SPAIN

Follow-up - State Reporting
i) Action by Treaty Bodies

CAT, A/65/44 (2010)

Chapter IV. Follow-up to concluding observations on States parties' reports

65. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the procedure established on follow-up to concluding observations. The follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 14 May 2010, the end of the Committee's forty-fourth session.

66. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

67. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In November 2009 and May 2010, the Rapporteur presented a progress report to the Committee on the results of the procedure.

68. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

69. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of the concluding observations.

70. Since the procedure was established at the thirtieth session in May 2003, through the end of

the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that periodic reports of Chile, Latvia, Lithuania and New Zealand have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due: Republic of Moldova, Cambodia, Cameroon, Bulgaria, Uganda, Democratic Republic of the Congo, Peru, Togo, Burundi, South Africa, Tajikistan, Luxembourg, Benin, Costa Rica, Indonesia, Zambia, Lithuania (to the 2009 concluding observations), Chad, Chile, Honduras, Israel, New Zealand, Nicaragua and the Philippines.

71. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in the web pages of the Committee at each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up (http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm).

72. Of the 24 States parties that did not submit any information under the follow-up procedure as of 14 May 2010, non-respondents came from all world regions. While about one-third had reported for the first time, two-thirds were reporting for a second, third or even fourth time.

73. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

74. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties which are posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

75. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

76. Among the Rapporteur's activities in the past year, have been the following: attending the inter-committee meetings in Geneva where follow-up procedures were discussed with members from other treaty bodies, and it was decided to establish a working group on follow-up; addressing the Committee on the Elimination of Discrimination against Women at its August 2009 meeting in New York concerning aspects of the follow-up procedure; assessing responses from States parties and preparing follow-up letters to countries as warranted and updating the information collected from the follow-up procedure.

77. Additionally, the Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings, in November 2009 and later in May 2010, and specifically presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session (November 2009), one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

78. The Rapporteur also found that certain topics were more commonly raised as a part of the follow up procedure than others. Specifically, for all State parties reviewed since the follow-up procedure began, the following topics were most frequently designated:

Ensure prompt, impartial and effective investigation(s)	76 per cent
Prosecute and sanction persons responsible for abuses	61 per cent
Guarantee legal safeguards	57 per cent
Enable right to complain and have cases examined	43 per cent
Conduct training, awareness-raising	43 per cent
Ensure interrogation techniques in line with the Convention	39 per cent
Provide redress and rehabilitation	38 per cent
End gender-based violence, ensure protection of women	34 per cent
Ensure monitoring of detention facilities/visit by independent body	32 per cent
Carry out data collection on torture and ill-treatment	30 per cent
Improve condition of detention, including overcrowding	28 per cent

79. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns (illustrative, not comprehensive) have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

80. As a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The

Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for improvement.

81. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

82. The chart below details, as of 14 May 2010, the end of the Committee's forty-fourth session, the replies with respect to follow-up. This chart also includes States parties' comments to concluding observations, if any.

Follow-up procedure to concluding observations from May 2003 to May 2010

...

Forty-third session (November 2009)

State party	*Information*	*Information received (including*	*Action taken*
...			
Spain	November 2010	-	
...			

...

Follow-up - State Reporting
(ii) Action by State Party

CAT, CAT/C/ESP/CO/5/Add.1 (2011)

Responses by the Government of Spain to the concluding observations of the Committee against Torture (CAT/C/ESP/CO/5)

[19 January 2011]

A. Introduction

1. Responses to the five recommendations for which the Committee against Torture requested information in its concluding observations (CAT/C/ESP/CO/5, para. 33) after consideration of the fifth periodic report of Spain (CAT/C/ESP/5) at its forty-third session, held in November 2009, are set forth below.

B. Response to the recommendation in paragraph 10 of the concluding observations[1]

2. The Government of Spain is drafting a bill that will overhaul criminal procedure and incorporate the commitments undertaken by the Government in the Human Rights Plan. The bill will be introduced in Parliament in the course of 2011.

C. Response to the recommendation in paragraph 12 of the concluding observations[2]

3. The need for incommunicado detention stems from the complexity and potential international ramifications of investigating and elucidating criminal acts committed by armed groups and terrorist or rebel organizations. However, in order to avoid prejudice to the rights of detainees, incommunicado detention in Spain is subject to all procedural guarantees within a rigorous legal system.

4. Precisely because of the strictness of the relevant regulations, Spain's system of incommunicado detention complies fully with the requisites of the international treaties signed by Spain, and its legality has been upheld by ordinary courts and the Constitutional Court, which is the highest authority in the land for ensuring respect for human rights.

5. In its judgement No. 196/87 of 11 December, the Constitutional Court ruled that "the decision to place a detainee in incommunicado detention, when made under the conditions set out by law, indirectly protects the values enshrined in the Spanish Constitution and enables the State to discharge its constitutional duty to provide security to its citizens, thereby increasing their trust in the functional capabilities of State institutions". The judgement was handed down in a case in which the constitutionality of the regulations governing incommunicado detention had been challenged. The Constitutional Court has since reiterated the substance of that ruling in subsequent cases in which the question has been raised, as in its judgement No. 7/2004 of 9 February.

6. The safeguards built into the system of incommunicado detention require, firstly, a judicial authorization by reasoned decision issued in the first 24 hours of detention and an individual assessment by the judge before he or she orders that a detainee or convicted prisoner be held incommunicado. Secondly, they require constant monitoring of the detainee from the outset by the judicial authorities or, where appropriate, by the prosecution service, which must be provided with details of the place of confinement and the public officials involved – for which purpose it has the necessary means and is assisted by the relevant forensic doctors. In any event, the judge who authorizes the incommunicado detention, or the judge of the jurisdiction in which the detainee is held, keeps the personal situation of the detainee under direct, ongoing supervision.

7. It should be noted that a detainee may not be held incommunicado for up to 13 days, as stated by the Committee in its conclusions, but rather, in compliance with the Constitution, for the same amount of time as pretrial detention (72 hours, or 120 hours in cases of terrorism and with judicial authorization, as stipulated in article 17.2) plus another 5 days once the detainee has been brought before a court, if the judge so orders in a reasoned decision.

8. In requesting assurances that detainees have the right to appoint a lawyer of their own choosing, the Committee raises doubts about the legal provision that guarantees the detainee the assistance of an assigned counsel. This issue has already been raised before the Constitutional Court. In its judgement No. 196/1987, the court ruled that "a lawyer's assistance fulfils different functions in the detention phase and the trial phase" and that, "although it was especially important during the trial for defendants to be able to trust their legal counsel and therefore essential that they choose their counsel freely, the role of the lawyer during the period of detention is to ensure that the constitutional rights of detainees are respected, that they are not subjected to duress or treatment incompatible with their dignity and freedom to testify, and that they receive proper technical advice on how to behave during questioning, including when to remain silent". The Constitutional Court also underlined that, "once the period of incommunicado detention, which must by law be brief, is over, detainees recover the right to appoint legal counsel of their choice". This aspect of incommunicado detention has thus already been examined by the Constitutional Court, which has ruled that "an assigned counsel guarantees the rights of detainees in the same way as a lawyer of their own choice".

9. The European Court of Human Rights is of the same view and distinguishes between legal assistance in pretrial proceedings and during the trial itself. During pretrial proceedings, limiting detainees' right to appoint their own counsel is justified when there is reasonable cause to believe, for instance, that they might alert persons suspected of involvement in the offence who have not yet been arrested (judgement of 16 October 2001, *Brennan v. the United Kingdom*).

10. Moreover, in order to achieve an acceptable balance between the need to prevent terrorist attacks and the detainee's defence, legislation stipulates that assigned legal counsel be appointed by bar associations, professional bodies that are fully independent of the authorities (the State's involvement is limited to paying the lawyer's fees upon conclusion of the trial). The legislation requires that the lawyer chosen meet certain prerequisites in terms of professional qualifications (a minimum of 10 years of professional experience and proven competence in criminal matters).

11. To claim that the legal assistance of assigned counsel fails to ensure respect for detainees'

rights as effectively as that provided by a freely chosen counsel would be tantamount to calling into question the entire Spanish system of legal assistance, which relies on assigned legal counsel appointed by the bar associations. It should be borne in mind that defendants without financial means receive assistance not only during the period of pretrial investigation but also throughout their trial, and that no one has ever suggested that this system fails to respect the basic right to legal assistance.

12. On the other hand, assigned counsel are generally not allowed to conduct private interviews with detainees because, given the highly organized nature of terrorist groups, detainees who are members of such groups sometimes threaten and apply pressure to lawyers to act as couriers and deliver information that could endanger anti-terrorist operations.

13. Finally, it would be ingenuous not to recognize that the network that provides support and legal assistance to members of the ETA terrorist organization delivers messages and threats to detainees themselves. For that reason, preventing contact between them and the organization's network of lawyers is often necessary in order to ensure that they can make statements freely and without coercion. Not infrequently, detainees held for terrorist offences appoint persons as trusted counsel who are so closely associated with the armed group that they themselves are convicted of being members (most recently in April 2010, when four lawyers who regularly defend ETA terrorists and have acted as couriers for the organization and organized the escape of some of its members were arrested on suspicion of belonging to a terrorist organization).

14. Similarly, the Committee requests assurances in its recommendations that detainees may be examined by a doctor of their choice. In the Spanish legal system, detainees, regardless of whether they are held incommunicado, are examined by forensic doctors, medical professionals with years of specialized experience in determining the causes of death and injury, as repeatedly recommended by all international bodies responsible for the protection of detainees' rights.

15. Forensic doctors in Spain are employed in the justice system after passing public examinations, based on merit and ability, and taking into account their technical and legal expertise. Neither the judge nor government authorities may send a particular forensic doctor to examine a specific detainee, as that task is carried out by the doctor already assigned to the case in the court concerned. The professional conduct of forensic doctors is guided by the same ethical standards that apply to the rest of the medical profession and they may not receive instructions from either the judge or government authorities.

16. In order to ensure greater protection of detainees held incommunicado, the Human Rights Plan provides for the drafting by the Ministry of Justice of a protocol that will set forth the minimum medical examinations and standardized reports that must be provided in such cases. Should a medical examination by a doctor reveal any outward signs of violence, this fact must appear in an injuries report, which is then forwarded to the police court. Subsequently, the detainee is examined by a forensic doctor in the police court and a new medical report is prepared. The Human Rights Plan also provides for the adoption of the necessary measures to ensure that a detainee held incommunicado is examined not only by the forensic doctor but also by another doctor from the public health service who has been freely appointed by the national mechanism for the prevention of torture.

17. State Secretariat for Security Instruction No. 12/2007, on the conduct expected of members of the State security forces with a view to guaranteeing the rights of persons detained or in police custody, contains the following provision that applies to all detainees, including those held incommunicado: "In the event that he/she shows any injury, whether or not attributable to the detention, or claims to have such an injury, the detainee shall be immediately transferred to a health centre for assessment."

18. Finally, following the amendments introduced in the Criminal Procedure Act by Act No. 15/2003 of 25 November (in force since 27 November 2003), prisoners held incommunicado may request a medical examination by a second forensic doctor appointed by the competent judge or court in order to establish the facts. Furthermore, since December 2006 half the courts that investigate offences by armed groups have applied a protocol under which detainees may request that medical examinations be carried out jointly by a doctor of their choice and the court forensic doctor.

19. It cannot therefore be said that Spain has not adopted effective measures to prevent the violation of the rights of detainees held incommunicado. The presence of a forensic doctor is, it should be stressed again, at least as effective for the prevention and detection of possible ill-treatment as that of any other medical practitioner.

20. Thirdly, the Committee requests assurances in its recommendation that a family member of the detainee is informed of their arrest and place of detention. That would, however, defeat the point of incommunicado detention, the aim of which, as set out above, is to prevent the detainee from alerting other members of the armed group and so hampering investigations.

21. It should be remembered that periods of incommunicado detention are, by law, very brief. Moreover, just as in the case of the courts that allow detainees to request medical examinations by doctors of their own choice, three of the six courts that investigate terrorist offences in Spain have, since December 2006, applied a protocol under which family members are informed of the place of detention and any transfers that take place.

22. Fourthly and lastly, the Committee recommends that video surveillance systems be installed in all detention centres run by the State security forces. Such systems are already being installed in the common areas and passageways (used by detainees, forensic staff, lawyers, eyewitnesses, judicial commissions and kitchen staff) of detention facilities run by the National Police and Guardia Civil, in more than half of which such systems are already in place, as well as those run by the regional Basque and Catalan police forces. Cameras are installed in interrogation rooms if so recommended by the investigating judge, although the legal validity of statements taken is, in any case, verified by the lawyer who witnesses them.

23. In compliance with recommendations made by international human rights bodies, the Human Rights Plan of the Spanish Government includes the following measure (No. 97 b): "Due consideration shall be given to the regulatory and technical measures needed to comply with the recommendation of human rights bodies that the detention of prisoners held incommunicado in police facilities be recorded by video or other audio-visual method for the entirety of its duration."

24. The State security forces comply fully with all court rulings (usually made by the National High Court) that order the video recording of detainees held incommunicado. To that effect, they have been provided with the necessary equipment, such as the advanced recording system installed in common areas and rooms in which judicial proceedings are carried out (the taking of statements, eyewitness identification, release of confiscated effects) in the General Commissariat of Information in Madrid, and the portable recorders used by the Guardia Civil.

25. Again, it should be noted that, since December 2006, three out of the six courts that investigate terrorist offences have required the recording, on DVD or other audio-visual equipment, in police stations of the place and conditions of detention of each detainee during the entire time they are held incommunicado. The recordings are available to the court.

26. It should be remembered that the incommunicado detention regime is applied only in exceptional circumstances in Spain and that Spain is by no means the only country that has such a regime. In fact, only 0.05 per cent of detainees were placed in incommunicado detention in 2008, while in 2009 no judge ordered more than five days of incommunicado detention in any one case. Moreover, most European countries employ similar regimes even though they do not face the same problem of active terrorism as Spain, where more than 1,000 people have been killed by terrorists and the biggest terrorist attack in the history of Europe took place on 11 March 2004, claiming the lives of around 200 people and wounding 2,000 more. In France, the investigating judge may decide not to authorize visits to remand prisoners for a period of up to four years; in Germany, incommunicado detention may be extended to cover the entire period spent in prison, given that no limit on its duration is established under the law; in the United Kingdom of Great Britain and Northern Ireland, the decision to hold someone in incommunicado detention may be taken by a police officer, who is not obliged to inform the judge of that decision until 48 hours have passed since the person was detained.

D. Response to the recommendation in paragraph 12 of the concluding observations[3]

27. On the basis of the report by the Ombudsman on centres for children with behavioural or social problems, which contained a series of observations and recommendations with regard to conditions it had found in various such centres in the Autonomous Communities, it was decided at the Social Affairs Sectoral Conference that the Joint Commission of Directors General of Child Services of the Autonomous Communities should agree on a code of practice to serve as the basis for a more systematic professional response and easier assessment, with a view to guaranteeing the rights of such children in each Autonomous Community, as well as adapting the codes of practice and procedures of the Communities to the particular circumstances of each centre and the child's situation.

28. Moreover, the Congress of Deputies, during a general policy debate on the State of the Nation on 19 May 2009, passed a resolution that called on the Government, in the context of policy on child welfare, to "draft a basic code of practice jointly with the Autonomous Communities on the care of children with social problems living in children's centres".

29. After several meetings and studies carried out by the above-mentioned Joint Commission, a

code of practice was agreed upon at a meeting on 20 May 2010.

30. The code states expressly that, "independently of inspections that might be carried out by other institutions (such as the Ombudsman, the Ombudsman's regional counterparts and the Public Prosecution Service (*Ministerio Fiscal*)), the Child Protection Authority shall be responsible for overseeing and inspecting the centres and reviewing the measure, sending reports to the juvenile section of the prosecution services regularly or when circumstances warrant it. Inspections of the centres should be particularly frequent."

31. Distinguished members of the Minors Coordination Bureau of the Prosecutor-General's Office (*Fiscalía General del Estado*) assisted in drafting the code, making important contributions, proposals and suggestions that considerably improved the final version of the code, which has strengthened the framework of judicial guarantees and rights of the children concerned.

32. Once finalized, the code was sent to all the Autonomous Communities, as well as to the Prosecutor-General's Office, Amnesty International and the Ombudsman.

33. A special Senate committee on the question of domestic adoption and related subjects concluded its work with the publication of a final report and recommendations on 17 November 2010, along with conclusions and recommendations by the Senate and proposals by the Prosecutor-General's Office and the Ombudsman. There are plans to establish specialized centres and specific programmes, approve a State framework to guarantee the rights of children (standardization of internal rules, punishments, appeals, medical treatment and medicines, etc.), review the management system in children's centres, bolster supervision by the Autonomous Communities of the public administration, public prosecution service and inspection and oversight bodies, and establish or, where appropriate, improve the quality of mental health units for children and young people.

E. Response to the recommendation in paragraph 23 of the concluding observations[6]

34. Measure 102 of the Human Rights Plan adopted by the Government states: "The Ministry of the Interior shall design a computer application capable, at the least, of collating current data on cases that might entail abuses or violations of the rights of persons in police custody."

35. The concept of "police custody" includes any situation in which the State security forces take a citizen into custody or take some other action against them (for example depriving a person of their liberty or freedom of movement, or even breathalyzing them). The computer application will become operational in the coming months after an initial training period for users and administrators.

36. The following kinds of conduct will be included in the database:

(a) Homicide in its various forms;
(b) Assault and battery;
(c) Illegal detention;

(d) Threats, coercion, insults, degrading treatment, etc.;
(e) Torture, ill-treatment, etc.;
(f) Acts against sexual freedom and integrity;
(g) Acts against privacy, the right to one's image and inviolability of the home;
(h) Offences against the rights of foreign citizens;
(i) Abuse of public office, perversion of the course of justice, bribery and acts against the public administration;
(j) Concealment and obstruction of justice;
(k) Acts contrary to the fundamental rights and civil liberties enshrined in the Constitution;
(l) Acts of grave disrespect to citizens, especially verbal and physical assaults;
(m) Other.

37. The application will enable the analysis and use of statistics on this kind of conduct and the preparation of reports by the State Secretariat for Security.

F. Response to the recommendation in paragraph 25 of the concluding observations[5]

38. Organization Act No. 2/2009 of 11 December, which amended Organization Act No. 4/2000 of 11 January, on the rights and freedoms of aliens in Spain and their social integration, included new articles on gender violence and human trafficking, giving effect to the recommendation by the Committee against Torture in the following fashion.

39. Article 19, on the effects of family reunification in special circumstances, stipulates:

> 1. Residence permits granted on the grounds of family reunification to spouses and children shall allow their holders to seek employment, on reaching working age, without the need for further formalities.
>
> 2. Spouses granted residence for the purpose of family reunification shall be entitled to apply independently for a residence permit when they possess sufficient means to meet their own needs.
>
> A female spouse granted residence for the purpose of family reunification who falls victim to gender violence may, without being required to fulfil the above condition, be issued with a residence and work permit in her own right from the moment that she is granted a protection order or upon presentation of a report from the Public Prosecution Service indicating that there is evidence of gender violence.

40. Article 31 bis, on temporary residence and work for foreign women who are victims of gender violence, states:

> 1. The rights of foreign women who fall victim to gender violence, whatever their administrative status, are guaranteed under Organization Act No. 1/2004 of 28 December on comprehensive protection measures against gender violence, as are the protection and security measures provided for under existing legislation.

2. If, when a case of gender violence against a foreign woman is reported, it emerges that she is in an irregular situation, punitive administrative proceedings initiated against her for a violation of article 53.1.a of this Act shall be suspended by the investigating judge until completion of the criminal proceedings.

3. A foreign woman who finds herself in the situation described in the previous paragraph may apply for a residence and work permit on grounds of exceptional circumstances from the moment that she is granted a protection order or upon presentation of a report from the Public Prosecution Service indicating that there is evidence of gender violence. The permit shall not be granted until completion of the criminal proceedings.

Notwithstanding the foregoing, the authorities responsible for issuing permits on grounds of exceptional circumstances may grant the foreign woman a temporary residence and work permit. Any such temporary permit shall expire upon acceptance or final rejection of the application for a permit on grounds of exceptional circumstances.

4. If criminal proceedings result in a conviction, the woman concerned shall be notified that she has been granted the temporary residence and work permit for which she has applied. If she has not applied for one, she shall be informed that she is eligible for a residence and work permit on grounds of exceptional circumstances and shall be informed of the deadline for submitting an application.

Should the criminal proceedings fail to conclude that there has been gender violence, the suspended punitive administrative proceedings shall be resumed.

41. Finally, article 59 bis, on victims of human trafficking, stipulates:

1. The relevant authorities shall take the necessary steps to identify victims of human trafficking as provided for in article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005.

2. When the administrative bodies responsible for carrying out investigations relating to punitive proceedings consider that there are reasonable grounds for believing that a foreign person in an irregular situation has been the victim of human trafficking, they shall inform the person concerned of the provisions of this article and submit a proposal for consideration by the competent authority that he or she be granted a period of time for recovery and reflection, in accordance with the procedure set forth in the regulations.

That period of recovery and reflection shall last at least 30 days and should be sufficient to enable the victim to decide whether to cooperate with the authorities in the investigation of the offence and, where appropriate, in criminal proceedings. During this period, the person shall be granted temporary leave to remain and any punitive administrative proceedings initiated against him or her or, where appropriate, the execution of any deportation or refoulement orders shall be suspended. The competent authorities shall also be responsible for meeting the subsistence needs of the person

concerned and, where necessary, providing security and protection.

3. The period of recovery and reflection may be denied or revoked for reasons of public order or when it is found that the status of victim has been wrongly invoked.

4. The competent authority may declare victims exempt from administrative liability and grant them the choice of assisted return to the country whence they came or a residence and work permit on grounds of exceptional circumstances, if it considers this necessary in view of their cooperation during investigations or criminal proceedings or their personal situation, and opportunities for their social integration, in accordance with the provisions of this Act. While the proceedings to grant a residence and work permit on grounds of exceptional circumstances are under way, they may be granted a temporary residence permit under the terms of the regulations.

In the processing of the permit referred to in the previous paragraph, an exemption may be made for documents whose procurement might entail a risk to the victim.

5. The provisions of this article shall also apply to foreign minors, whose age and maturity must be taken into account and, in any event, whose best interests take precedence over other concerns.

6. Cooperation with non-profit non-governmental organizations whose aim is to assist and protect victims of human trafficking shall be regulated.

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[1] Response prepared by the Ministry of Justice.

[2] Response prepared by the Ministry of Justice and Ministry of the Interior.

[3] Response prepared by the Ministry of Health, Social Policy and Equality.

[4] Response prepared by the Ministry of the Interior.

[5] Response prepared by the Ministry of Health, Social Policy and Equality.