proceedings relating to ongoing litigation in 2023 lasted an average of three years. This is before taking into account that the majority had not yet reached completion, meaning that this figure will surely increase.

Case title: **Death in solitary confinement**

Location: **Brians 1 Penitentiary Centre isolation unit (DERT)**

Case summary:

On 30 November 2017, L.A. was found dead in the isolation cell of the solitary confinement wing of the prison where he had been held since 25 November of the same year. He had been held in pre-trial detention since June 2017, and had not been placed on suicide watch.

Details for consideration:

- The events in question led to the initiation, on 30 November 2017, of proceedings by the investigative court of Martorell into possible criminal conduct.
- With a criminal complaint eventually ruled out, a claim for damages was filed before the Ministry of Justice of the Government of Catalonia on 28 November 2018. Official investigations came to a close on 9 October 2020, almost two years after the claim was registered.
- On 21 December 2020, an administrative appeal was filed against the dismissal of the claim for damages by the authorities, leading to the case being brought before the courts. At present, the case is still pending a judicial decision.
- Following L.A.'s death, more than six years have passed without his family having obtained any acknowledgment of responsibility or redress from the authorities.

3.3.3. Deportations and judicial investigations, a cycle of impunity

Case title: **Obstacles in reporting torture and/or ill-treatment in the Barcelona Immigration Detention Centre (CIE)**

Location: **CIE Zona Franca, Barcelona**

Case summary:

On 11 November 2020, B.Z. was interned at the Zona Franca Immigrant Detention Centre (CIE) in Barcelona, having been transferred from Mallorca, where he arrived by small boat. B.Z. was discovered to have been a close contact of a SARS-CoV-2 positive case, leading to him being separated from the rest of the inmates and placed in isolation at the centre. He was held for ten days in an unfurnished cell in degrading conditions, losing track of time and space. During this time, B.Z. was allegedly assaulted up to four times by Policía Nacional officers. As a result of these assaults, B.Z. suffered physical injuries and serious negative effects to his mental health, leading him to self-harm on various occasions during isolation, without receiving any psychiatric or psychological care in response. Finally, B.Z. was deported.

Details for consideration:

- A complaint regarding the case was filed, requesting that B.Z. be called to make a statement as an injured party and receive the attention of a forensic medical professional. To ensure appropriate evidence could be gathered, it was requested that his deportation be suspended and video surveillance footage from cameras in the CIE provided.
- The duty court initiated preliminary investigations into potential criminal conduct contravening B.Z.'s inviolable right to dignity, as well as the offence of causing injury, and agreed to a range of measures among which was the call for a statement from B.Z. as the injured party/victim.
- In spite of this, the investigating court allowed B.Z. to be deported from Spain. As a result, and despite efforts to continue the investigation, the case was dismissed following a decision by the Provincial Court of Barcelona.
- In 2023, an appeal was filed to the Constitutional Court for violation of the fundamental rights to effective judicial protection, physical integrity, respect for the inviolable right to human dignity, and the prohibition of torture and inhuman or degrading treatment.

This case is an archetypal example of how allegations of torture and ill-treatment are handled, with courts continuing to fail to ensure that whistleblowers are heard. In this case – and in the majority of cases concerning the CIE – this is aggravated by the deprivation of liberty of those held in the custody of state authorities, who are deported without proper investigations being carried out. Deportation on the basis of residency requirements cannot take precedence over the duty of the state to effectively investigate allegations of torture.

3.3.4. Istanbul Protocol and other reports

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol, is the first set of international guidelines for documentation of torture and its physical and psychological consequences.

Where detention or deprivation of liberty are concerned, a lack of witnesses or video surveillance cameras makes it very difficult to obtain evidence beyond the affected person's own testimony. The Istanbul protocol serves in these cases as an essential tool to be able to **gather the full testimony of the affected person** – including as regards where and how the injuries may occur, the emotional impact thereof – and to highlight the consistency and coherence of their account as a true retelling of events.

Over the years, Irídia's psychosocial team has provided reports to the Institute of Legal Medicine and Forensic Sciences of Catalonia (IMLCFC) requesting the application of the Istanbul Protocol. Nevertheless, on numerous occasions, judges have denied requests directed to the IMLCFC for the application of the protocol. This is despite international recommendations urging its application in cases of allegations of torture and ill-treatment as a matter of necessity.

Sovint en contextos de detenció o privació de llibertat on la manca de testimonis o càmeres de videovigilància fa que sigui molt difícil poder aconseguir proves alternatives més enllà del propi relat de la persona afectada.

Where judges have upheld such a request, there has been an evident lack of knowledge of the scope and aims of the Istanbul Protocol on the part of the medical staff of the IMLCFC, as well as serious shortcomings in application, both in terms of the lack of time taken (30-minute assessments, where application of such a comprehensive protocol ought to require hours) and the lack of staff available. There have even been cases in which, with only the victim's account to rely on, forensic doctors have considered the Istanbul Protocol non-applicable. This is despite no mention being made in the protocol of the need for witnesses or medical reports prior to examination; on the contrary, the protocol underlines the need for investigation when no other means of evidence is available.

Those affected also report being revictimised by staff responsible for applying the protocol, who have called their version of events in question and minimised their symptoms and psychosocial sequelae.

CIE Zona Franca - Valentina Lazo

04

Unsanctioned use of police weaponry and equipment

4.1. Conducted energy devices (tasers)

Conducted energy devices (CEDs), commonly known as tasers, are classified as non-lethal weapons. These weapons are designed for use on people for the purposes of temporarily incapacitating them through the transmission of an electric shock that affects bodily mobility. However, their use by Mossos d'Esquadra agents has already led to the **death of at least one person**, in 2021 (referred to in the A.C. case in section 3.1), in addition to other serious physical and mental health effects on those targeted.

The Catalan Ombudsman, in its 2021 report concerning the distribution, regulation and use of electric weapons by Catalan police, expressed concern about the growing use of tasers, citing the need for a regulatory review. One of the issues highlighted by the Ombudsman – given its lack of inclusion in the Mossos d'Esquadra's regulations – was the need to establish a maximum number of times a CED can be fired, in order to avoid repetitive and continuous use. As international human rights protection bodies have already warned[27], these weapons could come to be used in an abusive manner and/or as a means of punishment, leading to potential situations of ill-treatment or torture. As such, it is essential that the regulations governing their use are both clear and restrictive. Whatever this maximum number may be, it must be established in accordance with scientific evidence which demonstrates the physical and psychological impact of repeated electric shocks by taser, thus ensuring the consistency of regulations with medical criteria.

Use of such weapons by the Mossos d'Esquadra is regulated by Ruling 4/2018 of the General Directorate of Police, available in Catalan on the Ministry of Home Affairs' website. The protocols followed by local police, if any, are unknown. This lack of transparency makes it difficult to determine if any such regulations exist and, if they do, whether or not they follow the appropriate international standards and recommendations. For this reason, the local police forces to whom such weapons are available must publish their protocols as a matter of urgency. It is disconcerting to note that, despite their potential to cause harm, these weapons are available not only to the Mossos d'Esquadra but also to a number of local police forces in Catalonia in spite of the limited authority of these forces, especially as regards the custody of detainees.

Furthermore, Ruling 4/2018 ought to be more restrictive in defining the grounds on which CEDs can and cannot be used. The authorisation of the use of CEDs in dealing with a "risk to public safety" is excessively broad, and exceeds the guidelines provided in international regulations. The United Nations Guidance on Less-Lethal Weapons[28] permits the use of this type of weapon to "incapacitate individuals at a distance posing an imminent threat of injury (to others or to themselves)". The vagueness of public safety as a concept, by extension, clouds any assessment of when it may be under threat. In practice, such imprecise grounds serve as carte blanche for the use of tasers and thereby ought to be revoked.

Ruling 4/2018 also refers in passing to the circumstances in which CEDs cannot be used, citing those in which the person has a preexisting health condition perceptible to acting officers. Reference to the "perception of officers" is again excessively subjective, and could also lead to improper use of CEDs. To this end, the taser pistols manufacturer Axon Inc recommends that its weapons not be used on people under the

27 UN experts question the excessive use of TASERs by the US police https://www.swissinfo.ch/spa/expertos-onu-cuestionan-el-excesivo-uso-de-las-t%c3%a1ser-en-la-polic%c3%ada-de-ee-uu/48276360

28 United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement. 2020. High Commissioner for the United Nations. This can be found at the following link: https://www.ohchr.org/en/publications/united-nations-human-rights-guidance-less-lethal-weapons-law-enforcement

influence of drugs, with mental health problems, heart problems or in a state of agitation, among other conditions. Such circumstances ought to be included within existing protocols as criteria for avoiding the use of taser pistols, in order to ensure the non-lethality of these weapons.

Indeed, given that a number of the circumstances mentioned by the manufacturer as precluding CED use may be outwardly imperceptible (heart disease, non-visible mental health problems and/or pregnancy, among others), any such protocols must stipulate that these weapons can only be used following verification by the acting officers. Recording criteria for use – and the factors taken into account prior to doing so – in the police report submitted to the judicial authorities underpins any evaluation of CED use after the fact.

A clear example of the above is the case of A.C., whose death occurred after being shocked six times with a CED when he was in a state of agitation and under the influence of psychoactive substances. The forensic report into the case clearly states that his death occurred as a result of the effect of the shocks delivered in these circumstances. Although the acting officers were aware of said state of agitation, and of the fact that A.C. was a drug user – given that it was not the first time he had been approached by police – they nevertheless made use of the CED. As a result, A.C. was subject to six electric shocks of 5 seconds each, two of which were delivered after he was disarmed and restrained on the ground. This is **indicative of the lack of effectiveness of existing protocols in precluding the potentially lethal use of taser pistols.**

Finally, any intervention in which tasers are used must be properly recorded for oversight purposes. Section 6.1 of Ruling 4/2018 provides for the recording of footage of the operation and of the part of the body against which the CED is fired "whenever possible". This notwithstanding, in order to ensure full oversight in all cases, this provision must be made obligatory. In 43.85% of the total of 114 cases in which officers of the Mossos d'Esquadra used taser pistols between September 2018 and December 2021, video footage of the operation was not recorded[29]. In the aforementioned case of A.C., the intervention made by officers was recorded. Ruling 4/2018 must clearly set out that, in analysis following use of a CED, any components included in or on the device itself for the purposes of guaranteeing its traceability and oversight must be reviewed in order to determine the appropriateness and need for doing so.

Five years since their statutory introduction in Catalonia – and taking into account that at least one person has been killed and others harmed following their use – the proliferation of these devices among local police forces, without oversight or justification, as well as the fact that their use has not been properly recorded in almost half of the interventions made, has led Irídia to conclude that it is time for a parliamentary evaluation of these weapons to be undertaken.

29 Report "Los Mossos y las pistolas táser: cuánto las han usado y cuántas veces lo han grabado como indica el protocolo" carried out by Maldita.es and Planta Baixa (TV3); 23 March 2022. Link to the report in Spanish: https://maldita.es/malditodato/20220325/taser-mossos-uso-grabacion-muerto/

4.2. Kinetic impact projectiles

In 2023, the internal police protocol governing the use of 40 mm projectiles and launchers was substantially modified, incorporating many of the demands that Irídia, Amnesty International and Stop Bales de Goma had repeatedly made to the Minister of Home Affairs over recent years. The positive aspects of the revised protocol are further detailed in the Good Practice section of this report, highlighting the fact that use of said projectiles is now restricted only to cases where there is a risk of death or physical injury, and that they cannot be fired higher than the abdomen or used to disperse demonstrations and/or crowds of people.

However, in the new protocol, there is one element which carries the risk of continued indiscriminate use of these projectiles. Firing is permitted with the aim of "neutralising individual or **collective engagement in violent behaviour**"[30]. The concept of collective violent behaviour is problematic, since – even if individuals in a group act violently – the behaviour of any given group is not in itself not uniform. While members of a group may encourage others in the commission of violent acts that entail a risk to others, this does not in itself justify the use of said type of weapon according to international regulations.

Moreover, the protocol continues to provide for the use of SIR-X, a particularly harmful projectile, despite the fact that its withdrawal was formally requested by the Parliament of Catalonia on 2 December 2022. In this regard, the Ministry of Home Affairs has stated that its use will cease as soon as the formal tender to obtain SIR, the previous projectile used, has been concluded. This is expected to occur in 2024.

Be that as it may, the principal demand made by Irídia and Stop Bales de Goma remains pending. Both organisations requested that **the use of all types of foam projectiles by the Mossos d'Esquadra be prohibited, due to their highly harmful and potentially lethal nature**. Even if effective means of oversight and traceability are put in place, the risk of permanent, irreversible injury to those struck with these projectiles in sensitive areas of the body will always exist.

Indeed, lack of traceability remains the biggest obstacle that those affected encounter in legal proceedings initiated following an injury caused by foam projectiles. In proceedings in which the commission of a crime is investigated, the identification of the specific officer who has caused injury is essential, since the lack of a known perpetrator may be reason to dismiss the case, as happened in 2022 in the case of A.K., mentioned in the 2022 Report on Institutional Violence.

Likewise, the Protocol continues to provide for the use of the SIR-X, the most damaging projectile, despite the fact that the request for withdrawal made by the Parliament of Catalonia was approved on December 2, 2022.

30 Point 5.1 of the Protocol for the use of launchers and 40mm projectiles - 16/07/2019, Revision 27/10/2023.

05

Institutional violence and encroachment on civil liberties

In April 2022, the Canadian laboratory The Citizen Lab published an investigation together with Amnesty International in which it confirmed one of the most significant espionage operations in Europe, with a total of **65 people spied on in Spain**, the majority of them connected to the Catalan independence movement. A few months later, the newspaper La Directa revealed that an officer belonging to the Policía Nacional had infiltrated activist spaces in Barcelona. Throughout 2023, it would be seen that he had not been the only one, with the discovery of a number of additional cases.

Taken together, these cases are indicative of a repressive trend featuring the use of deeply invasive techniques and methods which undermine the privacy, intimacy and even personal relationships of members of the public, in an alarming encroachment on the exercise of civil liberties. The **seven cases of police infiltration** of activist circles uncovered in the last two years (six of which were documented during 2023) closely follow the use of **spyware such as Pegasus and Candiru**.

Over the course of 2023, judicial investigations into activists have also been initiated or reopened – such as the case of the Democratic Tsunami, reactivated four years after the 2019 protests – under the guise of accusations of terrorism and participation in organised crime. Likewise, the criminalisation of protest movements has also been carried out by other state institutions. One such example is the classification of environmentalism as a "terrorist" movement in the Attorney General of the State's 2022 annual report, and in the Europol annual report concerning terrorism in the European Union in 2023.

When confronted with these cases, Spanish authorities have repeatedly relied on the mantra of "national security", in the vaguest and most opaque terms, in order to justify the use of such methods and to deny any kind of investigation into them. Furthermore, regulation of intelligence activity in Spain (in particular, the 2/2002 Act regulating prior judicial control of the CNI) is excessively imprecise and cannot be considered as meeting the standards of clarity, accessibility and predictability expected in a democratic society, as established in the jurisprudence of the European Court of Human Rights.

These methods should not be understood in isolation but as part of a set of tools aimed at the **persecution of political dissent and criticism** and the encroachment on civil liberties in practice, in addition to pre-existing tactics such as the excessive use of force.

Mention must also be made of police misconduct in their dealings with journalists working to cover protests. As the critical media observatory Mèdia.cat has found – with data systematised and included in its Censorship Map – between 2019 and 2023, three out of every ten incidents affecting journalists were caused by police officers. Moreover, most of these occurred during their coverage of protests in public spaces.

5.1. Use of force during protests

Case title: **Assault with police baton on two protesters**

Location: **Carrer del Solsonès, Barcelona**

Case summary:

On 11 May 2023, a protest took place against the eviction of the squats known as El Kubo and La Ruína, located in the Bonanova neighbourhood of Barcelona. During the protest, police advanced on protesters, with at least two Mossos d'Esquadra ARRO officers using their police baton to strike two protesters from above, causing direct blows to the head. From the images shown by various media outlets, it was possible to identify the officers allegedly responsible. In 2023, Irídia took on legal representation in the case and filed a complaint against the two officers.

Details for consideration:

- The officers identified as perpetrators acknowledged having used their batons against the protesters, although they maintain that this use was proportional.
- It is concerning that, despite broadcast by a range of different outlets of this potentially criminal conduct, the force's General Commissariat responsible for doing so failed to initiate an internal investigation. This was confirmed in the response to the court order to provide evidence of said investigation.

Although 2023 did not see the same upturn in public protest as in previous years, cases of malpractice in the form of excessive use of force against protesters continued to be recorded. Despite current regulations, malpractice continues to be seen in the use of police batons and defensive weapons, with downward blows and impacts on vital parts of the body recorded.

On 5 September 2013, the Ministry of Home Affairs issued Ruling 16/2013, concerning the use of weapons and defensive equipment in police operations. According to this Ruling, the police baton is a piece of equipment designed for self-defence (maintaining a safe distance, stopping blows and ensuring self-protection) which can also be used, due to its rigidity, to apply physical restraint by way of immobilisation, compression or luxation. The aforementioned ruling provides that the use of police defensive equipment “must be limited to one or two short, sharp blows...with the item parallel to the ground and [deployed against] muscularly protected parts of the lower body”, and “in no case should it be used downwardly or against vital areas of the human body such as the head”.

Notwithstanding the above, in 2023 there continued to be cases in which **officers used this equipment in a manner contrary to the provisions set out in these regulations**. The aforementioned case, which occurred on 11 May 2023, in which two Mossos d’Esquadra ARRO officers struck two protesters with their police batons from a top-down position, causing direct blows to the head, represents a flagrant violation of the aforementioned Ruling on the use of this equipment, and is constitutive of the crime of causing injury by use of a dangerous object. This form of aggression against protesters also represents an infringement of the right to protest.

Police charge during the May 11 protest - Àxel Miranda

5.2. Police infiltration of activist circles

From 31 January to 6 September 2023, thanks to the investigative work carried out by La Directa and El Salto, a total of **six police officers who had infiltrated activist groups across Spain were uncovered. These came in addition to a further case uncovered in 2022**. All of the officers belonged to the Policía Nacional. These cases affected a wide range of grassroots activists and organisations whose actions cover a number of geographical areas within Spain. Although the collective damage cannot be quantified, with its full scope as yet unknown, more than a dozen activist groupings have spoken about the effects of three of the cases of police infiltration documented in Catalonia between 2022 and 2023 (two in Barcelona and one in Girona).

Following the revelation of these cases, it was possible to establish that the action of the seven undercover officers had been carried out in a planned and deliberate manner, and with full authorisation throughout the chain of command of the force to which they belong. All of them were provided with a false identity – something which can only be granted by the Ministry of the Interior – as well as resources which allowed them to carry out their work as undercover officers over a long period of time, ranging from two to six years.

It is important to note that in none of the documented cases was any judicial authorisation granted which would allow for the use of undercover investigations provided for in Article 282a of the Criminal Procedure Act for “activities related to organised crime”. The task of “gathering, receiving and analysing data” provided for in Article 11 of the Law Enforcement Agencies Act 2/1986 and used as a justification by the Spanish Minister of the Interior, Fernando Grande-Marlaska, cannot under any circumstances be considered as legal justification for conduct such as that described.

These operations, wholly legally unfounded, have had a **devastating chilling effect** on grassroots activists, neutralising entire spaces and groups. This infiltration by police demonstrates that Spain resorts to highly invasive and humiliating methods with the clear and premeditated intention of curbing the exercise of civil liberties, extracting information, and drawing attention to and punishing individual participation in and/or connection with certain groups and causes. The presence of such undercover officers, as well as the practices used to carry out their operations, is a flagrant breach of the inviolable right to dignity of those affected and represents a clear attack on the fundamental right to freedom of association and unionisation, not only of the individuals directly targeted and those close to them, but of the movements to which they belong as a whole.

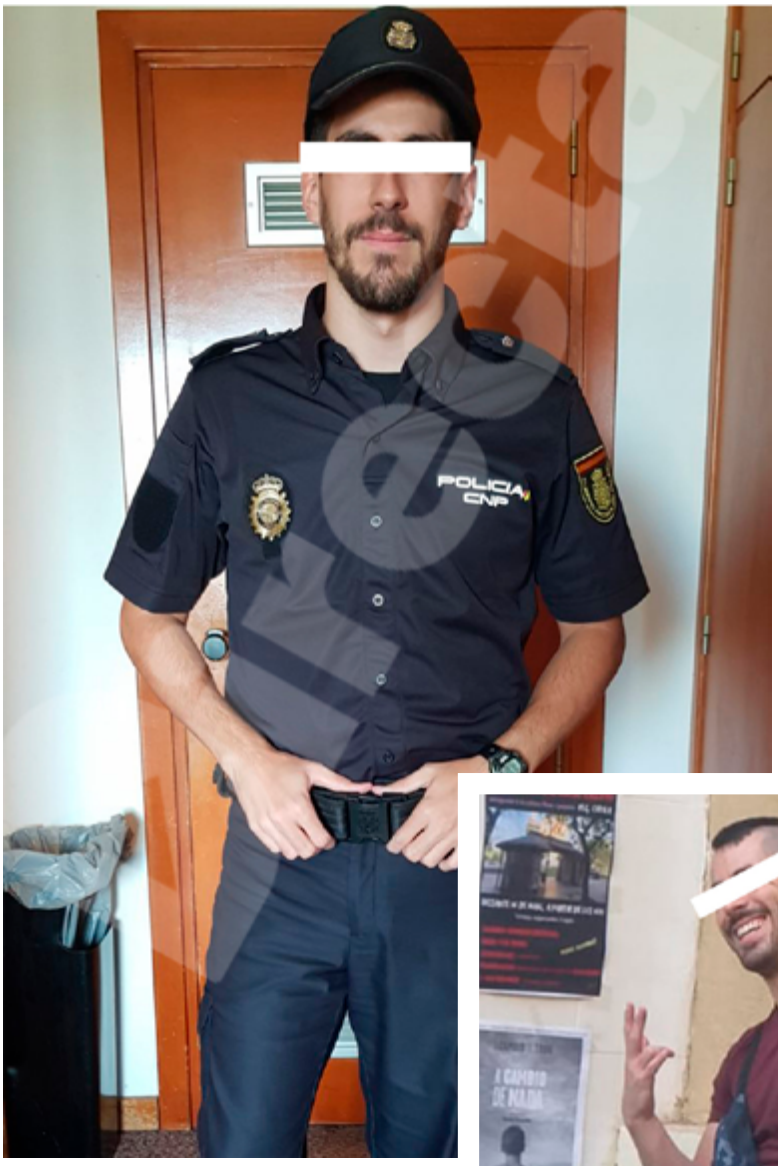
These events are a clear example of **police abuse**, insofar as they have both caused serious damage to those affected and been carried out by a police officer in the exercise of their duties. It is important to note that the bonds formed to carry out the infiltration – affiliation, friendships, relationships of trust and even intimate, sexual relationships – were not coincidental but strategic and deliberate, and gravely undermine the wellbeing and inviolable dignity of those affected.

This inviolability pertains to what is termed a person's "physical and moral integrity" in the Spanish Constitution, a concept used throughout Spanish and certain international jurisprudence. By extension, degrading treatment is that which causes the affected person to feel fear, anguish and inferiority to the point of humiliation, breaking their physical or moral resistance. In such cases, the deprivation of their personhood through instrumentalisation, the harm to their physical and psychological wellbeing and the causing of unnecessary pain and suffering to them all constitute a contravention of their inviolable right to dignity – that is, an offence against what Spanish law terms their "moral integrity".

In one of the cases mentioned, Irídia and the CGT trade union filed a complaint against the undercover officer in question and his hierarchical superiors for four different offences committed against eight affected persons.

Police infiltration of activist circles is a practice that has also been carried out in other countries. A paradigmatic example comes from the United Kingdom, where an officer infiltrated the environmentalist movement in a similar way, resulting in the case of *Kate Wilson v. The Commissioner of Police of the Metropolis and National Police Chiefs.* An independent English court known as the Investigatory Powers Tribunals (IPT) eventually ruled that Articles 3, 8, 10, 11 and 14 of the ECHR, relating to the prohibition of torture and ill-treatment, the right to private and family life, freedom of expression, the right of association and the prohibition of discrimination, had been violated by police. Regarding the specific effects of the intimate, sexual relationship that the undercover officer established with the activist, the court considered that said officer had invaded the core of her private life, in a complete disregard for her wellbeing and human dignity.

A range of international experts from the United Nations spoke out against the police's conduct in this case. The Special Rapporteur on the rights to freedom of peaceful assembly and of association of the United Nations, in their follow-up mission to the United Kingdom and Northern Ireland in 2017 (A/HRC/35/28/Add.1), stressed that such operations had caused "*profound damage to the survivors and to people's comfort with exercising their rights to freedom of peaceful assembly and association, given the levels of mistrust that ensued*" following revelations of the case.



Images of undercover policeman Daniel Hernandez Pons published in La Directa on January 30, 2023.

06

Institutional violence in prisons and other detention centres

The cases dealt with in 2023 involving institutional violence affecting those in detention or otherwise deprived of their liberty centred largely on difficulties in accessing the evidence required to bring formal complaints, insufficient communication of deaths in custody to family members and those close to the deceased, and lack of oversight in prisons and other detention centres.

It must be recalled that, in February of the same year, a women's wing of the CIE Zona Franca was opened amidst a significant lack of transparency. While Irídia visited the centre in 2023, no specific case of institutional violence has been reported there.

6.1. Difficulties in accessing the evidence required to bring formal complaints of ill-treatment and torture in prisons and other detention centres

Prisons, and detention centres more broadly, are characterised by a significant lack of transparency, to which a lack of collaboration on the part of the authorities when it comes to providing information can be added in many cases. This makes it difficult to obtain evidence to support allegations of ill-treatment and torture and, therefore, to ensure a fair judicial process which upholds the right to truth, justice, redress and non-repetition for victims.

In general, persons deprived of liberty, whether in prisons, police stations or immigrant detention centres, are prevented from requesting access to video surveillance camera footage. With respect to prisons, however, Memorandum 1/2021 issued by the Secretariat of Criminal Sanctions, Rehabilitation and Victim Support establishes that such footage is to be stored and preserved for one month from the date of recording.

Neither prisons nor detention centres offer a specific form to request the handover of video surveillance footage which could serve as an essential means of proof. As such, in many cases, inmates are unaware of the possibility of making such a request. As a result, when courts require prisons and detention centres to provide footage as part of criminal proceedings, the time that has passed means that footage is in many cases no longer available. The majority of the time, there is no footage corroborating the version given by the complainant, which makes it difficult to build a case.

With regard to access to medical documentation, it is clear that there are serious impediments to accessing **medical reports accrediting the physical and psychological impacts of alleged torture or ill-treatment** against those held in prisons and detention centres. Those treated by medical staff in prison are, as a rule, not issued with a copy of these reports, meaning that they often cannot be provided in the formal filing of any complaint. Any request for medical documentation must be made by the affected person, thus incurring delays which may be difficult to reconcile with existing deadlines in the filing of complaints of ill-treatment or torture.

Both in the CIE Zona Franca and the rest of the CIEs around Spain, the in-centre health service is not part of the public health system, and is outsourced by the Ministry of the Interior to the private company Clínica Madrid. Quality of the care provided aside, this has consequences in terms of the lack of availability of patients' medical records and prescriptions to the doctors working in the centre. In turn, doctors working in the public health system are also unable to access the reports prepared and prescriptions issued by in-centre doctors, which can cause interruptions in treatment, with all the consequences that this may entail for the patient's overall health.

Neither in prisons nor in detention centers for foreigners is there a specific form to request the custody of images from video surveillance cameras.

Where incidents occur in such environments, it is difficult to corroborate them. It must be borne in mind that deprivation of liberty in and of itself tends to mean that the person is isolated from others, leading to a lack of witnesses. Where there are witnesses, these people may be afraid of and unwilling to testify. As such, it is often difficult to base a case on the version of third parties as witnesses to the incident.

In the case of the CIEs, **deportation** often occurs without the complainant having been able to ratify his version of events in court or been called to do so. Other people who may have been witnesses to the reported incident may also be subject to deportation.

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

Case title: **Assault at Quatre Camins prison**

Location: **Centre Penitenciari de Quatre Camins**

Case summary:

On 16 May 2023, A.A.M., an inmate in the Quatre Camins prison with a recorded physical disability, suffered a physical and verbal assault by several prison officials while he was in his cell. During this aggression, he was subject to insults and struck on different parts of the body, with one of the acting officials removing his crutches, without which A.A.M. cannot move. He was also restrained on the ground with disproportionate force, causing injuries. His cellmate witnessed the events.

A.A.M. was treated by the medical staff of the prison in the presence of one of the officials, but was not issued with a copy of the medical report.

Months later, when A.A.M. was released from prison and received legal advice from Irídia, he filed a complaint with the duty court in the municipality of Granollers, requesting judicial investigation into the incident to clarify whether a medical report had been issued, request his cellmate provided statement as a witness, and demand the handover of recorded video surveillance footage.

Details for consideration:

- A.A.M. filed a complaint following the assault to request access to the medical report and video surveillance footage in question, having been previously unaware that he could do so.
- Although the complaint was filed at the beginning of October, no response from the court had been received, nor had the requested investigations been carried out, as of 31 December 2023.

6.2. Shortcoming in the communication of deaths in custody to family members and those close to the deceased

There continue to be serious shortcomings in relation to the care provided to those related or otherwise close to a person who dies in prison. Chief among these is the lack of information regarding the condition of the deceased prior to death, or the care provided to next of kin by prison staff who inform them. These staff lack training, with the prison itself lacking adequate physical facilities for the correct handling of such a delicate situation.

It is also common for family members and those close to the deceased to be ignorant of the avenues available to them to request information and explanations from prison authorities concerning the circumstances of the death.

Imprisonment brings with it the separation of families, making it difficult for family members to communicate with the person in custody and to appreciate the ins and outs of their day-to-day life. With information already scarce, receiving the news of the death of a loved one raises many questions that need to be addressed.

There is therefore a need to create and implement a **communication and care protocol for prisoners' families when a person dies in prison.** This must specifically outline who is responsible for communication, what information should be provided, and the psychological and bureaucratic support that is to be made available to families, among other responsibilities.

In cases of death in prison, the autopsy must determine the exact cause of death and the circumstances in which it occurred, as part of a thorough investigation into the matter. As such, **it is essential that autopsies are carried out in compliance with the Minnesota Protocol**, in order to obtain any and all clues that the body of the deceased can provide regarding the events that have occurred and the circumstances of their death. Failure to carry out an autopsy in accordance with international regulations results in a lack of information on the circumstances of the death and, in turn, leads to difficulties in bringing legal action. Moreover, it has a severe impact on the deceased's next of kin and wider social circle, as they are unable to obtain the information required in order to clarify the circumstances surrounding the death.

In relation to the above, and in the cases of death in custody that the Service is aware of, autopsies have not been carried out in accordance with the Minnesota Protocol, rendering it difficult to take matters further via the courts, thus hindering any clarification of the facts.

There are also frequent delays in the application of suicide prevention protocols even where obvious risk factors exist (including expressions of suicidal ideation, depression and self-harm) which ought to require prompt action in order to guarantee the physical wellbeing of the person in question. Moreover, even where these protocols are applied, serious shortcomings have been observed in compliance with the recommendations and standards they establish, placing the life of the affected person at risk.

There have been cases of people subject to suicide prevention protocols who have been placed in solitary confinement, in spite of the obvious risk that prolonged isolation poses for people with suicidal ideation, as well as cases in which consumption of psychiatric medication was made without supervision, despite the affected person having a history of hoarding medication, with the risk of serious intoxication that this entails.

Likewise, in cases of death in custody awaiting trial, a protocol for the provision of communication and support to family members must be established to ensure that they

are provided with full information regarding judicial and administrative procedures, and that in the shortest possible time they can reclaim the body of their next of kin.

6.3. Shortcomings in the internal investigations carried out by the authorities in cases of death in custody

During 2023, the Service continued to be involved in two claims for damages resulting from a death in custody. In one case, the claim came before the judiciary and remains pending a date for hearing, while the other is in the hands of the civil administrative authorities.

In the first case, relating to the death of an inmate in the Brians 1 prison in November 2017, Irídia reiterated its request for remission of the photographs of the body and detailed information of the visual inspection of the state of their cell, which had already been made as part of a prior civil claim. However, the Ministry of Justice of the Government of Catalonia failed to comply with this request, previously upheld by the civil courts, alleging that the requested photographs could not be obtained. The police record suggests that photographs were taken by officers of the Mossos d'Esquadra during visual inspection of the area in which the death occurred, meaning that they must exist and be available to all Catalan government departments, including the Ministry of Justice.

Regarding the second claim, relating to the death of an inmate in the Brians 1 prison in August 2018, authorities failed to act promptly, leading to several deadlines being missed due to administrative inactivity. In turn, the Ministry of Justice failed to provide additional evidence within its power, requested as a key part of the claim, without justifiable cause and in violation of the right to obtain evidence of the party to the complaint.

The aforementioned incidents highlight shortcomings in the official investigation procedures covering deaths in custody which, due to the nature and circumstances in which they occur, and the impact they have on those close to the deceased, **must be applied to the letter in order to ensure a thorough investigation and the possibility of redress.**

6.4. Mechanical restraints and solitary confinement in CIEs

On the decision of the director of a centre, and in accordance with Article 57 of Royal Decree 162/2014, dated 14 March, regulating the operations and internal structure of immigrant detention centres (CIEs) in Spain, both personal physical restraint and preventive isolation in a single cell can be applied.

This same article limits use of these measures to cases in which there are no alternatives, with due justification and never as a means of punishment. It also specifies that such use must be communicated both to the person to whom it applies and to the courts responsible for oversight which, in addition, must provide authorisation.

In the CIE located in Barcelona, solitary confinement entails detention in a single unfurnished room, without a toilet or sink inside (officers must be called to accompany the person to the bathroom), and without a window that allows a view to the outside. The detainee is unable to access the courtyard and is kept in absolute solitude from the rest of those detained in the centre. A wide range of detainees have been subject to such confinement, among them, those suffering mental health issues.

The Spanish Ombudsman, in their role as the National Mechanism for the Prevention of Torture (NMPT), upon verifying these circumstances, concluded that the **application of such isolation measures in cases to those suffering mental health issues is wholly unjustified,** and recommended the establishment of a psychological and psychiatric consultation service within CIEs in accordance with the provisions of Section 9 of the Guidelines issued by the European Committee for the Prevention of Torture in March 2017 CPT/inf (2017)3.

The existence and persistence of such grave infringements of the rights of those in detention – who, it must be recalled, are often deprived of their liberty as a result of an entirely non-criminal infringement of the law – have motivated the complaints presented by Irídia before the courts with oversight of the CIEs, as well as to the Spanish Ombudsman and relevant European authorities, in which we have both highlighted this situation and demanded urgent measures to be taken to deal with it. Additionally, both Irídia and other grassroots campaigners are working to end internment and shut down the CIEs.

Quatre Camins Penitentiary Center - Valentina Lazo

07

Impunity for crimes committed by the Francoist dictatorship

Case title: **Lawsuit by the Ferrándiz siblings alleging crimes against humanity committed by the Franco regime**

Location: **Police headquarters, Via Laietana, 43, Barcelona**

Case summary:

In April 1971, the twins Maribel and Pepus Ferrándiz, aged 17, were arrested on charges of being members of the Young Red Guard organisation. Four police officers raided their family home at 2 in the morning, while the siblings were sleeping, detaining and transferring them to the police headquarters located on Via Laietana, where they were held for 32 days. During the various interrogations to which they were subjected, both were subjected to physical and psychological torture by officers of the Political-Social Brigade, whose objective was to obtain information about the political organisation to which they belonged and its members.

Pepus was placed in solitary confinement for the first 21 days of detention, and then moved to a shared cell. Maribel shared a cell with other prisoners during the full 32 days of her detention.

On 25 May 1971, in the early hours of the morning, the Ferrándiz siblings were called to testify before a judge and subsequently transferred to the Trinitat Vella women's prison (Maribel) and to the La Model Men's Penitentiary Centre (Pepus), where they would be detained for thirteen months.

Details for consideration:

- These allegations of torture constitute a crime against humanity insofar as they are representative of a widespread and systematic method of repression employed by the police of the Franco regime against a segment of the population.
- The use of detention and torture was clearly influenced by gender, class and political bias against those persecuted.
- Despite constituting crimes against humanity – which are imprescriptible and cannot be amnestied – these acts have remained unpunished to this day. As of 31 December 2023, the claim is still pending admittance by the investigating court.

There remains an impunity surrounding the Via Laietana police headquarters and its repressive activities between 1939 and 1980: t**hose who committed torture there have never been tried, and the building continues to serve as a police headquarters** (at present, of the Policía Nacional), despite the fact that numerous campaigners for historical memory and grassroots organisations have spent years demanding its **transfer and transformation into a centre for historical memory and study of the events which occurred there.** This handover of the Via Laietana headquarters is essential for the upholding of **the right to memory** which is part and parcel of any democratic society that, in its recent past, has seen widespread and systematic repression against a part of the population.

This impunity is not exclusive to this case, but responds to the generalized refusal throughout the State to investigate the crimes of Francoism, maintaining the current model of impunity.

In **November 2022**, a complaint was filed **for crimes against humanity in the form of torture suffered by Carles Vallejo** during his detention at Via Laietana 43 between 1970 and 1971. This was the first claim filed for torture during the Franco regime after the entry into force of the Democratic Memory Law on 21 October 2022.

In 2023, Investigative Court No. 18 of Barcelona, to which the claim was assigned, ordered the Public Prosecutor's Office to rule on its admission for hearing. The Prosecutor responded demanding that the claim be struck out. Nevertheless, following creation of a special Public Prosecutor's Office for Human Rights and Democratic Memory in June 2023, Irídia requested that this new body reconsider the matter. **This new office issued a report concluding that the case should be admitted** and, in view of this – and for the first time – the chief prosecutor of Barcelona reversed their recommendation and called for the case to be heard.

As such, t**he Public Prosecutor's Office, with Irídia representing the claim and the Government of Catalonia as a third-party litigant acting in the public interest, requested admission of the complaint to the court**. Nevertheless, the court ruled the complaint inadmissible in view of a strict reading of the principle of legality, considering that the alleged acts of torture had been prescribed and were subject to amnesty as per the legislation in force at the time, thus meaning that they could not be regarded as constitutive of crimes against humanity. Contrary to the request of all parties, the court struck out the claim, reflecting the **continued impunity surrounding the cases of crimes against humanity committed during the Franco dictatorship and the transition to democracy in Spain.**

Such impunity is not exclusive to this case and **persists to this day**, built upon a deep-rooted unwillingness throughout Spain to investigate the crimes of the Franco regime. In the last six years, **more than 100 complaints** have been filed in Spain, backed by the organisation CeAQUA. Of all of them, **only one has been admitted for hearing:** that of Julio Pacheco. Although the admission of this complaint may set a remarkable precedent, its isolation continues to highlight the persistence of widespread impunity which conditions the reluctance of authorities to investigate Francoist crimes.

Carles Vallejo during an act in front of the police station on Via Laietana, October 11 - Borja Lozano

08

Good Practice

- **Reopening of investigations by Section 8 of the Provincial Court of Barcelona into alleged criminal offences**

On 13 October 2023, Section 8 of the Provincial Court of Barcelona issued a ruling agreeing to reopen investigations into alleged criminal offences concerning the death of A.P., who died after being shocked six times with a CED device by an officer of the Mossos d'Esquadra. In its decision, the court ruled that the investigations carried out by the Investigative Court No. 2 of Badalona had not been exhaustive, and that a number of issues remained to be resolved in order for the facts of the case to be fully established. In this regard, the Provincial Court highlighted shortcomings in the audit report carried out by the Inspectorate of the Service Evaluation Division, under the command of the General Directorate of Police.

On the one hand, it ruled that the audit failed to analyse the circumstances in which use of the CED was decided upon, in order to fully establish its appropriateness and necessity. On the other hand, it noted that the audit did not make reference to use data stored in the CED's registry, a mechanism for the traceability of said weapons, despite the existence of this data being mentioned in the police report of the incident. The ruling also noted that the audit report did not include analysis of the video footage available.

The Provincial Court ruling held that, in the investigation phase, the vagueness offered in the internal audit report ought to have been clarified. As such, it upheld the request to reopen investigations into what is an especially serious case concerning death due to cardiorespiratory arrest immediately after police intervention in which use was made of a conducted energy device.

- **Reopening of investigations by Section 9 of the Provincial Court of Barcelona into alleged criminal offences**

On 13 March 2023, Section 9 of the Provincial Court of Barcelona issued a resolution agreeing to reopen investigations into alleged criminal offences concerning the racially-motivated assault suffered by M.K. at the Brians 1 prison in March 2020. In its ruling, the court argued that the Investigative Court had not exhausted all available avenues of investigation into the alleged conduct by prison officers which, if proven, would constitute a serious offence. It also determined that the dismissal of the case by the Investigative Court was based on a report issued by the prison and without having taken what it considered to be the necessary statement from the complainant of their version of events.

In terms of the investigation itself, the Provincial Court considered that this should be started anew and include all of the steps requested by Irídia, among which is the forensic examination of the complainant in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, better known as the Istanbul Protocol.

- **Ruling by Section 7 of the Provincial Court of Barcelona for the continuation of summary proceedings**

On 7 December 2023, Section 7 of the Provincial Court of Barcelona issued a ruling in which it overturned the decision of the Investigative Court to close investigations and dismiss allegations of assault on T.S. by officers of the Mossos d'Esquadra during demonstrations against the sentencing of pro-independence Catalan leaders in Barcelona in 2019. The investigating judge had dismissed the case on the grounds that it was impossible to identify the Mossos d'Esquadra agents who had assaulted and insulted T.S. The Provincial Court nevertheless upheld the appeal presented by Irídia, considering that, following identification of the Mossos d'Esquadra sergeant who was

in command of the acting officers, a case could be brought against them as guarantor of the actions of those who were alleged to have assaulted T.S.

- **Specific and detailed psychiatric assessment report by the Institute of Legal Medicine and Forensic Sciences of Catalonia**

In relation to a case brought for physical and psychological harm caused by non-sanctioned use of force by an officer of the Guàrdia Urbana (local Barcelona police) – and in contrast to the majority of cases – the Institute of Legal Medicine and Forensic Sciences issued an independent psychiatric assessment report, in which it offered specific consideration of the psychological impact on the affected person. This report includes in detail the psychological effects resulting from the alleged events and the symptoms thereof, and establishes a causal link between them and the facts subject to criminal proceedings.

This report served to accredit the existence of psychological harm caused – essential for the presentation of allegations of criminal injury – as well as evaluating this for the purposes of a future civil liability claim.

- **Swift investigations by Investigative Court No. 4 of Cornellà**

Investigative Court No. 4 of Cornellà, which was handed the case of a racially-motivated assault by five Guàrdia Urbana officers in the town of Cornellà de Llobregat – highlighted in our 2022 report – ensured that full and thorough investigations were carried out swiftly. In the four months immediately following the filing of the complaint, the investigating judge called the complainant to testify both as a witness and as the injured party, as well as citing the officers involved to provide a declaration under investigation. A forensic examination was carried out to establish the physical and psychological harm caused, and a statement was taken from a witness to the incident. The presiding judge also requested the submission of additional documentation necessary for the clarification of the facts.

- **Publication of the protocols for the use of weaponry and defensive equipment by the Mossos d'Esquadra**

After years of requests from the Catalan Ombudsman and human rights organisations such as Irídia and Amnesty International, the protocols for the use of weapons and defensive equipment by Mossos d'Esquadra officers were published on the force's website.

Accessibility to these protocols could nevertheless be improved, insofar as are available solely through a page titled "Llançadora" (launcher). By contrast, it would arguably be more user-friendly to create a page covering the broader category of police weaponry and equipment, via which the full range of protocols could be accessed, including those covering the use of foam rounds. Be that as it may, the publication of these protocols represents good practice, and they can be consulted (in Catalan only) via the following link: https://mossos.gencat.cat/ca/els_mossos_desquadra/Eines-policials/Llancadora/

- **Modification of the Protocol for the use of 40mm launchers and their projectiles *(foam)***

Over the course of 2023, Irídia and Amnesty International Catalonia continued to work together in order to bring to the Catalan Ministry of Home Affairs' knowledge its failure to fulfil international obligations and to demand the withdrawal of the SIR-X projectile, as agreed to by the Parliament of Catalonia's Examining Committee on Policing on 2 December 2022. On 27 October 2023, the Mossos d'Esquadra introduced substantial modifications to the Protocol for the use of 40 mm launchers and their projectiles issued on 16 July 2019 to resolve these outstanding issues.

Specifically, the following aspects were revised:

1. **The distance at which SIR-X projectiles can be fired by officers of the force was modified upwards, from 20 metres to 30 metres.** The manufacturer of the SIR-X projectile (B&T AG, Switzerland) stipulates that the greatest risk of serious injury (lacerations, cranial fractures, spleen, liver or heart ruptures, closed chest traumas, internal haemorrhages) or death occurs at distances of less than 30 metres. This has been repeatedly highlighted by Irídia following confirmation that the Ministry of Home Affairs had failed to respect the manufacturer's instructions. In any use of the SIR-X projectile, these distances must be respected. Key to bringing about this change, as stated in the new protocol (pg. 7), was the expert report[31] published by the Omega Research Foundation as part of the criminal complaint brought before Investigative Court No. of Barcelona for the serious ocular injury suffered by a young woman during protests against the imprisonment of Pablo Hasel on 16 February 2021. Omega is a UK-based non-governmental research organisation working to safeguard human rights and prevent serious human rights violations, including torture and other ill-treatment. Founded in 1990, Omega's years of specialist work have generated an extensive body of evidence on the manufacture and trade of equipment used for torture and repression. The report, which was also delivered to the General Directorate of Police, offers analysis of the protocols covering the 40 mm launchers in use by police at the time of the events, taking into account the instructions provided by the manufacturer of the SIR-X projectile and the local and international regulations that govern the use of force and less lethal weapons by police officers. It identifies a number of failures to comply with international regulations, in addition to practices which could pose an unacceptable risk to the physical safety of members of the public, including the use of projectiles at a distance of less than 30 metres. The Minister of Home Affairs announced that the SIR-X projectile will be withdrawn in 2024, thus complying with one of the conclusions of the Examining Committee on Policing (CEMP, in Catalan). Although Irídia continues to recommend the complete prohibition of the use of all projectiles of this kind by the Mossos d'Esquadra, the future withdrawal of this specific projectile is nevertheless an important step forward.
2. **Shots above the abdomen have also been prohibited in all cases.** Previously, although protocols indicated that shots were to be fired "below the abdomen", provision was made "if [accuracy] can be guaranteed, [to] target the limb of a person in possession of a projectile object, blunt object, knife, etc.". In practice, this allowed shots to be fired against the upper body, contravening international regulations on the matter, such as the United Nations Guidance on Less-Lethal Weapons, issued in 2020 (OHCHR, 2020). The published version of the new protocol states that any shot "must be aimed below the abdomen, complying with the distances indicated. At this point, any and all variables which may lead to an unintended and unwanted outcome of a shot fired against another part of the body (moving target, shooter balance, and other circumstances) must be taken into account". As such, no exceptions are made, although a part of this section of the protocol has been blanked out. Nevertheless, it is unlikely that this section refers to parts of the body likely to be targeted.
3. The use of ***foam*** launchers is restricted to cases in which there is an "objective risk of death or physical harm" to members of the public, thus barring their use to prevent damage to property. International regulations are unequivocal in this regard, considering this type of weapon to be especially harmful, and that the right to life and physical wellbeing takes precedence over the right to property. For example, the Human Rights Handbook on Policing Assemblies (OSCE, 2016), states that "shots should only be aimed at individuals who pose an immediate threat of serious

31 Expert opinion on the Protocol of the Mossos d'Esquadra for the use of the SIR-X projectile, provided by the Omega Research Foundation, 2022.

injury or loss of life" (p.81). In turn, the Guidance on Less-Lethal Weapons by police officers states that "kinetic impact projectiles should generally be used only in direct fire with the aim of striking the lower abdomen or legs of a violent individual and only with a view to addressing an imminent threat of injury to either a law enforcement official or a member of the public" (OHCHR, 2020).

4. ***Foam* launchers may not be used to disperse demonstrators or crowds.** The previous protocol provided that, by order of the unit's commanding officer, the firing of shots could be made with the aim of "dispersion within a confined area" or for "general dispersion", something which both Irídia and Amnesty International had repeatedly raised concerns about. Omega also concluded that the provisions in the protocol, known as PIT 22, for "the use of SIR-X for dispersion in a confined space or for general dispersion could be interpreted as [being] opposed to international human rights standards", insofar as said standards outline that the purpose of kinetic impact projectiles is to target people who exercise violence, and not for indiscriminate use against gatherings of people. As already mentioned, the fact that the use of launchers remains permitted for the purposes of "[neutralising] collective engagement in violent behaviour" entails a continued risk of indiscriminate use that must be reviewed.

- **Creation of the General Commissariat for Internal Investigation and Disciplinary Affairs of the Mossos d'Esquadra**

Ruling 57/2023 on the restructuring of the General Directorate of Police led to the revision of internal oversight of the Mossos d'Esquadra with the establishment, via Article 146, of the General Commissariat for Internal Investigation and Disciplinary Affairs. The creation of a Commissariat, rather than a division as was previously the case, is a significant step forward in that it bestows a more important rank to the office in charge of ensuring accountability and improvement. Whether or not this has been accompanied by an increase in funding or staff is unknown; given the increase in rank, however, it is hoped that this is very much the case.

This change follows the requests for reform outlined by Irídia in our 2022 Report on Institutional Violence[32], in addition to the study "Anàlisi dels mecanismes de control del cos de Mossos d'Esquadra", in which we called for "far-reaching reform of the internal oversight and discipline of the Mossos d'Esquadra. Internal Affairs (or any successor department) must be provided with full organizational and operational autonomy, sufficient human and technological resources, and a permanent human rights training programme"[33].

- **Creation of a joint-working protocol between the Ministry of Home Affairs and organisations, trade unions and professional associations representing journalists and media workers in relation to the use of personal identification in potentially dangerous or problematic situations**

On 22 March 2023, the Catalan Ministry of Home Affairs and a number of media organisations, trade unions and professional associations (Col·legi de Periodistes de Catalunya, Sindicat de Periodistas de Catalunya, Sindicat de la imatge – UPIFC, Grupo de Periodistas Ramon Barnils) agreed on a protocol for joint-working in relation to the use of personal identification in potentially dangerous or problematic situations[34]. The protocol represents a milestone in that it sets out measures for ensuring that everyone can properly enjoy rights and freedoms such as the right to information and freedom of expression, as well as safeguarding the work of media professionals, particularly in their coverage of public protests. The supposed non-identification of media professionals has been used as a pretext to excuse violence, harassment and police misconduct

32 https://iridia.cat/publicacions/informe-sobre-violencia-institucional-2022/
33 https://iridia.cat/publicacions/mecanismescontrol/
34 Sindicat de la Imatge – UPIFC, La UPIDC signa el nou protocol amb Interior (22 March 2023). Available in Catalan at: https://upisindi.cat/cat/la-upifc-signa-el-nou-protocol-amb-interior/

towards journalists. Nevertheless, one of the measures included in this document is that media professionals need not be obliged to wear visual identification (a press jacket and/or armband) that accredits and identifies them when covering protests. While the use of such means of identification continues to be recommended, it is ancillary to and cannot act as a substitute for other means of accreditation (press card).

- **Report by the Public Prosecutor for Human Rights and Democratic Memory demanding a full judicial investigation into allegations of torture at the Via Laietana 43 police headquarters**

Some months after the Prosecutor's Office initial request that the claim brought by trade unionist Carles Vallejo for torture at the Commissaria de Via Laietana 43 in 1971 be dismissed, Dolores Delgado – the newly-appointed Public Prosecutor for Human Rights and Democratic Memory – requested its admission to hearing. For the first time, and after more than 40 years of impunity, a Public Prosecutor offered their opinion regarding a case of alleged torture by Francoist officials, requesting an investigation into the events. This pronouncement is a step forward in the fight for justice – and the fight against impunity – in response to the crimes of the dictatorship.

Indeed, the very creation of the Public Prosecutor's Office for Human Rights and Democratic Memory following the passing of the Democratic Memory Law 20/2022 (21 October 2022) – with its constitution stipulated in Article 28 – also represents an advance in Spain's handling of historical memory in public policy. Since taking office, the new prosecutor has also shown her interest in ongoing judicial proceedings (at present, this covers only 1 out of 100 cases), appearing as an observer during the delivery of the first statement by victims of torture during the Franco regime before the courts on 15 September 2023. This statement was made following the admission to hearing of the only existing judicial case concerning allegations of torture suffered under the dictatorship in Spain – brought by Julio Pacheco – in which, for the first time, the complainant and a witness were summoned to testify as injured parties. The presence of the new prosecutor's team, in an observational capacity, is a key part of ensuring redress for those affected.

In addition to being an unprecedented and landmark event for historical memory and justice, this decision should also encourage further measures for ensuring historical memory in Spain, breaking the cycle of impunity which has been in force for decades.

- **Creation of an inquiry committee by the Parliament of Catalonia into Pegasus spy cases in Spain**

On 21 September 2022, the Parliament of Catalonia ratified the creation of the first inquiry committee into espionage using Pegasus spyware in Spain, as requested by the political parties ERC, JxCat, CUP and ECP. Its creation had been encouraged by the PEGA Committee of the European Parliament, established in the face of the alarming use of spyware such as Pegasus or Candiru in a range of different countries around Europe. Spain was among the countries at the centre of the committee's investigations, along with Hungary, Poland, Greece and Cyprus. The PEGA Committee brought its work to a close in May 2023 with a series of forthright conclusions and recommendations concerning Spain which have served to guide the work of the Catalan committee.

While the Parliament of Catalonia committee was constituted at the beginning of January 2023 following approval of an action plan – and with a one-year mandate to clarify the facts and take action regarding the violations of fundamental rights which the use of said spyware could entail – it remains active due to problems in obtaining information and the refusal of some of those cited to cooperate. Since its creation, and in light of the submissions provided by affected activists, grassroots campaigners and human rights organisations – as well as technological and other experts – the committee has highlighted a lack of political interest in providing clarification in the documented cases. Irídia appeared before the committee on 2 May 2023 to provide our own declarations.

At the end of 2023, while negotiations to establish a new Spanish government were ongoing, members of the Congress of Deputies from the political parties ERC, Bildu and BNG entered a petition for an inquiry into the Pegasus espionage case known as the CatalanGate. An inquiry committee was set up by Congress on 12 December the same year.

- **Creation of the Parliament of Catalonia Inquiry Committee into Infiltration by State Police Forces in Social and Political Grassroots Movements around the Country**

On 3 October 2023, following a motion being brought before the City Council of Girona and Salt by a group of local people who had been affected, the Parliament of Catalonia approved the creation of the Inquiry Committee into Infiltration by State Police Forces in Social and Political and Grassroots Movements around the Country. The committee was set up at the request of members from the political parties CUP, ERC, JxCat and ECP on 9 November 2023, and its action plan approved on 30 November of the same year, with the intention of entering into operation in early 2024.

Given the lack of information and political will to investigate and take the necessary measures to address such serious cases, the creation of this committee represents a step forward in encouraging public debate on what the limits and oversight of the police should be in a democratic society based on the rule of law. Its action plan outlines engagement with experts, human rights organisations and those affected both nationally and, regarding other cases, internationally, who it is foreseen will contribute to an appraisal of the scale and nature of these operations, as well as the impact they have had on the civil liberties and fundamental rights of the public.

In the United Kingdom, an independent public inquiry is currently underway into more than 27 cases of police infiltration in the country, similar to those documented in Spain. As such, the Parliament of Catalonia's own inquiry committee should serve to broaden debate and highlight the need to carry out a thorough and comprehensive investigation into these cases, as well as to urge the Spanish government to take the necessary measures so that these events do not occur again.

- **Official commitment to a country free of racism by the Government of Catalonia**

On 10 October 2023, the Minister of Equality and Feminism and the Director General of Migration, Refugees and Antiracism presented a series of measures under the title "The Government of Catalonia's commitment to a country free of racism. 70 measures for social and institutional transformation"[35]. Among the measures which make up the plan are the following:

  - Increase law enforcement agencies' awareness about anti-racism and enhance tools to prevent discriminatory bias in police stops.
  - Develop a protocol for the prevention, identification and handling of discrimination and hatred for private security firms, and provide appropriate training to the personnel of these companies.
  - Commemorate the 275th anniversary of the Great Gypsy Round-Up and encourage renewed representation of Roma women's history.
  - Provide free legal advice to people and organisations involved in defending the rights of migrants, refugees or racialised people who suffer attacks by anti-rights groups, as part of a broader Action Plan for the support of organisations and individuals defending human rights in Catalonia.

35 https://igualtat.gencat.cat/web/.content/Ambits/anti-racism-migration/policies-i-plans/plans-programs/compromis_antiracista.pdf (Catalan)

- Conduct a macro survey to ascertain the state of discrimination in Catalonia, with particular reference to ethno-racial discrimination.
- Publish an annual report on incidents of racism handled by police and the actions carried out by officers.
- Offer training sessions on anti-racism to legal aid professionals in collaboration with the Catalan Bar Association.
- Promote research aimed at analysing racism within criminal justice and law enforcement.

09

Recommendations

The recommendations contained herein make reference to circumstances or practices that have come to the attention of SAIDAVI (Service for Attention and Reporting in Situations of Institutional Violence) through our own strategic litigation and other cases. To these we might add, as a general recommendation addressed to all public bodies, the need to take into account the conclusions and implement the steps recommended by the Catalan Ombudsman in its Annual Report of the Mechanism for the Prevention of Torture.

9.1. To the parliamentary groups of Congress

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

2 Repeal of the precepts that threaten freedom of expression and the right to assembly, as part of the reform of the Citizens' Security Act 4/2015. In particular, the offence of publishing images of security force personnel must be eliminated, as it constitutes a serious violation of freedom of information and has been found to lead to a worrying degree of self-censorship. The additional provision of the law relating to summary and collective expulsions, known as "express deportations" and contrary to international law, must also be repealed. These reforms must also include the express prohibition of racially-motivated raids and stop-and-searches, and of the use of rubber bullets by police forces. In addition, recognition must be made of the right to spontaneous demonstration without prior communication, eliminating the penalisation of organisers for public order offences. Likewise, the penalisation of contempt towards police officers (art. 37.4) and refusal to cooperate (art. 36.6) must also be removed, while the refusal to provide identification when requested should, at most, be considered a minor offence.

3 Article 131 of the Criminal Code, passed as law in Act 10/1995 23 November must be amended so as to define the crime of torture as an imprescriptible offence, as recommended by the United Nations Committee for the Prevention of Torture on repeated occasions.

4 Given their potential to cause harm, the use of rubber bullets by police forces must be outlawed. To this end, consensus must be reached for the creation of an inquiry committee to investigate the cases of those affected by the use of rubber bullets, in order to assess the impact on members of the public caused by the use of these weapons, with the activation of relevant remedial measures and evaluation of compliance with current oversight, appraisal and disciplinary measures as they apply to the police forces engaged in public order duties.

5 The Government must be urged to amend the regulations governing the uniform of police officers with public order duties (riot police), such that their identification number be easily memorable and visible from 360 degrees, with respect to typography, numbering and size. This number must appear on the front and back of their uniform, and on each side of their helmet.

6 The Immigration Act must be amended to abolish the existence of Immigration Detention Centres (CIEs) and end medium-term detention pending trial or deportation. Any such amendment should also provide facilities for the regularisation of migrants' resident status in Spain. Likewise, the validity of deportation orders should be limited to a maximum of two years, without any period of prohibition of entry – which should also be limited – affecting their expiry.

7 Legislation must be passed which outlines judicial oversight over Immigration Detention Centres including but not limited to the procedures, timescales and avenues of appeal available, in order to address the extant absence of oversight and guarantee the effective judicial protection of those detained in CIEs around the country.

8 The Popular Legislative Initiative "Regularización Ya" must be given due consideration, debated and passed in order to proceed towards the granting of residence to the more than 500,000 people currently without legal status to remain in the country. This lack of legal status acts as a deterrent when it comes to reporting cases of institutional violence and represents a breach of the right to truth, justice, reparation and non-repetition of those affected.

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

- The Amnesty Law must be amended or repealed.
- The Criminal Code, as passed in Act 10/1995 23 November, must be amended to expressly include the principle of international jurisdiction (contained, inter alia, in Article 7.2 of the European Convention on Human Rights, and in Article 15.2 of the International Covenant on Civil and Political Rights).
- Spain must also take steps to ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.
- It must also act to amend the International Treaties Act, in order to ensure specific recognition and implementation of the judgements issued by the United Nations' Treaty Bodies.

10 The Official Secrets Act 11/2002, which underpins regulation of the National Intelligence Centre (CNI), and the 2/2002 Act governing judicial oversight of the CNI, must be amended to include a legal framework for intelligence operations which respects the principles of legality, legitimacy, necessity, proportionality, competency, effective judicial protection, user notification, transparency, public oversight, security and technical certification and alignment. These amendments must ensure the eradication of invasive espionage methods and/or techniques through use of spyware such as Pegasus, Candiru and similar programmes.

11 The General Council of the Judiciary must be renewed, with its mandate having expired fi years ago, with the appropriate new appointments to be made by Congress and the Senate.

9.2. To the parliamentary groups of the Parliament of Catalonia

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

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

3. The Justice Committee must assess the implementation of Memorandum 2/2017, approved by the parliamentary Working Group, regarding the use of solitary confinement in prisons in Catalonia, for the purpose of assessing compliance and its effectiveness.

4. The relevant parliamentary committees – in particular, the Home Affairs Committee – must oversee the implementation of the conclusions of the Examining Committee on Policing and, where appropriate, of the Examining Committee on Institutional and Structural Racism.

5. The Home Affairs Committee must conduct an evaluation of the use of Conducted Energy Devices (CEDs) by both the Mossos d'Esquadra and local police forces, as part of which it must also analyse the relevant statutory regulations, in order to assess their use and the possible lethal impacts thereof, in addition to shortcomings in traceability and subsequent oversight.

9.3. To the National Government – Ministry of the Interior

1. The procedural and operational work of the internal affairs units of the Policía Nacional and the Guardia Civil must be reviewed, so as to ensure their independence in investigating alleged offences in contravention of the inviolable right to dignity (*integridad moral*) and/or of torture, sexual coercion and violence, causing of injury and/or unlawful detention committed by, at the instigation of, or with the consent or acquiescence of an officer of the law or any other person in the exercise of said public duties. Likewise, it is essential that these units be formed of officers with full human rights training and that they be afforded a higher degree of autonomy from the rest of the force, in order to ensure that their duties are fulfilled in an independent and diligent manner. A channel through which members of the public and human rights organisations can report situations of institutional violence must be put in place, allowing for appropriate and rapid action to be taken in order to ensure the safeguarding of evidence. Given the specificities of this type of case, any such channels should not be the same as those which exist for reporting other allegations of malpractice.

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

3 The regulations governing the uniform of police officers with public order duties (riot police) must be amended, such that their identification number be easily memorable and visible from 360 degrees, with respect to typography, numbering and size. This number must appear on the front and back of their uniform, and on each side of their helmet.

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

5 In addition to the number of formal and criminal complaints, convictions and penalties issued, disaggregated data must be published annually concerning internal disciplinary procedures involving officers of the Policía Nacional and the Guardia Civil for the alleged commission of offences of torture, sexual coercion and violence, injuries and/or unlawful detention, or which contravene the inviolable right to dignity of any affected parties.

6 A police protocol for dealing with ethnic and racial discrimination must be adopted, in order to outlaw and eradicate practices such as ethnic and racial profiling. Requests for identification made to members of the public by police officers must be guided by a series of well-defined protocols for action and justified in writing. Likewise, a training plan must be put in place for police forces to ensure the correct implementation of this protocol in their actions.

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

8 A permanent translation and interpretation service capable of meeting the linguistic needs of all detainees must be installed in CIEs, in order to guarantee their rights to legal defence, asylum and health, as well as to ensure the protection of victims of trafficking and children and adolescents who, despite their circumstances, find themselves in detention.

9 Measures must be taken in order to guarantee the right to defence and freely chosen, confidential face-to-face legal assistance to those detained in CIEs. Likewise, their rights to visits and to contact with NGOs and human rights defence organisations must be safeguarded, without the need for prior confirmation by telephone, as has been the case since the COVID-19 pandemic.

10 Serious shortcomings in the health care provided to those detained in the CIE in Barcelona, such as the lack of 24-hour medical services, the absence of psychological and psychiatric support and the lack of digital medical records, must be addressed. The health services outsourced by the Ministry of the Interior to the private company Clínica Madrid must be brought under public management. The Ministry must transfer competencies in health care provision in the CIE in Barcelona to the Government of Catalonia, with the Catalan Health Service taking charge of its management, in order to offer the same right to health to those detained in the CIE as enjoyed by the public at large.

11 Psychological support must be made available to those detained in the CIE who require it, especially those who have shown signs of self-harm, suicidal ideation or attempted suicide.

12 Guidelines must be prepared to govern the use of solitary confinement in the CIE, creating a system in which its use is carefully restricted both in terms of the circumstances and duration over which it may be applied. Furthermore, continuous cell time must also be limited according to strict necessity, and in no case must exceed 24 hours. In addition, cells used for solitary confinement must be brought up to basic standards of decency, and in no case can confinement of this kind be applied for health reasons. Detainees must, in these circumstances, be referred to public health services.

13 A revision of restraint procedures in CIEs must be undertaken. As recommended by international organisations such as the European Committee for the Prevention of Torture of the Council of Europe, physical restraint must only be carried out in a limited manner and causing the least harm possible, and for the minimum amount of time necessary, which must in no case exceed 30 minutes in duration. Efforts must be made to move towards a zero-restraints policy, as is the case in psychiatric facilities.

14 Existing legislation – among which we include the Royal Decree 596/1999, which complements Act 4/1997 regulating the use of video cameras by police forces in public spaces – must be amended to ensure that audio and video footage recorded in CIEs is kept for a period of at least six months.

15 Prison regulations must be reformed and the prison system updated, suspending solitary confinement as a part of normal practice in closed prisons and prohibiting the use of solitary confinement as punishment where this exceeds 15 days. International recommendations must also be heeded in terms of the mechanical restraint practiced in both the prison and medical environments, as part of a move towards a zero-restraints model.

16 A consistent communication channel which allows for regular meetings between the Ministry of the Interior and human rights defence organisations must be established. At present, there are no effective channels for constructive meetings and reciprocal communication.

17 Measures must be taken to ensure protection for journalists when carrying out their work, especially in the coverage of protests, in accordance with the Council of Europe Recommendation 2016 on the safety of journalists and other media actors. Given continued police misconduct in impeding journalists' work, measures must be adopted to prevent the obstruction, prosecution and punishment of media professionals which constitute a serious violation of the right to information.

18 The recommendations of the PEGA Committee of the European Parliament made to Spain on the use of spyware against activists must be adopted.

19 Spain must join the global moratorium on the purchase and use of espionage systems until the necessary safeguards to protect human rights are implemented, and must ensure these events are not repeated, immediately ceasing any operations of a similar nature. It must also desist from the purchase, development and use of technologies that can have a disproportionate detrimental impact on fundamental rights, such as Pegasus, Candiru or similar. Proportionality must be a key factor in the decision to acquire and use said technologies, and their use and effectiveness must be overseen by an independent body on an ongoing basis.

9.4. To the Government of Catalonia

1 In order to comply with the *Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia*, a specialist office offering restorative justice and comprehensive psycho-legal care to those affected by human rights breaches incurred by the use of force must be created. It is essential that the design and implementation of this service is carried out taking into account the voices and needs of those affected, via a participatory process that guarantees the principle of effective participation. This office must address the multiple consequences of human rights infringements which arise from the use of force by police officers and private security personnel, including during the Franco regime and the transition to democracy in Spain.

9.4.1. To the Ministry of Equality and Feminism

1 The Ministry must oversee the implementation of the *Concluding Report of the Examining Committee on Policing* (CEMP) of the Parliament of Catalonia, particularly with regard to the introduction of identification and registration forms for recording the reasons for stop-and-searches. In accordance with the principles of informed consent and confidentiality, any such form must be handed over to both the person concerned and to the Ministry of Home Affairs. The Ministry must ensure that an external audit is carried out by experts and with the participation of human rights and anti-racist organisations, in order to assess police selectivity and discrimination based on ethnic-racial profiling as it may exist in the Mossos d'Esquadra and the local police forces operative in Catalonia, as agreed by the CEMP.

9.4.2. To the Ministry of Home Affairs

1 The creation of an independent police oversight body via the drafting of legislation jointly with the Ministry of Equality and Feminism, and with participation from grassroots organisations, must be sought. This body should have the necessary powers to assess the need for and suitability of weapons and equipment available for police use. It should also play a supervisory role in evaluating police operations and in the creation of protocols for the use of force, as well as the measures taken to prevent its use. In addition, its remit should include the investigation of alleged malpractice or criminal activity, with the ability to act ex officio, and to access all the information necessary for it to complete independent and thorough inquiries.

2 In compliance with the *Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia*, transparent working practice guidelines and accountability mechanisms must be drawn up and presented for approval by the Parliament of Catalonia and the Ombudsman. To this end, the Directorate General of Police, the Prefecture of Police, the General Commissariat for Internal Investigation and Disciplinary Affairs and the General Directorate of Security Administration must issue annual performance reports, to be submitted to the Home Affairs Committee of the Parliament of Catalonia. These must be made public, appropriately redacted to ensure confidentiality, via the main website of the police of Catalonia. These reports must include the type of infractions, the number of precautionary actions taken, and the result of any disciplinary procedures, including the number of officers dismissed from the force as a result, specifying the units to which they belonged. All of the above is without prejudice to the fact that a future independent police oversight body is to be created.

3 To the General Directorate of Police:

- In compliance with the *Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia*, evaluation of the need and suitability of newly-acquired police weapons and equipment must be carried out in a transparent manner, taking into account not only technical and operational criteria but also their possible consequences for public health and the exercise of fundamental rights. For so long as the creation of an independent police oversight body may remain pending, any questions concerning technical criteria and the need and suitability of weapons and equipment for police use, and any acquisition thereof, must be addressed by the Home Affairs Committee of the Parliament of Catalonia.
- Any unsanctioned or potentially criminal activity by officers belonging to the Mossos d'Esquadra or the local police forces operating in Catalonia must be brought to the attention of the General Commissariat for Internal Investigation and Disciplinary Affairs. By extension, guidance must be issued to all Citizen Help and Information Offices (OAC) and police stations of the Mossos d'Esquadra in order to ensure that complaints filed against officers of the force are transferred to the General Commissariat efficiently and in the shortest possible time.
- The protocol for joint working between the Ministry of Home Affairs and the High Court of Justice of Catalonia must be clarified so that the judicial bodies in Catalonia inform the General Commissariat of any criminal investigation concerning police officers, whether or not this is related to their professional duties. Likewise, the General Commissariat for Internal Investigation and Disciplinary Affairs must respond to judicial requests or any other administrative procedures once due checks and investigations have been carried out.
- Provincial Internal Investigations and Disciplinary Affairs offices, in addition to an e-mail and telephone service, must be open to members of the public for the registration of complaints and grievances concerning the Mossos d'Esquadra. The existence of these offices, with a specific and easy-to-identify corporate image, should be sufficiently publicised to ensure that the public is aware of them.
- A specialised unit must be created within the General Commissariat for the purposes of investigating allegations of racially-motivated criminal conduct or malpractice by police officers, in order to prevent and eradicate such incidents.
- An online channel is to be created to enable the presentation of complaints, in the easiest and most accessible manner, via the main website of the police of Catalonia.
- A direct channel should be established between the General Commissariat and human rights organisations in order to bring complaints against officers of Mossos d'Esquadra to the attention of the former and thus facilitate the prompt initiation of investigations.
- In compliance with the *Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia*, measures aimed at safeguarding the right to information must be incorporated into the full range of existing public order protocols.
- SIR-X projectiles must be immediately withdrawn, given the serious proven injuries caused by their use. Pending the prohibition by Parliament of Catalonia of the use of *foam* projectiles, effective traceability mechanisms must

be established. This includes the geolocation of weaponry and the numbering of projectiles so as to permit the identification of the weapon fired or officer responsible for firing it.

- The Mossos d'Esquadra must ensure the automatic storage of any images that are recorded at its facilities for a period of six months. Video surveillance must also be installed in all police facilities, including the cells in which detainees are held, as well as spaces accessible to members of the public, eliminating blind spots. It is particularly important that rooms used for conducting searches are equipped with image and sound recording facilities, as has been implemented at the Les Corts police station.
- All police vehicles used to transfer detainees – including ARRO and BRIMO vehicles – must be equipped with an image detection, collection and conservation system similar to that used by the Guàrdia Urbana.
- An external audit by experts, with the participation of human rights and anti-racist organisations, must be carried out with the aim of assessing police selectivity and discrimination based on ethnic-racial profiling as it may exist in the Mossos d'Esquadra and the local police forces operative in Catalonia. This review must be afforded scope to make recommendations for the prevention, detection and sanctioning of improper or criminal conduct relating to ethnic and racial discrimination. Based on the results, a protocol for tackling ethnic-racial discrimination in police actions must be drawn up and implemented, with the aim of prohibiting and eradicating such practices. In compliance with the *Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia*, this protocol must include measures such as:
    - » The introduction of identification and registration forms for recording the reasons for stop-and-searches. In accordance with the principles of informed consent and confidentiality, a copy of any such form must be handed over to the person concerned and another stored by the registry office of the Mossos d'Esquadra.
    - » The introduction of a procedural manual on the use of identification and registration forms in public places, to be issued to members of the Mossos d'Esquadra and local police.
    - » The publication of an annual report, in which results are presented by geographical area, allowing for the introduction of any necessary changes should results show that police have engaged in ethnic-racial profiling.
- Instruction 4/2018 of the Mossos d'Esquadra, which concerns the use of Tasers (Conducted Energy Devices, CEDs), must be modified in order to comply with the recommendations of the Catalan Ombudsman and the standards agreed by the Parliamentary Committee, as well as those established by international regulations. In particular, it is necessary that the protocol for the use of such devices establishes that they can be discharged no more than twice, as a safety guarantee against repeated and continuous use. Likewise, "risk to public safety" must be removed from the protocol governing the use of CEDs, with said use also prohibited on persons susceptible to serious injury as per the information provided by the manufacturer (those with heart conditions, asthma or other pulmonary conditions, those in a state of excited delirium, significant agitation or severe exhaustion, those under the influence or chronic users of drugs and/or those suffering overexertion following physical struggle). Lastly, means for automated recording

of the use of any CED must be incorporated within the weapon itself, with this task not depending on the diligence of the officer.

- Police protocols should be reviewed to ensure that medical examinations of detainees are, as a general rule, conducted in private and without a police presence, unless otherwise requested by medical personnel for security reasons. To this end, and as indicated by the Ombudsman, the right to private medical examination can only be restricted in exceptional circumstances of dangerous behaviour or risk of harm. Additionally, if the person so refuses, they must not be forced to undergo examination.
- The Mossos d'Esquadra must be encouraged to investigate companies or individuals engaged in the extrajudicial eviction of people who do not hold title to the property in which they reside, insofar as this may entail coercion or threats aimed at their abandoning said property. Failing to take action to prevent the use of direct or indirect force is tantamount to tolerance of the potentially violent conduct directed against individuals by security and similar companies, and could therefore be considered as aiding and abetting in the commission of an offence.

4 The Directorate-General of Security (DGAS):

- A compliance audit must be carried out into the crime prevention plans of the private security companies operating in Catalonia, in addition to those of the public services that have outsourced security duties to private companies, such as is the case of Transports Metropolitans de Barcelona (TMB). This audit must also look into internal investigative work carried out by the DGAS in the event of any complaint regarding malpractice and/or possible criminal conduct.
- The compliance with human rights standards of private security personnel working in Catalonia must be assessed.
- The Ministry of Home Affairs' Annual Report must be made publicly available, with itemisation by offence of the disciplinary procedures brought against private security personnel and indication of how many of these have led to disciplinary action being taken (and the type of action taken).
- In compliance with the *Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia, the protocols of the local police forces operating in Catalonia must be standardised, especially with regard to the use of police equipment.*
- *In compliance with the Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia, action must be taken to introduce identification and registration forms for recording the reasons for stop-and-searches carried out by any and all local police forces in Catalonia.*

5 In addition to those explicitly mentioned in this report, the totality of the measures set out in the conclusions of the Examining Committee on Policing must be put in place.

9.4.3. To the Ministry of Justice

1. The Ministry of Justice must undertake an evaluation of the application of Memorandum 1/2022, which superseded Memorandum 2/2021 concerning the Protocol for the use of restraints in prisons in Catalonia, as well as of the impact that the changes introduced may have on the fundamental rights of those in detention. It is necessary that, once the result of this evaluation has been shared with the Parliament's Justice Committee, a new memorandum be approved which establishes, in a clear and detailed manner, the means of ensuring the implementation of a zero-restraint model in the Catalan prison system.

2. The Ministry of Justice must normalise the monitoring, prevention and reporting of situations of institutional violence in Catalan prisons carried out by human rights organisations, granting them a special status which facilitates their work, and which guarantees them absolute independence and freedom in carrying out this work, while ensuring that prisoners' rights are safeguarded in the process. In particular, Irídia and other organisations similarly dedicated to the defence of human rights must be afforded access to prisons in the same conditions as any other organisations or companies which provide prison services, religious assistance, or training workshops to prisoners.

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

4. A specific body must be set up for the reporting of allegations of torture, degrading treatment, sexual violence or coercion, or injury committed by prison officers or any other person working within the prison system, at the instigation or with the consent or acquiescence of those held in detention, their families or human rights defence organisations as communicated to the prison inspection service, as a means of building upon the safeguards in place for the due and prompt gathering of evidence.

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

6. A new communications protocol must be drafted, ensuring that the families of prisoners are adequately informed and kept up-to-date regarding their well-being, especially in cases of physical or mental illness, and that the correct support is provided to them by the prison service. In the case of deaths in custody, the crisis management unit of the emergency medical services should make initial contact with the family and/or those close to the deceased to ensure specialised support. Human rights organisations and prisoners' families must be able to participate in the drafting of this new document.

7. The Ministry must urge the Free Legal Assistance Commission to comply with the collaboration agreement reached in 2023 between the Ministry and the Council of the Illustrious Bar Associations of Catalonia for the establishment of a free legal aid deployment plan, by which the Commission no longer needs to seek judicial authorisation for the provision of legal aid in cases involving minor offences.

8 To the Institute of Legal Medicine and Forensic Sciences of Catalonia (IMLCFC):

- The Forensic Medical Action Protocol in cases of alleged torture or ill-treatment approved in April 2016 by the Board of Directors of the Institute of Legal Medicine and Forensic Sciences of Catalonia must be updated to comply with the standards of the 2022 edition of the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Prior to said revision, IMLCFC professionals must apply the Protocol in its current form where doctors suspect that torture or ill-treatment has taken place during detention or custody, or where the presiding judge or Public Prosecutor's Office so requests. Any record of the use of the Forensic Medical Action Protocol in suspected cases of torture or ill-treatment must be published annually. It is for this reason that specific human rights training focusing on the implementation of the Istanbul Protocol must be provided to forensic doctors.
- A specialised unit must be created within the IMLCFC for the investigation of allegations of institutional violence, specifically, those of degrading treatment, torture, sexual violence and coercion, causing of injury and/or unlawful detention committed at the instigation of, or with the consent or acquiescence of a public official or any other person acting in a public capacity. In order to deal with cases of institutional violence – especially cases of torture or ill-treatment in detention or custody – more tools and resources, as well more professionals with training regarding human rights infringements, are required.
- Forensic doctors must systematically record the harmful psychological effects of institutional violence in their expert evidence to the courts, quantifying and assessing these in an objective and thorough manner. At present, psychological evaluations of this kind are carried out by IMLCFC psychologists. However, only two psychologists were available to cover the whole of Catalonia in 2023. It is therefore recommended that the number of staff who can carry out these evaluations be increased.
- In-person examination of victims must be recorded and provide the basis for the evaluation report, which cannot be solely based on revision of their medical records.
- Where a person dies in custody (in prison, during arrest or at a police station), the autopsy must be carried out in accordance with the provisions of the Minnesota Protocol (2016) for the investigation of suspicious deaths. This protocol, which is included in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, sets out general and specific guidelines on the procedures for investigating potentially unlawful deaths and applies, inter alia, to deaths in custody, as well as to cases in which the State may have acted in disregard of its duty to protect life. It is for this reason that specialist human rights training, and specifically that which focuses on the implementation of the Minnesota Protocol, must be provided to forensic doctors.
- A protocol for the provision of communication and care for the families of those who have died in custody must be introduced and applied following autopsy.

9.4.4 To the Ministry of Health

1. The United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) must be made available to all emergency health centres in Catalonia, and a specific protocol must be created for its application during medical examinations of people in detention and/or who claim to have suffered torture or inhuman or degrading treatment. The fundamental principle of confidential treatment must be respected, meaning that any treatment must be provided to detainees without the presence of police. Exception must only be made where there is a clear and obvious risk to the detained person, medical or health personnel and/or third parties, and at the specific request of medical and/or health personnel.

2. The Ministry of Health must offer training on the Istanbul Protocol and the correct reporting of injury in cases of torture and/or ill-treatment to all general practitioners and doctors working in accident and emergency units in Catalonia, as well as on how to report cases in which doctors or other health personnel consider that torture or inhuman or degrading treatment may have taken place, even if the person under treatment does not allege this.

9.5. To Barcelona City Council

9.5.1. To municipal councillors

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

9.5.2. To the Executive – Department of Security and Prevention

1. As has already been done by the Mossos d'Esquadra, the regulations governing the uniform of Guàrdia Urbana officers with public order duties belonging to the Back-up Unit for Emergencies and Local Incidents (UREP) must be amended, such that their identification number be easily memorable and visible from 360 degrees, with respect to typography, numbering and size. This number must appear on the front and back of their uniform, and on each side of their helmet.

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

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

4. Disaggregated data must be published annually in relation to legal proceedings initiated against officers of the Guàrdia Urbana for the alleged commission of offences of degrading treatment, torture, sexual coercion and violence, causing of injury and/or unlawful detention. Likewise, the number of disciplinary proceedings initiated in response to allegations of discrimination based on race, gender, sexual orientation, religion, language, opinion, place of birth, place of residence, or any other personal or social condition or circumstance, must be

included in the *Management Report of the Guàrdia Urbana*. The report must also include the number of disciplinary proceedings initiated in response to allegations of the commission or tolerance of, or collusion in, acts of torture or cruel, inhuman or degrading treatment or punishment, and any other abusive, arbitrary or discriminatory conduct which involves physical violence or threatening behaviour. The report must also include the number of disciplinary proceedings which result in punitive action being taken, and the type of action taken.

5 An external expert review must be carried out, in consultation with human rights and anti-racist organisations, in order to analyse the hiring practices of the Guàrdia Urbana, and any ethno-racial discrimination which may exist within the force. This review must be afforded scope to make recommendations for the prevention, detection and sanctioning of improper or criminal conduct relating to ethnic and racial discrimination. Based on the results, a protocol for tackling ethnic-racial discrimination in police actions must be drawn up and implemented, with the aim of prohibiting and eradicating such practices. In compliance with the *Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia*, this protocol must include measures such as:

- The introduction of identification and registration forms for recording the reasons for stop-and-searches. In accordance with the principles of informed consent and confidentiality, a copy of any such form must be handed over to both the person concerned and, respecting their confidentiality, to the Department of Security and Prevention.
- A publicly-available annual report, in which results are presented by geographical area, which allows for the introduction of any necessary changes should results show that police have engaged in ethnic-racial profiling.

9.6. the National Public Prosecutor's Office

1 A specialised office for the prosecution of institutional violence must be created, providing oversight of all criminal proceedings relating to degrading treatment, torture, sexual violence and coercion, causing of injury and/or unlawful detention committed by public employees, and allowing for proactive intervention in the defence of the rights of victims.

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

3 Specific human rights training must be offered to prosecutors, particularly regarding the 2022 edition of the Istanbul Protocol, otherwise known as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4 With regards to judicial proceedings which arise from complaints of ill-treatment in CIEs, the Public Prosecutor's Office must act with the utmost haste and request that urgent investigations are carried out in order to gather any evidence of criminal conduct, taking into account the high likelihood of the deportation of victims and witnesses in such cases, something which hinders or precludes the continuation of any investigations or trial. In particular, it is essential that action is taken to gather any video surveillance footage taken in CIEs, as well as testimony from victims and witnesses before they are deported, and to ensure that forensic medical professionals assess any signs of physical injury and/or psychological harm which they may show.

5 The Annual Report of the Public Prosecutor's Office must include, in the chapter on "Issues of special interest", information on the judicial action taken into matters of torture and other cruel, inhuman or degrading treatment. It must include publication of detailed comparative data on the number of complaints made by victims of any offences which may fall under the definition of torture and/or ill-treatment (according to Spain's Criminal Code, crimes of torture and ill-treatment, degrading treatment, sexual violence, causing injury, unlawful detention, and omission of the duty to prevent torture committed by public officials and authorities), and the number of investigations and/or charges brought by the Prosecutor's Office. Likewise, this section of the report must include disaggregated data on requests for the consideration of the aggravating circumstance of discrimination in relation to the aforementioned offences.

9.7. To the General Council of the Judiciary

1 Specific human rights training must be offered to judges, particularly regarding the 2022 edition of the Istanbul Protocol, otherwise known as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9.8. To the Head of the Judiciary of Barcelona

1 Systematic action must be taken to ensure the right to effective judicial protection in the assignment of cases to the judiciary for those who, at their own instigation or with their consent or acquiescence, report alleged offences of degrading treatment, torture, sexual violence and/or causing injury committed by public officials within CIEs. Those who suffer ill-treatment within CIEs must be able to report this. Any evidence must be gathered with the utmost haste by the competent judicial authorities, who must also be authorised to carry out urgent investigations in cases which have occurred beyond the existing 72-hour period. This must be done taking into account the high probability of the victims and/or witnesses being deported, something which makes it difficult or impossible to continue with judicial proceedings. Urgent action must be taken to gather video surveillance footage recorded at the Centre and testimony from the victim and witnesses prior to their deportation, and to ensure that forensic medical professionals assess any signs of physical injury and/or psychological harm which they may show.

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

1 In compliance with the *Concluding Report of the Examining Committee on Policing of the Parliament of Catalonia*, a specific court service must be created to deal with institutional violence, staffed by professionals specialised in the area, in order to handle cases concerning crimes of degrading treatment, torture, sexual violence and coercion, injuries and/or unlawful detention committed by public officials or any other person in the exercise of public functions, at their instigation, or with their consent or acquiescence. This service must:

- be staffed by professionals with the specific legal experience and psychosocial training required to provide support to affected persons. Specialist

legal professionals must be involved in the lead-up to the filing of a claim, as well as in the filing and judicial investigation thereof, in order to correctly gather and safeguard evidence, and to ensure that those who suffer institutional violence are aware of their rights, receive correct legal advice, and have their interests defended.

- offer free legal assistance on demand to those who wish to take a case to court.
- include measures for joint-working with the legal defence teams of those under investigation, as well as a referral mechanism linked to the to-be-established office specialised in restorative justice and comprehensive psycho-legal care.

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

With the support of:

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