

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Spain.

## **APPENDIX**

ECRI wishes to point out that the analysis contained in its second report on Spain, is dated 13 December 2002, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Spain to engage in a process of confidential dialogue with ECRI on its draft text on Spain and a number of his comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the governmental authorities of Spain expressly requested that the following observations on their part be reproduced as an appendix to ECRI's report.

### ***Observations provided by the Authorities of Spain concerning ECRI'S report on Spain***

#### « I.- General remarks

1.- The Spanish Authorities express their gratitude to the ECRI for the interest shown in analysing the situation of Racism and Intolerance in Spain, as well as the effort expended in drawing up the report hereby replied to.

2.- Likewise, note is taken of the recommendations made in the Report.

3.- The Spanish Authorities hoped that the paper would be more precise in its comments and value judgements that, frequently, are imprecise, inconsistent and not supported by specific data. Set phrases such as "there have been reports", "ECRI expresses its concern at" are frequently repeated. The number of cases causing concern or the percentage thereof are not quantified.

4.- The Spanish Authorities consider that in order to confer more muscle to the opinions contained in the Report, with reference to certain situations in the Canary Islands (Lanzarote and Fuerteventura) and at Ceuta and Melilla it would have been very convenient for a member of the ECRI Delegation, which visited Madrid, to have travelled to some of the aforesaid places so as to verify the exactitude of the reports received.

#### II.- Specific comments

B4.- Even though Article 14 of the Spanish Constitution states that "Spaniards are equal before the Law", Article 13.1 lays down that "aliens shall enjoy in Spain the public freedoms guaranteed under the present Title (that includes Article 14) under the terms treaties and laws may establish". Hence, the criticisms contained, in the aforesaid Report, on the Spanish Constitution, in the sense that it does not recognise equality before the law of aliens are not justified.

B6.- International Law, both conventional and customary, does not impose a general obligation on States to recognise to illegal foreign workers the right to associate, strike

and join a trade union. What Organic Act 8/2000, on the rights and freedoms of aliens in Spain and their social integration, aims at is to do is to integrate aliens within Spanish society, but in a legal context, as in the case of Spaniards, since their marginalisation would imply their exclusion.

C12.- The scarce application, according to the ECRI; of the criminal provisions combating discrimination may appear so as a consequence of statistics that do not distinguish between different types of cases. It could also be due to the inexistence of so many cases as the ECRI assumes that, in turn, does not mention a scale to decide whether the percentage is high or not or even what the percentage in question is. As recent examples of the practical application of the criminal provisions one could mention:

- Judgement of the Constitutional Court dated 11<sup>th</sup> November 1991
- Decree of the Provincial Court of Barcelona number 1547/2000
- Judgement of the Supreme Court dated 12<sup>th</sup> July 2001
- Judgement of the Constitutional Court dated 29<sup>th</sup> January 2001
- Judgement of the Provincial Court of Madrid dated 21<sup>st</sup> June 2001

D14.- Apart from the Defensor del Pueblo (Ombudsman), other Institutions have been created dealing with matters such as Intolerance, Racism, Immigrants, etc., that the Report seems to ignore: i.e. the Higher Council on Immigration Policy for the Co-ordination of the Public Administrations, created by Organic Act 4/2000, dated 11<sup>th</sup> January, the Forum for the Social Integration of Immigrants (pursuant to Article 70 of Organic Act 4/2000) and the Permanent Observatory on Immigration (completing the Forum).

H23.-The opinion voiced that guarantees do not exist that an asylum request shall be analysed independently has to be absolutely rejected. All asylum requests, submitted anywhere in Spain, are scrutinised pursuant to Act 5/1984, dated 26<sup>th</sup> March, subsequently amended by Act 9/1994. Provisions regulating procedures are highly detailed. All persons have access to legal assistance and to an interpreter, with the intervention of the UNHCR. Leaflets in several languages, explaining the asylum procedure, are made available at airports and border cross points. It is simply not true that discriminatory situations exist in the Canary Islands and at Ceuta and Melilla. Please refer, in this context, to paragraph I. "general remarks" number 4.

H24.- The number of asylum requests aggregated, in 2001, 9,490 and, in 2002, 6,236, a decline of 34.28 %, following a very similar trend to that experienced in the 29 most developed countries in the world. It ought to be pointed out that, in 90 % of cases, the decision taken by the Spanish Office of Asylum and Refugees coincided with the opinion expressed by the UNHCR.

I26-27.- The Spanish Constitution, the case law handed down by the Constitutional Court and current legislation in Spain enshrine recognition of the principle of non-discrimination for reasons of race. Immigration laws and regulations provide for antidiscriminatory measures to combat Racism and Intolerance. Thus, the Spanish legal system is fully positioned against racist attitudes and counts with a full battery of tools to fight racist violence, perpetrated both by private individuals and by civil servants. The fact that the GRECO Programme (dated 30<sup>th</sup> March 2001) contains measures against Racism and Discrimination ought to be recalled.

I28.- During the El Ejido events, the police acted to guarantee public order and security. All complaints lodged by immigrants were dealt with and some are pending a judicial decision. From the very beginning, measures of a social nature were adopted, with a wide political consensus, to improve the lot of immigrants in the area.

As far as the indemnity payments to both immigrants and Spaniards for the damages that ensued are concerned, it ought to be pointed out that the 213 claims lodged had allowed 275 expert valuations to be carried out and, only in the first few weeks after the incidents, 231 cheques were handed out for an aggregate value of € 480,000. Apart from this, 42 modules were installed to re-lodge immigrants, € 10,000 were earmarked for an active regularisation campaign of immigrants and the competent public authorities implemented a programme including the restoration of farmhouses, rented and pre-fabricated homes, temporary lodgings for seasonal workers and social dwellings for social re-groupings. The most representative agrarian organisation got involved in the housing programme.

J32.- With reference to the teaching of Spanish to immigrants, our educational system adopts the position of giving priority to immediate integration.

This linguistic support falls within the domain of the Autonomous Communities. Thus, in the case of Madrid, for instance, an "Itinerant Support Service for Immigrant Students" has been established, providing support and advise to ease the educational incorporation of immigrant students joining classes during the academic year, especially when such students do not have a full command of Spanish.

K34 – 35 With reference to the specific measures adopted to combat discrimination in the spheres of employment and training, directed at vulnerable groups like Roma/ Gypsies and immigrants, the following could be underlined:

Regulation of migratory flows: the contingent of new foreign workers for 2002 aggregated 32,079 job offers; of these 10,854 were for stable jobs and 21,195 for seasonal ones.

As a continuation of the "Employment Promotion Programme for the Jobless in a Social Exclusion Situation", firms employing these workers shall enjoy a rebate of 65 %, during two years in their social security contributions. This shall benefit more than 4,000 employees.

Inclusion of immigrants, as a group, in training contracts, pursuant to Act 12/2001, dated 9<sup>th</sup> July, on urgent measures to reform the labour market to increase employment and improve the quality thereof.

K37.- With reference to certain opinions, within Spanish society, on the risk of multiculturalism (several cultures co-existing separately) this may be due that this notion is rejected in favour of the intercultural integration model that is one of the objectives of Spanish immigration policy.

The Spanish authorities wish to make clear that the requirements and procedures to enter, reside and work in Spain are identical for all aliens not members of the EU and the EEA, regardless absolutely of their race or religion. Any hint of differences in treatment in certain Spanish regions lack any veracity whatsoever.

M38.- It is totally wrong to say that police or administrative controls exist in Spain specially directed at persons of any ethnic minority.

In addition, the ECRI is invited to take note that, at the General Directorate for the Police, an Internal Affairs Unit exists to investigate irregular behaviour on the part of police officers. Within the Police Force, situations of impunity do not arise with reference to known irregular or criminal behaviour and if these types of behaviour do occur, the legal system is endowed with the necessary legal mechanisms to investigate them, collect evidence thereof and impose penalties.

M39.- The statement contained in the Report on ill treatment and abuse by police officers has not been verified in the least. One datum in this respect: during the last two years there have been hundreds of demonstrations, public gatherings and sit-ins of immigrants, all in the most complete freedom, even those not previously notified to the governmental authority.

N41.- ECRI's insistence on its interpretation of the Spanish Constitution, concerning data protection, is surprising given the almost general consensus existing on this matter in Spain. Article 16.2 of the Spanish Constitution establishes that "nobody may be obliged to make statements pertaining to his ideology, religion or beliefs" so that the creation of special population censuses based on race, ethnicity, religion etc. could be unconstitutional. Also, data referring to these matters are deemed to require "special protection" pursuant to Organic Act 15/1999, on the Protection of Personal Data and, thus, cannot be used without the data subject's explicit consent; additionally, the Spanish Data Protection Agency is entrusted with ensuring this is observed.

All this, therefore, impedes drawing up specific censuses on the Roma/Gypsy population. The ECRI is hereby invited to reconsider its position, also recalling that a text translated from Spanish was handed over to the Delegation during the last visit.

P43.- As already stated in paragraph N 41, data concerning membership of a racial, ethnic, religious, etc. group are constitutionally protected so that these variables do not appear in official statistics referring to population, employment, education, social

protection, etc. Information on these matters is obtained from research and sociological studies that supply basic data on the Roma/Gypsy population.

P45.- Successive “Employment Action Plans” foresee specific employment and training measures for the most vulnerable groups, amongst them the Roma/Gypsy community. The Roma Development Programme finances programmes to improve education of Roma/Gypsy organisations.

P46.- The Roma Development Programme finances activities related to access to an adequate dwelling and the re-housing of the Roma/Gypsy population by means of integral social programmes of information, advice, accompaniment during the relocation and adaptation process to the new dwelling, relations with neighbours, school support, community obligations, etc.”.

P47.- The Spanish authorities are making a continuing effort to integrate the Roma/Gypsy population within the National Health System finding it necessary to overcome, at times, a certain lack of interest on the part of some sectors of the aforesaid community. Integral Programmes exist, financed by the General State Administration and the Autonomous Communities, with the aim of introducing health improvements including: promotion of vaccination, paediatric and family planning controls, health education courses, diet, hygiene, minor domestic accidents, etc.

P49.- No specific legal framework exists, in Spain, for the promotion of Roma/ Gypsy culture and traditions. Nevertheless, there are numerous educational, social and cultural programmes financed by the Ministries and the Autonomous Communities, whose contents promote and recognise Roma/Gypsy culture: holding of the “Roma/Gypsy Day”, in some Autonomous Communities (Andalusia, Aragon, etc.), Roma/Gypsy socio-cultural centres (Granada), House of Cultures (Saragossa), Seminars, Meetings, Conferences, Exhibitions, Roma /Gypsy Fairs (Zafra and Jaén), etc.

P50.-It is simply not true that the Roma Development Programme is “overly oriented towards delivering social assistance”. This is an informative error here since none of the Programme’s activities involve financial assistance or the like, but, rather, the provision of information and guidance, social and educational work with families, the search of mechanism of social and job insertion, recognition of their cultural wealth, etc.

As far as involvement of Roma/Gypsies in approving programmes is concerned, the active presence of users in designing, applying, implementing and evaluating the actions directed at the Roma/Gypsy population is, precisely, one of the criteria used. A Consultative Commission exists for the Roma Development Programme, with representatives of the Ministry of Employment and Social Affairs and nine Roma/Gypsy organisations with a recognised track record.

P51.- The study- evaluation of the Roma Development Programme, carried out last year by the Universidad Complutense de Madrid, in which the Public Administration, ONGs, experts both Roma/Gypsy and not have participated. These have expressed their opinions on the Project’s record of accomplishment since the inception thereof.

In the light of the results and methodologies included in the report, the Programme's objectives, contents and methodology shall be re-considered to improve on the weak points thereof and in order to assume new challenges for the future, both short- and medium- term.

Q53.-It is convenient to point out here the existence of the "Permanent Campaign in Favour of Intercultural Coexistence and against Racism and Intolerance"; its slogan is "Live and Co-exist". This campaign is one of the five axes agreed at the Sectorial Conference of Social Affairs" (19<sup>th</sup> February 2001) with the social integration programmes with immigrants. Since 1999, the Fundación Iberoamérica-Europa carries out quarterly reviews on the treatment of both racism and immigration on the wireless, the press and on television. In addition, the "Movement against Intolerance" draws up, on a quarterly basis, a report on this subject.

Q54.- The renewal of work and residence permits that can be refused if the circumstances permitting such a renewal are not present, pursuant to the current immigration implementing regulations. Nevertheless, even in the event of refusing a renewal a foreigner may obtain a residence permit, provided he/she fulfils the conditions laid down.

Q55.- It is simply not true that, recently, the competence of the Forum for the Social Integration of Immigrants has been weakened or that civil society is not duly represented thereat. The Forum includes 24 members, of which 16 represent associations of immigrants and refugees or support organisations and the 8 remaining ones belong to the Public Administrations. Also, the Forum's objectives and functions remain unaltered.

Q56.- The affirmation that the implementation in practice of Organic Act 4/2000, and implementing regulations, varies considerably in different regions of the country lacks any basis and is not argued in any way. Precisely one of the essential characteristics of Spanish immigration laws and regulations, widely recognised by those affected thereby, is the highly detailed description of the administrative processes involved.

Q57.- Again we are faced with a comment that does not provide the data on which it is based and with which we cannot concur. All aliens arriving illegally, anywhere in Spain, receive the same treatment laid down in current legislation. Internment Centres are installations, devoid of a penitentiary nature, where those foreigners whose expulsion procedure is in course are interned for a maximum period of 40 days, with the prior authorisation of the competent judge.

The Centres at Lanzarote and Fuerteventura are being enlarged and improved, are endowed with adequate sanitary facilities and the medical service is manned by the Spanish Red Cross. Likewise, legal assistance and interpreters are made available.

It would have been very convenient for the ECRI Delegation to visit the aforesaid Centres.

Q58.- Unaccompanied foreign children in Spain receive the same treatment as Spanish children in danger, pursuant to Organic Act 4/2000, amended by Organic Act 8/2000, and implementing regulations, and to Organic Act 1/1996, on the legal protection of children.

It is totally incorrect to refer to the “removal from the country” since this administrative penalty cannot be applied in Spain to unaccompanied children. These follow a procedure of return to family or to protection of their State of origin or, in the event, are put under the protection of the Spanish Administration but expulsion is never possible.

For the Public Administrations, the child’s interest is always paramount and the fact no risk to his/her integrity exists is verified. Once return to his/her family or his/her country of origin is attempted and proves impossible he/she is granted a temporary residence permit.

Foreign children, coming under the protection of the Spanish State, receive the same treatment, in any part of the country, as that received by Spanish children in their same situation and they live together on the same premises, with a thorough follow-up of their stay in such places.

Madrid, 6 march 2003 »