



defendiendo los derechos y libertades civiles

Third party intervention in the case of Lopez Martinez v Spain

*Application no. 32897/16
European Court of Human Rights*

September 2017

Application No. 32897/16 – Lopez Martinez v. Spain

Third party intervention of Rights International Spain

1. This is a third-party intervention submitted by Rights International Spain pursuant to leave of the President of the Court granted on 12 September 2017, acting under Rule 44 § 3 of the Rules of the Court.

2. The intervener believes *Lopez Martinez* application is representative of the respondent State's systematic failure to carry out thorough, adequate and efficient investigations into allegations of torture and ill-treatment. This case provides an excellent opportunity for the Court to provide clear guidance to the respondent State on how to eliminate this structural problem. In addition, the intervener is of the opinion that fundamental safeguards against ill-treatment include an adequate identification system for members of law enforcement agencies. We invite the Court to recognize this safeguard as an essential element of the procedural protection afforded by Article 3.

3. The present intervention draws upon the standards articulated by the Court, international human rights bodies, as well as Spanish court decisions and the national Ombudsperson's recommendations. This submission will therefore address: (I) the importance of a proper and adequate identification system of members of law enforcement agencies as a fundamental safeguard and an essential element of Article 3, procedural limb; and (II) the existence of a systemic failure by the Spanish judiciary to carry out effective and thorough investigations into complaints of torture and ill-treatment.

I. **Proper and adequate identification system of law enforcement members as an essential element of Article 3**

4. States have a positive obligation under Article 3 of the Convention to put safeguards in place to protect people from torture and ill-treatment. The Court has said that this "requires by implication" that there should be an effective investigation, capable of leading to the identification and, if appropriate, the punishment of those responsible¹. If States are required to carry out official effective investigations, this implies a correlative obligation to ensure law enforcement officials are clearly and visibly identified in all circumstances when performing their duties.

5. Obstacles to effective investigations, such as inadequate or deficient identification systems of members of law enforcement agencies, "have the same practical effect as formal legal obstacles"². They "create a situation of impunity" and are therefore impermissible under Article 3³. The identification of law enforcement agents is an essential safeguard to adequately prevent torture and ill-treatment and a culture of impunity. Hence, it is a fundamental element of the

¹ ECHR, *Hristovi v. Bulgaria*, App. no. 42697/05, 11 October 2011, para. 93

² CPT, *Effective Investigation of Ill-treatment. Guidelines on European Standards.*, June 2014, p. 56.

³ *Hristovi v. Bulgaria*, para. 93.

procedural protection afforded by Article 3. This requirement is linked to the principles of transparency and accountability of police forces before the law for their actions or omissions.⁴

6. The Court's case law on unidentified police officers under Article 3 is clear. The Court has established that, "by allowing the special-unit officers to cover their faces with balaclava masks and not requiring them to wear any distinctive signs on their clothing, the domestic authorities knowingly made futile any future attempts to have them identified by the victims"⁵. Similarly, the Court has repeatedly held that where the circumstances are such that the national authorities deploy masked officers, those officers "should be required to visibly display some anonymous means of identification – for example a number or letter, thus allowing for their identification and questioning in the event of challenges to the manner in which the operation was conducted"⁶. In such cases, the Court has found that "domestic authorities deliberately created a situation of impunity" which made it impossible to identify the officers who were suspected of having committed acts of ill-treatment, thus breaching Article 3 of the Convention under its procedural limb⁷.

7. International human rights mechanisms have also highlighted the need to individually identify law enforcement officers as a critical safeguard to prevent ill-treatment and impunity. UN Special Procedures mandate-holders have insisted that to ensure responsibility for unlawful acts or omissions by officers in the context of assemblies, "law enforcement officials must be clearly and individually identifiable, for example by displaying a nameplate or number" on their uniforms⁸. The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has stated that effective ill-treatment prevention requires that all officers on duty wearing uniforms must be effectively identified in all circumstances⁹. In this sense, the CPT has repeatedly stated that "only exceptional circumstances can justify measures to conceal the identity of law enforcement officials carrying out their duties. Where such measures are applied, appropriate safeguards must be in place" in order to ensure that "the officials wearing masks or other equipment that may hamper establishing their identity can be held accountable for their actions (e.g. by means of a clearly visible number

⁴ OHCHR, Professional Training Series No. 5/Add.3 Human Rights Standards and Practice for the Police, 2004 and European Code of Police Ethics, Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001.

⁵ ECHR, *Dedovskiy and others v. Russia*, Appl. No. 7178/03, 15 May 2008, para. 91.

⁶ *Hristovi v. Bulgaria*, para 92; *Ozalp Ulusoy v. Turkey*, App. 9049/06, 4 June 2013, para 54; *Ataykaya v. Turkey*, Appl. No. 50275/08, 22 July 2014, para. 53.

⁷ *Dedovskiy and others v. Russia*, para. 91; *Hristovi v Bulgaria*, para. 93; and *Ataykaya v. Turkey*, paras. 53 and 54.

⁸ Joint report of the Special Rapporteurs on the rights to freedom of peaceful assembly and of association and on extrajudicial, summary or arbitrary executions, Doc. UN A/HRC/31/66, 4 February 2016, para 65. See also Report of Special Rapporteur Maina Kiai, Doc. UN A/HRC/20/27, 21 May 2012, para 79. In similar terms, OSCE-ODIHR - Venice Commission Guidelines on Freedom of Peaceful Assembly, para. 78.

⁹ CPT Report to Belgium on visit in 2013, CPT/Inf (2016) 13, para 14. See also CPT Report to France on visit in 2015, CPT/Inf (2017) 7, para 15.

on the uniform¹⁰”. In addition, the Council of Europe Commissioner for Human Rights has concluded that “practical and easily adoptable measures should be taken, such as the obligation for riot police officers to display identification numbers in a way which makes them visible from a distance and are brief enough that people can memorise and use them to report abuses¹¹”.

8. Both the CPT and the Commissioner’s visits to Spain have been an opportunity to review the legal framework and practice concerning this matter. The CPT has referred to a number of law enforcement agencies and situations, making recommendations: (i) to systematically inform detainees of the identity (name and/or number) of those present at interrogations, when in custody¹²; (ii) for prison officers to wear name or number tags permitting their identification¹³; (iii) to ensure that officers wear at all times some form of visible identity while on duty¹⁴; and (iv) to ensure the identification of officers taking part in expulsion or repatriation procedures, through not only a clearly distinctive badge but also a prominent identification number or name tag¹⁵. The Commissioner expressed concern about cases of police officers not wearing their identification numbers or hiding them or turning them upside down as well as by the fact that the identification numbers could not be read at a distance of more than a meter and contained too many digits thus making it very difficult to memorise¹⁶.

9. In the mission report, the Commissioner mentions as a positive aspect the “decision taken by the Ministry of the Interior in April 2013 to change the size and mode of display of the identification numbers¹⁷” of members of anti-riot units. In fact, due to the numerous complaints received on this matter, the national

¹⁰ CPT Report to Germany on visit in 2010, (CPT/Inf (2012) 6, para. 17 and CPT Report to Liechtenstein on visit in 2016, CPT/Inf (2017) 21, para 11. See also The CPT Standards, CPT/Inf/E (2002) I – Rev 2006, sec. IX Combating impunity, 14th General Report CPT/Inf(2004) 28, para. 34. Likewise, the CPT has criticized the practice of not disclosing the identity of members of particular groups of law enforcement officials in the context of criminal investigations as “unacceptable”; that if it were to persist it “would be tantamount to granting members of special and rapid intervention forces absolute immunity from criminal liability in relation to their actions while on duty. See CPT Report to Albania on visit in 2003, CPT/Inf (2006) 22, para 44.

¹¹ CoE Commissioner for Human Rights, Police abuse- a serious threat to the rule of law, Human Rights Comment, 25 February 2014.

¹² CPT Report to Spain on visit in 1994, CPT/Inf(96) 9 [Part 2], para. 70. The Spanish National Preventive Mechanism (NPM) against torture has similarly expressed concern about officers in police stations not being duly or correctly identified (see MNP 2012 annual report, para. 26; 2013 annual report, para. 24; 2014 annual report, para. 90; 2016 annual report, para. 21).

¹³ CPT Report to Spain on visit in 2003, CPT/Inf(2007) 28, para. 104. Similarly, see also MNP 2012 annual report, para. 125; 2013 annual report, para. 139; 2015 annual report, para. 55; 2016 annual report, para. 63. With respect to the identification of police officers in aliens detention centers, MNP 2011 annual report, para. 88; 2012 annual report, para. 62-63; 2013 annual report, para. 60.

¹⁴ CPT Report to Spain on visit in 2011, CPT/Inf(2013) 6, para. 106. The report refers to the Mossos d’Esquadra, the regional police in Cataluña. The CPT raised concerns regarding an operation on 27 May 2011 to evacuate Plaza de Cataluña “occupied” sin mid-May. See also, Commissioner for Human Rights report to Spain on visit in 2013, CommDH(2013)18, para. 116.

¹⁵ CPT report to Spain on visit in 2014, CPT/Inf(2015) 19 , para 34. See also MNP 2013 annual report, para. 262; 2015 annual report, para. 120 and 2016 annual report, para. 120.

¹⁶ Commissioner report to Spain, para. 120. The Commissioner urged the authorities to ensure that all law enforcement officials are easily identifiable (para. 149).

¹⁷ *Ídem*, para. 122.

Ombudsperson had opened an investigation concerning the application of the provisions of Instruction no. 13/2007 of the Secretary of State on display of the personal identification number by uniformed officers of the State security forces. During the said investigation, the authorities acknowledged that the reason why anti-riot officers were not properly identified was the fact that in certain circumstances they had to wear protective clothing, such as anti-trauma or bullet-proof vests, which did not allow for the identification number badge to be attached to them. Since these vests are worn on top of the uniform, the identification number is thus covered and not visible.

10. The Ombudsperson determined it was necessary to amend the framework of law in place and made two important recommendations. In recommendation 66/2012¹⁸, the Ombudsperson verified that the font and size of the identification badge number (30 by 10 millimeters) made it very difficult to read and recognize the numbers at the mandatory distance of 120cm¹⁹. The human rights institution continued observing difficulties and, in many cases, the impossibility to identify police officers. Consequently, in recommendation 161/2012, the Ombudsperson reiterated that the reduced dimension of the identity badge and numbers failed to serve the legal purpose of ensuring police officers can be easily and unequivocally identified by citizens. In addition to increasing the size of the identification numbers and badge, the Ombudsperson also suggested the latter should be placed in different parts of the uniform²⁰.

11. Although these recommendations were not implemented in the terms proposed by the Ombudsperson, they ultimately resulted in the approval of the 19 April 2013 Resolution by the General Directorate of the Police on the creation of the identification number for the members of police intervention units²¹. According to this Resolution, anti-collision or bullet-proof vests used by anti-riot officers shall be fitted with a high visibility number (4,5 cm long and tall on a badge 27 cm long by 6,5 cm high)²². This number containing a maximum of six digits

¹⁸ Recomendación 66/2012, de 22 de junio, formulada a la Secretaría de Estado de Seguridad del Ministerio del Interior, sobre el tamaño de los números de identificación personal de los agentes del Cuerpo Nacional de Policía y de la Guardia Civil (11015483). Rechazada.

¹⁹ The size of the badge or tag where the individual professional identity number of the police officer is engraved is 30 by 10 millimeters. This badge is pinned or attached with Velcro strap in the front part of the uniform, on the right-hand side under the emblem of the police. The regulating norm currently in force is Order INT-430-2014 of 10 March (art. 16), which repeals the previous Orders INT/2160/2008, of 17 July and INT/1376/2009, of 25 May. An example can be found in the following link: <http://www.20minutos.es/noticia/1795526/0/policia-numero/25-A-congreso/antidisturbios/> (red rectangle on the chest when the officers are not wearing vests).

²⁰ Recomendación 161/2012, de 28 de diciembre, formulada a la Secretaría de Estado de Seguridad del Ministerio del Interior, sobre identificación policial (11018475). Pendiente.

²¹ In 2014, the Ombudsperson recommended the Madrid City Council to issue a similar Resolution as the 19 April 2013 for the Madrid Local Police, including the Central Security Units. Recomendación 164/2014, de 18 de junio, formulada al Ayuntamiento de Madrid sobre identificación de los agentes de las Unidades Centrales de Seguridad (14002850).

²² Defensor del Pueblo, Resumen Informe Anual 2013, Identificación de funcionarios policiales, p. 44 (31-12-2013). The 2013 Resolution is not available from official publicly accessible sources. The authorities should promote and facilitate its publication as a matter of transparency and legal certainty. An unofficial version can be found here:

corresponds to the position of the officer within the unit (not to the individual professional identity number) and is attached with Velcro strap at the back of the vests or jackets²³. This latter point is an important shortfall that was raised by the Commissioner, who recommended alternative options, “such as placing the number on the helmets of officers, so that they can easily be read in the context of demonstrations”²⁴.

12. In 2014, the Ombudsperson’s office confirmed that shortcomings persisted concerning the duty to carry proper identification by police officers, both when they wear the mandatory uniform²⁵ and in the case of police Intervention Units²⁶. Despite the existence of the 19 April 2013 Resolution, the institution verified that implementation was lacking²⁷. Concerns also exist regarding the font used for the high visibility identification number of anti-riot police, on the grounds that one can easily confuse certain letters and numbers making it particularly difficult to read²⁸.

13. In the 2015 Annual Report, the Ombudsperson once again referred to the frequency with which citizens made complaints to the institution raising the difficulty to identify police officers²⁹. The UN Committee Against Torture in the 2015 concluding observations on Spain, noted “that the size of the identification numbers worn by the members of police action units has been increased following a recommendation by the Ombudsman”, yet expressed concern about the difficulty of identifying officers responsible for abuses. The UNCAT recommended the State party to “ensure that law enforcement officers can be properly identified at all times when performing duties for the maintenance of law and order”³⁰.

14. The issue of the size and characteristics of the identification badge number that must be worn on the uniform has not been solved. As referred to above, the 2012 recommendations issued by the Ombudsperson to increase the size of the numbers and identification badge were not implemented since the authorities did not find reasons to do so. According to the General Directorate of the Police, the identification system in place for all uniformed police officers had proved to be useful and valid in general public order situations and consequently remains unchanged.³¹

<https://fuera depalacio.wordpress.com/2013/04/26/un-poco-de-humor-que-tipo-de-letra-se-usa-en-la-nueva-identificacion-de-los-antidisturbios/>

²³ An example of the high visibility number on the back of the vests can be found in the following link: https://www.elconfidencial.com/archivos/ec/2013061369congreso_ampl.jpg

²⁴ Commissioner report to Spain, para. 122.

²⁵ This refers to the badge or tag where the individual professional identity number of the police officer is engraved.

²⁶ The high visibility number on the vest or bullet-proof jacket.

²⁷ Letter sent to the complainant J.G.R., file nº 14000660 on 18 July 2014.

²⁸ See, for example, <http://www.publico.es/tremending/2017/09/24/twitter-el-hilo-que-demuestra-que-la-identificacion-de-los-antidisturbios-esta-pensada-para-ser-ilegible/> the image on the right corresponds to the high visibility number with Terminator font where “S” and “5” are very similar.

²⁹ Defensor del Pueblo, Informe Anual 2015 y debate en las Cortes Generales (2016), pp. 223-225.

³⁰ UNCAT, Concluding observations on the sixth periodic report of Spain, CAT/C/ESP/CO/6, 29 May 2015, para. 19.

³¹ According to Amnesty International observers who attended a demonstration on 12 May 2013, even in cases where the agents wore their identification badges or tags, it was very difficult to read

15. Yet, the Ombudsperson has insisted on the need to increase the size of the identification badge number. In 2016, the institution made a recommendation to the Secretary of State for Security of the Ministry of the Interior to carry out the necessary tests to be able to objectively determine the minimum size and characteristics that the personal identification number should have in order to be read easily by citizens. In addition, it recommended to extend the use of the high visibility identification number to all actions of the police intervention units, even when they do not use anti-trauma vests³². The investigation is ongoing as the authorities have not yet fully responded on this matter³³.

II. Systemic failure to carry out effective investigations

16. International human rights bodies have recurrently concluded that Spanish courts have failed to carry out effective investigations into complaints of ill-treatment and thus issued numerous recommendations in this respect.

17. As early as 1993, the UNCAT already warned the Spanish authorities of the risk of perpetuating a culture of impunity as a consequence of their failure to carry out effective investigations³⁴. In its last concluding observations on Spain, UNCAT expressed serious concern “over reports that the Spanish authorities fail to carry out prompt, effective, impartial and thorough investigations into complaints of torture and ill treatment committed by the State party’s security forces, including use of the force by the police. In addition, from information received the authorities make little effort to prosecute alleged offenders. The Committee fears that such practices will foster a culture of impunity among law enforcement officials”³⁵.

18. Similarly, the Human Rights Committee (CCPR) has also shown its disturbance “at reports of shortcomings in the investigation of complaints and punishments” and expressed “its concern at the deficiencies in forensic assessment in cases of the investigation of human rights violations by State officials”³⁶, urging the State to “ensure that all complaints of torture and ill-treatment are investigated

the numbers because of the font size and color (golden with black letters). See España: El derecho a protestar amenazado, EUR 41/001/2014, p. 50.

³² Recomendación 20/07/2016 sobre las características del número de identificación personal de las Fuerzas y Cuerpos de Seguridad del Estado (queja número 11018475). Rechazada.

³³ Likewise, cases where police officers do not wear their identification badge on the uniform or the high visibility number on the anti-trauma vests continue to take place. See, for example, Diario Público, September 2017: <http://www.publico.es/sociedad/misterioso-motivo-impide-policia-nacional-llevar-numero-identificacion.html>

³⁴ UNCAT concluding observations on Spain, January 1, 1993, Doc. UN A/48/44(SUPP), para. 457: “The Committee also expressed its concern over the increase in the number of complaints of torture and ill-treatment; about delays in the processing of such complaints; and at the apparent impunity of perpetrators of torture”.

³⁵ UNCAT, concluding observations on Spain, para. 19; see also para. 18: “The Committee is concerned at reports alleging excessive use of the force by law enforcement officials (...) The State party should ensure the prompt, thorough and impartial investigation of all acts of brutality and excessive use of the force by law enforcement personnel and prosecute those who appear to be responsible”.

³⁶ CCPR concluding observations on of Spain, August 14, 2015, CCPR/C/ESO/C0/6, par. 14.

promptly, thoroughly and independently and that the perpetrators of such acts are brought to justice³⁷. Noting that “investigations are not always systematically carried out by the public authorities”³⁸, the CCPR has insisted on the importance “to bring to court and prosecute officials who are found to have committed such deed and to punish them accordingly”³⁹.

19. The UN Special Rapporteur on Torture and Other Cruel or Inhuman Treatment or Punishment has also recommended the Spanish authorities that “complaints and reports of torture or ill-treatment should be investigated promptly and effectively”⁴⁰, arguing that “the denial that the practice of torture or ill-treatment occurs, the deterrent, repeatedly reported to the Special Rapporteur, that allegations of torture are countered by criminal charges of defamation, and the questionable independence and impartiality of internal accountability mechanisms with regard to law enforcement officials are among the factors that contribute to the absence of an effective and prompt investigative practice and policy as regards” this issue⁴¹.

20. The Council of Europe Commissioner for Human Rights has also noted “with deep concern that the charges relating to allegations of ill-treatment inflicted by law enforcement officials are frequently dismissed by judges”⁴² and the CPT has insistently recalled the Spanish authorities that effective investigations must be “initiated promptly whenever there are grounds to believe that ill-treatment by the police may have occurred”⁴³.

21. In as many as in nine occasions in the last thirteen years⁴⁴, the Court has declared that Spanish courts had failed to carry out effective investigations into complaints of torture or ill-treatment, thus finding a violation of the procedural aspect of Article 3 of the Convention. The CCPR and the UNCAT, acting in their quasi-jurisdictional capacity, have also concluded in five occasions that Spanish judicial authorities had failed to carry out effective investigations into allegations of torture or ill-treatment⁴⁵.

³⁷ *Ibidem*.

³⁸ CCPR concluding observations on Spain, April 3, 1996, CCPR/C/79/Add. 61, par. 10.

³⁹ *Ibidem*, para. 17.

⁴⁰ Report of the UN Special Rapporteur on his visit to Spain, February 6, 2004, E/CN.4/2004/46/Add.2, para. 69.

⁴¹ *Ibidem*, para. 59.

⁴² Commissioner Report to Spain on visit in 2013, para. 132.

⁴³ CPT Report to Spain on visit in 2011, CPT/Inf(2013) 6, para. 82.

⁴⁴ ECHR *Martínez Sala et autres c. Espagne*, 2 November 2004, n° 58438/00; *San Argimiro Isasa c. Espagne*, 28 September 2010, n° 2507/07; *Beristain Ukar c. Espagne*, 8 March 2011, n° 40351/05; *Otamendi Eguiguren c. Espagne*, 16 October 2012, n° 47303/08; *B.S. c. Espagne*, 24 July 2012, n° 47159/08; *Etxebarría Caballero c. Espagne*, 7 October 2014, n° 74016/12; *Ataún Rojo c. Espagne*, 7 October 2014, n° 3344/13; *Arratibel Garciandía c. Espagne*, 5 May 2015, n° 58488/13; *Beortegui Martínez c. Espagne*, 31 May 2016, n° 36286/14.

⁴⁵ *Achabal Puertas v. Spain*, Communication n° 1945/2010, 27 March 2013, CCPR/C/107/D/1945/2010; *Blanco Abad v. Spain*, Communication n° 59/1996, 14 May 1998, CAT/C/20/D/59/1996; *Fatou Sonko v. Spain*, Communication n° 368/2008, 20 February 2012, CAT/C/47/D/368/2008; *Gallastegui Sodupe*, Communication n° 453/2011, 23 May 2012, CAT/C/48/D/435/2011.

22. It was not until 2007 that the Spanish Constitutional Court determined for the first time the existence of a violation of the duty to investigate in the cases brought before it. However, in the last ten years, the Constitutional Court has issued twelve judgements concluding there was a violation of fundamental rights for the failure to investigate complaints of torture or ill-treatment, drawing on the Court's case-law and other relevant international instruments⁴⁶.

23. The Constitutional Court "has insisted on the existence of a special mandate to carry out a thorough investigation, exhausting all measures that may be deemed useful to clarify the facts", indicating that this must be done "taking into account the concrete circumstances of each case and always bearing in mind the paucity of evidence in these offences"⁴⁷. However, the effectiveness of these decisions is limited. Indeed, the judgements of the Constitutional Court are rendered, in average, between four and six years after the complaints were initially made. Hence, although the Constitutional Court declares null and void the decisions to close investigations and orders the ordinary courts to re-open the proceedings and investigate, this delay undermines the possibilities of effective investigations being carried out.

24. As the Court has stated, the obligation to investigate complaints of torture and ill-treatment "is not an obligation of result, but of means"⁴⁸. Consequently, authorities must make genuine efforts to properly establish the relevant facts and, where appropriate, to identify and punish those responsible for ill-treatment⁴⁹.

25. However, an analysis of the Court's decisions on Spain and the case law of the Spanish Constitutional Court on this issue reveal that both investigating judges and prosecutors tend to show a passive behaviour in investigations concerning alleged ill-treatment⁵⁰.

26. Indeed, as the Commissioner for Human Rights has indicated, Spanish "investigating judges appear to rarely undertake ex officio investigations into publicised cases of alleged ill-treatment" and "they tend not to examine evidence that could substantiate allegations of ill-treatment"⁵¹. Similarly, the CPT has also concluded that, "even if such prima facie evidence of ill-treatment is submitted in writing to an investigating judge, an effective investigation would not necessarily follow"⁵².

⁴⁶ Judgements of 22 October 2007, n° 224/2007; 25 February 2008, n° 34/2008; 14 April 2008, n° 52/2008; 23 June 2008, n° 69/2008; 22 September 2008, n° 107/2008; 19 July 2010, n° 40/2010; 18 October 2010, n° 63/2010; 18 June 2012, n° 131/2012; 9 September 2013, n° 153/2013; 18 July 2016, n° 130/2016; 19 September 2016, n° 144/2016 and 24 April 2017, n° 39/2017.

⁴⁷ Judgement of the Constitutional Court, n° 130/2016, Fundamento Jurídico 2º.

⁴⁸ ECHR *Barabanshchikov v. Russia*, 8 January 2009, n° 36220/02, para. 54.

⁴⁹ CPT Guidelines, section 3.2.1, page 42.

⁵⁰ Only in the Judgement of the Constitutional Court of 9 September 2013, n° 153/2013, the Prosecutor was actively involved in the proceedings before the investigating court, requesting a number of investigative measures to be carried out and adhering to the appeal filed by the alleged victim before the *Audiencia Provincial* against the decision of the investigating Court to close the proceedings.

⁵¹ Commissioner Report to Spain on visit in 2013 para. 134.

⁵² CPT Report to Spain on visit in 2005, CPT/Inf (2007) 30, para. 48.

27. Although it is impossible to compile an exhaustive list of relevant investigative measures, international instruments and the Court's case law offer examples of the most representative and useful investigative means, namely: detailed and exhaustive statements of alleged victims, as well as medical physical and psychological examinations of alleged victims, carried out by independent and adequately trained personnel capable of identifying the causes of injuries and their consistency with the allegations⁵³. In the case of Spain, the CPT has stressed that "to qualify as effective, such an investigation must inter alia be both thorough and comprehensive; it should include, for example, a forensic medical examination, interviews with potential witnesses and, where appropriate, studying of CCTV footage"⁵⁴.

28. An analysis of the Court's judgements on Spain and the case law of the Spanish Constitutional Court on this issue shows that, in the majority of the cases, Spanish investigative courts refused to carry out even the most fundamental and straightforward investigative measures.

a.- Statement of the alleged victims

29. In the twelve cases where the Spanish Constitutional Court concluded that the investigations of complaints of ill-treatment had not met the effectiveness standard, only in two of them the investigating judge heard testimonies of the alleged victim⁵⁵. In the other ten cases, the investigating courts had closed the investigations without even hearing the complainants.

30. In the cases brought before the Court against Spain, only in three of them it is clearly stated that the investigating judge heard the alleged victims⁵⁶.

b.- Physical and psychological medical examinations

31. In the majority of cases brought to the Court or the Spanish Constitutional Court for violation of article 3, procedural limb, the proceedings were closed by the investigating courts relying exclusively on the medical reports produced by the court appointed forensic doctors who had examined the alleged victims while in police custody or in prison. No further examinations were carried out to determine the existence of physical or psychological effects or results of the alleged torture or ill-treatment.

32. In most of these cases, the investigating judges did not even cross-examine the forensic doctors to explain the circumstances in which the examination of the alleged victim took place or on the conclusions included in their reports⁵⁷.

⁵³ ECHR *Zolotorev v. Russia*, 19 September 2017, n° 13408/07, para. 48.

⁵⁴ CPT Report to Spain on visit in 2011, CPT/Inf(2013) 6, para. 157.

⁵⁵ Judgements of the Constitutional Court of 23 June 2008, n° 69/2008, and of 19 July 2010, n° 40/2010.

⁵⁶ ECHR *San Argimiro Isasa c. Espagne, Arratibel c. Espagne and Beortegui c. Espagne*.

33. It is important to note that only in two of the cases reviewed for the purposes of this submission, the investigating court ordered an expert medical physical and psychological examination⁵⁸: only in one case the expert directly examined the alleged victim⁵⁹, whereas in the other case the expert's opinion was limited to analysing the content of the medical reports produced by the forensics who had examined the victim while in police custody.

c.- Statement of the agents

34. Only in one of the cases brought before the Court, the investigating courts heard the agents who carried out the arrest or interrogation of the alleged victims or the agents against whom the complaint was filed⁶⁰.

35. Similarly, only in one of the cases that reached the Constitutional Court the investigating court called and questioned the police agents⁶¹. Not even when the identity of the agents who had arrested and interrogated the victim was known, did the judge decide to call them for questioning⁶².

d.- Witnesses' statements

36. Another common pattern in all the cases analysed in this submission is that only in one occasion the investigating judge accepted to identify and hear witnesses⁶³ –namely, the legal aid lawyer present during questioning of the alleged victim at the police station.

Lydia Vicente, Executive Director

Patricia Goicoechea, Deputy Director

⁵⁷ As an exception, in *San Argimiro Isasa, Otamendi* and in the case of the Constitutional Court n^o144/2016 the forensic medical doctors were called before the investigating Judge to give a statement.

⁵⁸ Judgement of the Constitutional Court of 23 June 2008, n^o 69/2008, and of 24 April 2017, n^o 39/2017.

⁵⁹ Judgement of the Constitutional Court n^o 39/2017.

⁶⁰ *B.S. c. Espagne*.

⁶¹ Judgement of the Constitutional Court of 22 October 2007, n^o 224/2007.

⁶² Judgement of the Constitutional Court of 9 September 2013, n^o 153/2013.

⁶³ Judgement of the Constitutional Court n^o 69/2008.