



CPT/Inf (2000) 3

**Report to the Spanish Government
on the visit to Spain
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
from 17 to 18 January 1997**

The Spanish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2000) 4.

Strasbourg, 13 April 2000

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Copy of the letter transmitting the CPT's report

Strasbourg, 20 March 1997

Dear Sir,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the Government of Spain drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visit to Spain from 17 to 18 January 1997. The report was adopted by the CPT at its thirty-second meeting held from 10 to 14 March 1997

I would draw your attention in particular to paragraph 51 of the report, in which the CPT requests that a full account of the action taken to implement the recommendation made in that paragraph be provided within three months, as well as to paragraph 56, in which the Committee requests the Spanish authorities to provide within six months a full account of action taken to implement the recommendations set out in paragraphs 52 to 55. The CPT would ask, in the event of the latter report being forwarded in Spanish, that it be accompanied by an English or French translation.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours faithfully,

Claude NICOLAY
President of the European Committee for
the prevention of torture and inhuman
or degrading treatment or punishment

Mr Francisco BUENO ARÚS
Technical General Secretary
Ministry of Justice
San Bernardo 62
28015 Madrid

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Spain from 17 to 18 January 1997. The visit was one which appeared to the CPT "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

2. The delegation consisted of the following members of the CPT:

- Mr Constantin ECONOMIDES (Head of the delegation);
- Mrs Nadia GEVERS LEUVEN-LACHINSKY.

The delegation was assisted by:

- Mr Derrick John POUNDER (Professor of Forensic Medicine, University of Dundee) (expert);
- Mr Eduardo KAHANE (interpreter);
- Mr Claude LORD (interpreter);

and was accompanied by Mr Jan MALINOWSKI of the CPT's Secretariat.

B. Context of the visit

3. In the course of its previous visits to Spain (April 1991, April 1994 and June 1994), the CPT paid particular attention to the issue of the treatment of persons detained by the law enforcement agencies, and more specifically by the Civil Guard.

In the report drawn up following the visit in April 1991, the Committee stated that although recourse to torture or other forms of severe ill-treatment by law enforcement officials was certainly no longer a common practice in Spain, it would be premature to conclude that the phenomenon of torture and severe ill-treatment had been eradicated. Further, at the end of the visit in April 1994, the CPT's delegation told the Spanish authorities that in the light of the information at its disposal, it could only reiterate the above-mentioned comment. Later that same year, and in the light of the information gathered during the June 1994 visit, the CPT went a step further and recommended that the Spanish authorities carry out, without delay, a general investigation of a thorough and independent nature into the methods used by members of the Civil Guard when holding and questioning persons arrested as presumed participants in one or more of the offences referred to in Article 384 bis of the Code of Criminal Procedure (cf. paragraph 34 of the report on the June 1994 visit; CPT/Inf (96) 9, Part III).

From the subsequent ongoing dialogue between the Spanish authorities and the CPT, it appeared that the action taken with a view to implementing that recommendation had led to some encouraging developments. Nevertheless, the CPT has continued to receive from time to time allegations of the ill-treatment of detained persons by the Spanish law enforcement agencies, and in particular of the ill-treatment by the Civil Guard of persons suspected of terrorist offences. One such case, concerning a person who had been placed at the disposal of the Spanish authorities in June 1996 following his release from a prison in France, was the subject of an exchange of correspondence between the Spanish authorities and the CPT.

4. At the beginning of 1997, the CPT received reports concerning a Mr Jesús ARCAUZ ARANA¹. According to those reports, Mr Arcauz was arrested by the Spanish law enforcement agencies during the night of Monday to Tuesday, 13-14 January 1997, following his removal from France after having been imprisoned there for six years, and was taken to the General Directorate of the Civil Guard in Madrid. He was apparently suspected of having participated in one or more of the offences referred to in Article 384 bis of the Code of Criminal Procedure

By letter of 15 January 1997, the President of the CPT requested from the Spanish authorities information on the legal situation of Mr Arcauz, copies of all medical reports drawn up in respect of him since his arrest, and an account of his current medical condition. This request for information was made under Rule 30 (1) of the CPT's Rules of Procedure².

On the same date, the Spanish authorities transmitted the information requested. It showed inter alia that Mr Arcauz - who was being held incommunicado by the Civil Guard - had alleged that he had been ill-treated after his arrest on 13-14 January 1997, in particular that he had been subjected to "la bolsa" (asphyxiation by the placing of a plastic bag over the head).

In the light of the information received, the CPT decided to carry out a visit to Spain in order to examine the treatment received by Mr Arcauz, as well as the operation in his case of formal safeguards against the ill-treatment of detained persons.

5. The CPT's delegation interviewed Mr Arcauz in Madrid V (Soto del Real) Prison, the establishment to which he had been transferred in the early morning of 17 January 1997. It also visited the General Directorate of the Civil Guard, where Mr Arcauz had been detained from the morning of 14 January to the late afternoon of 16 January 1997, as well as the Central Examining Court No. 5, the competent judicial body in respect of the detention of Mr Arcauz.

¹ Mr Arcauz consented to his identification in the CPT's report, including in the event of its publication (cf. Article 11, paragraph 3 of the Convention).

² Rule 30 (1) of the CPT's Rules of Procedure provides as follows: "Before deciding on a particular visit, the Committee or, if appropriate, the Bureau may request information or explanations as regards the general situation in the State concerned, as regards a given place, or as regards an isolated case concerning which it has received reports."

C. Consultations undertaken and cooperation received during the visit

6. As already indicated, the CPT requested information on the legal situation of Mr Arcauz, as well as certain medical information concerning him, under Rule 30 (1) of the CPT's Rules of Procedure. That information was very promptly supplied to the CPT.

Other requests for information made during and after the visit met with an equally satisfactory response from the Spanish authorities. In this context, the CPT wishes to acknowledge the assistance provided to its delegation by the persons appointed by the Spanish authorities to liaise with the Committee, in both the Ministry of Justice (Mr Francisco Javier BORREGO BORREGO) and the Ministry of the Interior (Mr Antonio CERROLAZA GOMEZ).

Reference should also be made to the substantial reply provided by Mr Francisco BUENO ARUS, Technical General Secretary of the Ministry of Justice, to a letter of 23 January 1997 from the President of the CPT, by which the Committee requested a detailed account of the steps taken - at the administrative and/or judicial levels - to investigate the alleged ill-treatment of Mr Arcauz, as well as information on any other measures envisaged or taken in connection with that matter.

7. In the course of the visit, the delegation had a fruitful meeting with Mr Javier GOMEZ de LIAÑO, the judge in charge of Central Examining Court No. 1 and who at the time of the visit was replacing the judge in charge of Central Examining Court No. 5 (the competent court in respect of the detention of Mr Arcauz). The delegation also met Mr Angel CANELADA COELLO, the forensic doctor who examined Mr Arcauz while he was detained at the General Directorate of the Civil Guard in Madrid.

In addition, the delegation was received by Mr Ignacio COCIDO, Head of the Private Office of the Director General of the Civil Guard. Further, it had discussions with Mr José Luis LOPEZ ARAUJO, one of the advisors to the Director General of the Civil Guard, as well as with the Head of Intelligence of that agency and certain officers under his command.

8. To sum up, the CPT is pleased to note that the cooperation received by its delegation during the visit was fully in conformity with Article 3 of the Convention.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

9. The delegation held two lengthy interviews with Mr Arcauz at Madrid V Prison, in the course of which he set out in full his account of his treatment whilst in the custody of the Civil Guard. The delegation also held detailed discussions with Civil Guard officers who had been directly involved in the detention of Mr Arcauz.

Further, the delegation examined the reports drawn up by the forensic doctor who had examined Mr Arcauz while he was detained by the Civil Guard in Madrid and discussed those reports with the doctor in question. It also had access to other medical information concerning Mr Arcauz (hospital medical records, reports issued by various doctors who examined Mr Arcauz at other stages of his custody and medical records kept in Madrid V Prison).

In addition, the CPT has considered the information subsequently supplied to it by the Spanish authorities on action taken to determine the veracity of the allegations of ill-treatment made by Mr Arcauz.

A. The account given by Mr Arcauz

10. According to his account, Mr Arcauz was transferred directly from the custody of a French law enforcement agency to that of the Spanish Civil Guard in the early morning of Tuesday, 14 January 1997, at the French-Spanish border post of "La Jonquera-Le Perthus". He was immediately taken by road to nearby Civil Guard premises at Figueres, arriving at about 2.00 am. A medical doctor was waiting for him there; however, this person refused to identify himself by name and, as a result, Mr Arcauz refused to be examined by him. Subsequently, another doctor arrived at about 2.30 am, who presented an identification card with his name and photograph. Mr Arcauz was examined briefly - blood pressure, pulse and auscultation of the chest.

At about 2.45 or 3.00 am, a Civil Guard group arrived from Intxaurreondo to make the transfer to Madrid.

11. Mr Arcauz stated that the journey to Madrid was "painful and violent".

The vehicle used was a transit van type. There was a driver and a front seat passenger, whom Mr Arcauz assumed was the officer in charge from the manner and content of his speech. Mr Arcauz sat on a rear seat between two Civil Guards. Directly facing the prisoner on another seat was a further Civil Guard.

He was blindfolded with an eye cover similar to those used in an aeroplane. Then the questions started and these were accompanied by hand slaps on the ears and loud sudden clapping of the hands adjacent to the ears. He was also hit by an object which, although he could not see it, appeared to be like the type of glove used to take hot kitchenware out of an oven. However, it felt possibly square and with something like sand inside. It seemed to be manipulated in such a way that it struck him with a flapping action. The Civil Guard hitting him and questioning him was the one facing him. The Civil Guards on either side held his hands which were not handcuffed.

As well as questions there were threats and intimidation. The threats were directed towards his family, with particularly detailed threats to sexually assault his wife and two young twin sons. There were detailed threats to kill, mutilate and eviscerate the children. These threats were accompanied by disclosure of detailed information about the whereabouts and activities of his family within the previous few weeks. Some of this information was not known to him but he later confirmed that it was true in speaking with his wife. The Civil Guards stated that they only had to telephone their colleagues and all of these things would happen.

From this time onwards he lost all notion of time and he did not know at what hour he arrived in Madrid.

12. When he arrived in Madrid he was still blindfolded and had the impression from the voices and activity around him that there were lots of Civil Guards present. He was taken to the General Directorate of the Civil Guard and put into a room. There were no registration procedures and he was simply brought to a room in which he remained for almost his entire stay.

In the room, still blindfolded, his clothing was forcibly removed. He remained blindfolded and naked except when a forensic doctor came to examine him and when he was taken to hospital. If he attempted to move his blindfold they immediately prevented him from doing so. On some occasions when he was subjected to "la bolsa" the blindfold moved during his violent struggles and he had some brief glimpses of his surroundings and the Civil Guards.

The room was cold and he was kept naked until the time of the second forensic medical examination. He developed a pharyngitis/laryngitis which he attributed to being naked in the cold room.

13. Throughout his interrogation he was compelled to sit on a chair with arms in a fixed position. He was not handcuffed and each arm was resting on the arms of the chair. His legs were spread and knees were bent with his feet on the floor. Three teams of Civil Guards conducted the interrogation. The interrogation was conducted by shouting at him directly into his ears. On occasions there was a knock on the door of the interrogation room and everything would become quiet for a while, but the reason for this was not apparent to him.

14. He was questioned about many small details in a diary which the police had found many years before, prior to his detention in France. Since the events related to seven to eight years previously he found it difficult to answer. The questions related to many trivial events recorded in the diary of which he had no clear recollection. He was asked about people, places, times and events but with no logical sequence or connection between successive questions. It appeared that some questions were directed towards clarifying in the minds of the interrogators the meaning of events of which they were already aware.

15. He was repeatedly struck about the head with the flat of the hands. He was subjected to "la bolsa" six or seven times by one interrogation team during a single shift of interrogation.

"La bolsa" was performed by having him stand. One Civil Guard then held his lower legs tightly with the arms gripped around them but not the hands gripping them. Similarly his arms were pinioned to his side by a second Civil Guard wrapping arms around his chest. A third Civil Guard who was behind him held the plastic bag over his head and produced asphyxiation by twisting it and tightening it at the back.

He struggled on these occasions and his blindfold slipped so that he saw the bag which was brown in colour. Several times he bit through the bag but it was then replaced with a new one. He was struck at the same time as "la bolsa" was performed. He lost consciousness several times. The loss of consciousness came on as a dizziness and then blacking out. He likened it to the sensation he felt when suddenly standing up from a seated position during his time on hunger strike. He had no idea of the length of time he was unconscious following "la bolsa" but when he regained consciousness he was still in a standing position supported by the Civil Guards who were restraining him and the plastic bag was loosened. In reply to a specific question from the delegation, he stated that he had not urinated during loss of consciousness.

16. He was threatened with electrical torture but none was performed. During the threats something was rubbed onto his legs and at the same time there was a clicking sound similar to that produced by an electric spark lighter used for gas fires. There was no pain from this; it was simply a means to threaten and intimidate him.

17. Although he was interrogated naked initially, for the forensic medical examinations he was told to dress in his own clothing, the blindfold was removed and he was examined in the same interrogation room. The room was approximately 3 x 3 metres with a table and two chairs. The room was well lit and on one wall there was a mirrored window. The Civil Guards told him that the forensic doctor was a friend of the police and that it was no good telling him anything and that also the Civil Guards would be watching during the medical examination.

During the first medical examination he said nothing. The doctor did not ask him any specific questions about his treatment by the Civil Guards but only asked whether he had anything to declare. The examination included auscultation of the chest, blood pressure and pulse. After the examination he was again blindfolded and stripped naked.

At the second forensic medical examination, he told the doctor about his treatment by the Civil Guard because he was desperate and afraid. He told the doctor he had been subjected to "la bolsa". The doctor wrote down his complaints and said that he would inform the judge and try to visit him two to three times per day. He felt that his appearance must have been very poor at this time and with a marked deterioration from the first examination. At the second forensic medical examination the doctor became more serious when he observed his pulse. He overheard the doctor say that "this was not the time or place to have an accident". The doctor saw that his head was a little bit red but there was no bruising.

After the second forensic medical examination the Civil Guards told him that they had been watching and that he should not have told anything to the doctor. However, the number of blows during the interrogation fell off thereafter and he was not again subjected to "la bolsa". He was also allowed to continue to wear his clothing and was not again interrogated naked.

The forensic doctor never directly asked whether he was being ill-treated but if he made a statement to the doctor then the doctor wrote it down. The forensic doctor commented on his complaints about being struck by saying that it was not so bad. After he indicated to the doctor that he would like to sleep, the doctor assured him that he would intervene on his behalf with the Civil Guard, but he overheard the doctor say that "he wants to sleep" and the Civil Guard laughed in response.

18. He was allowed to sleep once during the period of his custody at the General Directorate of the Civil Guard. This occurred between the second and third forensic medical examination. He did not know how long he slept for but was told by the Civil Guards that it was for five hours. To sleep he was taken downstairs to the basement into a small cell with an iron door and no light. The bed was low and had a mattress and blanket. He had the impression that the bed had a metal base and was a military type camp bed, but was unsure of this. When in the cell to sleep he tried to rub his eyes but a Civil Guard rushed in and slapped him and told him not to remove his blindfold. He twice went to the toilet in the basement. He urinated only. On the second occasion he asked for a shower but was told that there was none but he was allowed to use a wash-hand basin.

19. At the time of the third forensic medical examination the doctor came with an order from the judge that he was to be taken to hospital³. The Civil Guard officer told him that he was to say nothing in hospital and that the forensic medical doctor would say all that was necessary. He was not handcuffed but he was with two Civil Guards all the time including during medical examinations. The forensic medical doctor was also present. He was examined and X-rayed in hospital and one and a half litres of intravenous fluids were given. He made no complaint to the hospital doctors about his treatment because of the presence of the Civil Guards. He asked the nurse if he could be kept in hospital overnight but immediately he did so the Civil Guards intervened and his return from the hospital was arranged soon after that.

20. After returning to the General Directorate of the Civil Guard following his visit to the hospital he remained dressed without a blindfold and the blows given during his interrogation were sporadic.

21. Before commencing his hunger strike on 10 December 1996 he had weighed 81 kg and by the time he left France he had lost 15 kg. He was still on hunger strike during the time of his interrogation. He had also been refusing to take fluids for a few days prior to his transfer to Spain. Consequently he took no fluids on the journey between the border and Madrid but at some time during his interrogation he began to take water. Initially he was given tap water but the doctor instructed that they give him bottled water. The doctor also advised him to eat saying that he would come before a judge, that the interrogation was over for him and that he needed to be strong when he came before the judge. On giving up his hunger strike the police gave him tortilla and pork sausage sandwiches which he ate because he was desperately hungry but he had bowel problems as a consequence.

³ The establishment to which he was taken was the Jiménez Díaz Foundation.

22. Prior to coming before the court the Civil Guards showed him pictures of his children in which the heads had been cut off and they threatened that they would do this in reality if he did not get 50 years in prison. These photographs had accompanied him from France to Spain.

He saw his family and a lawyer, each for about ten minutes, for the first time when he was called before the judge.

B. The account given by the Civil Guard

23. The delegation spoke at length with two of the Civil Guard officers involved in the questioning of Mr Arcauz, respectively an operational and an intelligence officer. They indicated that Mr Arcauz announced that he did not intend to answer any questions or make any statement concerning the offences that he was suspected of having committed. Nevertheless, the detainee insistently requested to speak to Civil Guard officers about banal topics, as well as "political matters", and he made clear that he did not wish to sleep.

The operational officer indicated that, once the detainee had rested from the journey to Madrid, he spoke with him on various occasions for a considerable number of hours, including at night. As regards the intelligence officer, he kept company and spoke with Mr Arcauz from after the departure of the forensic doctor on the late evening of Wednesday, 15 January until the forensic doctor's arrival the following morning.

According to those officers, the interviews took place mainly in the cell occupied by Mr Arcauz, with the occasional presence of one or two other Civil Guard officers. No written note or record whatsoever had been kept of the interviews, given that they were only "friendly discussions".

It was vehemently denied that Mr Arcauz had in any way been ill-treated during his custody by the Civil Guard.

C. Medical information and records

24. During the time he spent in the custody of the Civil Guard (i.e. from 1.20 am on Tuesday, 14 January 1997, to 5.00 pm on Thursday, 16 January 1997), Mr Arcauz was examined on seven occasions by a forensic doctor, the first time within little more than one hour after his arrest. Further, in the afternoon and early evening of Wednesday, 15 January 1997, he underwent certain medical examinations and tests at the Jiménez Díaz Foundation in Madrid.

He was also medically examined on three different occasions (respectively by one forensic doctor, by three forensic doctors and a doctor appointed by Mr Arcauz's family, and by two forensic doctors) following his arrival in the Audiencia Nacional in the afternoon of Thursday, 16 January 1997.

Finally, Mr Arcauz was medically examined upon his arrival at Madrid V Prison, early in the morning of 17 January 1997.

Relevant extracts from the medical reports drawn up following the above-mentioned examinations are set out below.

25. *First forensic medical examination* (Premises of the Civil Guard in Figueres, 14 January 1997, 2.30 am):

"[...] Middle aged male who states that he is on hunger strike.

On physical examination, no sign of injury is observed. No wounds nor bruises. No signs of physical ill-treatment.

No pathology indicated in medical background.

Blood pressure 120/85. No fever. In good general state and therefore conscious and oriented. He does not show at present any sign of dehydration.

Given his hunger strike, I recommend a new medical appraisal within a maximum of 24 hours."

26. *Second forensic medical examination* (General Directorate of the Civil Guard, Madrid, 14 January 1997, 11.20 am):

"[...] I examined the detainee in the absence of witnesses. 'I am very weak because I am on hunger strike since 10 December 1996 and on thirst strike since last Friday. I am tired, shattered.'

He is noted to be a male of asthenic biotype, thin, who does not display signs of injury after being undressed. He states that he has not slept for three nights. The cardio-pulmonary auscultation does not reveal any sign of importance; the skin is dry, though there are no dehydration creases/wrinkles. Blood pressure 13.5/8.5. Pulse of 110 beats per minute and he is afebrile. [...] To conclude, Jesús is lucid, coherent, oriented and connects well with the interviewer; given his hunger strike, it would be a prudent measure to carry out regular medical supervision."

27. *Third forensic medical examination* (General Directorate of the Civil Guard, 14 January 1997, 6 pm):

"[...] He continues on hunger strike and the remarks made in the report of 11.20 am today have not changed.

He states that he has been subjected to 'la bolsa'. No signs of violence are observed. He has a discrete irritation of the pharynx. He claims to continue to be in a state of accentuated asthenia.

He can be permitted to take vitamins B6 and B1, which he has been taking recently."

When interviewed by the delegation, the doctor stated that, during this third examination, the detainee had also told him that he had received blows with the flat of the hand ("palmetadas") particularly to the head, and that he had been slapped; he added that, on examination, he did not find any bruises or reddening of the scalp.

28. *Fourth forensic medical examination* (General Directorate of the Civil Guard, 15 January 1997, 11.00 am):

"[...] Remains on the same lines as in previous reports, it being noteworthy that the tachycardia remains at 98 beats per minute, for which we exclude emotional causes, regarding it as organic, the origin of which should be established in a cardiology institution as soon as possible.

He continues on hunger strike although he now takes water. Urinates little.

Has a blood pressure of 12/8. No signs of dehydration and it is suggested that he take fruit, juices, non-fatty soups, etc.

The cardio-pulmonary auscultation is in line with that described earlier."

29. *Results of the medical examinations and tests carried out at the Jiménez Díaz Foundation* (15 January 1997, 3.30 to 7.30 pm):

"[...] He produces ECG performed at noon without anomalies. The ECG performed here at 5.00 pm is in line with previous one. At present, there are no signs of cardiac ischemic pathology. He displays a slight tachycardia and hyperventilation, as well as a CPK level of 317 (normal MB), consistent with his undernourishment.

Does not require treatment."

30. *Fifth forensic medical examination* (General Directorate of the Civil Guard, 15 January 1997, 11.45 pm)

"[...] Jesús has made much progress in recovering physically, has eaten an omelette sandwich, tolerating well the intake. Does not have epigastric complaints or as regards the hypochondrium. His blood pressure is of 12.5/8 and has 95 beats per minute.

He states that he would like to sleep; it is recommended that he relaxes and sleeps."

31. *Sixth forensic medical examination* (General Directorate of the Civil Guard, 16 January 1997, 8.35 am):

"[...] Jesús continues to recover normally following now the intake of normal food, he takes breakfast in my presence. Does not feel pain on superficial or deep abdominal palpation.

Moist mucous tissues.

He is found to have a pulse of 92 beats per minute and blood pressure of 12/8.

He says that, after dinner, he did not sleep but had a placid night. He says that he is a little tired.

No signs of clinical interest result from the pulmonary auscultation".

32. *Seventh forensic medical examination* (General Directorate of the Civil Guard, 16 January 1997, 12.15 pm):

"[...] He is in a good physical and psychological state and, only now and as a minor pathology, he suffers from a slight laryngitis which should be treated with local warmth. Some hot soup or the like."

33. *Eighth forensic medical examination* (Audiencia Nacional, 16 January 1997, 5.30 pm):

"[...] I examined the detainee Jesús Arcauz Arana in the absence of witnesses [...]"

Events relating to his detention and transfer. Denies ill-treatment, save for that recorded in the report of the 14th at 6 pm (in this respect, I refer to the report of 16 January). Attention to his peremptory needs has been sufficient.

He is noted to be a male of asthenic biotype once he has been ordered to undress, no sign of injury is observed. Upon his cardio-pulmonary auscultation, a pulse of 98 beats per minute is noted. Blood pressure 13/8. He is apyretic.

As a minor pathology, he has suffered - but no longer has - a laryngitis. He indicates that at midday today, before coming here, he urinated blood with pain.

Note: he was on hunger strike for 36 days, which he has now given up. An appraisal should be made as to whether any organic condition has ensued.

Conclusion: lucid, coherent, oriented, Jesús has at present sufficient psycho-physical capacity to give a statement."

34. *Medical examination carried out by three forensic doctors and one medical doctor appointed by Mr Arcauz's family* (Audiencia Nacional, 16 January 1997, 8.05 pm):

"[...] He gave up his thirst strike in order to take water on the 14th. Answering questions of Dr Idoyaga [the doctor appointed by Mr Arcauz's family], he replies that he was not forced but did it voluntarily and that water was provided to him in a sealed bottle. That on 15 January he started to take solid food voluntarily, upon his return to the cells after being examined in hospital [...]"

He indicates that he was handed over to the Civil Guard at the border post of La Jonquera in the early morning of Monday, 13 January. Answering questions of Dr Idoyaga, he replies that he travelled from the prison to the Spanish border handcuffed to the back and with the head down. After being handed over he was seen by a doctor at La Jonquera and subsequently by a forensic doctor in Figueres, where he was taken in a marked Civil Guard car. Subsequently, he was transferred to Madrid 'in a large unmarked car and without being handcuffed at any time'. He indicates that the treatment received during the transfer was violent, having received blows with the open hand and some with the fist, mainly to the head and in general to the whole of the body, but he received no kicks or punches, and that occasionally they made him lower his head and he received threats against himself and his family. Answering questions of Dr Idoyaga he replies that he did not leave the car at any time, although they stopped twice, and that they did not offer him food or drink, that there was no noise in the car (loud radio, etc.) and that he was not cold; 'it was hot' but he did not know whether it was the heating. After his arrival in Madrid, he indicated that as soon as they arrived they blindfolded him, that at the beginning he continued to be treated violently but it later eased off, especially after the first two visits from the forensic doctor.

That once they blindfolded him, they took him to a room with a table and chairs, where he was able to sit always without being handcuffed; to questions of Dr Idoyaga he replies that he was not alone but 'with them'; the doctor asks how many and if he could recognise them, he replies that they must have been four or five in turns, that they were from Intxaurreondo and he would recognise them by their voices. That he received blows to the head with the open hand and that the blindfold was only removed for the first visits of the forensic doctor. That before the first interview he was subjected to la bolsa 'during ten minutes' and that he lost consciousness three or four times, that given that he was not handcuffed 'two held me and another one put it from behind' and that he was subjected to simulated electric shocks with a device that 'sounded like a kitchen lighter' but which never touched although they passed it over his legs while disconnected and that he did not see the device, that while he was subjected to la bolsa he received a blow with the knee to the testicles and that he was pushed about; Dr Idoyaga asks him whether he received blows to the ears, he says no but they clapped their hands close to his ears; the doctor asks whether he had tinnitus (ringing in the ears) and he replies that he thinks so. Dr Idoyaga asks whether he was left naked without clothing and he replies not, that he was always dressed and shod. After the first visit from the forensic doctor, he says that the treatment eased off a lot and that they did not subject him to la bolsa again ('I think it was large and brown in colour'), although between the first and the second visit from the forensic doctor he still received some blows with the open hand ('slaps'). [...] Asked whether he has been able to sleep, he replies that he is conscious of having slept on two occasions; once he was told that he slept for five hours and another time for two hours but on both occasions he had the feeling of having rested. Dr Idoyaga asks him whether there were noises or light preventing him from sleeping and he answers no and that in the cell he had a bed and blanket, although he was a little cold. Asked about the treatment received today, he replies that it has been correct and that yesterday he received some 'slaps and was pushed about but not in a violent way', both before and after his stay in the hospital establishment.

At present he is well oriented in time and space, without any psychological pathology being noted.

Physical examination: He is well hydrated, normal eye mobility, normal eye reflexes, no motor disorders or lack of coordination, slight muscular atrophy, cardio-pulmonary auscultation within normal parameters (he is examined by Dr Idoyaga), slight laryngeal hyperaemia, blood pressure (both lying and standing) within normal parameters (respectively 140/80 and 135/85) and 100 beats per minute, the pulse being firm and regular. No signs of violence are observed in the head or neck (positive dermographism in the neck); on the anterior face of the thorax the areas shaved for ECG electrodes are observed, and on the posterior side (back) small not recent erosions due to acne scratching, there being also numerous scars due to this cause; on the inside of the left elbow a recent medical puncture is observed (yesterday's blood extraction for analysis) and an old haematoma in the process of healing, which he indicates was sustained in France; after withdrawing the dressing, another medical puncture is observed on the lower left arm, situated [towards] the wrist; a very slight mark can be seen on each wrist due to handcuffs; there are no signs of violence on the buttocks, genitals and lower limbs. [...]"

35. *Last forensic medical examination* (carried out by two forensic doctors at the Audiencia Nacional, 16 January 1997, 11.00 pm):

"The detainee indicates that he is feeling well, after having eaten, being able to make a statement.

He says that he wishes to continue giving his statement."

36. When *medically examined upon his arrival in prison* (17 January 1997, about 2.00 am), Mr Arcauz's vital signs were normal, including a normal pulse of 80 and blood pressure of 120/80. He complained of ringing in the ears (tinnitus). The cardiac and pulmonary auscultation did not reveal any pathology, as was the case for the neurological examination. The prison doctor told the delegation that Mr Arcauz appeared to be very tired, but made no other complaint (although he was not specifically asked about his treatment by the Civil Guard).

37. At the time when he was interviewed by the delegation, he complained that his head (scalp) was still sore from the slapping. However, he said that he had no bruises or other marks to his body. His eyes were tired and he felt that he had some loss of memory and poor concentration. When specifically asked about the problem of ringing in his ears (tinnitus) which he had complained about to the prison doctor, but did not raise spontaneously with the delegation, he stated that it was an old problem but that he noticed it more now perhaps because of the silence in his cell and perhaps because of the loud clapping that had been made next to his ears.

Under the circumstances, the delegation did not consider it necessary to seek to carry out its own medical examination of Mr Arcauz.

D. Action taken by the Spanish authorities

38. In response to the letter of the President of the CPT dated 23 January 1997, the Spanish authorities provided extensive documentation on the action taken in respect of the allegations made by Mr Arcauz.

39. It is particularly noteworthy that, by decision of 15 January 1997, the judge in charge of Central Examining Court No. 5 ordered that "having regard to the forensic doctor's report [...] in which he records the detainee's allegation of having been subjected to 'la bolsa', the forensic doctor be required to report as to whether he observes any objective symptom, element, sign or any other circumstance which supports the detainee's statement."

The forensic doctor responded to that request on 16 January 1997 in the following terms: "At the time of the examination of the 14th at 6 pm, and as indicated in the relevant report, no sign in support of the detainee's statement was observed."

40. Subsequently, on 4 February 1997, three forensic doctors gave a global account addressed to the court of all existing medical reports concerning Mr Arcauz.

They indicated inter alia that "in the reports issued, there is no reference to the presence of any signs of violence, the person concerned having only stated on the 14th at 6 pm that he had been subjected to 'la bolsa', not having mentioned any other physical ill-treatment. During the examination carried out at 8.05 pm on the premises of the Forensic Medical Clinic, the person concerned alleged 'motu proprio' as ill-treatment 'la bolsa' (once, before the first visit by the forensic doctor), blows with the open hand and some with the fist mainly to the head and some to the body during his transfer by car to Madrid, as well as at the beginning in the Directorate. The remaining allegations of ill-treatment are made in reply to questions, both specific and broad, of [the doctor appointed by the detainee's family]. In none of the examinations carried out (referred to above) were signs of violence observed [...]."

Commenting upon the results of Mr Arcauz's examination at the Jiménez Díaz Foundation, the forensic doctors indicated that the patient's "increased CPK level is consistent with his undernourishment, resulting from his voluntary hunger strike."

41. In a ruling of 14 February 1997, the judge in charge of Central Examining Court No. 5 first of all noted the public prosecutor's opinion that "there is not the slightest evidence of the ill-treatment of Jesús Arcauz Arana", and subsequently reached a conclusion as to the "inexistence of an offence involving the ill-treatment of Jesús Arcauz Arana".

Further, in his decision, the judge states that "the international rules and the indications of the CPT to prevent any possibility of ill-treatment or torture have been scrupulously respected", that "all the possibilities to investigate the existence of grounds to take further action in respect of such conduct have been exhausted", and that "it has been established that the minimum necessary objective elements in order to pursue proceedings for such conduct do not exist."

E. Assessment

42. The account given by Mr Arcauz is detailed and coherent. On a number of factual issues (timing of events, description of places where he was held) it can be demonstrated to be essentially accurate; further, there is no dispute that Mr Arcauz had very little sleep during the some 64 hours he spent in the custody of the Civil Guard. In addition, Mr Arcauz's description of the ill-treatment alleged by him and his reactions to it are, from a technical standpoint, quite credible; the manner in which he described the sensation felt when losing consciousness as a result of asphyxiation was particularly convincing.

There is an inconsistency concerning the question of clothing. In reply to a question during the medical examination at 8.05 pm on 16 January 1997, Mr Arcauz apparently stated that "he was always dressed and shod", whereas he subsequently told the delegation on 17 January 1997 that he had been deprived of his clothing during much of the day of 14 January 1997. However, this discrepancy could be attributed to the fact that he had certainly been dressed and shod during the 48 hours prior to answering the above-mentioned question.

To sum up, the account given by Mr Arcauz can be considered as plausible.

43. As regards the account given by the Civil Guard, it is extremely difficult to believe that Mr Arcauz was not questioned prior to the statement taken in the presence of a lawyer at midday on 16 January 1997, and that it was Mr Arcauz himself who insisted on speaking to the Civil Guard officers day and night. Such a contention defies common sense. For the CPT there is not a shadow of a doubt that Mr Arcauz was questioned by the Civil Guard during the 2½ days he was in their custody prior to the making of a formal statement in the presence of a lawyer. The fact that the Civil Guard officers should seek to deny this can only undermine the credibility of their account as a whole.

The CPT would hasten to add that it sees no objection to the Civil Guard having questioned Mr Arcauz during that time; this would be a perfectly legitimate activity for a law enforcement agency to engage in, provided no ill-treatment was inflicted and the relevant safeguards (in particular, access to a lawyer) were applied.

44. Turning to the different medical examinations of Mr Arcauz, on two occasions (i.e. the medical examinations of 14 January 1997 (6.00 pm) and 16 January 1997 (8.05 pm)) allegations made by Mr Arcauz of ill-treatment were recorded. However, on both occasions, no marks or conditions consistent with those allegations were observed. This latter point appears subsequently to have been considered by the competent judicial authorities as establishing that Mr Arcauz was not ill-treated.

The CPT must point out in this context that, in the light of the particular forms of ill-treatment alleged, the absence of any "signs of violence" cannot be considered as conclusive. No physical findings are to be expected from asphyxiation using a plastic bag, especially if it is performed in the manner alleged by Mr Arcauz; further, blows to the body may only leave slight marks difficult to observe and which quickly disappear, especially if inflicted with an open hand (cf. also paragraph 30 of the report on the June 1994 visit; CPT/Inf (96) 9, Part III).

Consequently, when allegations of such forms of ill-treatment come to their notice, public prosecutors and judges should not treat the absence of marks or conditions consistent with those allegations as in itself proving that they are false. In such cases, reaching a sound conclusion as to the veracity of the allegations will also require evaluating the credibility of the person making them; in other words, he (as well as any other relevant persons) should be interviewed on this specific matter by the public prosecutor and/or judge, preferably accompanied by a forensic doctor.

45. As already indicated, the competent judge also advanced that "the indications of the CPT to prevent any possibility of ill-treatment or torture have been scrupulously respected". In this context, it is well known that the CPT attaches particular importance to three fundamental safeguards against the ill-treatment of detained persons: the right of those concerned to have the fact of their detention notified to a close relative or third party of their choice, the right of access to a lawyer and the right of access to a doctor (including the right - if the person concerned so wishes - to be medically examined by a doctor of his choice).

46. In the case of Mr Arcauz, it would appear that the first requirement - notification of the fact of detention to a close relative/third party - was met.

47. However, Mr Arcauz did not enjoy a right of access to a lawyer in the form repeatedly recommended by the CPT. He was in fact denied any access whatsoever to a lawyer during the first 2½ days in the custody of the Civil Guard; further, when he did finally meet an officially appointed lawyer - when a formal statement was taken at midday on 16 January 1997 - he was not allowed to consult in private with the lawyer, either before or after the making of that statement. As the CPT pointed out in the report on its very first visit to Spain in April 1991, under such circumstances it is difficult to speak about an effective right of access to a lawyer; the officially appointed lawyer can at best be described as an observer (cf. CPT/Inf (96) 9, Part I, paragraph 51).

48. Mr Arcauz did have access to state-appointed doctors and he was the subject of numerous medical examinations in the course of his custody. The CPT welcomes this position. Nevertheless, a certain number of remarks are called for on this subject. Firstly, the CPT considers it regrettable that the forensic doctor who examined Mr Arcauz at 6.00 pm on 14 January 1997 only recorded in a very succinct manner the allegation made concerning asphyxiation and made no mention whatsoever of the allegation made on that occasion of blows with the flat of the hand. Secondly, the CPT considers it is quite improper that the medical examinations at the General Directorate of the Civil Guard should have been conducted in an interrogation room (which inter alia contained a one-way mirror, thereby enabling the medical examination to be observed by law enforcement officials) rather than in the medical room at the General Directorate. Thirdly, the CPT was disappointed to learn that there was still no official standardised form for recording the results of medical examinations; the new form, which the Committee had been informed was under preparation and which apparently would incorporate the Committee's recommendations on this subject (cf. the response of the Spanish authorities to the report on the April 1994 visit; CPT/Inf (96) 10, pages 60-62), had not yet been introduced. Fourthly, the CPT was concerned to note that the forensic doctor who examined Mr Arcauz while he was detained at the General Directorate of the Civil Guard held the mistaken view that it was not possible to perform "la bolsa" without leaving some physical trace.

As far as the CPT is aware, Mr Arcauz did not request to be medically examined by a doctor of his own choice. However, his family apparently did request on 15 January 1997 that Mr Arcauz be examined by a doctor chosen by them; this request was granted on 16 January 1997, the medical examination taking place at 8.05 pm on that day at the Audiencia Nacional. Nonetheless, the CPT would take this opportunity to recall the recommendations it made in paragraphs 67 and 68 of its report on the April 1994 visit on the subject of a detainee's access to a doctor of his own choice.

49. Finally, the CPT wishes to point out that its recommendation that a code of practice for the conduct of interrogations by law enforcement officials be drawn up has still not been implemented. The existence of such a code, in the form recommended by the CPT, could have led to Mr Arcauz being dealt with in a more appropriate manner while in the custody of the Civil Guard.

F. Action proposed

50. A significant number of terrorist acts continue to be perpetrated in Spain. In the report on its visit to Spain in June 1994 (cf. CPT/Inf (96) 9, Part III, paragraph 6), the CPT underscored that it abhors terrorism and recognised the great difficulties facing the security forces in their struggle against this destructive phenomenon. However, it also stressed that acts of torture or other forms of ill-treatment by law enforcement officials were not an appropriate response to terrorism. Such acts are both grave violations of human rights and fundamentally flawed methods of obtaining reliable evidence for combatting crime. In their reply to that report, the Spanish authorities clearly stated that they shared fully that view (cf. CPT/Inf (96) 10, page 127).

51. The information gathered in the course of the visit to Spain in January 1997 has done nothing to attenuate the CPT's long-standing concern about the manner in which members of the Civil Guard treat persons suspected of terrorist offences who are in their custody.

Reference has already been made to the recommendation made on this subject by the CPT in paragraph 34 of the report on the June 1994 visit (cf. paragraph 3 above). As the Committee subsequently pointed out in its letter to the Spanish authorities of 12 December 1995, that recommendation was not fully complied with. The members of the "working group" established by the Spanish authorities in response to that recommendation could scarcely be regarded as independent; further, the working group's terms of reference were not as targeted as the Committee had wished. The CPT therefore expressly reserved the right to seek again the kind of investigation originally envisaged, should circumstances so require. The time has now come to take that step.

Consequently, **the CPT recommends that a general investigation of a thorough and independent nature be carried out, without further delay, into the methods used by members of the Civil Guard when holding and questioning persons arrested as presumed participants in one or more of the offences referred to in Article 384 bis of the Code of Criminal Procedure. That investigation should also address the manner in which such persons are transported by the Civil Guard.**

The Committee wishes to receive within three months a full account of action taken to implement this recommendation.

52. Further, **the CPT recommends that the relevant judicial authorities exploit fully the possibilities offered by Article 520 bis of the Code of Criminal Procedure when allegations of ill-treatment of persons detained incommunicado come to their notice⁴; in appropriate cases they should interview the persons concerned on the subject of their allegations.**

⁴ Paragraph 3 of Article 520 bis of the Code of Criminal Procedure stipulates that "During detention, the judge may at all times request information on and ascertain the detainee's situation personally or by delegating responsibility to the investigating judge of the district in which the detainee is being held."

53. **The CPT also recommends that the Spanish authorities take immediate steps to comply with its previously-made recommendation that persons detained by the law enforcement agencies be granted the right of access to a lawyer as from the outset of their detention, it being understood that in the case of a detainee held *incommunicado*, that lawyer may be officially appointed on his behalf. The right of access to a lawyer must include the right to talk to him in private. The person concerned should also be entitled to have the lawyer present during any questioning conducted by the law enforcement agencies.**

Of course, the fact that a detained person has stated that he wishes to have access to a lawyer should not prevent law enforcement officials from beginning to question him on urgent matters before the lawyer arrives. Provision might also be made for the replacement of a lawyer who impedes the proper conduct of an interrogation, though any such possibility should be closely circumscribed and made subject to appropriate safeguards.

54. **In addition, the CPT recommends that the Spanish authorities reactivate work on the introduction of a standardised form for recording the findings of forensic doctors. That form must ensure that the following information is systematically recorded:**

- (i) statements made by the person concerned which are relevant to the medical examination (including the description by the person examined of his state of health and any allegations of ill-treatment);**
- (ii) the doctor's objective medical findings based on a thorough examination;**
- (iii) the doctor's conclusions, in the light of (i) and (ii).**

Further, the CPT recommends that steps be taken to ensure that all medical examinations of detained persons are conducted out of the hearing and - unless the doctor requests otherwise in respect of a particular detainee - out of sight of law enforcement officials. As regards more particularly medical examinations at the General Directorate of the Civil Guard in Madrid, it is recommended that they be conducted in the room which has been specifically set aside and equipped for that purpose.

55. **Finally, the CPT wishes once again to reiterate its recommendation that a code of practice for the conduct of interrogations by law enforcement officials be drawn up.**

In addition to stressing the total prohibition of the use of ill-treatment, the code should deal *inter alia* with the following: the systematic informing of the detainee of the identity (name and/or number) of those present at the interrogation; the permissible length of an interrogation; rest periods between interrogations and breaks during an interrogation; places in which interrogations may take place; whether the detainee may be required to remain standing while being interrogated; the interrogation of persons who are under the influence of drugs, alcohol, medicine, or who are in a state of shock. It should also be required that a record be systematically kept of the time at which interrogations start and end, of the persons present during each interrogation and of any request made by the detainee during the interrogation.

56. **The CPT wishes to receive within six months a full account of action taken to implement the recommendations set out in paragraphs 52 to 55.**