



CPT/Inf (2009) 10

**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 14 to 15 January 2007

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 (2009) 11.

Strasbourg, 2 March 2009

Note: In application of Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain personal data which is not in the public domain has been deleted from paragraphs 10, 19, 20, 25 and 29 of the published version of the visit report.

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Copy of the letter transmitting the CPT's report

Strasbourg, 27 March 2007

Dear Madam

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I 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) following its visit to Spain from 14 to 15 January 2007. The report was adopted by the CPT at its 62nd meeting, held from 5 to 9 March 2007.

The CPT requests the Spanish authorities to provide **within three months** a response to its visit report. The Committee would ask, in the event of the response being forwarded in Spanish, that it be accompanied by an English or French translation. It would also be most helpful if the Spanish authorities could provide a copy of the response in a computer-readable form.

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

Yours faithfully

Mauro Palma

Ms Maria Ángeles González García
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Copy: Mr Fernando Mansito Caballero, Ambassador,
Permanent Representative of Spain to the Council of Europe

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In accordance with 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 visited Spain on 14 and 15 January 2007.

2. The visit was carried out by the following members of the CPT: Mr Mauro PALMA, the then 1st Vice President of the Committee and Head of the delegation, and Mr Jean-Pierre RESTELLINI. They were supported by Mr Marco LEIDEKKER of the Committee's Secretariat and were assisted by Mr Claude LORD and Ms Vivienne PARRA-IDREOS (interpreters).

B. Context of the visit, consultations held and co-operation encountered

3. The visit was one which appeared to the CPT "to be required in the circumstances" (see Article 7, paragraph 1, of the Convention). In December 2006 the Committee received information that Mr José Ignacio DE JUANA CHAOS, a prisoner on hunger strike and hospitalised in the Doce de Octubre Hospital in Madrid, was being fed against his will by naso-gastric tube, following an authorisation from the competent judicial authorities. According to some reports, he was attached by his hands and feet to the hospital bed for this purpose. By letter of 22 December 2006, the CPT requested the Spanish authorities to provide a full account of all the measures taken in respect of the management of Mr De Juana's hunger strike.

By letter of 4 January 2007, the Spanish authorities informed the Committee that Mr De Juana had declared himself to be on hunger strike on 7 November 2006 and that he had been accommodated on the Custody Ward of the Doce de Octubre Hospital in Madrid since 24 November 2006. Further, the Spanish authorities confirmed that, following an authorisation given by the Central Court of Instruction No. 2 of the *Audiencia Nacional* on 24 November 2006, medical staff at the hospital were feeding him through a naso-gastric tube. However, the letter did not address the specific conditions under which this feeding was taking place.

The CPT therefore decided that a delegation, which included a medical doctor, should visit Spain in order to obtain precise information on the management of Mr De Juana's hunger strike.

4. The delegation visited the Custody Ward of the Doce de Octubre Hospital on 14 and 15 January 2007 and interviewed Mr De Juana at length. Further, it discussed with the doctors and nurses responsible for managing his hunger strike the specifics of the medical interventions carried out. The delegation also held consultations with Mr Fernando GARCÍA NICOLÁS, President of the Criminal Chamber of the *Audiencia Nacional*, and Mr Matías MUÑOZ GAJATE, Director of the Madrid VI Prison in Aranjuez where Mr De Juana was held prior to being hospitalised. In addition, the delegation met with a representative of the Spanish Medical Association and several lawyers familiar with the case.

At the end of the visit, the CPT's delegation held talks with Ms Maria Ángeles GONZÁLES GARCÍA, Secretary General of the Ministry of Interior, and Ms Mercedes GALLIZO LLAMAS, Director-General of Penitentiary Institutions.

5. The co-operation encountered during the visit was excellent. The CPT's delegation was given rapid access to persons with whom it wished to talk, to places it wished to visit and to documentation it needed to consult (in particular, medical files). In this respect, the CPT wishes to express its appreciation of the efforts of the liaison officer, Mr Antonio CERROLAZA GÓMEZ of the Ministry of the Interior, in facilitating the delegation's work.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Preliminary remarks

6. Mr De Juana was due to be released at the end of October 2004 after 18 years of imprisonment. However, some time before the date of release, he was informed that new criminal proceedings had been initiated against him.¹ He was remanded in custody pending investigation and trial. The court hearing took place on 27 October 2006 and he was sentenced on 8 November 2006; his appeal against the sentence was due to be heard on 12 February 2007. Consequently, at the time of the visit Mr De Juana was still in detention and awaiting a final decision.

7. The delegation was informed that Mr De Juana began his hunger strike on 7 August 2006 while detained in Algeciras Prison. At the end of August 2006, he was hospitalised in the Punto de Europa Hospital in Algeciras, where for a number of days at the beginning of October 2006 he was fed against his will by means of a naso-gastric tube. On 6 October 2006, he was transferred to the better-equipped Doce de Octubre Hospital in Madrid and was accommodated in the Custody Ward, where after some days he started to ingest food. On 19 October 2006, he was discharged from the hospital and taken to the Madrid VI Prison in Aranjuez.

8. On 7 November 2006, Mr De Juana resumed his hunger strike after being informed that he would receive a lengthy new prison sentence. Indeed, the following day, on 8 November 2006, the *Audiencia Nacional* sentenced him to 12 years and 7 months' imprisonment for "threats of a terrorist nature".

9. After resuming his hunger strike, Mr De Juana initially remained in the Madrid VI Prison, where he was the subject of regular medical examinations by the prison's health-care staff. However, on Friday 24 November 2006 he was transferred to the Custody Ward of the Doce de Octubre Hospital at the request of the Director of the prison, further to a recommendation by the prison's medical staff.

On the same day, the Central Court of Instruction No. 2 of the *Audiencia Nacional* authorised the medical staff of the Doce de Octubre Hospital to administer foodstuff to him against his will and to carry out any other medical treatment deemed necessary to preserve his life.

10. Although the legal authorisation to force feed Mr De Juana was issued on 24 November 2006, it was only on 11 December 2006 that the medical staff of the hospital decided to resort to force-feeding. In the intervening period, he had been administered other medication to counter the effects of his hunger strike. The period of force-feeding lasted without interruption until 7 January 2007.

¹ The criminal proceedings were related to threats allegedly made against State officials in two articles Mr De Juana had written for the magazine "Gara" in August 2004.

In the period preceding 11 December 2006, Mr De Juana lost a significant amount of body weight; [...]. The CPT's delegation was informed that he drank only water and even refused to take any vitamins. Throughout his hunger strike, Mr De Juana remained conscious and, according to his treating doctors and nurses, competent. He was on several occasions informed about the physical consequences of his hunger strike.

11. At the time of the CPT delegation's visit, Mr De Juana was not being force fed. However, he was continuing his hunger strike and was losing weight. The medical staff of the hospital therefore told the delegation that they could not exclude that they would have to resume force-feeding in due course.

In fact, the Spanish authorities informed the Committee by letters of 13, 21 and 27 February 2007² that the force-feeding of Mr De Juana was resumed on 6 February 2007 and had continued until 23 February 2007, and that during this period he was being restrained for some 10 hours a day.

B. The management of Mr De Juana's hunger strike

1. Introduction

12. From the documentation provided to the CPT it is clear that, as from August 2006, Mr De Juana was fed against his will during three periods: a short period at the beginning of October 2006; between 11 December 2006 and 7 January 2007; and between 6 and 23 February 2007. On each occasion, the force-feeding was authorised by the *Audiencia Nacional*.

The observations of the CPT regarding the management of Mr De Juana's hunger strike concern solely the second period of force-feeding (i.e. between 11 December 2006 and 7 January 2007).

13. State authorities have a duty of care with respect to persons in their custody. This duty of care includes the protection of a detained person's life, including the prevention of suicide and of any other act by the person concerned likely to cause death or irreversible physical damage. Therefore, a decision to feed against his will a prisoner on hunger strike can in principle be justified in order to prevent the prisoner from suffering irreversible physical damage or death.

² By letter of 6 February 2007 from the President of the CPT to the Spanish authorities, the Committee had asked to receive a weekly update in respect of the hunger strike of Mr De Juana.

On the other hand, the majority of national legislatures in Europe, as well as the relevant international medical ethical codes, today consider that a competent adult may choose to refuse medical treatment even if it could save his life. Consequently, the authorities involved in the management of a hunger strike by a prisoner may often be faced with two potentially conflicting values: their duty of care to safeguard a life and the prisoner's right to physical integrity (including the right not to have a treatment imposed on him).³

It is not for the CPT to seek to resolve this conflict of values. The Committee's task is to examine whether, in practice, a person deprived of his liberty is at risk of being subjected to torture or inhuman or degrading treatment or punishment, irrespective of the position adopted by the authorities and doctors concerned.

14. If a decision is taken to force-feed a prisoner on hunger strike, in the CPT's view, such a decision should be based upon medical necessity and should be carried out under suitable conditions that reflect the medical nature of the measure. Further, the decision-making process should follow an established procedure, which contains sufficient safeguards, including independent medical decision-making. Also, legal recourse should be available and all aspects of the implementation of the decision should be adequately monitored.

The methods used to execute force-feeding should not be unnecessarily painful and should be applied with skill and minimum force. More generally, force-feeding should infringe the physical integrity of the hunger striker as little as possible. Any resort to physical constraint should be strictly limited to that which is necessary to ensure the execution of the force-feeding. Such constraint should be handled as a medical matter.

Force-feeding a prisoner without meeting the standards set out above could very well amount to inhuman or degrading treatment.

2. Establishment of medical necessity

15. In Spanish prisons, the treatment of hunger strikers is governed by a protocol entitled *Protocolo de Actuación; huelga de hambre*. This protocol states explicitly that a hunger strike does not constitute a disciplinary offence; rather, the protocol deals with a hunger strike from a medical perspective. The protocol provides for the close monitoring of the health of the hunger striker by the medical staff of the prison. It distinguishes between prisoners under the special *Fichero de Internos de Especial Seguimiento* (F.I.E.S.) regime and other prisoners, in that the monitoring of the health of a prisoner subjected to the F.I.E.S. regime is more intensive during the first five days of a hunger strike.

The CPT has difficulty in understanding the justification for the distinction made in the protocol between prisoners on a F.I.E.S. regime and other prisoners. **The Committee would like the Spanish authorities to provide a clarification on this matter.**

³ In Spain, the Constitution stresses the value of life, and this is reflected in Article 3.4 of the Penitentiary Code, which states that the life and health of an inmate should be safeguarded. Further, the Constitutional Court has decided, in four separate rulings, that prisoners on hunger strike may be force-fed.

16. The CPT was surprised to note the absence in the protocol of any mention of a psychiatric assessment of the mental health of an inmate on hunger strike, and it is noteworthy that Mr De Juana had at no stage of his hunger strike undergone a psychiatric examination. The CPT considers that such an assessment could be helpful in determining those cases where the reasons behind food refusal are of a psychiatric nature. Further, psychiatric examinations throughout the course of a hunger strike would assist the treating medical team in detecting any mental deterioration, which could affect the hunger striker's capacity to make well-informed choices about his life and health. **The CPT recommends the revision of the *Protocolo de Actuación; huelga de hambre* in the light of the above, including the introduction of an ongoing psychiatric assessment of a prisoner on hunger strike.**

17. Further, in the CPT's view, **the proper handling of a hunger strike requires the active involvement of the prison management in ensuring, for instance, that communication between the hunger striker and relevant external parties is facilitated and that a constant dialogue is pursued with the hunger striker and those persons whom he wishes to represent him.**

18. During his detention in Madrid VI Prison, Mr De Juana was the subject of daily medical examinations by the health-care staff of the establishment, with some specific medical tests (such as blood analyses and electrocardiograms) being performed several times a week. His state of health was discussed by health-care staff and prison management at a weekly meeting and more frequently when necessary.

19. An electrocardiogram taken on Friday 24 November 2006 showed [...] and an analysis of blood samples, also taken that day, indicated that [...]. With the weekend approaching, the prison medical staff feared that they would not be in a position to monitor the health of Mr De Juana as closely as his medical condition demanded, and persuaded the Director of the establishment to order a transfer to the Doce de Octubre Hospital.

Later that same day, the Director of the Madrid VI Prison requested authorisation to force-feed Mr De Juana. The request was made in accordance with the relevant provisions of the *Reglamento Penitenciario*, and in particular Article 210 (1), which provides, under certain circumstances, for treatment against the will of a prisoner after authorisation by the competent judicial authorities. The request to the competent judicial authorities (in this case, the *Audiencia Nacional*) included a medical report and was made in the evening of 24 November, shortly after 8.00 p.m., the authorisation being granted a few hours later. The *Audiencia Nacional* authorised the medical staff in charge to: "administer (..) the feeding or the medical treatment as deemed appropriate, in order to preserve his life (..). If it were necessary, it is enabled to use the minimum force necessary to allow carrying out the administration of the appropriate therapeutic treatment and feeding, by medical prescription"⁴.

⁴ Translation taken from a letter sent by the Spanish authorities to the CPT, dated 4 January 2007.

20. From the time of his arrival in the Doce de Octubre Hospital, Mr De Juana was the subject of regular medical examinations and was given medical treatment (including [...]) to counter the effects of his hunger strike. The medical staff of the Doce de Octubre Hospital did not initially have recourse to force-feeding.

However, on 11 December 2006, the medical staff of the hospital reached the conclusion that the life of Mr De Juana was in acute danger and the decision was taken to force-feed him via naso-gastric tube. This decision was taken jointly by the three doctors in charge of his treatment and was based upon [...] and weight loss of around [...] (cf. paragraph 10 above) since the beginning of his hunger strike, on 7 August 2006.

The period of force-feeding lasted continuously until 7 January 2007, when Mr De Juana was considered no longer to be in acute danger and the naso-gastric tube was removed.

In the light of the above, the CPT observed that persons entrusted with the care of Mr De Juana based their judgement to execute force-feeding on the principle of medical necessity.

3. Suitable conditions

21. At the time of the CPT's visit, Mr De Juana was being accommodated individually in a well-equipped hospital room, in the special detention unit of the hospital. He was guarded around the clock by law enforcement officials. They remained outside the room in the corridor, but could see directly into the room through a window in the upper part of the door.

Mr De Juana was allowed to receive visits from his family for 40 minutes every week, and his lawyers had unlimited access. He was not authorised to leave the room and did not have contact with other prisoners on the detention ward.

It is the CPT's understanding that the force-feeding took place in this particular room. The Committee has no particular comments in respect of the conditions in the detention unit of the hospital.

4. Independent medical decision-making

22. As mentioned above, all medical decisions related to the carrying out of the force-feeding of Mr De Juana were taken collectively by the three doctors responsible for his treatment at the Doce de Octubre Hospital. The CPT welcomes this joint decision-making process by the independent team of doctors.

5. Legal recourse and monitoring

23. As indicated in paragraph 19 above, Article 210 (1) of the Prison Regulations attributes an authorising role to the competent judicial authorities (in this case the *Audiencia Nacional*) with respect to the administration of treatment against the will of an inmate. The decision of the *Audiencia Nacional* during the night of 24 November 2006 was taken by the judge on evening duty and the decision was confirmed by the plenary on Saturday 25 November 2006. Such decisions may be subject to appeal. In fact, it is the CPT's understanding that Mr De Juana submitted an appeal, which was rejected on 4 December 2006.

24. This was only the latest in a sequence of decisions by the *Audiencia Nacional* concerning Mr De Juana's health. For instance, on 28 August 2006 it authorised his hospitalisation, the timing of which was left in the hands of the medical team of the prison. Later, on 14 September 2006, the court authorised the forced administration of therapy and food, whenever necessary to protect his life and to prevent irreversible damage to his health; the decision stated that no physical force should be used⁵. Six days later, the *Audiencia Nacional* authorised the use of minimum force if necessary to give him therapy and food; the administration of sedatives was also permitted⁶. Mr De Juana was, at that time, being detained in the Punto de Europa Hospital in Algeciras.

25. From the delegation's discussions with representatives of the *Audiencia Nacional*, it emerged that this court considered itself fully acquainted with the status of Mr De Juana's health and thus capable of issuing a well-informed authorisation to force feed him. Apparently, the *Audiencia Nacional* received updates on Mr De Juana's state of health from the Director-General of Penitentiary Institutions.

Nevertheless, the CPT's delegation noted that the 24 November 2006 decision was to a large extent motivated by previous decisions taken by the *Audiencia Nacional* in respect of Mr De Juana's hunger strike. In addition, the decision makes reference to the gradual drop in the potassium level in his blood as registered by the medical staff of the Madrid VI Prison, as this was the only information in writing provided by the Director of the Madrid VI Prison with respect to his state of health. Besides the potassium level in his blood, no other medical documentation was referred to in support of the court's authorisation to force-feed him.

In this respect it should be noted that, in the communication between the Madrid VI Prison and the *Audiencia Nacional*, the potassium level in Mr De Juana's blood was erroneously recorded [...].⁷ Apparently, the outcome of the blood test of 24 November 2006 had not been communicated properly to the Director of the Madrid VI Prison, who subsequently passed on the information to the *Audiencia Nacional*. A laboratory test carried out by the Doce de Octubre Hospital on the same day, 24 November 2006, led to yet another result: [...].

⁵ See *Parte Dispositiva* of the decision of 14 September 2006 by the *Audiencia Nacional*, *Sección Primera*, *Rollo 8/05*, *Sumario 5/05 Juzgado Central de Instrucción n.1*.

⁶ See *Parte Dispositiva* of the decision of 20 September 2006 by the *Audiencia Nacional*, *Sección Primera*, *Rollo 8/05*, *Sumario 5/05 Juzgado Central de Instrucción n.1*.

⁷ The Spanish authorities consider a normal blood level of potassium to range between 3.5 and 5.0 mmol/l.

26. When a decision to force-feed a person is taken, it is for Parties to the Convention to determine the precise nature of the system for implementing such a decision. In some countries that system is exclusively medical in character and in others, such as Spain, it also involves the intervention of a judicial authority (it being understood, of course, that there can be no question of such an authority imposing on the doctor(s) concerned a particular method of treatment). Nevertheless, whatever the system in place, it should be capable of offering sufficient protection, as indicated in paragraph 14.

From paragraph 25 above, it would appear that the *Audiencia Nacional* exercised rather limited judicial scrutiny when examining the question whether to authorise the force-feeding of Mr De Juana. Closer scrutiny might have been expected, all the more so as the authorisation to force-feed was in principle unlimited in time; the decision of 24 November 2006 would, if not quashed on appeal, remain in force throughout the period the prisoner was being accommodated at the Doce de Octubre Hospital. Consequently, force-feeding could be suspended and restarted by decision of the relevant medical staff without a new authorisation being sought. **The CPT considers that the competent judicial authority should either place a time limit on an authorisation to force-feed a prisoner or be in a position to rescind that authorisation in the event of the relevant legal criteria no longer being met.**

27. During the meeting with representatives of the *Audiencia Nacional*, the delegation was informed about the possibility of an ad hoc monitoring visit to the hospital by forensic doctors working for the *Audiencia Nacional*. Such a visit was not considered to be standard procedure and at the time of the visit no such monitoring had taken place.

The CPT considers that close monitoring by, or on behalf of, the competent judicial authorities should be an essential component of their authorising role. The court concerned should assure itself that the authorisation to force-feed an inmate is executed in a manner which is the least harmful to the physical integrity of the hunger striker and that force-feeding remains a medical necessity.

6. Methods applied (including the use of restraints)

28. On the two occasions the CPT's delegation met with Mr De Juana, he was not attached to his bed, nor was he restrained in any other manner.

29. The CPT's delegation was informed that, in order for the force-feeding to take place, a nurse inserted the naso-gastric tube, in the presence of one of the doctors. Mr De Juana had been informed that the tube would be inserted and had offered no resistance. [...].

30. During the first four days of force-feeding (between 11 and 14 December) Mr De Juana was attached to the bed by his arms and legs for almost 24 hours a day, with broad straps of white tissue. It was explained to the delegation that the lengthy period of application of restraint was determined by the necessity to introduce the liquid substance very slowly over the course of almost the whole day. The straps were applied by the nurses working in the custody ward and their use was properly registered. In case of emergency, law enforcement officials were available to offer assistance.

During the following five days (i.e. until 19 December) the force-feeding was reduced to some 14 hours per day, during which time Mr De Juana was constantly restrained.

31. On 19 December, at 6.00 a.m., the straps were removed as, according to the medical staff, Mr De Juana indicated that he would not physically resist his feeding. However, on the evening of 20 December he demanded, according to the account given to the delegation, that the straps be replaced around his limbs, and threatened to switch off the feeding equipment if he was force-fed without being strapped.

Mr De Juana contested the representation of the events by medical staff. He affirmed that he had asked to be unstrapped and did not physically oppose being fed by naso-gastric tube, as he was no longer able to bear the pain caused by the prolonged immobilisation of his limbs. He told the CPT's delegation that he never asked for the straps to be re-applied. According to him, after almost two days he felt sufficiently fit to endure being restrained again. Consequently, he had resisted the force-feeding.

Further, he stated that, although the feeding took place against his will, he considered that active physical resistance would be useless given his fragile condition and the abundant presence of law enforcement officials and nurses. Nevertheless, Mr De Juana stressed that he reiterated on a regular basis that the feeding was not in conformity with his wishes.

32. Between 20 December 2006 and 7 January 2007 Mr De Juana was restrained for a period of up to 14 hours a day.

33. On several occasions, the lack of resistance by Mr De Juana to being strapped was considered by some as amounting to implicit cooperation, and even agreement, with the treatment performed. The CPT does not share this view; the non-resistance offered by him to the means of restraint applied should not be interpreted as agreement, as he clearly expressed himself to be in disagreement with his treatment. Therefore, the CPT considers the treatment to which Mr De Juana was subjected as force-feeding.

C. Conclusion

34. The medical decision to begin force-feeding Mr De Juana was taken after a close monitoring of his health by qualified medical staff during a considerable period of time. Further, the decision to begin force-feeding was taken jointly by the three independent doctors. Therefore the criterion of medical necessity can be considered to be satisfied, within the specific legal framework in Spain. Moreover, the actual treatment was executed in a hospital under appropriate conditions.

The decision to force-feed Mr De Juana followed an established procedure, in the form of both the *Protocolo de Actuación; huelga de hambre* and Article 210 (1) of the Prison Regulations, which included the possibility of an appeal and a certain degree of monitoring. However, the CPT considers that the process of judicial scrutiny and monitoring of prisoners on hunger strike could be reinforced and that an ongoing psychiatric assessment should be introduced.

From an assessment of the methods used to execute the force-feeding, and other information provided to the CPT, the Committee gained the impression that the methods were applied with care and the use of restraints were properly recorded; the restraints were removed when they were judged to be no longer necessary.

To sum up, in the case of the force-feeding of Mr De Juana, the CPT is of the view that the various actors responsible for implementing the decision to force-feed him took into careful consideration the elements which are articulated in paragraph 14 of this report.

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Nothing in this report should be interpreted to mean that the CPT believes that it is right to force-feed a detained person. On the contrary, this Committee believes that it is not its role to pronounce on this question. Nevertheless, if a decision to force feed an inmate is taken, such a decision should at a minimum meet the criteria listed in paragraph 14 above.