REPORT ON INSTITUTIONAL VIOLENCE

2024

Irídia_

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Executive Summary

The Report on Institutional Violence 2024:

EXPLAINS:

That the judicial system fails to effectively investigate allegations of ill-treatment and torture and of other crimes involving infringements of human rights committed by public officials, whether they be members of the police and security forces, the prison service or institutions such as the National Intelligence Centre.

Among other information, this report details that:

- In 32 of the 49 criminal cases taken on by Irídia, the investigating judge has dismissed the case without a full and thorough investigation. In 24 of these cases, investigations have been reopened by a higher court months or even years after the initial decision.
- The Public Prosecutor's Office has opposed the investigation in 20 of the 49 cases, has failed to act in 17 cases, and only in 12 has it taken any kind of active role in investigating or bringing the case to trial.
- The Institute of Legal Medicine and Forensic Sciences of Catalonia has issued just one forensic medical report in accordance with the standards of the Istanbul Protocol. In a further 20 cases in which it has issued a report, these have not followed said standards, nor was the affected person examined by medical staff. In the remaining cases, either the investigating judge has not sought any report or no investigations to the effect have been carried out.

CONCLUDES:

That impunity has a revictimising effect on those who, in seeking justice, redress and the guarantee of non-repetition, bring their cases to the attention of the courts. As such, it erodes trust in institutions, weakens the rule of law and encourages a culture of tolerance of this type of abuse.

RECOMMENDS:

The implementation of structural reforms to the judicial system, with the establishment of additional and more comprehensive training plans for judges, prosecutors, legal aid professionals and forensic doctors, the creation of a Special Prosecutor's Office for Institutional Violence and of an independent mechanism to monitor police conduct.

Acknowledgements

From all at Irídia, we wish to extend our gratitude to those whose expert knowledge informed this report; the professionals who have supported our legal work; the volunteers who have provided us with their time and experience; the organisations with whom we have worked in tandem to defend the rights of those who live where we do; all those whose contributions have enabled Irídia to exist and, lastly, all those who have approached Irídia to report cases of institutional violence, for their courage and determination that everyone should be treated with dignity, regardless of their condition and situation.

Prologue

Impunity Breeds Impunity

For many years, Argentine human rights organisations used the slogan “Impunity breeds impunity” in their public engagement campaigns. This phrase, originally created by the organisation HIJOS in the 1990s, aimed to highlight the impact of the absence of justice in a country where the powers that be had guaranteed impunity to those responsible for the most heinous crimes against the nation’s people.

Back then, it was easy to see how the crimes of the Argentine dictatorship had carried over into the new democratic era, with shared patterns of violence and an absence of justice across both periods. State aggression of the past permeated the daily life of the early years following the dictatorship in many ways. This was manifest, among other forms, in the notable continuity by which the forces of repression violently quashed both those who stood up for their rights and the young people from impoverished and/or racialised backgrounds accused of breaking the law, including through the process of prisonisation.

Contextual and procedural nuances notwithstanding, something similar can be seen in experiences from other parts of the world, such as in Spain. This latest report by Irídia is a testament to this. The long shadow of the violence of the Franco dictatorship is undeniable, and continues to be seen in present-day state violence – as well as the violence committed by private actors whose actions ought, in theory, to be overseen by the state –shaped by the negative stereotypes about certain groups and individuals that underpin police and judicial conduct.

One of the most notable aspects within this complex web of persistence – and one which this report makes clear – is that the Spanish judicial system continues to hinder access to justice for numerous victims, both past and present. Access to justice – the “right of all rights” – in cases of serious human rights infringements must serve both to protect people from state violence and to offer an adequate response to those who have suffered it. The correct judicial response when faced with human rights infringements must, at a minimum, entail a serious, proactive and diligent investigation of each offence, the trial and punishment of those responsible and the provision of some form of redress.

As such, it is clear that the right to access to justice is not only a matter of the right to the truth, although it must undoubtedly be included. The search for truth as an objective in and of itself is not the same as the search for truth as a basis for bringing those responsible – including the state itself – to justice.

Let us recall, moreover, that those who have carried out the aforementioned criminal actions, including concomitantly with the crimes of the Franco regime, deliberately sought to build impunity and, to this end, used the full range of means at their disposal, in particular, the temporary and permanent enforced disappearance and the concealment of the identities of those involved. In the present day, police, prison officers and other relevant actors are also able to call upon the apparatus of the state as a protective shield. The cases we see now show how, seeking impunity in the future, these same actors take pains to avoid being properly identified, as evidenced in the reports produced by Irídia. Indeed, as we shall learn herein, the similarities are manifold.

Both past and present, the refusal to try or to punish those responsible for egregious acts as established both in international human rights law and the Spanish criminal justice system is a new form of institutional violence against victims. This creates a spiral which perpetuates state violence and victims' sense of vulnerability and powerlessness.

Moreover, in cases of torture, ill-treatment and other forms of institutional violence, the lack of an adequate response from the judiciary serves to encourage such violence. The message sent out by the judiciary in failing to act appropriately – including by delaying investigations, which this report also points out as a feature of judicial malpractice – is that violence is tolerated. In this regard, the role of the judiciary and prosecutors' offices is crucial, not only with respect to the violence currently under investigation, but also as regards its possible recurrence in the future.

At the beginning of this prologue, I recalled the slogan of Argentine human rights organisations that highlights the continuities between the impunities of the past and those of the present. This statement belies another facet: justice begets justice. Or, at the very least, it has the potential to do so. This is why Irídia's work is so important, despite the challenges, setbacks and backlashes, and the frustration that follows them. Both this work – indispensable in such adverse circumstances – and the present report that reflects it serve to ensure that the struggles, the resistance and the tireless quest to find ways to break the impunity of the past and the present will not be forgotten. As the late poet Paco Urondo said: "the memory will burn until everything is as we dream it". Each year, Irídia publishes the Report on Institutional Violence, which brings together the main results of the activity of our Service for Attention and Reporting in Situations of Institutional Violence (SAIDAVI), as well as our primary means of advancing the defence of human rights and social change: strategic litigation. Over the years, the experience of the organisation in providing support and representation and bringing legal action before the courts in cases of ill-treatment and torture has provided us with first-hand practical and expert knowledge which, in turn, means that Irídia can offer unique and valuable contributions in ensuring oversight and accountability for institutional violence.

Ana Oberlin

*Doctor of Law and Social Science. Assistant Prosecutor, Public Prosecutor's Office of Argentina. She has provided legal representation to the Abuelas de Plaza de Mayo, the HIJOS organisation, and family members and survivors of state terrorism and victims of institutional violence during democracy in Argentina.

Ana Oberlin - Archive

Introduction

Each year, Irídia publishes the Report on Institutional Violence, which brings together the main results of the activity of our Service for Attention and Reporting in Situations of Institutional Violence (SAIDAVI), as well as our primary means of advancing the defence of human rights and social change: strategic litigation. Over the years, the experience of the organisation in providing support and representation and bringing legal action before the courts in cases of ill-treatment and torture has provided us with first-hand practical and expert knowledge which, in turn, means that Irídia can offer unique and valuable contributions in ensuring oversight and accountability for institutional violence.

This report not only shines a spotlight on the human rights infringements identified over the past year, but also highlights patterns and shortcomings in the system that perpetuate them, and makes specific recommendations to put an end to them.

This year, our report focuses on the shortcomings of the judicial system as a mechanism for the eradication of impunity in cases of ill-treatment and torture. The judicial system is a key institution in ensuring that fundamental rights and the rule of law are upheld. Nevertheless, when faced with cases of institutional violence, it shows serious structural deficiencies that weaken its purpose and reinforce impunity. This has a particular impact on those who have suffered institutional violence, revictimising them. It also has profound and worrying social consequences. Impunity erodes trust in democratic institutions and creates a perception of an unjust and arbitrary system built on the double standard of demanding respect for the rule of law and justice on the one hand, while, on the other, its own agents and forces break the law. Impunity weakens the foundations of the rule of law. When ill-treatment and torture go unpunished, and transparency and accountability are compromised, the structures of the state and the principles of equality and legality are delegitimised, discouraging citizen participation and paving the way for authoritarianism.

In the third section of this report, the main shortcomings of the range of actors within the criminal justice system are analysed. It details how the courts continue to fail to effectively investigate complaints of ill-treatment and torture, as well as how the assumption that the police's version of events remains beyond question and the remarkable slowness of proceedings create an environment in which impunity is further entrenched. The failings of the Public Prosecutor's Office in its duties to bring cases to justice and offer protection to victims remain a matter of concern, as do the shortcomings in legal aid and the expert evaluation of ill-treatment and torture by the Institute of Legal Medicine and Forensic Sciences.

Despite all of the above, at Irídia we continue to celebrate the milestones reached in our fight to end impunity, and those achieved in 2024 are also presented in this report. These milestones are especially important given the existing shortcomings in the judicial system, and they would not be possible without the trust of those to whom we provide support, as well as all the partners who champion and form part of the work that Irídia carries out.

01

Service for Attention and Reporting in Situations of Institutional Violence

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** within the **Metropolitan Area of Barcelona** at the hands of **police officers, prison officials** or **private security personnel** who carry out legally delegated duties in the provision of public safety.

The main goal of the Service is to ensure **support** for those affected, while at the same time championing **structural changes** to prevent the repetition of these human rights infringements and combat the impunity which surrounds them. To achieve this, SAIDAVI employs a **comprehensive care** model, offering psychosocial and legal support to affected individuals. With prior consent, the case may be brought to the attention of a range of different bodies in order to drive structural changes and/or ensure public awareness of the existence of these infringements and the need to combat them.

Psycho-legal support from the outset is a key aspect of the Service, and includes the joint presence of lawyers and psychologists to ensure a safe space in which those affected feel that their voices can be heard and validated. This **psycho-legal approach** seeks to counteract feelings of powerlessness and isolation, offering resources to deal with distress, recover a sense of control over one's own life and choose the path to follow according to each person's emotional needs and timescales.

This comprehensive model also includes **collective support**. In 2024, a mutual support group shared by those affected by institutional violence was opened and consolidated. This group represents a space through which to share experiences, create collective coping strategies and foster a network of solidarity.

Accessibility is one of the guiding principles of SAIDAVI, which offers its services completely free of charge. This involves significant investment in human and economic resources, and remains possible thanks to the support of Irídia's associate members, individual donations, and private and public funding. The commitment of members of the public, in the form of both donations and participation, is essential for ensuring the sustainability and continuity of the Service.

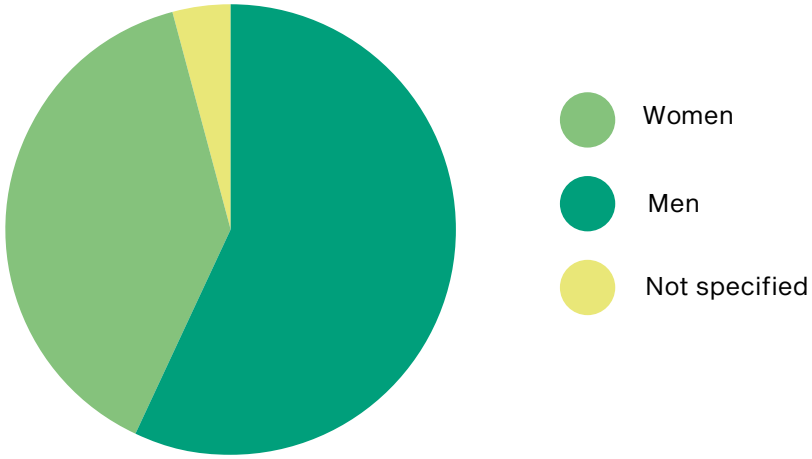
In 2024, SAIDAVI was made up of six lawyers, four psychologists, a technical coordinator, a director of the Service, three volunteers and two university students undertaking placements. Irídia employees specialising in the fields of communication, advocacy and sustainability also played a part in consolidating our comprehensive care model and working towards a fairer society that is more respectful of human rights.

1.2. SAIDAVI users in 2024

Over the course of 2024, **201 people turned to SAIDAVI** to report cases of alleged human rights infringements. Of this total, **49 people had suffered institutional violence**, with their cases falling within the scope of the Service.

Where appropriate in these cases, an initial psycho-legal interview was carried out, with legal advice, psychosocial support and – again where appropriate – communications and advocacy guidance offered. In the case of persons deprived of their liberty, visits were made to prisons and to the Immigrant Detention Centre (CIE) in Barcelona. Where cases did not fall within the scope of the Service, a response was provided to the user and, where appropriate, they were given advice by telephone or e-mail or referred to other organisations or services for support.

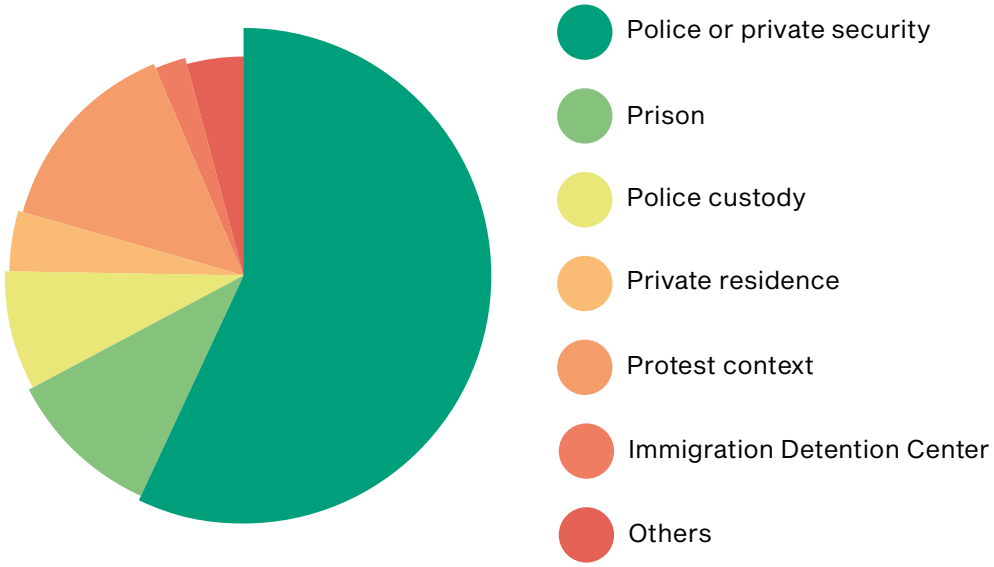
Of the 49 people affected, 19 were women, 28 were men and, in two cases, no gender was recorded. In terms of the age of those to whom support was provided: one was under the age of eighteen at the time of the events in question; 13, between eighteen and thirty-four years old; 12, between thirty-five and fifty years old; 5, between fifty and sixty-one years old, in addition to a further 17 people whose age is unrecorded.



Cases handled by gender
Source: Authors' work, SAIDAVI data

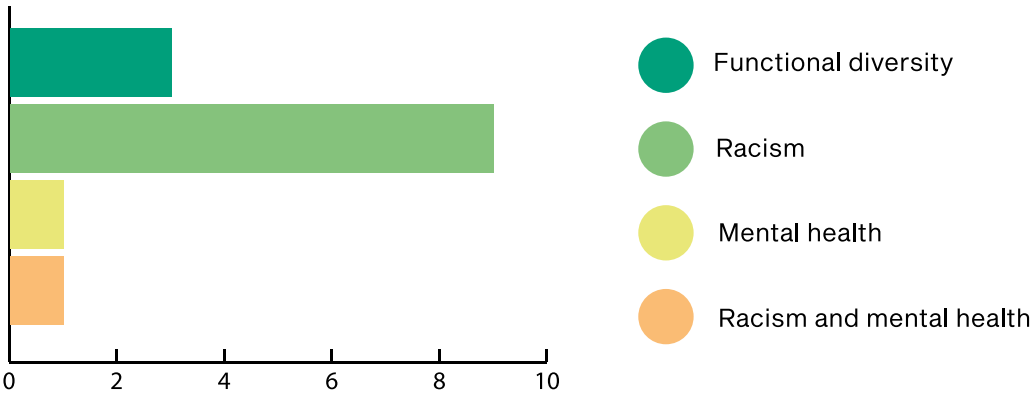
Cases handled by age
Source: Authors' work, SAIDAVI data

Of the 49 cases, 28 concerned conduct by police or private security officers in public spaces; 5, infringements of prisoners' rights; 4, incidents in police custody; 2, incidents in private residences; 7, incidents during protests and demonstrations; 1, incidents in the CIE, with 2 further cases arising in other circumstances.



Cases handled by context
Source: Authors' work, SAIDAVI data

In at least 13 of the cases handled in 2024, discriminatory conduct on the part of police was reported during initial consultation, as follows:



Cases handled by type of discriminatory conduct reported
Source: Authors' work, SAIDAVI data

Since **2016**, including the cases dealt with during 2024, SAIDAVI has provided support to a total of **736 people** affected by institutional violence.

1.3. Legal advice and follow-up

Those who contact SAIDAVI usually do so by **phone** or **email**. A member of staff handles this interaction and carries out an initial assessment, scheduling a **face-to-face interview** at Irídia's offices where the case meets the geographic and/or typological criteria for the Service's intervention, or referring the case to another service under other circumstances.

Should the aforementioned criteria be met, the member of staff also provides initial instructions to the affected person for the conservation of essential evidence should the case come to trial, since, due to its nature, such evidence may become unavailable at a later date. Subsequently, the member of staff records the case based on the initial information available and ensures handover to the initial interview team.

Upon their visit to the premises, the affected person meets with a psychologist together with a lawyer in the **designated psycho-legal meeting area**, with the aim of carrying out an initial legal and psychosocial assessment. In this safe and comfortable environment, their version of events is listened to, in order to ensure that they feel empowered and to avoid their revictimisation. Steps are taken to ensure the validation of their emotions and the assessment of psychosocial impacts, at the same time as providing them with information about their rights and the corresponding legal timeframes and procedures. In addition, the available evidence is analysed and guidance on legal options is provided. It is important that the person feels that there are options available to them from which they can choose: a sense of active agency is, in itself, an element of redress. As part of this integrated approach, psycho-educational tools are provided to address the effects of the incident upon the person, and an active defence of rights is encouraged, accompanying and empowering them on their path to reparation.

After this first visit, **psycho-legal support** continues to be provided to ensure comprehensive and consistent care. In terms of specific **legal support**, guidance is issued on how to file a complaint, with support given for drafting, locating witnesses and evidence and requesting legal representation. Once the **complaint** is lodged with the authorities, follow-up of the judicial process is made to ensure that the case is correctly handled. The court designated to handle the complaint is identified and **support and advice are provided for dealing with potential obstacles,** such as difficulty in obtaining legal aid or the possibility of appealing against any decision to dismiss the complaint which, often, the complainant is not notified of.

In parallel, **the psychosocial support** provided focuses on addressing the **psychological impact** of the violence suffered and reinforcing personal coping strategies to build an empowering account of the person's experience. In addition, the person is readied for and accompanied through the key stages of the process, such as any forensic medical examinations, court dates or public engagements, with the aim of avoiding **revictimisation** and appropriately handling any emotional reactions that may arise. When the case is brought to a close, a meeting is held with the affected person to evaluate the process as a whole and register the case closure, thus ensuring a **holistic cycle** is completed.

SAIDAVI acts as an essential service in the fight to ensure **truth, justice, redress** and the **guarantee of non-repetition** for those affected. This is particularly important given the shortcomings in legal aid, with a failure to adequately assign representation to initiate and oversee complaints concerning institutional violence, as well as the obstacles that complainants encounter in accessing information related to judicial decisions and understanding them. **These shortcomings are structural and have particularly negative impacts** when those affected find themselves at risk due to their irregular resident status in the country.

The Service also acts as a point of access to up-to-date information and knowledge about institutional violence. It identifies lines of work for **future strategic litigation** and serves as a **gauge of institutional violence** in the Metropolitan Area of Barcelona. SAIDAVI also enables the detection of situations in which this violence occurs, the identification of the different axes of discrimination present and the analysis of the role of the health system in the detection of offences relating to torture or ill-treatment committed by the police forces.

Interview at Irídia's offices - Borja Lozano

02

Strategic litigation

2.1. What is strategic litigation?

Strategic litigation involves **identifying human rights infringements and bringing them to justice**, with the aim of achieving an impact beyond the individual resolution of the case. This approach is based on an interest in driving **structural changes** in society, avoiding the repetition of these infringements, establishing oversight and accountability mechanisms and ensuring effective redress and compliance with the state's duty to prevent torture.

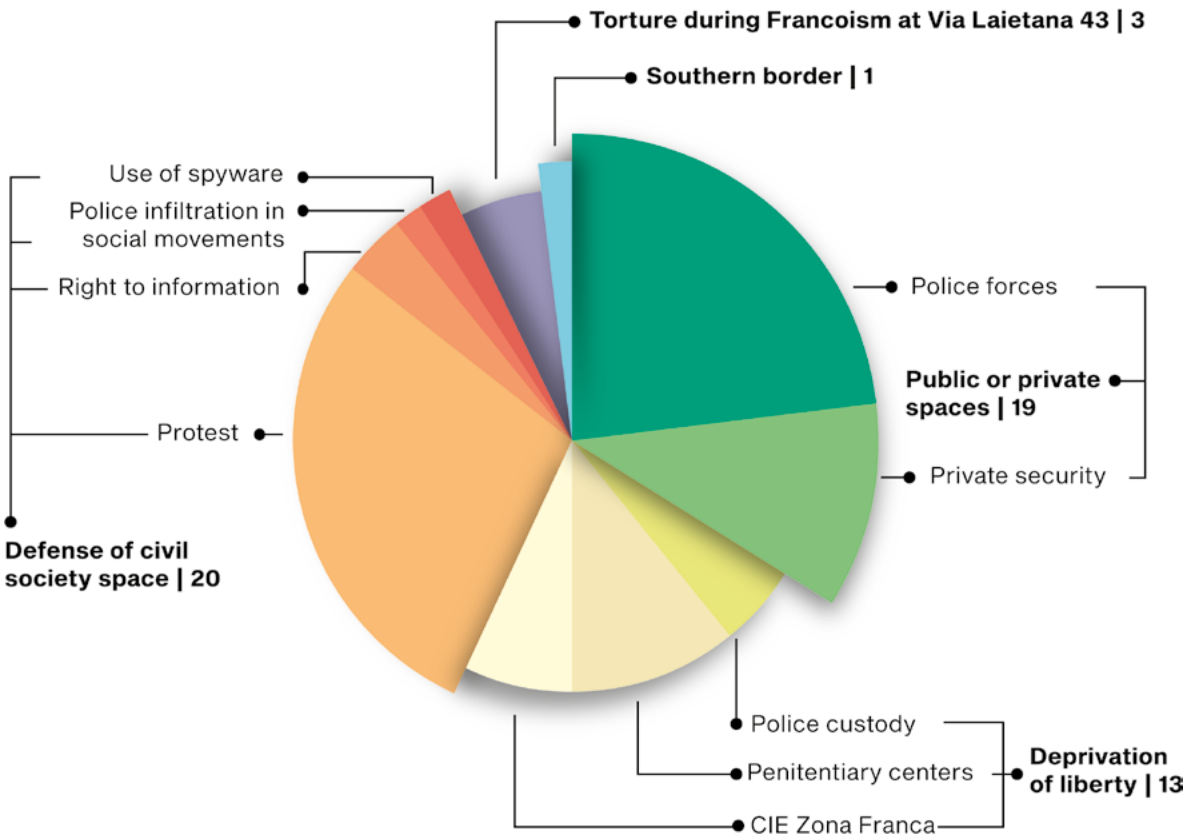
One of the risks of strategic litigation is that these cases – and those affected – end up being instrumentalised in the name of the overarching objective of social and political change. As a result, it is essential for Irídia that any such litigation be carried forward in a way that minimises this risk. The **litigation taken on by Irídia therefore puts the needs, timescales and voices of those affected at the centre**, ensuring that they receive the support they need as part of a holistic approach centred on ensuring their rights to truth, justice and redress.

Irídia focuses on ensuring that any litigation, along with its scope and impact, is adapted to the needs of the affected person throughout the process. The strategic axes of any litigation are defined and redefined in line with these needs in judicial, social and political terms, as is any and all decision-making regarding engagement and political and legal advocacy. The strategic objectives of each case taken on are synchronised with the desire for change and the goal of collective redress that underpin strategic litigation. The ultimate goal of strategic litigation is to foster a **fairer society** committed to safeguarding human rights.

> "After what had happened to me, I didn't know who to approach, what to do, or how to do it. I felt alone and adrift. Reporting [it] to the police, recovering physically, it was like the world bearing down on me, it was very difficult. Getting in touch with Irídia not only meant getting help with the legal side of things: it meant so much more. It was a life lesson, a shift from isolation to shared experience. It is a path for change, the only way to change things and fight for human rights". E.V.

2.2. Litigation handled by Irídia

Over 2024, Irídia **handled litigation in a total of 56 cases**, either as the legal representatives of the primary affected party, as a third-party litigant in the public interest or both. Below are the cases according to the context in which they arose:



Litigation handled by Irídia in 2024 by context
Source: Authors' work, SAIDAVI data

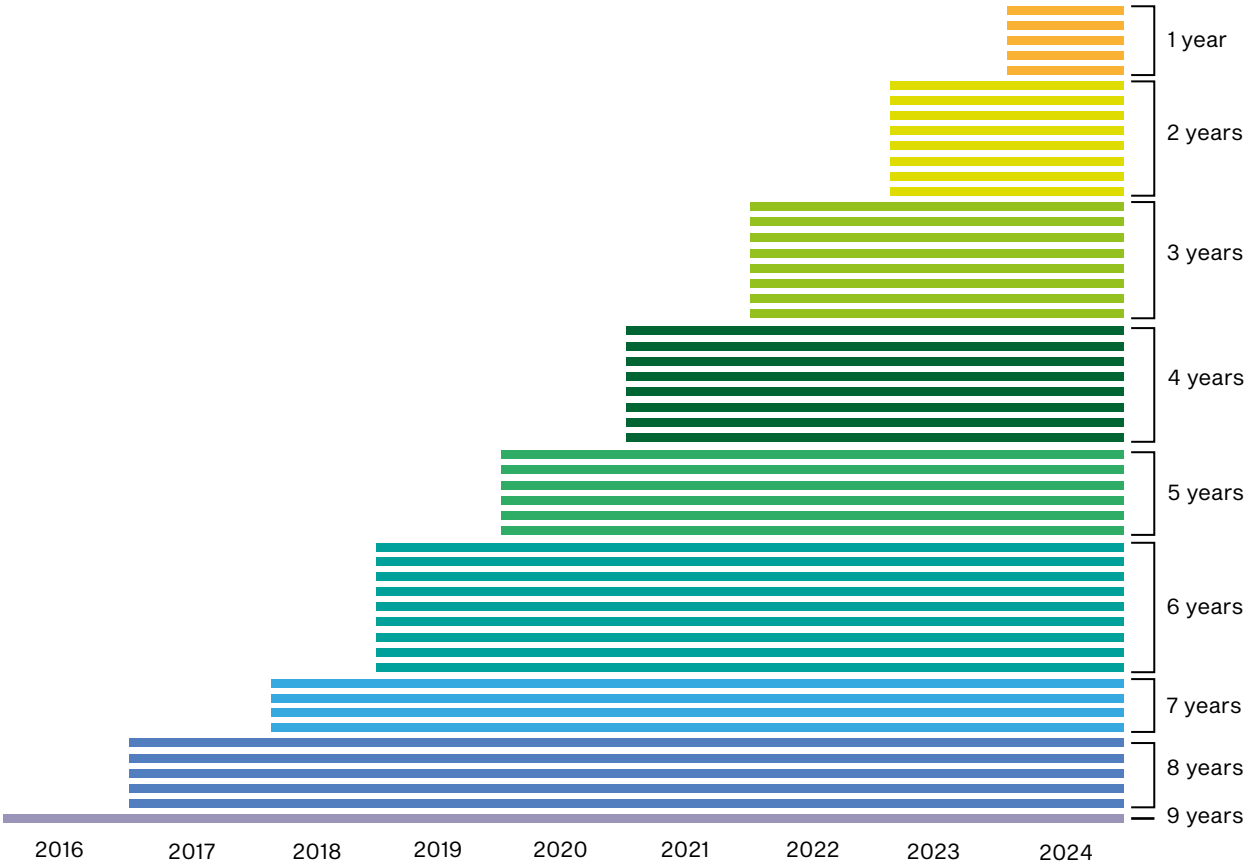
In 2024, eight of these cases came to a close and five new cases were taken on, and can be broken down as follows:

- 2 cases concerning ill-treatment in police custody
- 1 case concerning ill-treatment in a public space
- 1 case concerning public rights
- 1 case concerning historical memory

The remaining cases in which litigation remained ongoing throughout 2024 were taken on in previous years: one case in 2016; five in 2017; four in 2018; nine in 2019; seven in 2020; eight in 2021; eight, in 2022, and nine in 2023.

In **24 of the 56 cases, racist discrimination was identified**, by way of explicit comments, the conduct of police officers in their actions or the wider context of institutional racism in which these actions were undertaken. **This represents 42.8% of the total**, an increase compared to the previous year, in which racist discrimination was identified in 40.81% of cases.

Of the 56 cases, **49 resulted in a criminal complaint being brought, while 7 resulted in claims for damages** against the Government of Catalonia and/or the Spanish Government, brought before the administrative authorities or the civil courts as required.



Duration of Irídia's litigation
Source: Authors' work, SAIDAVI data

Of those against whom a criminal complaint was made for involvement in the incidents which motivated the legal action in question, a total of **143 were police officers or other public officials**. Of these:

- 65 were placed under investigation
- 14 were formally charged or are awaiting formal charges
- 5 were convicted following trial

In 2024, **59 police officers** awaiting trial or formal charges being brought against them were **pardoned** under the Amnesty Act 1/2024, 10 June. Irídia appealed against this decision and, as of the closing date of this report, a judicial ruling remains pending.

- The 143 individuals against whom formal charges were brought are:
- 40 Mossos d'Esquadra officers (Catalan police)
- 60 National Police Corps officers
- 21 Local police officers (9 from Cornellà, 5 from Barcelona, 4 from Sabadell, 2 from Sant Boi and 1 from Bisbal de l'Empordà)
- 12 private security guards
- 10 prison officers

Total number of officers and officials subject to legal action: 143

Under investigation: 65

National Police Corps

Prison officers

Mossos d'Esquadra

Private security guards

Local police officers
Sabadell Cornellà
Sant Boi La Bisbal d'Empordà

Formally charged or awaiting charges: 73

National Police Corps
Amnesty granted

Mossos d'Esquadra
Amnesty granted

Barcelona local police (Guardia Urbana)

Private security guards

Convicted: 5

Mossos d'Esquadra

Figures concerning parties subject to legal action taken by Irídia
Source: Authors' work, SAIDAVI data

2.3. Milestones in strategic litigation

The following milestones highlight the progress made over the course of 2024 in the legal action taken:

Justice has been brought in 3 cases concerning institutional violence

In 2024, four Mossos d'Esquadra officers were convicted of assaulting, mistreating and illegally detaining I. in Barcelona in 2020, in addition to lying in the police report to cover this up.

A claim for damages was won against the Government of Catalonia for the firing of a foam projectile which struck Olga's head during the demonstrations against the sentencing of pro-Catalan independence figures in 2019.

Lastly, the conviction of the Mossos d'Esquadra officer who struck the journalist Jesús Rodríguez with a police baton during coverage of an anti-eviction demonstration in 2016 in Barcelona was upheld by the courts.

One appeal won against an acquittal

In 2024, an appeal was won against the acquittal of a Barcelona Metro security guard for the assault suffered by Kim. The Provincial Court of Barcelona concluded that the initial decision of the courts was arbitrary and unsound, and overturned its ruling, forcing the trial to be repeated before a different judge.

Two cases of institutional violence brought to trial

Irídia ensured that two cases of institutional violence were brought to trial. One of these resulted in a conviction, while the other is scheduled for retrial following the overruling of the initial acquittal of the accused.

Four indictments filed

Irídia presented four indictments against officers belonging to the Mossos d'Esquadra and the local Barcelona (Guardia Urbana) police forces, as well as against private security guards, for charges relating to illegal detention, causing injury, torture and contravention of the inviolable right to dignity. The setting of a trial date in each case remains pending.

Proceedings to continue in nine cases after conclusion of pre-trial investigations

In 2024, investigating judges, following completion of investigations, considered that there were sufficient grounds to continue with proceedings against the accused parties in five cases. In four further cases, the court initially dismissed charges, giving precedence to the police's version of events. In each case, an appeal was lodged with and upheld by the Provincial Court, which ordered the case to be reopened and proceedings to be continued against the accused.

Three expert evaluation submitted as essential evidence

During 2024, expert evaluation was submitted following application of the Istanbul Protocol in two criminal cases concerning ill-treatment and torture. These submissions served as essential evidence in proving the facts of the case and the impact on those affected, as well as in bringing the accused to trial, where the judicial system was otherwise unable or unwilling to ensure the provision of such evidence.

Further expert evaluation concerning the finance and business structure of the companies belonging to the NSO Group was commissioned to support the complaint relating to the use of its Pegasus software to spy on the lawyer Andreu Van Den Eynde.

Three new criminal proceedings initiated

Three new proceedings concerning ill-treatment or torture were brought, leading to the identification and investigation of the alleged perpetrators.

First-ever complaint to the Barcelona Public Prosecutor for Democratic Memory

This milestone complaint was lodged with the city's specialist Prosecutor's Office for Democratic Memory. It concerns crimes against humanity, specifically, the torture suffered by Blanca Serra and her sister Eva during the Franco regime and the transition to democracy.

Five appeals filed before the Constitutional Court

Irídia filed five appeals before the Constitutional Court for violations of fundamental rights linked to the impunity of cases involving institutional violence.

Participation in one case before the European Court of Human Rights (ECtHR)

For the first time, Irídia participated as a third-party expert body (amicus curiae) on the prohibition of torture and the use of police weapons in a case concerning police torture or ill-treatment being heard by the ECtHR.

Trial at the Provincial Court of Barcelona of the I.H. case - Screenshot

03

The judicial system and impunity

Institutional violence represents a potentially traumatic experience with specific psychosocial consequences for the mental and emotional health of victims.[1] Experiences of this kind involve the breakdown of a person's expectations and direction and the fundamental beliefs that underpin their worldview, marking a watershed in their life.

However, these consequences can also activate coping mechanisms. **Victims' efforts to obtain genuine investigation, justice and recognition are constructive ways in which sense can be made of their experience as part of a journey towards personal empowerment**. Seeking justice is not only a question of obtaining recognition and redress in each individual case. It also offers an opportunity for social and cultural change, contributing to collective memory and ensuring that events are not repeated.

Spain's Status of Victims of Crime Act[2] establishes guidelines for ensuring a respectful and non-hostile justice system, as well as adequate support for victims. **Among the most important elements of this piece of legislation are: the right of victims to respectful and non-discriminatory treatment, to receive information, to participate actively in criminal proceedings, to enjoy protection and redress, and to have access to legal, psychological and social assistance.**

Unfortunately, in many cases where a complaint concerning institutional violence is brought, victims are forced to enter into a process full of obstacles and difficulties, marked by a lack of understanding and isolation. Court proceedings often take place in a cold and distant environment, where information is not provided in a clear or effective manner. It is common for cases to be closed without a full and thorough investigation having been carried out, for victims' accounts to be questioned or criminalised, and for victims to be brought face-to-face with those who harmed them without any protective measures in place. In addition, trials tend to be excessively prolonged, interrupting the victim's life both in the short and the long-term. Given these obstacles – and, in addition, due to the lack of the transparency of the police forces themselves – criminal proceedings often fall short in providing redress, and alternative avenues for reparation are not provided.

When victims of institutional violence are unable to count on a fully functioning judicial system, impunity is often the result. This impunity brings with it a revictimisation that can cause serious psychosocial harm, adding to the suffering caused by the violence at the outset, shattering fundamental beliefs and values and undermining the norms and rules that govern social coexistence. In the long-term, impunity entrenches the psychosocial effects of institutional violence, hindering the coping mechanisms of survivors and curbing the processes of grieving and memory that affected people must complete to ensure redress for the harm they have suffered.

> "The police may have taken my eye out, but the judicial process is psychological torture. I've been waiting for three years, three years of telling the same story, three years in which my version has not been given credit. I feel a lot of anger on a daily basis. And that's not who I am: they've turned me into this."
> R.G, lost an eye after being struck by a Mossos d'Esquadra officer wielding an extendable police baton in the city of L'Hospitalet.

1 -We use the term "victim" to underline the violation of their human rights as a subject of law. We do so on the understanding that this does not define the totality of their experience or identity as an affected person, and may not fully reflect their ability to resist or overcome their suffering. It is when the rights of a person are not recognised or protected that they are victimised.

2 -Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito.

This impunity not only affects the victims of institutional violence, but also those around them. Moreover, impunity in these types of cases leaves a scar on society as a whole, undermining the rule of law and violating human rights. **A country in which cases of torture or ill-treatment by public officials go unpunished fosters a justified distrust of its institutions, degrading democratic standards and leading to a loss of legitimacy both internally and internationally.** The only way to guarantee the absolute prohibition of torture is by improving the effectiveness of prevention and oversight, providing redress to victims and establishing mechanisms for non-repetition. At present, the judicial system is the principal external mechanism – separate from the police and the legislative branch – responsible for oversight and accountability, and with sufficient legal capacity to ensure that these standards are met when torture and ill-treatment are reported.

C01

Case title: **Impunity in case concerning ill-treatment by off-duty officers**

Location: **La Florida (L'Hospitalet de Llobregat)**

Case summary:

On 11 April 2024, two people appeared at the residence of J.L. and A.E., claiming to be lawyers representing a bank, and offering money for them to move out. Given their threatening tone, J.L. closed the door and called the emergency services.

Later, upon leaving the property, they observed the same two people accompanied by three others. The alleged lawyers insisted that they had to move out of the property, but refused to identify themselves or provide documentation. Suspecting that this was a case of property mobbing, J.L. began to record them. When he approached the other three individuals, one kicked him in the hand with which he was recording, injuring him, while another, in a threatening and authoritarian manner, showed him a police badge and claimed that they had the right to attack him. Both J.L. and A.E. consider that the actions of the officers would have been different were they not racialised people.

Details for consideration:

- Difficulties in filing a complaint: J.L. and A.E. went to a nearby police station following the events, but officers attempted to dissuade them from reporting the case. When they showed them the video, they were told that the assailants were not police officers, yet these same individuals entered the police station moments later, clearly indicating that they were. Ultimately, as a result of the persistence of J.L. and A.E., they managed to file the complaint along with presentation of a medical report and the video recording.
- Judicial obstacles: Investigating Court No. 1 of L'Hospitalet de Llobregat denied J.L. access to information concerning the case and its investigation when he personally attended the offices of the court. At the time of writing this report, A.E.'s complaint has not yet been admitted.
- Lack of notification: The court closed the case without carrying out any investigation or notifying J.L., which prevented any appeal of the decision. Notification was only provided to the complainant upon appearing with legal representation before the court.
- Dismissal without investigation: The initial decision to dismiss the case was issued without any grounds for doing so. An appeal having been subsequently filed, the investigating judge justified the dismissal on the grounds of a supposed lack of credibility of the victim's version of events, accepting verbatim the version of the police officers as recorded in the police report. Neither the medical report nor the video of the events were taken into account, nor were the victim or other witnesses called to testify. The Provincial Court dismissed both the appeal filed by Irídia and the motion to quash the decision.

Article 3 of the European Convention on Human Rights (ECHR) states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". The definition of torture[3], as contained in Article 1 of the Convention against Torture, underlines the intentionality and seriousness of the pain or suffering inflicted, as well as the fact that it is carried out by a public official, or with their complicity, for specific purposes. Furthermore, inhuman and degrading treatment (offences in contravention of the inviolable right to dignity, as defined in Spain's Criminal Code as offences "against moral integrity"), even where they do not reach the threshold of torture, are an especially degrading form of ill-treatment, as outlined in ECtHR case law.

The right to not be subjected to torture or inhuman or degrading treatment is absolute and admits no exceptions. This prohibition includes the causing of both physical and mental pain, as well as humiliation and emotional distress.[4] United Nations Special Rapporteurs have highlighted that **the use of unnecessary or excessive force by public officials can be considered an act of torture or ill-treatment, and use of such force must cease once it can no longer be considered necessary.**[5] This prohibition applies not only in the context of imprisonment, but also in the event of any excessive or unnecessary use of force by officials in public spaces, in police custody or during protests or demonstrations.[6]

Here, it is worth highlighting the 2023 interim report by the current United Nations Special Rapporteur on Torture, Alice Jill Edwards, which highlights the dangers of the improper use of police equipment and devices, which can constitute torture or inhuman treatment. This report separates these two categories: on the one hand, inherently cruel items that ought to be banned and, on the other, those which, despite having a legitimate use, can be misused and must therefore be strictly regulated. The rapporteur has recommended an international agreement to prohibit the manufacture, trade and use of certain weapons.[7]

Courts and tribunals play an essential role in ensuring the absolute prohibition of torture, and the mechanisms currently available mean that they are key stakeholders in ensuring states' compliance with their duty to prevent, investigate and bring to justice cases of torture and ill-treatment. This absolute imperative must guide their actions throughout any and all judicial proceedings relating to allegations of torture or other ill-treatment.

This obligation is manifested, on the one hand, in an essential procedural obligation: **to investigate allegations of torture in a thorough and effective manner.** Spanish constitutional doctrine[8] establishes that a judicial investigation cannot be considered effective if, where torture or ill-treatment is brought to their attention,

3 -Article 174.1 of the Criminal Code, in reference to the crime of torture, specifies three purposes: (1) to obtain a confession or information; (2) punishment, and (3) as a discriminatory act. However, another purpose provided for in international law is not included: to intimidate or coerce, as mentioned in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4 -Nils Melzer, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on the use of force without regard to detention and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/72/178) (United Nations, 20 July 2017), p. 11, par. 27. Available at: https://docs.un.org/en/A/72/178

5 -Manfred Nowak, Report of the Special Rapporteur on the Question of Torture (E/CN.4/2006/6) (United Nations, 16 December 2005), pp. 12-13, para. 38. Available at: https://docs.un.org/en/E/CN.4/2006/6

6 -Nils Melzer, ibid, p. 14, par. 34 and 36.

7 -Edwards, Alice Jill, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/78/324) (United Nations, 24 August 2023). Available at : https://docs.un.org/en/A/78/324

8 -The Constitutional Court has upheld claims for protection on 22 counts in cases involving complaints of torture or other ill-treatment committed by police officers, without exhaustive and effective investigations having been carried out: SSTC 34/2008, 25 February; 52/2008, 25 February, 107/2008, 22 September; 40/2010, 19 July; 63/2010, 18 October; 131/2012, 18 June; 153/2013, 9 September; 130/2016, 18 July; 144/2016, 19 September; 166/2021, 4 October; 39/2017, 24 April; 12/2022, 7 February; 13/2022, 7 February; 34/2022, 7 March; 53/2022, 4 April; 122/2022, 10 October; 124/2022, 10 October; 1/2024, 15 January; 33/2024, 11 March; 35/2024, 11 March; 105/2024, 9 September; 144/2024, 2 December.

the courts decide to either directly dismiss the case or consider the allegations as a lesser offence. This also applies where the courts fail to sufficiently clarify the facts of the case despite there being reasonable means available to them to dispel any possible doubts.

The Constitutional Court has established that a thorough investigation cannot be considered as having been carried out if certain essential thresholds are not met. These include a statement by the complainant and any health professionals who treated them, the identification of and statement by police officers, and the taking of witness statements.

It is particularly significant that Spain has been found guilty of violating Article 3 of the ECHR on thirteen separate occasions. The key issue in each of these cases is notably similar: it has been found that the legal precedent set by Article 3 has been violated as a result of not having carried out an effective official investigation, as a result of the cases having been dismissed without full and proper investigative proceedings having been followed.[9]

In addition to this duty to investigate, the **absolute prohibition of torture also includes its prosecution as a crime.** The ECtHR has established that the imperative of the prohibition of torture must be respected throughout all judicial proceedings, including trial.[10] Thus, the ECtHR has upheld that any investigation into alleged torture or ill-treatment must lead to the identification and punishment of those responsible, since, on the contrary, this prohibition would be rendered without effect in a manner which violates the rights of victims.[11]

To this end, Irídia has filed appeals before the Constitutional Court in cases where it is clear that the aforementioned doctrine of the ECtHR concerning the prohibition of torture has not been complied with, with said cases not having been taken to trial.

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

10 -The ECtHR judgement issued on 7 April 2015, in the case of Cestaro v. Italy, par. 206, recalls that, in criminal proceedings, and as regards any possible violation of Article 3 of the ECHR, "the entire proceedings, including the trial stage, must comply with the imperatives of the prohibition set forth in Article 3", and adds: "Consequently, the Court's task is to ascertain to what extent the courts, before reaching a conclusion, may be considered to have submitted the case before them to the scrupulous examination required by Article 3, in order to maintain the deterrent power of the judicial system and the important role it plays in upholding the prohibition of torture (see, Okkali v. Turkey, no. 52067/99, §§ 65-66, 17 October 2006; Ali and Ayşe Duran, cited above, §§ 61-62; Zeynep Özcan v. Turkey, no. 45906/99, § 42, 20 February 2007; and Dimitrov and Others, cited above, §§ 142-143)."

11 -The ECtHR judgement issued on 24 July 2012, in the case of B.S. v. Spain (paragraph 39): "Otherwise, the general legal prohibition of torture and inhuman or degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible for agents of the State to abuse the rights of those within their control with virtual impunity (Assenov and Others v. Bulgaria, 28 October 1998, § 102, Reports 1998-VIII)".

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3.1. Courts and tribunals: shortcomings

One of the key elements in the criminal justice system are the courts and tribunals. Any shortcomings in their functions are especially serious, since they represent the ultimate – and highest – institution for oversight and accountability with the power to prevent and deter impunity in cases of institutional violence.

Among the shortcomings identified by Irídia, the following stand out:

- Failure to comply with constitutional doctrine on the full and thorough investigation of alleged ill-treatment and torture, as well as a specific impunity in relation to the torture committed during the Franco regime and the transition to democracy.
- During investigations, double standards in assessing compliance with court orders. This is especially evident in the cases alleged to have occurred in the CIE.
- Structural shortcomings, not only during investigations, but throughout all judicial proceedings:
  - Unquestioning acceptance of police's version of events: the version presented by officers is accepted without scrutiny, influencing evaluation of the rest of the available evidence.
  - Excessive slowness of proceedings: cases of torture and ill-treatment are dealt with more slowly than other criminal matters, causing harm to victims and potentially entailing, de facto, impunity for the alleged offences.
- In 2024, application of amnesty to perpetrators of acts of torture and ill-treatment, based on an interpretation of the law contrary to international human rights standards.

Each of these shortcomings is explained in detail below.

3.1.1. Lack of investigation

In spite of the aforementioned jurisprudence, we have found that, where allegations of torture or inhuman or degrading treatment are brought before the investigating courts, these bodies tend to hastily dismiss cases, even when there is solid evidence to indicate that said offences have taken place. This occurs without the minimum investigative proceedings required by constitutional doctrine having been carried out. In some cases, complaints are dismissed or denied, while in others, they are reduced to a minor offence, preventing the investigation of possible crimes of torture and leading to a situation of impunity.

This leads victims to appeal against these decisions before the Provincial Court, resulting in unnecessary delays – appeals can take between five months and more than a year to be resolved – and even absolute impunity if the case is not reopened.

Of the 49 cases taken on by Irídia, the following examples of improper practice by the investigating courts have been identified :

- Outright dismissal of the complaint – 4 cases
- Admission of the complaint for a minor offence – 8 cases (in five of these, the complainant was not notified).
- Dismissal before carrying out essential investigations – 20 cases

In other words, **in 32 of the 49 cases (65.3% of the total), the case has been reduced to a minor offence or dismissed without exhausting all reasonable, available, effective and pertinent investigative procedures.**

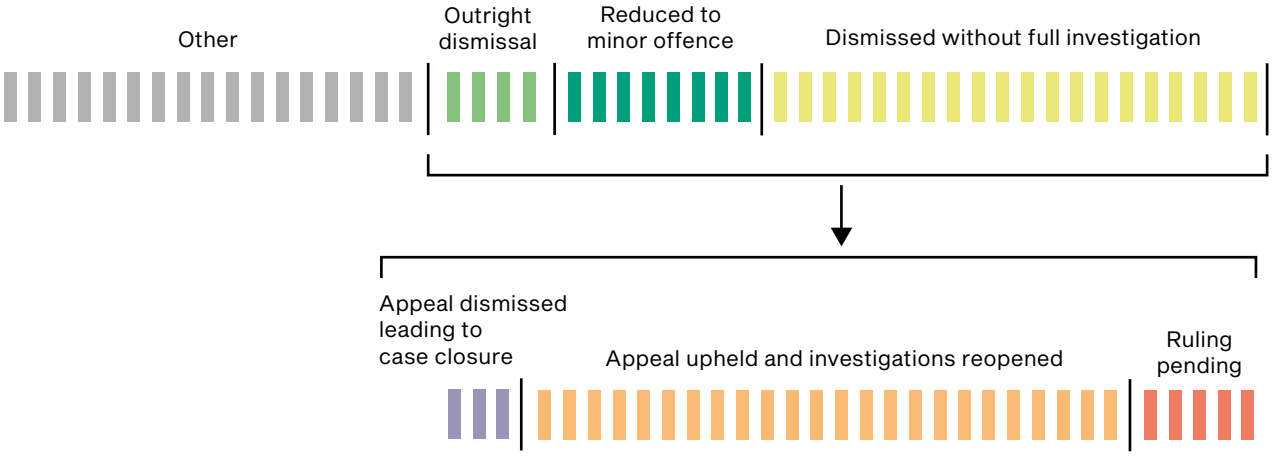
In 24 of these 32 cases, higher courts have reviewed the decision and ordered the investigating court to duly investigate:

- Where the complaint has been dismissed outright:
  - In one case, the Provincial Court upheld Irídia's appeal, ordering its reopening and investigation.
  - In the remaining three cases, appeals are still pending an appellate ruling.
- Where the complaint has been reduced to a minor offence:
  - In six of the eight cases, Irídia's appeal was upheld, and full and thorough investigations were ordered.
  - In one case, the appeal remains pending a Constitutional Court ruling.
- Where the complaint has not been fully investigated:
  - In 17 of the 20 cases, the Provincial Court upheld the appeal and ordered that investigations be reopened.
  - In two cases, the appeal was dismissed and the case was definitively closed.
  - In one case, a ruling remains pending.

This data highlights that, even though in many cases the higher courts ultimately uphold the duty to investigate, investigating courts continue to bring proceedings to a close before a full and thorough investigation is carried out, causing serious procedural delays, creating pressure for victims and even leading to impunity.

A paradigmatic example is the case highlighted in file **C01**, in which the court dismissed forthwith the complaint for inhuman or degrading treatment, without having heard the testimony of the victims or witnesses, and in spite of the existence of a medical report citing injuries and a video recording of the events.

Another example is the **case included in file C06**, dismissed in April 2023 without any investigations having been carried out. This case has subsequently been reopened by the Provincial Court, which ruled in favour of the need for a full and thorough investigation.



Current status of cases in which the courts have failed to carry out full and thorough investigations
Source: Authors' work, SAIDAVI data

C02

Case title: **Police infiltration of activist movements**

Location: **Sant Andreu (Barcelona)**

Case summary:

Between 2020 and 2022, agent D.H.P., an officer of the National Police Corps, infiltrated activist circles in Barcelona's Sant Andreu neighbourhood. As part of this infiltration, the officer maintained intimate relationships with several activists, allowing him access to specific political spaces and legitimising his image as an activist while hiding his true identity as a police officer.

The instrumentalisation of the activists with whom the D.H.P. agent maintained these relationships constitutes a serious violation by the state of the inviolable rights to dignity of those affected, with a clear gender bias.

Details for consideration:

- Investigating Court No. 21 of Barcelona ruled against hearing the complaint filed against D.H.P. and his commanding officer for offences which contravene the inviolable right to dignity and other fundamental rights of those affected. This ruling argued that the facts of the case were not constitutive of a criminal offence, without taking into consideration the conclusive evidence provided nor carrying out any investigation.
- In July 2024, Section 5 of the Provincial Court of Barcelona upheld the decision to dismiss of the complaint, closing the door to any judicial investigation into potential offences which could constitute torture or contravene the inviolable right to dignity of those affected.
- In October 2024, an appeal was filed before the Constitutional Court for the contravention of the inviolable right to dignity (understood as "moral integrity", as per Article 15 of the Spanish Constitution), privacy (Article 18) and effective judicial protection (Article 24), on the basis of the lack of any proper judicial **investigation.**

3.1.2. Impunity for torture committed during the Franco regime and the transition to democracy

The Democratic Memory Act (Law 20/2022, 19 October) expressly recognises the right to investigate "the violations of human rights and international humanitarian law that occurred during the civil war and the dictatorship, as well as the period between the death of the dictator and the effective date of the Spanish Constitution".[12] This recognition includes the right to effective remedy for having suffered significant human rights violations, and offers a way to end impunity for the crimes committed under the auspices of Francoism.

12 -Article 29.1 Ley 20/2022, de 19 de octubre, de Memoria Democrática; https://www.boe.es/buscar/act.php?id=BOE-A-2022-17099

This notwithstanding, **Supreme Court doctrine has barred the way for any criminal investigation of the crimes committed during the Franco regime**, even prior to the entry into force of the Democratic Memory Act. In 2024, the Constitutional Court ruled that the Act cannot take precedence over the Court itself in the interpretation of the law, nor can it define offences and their penalties. According to this ruling, the standards of international criminal law cannot be applied directly or indirectly through the Act as a means to investigate or judge conduct deemed non-criminal at that time, nor to deem offences imprescriptible or non-pardonable.

In 2024, the Provincial Court of Barcelona upheld the inadmissibility of the two complaints filed after the entry into force of the Act concerning crimes against humanity through torture, on behalf of **Carles Vallejo** and the siblings **Maribel and Pepus Ferrándiz**. In both cases, the complaints were dismissed outright, without any investigation.

The courts based the ruling of inadmissibility of the complaints concerning torture committed during the Franco regime on three main arguments:

a) The principle of legality in criminal law and of non-retroactive application

b) The statute of limitations

c) Enforcement of the Amnesty Act (Law 46/1977, 15 October)

These three obstacles are a perversion of justice in terms of international law. Firstly, the principle of legality and non-retroactivity cannot be applied to conduct deemed criminal in international law, even if this occurred before its classification as an offence in the Spanish law. Were this the case, the crimes of Nazism or the Pinochet regime could never have been brought to justice. According to international law, investigation of such conduct is imperative, and this is made clear in the obligations included in the international treaties ratified by Spain.

Secondly, and with regard to the statute of limitations, the litigation brought by Irídia concerns crimes against humanity. The torture perpetrated in the police facilities located at Via Laietana 43 in Barcelona during the Franco regime is imprescriptible insofar as it was committed as part of a systematic plan focused on a specific segment of the population. This is upheld by conventional international law, particularly in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, a text adopted and opened for signature, ratification and accession by the General Assembly of the United Nations on 26 November 1968, as well as by the Rome Statute, the founding instrument of the International Criminal Court of 1998.

Lastly, and with regard to the application of the Amnesty Act (Law 46/1977, 15 October)[13], various United Nations mechanisms and international bodies have been critical of the judicial interpretation of this law by the Spanish courts. The United Nations Special Rapporteur has pointed out that the letter of the Act[14] does not prevent judicial authorities from investigating claims of torture and those responsible. Several international law bodies have reiterated to the Spanish authorities that internationally-recognised crimes against humanity, such as torture, cannot be amnestied.

The Democratic Memory Act provided for the creation of a special Public Prosecutor's Office for Human Rights and Democratic Memory which, in 2024, began its assignment of prosecutors to the offices of the Provincial Prosecutors. These offices, however, have limited resources to carry out full and thorough criminal investigations, in turn hindering compliance with their obligation to investigate and uphold human rights law.

13 -Ley 46/1977, de 15 de octubre, de Amnistía; https://www.boe.es/buscar/act.php?id=-BOE-A-1977-24937

14 -Article 6 of the Amnesty Act (Ley 46/1977, de 15 de octubre) provides solely for the extinction of criminal liability arising from sentences which have been or that may be imposed

In light of the impunity for the torture committed during the Franco regime and the transition to democracy, Irídia filed a first lawsuit for crimes against humanity by means of torture on behalf of Blanca Serra on 20 November 2024. This complaint was filed with the Deputy Prosecutor for Human Rights and Democratic Memory of Barcelona, coinciding with the forty-ninth anniversary of the death of the dictator Francisco Franco. The aim is that this Prosecutor's Office should carry out an effective investigation, in virtue of the Democratic Memory Act and the Foundational Statute of the Prosecutor's Office[15] (EOMF, in Spanish).

C03

Case title: **Claims of torture at Via Laietana 43 during the transition to democracy**

Location: **Police facilities at Via Laietana 43 (Barcelona) and the Directorate-General of Security (Madrid)**

Case summary:

The political activists Blanca Serra Puig and her sister Eva Serra, the latter deceased on 3 July 2018, were arrested on four occasions between February 1977 and March 1982. These arrests were carried out by officers under the supervision of their hierarchical superiors and as part of the duties assigned to the General Police Corps. The officers in question were assigned to the Sixth Regional Social Investigation Brigade, stationed at the Barcelona Police Headquarters at Via Laietana 43 (Barcelona) and the Directorate-General of Security in Madrid.

Both were detained in harsh conditions and subjected to particularly cruel acts of torture, as a result of their political ideology, their defence of Catalan identity and their status as women activists, dissidents and transgressors who, through their activism, challenged the patriarchal system and its relegation of women to the private and domestic sphere.

Details for consideration:

- The events in question formed part of a wider pattern under Francoism, in which torture was carried out systematically within institutional structures created for this purpose.
- These repressive structures were not dismantled upon the death of the dictator, but were rather maintained during Spain's transition to democracy, without any accountability or reform of the police forces. The case of Blanca and Eva Serra is a paradigmatic example of this situation.
- This is the first case which has been filed with the Deputy Prosecutor for Human Rights and Democratic Memory for full and thorough investigation.
- The facilities where the affected parties were detained and tortured – Via Laietana 43 (Barcelona) and the offices of the Directorate-General of Security in Madrid – continue to be symbols of torture and repression. In addition, Via Laietana 43 is still used as a police station, despite ongoing demands from grassroots activists that it be transformed into an archive and interpretation centre to ensure that the torture committed there is not forgotten.

15 -Ley 50/1981, de 30 de diciembre, por la que se regula el Estatuto Orgánico del Ministerio Fiscal; https://www.boe.es/buscar/act.php?id=BOE-A-1982-837

3.1.3. Double standards

When attempting to bring cases of institutional violence to justice, one of the factors that favours impunity is the laxity which the courts grant to public authorities regarding their duty to act diligently in investigative proceedings, especially when these authorities may in some way be connected to or responsible for the reported events.

As such, there is a double standard in judicial proceedings: courts tend to place greater demands upon private litigants and third-parties acting in the public interest – especially with regard to compliance with procedural deadlines and the practice of investigative proceedings – than they do with public authorities and the Public Prosecutor's Office. Irídia has found that this lax approach has been taken with prisons, the CIE, the Internal Affairs Division of the Mossos d'Esquadra or the General Directorate of Police, among others.

The courts have the power to request information from public authorities where this is relevant to the investigation, either to identify officials responsible for the alleged events or to clarify specific official practice in relation to matters under investigation. In addition, the courts may set deadlines for the presentation of reports or official responses, reiterate these requirements in the event of a lack of response and sanction authorities for non-compliance, including the initiation of proceedings for obstruction of justice.

However, in practice, courts often do not apply these measures with the same forcefulness that they demand of other actors, which is in itself a form of **obstruction of justice and a paralysis of judicial procedure.** This laxity favours the impunity of the officers involved, as deadlines are missed by the authorities without any consequences.

A clear example of the above is **the case of A.E.M**., who suffered torture while detained in prison. As part of the judicial proceedings initiated following their complaint, the Court requested that the Quatre Camins prison provide a report concerning the case on three separate occasions. **The prison management ignored these requests**, leading to proceedings being stalled for over ten months.

Although the authorities received the court order and failed to comply with it, the court did not issue any warning of possible sanctions, nor did it undertake any measures to ensure compliance or actions in response to the aforementioned non-compliance.

C04

Case title: **Ill-treatment and torture during isolation for COVID**

Location: **CIE Zona Franca, Barcelona**

Case summary:

B.Z. was placed in isolation in the Immigrant Detention Centre (CIE) in Barcelona after testing positive for COVID. The cell where he was held contained no furniture or bedding and had no artificial light, with only one window to the outside. He was only permitted to leave to go to the bathroom, although this request was denied on occasion, forcing him to relieve himself through the window. Staff provided him with food begrudgingly, throwing it on the ground.

As a result of the above, B.Z. attempted to self-harm. In response, officers of the National Police Corps present at the CIE entered his cell, immobilised him and beat him.

Days later, B.Z. filed a complaint about the treatment he had received during his isolation. In retaliation, officers immobilised him in a dehumanising manner and assaulted him again. As a result of both the assault and the situation described, B.Z. broke the bathroom light and self-harmed with the shards, cutting himself. He was attended to by the CIE medical team, but did not receive psychological support.

Once his isolation for COVID was over, B.Z. returned to his assigned cell. There, he had an argument with an officer, who struck him on the neck.

Details for consideration:

- All the areas where the assaults took place were equipped with video surveillance cameras. In the initial complaint, a request was made to the court to demand that footage recorded by these cameras be provided, in order to avoid its destruction.
- Although the court agreed to this request and issued an official notice to the CIE to hand over any footage, not all of this was provided. The CIE provided an initial response within a week of notification, but it was not until two weeks later that it reported that part of the footage had been deleted due to the time that had elapsed since its recording.
- The court did not reiterate the request for evidence nor demand further explanations about the deleted recordings. No measures were taken against the CIE, despite the fact that the disappearance of this evidence meant that a key opportunity to substantiate the allegations was missed.
- After two years of criminal investigation, the investigating court moved to dismiss the case. The Provincial Court of Barcelona upheld this decision, on the grounds of the lack of sufficient evidence to take the case forward.
- In 2024, an appeal was filed before the Constitutional Court for the violation of the right to effective judicial protection and the prohibition of torture, in particular due to the lack of diligence by the investigating court, which failed to call the victim to testify, and the CIE's breach of its obligation to provide all recordings of the reported events, resulting in impunity for the acts committed.

3.1.4. Escalation of infringements in the CIE

Irídia has detected numerous obstacles in reporting ill-treatment at the CIE in Barcelona. These arise both prior to and after filing a complaint.

Inmates held in the CIE are left **powerless** insofar as they are unable to access justice under the same conditions as any other person. Notably, they face obstacles in obtaining legal representation, which cannot be made apud acta (i.e. freely requested before the courts). Similarly, they cannot seek power of attorney, as they are deprived of their liberty. In all of the litigation brought by Irídia on behalf of CIE detainees, request has been and continues to be made that the relevant judicial authorities summon the complainant to avail of their right to ratify the complaint, participate in the prosecution and obtain power of attorney apud acta, should they so wish. However, in the majority of cases, this has not been provided for, and **the person affected has been deported before the court has moved to hear the case.**

It is the **duty courts** that receive and register complaints relating to incidents in the CIE, including complaints of ill-treatment. In some cases, these courts are not considered competent to process these complaints, meaning they often fail to ensure that urgent action to gather evidence is taken. In other cases, even where these courts do admit the complaint, they fail to take said action, considering it either unnecessary or non-urgent.

These **shortcomings** mean that, when the competent investigating court finally initiates its own proceedings, a significant amount of the evidence has already been lost: video surveillance footage has been erased, complainants or witnesses are no longer in the CIE because they have been deported or released, or the physical evidence of injuries has disappeared. In the majority of cases, this results in the investigating court moving to dismiss the complaint due to lack of evidence.

In all cases in which Irídia has appealed against the dismissal of the complaint, **the Provincial Court has upheld the appeal** and ordered that proceedings be restarted, with the victims located and statements taken from the complainants, including where this requires international cooperation and the use of information technology. Nevertheless, when any court hearing takes place, months or years may have passed since the events, without the victim having been able to make their statement. **During this time**, many victims have been **deported** and s**ubjected to significant risk**. Some have **disappeared or died**, resulting in **total impunity** for the offences committed.

In short, **the available mechanisms currently fall short** of protecting those detained in the CIE and ensuring that they are not deported prior to a statement being taken, in order to guarantee the most essential evidence in the case.

These shortcomings render the institutional violence which occurs in the CIE invisible, and leave those affected powerless. The lack of available support – both economic and psychosocial – means that many victims are unable to sustain long and costly judicial proceedings.

They often find themselves in **situations of extreme risk** and at a turning point in their lives, in which their priority is survival. This further hinders their ability to cope with the demands of the legal process and highlights the difficulties and vulnerabilities they face.

It should be borne in mind that, in the Spanish legal system, criminal law – and, in particular, the right not to be subjected to torture – takes precedence over administrative law. It is through the latter that penalties for non-compliance with the

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Immigration Act (known in Spain as LOEX)[16] – the sole legal basis of the deprivation of liberty of those held in the CIE – are set. It is therefore **contrary to legal order** that an administrative penalty should compromise any fundamental right, such as that of effective judicial protection in criminal proceedings.

Another shortcoming that facilitates impunity in situations of detention is the **improper and substandard medical care provided within the CIE**, which is outsourced by the Ministry of the Interior to the private company Clínica Madrid.[17]

The tender and award of the medical service to this private company **breaches the principle of suitability** of the contract, as established in the Public Procurement Act (known in Spain as LCSP)[18], insofar as the contracted body has failed to demonstrate its fitness for purpose in meeting the needs of those detained in the CIE.

In addition, Irídia has discovered that the **medical reports** held by the CIE health service demonstrate serious shortcomings. In many cases, injuries are not recorded or the details of the examining physician are not included. These failures, together with delays in procedures and the lack of timeliness in carrying out essential tests following potential criminal incidents, render forensic reports incomplete or inconclusive.

16 -Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social; https://www.boe.es/buscar/act.php?id=BOE-A-2000-544

17 -On 14 February 2023, the chief commissioner of the Central Unit for Deportation and Repatriation (UCER, in Spanish), which reports to the General Commissariat of Immigration and Border Control (CGEF), undersigned the requirements for the subcontracting of medical examinations and health care at the CIEs, covering the period from 1 June 2023 to 31 May 2025 (file number Z23EX001/0506)

18 -Article 28 of Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, in relation to Articles 99.1 and 116 of the same legislation; https://www.boe.es/buscar/act.php?id=BOE-A-2017-12902

The shortcomings identified in access to the courts and to relevant evidence represent **a significant failure of the judiciary in guaranteeing the fundamental rights of those detained in the CIE who report ill-treatment.** In addition, it revictimises detainees not just as victims of the discrimination, abuse or assault committed by those responsible for their physical safety and wellbeing, but also as a result of the infringement of their rights by the authorities and institutions responsible for their protection under law.

These specific challenges faced by CIE detainees in accessing justice reinforce their distrust in oversight and accountability mechanisms and deepen impunity for police violence as a structural practice.

C05

Case title: **Impunity for torture of detainees after an escape attempt**

Location: **CIE Zona Franca, Barcelona**

Case summary:

In September 2017, following an escape attempt by a number of people detained at the CIE in Barcelona, several officers of the National Police Corps launched a violent reprisal against those involved. The officers beat several detainees, separated them between two different spaces and kept them isolated for several hours. Subsequently, they were individually accompanied to the toilets and to separate cells, where they were again assaulted, insulted and subjected to humiliation. A number of the victims lodged formal complaints with the CIE the day after the events, explicitly indicating their willingness to report the incident to the judicial authorities.

Details for consideration:

- In the complaint filed by Irídia, request was made to the courts for the urgent issuance of a notice to the CIE to hand over security camera footage, as well as for the suspension of any deportation order affecting the victims until statements could be taken from them. Following delays by Investigating Court No. 30 of Barcelona in requesting this footage, this had already been deleted by the time the notice was issued. The judge presiding over the investigation also declined to request the suspension of any deportation orders, meaning that no statement could be taken from the victims nor was any forensic medical examination of their injuries undertaken.
- After several stays and dismissals of the case by the investigating court – subsequently overturned by the Provincial Court, following appeals filed by Irídia – investigations were completed through the avenues still available.
- The final court ruling confirmed the dismissal of the case without proceeding to trial. The Provincial Court upheld this dismissal in 2024, primarily due to the impossibility of taking statements from the complainants, since they had been deported from Spanish territory.
- In 2024, Irídia filed an appeal before the Constitutional Court, which rejected the appeal on the grounds of a lack of constitutional significance.

3.1.5. The unquestionability of the police

Through SAIDAVI, Irídia has found that, on many occasions, the courts and tribunals **unquestionably accept the police version of events** in criminal proceedings. Time and again, officers' accounts are afforded validity without being checked against other evidence that could corroborate the victim's version of events.

It must be recalled that **while in criminal proceedings officers of the law do not enjoy a presumption of veracity in their statements**, this is the case in administrative proceedings, where – even though evidence to the contrary can be admitted – officers' testimony alone is considered sufficient basis for the issuance of penalties.

In addition, in criminal proceedings, any officer of the law facing charges provides evidence as the accused; therefore, their version of events is part of a broader strategy for acquittal which falls under the auspices of their legal defence. In Spanish criminal procedural law, those under investigation – in contrast to witnesses – **are not legally obliged to tell the truth** in their testimony, and enjoy the right not to incriminate themselves. This notwithstanding, when officers do testify as witnesses, the law does not grant them more credibility a priori than other witnesses.[19]

The Constitutional Court has ruled on how information provided by police in cases concerning complaints of torture or ill-treatment should be assessed. It has upheld that **police reports** are evaluative and dependent on the observations of the officers and, therefore, **cannot be taken as the absolute truth**.[20] It has also ruled that any judicial investigation conducted exclusively on the basis of the testimony of officers involved in the events could constitute a violation of the right to an independent and impartial investigation.[21]

Despite this, **courts and tribunals routinely give priority to police testimony while systematically questioning the credibility of victims, even when they testify as aggrieved witnesses, sworn to tell the truth and with solid evidence to corroborate their version of events.** Said evidence includes forensic medical reports, psychological or psychiatric reports, expert reports based on the Istanbul Protocol[22] and photographs of injuries. Even where eyewitness testimony is given, their version of events continues to be called into question.

In many cases, **video or audio recording of incidents provides the only means by which judicial proceedings have been taken forward rather than dropped.** This is especially serious considering that cases of ill-treatment or torture are inherently difficult to record for the purposes of submitting evidence, given that they often occur behind closed doors. This means that the complainant's story is, in many cases, the only first-hand evidence available, complemented by peripheral proof which may be limited in nature or otherwise absent, such as recordings or witnesses to events.[23]

The Constitutional Court has recognised this evidentiary challenge in cases of torture or ill-treatment, considering that it provides just cause for initiating judicial investigations, even where the available evidence may seem insufficient.[24]

19 -STS 920/2013, 11 de diciembre, FJ 2n

20 -STC 53/2022, 4 de abril, FJ 4

21 -STC 124/2022, 10 de octubre, FJ 4.

22 -The Istanbul Protocol, as an international legal framework for the documentation of torture and ill-treatment, establishes with regard to the assessment of the complainant's version of events that its consistency with the psychological or physical signs must be verified, in order to determine the existence of a possible situation of torture or other ill-treatment

23 -It should be recalled that the jurisprudence of the Supreme Court (among others, STS 172/2022, 24 de febrero, FJ 3r) has established that, when considering offences of this nature, which are committed clandestinely, the victim's statement can be taken as sufficient evidence for setting aside the presumption of innocence of the accused. This is possible if three requirements are met: (a) there is no subjective reason for disbelief, such as a motive for enmity or revenge between the parties; (b) the story is plausible and can be objectively corroborated and (c) the incrimination provided by the victim is consistent, clear and without contradiction over time

24 -STC 34/2008, de 25 de febrero, FJ 7.

One particularly concerning pattern is the **criminalisation of victims of institutional violence**, given the context in which such incidents take place. A paradigmatic example are the cases which arise **at and around protests and demonstrations**. Cases have been identified in which **demonstrators have been held responsible for the harm they have suffered**, on the supposed grounds of having accepted putting themselves at risk by **continuing to participate in a demonstration or rally** which police acted to break up. This interpretation not only breaches the right to effective judicial protection, but also the fundamental right to assembly.

One of the characteristics of the impact of torture is the difficulty in narrating the experience, the feeling of incomprehension and even questioning and blaming oneself. As such, the fact that the institution responsible for hearing and investigating this experience should **call the complainant into question and criminalise them** is particularly alarming. This traps the victim in a position of vulnerability, in which there is an ostensible collaboration between the institutions that harmed them and those that should provide them with justice. The criminalisation of the victim, insofar as it generates distrust and isolation, also affects the **social support necessary for redress** and hinders their ability to recover. For true redress, a clear acknowledgement of the facts and respect are necessary throughout the process.

> "I was simply exercising my right to demonstrate and what I got for my troubles was to end up maimed. The funny thing is that, in the eyes of the judge, my injuries were fair because I had put myself in harm's way. Does this mean it's not safe to take to the streets to demonstrate?" Young protester in case C06.

SAIDAVI has also identified the **existence of racist discrimination among the judiciary, with a heightened lack of belief afforded to racialised people, further entrenching racist stereotypes and prejudices.** This lack of belief has been seen to lead to specific questioning in relation to the supposed 'true' motivation for the complaint and the criminalisation of the victim, holding them responsible for their experiences and the harm they have suffered.

Such racial discrimination has, at times, been preceded by criminalisation in the form of the ethno-racial profiling carried out by police officers whose actions have been undertaken on the basis of their connecting the physical appearance of the person with alleged criminal conduct. In other words, **racial profiling frequently acts as a gateway to even more serious police misconduct**.[25]

> "I showed them my identity document as usual, because they always stop us, we know how it is. (...) I wanted to report the incident, but not anymore. I know how it is, it won't change in 200 years." O.J., assaulted by Mossos d'Esquadra officers in Rubí.

25 -Irídia & RIS, Racismo policial en el Estado español. Un análisis cualitativo del sesgo racial en la práctica de parada, identificación y registro policial (2024), p. 30. Available at: https://iridia.cat/wp-content/uploads/2025/01/Informe_racisme_policial-WEB-corregit.pdf

C06

Case title: **Loss of an eye due to foam projectile fired at a protester**

Location: **Corner of Via Augusta and Carrer Bosch, Barcelona**

Case summary:

On 16 February 2021, a nineteen-year-old woman was struck by a foam projectile fired by an officer belonging to the riot police section (BRIMO) of the Mossos d'Esquadra while participating in a demonstration in favour of freedom of expression and opposing the imprisonment of the singer Pablo Hasél.

The projectile struck her directly in the face, maiming her in her right eye, with serious and lasting physical and psychological damage.

Details for consideration:

- Criminal proceedings were initiated by Investigating Court No. 1 of Barcelona. Despite the slow pace of proceedings, the proper and necessary investigative procedures were carried out in order to clarify the facts, leading to two Mossos d'Esquadra firearms officers and their commanding officer being placed under investigation.
- Irídia submitted expert analysis by the Omega Research Foundation, which contrasted the internal protocol for the use of foam projectiles by Mossos d'Esquadra with the guidelines set by the manufacturer. The experts concluded that the protocol ran counter to the manufacturer's recommendations, allowing for use from distances of 20 metres or more, instead of the recommended minimum of 30 metres.
- The investigation by the Mossos d'Esquadra Internal Affairs Division (DAI) requested by the Court identified the officers involved in the operation, but did not specify which of them had fired the shot in question, nor did it consider whether the use of foam projectiles was made in accordance with protocol.
- In spite of this, on 8 May 2024, an interim judgement was issued for the dismissal of the case, on the grounds that the actions by police in question could not be considered a criminal offence. The investigating court held that the young woman accepted the risk of being injured by participating in the demonstration. The Provincial Court of Barcelona confirmed the dismissal of the case, foreclosing the possibility of it coming to trial. As a result of this decision, Irídia filed an appeal before the Constitutional Court. At the time of writing, a decision on the admission of the appeal remains pending.

3.1.6. The slowness of the justice system

In general, judicial proceedings involve a series of steps with specific deadlines. These include filing a complaint, gathering key evidence, providing statements and lodging appeals. This process can place a significant burden on those affected, who are often faced with unfamiliar and unmanageable bureaucracy.

By contrast, the process of psychosocial recovery follows a very different rhythm: its timescales are more variable and related to coming to terms with the experience and adapting to new circumstances in all spheres of one's life. This disjuncture between judicial and personal timescales can seriously hinder the recovery process, forcing the victim to remain immersed in proceedings which are at a remove from their emotional and psychological needs.

For many people, the end of judicial proceedings is a symbolic closure of their experience or, at the very least, a way of making sense of and allowing them to begin to come to terms with it. However, excessively prolonged proceedings – especially when no clear progress is made – can give rise to the sensation that the case has "ended up on the scrapheap", preventing those affected from advancing in their recovery, and leading them to feel symbolically trapped in the time of the events and unable to move on with their life.

The costs of the judicial process are not only emotional and temporary, but also economic. SAIDAVI offers its services for free so that those affected do not have to bear the burden of the legal costs, which are covered by Irídia. Nevertheless, keeping an eye on case developments, attending court and submitting to examination can all be especially draining, not to mention incompatible with work or academic responsibilities, in addition to further personal impacts, particularly for those at risk of social exclusion. Sustaining these efforts over time is even more difficult, as those affected often have to balance judicial demands with their own needs for economic, familial, occupational and emotional stability. The judicial process is particularly exhausting and carries with it a double burden: on the one hand, the need to seek justice; on the other, the challenges in dealing with the personal and social repercussions of the process itself.

> "Every time I hear from you [Irídia, about a case taken on 5 years ago], I go over everything, I look back with unease. I find it uncomfortable and difficult to relive the whole process." A.T., assaulted by a BRIMO officer during protests in October 2019.

The justice system has become increasingly saturated in the last decade, causing excessive delays that exacerbate secondary revictimisation.[26] Where complaints are made concerning alleged institutional violence, Irídia has found that judicial proceedings are excessively drawn out, in part due to a general overload of the courts, but also due to specific obstacles and specific in these kinds of cases.

In three of the cases which have come to trial, it has taken five years following the events for a sentence to be handed down, and four years in another.

This inertia is of particular concern at the investigative stage. The Criminal Procedure Act (known in Spanish as LECrim)[27] sets the legal deadline for the undertaking of investigations at 12 months. Should any investigative procedures remain pending, a request must be made for their extension prior to the end of this period, and again every six months. In the event that, due to the slowness and saturation of the courts themselves, this extension is not sought and approved within the deadline, it may entail the closure of the case without all the evidence necessary to bring it to trial having been gathered. This is a particularly egregious cause of impunity where cases of torture and ill-treatment are concerned, in that it lies exclusively at the door of a broken judicial system. In one of the cases brought as

26 -Catalan Ombudsman's Report to Parliament 2023, March 2024; pp. 322 - 323 on the Justice System in Catalonia;

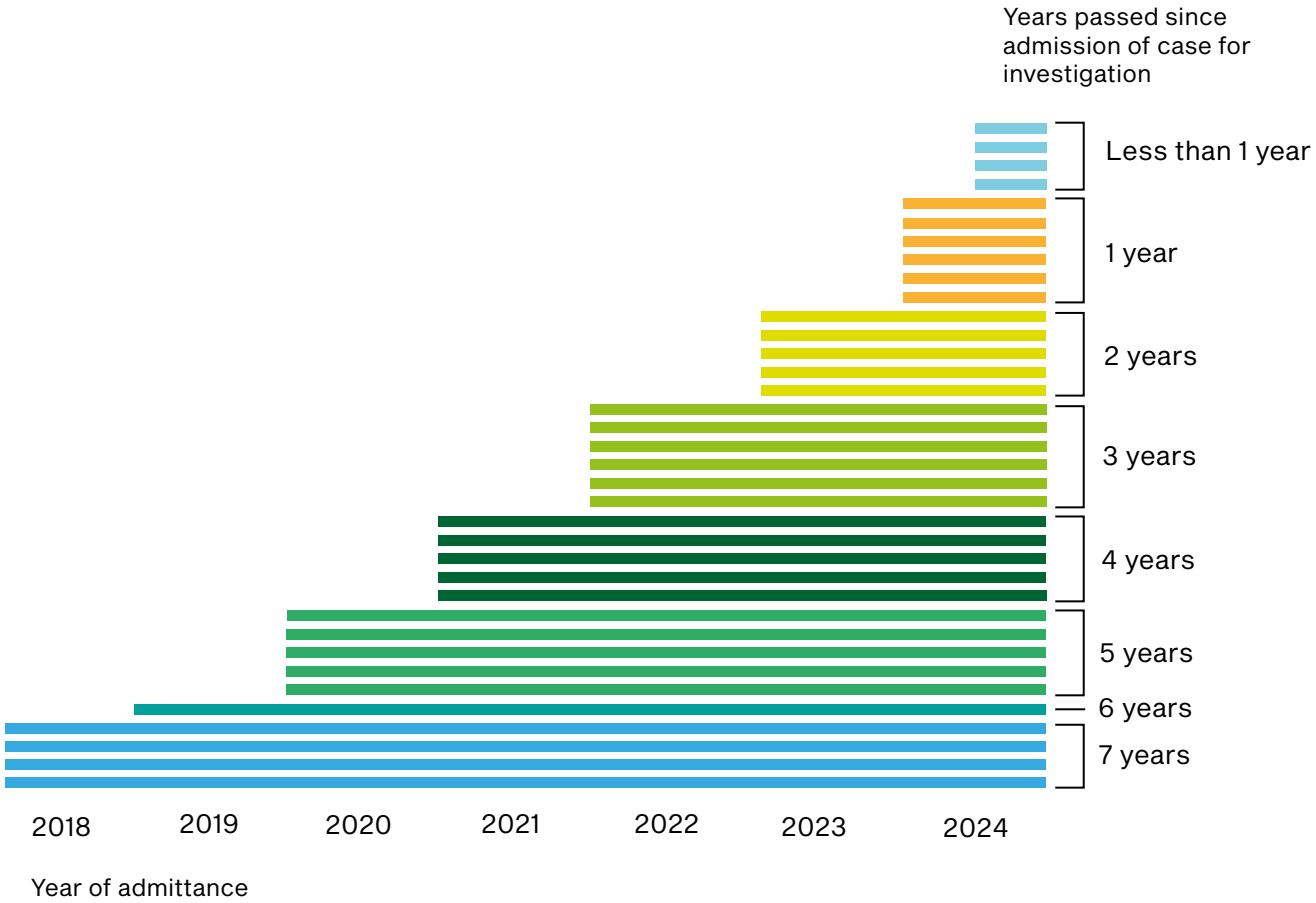
27 -Article 324, Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal; https://www.boe.es/buscar/act.php?id=BOE-A-1882-6036

litigation by Irídia, the investigating court refused, in its own ruling, to extend investigations, on the exclusive grounds of a clerical error made by the same court in failing to process a request for extension on time, despite request for this having been made within the deadline by the private prosecution.

Of the 36 cases that are currently still at either the investigative or the interim stage, 4 were initiated seven years ago; 1, six years ago; 5, five years ago, and a further 5, four years ago. A further 6 were initiated three years ago; 5, two years ago, and 6, in 2023. Only four were filed in 2024. In other words, the investigative phase in the litigation brought by Irídia **lasts an average of 3.14 years.**

As mentioned, the widespread overload of the courts is not the only factor that results in procedural inertia where complaints regarding institutional violence are concerned. Furthermore, double standards in compliance with deadlines and formalities, the unjustified dismissal of cases and the need to petition a higher judicial authority to reopen proceedings represents one of the primary drivers of delays in proceedings concerning ill-treatment or torture.

As an example of the above, we may consider the **case of I.B**. who, after suffering a racially-motivated assault at the hands local police officers in the municipality of Cornellà de Llobregat in 2022[28], was forced to wait more than a year to receive an examination of the emotional impact of the incident. **Proceedings were halted for 10 months** in order for this examination, which had been sought ex officio by the court, to be carried out.



Duration of investigative phase in litigation brought by Irídia
Source: Authors' work, SAIDAVI data

28 -Case highlighted in the 2022 Irídia Report on Institutional Violence, p. 25.

C07

Case title: **Loss of an eye due to assault with police baton on an asylum seeker**

Location: **Spanish Southern Border, Melilla**

Case summary:

On 2 March 2022, Djack, a 17-year-old asylum seeker, arrived in Spain by jumping over the fence located on the border between the Spanish city of Melilla and Morocco. He was immediately accosted by an officer of the Civil Guard, who struck him on the face twice with their police baton, hitting him directly in the left eye. To prevent him from escaping, the officer dealt a further blow to his back. The assault caused a rupture to his left eye, resulting in irreversible loss of sight, in addition to significant physical and psychological harm.

In March 2023, Irídia acted on behalf of the young man and filed a complaint for the crime of torture and contravention of his inviolable right to dignity, as well as for the crime of causing injury resulting in loss or dysfunction of a primary organ.

Details for consideration:

- On April 24, 2023, the investigating court issued an interim judgement ordering the case to be dismissed outright, without having carried out the necessary investigations to establish the facts of the case.
- Irídia filed an appeal against this decision. The Public Prosecutor's Office objected to the appeal. On 2 October 2023, the Provincial Court of Malaga agreed to reopen the case.
- Proceedings were not initiated until a year had passed following the filing of the complaint. At the time of writing of this report, a statement has yet to be taken from the victim, and no investigations have been carried out to identify those responsible, despite this having been requested in the complaint and ordered by the Provincial Court.
- Djack continues to experience considerable suffering as a result of his irreversible injuries and revictimisation during this process, significantly affecting him in his daily life and physical abilities, as well as exacting a toll on his emotional and psychological wellbeing.

There are cases in which judicial proceedings have been suspended for an entire year. One such case is that which concerns the complaint filed on behalf of **Carles Vallejo** for torture under the Franco regime, which was suspended for **one year and three months** pending the resolution of an appeal filed in October 2023.

This and the other aforementioned factors create inertia in litigation which, besides obstructing redress for victims of institutional violence, places the continuity of proceedings at risk, and may encourage leniency towards police officers and public officials facing charges on account of undue delays. This contravenes the mandate to effectively investigate complaints of torture and ensure adequate redress and appropriate sentencing of those criminally responsible.

3.1.7. Amnesty

On 11 June 2024, Act 1/2024 on amnesty for the institutional, political and social normalisation in Catalonia (hereinafter, the Amnesty Act), came into force.[29] This piece of legislation helped return to the field of politics and public debate matters which should never have entered the judicial sphere in the first place. Nevertheless, the Act has been utilised in order to avoid pursuing several cases of torture and ill-treatment committed by police officers.

The Amnesty Act provides an express exception, according to which acts constituting torture and/or inhuman or degrading treatment that breach Article 3 of the European Convention on Human Rights (ECHR) are excluded from amnesty. Several courts have disregarded this exception, agreeing to drop proceedings against officers accused of conduct potentially in breach of Article 3 of the ECHR.

ECtHR jurisprudence holds that **amnesty cannot be granted where acts may constitute torture or ill-treatment.**[30] Moreover, the provisions of the United Nations Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, ratified by Spain – and especially the rulings issued by its interpretive body, the Committee Against Torture (CAT)[31] – establish that amnesties for acts of torture or other inhuman or degrading treatment or punishment are incompatible with the obligations of the state parties which have ratified the Convention. The United Nations Human Rights Committee (HRC) has expressed the same opinion.[32]

This regulatory framework obliges public authorities to interpret legislation, including the Amnesty Act, from a perspective focused on the protection of fundamental rights. Amnesty for officers accused of torture and ill-treatment means upholding impunity, denying victims their right to redress and failing to comply with the state's duty to investigate and bring to justice those responsible. **Applying amnesty in these cases sends a message of tolerance of torture and ill-treatment.**

A solid body of ECtHR case law exists which requires, in general terms, a certain threshold of egregiousness of mistreatment and inhuman or degrading treatment in order for it to be understood as violating Article 3 of the ECHR (and, therefore, to be considered non-pardonable). This requirement must be analysed against the specific circumstances of the case, the perpetrator of the events, the injuries and impact caused and the characteristics of the victim and their experience of the events as these relate to their human dignity.[33] This **"minimum threshold of gravity"** is what the courts have recurred to in order to waive the exception and offer amnesty to accused police officers.

Nevertheless, the ECtHR has also ruled that, **where the accused is a member of the police or state security forces**, the aforementioned **minimum threshold is considered to be automatically exceeded**. Any use of force by police officers other than that which is strictly necessary violates human dignity and de facto constitutes a violation of Article 3 of the ECHR, meaning that it cannot be subject to amnesty.[34]

This jurisprudence is not being applied by the Spanish courts in their interpretation of the Amnesty Act. **In 2024, amnesty was granted** in various proceedings in

29 -Ley Orgánica 1/2024, de 10 de junio, de Amnistia; https://www.boe.es/buscar/act.php?id=-BOE-A-2024-11776

30 -ECtHR judgement in the Case of Margus v. Croatia, 27 May 2014

31 -CAT/C/GC/3: General Comment on the Application of Article 14 by States Parties; CAT, 2012; https://docs.un.org/en/CAT/C/GC/3

32 -General Comment No. 20 on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment in relation to Article 7 of the 1992 Convention on Civil and Political Rights; https://www.refworld.org/legal/general/hrc/1992/en/11086

33 -ECtHR judgements, Ireland v. United Kingdom; Aksoy v. Turkey, 18 December 1996; Krastanov v. Bulgaria, 30 September 2004 or M.S.S. v. Belgium and Greece, 2011.

34 -ECtHR judgement in the case of Bouyid v. Belgium, 28 September 2015

which officers of the National Police Corps and the Mossos d'Esquadra were accused of acts constituting torture or inhuman or degrading treatment. These are acts which, in accordance with the wording of the Act and the jurisprudence of the ECtHR, clearly exceed this minimum threshold of gravity, having been carried out by police officers using unnecessary or disproportionate force aimed at humiliating and degrading the victims.

The most well-known of these cases is that which was brought against the officers involved in the **baton charges against voters in Barcelona** on the day of the 2017 Catalan independence referendum. In this case, the investigating court, after more than seven years of investigation, **granted amnesty to the 46 officers** under investigation, on the grounds that their actions did not exceed the aforementioned "minimum threshold of gravity". Irídia has filed an appeal against this decision, as have other private and third-party litigants. This appeal will be heard by the Third Section of the Provincial Court of Barcelona.

This is not the only case of ill-treatment or torture in which the officers under investigation have been granted amnesty. Amnesty was also granted to the **five officers of the National Police Corps** under investigation for an assault on **G.B**., in retaliation for their participation in the demonstrations against the sentences handed down to pro-independence political leaders (2019). In this case, Irídia has also lodged an appeal against the decision.

For many victims, in a psychosocial sense, amnesty lays waste to their hopes of redress. The slowness of judicial proceedings, the difficulties in investigation and the years of waiting can be counteracted if the judicial system allows those affected to see the people who have harmed them brought to justice. With the application of the Amnesty Act, this sense of purpose is lost, as is the value of the struggle and the energy put into it. Many of those affected have not only engaged in litigation in their own interests, but also through a sense of collective responsibility, believing that those exercising their right to protest should not, under any circumstances, suffer police brutality. The fact that such cruel treatment by police officers goes unpunished exacerbates their feeling of helplessness.

The improper application of the Amnesty Act has also meant that some of those affected have decided not to continue with litigation, requesting that the decision to grant amnesty to their assailants not be appealed. After enduring a years-long judicial process in which they have had to continually confront the pressure of going to trial against the police, the granting of amnesty has a deterrent effect on those affected, who ultimately prefer to turn the page, even if this results in impunity.

In the cases taken on as litigation by Irídia, **59 officers were granted amnesty in 2024, of whom 51 belonged to the National Police Corps and eight to the Mossos d'Esquadra.** The investigative phase was concluded in all judicial proceedings, initiated between 2017 and 2019, with the courts ruling that there was sufficient evidence to bring the officers involved to trial for crimes of causing injury, in contravention of the inviolable right to dignity or torture of those affected.

These 59 officers were granted amnesty after between five and seven years awaiting either trial or formal charges.

As of the closing date of the report, this decision has been appealed in cases concerning 52 of the officers, pending judgement by the Provincial Court. Seven Mossos d'Esquadra officers were not granted amnesty, as the victim decided to abandon litigation. Irídia continues to litigate in other cases where the defendants' legal representatives, Ministry of Justice lawyers or the Public Prosecutor's Office have the opportunity to request amnesty.

C08

Case title: **Unjustified assault with a police baton on a protester**

Location: **Barcelona-El Prat Airport**

Case summary:

On 14 October 2019, at a protest taking place at Barcelona-El Prat Airport against the Supreme Court ruling against pro-Catalan independence political and social leaders, a BRIMO officer of the Mossos d'Esquadra subjected a protester to assault for no apparent reason. The officer struck her with a police baton on her left leg, causing her to fall to the ground. Despite being motionless on the ground, the officer continued to hit her several times, striking from above.

As a result of the assault, C.C. suffered multiple contusions to her upper and lower limbs, injuries to her wrists and a sprain to her right ankle. In addition to these physical injuries, she also suffered severe psychological distress, including Post-Traumatic Stress Disorder (PTSD), due to the gratuitousness of the officer's actions in flagrant violation of her dignity.

Details for consideration:

- On 23 October 2019, a complaint concerning the incident was filed. After an initial ruling by the investigating court to hear the case as a minor offence, the Provincial Court of Barcelona upheld Irídia's appeal and ordered the initiation of a preliminary criminal investigation.
- The corresponding investigative procedures were carried out to clarify the facts of the case and identify the officer responsible. Ultimately, the court ruled in favour of bringing the case to trial.
- In June 2022, Irídia filed for criminal charges to be brought against the officer for contravening the victim's inviolable right to dignity and for causing injury, with their role as a public official as an aggravating circumstance. Despite the available evidence, the Public Prosecutor's Office decided not to seek charges against the officer, resulting in a notable delay in the proceedings.
- Almost four years after the event, in June 2023, an oral hearing was granted and the accused officer summoned to trial.
- With a date pending for the holding of the trial, in July 2024, the officer's defence requested that criminal liability be dropped in view of the provisions of the Amnesty Act. The Public Prosecutor's Office moved for the granting of amnesty and the Provincial Court of Barcelona ruled to dismiss the case on these grounds.
- On 12 September 2024, Irídia filed an appeal before the Superior Court of Justice of Catalonia against the decision of the Provincial Court. At the time of writing of this report, the appeal remains pending.

3.2. How the Public Prosecutor's Office acts (and fails to act)

The Public Prosecutor's Office plays an essential role in the Spanish criminal justice system, with a mission to uphold justice, the rights of citizens and the public interest as protected by law. Its mandate includes a fundamental responsibility for the protection of victims' rights, especially of the most vulnerable.

Within the criminal justice system, the Public Prosecutor's Office is supposed to call on the judiciary to undertake the appropriate precautionary measures and proceedings aimed at clarifying the facts and identifying the perpetrators of any potential offence. It is also responsible for the procedural protection of victims, ensuring mechanisms for their aid and assistance, regardless of whether or not a private prosecution is brought.[35]

Nevertheless, in many of the cases in which Irídia has provided legal representation, the Public Prosecutor's Office, far from fulfilling its responsibilities, has declined to take any action to the benefit of the victim. It has even acted against complainants in cases concerning alleged institutional violence. Furthermore, on occasion it has acted in defence of the perpetrators.

The figures collected by Irídia regarding the role of the Public Prosecutor's Office in our litigation throughout 2024 are very worrying.

In only 12 of the 49 cases of criminal litigation did the Public Prosecutor's Office **play a proactive role in seeking investigation or prosecution.** Proactivity can include actions such as appearing during examinations, backing the appeals made by the private prosecution, petitioning the courts for investigation and moving to prosecute even where the Office has not participated at earlier stages of proceedings.

In 20 of the 49 cases, the Public Prosecutor's Office **has opposed investigative proceedings**, objecting to the private prosecution, requesting the dismissal of the proceedings without essential procedures having been carried out, requesting the outright dismissal of the complaint, petitioning for the acquittal of the accused despite the existence of strong evidence or proof to the contrary, requesting the granting of amnesty in cases of ill-treatment and demanding measures which criminalise the victim.

In the remaining 17 cases, the Public Prosecutor's Office has failed to take any action whatsoever.

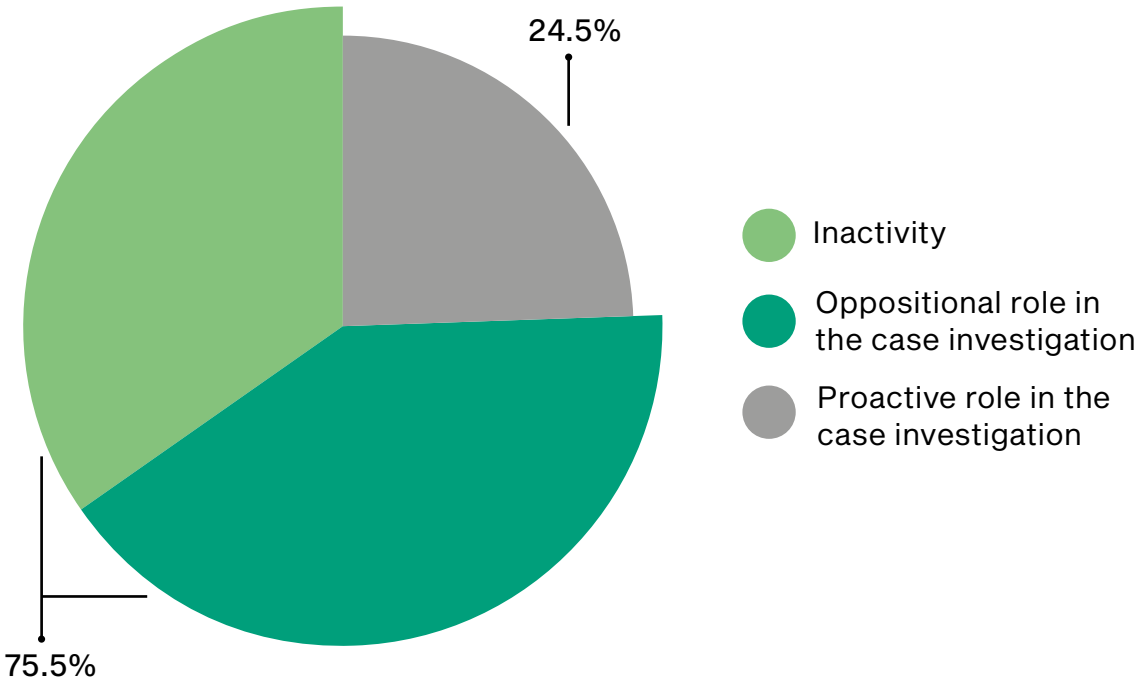
In none of the 49 cases has the Public Prosecutor's Office requested **measures for the protection** of the victim or enquired about their needs.

In some cases, the various Public Prosecutors, far from fulfilling their role of standing up for the victim and the public interest, have acted as a **revictimising agent**, questioning their versions of events and serving as a key driver in the perpetuation of impunity.

Impunity brings with it significant psychosocial consequences, producing a breakdown in the belief and trust in justice, at the same time as exacerbating feelings of helplessness and hopelessness. Widespread mistrust of the judiciary, the belief that the police will be believed before any member of the public and the fear of being re-victimised act as a deterrent when it comes to reporting alleged offences. This is all the more serious given that it weakens the rule of law.

The fact that the Public Prosecutor's Office brings victims' credibility into question is especially serious, since it is the institution responsible for ensuring their rights are upheld and for preventing additional harm from being caused to them

35 -Article 3, Ley 50/1981, de 30 de diciembre, por la que se regula el Estatuto Orgánico del Ministerio Fiscal; https://www.boe.es/buscar/act.php?id=BOE-A-1982-837



Response of Public Prosecutor's Office in litigation brought by Irídia
Source: Authors' work, SAIDAVI data

during criminal proceedings. This includes ensuring that victims are **treated with dignity and respect**, as well as providing measures for their protection during statements and avoiding their exposure to situations that may cause them further distress. A clear paradox exists when one of the mechanisms responsible for defending victims' interests has, on so many occasions, ended up causing them further harm.

One example of a case in which the Prosecutor's Office has **defended the interests of those responsible for causing harm and opposed effective investigations** of alleged offences is the action of the Deputy Prosecutor of the Cybercrime Unit in the litigation taken on by Irídia this 2024 as part of the campaign "**Irídia vs. Pegasus**", as highlighted in **the C09 case file.**

Also significant in this regard is the role that the Public Prosecutor's Office has played in the judicial proceedings undertaken in relation to **police baton charges** against voters during the **2017 Catalan independence referendum**. In the main proceedings, the Prosecutor's Office requested the application of the Amnesty Act for all officers under investigation, despite their alleged actions constituting possible inhuman or degrading treatment. Furthermore, in the summary procedure concerning police operations on Carrer Sardenya in Barcelona, which resulted in **Roger Español** losing an eye after being struck by a rubber bullet, the Public Prosecutor's Office requested that Mr. Español be brought to trial for the offence of assaulting or obstructing an officer of the law. At the same time, the Public Prosecutor's Office sought that **all investigations and charges against the officers involved be dropped**, on the grounds that their actions were within the law insofar as they were a "proportional" response to the hostility shown by those gathered at the scene.

A similar situation can be seen in the cases in which the Public Prosecutor's Office has **failed to take action**, leaving the burden of the accusation in the hands of the private prosecution, that is, the victim. One such example of inaction comes from the criminal proceedings initiated following **the death of A.C.**, who was subjected to six electric shocks by a Mossos d'Esquadra officer using a Conducted Energy Device (CED).[36] Notably, despite the case involving a death due to the use

36 -Case highlighted in the 2023 Irídia Report on Institutional Violence, p. 23.

of a police weapon, the **Public Prosecutor's Office declined to request that any investigations be carried out.** Likewise, the Public Prosecutor's Office did not appeal the initial decision by the courts to dismiss the case. Following reopening of the investigation, witnesses and experts were called to provide statements on behalf of the private prosecution. During these sessions, the Public Prosecutor's Office took an entirely cursory role, fielding no questions nor requesting any information.

This also occurred in a **case of alleged ill-treatment at the Quatre Camins prison.** The Prosecutor failed to attend the hearings to which, respectively, the victim was summoned to provide their declaration as the affected party and the 10 prison officials involved were called to provide their statements under investigation for alleged torture.

Another example of the **Public Prosecutor's shortcomings** in its role to prevent and prosecute cases of torture and ill-treatment can be seen in the **2024 Report of the Attorney General**, which refers to activity carried out in 2023 (the Report, hereinafter).[37]

The data included in the Report on crimes of torture and in contravention of inviolable human dignity committed by public officials or authorities is highly fragmented. This makes it difficult to draw accurate conclusions and produce any effective analysis.

The crime of torture is appraised, initially, in the tenth section of the Report, within the broader purview of hate crimes and discrimination. The Report indicates – crucially, given the information we have considered above – that, over the course of 2023, the Public Prosecutor's Office was not engaged in any pre-procedural investigations concerning cases of this nature, nor did it move to seek any charges for torture committed on the grounds of discrimination. Of course, an essential piece of information is missing: the number of complaints filed for torture both to the Prosecutor's Office and to the courts.

On this issue, the Report notes that the information systems belonging to the courts and the Prosecutor's Office throughout the country do not provide for the classification or quantification of complaints or proceedings relating to hate crimes and discrimination.[38]

Notably, this Report only considers as cases ill-treatment and torture committed by public officials or authorities those involving police officers for acts initially classified as offences in contravention of the inviolable dignity of the affected. In other words, any and all cases of ill-treatment or torture initially investigated as constitutive of another criminal offence – such as causing injury, illegal detention, threatening behaviour, coercion, sexual assault, etc. – are excluded from the Report, as are those involving prison officials or private security guards fulfilling public safety duties.

Of the few cases which are accounted for in the Report, it is concluded that "in 2023, a single sentence was handed down for torture and 26 sentences for crimes against moral integrity committed by public officials, compared to two and 37 sentences respectively in 2022".[39] It is not known, however, what the involvement of the Prosecutor's Office was in these cases, nor the nature of the sentences in question.

These figures significantly differ from the evidence seen by Irídia through SAIDAVI, making it clear that the Public Prosecutor's Office is unable or unwilling, in its current configuration, to act effectively as a key public institution for the investigation of complaints of torture and ill-treatment, and for ensuring they are brought to justice and redress is made to victims.

37 -Memoria de la Fiscalía General del Estado 2024 [Spanish]; https://www.fiscal.es/memorias/memoria2024/FISCALIA_SITE/index.html

38 -Source: Memoria de la Fiscalía General del Estado 2024, p. 871 and p. 873

39 -Source: Memoria de la Fiscalía General del Estado 2024, p. 1044 and p. 1045

C09

Case title: **Irídia vs. Pegasus**

Case summary:

Andreu Van Den Eynde is one of three lawyers spied on using the NSO Group's Pegasus software. Unlike the 18 cases officially acknowledged by the Spanish authorities, his is one of the 47 cases of espionage carried out without either judicial authorization or recognition of official responsibility.

Van Den Eynde was spied on during the Covid-19 lockdown, on 1 May 2020, while carrying out his work online. At the time, he represented several Catalan pro-independence political leaders, some of whom had been imprisoned. The methods allegedly used to infect his device involved full access to all information stored and used on it.

When the CatalanGate case was made public, Van Den Eynde filed a complaint for acts of espionage and interception of communications, unauthorised access to a computer system and the acquisition and production of software for spying. Irídia took on his case as litigation in January 2024, as part of the proceedings handled by Investigating Court No. 24 of Barcelona.

Espionage of this nature violates the rights to privacy and secrecy of communications, the right to a defence and freedom of information, and represents a frontal attack on the rule of law.

Details for consideration:

The Public Prosecutor's Office has systematically blocked and hindered the investigation by carrying out the following actions:

- It has opposed any attempt to bring class action lawsuits, despite individual complaints clearly concerning the same parties under investigation, resulting in procedural duplication and delays in investigation.
- It has also opposed the involvement of the Government of Catalonia as a third-party litigant in the public interest.
- It has blocked any investigative proceedings pertaining to the NSO Group and its possible criminal responsibility, as well as the National Intelligence Centre (CNI) and its members.
- It has opposed the sharing of information between the different judicial bodies handling each of the proceedings.
- It has repeatedly called into question the expert evidence provided, including the Citizen Lab report.
- It has opposed the extension of the complaint to involve the legal representatives of the companies responsible for Pegasus, even going so far as to contradict rulings handed down by the investigating courts and the Provincial Court.

3.3. Shortcomings in legal aid

Access to legal representation, as a guarantor of **effective judicial protection**, is a fundamental right enshrined in the Spanish Constitution[40] and, in cases of ill-treatment, also falls under the **international duty of states to fully prevent and investigate cases of alleged torture**, inhuman or degrading treatment and any conduct by public officials which causes physical harm or contravenes the inviolable right to dignity.

The right to legal representation exists to ensure the practical application of the principles of equality of the parties within an adversarial system, which imposes on judicial bodies the obligation to act to avoid imbalances in parties' procedural standing or limitations which may disadvantage one or the other in making their case.

SAIDAVI has detected significant shortcomings in the provision of legal representation in cases of institutional violence. To address these shortcomings, Irídia has proposed the creation of a specific in-court representation service in cases of institutional violence.

This proposal, which has been included and presented on a number of occasions in various contexts, including within the Action Plan and before the Examining Committee on Policing of the Parliament of Catalonia – which passed the proposal under Measure No. 40, currently pending implementation – aims to offer a response to violence which often goes overlooked, and which reinforces, for those affected, the sense that such violence goes unpunished when committed by public officials.

The training of court-appointed legal aid professionals in human rights, protocols for the use of force and internal police procedures, as well as knowledge of the principal psychosocial impacts of institutional violence, is crucial for effective representation, ensuring that abuses are duly investigated and that victims receive the corresponding redress.

Any member of the public should be able to file a complaint against an officer of the law at a police station with the same safeguards as when registering a complaint against another individual. This notwithstanding, SAIDAVI has recorded cases in which those affected believe they were prevented from filing a complaint at a Mossos d'Esquadra police station.

As noted, when someone seeks to report having suffered institutional violence, they tend to encounter more difficulties than in other cases, with the expeditious dismissal of the case, a lack of effective investigation, a questioning of their version of events, the assumption of veracity of the version of officers, a lack of support from public prosecutors, etc. The **intervention of a specialist lawyer** who is aware of all the specifics required in cases of this nature **is fundamental** in ensuring that those who suffer institutional violence fully understand their rights and r**eceive proper legal advice.** The requesting of certain judicial proceedings, the importance of proving psychological harm, requesting measures to protect the victim and knowledge of the protocols that regulate the use of force or weapons by the police are basic elements in the safeguarding of the interests of those affected.

Professional bar associations do not offer specific training which fully addresses cases of institutional violence. These cases require in-depth knowledge not only of jurisprudence, but also of the relevant social and political factors. According to the ECHR, **legal representation for those detained** in police stations and other

40 -Article 24.2 of the Spanish Constitution.

forms of custody, together with medical examination and recognition and the right to inform a third party of the detention, **constitute fundamental safeguards against ill-treatment and torture.**[41]

The physical presence of a lawyer – rather than by videoconference – is essential for upholding the rights of the detainee and to confirm whether they have suffered any kind of violence at the hands of police officers or other officials. Numerous studies carried out by torture prevention organisations show that safeguarding during detention is the measure which has the greatest impact in preventing torture. The presence of lawyers at police stations is chief among these safeguards.[42]

Another issue detected by SAIDAVI in relation to legal aid concerns the processing of allegations of institutional violence as minor offences. There is no statutory provision of legal aid in cases concerning minor offences, meaning that, in practice, the majority of proceedings are carried out without this aid being available to the victim. This constitutes a serious imbalance where said cases concern institutional violence, in which the adversarial party is an officer of the law.

The Supreme Court has ruled that, in order to avoid any breach of the right to effective judicial protection, legal representation can be requested even in cases in which this is not a statutory requirement, as would be the case with minor offences.[43] In practice, however, those who file a complaint concerning police conduct classed as a minor offence are directly summoned to appear before the courts. Consequently, in the majority of cases, they appear without legal representation, particularly where they do not have the financial means to pay for a lawyer. It has been found that victims are not notified of the decision to downgrade consideration of the matter of their complaint to a minor offence, rendering it impossible to **lodge an appeal**. Given the seriousness of the allegations, such cases ought to be treated as criminal matters, and the complaint investigated accordingly.

This **flagrant imbalance of procedural justice** – one which, moreover, contravenes legal provisions[44] – can be avoided if the affected party presents a written request to the courts seeking express authorisation to appear with a legal aid officer, invoking their right to effective judicial protection particularly in situations such as the one described. Once this authorisation has been obtained, the victim can approach the Free Legal Aid Committee and request that a lawyer be assigned to them in order to proceed to trial with the appropriate legal representation. It should be noted that this Committee does not assign representation without prior judicial authorisation, despite the fact that, as established in the Official Legal Aid Covenant, the Committee can assign a lawyer to the interested party where they appear before the committee to request this.

41 -ECtHR judgement, 18 September 2008, Türkan v. Turkey. https://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88393

42 -Safeguards during detention, Association for the Prevention of Torture, France, September 2016 (pag. 7, 19, 20)

43 -Rulings TC 47/1987, 22 April and TC 22/2001, 29 January.

44 -Both in the Status of Victims of Crime Act and the Model for the Comprehensive Care of Victims through a Support Service for Victims of Crime. See: https://repositori.justicia.gencat.cat/bitstream/handle/20.500.14226/51/programa-marc-oavd.pdf

C10

Case title: **Discriminatory assault of a minor by municipal police officers**

Location: **Sant Boi de Llobregat**

Case summary:

On 2 March 2023, while S.D. – a minor at the time of events – was travelling as a passenger on the back of a motorcycle, officers of the municipal police corps of the town of Sant Boi initiated a chase and ordered the vehicle to stop. The driver, who did not initially fulfil this request, finally stopped in a wooded area, and tried to force S.D. to flee with him. S.D. freed himself and remained at the scene until two officers arrived.

The officers insulted him, threw him to the ground and, holding him face down, bent his arm behind his back while continuing to insult and kick him. His glasses and cell phone were broken deliberately. The officers then handcuffed him and put him in a police vehicle, threatening him and making intimidating comments with clear reference to his perceived Gypsy background.

S.D. was transferred to the Hospital of Sant Boi, where a different patrol took charge of his custody, and was taken thereafter to the town's Mossos d'Esquadra police station, where he was released hours later by request of the Juvenile Prosecutor's Office. Following the events, S.D. has developed post-traumatic symptoms that have had a serious impact on his life, affecting his behaviour and relations within his family, peer group and educational environment.

His legal aid officer – by chance, a specialist in cases of institutional violence – identified evidence of ill-treatment, and filed a complaint with the Mossos d'Esquadra together with the minor and his father, requesting that this and any further evidence be handed over as a matter of urgency.

Details for consideration:

- As a result of the legal aid officer's swift and clear filing of a complaint, criminal proceedings are currently underway against the officers who harassed and assaulted S.D. in a discriminatory manner. The case remains under investigation.
- This paradigmatic case highlights the need for specific training for professionals in human rights and institutional violence. Cases such as this can easily go unpunished if the lawyer does not have the training and experience to identify the nature of the situation or if legal aid is not carried out in-person.

3.4. Shortcomings in forensic evidence

Given the difficulties noted in investigating complaints of torture and bringing those responsible to justice, it is essential that all stakeholders within the judicial system comply with Spain's obligation to guarantee the absolute prohibition of torture. To this end, the proper gathering and analysis of available evidence by judicial authorities is fundamental.

The **main forensic tool** for assessing and accrediting situations of torture and ill-treatment and their impact is the **Istanbul Protocol**.[45] According to this protocol, any legal investigation into alleged cases of torture must meet seven essential requirements. One of these is the preparation of a detailed forensic report that includes consideration of the compatibility of allegations of torture or ill-treatment with the available physical and psychological evidence. The Istanbul Protocol represents an essential tool for the **comprehensive recording** of the affected person's version of events, determining where and how their injuries occurred, assessing the emotional impact of these and ensuring consistency and coherence in pursuit of establishing the true facts of the case.

In Catalonia, **the Institute of Legal Medicine and Forensic Sciences of Catalonia (IMLCFC)** is the body in charge of carrying out these examinations and issuing the corresponding reports. In 2016, this same Institute issued its **Protocol of Medicoforensic Action in Cases of Alleged Torture or Ill-Treatment** (hereinafter, the IMLCFC Protocol). Although this document refers to the Istanbul Protocol, it does not include it completely, something which generally leads to l**ess exhaustive examinations.**

This shortcoming is especially noticeable in relation to the IMLCFC Protocol's appraisal of psychological testing. The IMLCFC Protocol includes a section covering only the "mental state" of the person examined, in reference to cognition, language and processing of information, but not to any psychological impact. In addition, it fails to specify the psychological tests to be administered, nor does it include consideration of matters such as the broader impact of institutional violence on the lives of those affected.

Irídia has observed that, in the majority of cases where an examination of physical and psychological injuries is requested as part of investigations – including when the application of the Istanbul Protocol is specifically requested – **the IMLCFC Protocol is not correctly followed.**

The most significant shortcomings concern the sections *Cause of Injury, Forensic Medical Assessment and Psychological Assessment*. Broadly speaking, the reports issued **fail to sufficiently document the facts**, and do not correctly identify the **perpetrators** or the **means of causing injury**. In addition, as a rule they fail to consider the **compatibility of the injuries** with the events reported in the initial forensic report.

Furthermore, **psychological impact assessment is often not carried out** or, when it is, there is a lack of knowledge about the specificity of the impacts of torture and ill-treatment and a lack of rigour in the use of appropriate psychological assessment tools.

It is important to note that not all victims of torture or ill-treatment present clinical psychiatric symptoms: the effects of their suffering can manifest in non-clinical ways. Moreover, awareness of the nature of the common interpretation of Post-Traumatic Stress Disorder (PTSD) as a concept – which, although it

45 -Adopted by the United Nations in 1999, and updated in 2022. It sets international standards for the investigation and documentation of allegations of torture and other ill-treatment. Although the Istanbul Protocol is not legally binding, its adoption by the United Nations gives it global authority as a key guidance tool in the documentation and investigation of torture.

commonly affects victims of torture, is neither the only symptom nor does it occur in all cases – is essential.

Contrary to the IMLCFC Protocol, the Istanbul Protocol underlines that psychological examinations must always be included in the evaluation of victims of ill-treatment, and that any report based exclusively on medical examination cannot be considered satisfactory or complete. **Documenting the psychological suffering of victims is essential**, given that psychological damage can persist over time, while physical injuries can be invisible or disappear quickly.

Proof of injuries is crucial in establishing the crime which has been committed, to the extent that the exacting of physical or mental harm forms part of the legal definition of the offences of torture, degrading treatment and causing injury. In turn, the severity of these injuries is also crucial in the decision to press charges for minor or for serious offences. The failure to assess psychological impact renders the **injuries and impacts** of institutional violence invisible, resulting in a **less serious consideration of offences** and paving the way for **impunity.**

These shortcomings also contribute to the revictimisation of the affected person, whose suffering (and the effects thereof) are not taken into consideration in judicial proceedings. For victims, experts and trained professionals often represent a source of hope for the recognition and validation of their experience and suffering. Nevertheless, undergoing examination involves, in many cases, having to relive traumatic experiences, which, although it can contribute to emotional redress, can also be highly revictimising. It is essential, therefore, that the person feels heard and that their experience is evaluated in its full complexity.

> "About four times a week I get flashbacks of what happened. It's like I'm there, with the police beating me, striking me with their batons. I also have nightmares in which the police are beating me up [...]. I feel better here because I'm not seeing the [border] fence all the time. In Melilla, it made me sick. Of course, in Barcelona there are also police, and when I come out of the metro or walk down the street and I run into one of them, these thoughts come back to me and I get upset. [...] I can't stand hearing noises or engines or machinery, because I get upset [...] I'm only really fine if I'm sleeping or if I'm out hiking, where I don't see the police and I know they can't come for me". Djack

An IMLCFC report including a detailed description of the facts, the identification of the cause of injury and the perpetrator, an exhaustive exploration of the psychological impacts and a forensic medical assessment of the compatibility of the findings with the alleged offences has been issued **in only one of the cases brought by Irídia and taken forward as criminal litigation.**

This report was prepared by one of the authors of the IMLCFC Protocol. By contrast, **in the other 20 cases in which the courts** have ordered this report, **the forensic examination has not been carried out** in accordance with the standards of the **Istanbul Protocol.**

Another key factor is the l**ack of cross-cultural competencies** in assessing psychological impacts, which can lead to a biased or stereotyped consideration of the affected person. It is essential to understand suffering from a perspective that takes the cultural and religious beliefs of the person into account, including their forms of expression, the meaning they attribute to their experience and the cultural values that guide them.

One example of this lack of competencies can be seen in the case of **E.C.**, handled by SAIDAVI, who filed a complaint for harassment and assault by municipal police officers in Sabadell while walking her dog and, thereafter, in police custody.

The Court agreed to an evaluation of her injuries and their impact by a forensic examiner, who, instead of carrying out said evaluation, requested a psychometric examination by a forensic psychologist. The resulting report was entitled "Other interventions: a simulation study". Despite it being the responsibility of forensic professionals to carry out additional studies, in this case, an evaluation of the

physical and psychological injuries of the affected person was not carried out as requested by the court. In addition, in the conclusions of the report, the "distinct socio-cultural origin (Bolivia)" of the victim was mentioned as a conditioning factor. It can be inferred that the inclusion of this 'factor' is related to the comments in the report that tests are "standardised according to the Spanish population". If so, it may be inferred that these tests may be imprecise or even invalid. If not, this is a clear example of racial bias, given that, within the framework of this "simulation study", the nationality of the subject was taken into account as a means of discrediting her.

All of the above factors highlight a lack of specialist training for examiners, who have often not been sufficiently prepared to handle these cases properly, and who fail to apply current protocols in cases of ill-treatment and torture.

Another paradigmatic case of is that of **M.K.**, a victim of torture while in detention. The investigating court ruled in favour, at the request of the private prosecution, to the carrying out of forensic examination in line with the Istanbul Protocol. The court specified in its ruling that an evaluation by a forensic psychologist was required. The forensic examiner in charge **refused to apply the Istanbul Protocol**, arguing that, without medical records accrediting physical injury, this instrument cannot be applied. This highlights **a serious lack of specific training** for medical professionals, one which ultimately **hinders criminal proceedings.** In the case of M.K., after repeated refusal by the forensic examiner to apply the Istanbul Protocol, the investigating court moved to dismiss the case, without full investigations having been completed, precisely due to the absence of examination to ratify the victim's testimony. The ruling has been appealed.

3.5. Police self-investigation: the role of the internal affairs divisions and the Judicial Police

The Judicial Police is one of the key actors in any criminal investigation. Its function includes supporting the courts and tribunals, as well as the Public Prosecutor's Office, in the clarification of allegations and in the gathering and securing of evidence. As and when requested, this function can be extended to any and all police forces within the country, whether they report to central government, regional governments or local authorities.

The **Judicial Police**, which includes any police force required by a court, tribunal or by the Public Prosecutor's Office, therefore plays an **essential role** in **identifying the perpetrators of a crime** and in **preserving the evidence** necessary for criminal proceedings.

This becomes problematic when the criminal investigation involves officers belonging to the same police force. In these cases, the investigation is carried out by the police themselves, and, for the most part, by the units to which the accused officers belong. Sometimes, it is the same unit to which the officer involved belongs which directly responds to instructions issued by the courts.

While it is true that the police have the necessary tools and resources to carry out investigations, their **impartiality** is **compromised** where court orders are handled by direct colleagues or the commanding officers of those under investigation. This can lead to a **lack of objectivity** in the investigation of allegations, seriously damaging the credibility and effectiveness of the judicial process.

This structural problem, which allows insufficient police investigations to contribute to impunity, has been documented by several human rights organisations and even acknowledged by the courts. A paradigmatic example is the ruling on the death of Íñigo Cabacas in 2012, who was struck by a rubber bullet:

> "Shortcomings in the investigation carried out by the Ertzaintza into reports that a member of the public had been hit by a rubber bullet on the night of 5 April 2012, mean that, in the judgment of this court, essential elements have not been brought to our consideration in order to adequately corroborate the facts and render our conclusions incomplete." SAP Vizcaya 82/2018.

In Catalonia, there have also been similar cases. One clear example is that of **Jordi**, who was assaulted and suffered a head injury after being struck by a police baton during protests in October 2019. Criminal proceedings were opened and carried on for over two years, with a total of **13 Mossos d'Esquadra officers investigated**. Ultimately, despite it being proven that the injury was caused by an unjustified and non-protocolary use of force, **the case was dismissed due to the impossibility of identifying the officer responsible.**

The main reason for this was the **lack of collaboration of the commanding officer** of the unit, part of the Mossos d'Esquadra **riot police division (BRIMO)**, who failed to uphold their duty to supervise and direct the agents under their command.

A subsequent civil case, brought for damages against the Government of Catalonia as a result of the injuries suffered, was **dismissed** on the basis of the contents of a police report **signed by the same commanding officer**. This same officer is currently under investigation and awaiting charges in another case for causing injury and degrading treatment in relation to other events that occurred on the same day and in the same circumstances.

Another determining factor in the lack of independent internal police investigation are the **contradictions between police reports** delivered to the courts. This has a particular impact where there is no audiovisual material to verify the facts, with the only version available being that of the police.

A paradigmatic example of these contradictions comes from the **case of S.E.**, a photojournalist who, in October 2019, was struck by a foam projectile while covering protests in Barcelona. In an initial report signed by **the Intendant of the BRIMO** – that is, by the highest-ranking officer of the riot police unit under investigation – it was categorically stated that:

> "... the BRIMO officers who participated in this intervention **did NOT fire a single shot via launcher**, and the use of this device was strictly dissuasive." [sic.] Police report.

This report was key in the ruling to dismiss the case, issued by the Investigating Court No. 25 of Barcelona and subsequently upheld by the Provincial Court of Barcelona, despite the fact that, during judicial proceedings, a foam projectile collected at the scene was provided to the court, in addition to statements by the victim and an eyewitness. Irídia appealed the ruling before the Constitutional Court, which forced the investigation to be reopened. The ruling of the Constitutional Court explicitly points to the fact that the version of events contained in a single police report does not provide sufficient grounds to avoid conducting a more thorough investigation. Specifically, the Constitutional Court ruled:

> "What is certain is that the apodictic acceptance of the assertions contained therein, without practicing any additional investigation and without even hearing the intervening officers themselves, implies not only a tacit dejudicialisation of the criminal investigation but also an evident withdrawal from the plaintiff of the possibility of subjecting the conclusions reached therein to contradiction."

With the reopening of the case and the request for a new police report – on this occasion tasked to the Internal Affairs Division (DAI) – the manifest contradictions of the first police report were, years later, made plain, with acknowledgement that foam projectiles were used during the events under investigation.

> "... [a] situation that gave cause to the commanding officer of the unit, as provided for in the protocol, to **authorise the selective use of FOAM projectiles** to ensure the physical safety of the officers (...) Based on these concurrent circumstances, t**his less than lethal means was used** within the allocation available to the officers (...)". Police report.

A third indicator of the lack of independence of police investigations is that, when courts request that specific information about the events in question be provided, **the police ignore the request**, preventing access to said information. This hinders proper judicial procedure and favours impunity.

A clear example of this can be seen in the **case of A.C.**, who died after receiving six electric shocks by a Mossos d'Esquadra officer using a Conducted Energy Device (CED) known as a Taser. In this case, the investigating court twice called upon the Service Evaluation Division (DAS) of the Mossos d'Esquadra to **produce a complete audit report** on the use of the CED, as is required in such cases.[46] Despite this, **the DAS failed to comply with both the judicial request** and existing protocols, hindering the judicial investigation, which resulted in **the initial dismissal** of proceedings and a **delay of over a year** in reopening the case.

Beyond the DAS, another key actor in the investigation of possible unlawful acts by police officers are the internal affairs units, responsible for investigating ex officio or on the orders of a commanding officer any alleged civil and/or criminal offences committed by officers, in order to determine the possible responsibilities arising thereof.[47] In the case of the Mossos d'Esquadra, Decree 57/2023 concerning the restructuring of the General Directorate of Police raised the hierarchical rank of the then-Internal Affairs Division (DAI) to the **General Commissariat for Internal Investigation and Disciplinary Affairs**, reporting directly to the Director General.

This notwithstanding, where institutional violence is concerned, significant shortcomings have been detected in the investigations carried out by these units. A paradigmatic example is the case of I.R.,[48] the young man who, in December 2018, was struck by a foam projectile fired by an officer of the Mossos d'Esquadra during a rally against the celebration of the Council of Ministers of the Spanish Government in Barcelona, which eventually resulted in him losing a testicle.

Irídia lodged a third-party prosecution in the public interest, requesting that the DAI be instructed to prepare a report into the events and ensure internal investigations be carried out, including the identification of the officers involved in the operation, the firearms officer responsible and the commanding officer(s) responsible for giving the order to fire. It is important to note that this request was

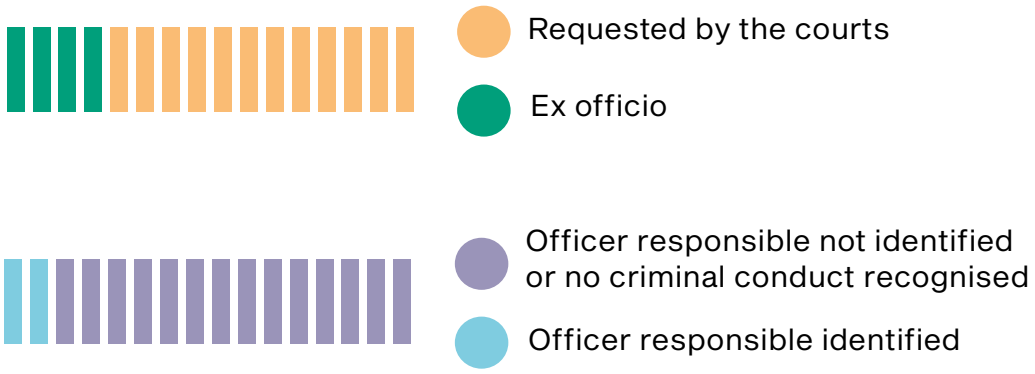
46 -Required by Ruling 4/2018 concerning the use of CEDs by members of the Mossos d'Esquadra.

47 -Decree 163/2000, of 2 May, governing the Strategic Planning and Internal Affairs Divisions of the Mossos d'Esquadra. https://portaljuridic.gencat.cat/ca/document-del-pjur/?documentId=218856

48 -Case highlighted in the 2023 Irídia Report on Institutional Violence, p. 30.

made by Irídia, and not ex officio by the courts. In response, the Mossos d'Esquadra provided footage recorded by the force at the time the injury occurred, as well as reports in which five firearms officers were identified. However, **in none of these was the identity of the officer responsible provided**. Nevertheless, thanks to the report of an independent expert body which analysed the images in question, Irídia **was able to identify the officer** responsible for the shot. This is yet another example, like the case of Roger Español in 2019, of civil society – with fewer material and human resources – taking on the responsibility and cost of an investigation to identify the perpetrators of serious human rights infringements.

Cases have also been recorded in which, in spite of being in the public interest, neither the **DAI nor the DAS have initiated ex officio investigations**. This can be seen, for example, in the **case of Olga**, who was struck on the head by foam projectile in October 2019 and, as a result, suffered severe head trauma, hearing loss and permanent epilepsy. The internal affairs units of the police forces rarely initiate ex officio investigations themselves and, in the majority of cases, only intervene when they are obliged to do so by the courts as part of criminal proceedings initiated following the lodging of a complaint by the victim.



Basis and outcome of internal investigations
Source: Authors' work, SAIDAVI data

Internal investigations of one kind or another have been carried out **in 16 of the 44 cases of litigation against police forces ongoing in 2024**. Of these, **only four were initiated ex officio**, while the rest were required by court order. **In 14 of the investigations, it was concluded that the perpetrator could not be identified or that there was no criminal conduct.** Only in two cases were the perpetrators identified and possible malpractice on the part of the officers considered.

Another cause for concern is that, **in 12 of the cases under investigation, the internal investigation focused more on the conduct of the complainant, making pejorative assessments of them, than on that of the officers involved.** In addition, **only in two cases were internal disciplinary or precautionary measures recorded as having been taken** while the investigation was being carried out.

It is worth considering the role of the commanding officers, who ought to play a key role in the detection and communication of any proscribed conduct within the force. However, **in none of the cases investigated was there any indication that commanding officers had reported the incident to internal affairs.** Once cases have been brought to justice, they have further failed to comply in identifying the officers responsible for alleged events.

Finally, shortcomings in police investigations are compounded by the **lack of training and knowledge within judicial bodies** on the functioning **of internal police investigation mechanisms and protocols governing the use of force.** This lack of knowledge has significant implications in how judicial proceedings are carried out. On the one hand, judicial bodies tend not to specify which police department should lead the investigations they request, leaving this decision to the police forces themselves. On the other, when the police provide information to the courts, the lack of specific training for judges on police operations, standards governing the use of force and regulations on the use of weapons means that police practice is not adequately held to account, and the role of the judiciary as an effective oversight mechanism is weakened.

Police deployment on Carrer Parlament - Víctor Serri

04

The regulation and availability of weapons and equipment for police use

In determining legal compliance in the use of weapons and equipment by police, analysis of whether or not the wider operation is carried out in line with protocols and internal regulations is crucial. In other words, there must be clarity in terms of the circumstances, conditions and procedures of use, the orders given by commanding officers and the accountability mechanisms governing the entire operation. This premise, however, is obstructed from the outset by the difficulties in gaining access to said protocols and internal regulations. As Irídia has repeatedly highlighted, there is a lack of transparency on the part of the police when it comes to making these documents publicly available and accessible, rendering it extremely difficult to determine whether operations are carried out in line with forces' own internal precepts. Under the auspices of security, **politicians and commanding officers restrict citizens' access to what are, in effect, public policies that affect their fundamental rights.**

In this regard, it is important to note that these internal regulations are often designed and approved by the police forces themselves, without being subject to independent review by external legal experts. As a result, there are protocols in place that breach international human rights standards and even the recommendations of weapons manufacturers. This is an especially serious situation insofar as it points to clear shortcomings in governance that put the public at risk and foster impunity in cases of institutional violence. The response of the judiciary, so far, has been clear: where no accountability mechanisms exist to evaluate **police self-regulation** – and to reform it, where it is in breach of the international standards and regulations to which Spain is a party – officers are to be considered exempt from any and all criminal liability.

Kinetic impact projectiles: foam

A paradigmatic example of the consequences of this lack of oversight is presented in **case C06**, in which a young woman lost her eye as a result of a foam projectile fired by an officer of the Mossos d'Esquadra in February 2021. One of the key elements of the case was the independent expert report prepared by the Omega Research Foundation, which analysed the protocol governing use of the SIR-X foam projectile by the Mossos d'Esquadra. The report concluded that the **protocol contradicted the recommendations of the SIR-X manufacturer,** as it provided for a lower minimum distance for safe use of 10 metres, despite warning by the manufacturer that use at distances of less than 30 metres could result in very serious injuries.[49]

Indeed, as noted in the C06 case summary, the foam projectile in question was fired at a distance of 22 metres, 8 metres less than the manufacturer's recommendation, although within the range established by the internal police protocol in force at the time of the events, which allowed for use from 20 metres distance or greater. This was acknowledged by the then-head of the BRIMO, Intendant Xavier Pastor, and by his second-in-command Miquel Hueso. In May 2024, **the investigating judge concluded** that the **actions of the officers were legal, given that they complied with the protocol in force at that time**, despite the fact that the shot was fired at the victim's head, in clear contravention of existing regulations.

49 -2023 Irídia Report on Institutional Violence, Section 4.2.

> "There is also no violation of the objective duty of care, since there is a specific protocol that governs the use of rubber bullets. The circumstances providing for this use occurred in the present case ..."
>
> **Case C06**
>
> **Provisional dismissal ruling, Investigating Court No. 1 of Barcelona, 8 May 2024**

This ruling was subsequently upheld by the Provincial Court of Barcelona, which in October agreed to the conclusive dismissal of the case, alleging – among other reasons – that the actions of the Mossos d'Esquadra complied with the protocol in force. This protocol, according to the court, is the regulatory framework which "officers must comply with in their professional duties".

> "Consideration cannot be given hereupon to the allegations made by Associació Irídia regarding the fact that the manufacturer's document – in English – includes a series of precautions which have not been included in the document which, in its translation into Catalan, constitutes the protocol, since it is this existing protocol which officers must heed in carrying out their professional duties (...) Regrettably, an unfortunate accident occurred, but the responsibility for its occurrence is in no way attributable to the police's actions."
>
> **Case C06**
>
> **Ruling 1806/24 of the 21st section of the Provincial Court of Barcelona, 3 October 2024**

In 2023, after a long fight for justice in case C06 and a joint advocacy campaign with Amnesty International focused on the breaches of international standards in the 40 mm launcher use protocol, the General Directorate of Police took steps to address this negligent practice and committed **to the withdrawal of the SIR-X projectile**. This decision was taken following that reached by the Parliament of Catalonia's Examining Committee on Policing in December 2022. It is nevertheless important to note that the SIR-X projectile continues to appear as a reglementary item in the protocol governing the use of 40 mm projectiles and launchers, implying that its suspension in practice depends entirely on the choice of Catalan Ministry of Home Affairs and Public Safety to do so.

In short, under the new protocol governing use of foam projectiles – in force since October 2023 – the actions of the officer who shot the young woman could not be considered as legal. This case clearly shows how **a lack of specialist independent supervision of police protocols** can lead to a regulatory framework that runs contrary to human rights and which, despite resulting in serious breaches, is endorsed as legal by the judiciary.

Conducted Energy Devices: Taser pistols

The above situation is especially serious where potentially lethal weapons, such as Conducted Energy Devices (CEDs) – widely known as Tasers – are concerned. Following their regulation for use by the General Directorate of Police in 2018, institutions such as the Catalan Ombudsman[50] and numerous human rights organisations have warned of non-compliance with international standards and urged that the protocol governing their use be modified. As it stands, this protocol allows for potentially lethal use. Despite warnings to this effect, the Mossos d'Esquadra

50 -Catalan Ombudsman's Report, 2021; https://www.sindic.cat/site/unitFiles/7559/Informe%20pistoles%20electriques_gener%202021_cat_ok.pdf

have not addressed any of the breaches included in the document, endorsed by the then-Chief Commissioner Ferran López Navarro.

Amongst these breaches[51] are the number of shocks and their use in the case of demonstrations and rallies, as well as on children under eighteen years of age and people with mental health problems. Any new protocol, in addition to limiting or prohibiting the above, must ensure that police operations are recorded in all cases, restricting the cases in which use can be made of these weapons and, in turn, avoiding the use of broad justifications such as "risk to public safety" or "officers' perception" for their use against particularly vulnerable members of the public.

It should be recalled that this type of weapon has already caused at least one death in Catalonia: the death **of B.C.**, which occurred in Badalona in November 2021.[52] This particular case, reported to SAIDAVI, was reopened in 2024. Beyond the abusive and disproportionate use of the weapon in question – which in itself can constitute a serious offence – the case has also highlighted the shortcomings of the protocol governing said use.

Ruling 4/2018, concerning the use of CEDs by members of the Mossos d'Esquadra, contains **provisions contrary to international and manufacturer recommendations.** This ruling fails to forbid officers from using this weapon on people who are in a state of agitation arising from mental health difficulties, consumption of psychoactive substances or other causes.

The current shortcomings in the regulation of use of this weapon by the Mossos d'Esquadra have also shaped the regulations that have been and continue to be made by **local police forces throughout Catalonia.** The guidelines set out by the Ministry of Home Affairs and the General Directorate of Police directly condition the protocols adopted by municipal councils. To date, this type of weapon is available for use by 78 of the local police forces in Catalonia.

Beyond their substandard regulation, growing demand from local police forces for the inclusion of CEDs in their armoury points again to **the discretion of the authorities** – in this case, municipal authorities – as the primary factor in the availability of weaponry, without any decision to the effect being subject to transparent and democratic oversight or informed and independent public debate over their suitability in terms of ensuring operational requirements do not override human rights standards.

As an example, **Barcelona City Council announced the purchase of 22 CEDs for its local police force in 2024, at the request of police union representatives and the force itself.** In a joint statement[53], 18 grassroots organisations decried that, although the municipal government opened a public consultation prior to the drawing up plans for the regulation of the use of CEDs, this was done without appropriate communication through official channels, and without making these plans available to organisations which specialise in the matter, **hindering a full and thorough participatory decision-making process**. Furthermore, engagement with grassroots organisations has excluded a number of key organisations which participated in parliamentary debate over the introduction of this weapon in Catalonia in 2016, highlighting the risks involved in its use.

It should be recalled that, as far back as 2009, the **CAT** urged the Spanish government to "**consider the possibility of abandoning the use of Taser electric weapons by local police**, since their effects on the physical and mental state of the people against whom they may be used could violate

51 -Mentioned in the 2023 Irídia Report on Institutional Violence

52 -Case highlighted in the 2023 Irídia Report on Institutional Violence, p. 23.

53 -Statement calling for the suspension of the purchase of Taser pistols by the municipal police force in Barcelona, 14 October 2024; https://iridia.cat/wp-content/uploads/2024/10/VF_2024_10_ComunicatTaser_BCN.pdf

Articles 2 and 16 of the Convention against Torture".[54] The CAT has also considered that these weapons should not be carried by security personnel in prisons and other centres in which detention takes place, including mental health facilities.[55]

Likewise, the United Nations Human Rights Committee[56] urges states to "ensure that **less-lethal weapons are subjected to strict independent testing** and evaluate and monitor the impact on the right to life of weapons such as electro-muscular disruption devices (Tasers)".

The little information that has emerged about the decision of the Barcelona City Council to purchase CEDs can be related to the desire to use new weapons, straddling the line between firearms and self-defence, to deal with episodes of disturbance, commotion and knife crime. Where the recommendations of the United Nations[57] and those of the manufacturer Axon[58] are concerned, use of Tasers in cases such these is expressly discouraged.

Catalan mental health organisations have repeatedly warned that the use of Taser pistols poses a markedly high risk for patients in psychiatric treatment, particularly given the prevalence among this group of pharmaceutical treatment, heart problems and behaviours which may be misinterpreted as threatening by officers without specific training. These organisations have highlighted how the use of Tasers stigmatises and breaches the human rights of those suffering from mental health issues, and they have insisted on alternatives that focus on supporting the person from a healthcare perspective that is more humane, preventive and flexible. By the same token, anti-racist organisations have sounded the alarm about potential use of such weapons on non-white and racialised people, with a range of different studies having found that, as a group, these people have a higher chance than the rest of the population of being stopped and searched by the police.

54 -Concluding observations of the Committee against Torture in its Consideration of reports submitted by States Parties under article 19 of the Convention; 9 December 2009; CAT/C/ESP/CO/5; https://digitallibrary.un.org/record/675453?ln=en

55 -Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland: the Committee against Torture; 7 June 2019; CAT/C/GBR/CO/6; https://docs.un.org/en/CAT/C/GBR/CO/6

56 -General Comment No. 36 on article 6: right to life of the United Nations Human Rights Committee, 3 September 2019; CCPR/C/GC/36; https://www.undocs.org/en/CCPR/C/GC/36

57 -United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement; 2020; https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/LLW_Guidance.pdf

58 -CEW TASER Weapon Guide: Warnings, Instructions, and Information for Law Enforcement, October 2018; Axon Enterprise, Inc.; https://axon.cdn.prismic.io/axon %2F3cd3d65a-7500-4667-a9a8-0549fc3226c7_law-enforcement-warnings%2B8-5x11.pdf

Taser pistol - Archive image, La Directa

05

Police brutality and the shrinking of civic space

There is clear evidence of increasing criminalisation of protest over recent years by both the police and the judicial system. 2024 saw a particularly **intensified crackdown** on the right to protest in a number of its expressions. This offensive has brought with it the application of methods that drastically restrict civil society's scope in exercising fundamental rights to assembly and demonstration, association, information and freedom of expression.

Over the course of the year, novel repressive strategies led to large-scale breaches of fundamental rights. These include state **spying operations** and deliberately obstructive investigations, the effects of which stretch beyond the collective and social sphere to directly affect people's lives, amplifying their impact.

A clear example of this is the proliferation **of cases of undercover National Police Corps officers infiltrating activist circles**.[59] At present, a total of nine National Police Corps officers have been found to have infiltrated groups in Barcelona, Valencia, Girona and Madrid. In the most recently uncovered case, this infiltration had lasted two decades. In addition, the mobile phones of 65 people[60] including lawyers, journalists, human rights defenders, activists and political representatives have been intercepted using Pegasus spyware.[61] Shortly after the news broke, the National Intelligence Centre (CNI) acknowledged that 18 people had been spied on with judicial authorisation from the Supreme Court. However, it remains unknown who ordered the surveillance of the remaining 47.

In the days following the revelation of the Pegasus scandal, the Government dismissed the head of the CNI, Paz Esteban. This notwithstanding, throughout 2024, grassroots organisations continued to call on Spain to meet its obligation to guarantee accountability, access to information and redress for those affected by these illegal and undemocratic practices.

59 -Defined by the current Minister of the Interior, Fernando Grande-Marlaska, as "intelligence agents" covered by Article 11 of the Security Forces Act (Act 2/86, of 13 March). This figure does not exist in law, nor has it been validated by any judicial decision or order. As such, it must be understood as existing outwith the law.

60 -CatalanGate: Extensive Mercenary Spyware Operation against Catalans Using Pegasus and Candiru, The Citizen Lab. 18 April 2022, available at: https://citizenlab.ca/2022/04/catalangate-extensive-mercenary-spyware-operation-against-catalans-using-pegasus-candiru/

61 -The latest report of the European Commission for Democracy through Law (Venice Commission), Report on a rule of law and human rights compliant regulation of spyware (6-7 December, 2024), defines spyware as a "surveillance weapon". In addition, it identifies Pegasus as one of the most intrusive spyware tools, if not the most intrusive. Available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)043-e

Tsunami Democràtic: the tip of the iceberg in the growing criminalisation of the right to protest

The Tsunami Democràtic case exemplifies the growing criminalisation of the right to protest in Spain. During 2024, draconian measures have been accentuated by the **instrumentalisation of terrorism and organised crime charges**, the most serious offences under criminal law. Accusing activists of engaging in terrorism or organised crime is the precursor to the construction of "the internal enemy", justifying repressive measures that impinge upon basic human rights.

A clear precedent for this came in the reform of the Criminal Code and the passing of the Citizens' Security Act[62] in 2015, which continues to have a notable negative impact on civil rights.[63] The unjustified accusation of engaging in terrorism or organised crime, where this concerns actions which are part of the legitimate exercise of the right to protest protected by both international and domestic law, paves the way for justifying the deployment and normalisation of measures as draconian as those already mentioned.

The most emblematic case in this regard is the Tsunami Democràtic case. The National High Court and the Supreme Court launched a terrorism investigation against 11 people, with the aim of linking them to the Tsunami Democràtic movement which, in 2019, mobilised large-scale demonstrations to demand that the Spanish government negotiate a series of demands, with the slogan "sit and talk". The criminal investigation forced five people into exile in Switzerland, under threat of arbitrary detention. Among those investigated were activists, human rights defenders, journalists and political representatives.

One of them was **Jesús Rodríguez, of the news outlet La Directa**, who, at the end of 2023, was forced to go into exile in Geneva[64] in order to safely continue his work as a journalist. Finally, following three years of judicial investigations, the case was dismissed in November 2024. This decision highlights the intention of the judiciary to influence the legislature, at a time when the scope of the **Amnesty Act** was still being debated.[65]

Far from being an isolated case, the Tsunami Democràtic case is just the **tip of the iceberg of a deeper drive towards the criminalisation** of a large number of activists and social movements. It is also another example of the extensive and disproportionate application of the Criminal Code. The broad and vague definition of some of its articles allows for abusive application, as is also the case when offences are instrumentalised to crack down on freedom of expression.[66]

It is important to note that, despite the range of draconian methods involved – and their adaptation and differing forms, according to the circumstances – they share a common aim in the cases seen in Irídia's work defending civil liberties. The ultimate goal is to **break apart a shared social fabric, to individualise** and – at the same time – to stir up fear and a **climate of self-censorship and demobilisation,** including through the creation of pretexts and discourse that serve to justify and normalise repression. This crackdown by the authorities is justified internally as well as externally, on the false promise of ensuring "National Security", the exclusive competence of the Member States of the European Union.

62 -Citzens' Security Act (Act 4/2015, of 30 March), popularly known as the gag law.

63 -On 3 October 2024, an agreement was announced between the parties which make up the Spanish coalition government (PSOE and Sumar) and Bildu to reform the Citizens' Security Act, nine years after its entry into force. At the time of writing, the reform bill remains subject to parliamentary amendments. More information in Spanish at: https://www.eldiario.es/politica/congreso-inicia-hoy-reforma-ley-mordaza-tramitarla-urgencia-aprobarla-ano_1_11772448.html

64 -This came to light in April 2024, when Judge Manuel García-Castellón issued a ruling requesting the location of the individuals under investigation.

65 -Ley Orgánica 1/2024, de 10 de junio, de amnistía para la normalización institucional, política y social en Cataluña.

66 -In particular, Articles 525 and 578 of the Criminal Code, concerning causing offence on religious grounds and the glorification of terrorism and insult to the Crown (Ley Orgánica 10/1995, de 23 de noviembre).

In each and every one of these cases, **the principal mechanism available to civil society to defend rights and freedoms – political participation, association and protest** – has been targeted in a way which calls into question and weakens **democratic principles and the rule of law.**

Impunity and lack of transparency on top of lack of regulation

The growing trend towards repression documented in 2024 has been accompanied by an increasing lack of transparency on the part of public institutions. **On numerous occasions, Spain has refused to investigate or declassify key information, hiding behind the Official Secrets Act passed under the Franco dictatorship**.[67] This lack of transparency not only limits the public's right to information, but also makes it difficult to ensure accountability in cases which have had a devastating impact on the people affected and on their wider communities.

Furthermore, the use of technology, both existing and new, for draconian purposes continued unabated in 2024, with the use **of cyber-surveillance tools** increasingly present in public spaces despite a lack of information about their scope and impact. A growing security technology sector drives a commercial, profit-driven relationship between the state and the private companies engaged in development. At the European level, there has been debate on the need for oversight and checks and balances on the use of invasive technological tools, including spyware, the use of which is currently **unregulated.**

In December 2024, the Venice Commission published a report outlining minimum safeguards for the use of spyware, pointing to the danger of this tool as **a potential weapon for permanent espionage.**[68] It is important to reiterate that the new digital era should not, under any circumstances, entail the rollback of rights and freedoms. By contrast, the exercise of fundamental rights must always prevail and be guaranteed above all else.

Image from the Irídia vs Pegasus campaign - Archive image, Irídia

67 -Ley 9/1968, de 5 de abril, sobre secretos oficiales.

68 -Report on a rule of law and human rights compliant regulation of spyware, Venice Commission (6-7 December 2024), p. 48-49.

Mechanisms for collective responses to police actions

The activation of these repressive instruments gives rise to a climate of self-censorship, driven by fear and directed against the population as a whole, in order to dissuade us from exercising our rights and freedoms. Civil society is rendered **defenceless** and devoid of the required mechanisms to push back.

One of the strategies reinforced in 2024 to address this was the **observation and systematic recording of human rights infringements during protests and demonstrations.** In the Metropolitan Area of Barcelona, this work has been carried out for years by the **Som Defensores network of observers.**[69] This network is a key resource for recording and documenting the use of force, essential for identifying the conduct of officers responsible for non-protocolary or criminal conduct and for ensuring that this is brought to the attention of authorities and the public as a means of building accountability.

Over the course of 2024, SAIDAVI handled a total of seven cases that occurred during protests and demonstrations. These cases occurred on four different occasions, during two of which a Som Defensores observation team was present. In addition to ensuring the obtention of images to back up reporting, their presence made it possible to document, in a number of cases, the **disproportionate and unnecessary action** of officers of the Mossos d'Esquadra in their duties to uphold the law and public safety, in contravention of the principles governing the use of force.[70] One of the examples recorded was the improper use of police batons, with **blows delivered in a downward vertical trajectory**, striking **vital areas of the body above the waist** and, in some cases, **the heads** of protesters. The detention, **kettling** and **arbitrary identification** of protesters was also recorded on numerous occasions.

In addition, and again as a result of the observation work carried out, evidence for complaint was gathered on at least eight occasions during the course of protests and demonstrations that a significant proportion of the Mossos d'Esquadra officers deployed on the streets **could not be correctly identified** by way of a Police Operational Number (NOP, in Catalan) on the back of their protective vests. As a consequence, in January 2024, a complaint was lodged with the Directorate General of the Police and the Chief Commissioner of the Mossos d'Esquadra to point out **this non-compliance with existing internal police regulations.** This complaint was filed jointly by the Som Defensores network and Amnesty International Catalonia.

In addition, in the photographs obtained, it can be seen that the vests worn by the officers were not part of the protective equipment for use in the fulfilment of their duties, but rather citizen security vests, obscuring the visibility of their NOP and making it impossible to identify them using this number. This issue represents a setback to the extent that, since 2013, the Mossos d'Esquadra force has implemented improvements in the proper identification of police officers. In 2020, **360° identification** was introduced on the front, back and helmet of BRIMO officers[71], with this being extended in 2022 to officers belonging to the Regional Operational Resources Area (ARRO).[72] This notwithstanding, the requirement for a visible NOP on the back of officers' vests has been in force since 2014.[73]

In 2024, the lack of a visible NOP for the identification of National Police Corps officers deployed at protests was again documented and reported. According to existing regulations, dating from 2014, this identifier should be visible on the back

69 -The Som Defensores network of observers was created prior to the Catalan independence referendum in 2017. It is currently coordinated by Novact and Irídia. More information available in Catalan at: https://somdefensores.cat/

70 -Principles of consistency, appropriateness and proportionality, as included in Article 11 of Llei 10/1994, de la Policia de la Generalitat de Catalunya – Mossos d'Esquadra

71 -Instrucció 8/2020, de 16 d'octubre

72 -Instrucció 3/2022, de 28 d'abril.

73 -Instrucció 16/2014, de 4 de setembre, in which the specifications of the NOP worn by BRIMO and ARRO officers are stipulated

of officers' uniforms. However, in the last nine years, no disciplinary proceedings have been brought for non-compliance, consolidating impunity for police conduct during protests and demonstrations.

In addition to requiring compliance with current regulations on police identification, an update of the regulatory framework is also needed to ensure that the **National Police Corps** adopts 360° identification of its officers, so that their identification number is visible both on the front and back of their uniform and helmets, ensuring that identification is possible from any angle.

Protest by Palestinian solidarity activists against the drone fair "Unvex", Barcelona (june 2024) - Archive image

06

Isolation and solitary confinement

Article 25.2 of the Spanish Constitution establishes that persons serving a prison sentence maintain all of the fundamental rights recognised therein, except those that are expressly limited by the nature of their conviction, sentence and according to penitentiary law. **While certain rights may be restricted** or limited, **under no circumstances is the right to dignity** among these.[74] This fundamental right is an unavoidable mandate as regards the conditions of their imprisonment, which must allow for the full expression of the individual identity of those deprived of liberty. Despite this, evidence of the devastating effects of isolation within prisons on the physical and mental health of those subjected to it is widely recognised by organisations working to ensure the defence of human rights in the prison system.

Solitary confinement is defined as any situation in which an inmate is isolated for a minimum of 22 hours a day without significant human contact. When this is prolonged for more than 15 days, it is considered prolonged isolation. Under the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the **Mandela Rules, solitary confinement may only be applied in exceptional cases, as a last resort, for the shortest possible time and subject to independent review, and only then with the assent of the competent authority.**[75] In addition, these rules explicitly prohibit isolation when the detainee has a physical or mental disability that may be compounded by isolation.

Although the number of people held in isolation has decreased over the last ten years, it is currently estimated that about 600 people remain in such conditions, including those both in longstanding and temporary solitary confinement.

The **serious and multiple effects on the physical and mental health** of those subjected to isolation have led to many calls over the years for **the immediate dismantling of this system**. Solitary confinement, insofar as it involves inhuman and degrading treatment, violates international human rights standards, as is recognised in the jurisprudence of the ECtHR, as well as the resolutions and recommendations of a range of national, European and international mechanisms for the prevention of torture.

Last year, 11 people died in Catalan prisons. One of the most striking conclusions of the report by the Centre for Legal Studies and Specialised Training of the Ministry of Justice and Democratic Quality is the link between isolation and the risk of suicide. The report indicates that 80% of those who committed suicide between 2018 and June 2023 were held in isolation at some point in the six months prior to their deaths.

> "The DERT is a factory for mental illness." C.C., mother of an inmate who died in custody in the Brians II prison.

The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment warned in 2008 that between one third and 90% of those held in solitary confinement develop concerning symptoms. These include insomnia, confusion, hallucinations and psychosis, and can manifest in a matter of days. In addition, **risks to their health increase** in tandem with the **duration of isolation.**[76]

74 -Article 10 of the Spanish Constitution, under Title I on fundamental rights and duties (English translation)

75 -United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), General Assembly, Resolution 70/175, Annex, 17 December 2015; https://docs.un.org/en/A/RES/70/175

76 -Ibid.

According to the World Health Organisation (WHO), one of the factors that increase the risk of suicide is social and physical isolation, and most suicides in prisons take place when prisoners are held in isolation. Specialist studies have shown that self-harming is much more common in isolation units than among the rest of the prison population.

> "It's very hard, very hard. You're in a hole. You start to go crazy. You lose the will to live. Inside, I started cutting my arms and chest [...] You've been in there so long you're scared of people when you get out. I couldn't bear to have anyone behind me. I didn't want to talk to anyone. I was annoyed by people [...] Inside, you know you're alone. No one knows how the guards treat you. I felt like I was being treated worse than an animal. I felt like I stopped being a person." C.B., inmate in 2018 in the Brians II prison, spent fifteen days in isolation.

The existence of suicide prevention protocols is useless if those in charge of applying them decline to follow their recommendations. Irídia has detected cases in which relevant personality traits have not been taken into account when assessing the real risk of suicidal behaviour, including impulsiveness, the inability to foresee the consequences of one's own actions, intellectual quotient, and the ability or otherwise to control one's own emotions.

Often, professional reports state that verbalisation of the desire to die or self-harm can be understood as attention-seeking or manipulative behaviour without genuine risk. However, existing suicide prevention protocols stress that these behaviours should not be underestimated, both given that they are motivated by intense emotional distress and, moreover, because suicide attempts can end in death. In social terms, it must be understood that many people who commit suicide do not want to die, but rather what they deeply desire is an end to their suffering, and death presents itself as the only possible means of leaving this suffering behind.

In addition, it should be noted that **the families are also victims of the degrading treatment** present in the prison system. In many cases, the relatives of those who have died in custody have met with prison officials and directors to try to get answers, yet the treatment they have received at such a painful and delicate time has been arrogant and dismissive of their needs.

As a rule, **communication** of **deaths in custody** to family members is cold, **impersonal and utterly inadequate.** In the face of a sudden death, family members need answers to the avalanche of questions that arise from their loss, in order to begin their grieving process. Often, in cases of deaths in prison, those who ought to provide information fail to do so. This is a nightmare scenario for family members, who are forced into judicial proceedings in order to obtain clear information from the prison about how the death of their loved ones have occurred, the events leading up to this, and the arrangements for the autopsy, the wake and the funeral.

The psychosocial impact of the loss of a family member is compounded by **uncertainty and mistrust** stemming from the lack of information and transparency of the prison system.

C11

Title: **Death in custody during isolation**

Location: **Brians 1 Prison**

Case summary:

On the afternoon of 27 October 2023, M.M. was found dead in a cell in the Brians 1 prison, where she was being held in solitary confinement. The family, made aware of the incident following a call from a fellow inmate, immediately made their way to the prison. At first, officials denied that M.M. had died, then rectified and informed them that she had been found hanging and that the cause of death had been suicide.

Throughout 2024, the family received support and advice from SAIDAVI.

Details for consideration:

- M.M. was not placed under any suicide prevention protocol despite having several mental health diagnoses that made her especially vulnerable to the damaging effects of isolation. M.M. presented with a mild intellectual disability, as well as impulsive traits, substance abuse and self-harming behaviours that had required medical attention in the days before her death. She had also attempted suicide in the past. Despite the above, officials indicated that she was not a suicide risk.
- The lawyer appointed by the court to represent the family lacked the necessary technical knowledge to request urgent and essential proceedings from the outset for the case to be investigated as a death in the custody of the state.
- The lack of a publicly available service that centralises and provides information to the families of those who die in custody causes serious difficulties in identifying where the body is held, what steps must be taken in relation to the autopsy and burial, and how to obtain medical reports. This exacerbates the pain of their bereavement.

07

Good practice

Creation of a special Public Prosecutor's Office for Human Rights and Democratic Memory

The creation of the Public Prosecutor's Office for Human Rights and Democratic Memory, in accordance with Article 28 and the first of the final provisions of the Democratic Memory Act, materialised in the figure of the Prosecutor of the Coordinating Chamber for Human Rights and Democratic Memory, as per Article 20.2 ter EOMF, is an example of good practice in strengthening the rule of law and guaranteeing fundamental rights. This figure is essential for ensuring the right to justice and redress for victims of human rights infringements, as well as to preserve the democratic memory of the events that occurred during the war, the Franco dictatorship and the initial years of Spain's transition to democracy.

In 2024, the regional deployment of this specialised Prosecutor's Office began with the appointment of Sara Gómez Expósito to the post of Deputy Prosecutor for Human Rights and Democratic Memory within the Barcelona Provincial Prosecutor's Office on 10 June 2024.

Nevertheless, as of the closing date of this report, these Prosecutors' Offices continue to have few tools and resources at their disposal to promptly and effectively initiate criminal investigations in accordance with their mandate to investigate infringements of fundamental rights and international humanitarian law.

Despite these shortcomings, both the position and the work carried out by the Prosecutor's Office for Human Rights and Democratic Memory should be considered in a positive light, particularly given their efforts to ensure the admission of complaints for crimes against humanity for the torture suffered by **Carles Vallejo** and **Maribel and Pepus Ferrándiz**, as well as for the appeals filed against the decisions by the courts to dismiss these. For the first time in Spanish history, the Public Prosecutor's Office has agreed to investigate the crimes of the Franco regime, filing an appeal before the Constitutional Court.

Decision by the courts overseeing the CIE

In December 2024, following a request by Irídia and Migra Studium, Judges Zita Hernández Larrañaga and Alejandra Gil Llima, of the Investigating Courts 1 and 30 of Barcelona respectively, acting in the oversight of the Immigrant Detention Centre (CIE), issued a ruling calling for improvements in the conditions of those held in the CIE in Barcelona, including:

- Removal of the requirement of prior appointment for visits by family and friends, as well as extension of hours and days of visitation.
- A guaranteed interpretation service for detainees in all necessary situations, especially in care provided by the centre's medical services, to ensure that they receive appropriate treatment.
- Improvement in visitation booths, to guarantee the privacy of communications.
- Possibility for detainees to access not only a lawyer but also a psychologist and a trusted interpreter.

- Increased focus on mental health by way of psychological counselling service that complements medical care.
- Elaboration of a protocol by the director of the CIE to clarify how detainees' access to the internet can be ensured in compliance with Article 16 of Royal Decree 162/2014, of 14 March.

Ruling by Section 6 of the Provincial Court of Barcelona overruling the acquittal of a Barcelona metro security guard

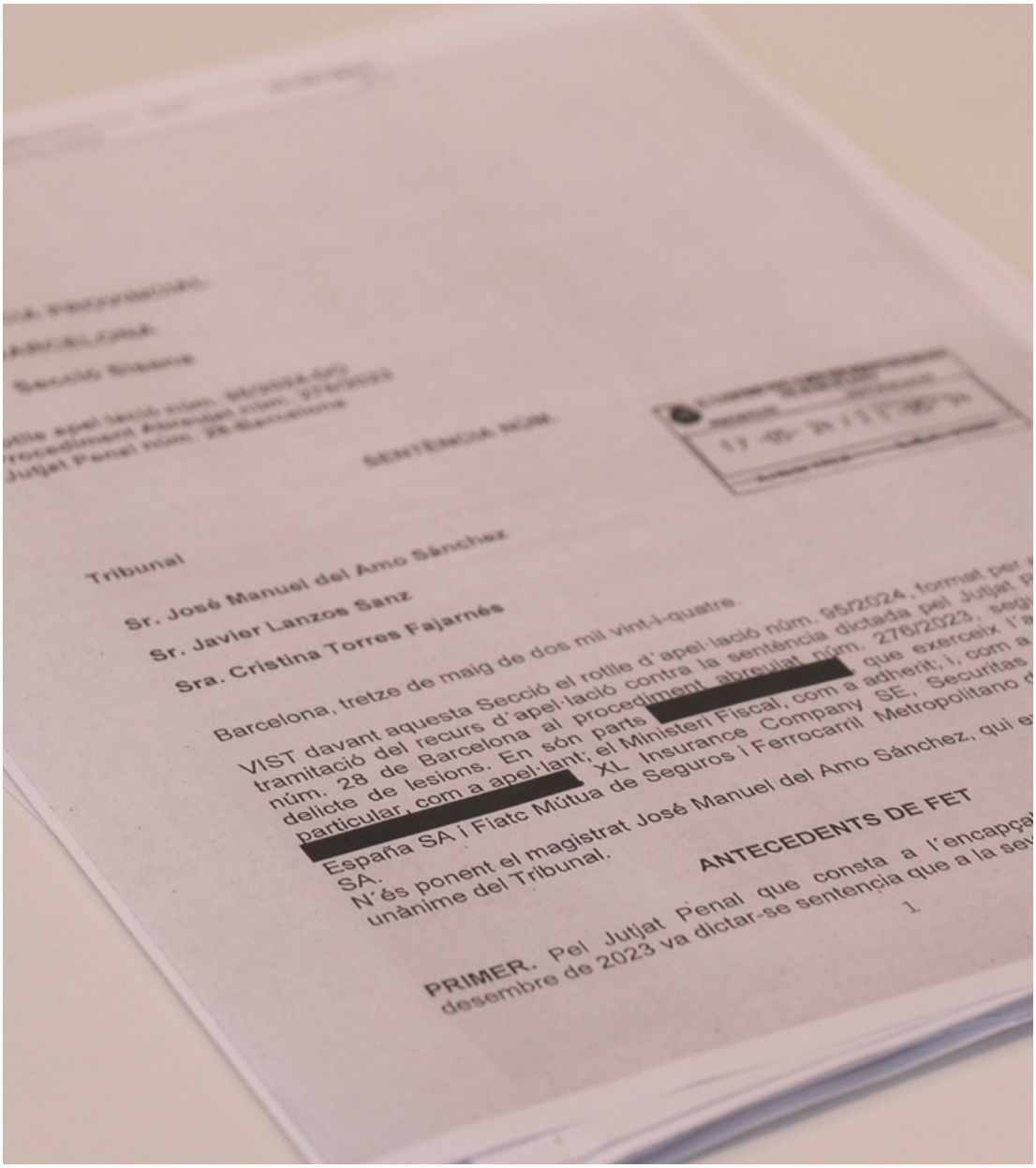
Magistrates José Manuel del Amo Sánchez, Javier Lanzos Sanz and Cristina Torres Fajarnés, of Section 6 of the Provincial Court of Barcelona, moved to declare a mistrial and overrule the acquittal of a private security guard accused of assaulting **Kim** at the Joanic metro station in Barcelona.

The Provincial Court upheld the appeal filed by Irídia, on behalf of the private prosecution, and ruled that the assessment of the evidence made by the Criminal Court No. 28 was manifestly erroneous. This ruling focused on the interpretation of video footage of the events by the lower court as not being constitutive of evidence of assault, with the higher court reaching the opposite conclusion.

In accordance with this ruling, the Provincial Court called for a retrial before a different judge. This decision is particularly noteworthy given that it sets a **precedent for the review of erroneous judicial decisions**, ensuring that impunity does not become the norm in cases of violence by private security personnel carrying out public safety duties.

This second trial was held in November 2024 before Criminal Court No. 29 of Barcelona and a new magistrate, ensuring full procedural safeguards for the victim.

Ruling by Section 6 of the Provincial Court of Barcelona ordering the retrial of a previously closed case - Borja Lozano



08

Recommendations

ENDING IMPUNITY FOR INSTITUTIONAL VIOLENCE WITHIN THE JUSTICE SYSTEM

1	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. Likewise, Article 174.1 of the Criminal Code should be amended to include **intimidation or coercion as one of the purposes of the crime of torture,** in addition to the **criminal responsibility** of "any other person in the exercise of their public functions, at their instigation, or with their consent or acquiescence", bringing legislation into line with the United Nations Convention against Torture.
2	Inclusion **must be made in both the introductory and the ongoing training plans for judges** of assessment of evidence, the importance of the "Manual for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (July 2022 review) and **jurisprudential impartiality and standards** as established by both the Constitutional Court and the ECtHR, in addition to other international bodies, insofar as these concern the investigation and prosecution of alleged offences resulting in death, injury, torture, harm to physical and moral integrity, sexual violence or coercion, illegal detention, discrimination and/or excessive use of force committed by officers of the law, at their instigation, or with their consent or acquiescence.
3	A **research office must be set up within the General Council of the Judiciary** to develop a **Good Practice Guide** for the handling of alleged offences resulting in death, injury, torture, harm to physical and moral integrity, sexual violence or coercion, illegal detention, discrimination and/or excessive use of force committed by officers of the law. This Guide should be based on the jurisprudence of the Constitutional Court for the effective investigation of these allegations, essential investigatory procedures and assessment of available evidence, and should include recommendations regarding the role of the judicial police attached to internal affairs units in the investigations of the aforementioned offences where these may have been committed by officers of the law.
4	Action must be taken with the utmost haste in **judicial proceedings initiated in response to allegations of mistreatment at the CIE**, with the competent court ensuring that the appropriate steps are taken for any and all evidence to be quickly gathered, given the high likelihood that victims or witnesses in these cases will be deported, hindering or rendering impossible the continuation of judicial proceedings. In particular, it is essential that the deportation of witnesses and victims be avoided and that they be encouraged to provide statements as pre-trial evidence, in addition to forensic medical assessment of any physical and/or psychological injuries and the requisition of the centre's video surveillance camera footage.
5	A **Special Prosecutor's Office for Institutional Violence** must be created, under the umbrella of the Public Prosecutor's Office, with the aim of overseeing the conduct of and investigating any abuses committed by public officials or private security guards responsible for public safety duties. These include, among others offences, those resulting in death, torture, injury, harm to inviolable dignity, sexual violence or coercion, illegal detention, discrimination and/or excessive use of force, with oversight over judicial proceedings and an active defence of the rights of victims. In addition, this Office should work together with human rights organisations

	and civil associations to prevent institutional violence, ensure accountability and gather clear data on crimes committed by public officials, as well as ensuring that the necessary resources for the classification and quantification of complaints and procedures related to the aforementioned offences are available within the information systems of the courts and Prosecutors' Offices across the country, with disaggregated data including aggravating circumstances on the grounds of discrimination.
6	The **Attorney General's Office must draw up guidelines addressed to prosecutors with clear instructions** to act diligently in protecting victims who report cases of ill-treatment and torture and for specific steps to be taken by the Prosecutors' Offices to encourage effective investigation from the outset, as provided for in the Constitution, from the bringing of charges against those responsible to the provision of due redress in accordance with ECtHR jurisprudence.
7	The **Annual Report of the Attorney General**, within the chapter on "Issues of particular interest", must include information on: – The procedures followed in relation to torture and other cruel, inhuman or degrading treatment, and the publication of detailed comparative data between the number of complaints brought by victims of crimes involving torture and/or ill-treatment and the number of investigations and/or prosecutions brought by the Public Prosecutor's Office concerning these offences. – Disaggregated data on requests for the consideration of aggravating circumstance on the grounds of discrimination in relation to the aforementioned offences.
8	Provision must be made of **a specific court-appointed legal aid service for the handling of cases concerning institutional violence,** where these result in death, torture, harm to physical and moral integrity, injury, sexual violence or coercion, illegal detention, discrimination and/or excessive use of force committed by officers of the law, at their instigation, or with their consent or acquiescence. This service must be staffed by professionals with the specific legal knowledge and psychosocial training required to provide full support to those affected.
9	**The Legal Aid and Assistance Service available to those deprived of their liberty in centres such as prisons** must be strengthened to address all aspects related to the personal and legal situation and the rights of prisoners. A legal representative must be assigned to ensure the fundamental rights of those deprived of their liberty, especially where release on licence is revoked or prisoners are placed in solitary confinement.
10	**The Medicoforensic Action Protocol for dealing with alleged torture or ill-treatment,** ratified in April 2016 by the Board of Directors of the Institute of Legal Medicine and Forensic Sciences of Catalonia, must be reviewed to ensure compliance with the standards of the 2022 United Nations Manual for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
11	In cases of deaths in custody (in prisons, during detention or in police facilities), an autopsy must be carried out in accordance with the provisions of the Minnesota Protocol (2016) on the investigation of potentially unlawful deaths.

POLICE FORCES

Accountability

12 **An external and independent mechanism for the oversight of the police must be established** in accordance with national and regional jurisdiction. This body, accountable to the respective legislative chambers (the Spanish Congress and the Parliament of Catalonia), must be afforded the sufficient capacity, budget, independence and scope to investigate ex officio any conduct or practice by officers of the law or private security personnel responsible for public safety duties which results or is suspected to have resulted in death, injury, torture, harm to physical and moral integrity, sexual assault, discrimination, excessive use of force or any other circumstance that the same mechanism considers of interest. It must also be able to access all the information required to ensure its work is both independent and effective. This body must have the necessary jurisdiction to assess the need and suitability of weapons and equipment for police use, as well as a supervisory role in the preparation of internal protocols and regulations. Likewise, as an independent body, it should have the capacity to issue specialist expert reports in the cases specified above, at the request of the parties to any judicial proceedings or at the behest of the investigating courts carrying out judicial investigations.

13 **The mechanisms and operations of the internal affairs units of the various police forces must be revised**. It is essential that these units be made up of personnel and officers appropriately trained in human rights and provided with a greater degree of autonomy and higher rank within the force, with the aim of ensuring they carry out their work independently and diligently.

14 **Protocols for the use of force** by all police forces must be made public to the extent required for citizens to understand and monitor their use. Disaggregated data must also be published covering any judicial or internal proceedings initiated against police officers for the alleged commission of offences in contravention of the inviolable right to dignity or of torture and/or involving sexual violence or coercion, causing injury and/or illegal detention, as well as the number of complaints, convictions, punishments and types of punishment.

15 **360º identification must be present on the uniform of all riot police officers** belonging to national, regional and municipal forces, with an identification number that can be easily recalled visible on the front and back of their uniform and on the sides of their helmet.

16 **The Status of Victims of Crime Act (Act 4/2015, 27 April) must be reformed** to specifically include redress for victims of offences resulting in death, contravention of the inviolable right to dignity, torture, sexual violence or coercion, injury, excessive use of force, discrimination and/or illegal detention by officers of the law, and to establish the obligation to initiate legal proceedings ex officio in such cases.

Weapons for police use

17 **The use of rubber bullets and all types of foam projectiles by police must be prohibited**, with an assessment of their impact on the public and activation of the appropriate remedial measures for those affected. In the case of the Mossos d'Esquadra, for as long as the use of foam projectiles is not totally prohibited, the Protocol for the use of 40 mm projectiles and launchers must be modified to remove the SIR-X projectile from the reglementary armoury.

18 **Ruling 4/2018 of the Mossos d'Esquadra concerning the use of Conducted Energy Devices (CEDs) such as Tasers must be modified** in order to comply with the responsibility to uphold human rights established in international regulations, as well as the recommendations made by the Committee of the Parliament of Catalonia and the Ombudsman, with a view to limiting both their overall use and the

maximum number of discharges permitted, given their potential to cause serious injuries, and preventing their use on minors. In addition, a mechanism for recording the use of CEDs must be introduced, installed on the weapon itself and of mandatory use at all times, regardless of the decision of the officer in question.

19 **Existing internal protocols of the various local police forces operative in Catalonia** in relation to the use of force and police tools and weapons **must be reviewed** and standardised to ensure that they comply with international human rights standards and the indications of manufacturers.

Police racism

20 **During the arrest, identification or searching of members of the public by police officers, systematised forms must be made available and used** to clearly report the reason for the action taken, the result thereof, and the ethno-racial profile of the individual as identified by the officer and as self-identified by the individual concerned, in accordance with the principles of informed consent and confidentiality. It is essential that a copy of the form be provided to the individual concerned and another submitted to the registry of the police force itself. These forms must be designed in collaboration with civil society organisations and with the involvement of racialised persons.

21 **An external audit must be carried out by experts, with the participation of human rights and anti-racist organisations**, in order to analyse the hiring practices of, and any ethno-racial discrimination which may exist, within each police force. This audit must allow for the preparation of a publicly accessible annual report, the full results of which should be divided by region, and which should serve as the basis for any action required where results show discriminatory bias in hiring.

Private security

22 **Investigation should be encouraged into companies** or individuals engaged, by way of threats or coercion, in the extrajudicial eviction of those resident in properties without legal title. Additionally, **an audit should be carried out of the compliance plans** in place within both the private security companies operating in Catalonia and the public services that have outsourced their security services to private companies, such as Transports Metropolitans de Barcelona (TMB). This audit must cover the internal investigation provisions of the Directorate-General of Security for the handling of complaints of malpractice and/or possible criminal conduct, as well as the total number of the disciplinary proceedings opened which have resulted in disciplinary action being taken (and the type of action taken).

DEFENCE OF CIVIL RIGHTS

23 **The Official Secrets Act (Act 9/1968, 5 April), the Intelligence Act (Act 11/2002, 6 May) and Act 2/2002, 6 May, regulating prior judicial control of the National Intelligence Centre (CNI)** must be amended to ensure inclusion of a legal framework for intelligence operations that respect the principles of legality, legitimate purpose, necessity, proportionality, competent authority, effective judicial protection, notification of the user, transparency, public oversight, security and certification and technical suitability. These amendments must ensure that invasive spying methods and/or techniques based on the use of spyware such as Pegasus, Candiru or similar products are outlawed, in accordance with the minimum safeguards stipulated by the Venice Commission in its report dated 13 December 2024 on the regulation of spyware in accordance with the rule of law and human rights.

24 **A moratorium on the purchase and use of the aforementioned espionage systems must be put in place until the necessary safeguards to protect human rights are implemented**, immediately ceasing any operations of a similar nature, and assurances must be made that these events will not be repeated. By the same token, the purchase, development or use of technologies with a disproportionately detrimental impact on basic rights, such as Pegasus, Candiru or equivalent software, must be ceased.

25 **Information in relation to the use of Pegasus and undercover police infiltration must be declassified** so that all cases of espionage and police spying in Spain can be independently, effectively and exhaustively investigated, in order to understand their full scope.

26 **The Organic Law 2/1986 on the Security Forces and Corps, as well as other laws regulating regional police forces, must be amended to explicitly prohibit the use of "intelligence agents" operating under false identities in** the prevention of criminal acts that do not fall within the scope of organised crime or anti-terrorism efforts, as defined in Article 282 bis of the Criminal Procedure Act (LECrim). Currently, these agents operate without a legal framework, which is why it is necessary to ban any arbitrary or abusive police infiltration that unjustifiably infringes upon citizens' fundamental rights and has serious consequences for civil society organisations and community groups.

27 **The provisions of the Citizens' Security Act (Act 4/2015, 30 March) which infringe the rights to freedom of expression and assembly must be repealed.** Given that a parliamentary process is currently underway to reform this legislation, it is essential that the parties with parliamentary representation commit to a joint text that reflects the key demands of grassroots organisations:

- Elimination of the minor offence of "disrespect" towards officers (Article 37.4) and limitation of the offence of disobedience and resistance (Article 36.6) to a minor offence based on "objective" criteria. The offence of publishing images of police officers must be repealed (Article 36.23).
- In addition, the right to spontaneous demonstration without prior communication must be granted, eliminating the penalisation of organisers for public order offences.
- The presumption of veracity given to statements provided by officers of the law (Article 52) must be eliminated where the law concerns basic rights.
- Clear and detailed criteria must be established for searches on individuals in public spaces (Article 20), with a specific protocol for searches carried out on transgender and other gender non-conforming persons.

28 **The Criminal Code (Act 10/1995, 23 November) must be amended to address issues that limit freedom of expression and the right of assembly**, in particular:

- Articles 490 and 491 of the Criminal Code concerning the causing of offence and insult to the Crown, Article 525 concerning offences against religious sentiment and Article 578 concerning glorification of terrorism must be repealed in order to ensure the non-criminalisation of expressions which do not constitute hatred, discrimination or violence.
- Articles 570 and 573 of the Criminal Code must be amended to ensure that assembly, civil disobedience and non-violent struggle cannot be treated as matters relating to terrorism or organised crime offences. The definition of these offences must be adjusted to international standards as established by Directive 2017/541 of the European Union.

MIGRATION POLICY

29 **Rules governing repatriations and transfers of detainees by air or sea** which allow for both forced sedation and the use of straps and straitjackets during deportations **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.

30 The additional provision of the Citizens' Security Act (Act 4/2015, 30 March) permitting summary and collective expulsions, known as "express deportations" and contrary to international law, must also be repealed.

31 The Immigration Act must be amended **to abolish the existence of Immigration Detention Centres** (CIEs) and end medium-term detention pending trial or deportation. 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.

- For as long as they remain in existence, a law for the judicial oversight of the CIEs must be passed, making clear the proceedings, timeframes and means of appeal available in any judicial action, in order to ensure the effective judicial protection of those detained there.
- The serious shortcomings in health care for detainees held in the CIE in Barcelona, such as the lack of a round-the-clock medical service and the lack of digital medical records, must be fully addressed. The centre's health service, currently outsourced by the Ministry of the Interior to a private company, must be brought under public control and, consequently, transferred from the Barcelona CIE to the Government of Catalonia, with the Catalan Health Service taking charge of its management, in order to ensure that detainees' right to health is upheld on equal terms with the rest of the population.

DETENTION AND IMPRISONMENT

32 **A specific body must be set up for the reporting of allegations of torture,** degrading treatment, sexual violence or coercion sexual freedom or causing of injury committed by prison officers or any other person working within the prison system, at their instigation, or with their consent or acquiescence, available to prisoners, their families and human rights organisations, building upon the safeguards in place for the due and prompt gathering of evidence.

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

34 Memorandum Circular 1/2022, concerning the Protocol for **the use of restraints in prisons in Catalonia,** must be repealed, given the impact of restraint on the rights of prisoners. The objective of any public policy on the immobilisation of those in detention should be based on a zero-restraints model. The authorities should implement the necessary measures to avoid the need for immobilisation and mechanical restraint of those in detention, with a preference for less harmful means and de-escalation measures not included in the Memorandum.

DEMOCRATIC MEMORY

35 The **Catalan Democratic Memory Act** must be brought into force as quickly as possible, with the following measures included:

- **A Committee of Experts** – institutional, independent, extrajudicial and temporary in its nature – must be created and granted full powers to investigate and prepare a report, with access to existing documentation and research, on the serious infringements of human rights and international humanitarian law that have occurred within the statute of limitations provided for by the Catalan Democratic Memory Act.
- **A public service for victims and those targeted for repression must also be set up** in order to provide assistance, guidance and support in the search for missing family members, including aiding them in accessing official records, legal and psychosocial support, and information on the options available for legal action and redress.

36 **The Police Prefecture located on Via Laietana**, in Barcelona must cease to operate as a police station, and the building must be handed over to a consortium involving the Government of Catalonia and other Catalan institutions. Once handed over, work must be undertaken to define the nature, use and design of a future centre for historical memory, with the participation of memorial organisations, human rights groups and representatives of the victims and others targeted for repression.

37 **The 1977 Amnesty Act must be repealed or, at the very least, reformed in order to fully ensure the right to effective judicial protection** for those who suffered serious human rights violations during Spain's last dictatorship and the transition to democracy.