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## **ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

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### **Third Opinion on Spain adopted on 22 March 2012**

#### **EXECUTIVE SUMMARY**

Spain has maintained a mainly constructive approach to the monitoring process of the Framework Convention. However, there is a general lack of awareness on the Framework Convention in Spain.

The authorities at state and regional levels have continued to develop long-term policies and programmes to promote equal opportunities for the Roma. Important programmes have been implemented to improve the access of Roma to employment, to resettle those living in slums, as well as to increase school attendance of Roma pupils. The Institute of Roma Culture was established in 2007 to promote Roma culture, history and language.

However, the concrete impact of these policies with respect to the Roma continues to be limited in some areas by a lack of adequate and earmarked funding for their implementation. Persons belonging to the Roma minority continue to face discrimination in various areas of life and they are disproportionately affected by the current economic crisis. The concentration of Roma pupils in schools located in disadvantaged areas and with low academic achievement persist.

Sustained efforts have been made by the authorities to develop comprehensive policies and an institutional framework to prevent and combat discrimination and racism and to encourage more respect for cultural diversity. The Council for the Promotion of Equal Treatment of all Persons without Discrimination on grounds of Racial or Ethnic Origin was set up in 2010. These efforts need to be continued and intensified as racism and intolerance, including Islamophobia, are growing, partly as a consequence of the economic crisis affecting Spain. The media continue to disseminate stereotypes and prejudices against some minority groups, including the Roma and immigrants. “Stop-and-search” operations carried out by the police disproportionately target immigrants and Roma, which reinforces discrimination against these groups.

Moreover, there is a lack of awareness in the judiciary of the anti-discrimination legislation and a lack of data collection on racially-motivated offences in the justice system and by the police.

The State Council for the Roma People was established in 2007 as a consultative body at national level. Nevertheless, the effective participation of Roma in public affairs remains very limited.

#### **Issues for immediate action**

- **Take more resolute measures to implement effectively the policies aimed at improving the situation and the integration of the Roma, in close co-operation with Roma representatives; ensure that these policies are adequately resourced and are not disproportionately affected by budgetary restrictions;**
- **Eliminate the practice of “ethnic profiling” by the police which targets persons belonging to some minority groups; increase training of the police to combat racism and discrimination, on the basis of existing good practices;**
- **Investigate the reasons for the persisting concentration of Roma pupils in schools located in disadvantaged areas and with lower academic achievement, in order to eliminate these practices; ensure that the implementation of admission rules to schools does not result in discriminatory practices against Roma pupils.**

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**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES**

**THIRD OPINION ON SPAIN**

1. The Advisory Committee adopted the present Opinion on Spain in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the State Report (hereinafter the State Report), received on 23 August 2010, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Madrid, Cordoba and Sevilla, from 12 to 16 December 2011.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Spain. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make extensive reference to the follow-up given to the findings of the monitoring of the Framework Convention, contained in the Advisory Committee's first and second Opinions on Spain, adopted on 27 November 2003 and 22 February 2007 respectively, and in the Committee of Ministers' corresponding Resolutions, adopted on 30 September 2004 and 2 April 2008.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Spain.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Spain as well as with representatives of national minorities and others involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present Opinion public upon its receipt. The Advisory Committee would also like to bring to the attention of States Parties that on 16 April 2009, the Committee of Ministers adopted new rules for the publication of the Advisory Committee's Opinion and other monitoring documents, aiming at increasing transparency and at sharing the information on the monitoring findings and conclusions with all the parties involved at an early stage (see Resolution CM/Res(2009)3 amending Resolution (97) 10 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the protection of National Minorities).

## I. MAIN FINDINGS

### Monitoring process

6. Spain has maintained a mainly constructive approach to the Framework Convention's monitoring process. The Advisory Committee is pleased that it was invited to visit Spain in order to gather additional information on the situation of persons belonging to minorities and to have a direct dialogue with the authorities. The visit took place in December 2011 and provided an opportunity to have very open and constructive discussions with representatives of the various administrations concerned.

7. These discussions enabled the Advisory Committee to complement the information provided in the third State Report submitted by Spain, which, regrettably, covers only the period 2006-2008, although it was submitted to the Council of Europe on 23 August 2010. The Advisory Committee expects that, in subsequent monitoring cycles, the Spanish authorities will cover the period actually under review since the adoption of the present Opinion, so that the Advisory Committee can obtain an overview of the situation which is as up-to-date as possible.

8. Additionally, the Advisory Committee was informed that minority representatives and other non-governmental organisations have not been involved or consulted in the process of preparation of the State Report. Similarly, it is regrettable that the second Opinion of the Advisory Committee on Spain and the corresponding second Resolution of the Committee of Ministers have, to the knowledge of the Advisory Committee, not been translated into Spanish and disseminated by the authorities. Moreover, the Advisory Committee regrets that the awareness of the Framework Convention seems to be very limited in Spain, including among persons and groups potentially interested by the protection that it offers. While taking note of the official position that the concept of national minorities does not exist in the Spanish legal order (see remarks under Article 3 below), the Advisory Committee reiterates that the authorities should promote a better knowledge of this instrument and organise discussions on its application in Spain, with representatives of the groups potentially concerned. It expects that the authorities will translate, publish and disseminate the present Opinion and the corresponding Committee of Ministers' Resolution and that it will launch a debate on the results of this monitoring cycle in particular, and on the Framework Convention in general, possibly in the form of a follow-up seminar.

### General overview of the implementation of the Framework Convention after two monitoring cycles

9. Since the adoption of the second Opinion of the Advisory Committee, substantial steps have been taken to improve the protection of persons belonging to minorities in Spain, in particular the Roma.<sup>1</sup> Important institutional developments have taken place, with a view to strengthening the official recognition of the Roma in Spain and to increase their opportunities to have an impact in decision-making on issues of concern to them, for instance through the setting up of the State Council for the Roma People and the Institute of Roma Culture (see paragraph 15 below).

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<sup>1</sup> The term "Roma" is used in this Opinion to cover persons who usually self-identify and are referred to as "Gitanos/as" in Spain. The term "foreign Roma" is used in this Opinion to refer to Roma who moved to Spain from other countries.

10. Sustained efforts have also been made to develop comprehensive policies to prevent and combat discrimination and racism and to encourage more respect for cultural diversity. The authorities at state and regional levels have continued to develop long-term programmes to promote equal opportunities for the Roma. However, the concrete impact of this well-established practice of the Spanish authorities of developing policies with respect to the Roma continues to be limited in some areas by a general lack of adequate and earmarked funding for the implementation of these policies.

11. Moreover, Spain has been experiencing a severe economic crisis since 2009, which has resulted in drastic budgetary restrictions at all levels. The Advisory Committee is aware that further budgetary restrictions will be implemented in the near future. It is essential that the authorities evaluate carefully the potential impact of budgetary restrictions on the situation of the Roma and on the situation in the field of discrimination and racism in general. Budgetary stringency must not have a disproportionate impact on the situation of disadvantaged minority groups, such as the Roma as this could threaten the progress achieved in the last decade and lead to increased marginalisation and exclusion of part of the Roma community.

12. Additionally, hostility and resentment towards minorities, such as the Roma and immigrants, is reportedly growing as a result of the economic crisis and, in particular, of massive unemployment in the population as a whole. While Spain continues to be characterised by a general climate of tolerance, increased manifestations of discrimination on grounds of ethnic origin are reported (see remarks below). Therefore, it is of utmost importance to continue and expand the current policies to combat racism and discrimination in society and promote equal opportunities for the Roma, despite the current economic difficulties.

### **Legislative and institutional framework**

13. Important steps have been taken to strengthen the legislative and institutional framework for the protection of minorities. Firstly, a comprehensive Bill on Equal Treatment and Non Discrimination has been drawn up, in consultation with the NGOs concerned. As it stands, the draft law contains important improvements to the anti-discrimination legislation already in force. It is therefore regrettable that it has not yet been discussed by the Parliament. Additionally, the existing legislation on racism and racially-motivated hatred continues to be rarely invoked in courts and there is a persisting and acute lack of awareness in the judiciary and law enforcement of discrimination and racism-related legislation.

14. The establishment in 2010 of the Council for the Promotion of Equal Treatment of all Persons without Discrimination on grounds of Racial or Ethnic Origin (hereinafter Council for Equal Treatment) is a welcome development, seven years after the transposition into Spanish law of Directive EC 43/2000 which foresaw the creation of an independent body to combat discrimination. This body should add to the effective work already carried out by the Spanish Observatory of Racism and Xenophobia and the ombudsmen at state and regional levels (*Defensores del Pueblo*) in the field of prevention of racism and discrimination. Moreover, the creation of special prosecutors' offices on hate crime and discrimination at various levels in 2009 has already brought fruitful results.

15. The Institute of Roma Culture was set up in 2007 as a public body in charge of promoting and developing Roma culture which is an important step forward in officially acknowledging the importance of Roma culture and identity in Spain. The setting up in 2007 of the State Council for the Roma People is another commendable development as it widens the

opportunities for Roma to be involved in decision-making on issues of concern to them at state level. This new body plays the role of a consultative body on Roma issues at state level. It is therefore crucial to ensure that it can have an effective impact on policy-making. Its composition should also adequately reflect the large diversity prevailing in the Spanish Roma community.

### **Combating racism and promoting respect for diversity**

16. Given the growing cultural diversity of Spanish society, the authorities have pursued their policies to promote the integration of immigrants. Moreover, particular emphasis has been put on the need to consolidate respect for human rights, through the Human Rights Plan for 2008-2012. Furthermore, a Comprehensive Strategy against racism, racial discrimination, xenophobia and other related forms of intolerance was adopted in November 2011. Measures have been taken to develop tools, such as the Observatory of Religious Pluralism, for the authorities to be better prepared to cope with increasing cultural and religious diversity.

17. Despite these efforts, there has been an increase in expressions of racism and intolerance against Roma and immigrants, as well as towards religious groups, and in particular against Muslims, in society as a whole, but also in the media and in politics. There is a growing tendency, fuelled by some politicians, to scapegoat immigrants for some of the consequences of the economic crisis, particularly unemployment. Hostile demonstrations against the building of mosques, or the resettlement of Roma families, have often been reported. There is also a lack of awareness in the judiciary and the police of racially-motivated discriminatory offences and the related legislation. In addition, there is no data collection system on racially-motivated crime in the justice system.

18. While initiatives have been taken locally to improve training of the police on racism and discrimination issues, it remains reportedly difficult to have racially-motivated offences recorded as such by the police. Moreover, no independent body has been set up to deal with possible police misconduct and abuse. "Stop-and-search" operations carried out by the police disproportionately target persons belonging to some minority groups, including the Roma.

### **Equal opportunities for Roma in various areas**

19. While the authorities at state level and in some of the Autonomous Communities have continued to implement comprehensive plans to promote equal opportunities for Roma in society, the data available indicate that a proportion of the Roma population continues to face important disadvantages in the area of employment, housing and education and widespread discrimination.

20. Concerning employment, the authorities have made extensive use of European funds to support the access of Roma to employment, through long-term, targeted programmes mainly carried out by NGOs. Nonetheless, information available indicates that unemployment has grown disproportionately among Roma due to the economic crisis. New legislative provisions adopted in 2010 should have a restrictive impact on the traditional Roma occupation as street sellers, if the moratoria on the implementation of the law that are currently in place are lifted.

21. As far as housing is concerned, various resettlement projects have successfully been implemented and the number of slums around large Spanish cities, such as Madrid and Seville, has substantially decreased. Innovative projects have been carried out in this context, which resulted in better integration of the Roma in society. However, a proportion of the Roma

population continues to live in substandard conditions and in isolation, which has a detrimental impact on their state of health. Not all resettlement operations have led to successful integration in mainstream housing, due sometimes to a lack of continuous support to the families concerned, and in other cases to hostility from the neighbourhood in areas where Roma families were resettled. Growing discrimination against Roma and immigrants is reported in the housing market.

22. In the field of education, substantial progress has been made in the last 15 years and the rates of enrolment of Roma pupils in school, including preschool education, have dramatically risen. Various programmes provide additional support to schools located in disadvantaged neighbourhoods or those with a large proportion of Roma and immigrant pupils. Nonetheless, the situation remains unsatisfactory as far as completion of secondary education is concerned, as well as in terms of achievements of the Roma pupils, in comparison with the majority population.

23. Various reports indicate that a tendency persists towards a high concentration of Roma pupils in certain schools, often located in disadvantaged urban areas. Some of these schools have managed to carry out important work to improve the academic achievement of their pupils, and work in close co-operation with their families, with the support of NGOs and the authorities. Nevertheless, most of these schools have a low academic level and perpetuate the social exclusion of part of the Roma population.

### **Participation of Roma in public affairs**

24. Despite steps taken by the authorities to improve the recognition of the role and place of the Roma identity and culture in Spanish society, the involvement of Roma in public affairs remains very limited. Their participation in elected bodies at all levels is insignificant, despite the fact that some Roma representatives have been included in electoral lists of some mainstream political parties. Moreover, the mainstream media, including public broadcasters, rarely reflect the concerns and interests of the Roma population.

25. The State Council for the Roma People was established in 2007 at state level. While this body constitutes an important step forward, it is essential to ensure that it can have an effective and sustainable impact on policy-making on Roma-related issues and that it is systematically consulted by the authorities, including concerning the allocation of funds. A limited number of consultative bodies exist at the regional level.



## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 3 of the Framework Convention

#### Scope of application of the Framework Convention

##### *Recommendations from the two previous cycles of monitoring*

26. In the previous monitoring cycles, the Advisory Committee invited the authorities to disseminate information on the Framework Convention to all potentially interested persons and to consider organising consultations on the Framework Convention's scope of application also with groups other than Roma.

27. The Advisory Committee encouraged the authorities to examine the possibility of extending the protection of the Framework Convention to the population of Berber origin, and possibly to other groups.

##### *Present situation*

28. While being fully aware of the fact that the concept of "national minority" does not exist in the Spanish legal order, the Advisory Committee wishes to reiterate that the application of the Framework Convention with respect to a group of persons does not necessarily require its formal recognition as a national minority, a definition of this concept or the existence of a specific legal status for such groups of persons. The Framework Convention was conceived as a pragmatic instrument, to be implemented in very diverse social, cultural and economic contexts and to adapt to evolving situations. Therefore, the Advisory Committee welcomes that the authorities continue, in practice, to consider that the Roma constitute a specific minority and benefit from the protection of the Framework Convention. Nonetheless, it remains concerned by the fact that the authorities have not organised any consultations or discussions on the protection offered by the Framework Convention with other groups potentially concerned and have decided *a priori* that this protection should be extended only to the Roma.

29. The Advisory Committee has, as in the previous cycle of monitoring, been approached by groups other than the Roma expressing an interest for the protection of the Framework Convention. Persons belonging to the Berber group in Melilla, who speak Tamazight and are of Muslim religion, have expressed particular interest to be included in the scope of application of the Framework Convention. The Advisory Committee notes with satisfaction that the authorities in Melilla have continued to take measures to increase the visibility of the Tamazight language and culture<sup>2</sup> and are aware of the efforts needed to develop teaching of this language, which remains so far largely uncoded and is not taught at school. In this regard, it notes the views expressed by persons belonging to this group that recognition as a group protected under the Framework Convention could substantially reinforce the ongoing efforts to promote the Tamazight language and culture. Moreover, the Advisory Committee understood during its visit to Spain that representatives of some state bodies refer to persons belonging to the Berber group as a *de facto* minority, like the Roma. Therefore, it believes that the authorities should consider extending the protection of the Framework Convention to the Berber group and should engage without delay in consultations with this aim with persons belonging to this group.

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<sup>2</sup> Notably through the Institute of Cultures, established in Melilla in 2010.

30. Additionally, the Advisory Committee was approached by persons belonging to organisations representing the Basque, Catalanian and Galician cultures and languages. These persons have also expressed interest for the protection offered by the Framework Convention. They underlined that the Framework Convention could provide additional protection for their specific identities, languages and cultures, particularly in the fields of teaching of their minority language and media in their minority languages, where reportedly, particular difficulties have been experienced (see paragraph 32 below).

31. The Advisory Committee acknowledges that persons living in the Autonomous Communities with special linguistic status, and having cultures and languages different from those of the majority population, benefit from specific recognition and are protected under the Spanish Constitution, statutory laws of the respective Autonomous Communities and the European Charter for Regional or Minority Languages. It also notes the view of the authorities that the current level of protection makes it unnecessary for persons belonging to these groups to benefit from the protection of the Framework Convention. The Advisory Committee, however, reiterates that the existing protection offered to these groups through domestic legislation and through the European Charter for Regional or Minority Languages does not preclude their benefitting from additional and complementary protection under the Framework Convention, nor does it make such protection unnecessary.

32. The Advisory Committee understands that persons belonging to these groups who live outside their Autonomous Communities have considerably less access to protection and support for their languages and cultures. This appears to be, for instance, the case of Basques living in Navarra, and of Galician-speaking persons living in Autonomous Communities neighbouring Galicia (such as Asturias as well as Castilla and Leon). Therefore, the Advisory Committee believes that it might be beneficial for them to enjoy the additional protection of the Framework Convention, notably - but not only - as far as language-related rights are concerned. Consequently, the Advisory Committee is of the opinion that the authorities should engage in consultations with these groups, and others possibly interested in the Framework Convention, in order to ascertain whether the positions conveyed to the Advisory Committee by some representatives are shared by other persons and organisations representing the Basque, Catalanian and Galician languages and cultures.

33. The Advisory Committee further notes that the Val d'Aran was granted a special status in Catalonia in 1990,<sup>3</sup> based on its specific culture, history and language (Occitan), with a view to preserving and developing further its specific characteristics. The special status was confirmed in the Statutory Law of Catalonia adopted in 2006, as well as through the Aranese Language Act adopted on 22 September 2010. Therefore, the Advisory Committee is of the opinion that consultations with persons living in Aran should also be held in order to ascertain whether they are interested in the protection of the Framework Convention.

34. Lastly, the Advisory Committee learnt with satisfaction during its visit that no distinction is made in the application of some programmes between Spanish and foreign Roma, notably in the field of education and access to health care. It also appreciated that the authorities at different levels have taken some steps to improve the situation of foreign Roma (see remarks on Article 6 below). It welcomes this inclusive approach, which is consistent with current efforts at

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<sup>3</sup> Law 16/1990 on the special regime of the Aran Valley.

European level to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities.<sup>4</sup>

#### *Recommendations*

35. The Advisory Committee reiterates its call to the authorities to consider without delay the possibility of extending the scope of application of the Framework Convention to the population of Berber origin, in close consultation with the persons concerned.

36. Additionally, it urges the authorities to undertake consultations with representatives of groups other than the Roma to raise their awareness of the protection offered by the Framework Convention and to ascertain whether they are interested in such protection.

### **Article 4 of the Framework Convention**

#### **Legislative and institutional framework against discrimination**

##### *Recommendations from the two previous cycles of monitoring*

37. In the previous monitoring cycles, the Advisory Committee urged the authorities to redouble efforts to raise awareness about the problems of discrimination and available remedies, both among the general public and specific circles.

38. It also urged the authorities to establish without further delay the Council of Equal Treatment and provide it with sufficient resources.

##### *Present situation*

39. The Advisory Committee notes with satisfaction that a comprehensive Bill on Equal Treatment and Non Discrimination has been elaborated since the adoption of its second Opinion, which improves considerably the anti-discrimination legislation in force on various aspects, including *inter alia*, the addition of new grounds of discrimination (including discrimination based on language), the creation of a Council for the Promotion of Equal Treatment of all Persons without Discrimination on Grounds of Racial or Ethnic Origin (hereinafter Council for Equal Treatment) with larger competencies than the Council that was established in 2010 (see remarks below), as well as the requirement regularly to collect and analyse data on discrimination. The preparation of the draft law included intense consultations with NGOs involved in anti-discrimination work, which is commendable. Additionally, the adoption of a single, comprehensive law would certainly contribute to increased awareness of anti-discrimination provisions and remedies among the population at large, as well as among the judiciary and law enforcement (see remarks on Article 6 below). Therefore, the Advisory Committee strongly believes that the draft law should be adopted without delay.<sup>5</sup>

40. The Advisory Committee notes that the Council for Equal Treatment was set up in 2010, as foreseen in the anti-discrimination legislation adopted in 2003. The Advisory Committee notes that the Council's mandate includes assistance to victims, awareness-raising and training on discrimination, research and data collection, as well as the promotion of positive measures. It notes with satisfaction that the Council, in its short time of existence, has already published very

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<sup>4</sup> See also Venice Commission, Report on "non-citizens" and minority rights, CDL-AD(2007)001, 18 January 2007, paragraph 137, adopted by the Venice Commission at its 69<sup>th</sup> plenary session on 15 – 16 December 2006.

<sup>5</sup> The discussion by the Parliament of the draft law was postponed following the convocation of anticipated parliamentary elections in November 2011.

useful research on the situation in the field of discrimination.<sup>6</sup> The Advisory Committee also strongly welcomes the creation of a Network of Assistance to Victims of Discrimination throughout the country, which involves various NGO's that receive complaints at the local level.

41. However, the Advisory Committee regrets the lack of means allocated to the Council, and to the Network of Assistance to Victims, which sets a limit to the possible impact of the work carried out in this context. The availability of human and financial resources is, in general, problematic as far as the functioning of the Council is concerned and the Advisory Committee considers that for the Council to continue its fruitful work in the long term, it is in need of more support.<sup>7</sup> Additionally, it regrets that the current mandate of the Council does not allow it to bring discrimination cases to courts or to intervene in court cases on behalf of victims of discrimination. Lastly, the Advisory Committee is concerned by the lack of structural independence of the Council, which operates within the framework of the Ministry for Health, Social Services and Equality and whose President is appointed by the administration.

42. The Advisory Committee is also pleased to note that the Ombudsman's office (*Defensor del Pueblo*) continues to play a very important role in combating discrimination and racism, both at central and local levels (see also remarks in respect of Article 6 below) and that the level of compliance with its recommendations continues to be high.<sup>8</sup> However, the Advisory Committee notes that the number of complaints addressed by Roma to the Ombudsman's office on grounds of discrimination is very low. This general trend towards low reporting was confirmed by other institutions, such as the Council for Equal Treatment, which estimates that the number of victims of discrimination who report their cases to the authorities is only around 4%. Information provided to the Advisory Committee indicates that there is, in general, a lack of confidence among persons most vulnerable to discrimination, such as the Roma, in the effectiveness of the institutions responsible for dealing with discrimination cases, and in particular the police. It is therefore of the utmost importance that the Council for Equal Treatment, and other bodies, can continue effectively to raise awareness of anti-discrimination legislation and existing remedies.

#### *Recommendations*

43. The Advisory Committee calls on the authorities to adopt without further delay comprehensive anti-discrimination legislation, possibly based on the draft anti-discrimination law that has recently been prepared in close consultation with civil society organisations.

44. The Advisory Committee invites the authorities to continue to support the work of the Council for Equal Treatment and to allocate sufficient resources, so that it can work effectively and independently to support victims of discrimination. In general, it is essential that it can continue to raise awareness of discrimination in society, including among the persons most at risk of discriminatory treatment.

45. Continued support should also be provided for the work of the Ombudsman, at state and regional levels.

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<sup>6</sup> See for instance: *Panel sobre la discriminación por origen racial o étnico (2010): la percepción de las potenciales víctimas* (Panel on discrimination on grounds of racial or ethnic discrimination (2010): the perception of potential victims), 2011, at: <http://www.igualdadynodiscriminacion.org>

<sup>7</sup> The Director of the Council for Equal Treatment acts on a voluntary basis and there is only one staff member working full-time for the Council.

<sup>8</sup> Around 70% for the State level Ombudsman's recommendations (information provided by the Ombudsman's Office).

## Data collection

### *Recommendations from the two previous cycles of monitoring*

46. In the previous monitoring cycles, the Advisory Committee urged the Spanish authorities to pursue further their efforts to collect data on the situation of ethnic groups in all relevant spheres, including the criminal justice system.

### *Present situation*

47. Various interlocutors of the Advisory Committee underline that, despite progress achieved in recent years, there remain gaps in terms of data and information on the situation of the Roma, especially at local and regional levels. This has a negative impact on the identification of the magnitude of the problems faced by the Roma and limits the effectiveness of the policies and measures that have been designed to tackle these problems. In particular, according to many interlocutors, funding allocations do not match the needs due to a lack of accurate information on the numbers and geographical distribution of the Roma population (see also remarks below).

48. While the official position regrettably remains that no data on the ethnic origin can be collected, the Advisory Committee is pleased to note that the overall perception of the need for comprehensive and up-to-date information on the situation of Roma has increased among those in charge of policies and programmes to improve their situation. The Advisory Committee notes with satisfaction that the authorities make extensive use of data and information gathered by NGOs and other relevant actors on the situation of the Roma in various areas of life.<sup>9</sup> The quality and quantity of data collected also seem to have improved in the last few years and the overview of the situation is more accurate than it used to be thanks to the practice of cross-referencing the various data sources available, as is reportedly done by the ministries concerned when evaluating existing needs. Moreover, the Advisory Committee welcomes the fact that data and information collection on the situation of specific groups, including the Roma, is part of the mandate of the Council for Equal Treatment and that the draft law on discrimination, as well as the Action Plan for the Roma Community Development for 2010-2012 (see remarks below), provide for increased data collection.

49. Moreover, most of the organisations active in the field of anti-discrimination (both non-governmental and public bodies) underline as a source of major concern the lack of data and information in the justice system on racially-motivated offences or offences motivated by discrimination.<sup>10</sup> This gap is a major obstacle to a more adequate processing of discrimination cases in courts and to efforts made to raise the awareness and training of the judiciary in these matters. Among the main causes for the lack of data is the absence of adequate recording by the police of the racist or discriminatory motivation of offences (see also remarks on Article 6 below).

50. Therefore, the Advisory Committee welcomes the changes introduced, as of January 2011, to the statistical system of the police, aiming at a more adequate registration of racially-

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<sup>9</sup> In particular, the various reports on the situation of Roma in different sectors prepared by the *Fundación Secretariado Gitano*. See, for instance: *Mapa "Vivienda y comunidad gitana en España 2007"* (Map of Roma Housing 2007); *"Hacia la equidad en salud"*, a study of the health status of the Roma population compared with the majority population, *Fundación Secretariado Gitano*, 2009.

<sup>10</sup> See in particular *Fourth report on Spain* of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe, published on 8 February 2011. See also *Memoria de la Fiscalía de Barcelona, Servicio delitos de odio y discriminación*, (Report by the Barcelona Prosecutor Office, Service for offences motivated by hatred and discrimination), 2009.

motivated offences, as well as the commitment expressed by the authorities, in November 2011 to improve the procedures for recording by the police of racist incidents, including through the training of police officers. It expects that these decisions will swiftly result in a more adequate and systematic recording by the police of discriminatory and racist offences. It also believes that the co-operation that was undertaken in Catalonia between the Public Prosecutor for Hate Crime and Discrimination and the Catalanian police (*Mossos d'Esquadra*) in order to improve the recording and processing of racially-motivated offences is promising and should be replicated in other regions. Lastly, it expects that the commitment taken by the authorities as part of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Other Related Forms of Intolerance, adopted in November 2011, to improve substantially the system of data collection in the justice system on racially-motivated and discrimination related offences will be implemented effectively and swiftly.

#### *Recommendations*

51. The Advisory Committee invites the authorities to continue and broaden the systematic collection of data and information on the situation of the Roma in the various areas of life, in line with international standards in the field of personal data collection.<sup>11</sup>

52. It is particularly urgent to develop a comprehensive system of data collection on discrimination in the justice system, so as to promote a more effective implementation of the anti-discrimination legislation in force. Training of the police in recording discrimination related offences must also be improved, drawing on existing good practices that have recently been implemented (see also recommendations under Article 6 below).

### **Promotion of full and effective equality of Roma**

#### *Recommendations from the two previous cycles of monitoring*

53. In the previous monitoring cycles, the Advisory Committee urged the authorities to seek further resources to support specific programmes aimed at ensuring effective equality of Roma, especially women, in their access to employment, housing, health care and other social services.

#### *Present situation*

54. Since the adoption of the second Opinion of the Advisory Committee, the authorities have continued to implement policies to improve the situation of Roma in various areas of life, both at state level and at the level of the Autonomous Communities. They have, in particular, elaborated the Action Plan for the Roma Community Development for 2010-2012, in close co-operation with the State Council for the Roma People (see remarks on Article 15 below). The authorities have also prepared a National Strategy for the Inclusion of the Roma Population until 2020, as part of the EU Framework for national Roma integration strategies.<sup>12</sup> The Action Plan for 2010-2012 follows on the Programmes for the Development of the Roma People, in place since 1989. The Advisory Committee welcomes the fact that this Plan is transversal and covers all the relevant areas of life and that it has been designed based on the data that are available on the situation of Roma in the different sectors, such as employment, housing or health (see remarks above on data collection). Although incomplete, these data reveal persisting inequalities

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<sup>11</sup> See: Committee of Ministers' Recommendation No. (97) 18 and the Council of Europe Convention ETS 108 concerning the protection of personal data collected and processed for statistical purposes as well as the recommendations of the United Nations Economic Commission for Europe prepared in co-operation with the Statistical Office of the European Communities.

<sup>12</sup> See [http://ec.europa.eu/justice/discrimination/roma/national-strategies/index\\_en.htm](http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_en.htm). The strategy had to be presented to the European Commission by 31 December 2011.

in employment, health, education and housing, despite substantial progress achieved in the last 10-15 years (see remarks under Articles 12 and 15 below).

55. Therefore, the Advisory Committee reiterates the concern expressed in its second Opinion that the funding provided by the central, autonomous and local authorities for the implementation of the Action Plan, and previously, the Roma Development Programmes, is insufficient to meet existing needs, especially as it has markedly diminished as of 2009.<sup>13</sup> Moreover, interlocutors of the Advisory Committee have underlined that no specific budgetary allocations have been earmarked within the budgets of the various institutions concerned by the implementation of the Action Plan 2010-2012. The Advisory Committee notes that the amounts indicated in the Action Plan (around 107 million € for 2010-2012) represent the overall budgets of the institutions involved, including funds for programmes which do not target the Roma population as such. Moreover, the Advisory Committee is concerned by reported delays in starting the implementation of this Action Plan.

56. Furthermore, the Advisory Committee notes the concern expressed by some of its interlocutors that, although the authorities are implementing commendable policies through intermediaries, such as the *Fundación Secretariado Gitano* in the field of employment,<sup>14</sup> there is insufficient direct involvement and concrete public policies of the authorities to promote, for instance, the employment of the Roma.

57. Additionally, the Advisory Committee is concerned by the impact on the Roma population of the severe economic crisis affecting Spain. It notes with deep concern the results of a recent study<sup>15</sup> indicating that persons belonging to various ethnic groups, among which the Roma, feel that discrimination against them in various spheres of life has increased since the beginning of the economic crisis. According to the information collected by the Advisory Committee during its visit to Spain, Roma are disproportionately affected by unemployment as their unemployment rate in 2011 was estimated to be around 37% whereas it was 21% for the population as a whole.<sup>16</sup> This might result from various factors, among which the lower levels of qualification of many Roma, but also from discrimination in the labour market. The Advisory Committee is also alarmed by information indicating that discrimination in access to housing is increasing with the crisis, and that the most vulnerable groups, among which the Roma, are particularly affected by this problem (see also remarks under Article 15 below). Against this background, the Advisory Committee welcomes the commitment expressed by the Andalusian authorities to avoid financial cuts in programmes aimed at the labour market and social integration of disadvantaged groups, in particular the Roma, so as not to provoke their further marginalisation.

58. In general, while acknowledging that Spain is experiencing a difficult economic and financial situation, the Advisory Committee strongly believes that the authorities should ensure that policies and programmes aimed at supporting the integration in society of the most marginalised groups, including part of the Roma population, are not disproportionately affected by budgetary cuts, as they are essential to ensure long-term social cohesion. In this respect, it is

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<sup>13</sup> Funding for the implementation of the Roma Development Programme reached around 4,5 million € in 2009 and 2010 (with around one million being allocated by the state authorities and the rest by autonomous and local communities), while it was at around 7,5 million € in 2007 and 2008 and 8,6 million € in 2000. Source: Ministry of Health, Social Services and Equality, Evaluation Report of the Roma Development Programme for 2010.

<sup>14</sup> Notably the ACCEDER programme, see remarks on Article 15 below.

<sup>15</sup> *Panel sobre la discriminación por origen racial o étnico (2010): la percepción de las potenciales víctimas, ibid.*

<sup>16</sup> See National Roma Integration Strategy in Spain, 2012-2020.

also essential to assess adequately the potential impact of any budgetary cut on the situation of the disadvantaged Roma population.

59. Furthermore, discrimination in access to public services continues to be high, as such cases constitute around 50% of the complaints received by the Network of Assistance to Victims of Discrimination. Numerous cases of denial of access to public places or of denial of service, such as bars and other places of entertainment, have been reported, which is of deep concern to the Advisory Committee. Roma are also disproportionately targeted by the police in “stop-and-search” operations (see remarks under Article 6 below).

#### *Recommendations*

60. The Advisory Committee calls on the authorities to implement effectively the policies and programmes to improve the situation and integration of the Roma in all areas of life. These programmes, including the Action Plan for the Roma Community Development for 2010-2012 and the National Strategy for the Inclusion of the Roma Population until 2020, must be adequately resourced and it is important to ensure that financial restrictions do not have a disproportionate impact on them.

61. Particular attention should be paid to assessing the impact of the economic crisis on discrimination affecting the Roma, especially the most disadvantaged members, including through improved data and information collection. All allegations of discrimination in the provision of services must be effectively investigated and sanctioned as appropriate.

### **Article 5 of the Framework Convention**

#### **Preservation and promotion of the Roma culture**

##### *Recommendations from the two previous cycles of monitoring*

62. In the previous monitoring cycles, the Advisory Committee urged the authorities to develop further initiatives to protect and promote Roma culture and identity, notably by establishing without delay the Institute of Roma Culture.

63. It also invited the authorities to organise consultations with Roma representatives to identify the needs and demands of the Roma with regard to the learning of the Romani and *caló* languages and to fund projects carried out by NGOs in this field.

##### *Present situation*

64. The Advisory Committee is pleased to note that the authorities have made further efforts to enhance public recognition of the distinct identity and culture of the Roma. It particularly welcomes the establishment, in May 2007, of the Institute of Roma Culture (*Instituto de Cultura Gitana*) as a public foundation under the auspices of the Ministry of Culture. It learnt with satisfaction that the Institute already managed to develop a number of important projects, both in the area of promotion of the Roma culture (such as cultural events and publications, the Roma Prize allocated yearly to persons who significantly contributed to developing Roma culture) as well as for the development of teaching of the Romani language in Spain (see remarks on Article 12 below).

65. The Advisory Committee also welcomes the inclusion in the new Autonomy Statutes of Castilla and Leon and of Aragon, adopted in 2007, of a provision on the need for public policies to promote non-discrimination and respect for diversity, in particular with regard to the Roma



community (in Castilla and Leon) and to promote the integration of the Roma community (Aragon). Following the specific reference to the need to respect and promote the Roma culture and identity in other autonomy statutes (namely in Andalusia<sup>17</sup> and Catalonia), this is a new step forward towards a better institutional acknowledgment of the importance of the Roma identity and culture in the regions of Spain.

66. However, the Advisory Committee deplores the fact that support for Roma cultural projects is, reportedly, very limited, both at central and regional levels, even though some regional authorities do fund Roma projects and programmes. The latter is notably the case of the authorities of Andalusia, which continue to support the Andalusian Centre of Roma Culture and the Roma library. The Advisory Committee also notes with interest that some support is also provided to the promotion of the Roma culture in Melilla, together with the cultures of other groups living in the city, in particular the Tamazight-speaking Berbers.

67. However, the Advisory Committee regrets that progress on the promotion of the Romani and *caló*<sup>18</sup> languages has been limited. There is no teaching of the Romani and *caló* in the school system (see also remarks on Article 14 below) and access to it outside the school system is limited to a few initiatives, often carried out by NGOs. A project was for instance started to promote the learning of the Romani language in Catalonia, as part of the Comprehensive Plan for the Roma People of Catalonia. The Institute of Roma Culture is also developing material to learn the Romani language. Nevertheless, the Advisory Committee regrets that, in general, opportunities to study the Romani language, or the *caló*, remain very scarce. While acknowledging that the demand within the Roma community for learning these languages might not be very large, the Advisory Committee understands that it is growing and it is of the opinion that it should be adequately evaluated so that existing needs can be met. In fact, the Advisory Committee believes that promoting the Romani and *caló* languages as a relevant aspect of Roma culture, should form part of efforts to promote a better recognition and respect for the Roma culture.

#### *Recommendations*

68. The Advisory Committee invites the authorities to continue to provide adequate support to the Institute of Roma Culture and to enable it to work effectively and independently for the promotion of Roma culture. In general, they should ensure that sufficient funding is allocated to support projects and programmes aimed at preserving and promoting Roma culture at different levels.

69. The Advisory Committee reiterates its call to the authorities to identify the needs and requests of the Roma with regard to studying the Romani and *caló* languages (see also recommendation on Article 14 below). They should also provide further support to non-governmental projects in this area.

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<sup>17</sup> In which the recognition of the Roma identity and culture and the need to promote integration was restated in the revised Autonomy Statute adopted in 2007.

<sup>18</sup> *caló*, which is reportedly spoken less and less by new generations of Roma, has been described as a hybrid language composed of isolated Romani words using the grammar of local Spanish languages (Castilian, Catalan, Basque, etc.).

## **Article 6 of the Framework Convention**

### **Combating racism and intolerance**

#### *Recommendations from the two previous cycles of monitoring*

70. In the previous monitoring cycles, the Advisory Committee urged the authorities to take resolute action to promote intercultural dialogue in order to help bolster tolerance and combat prejudice. It also encouraged the authorities to pursue further their policies of integration of immigrants, including in the education system.

#### *Present situation*

71. In a context marked by the economic crisis, the Advisory Committee is concerned by numerous reports indicating a rise in expressions of racism and intolerance against immigrants and Roma, as well as towards religious groups such as Muslims and Jews, in the society as a whole, but also in the media and in politics. Populist and intolerant rhetoric was reportedly used during the electoral campaign of autumn 2011, particularly in Catalonia, notably rhetoric aimed at criminalising the entire Roma community, despite recommendations made by the Council for Equal Treatment ahead of the electoral campaign.<sup>19</sup> In fact, Roma continue to face frequently manifestations of hostility in various spheres of life, including denial of access to public places, such as bars and shops, and opposition to the resettlement of Roma families (see also remarks on Articles 4 and 15). The Advisory Committee is deeply concerned by reported demonstrations of neighbours' associations against the resettlement of Roma families, during which racist rhetoric is often used.<sup>20</sup>

72. The trend towards increasing intolerance is also apparent in renewed activism among far-right movements, on the Internet and also through physical attacks against immigrants and threats against NGOs and persons dealing with immigrants. In this context, the Advisory Committee welcomes a series of court decisions of 2009 condemning far-right movements (see also remarks below).

73. Moreover, according to information brought to the attention of the Advisory Committee, there is a growing tendency, fuelled by some politicians, to scapegoat immigrants for some of the consequences of the economic crisis, particularly unemployment. Some municipalities have in particular refused, against the law, to register immigrants without a residency permit, which deprives them of access to health care and education.<sup>21</sup> Immigrants also face, according to various surveys, increased discrimination on the housing market and are disproportionately affected by the crisis as far as employment is concerned (see also remarks under Article 4 above). These developments are of deep concern to the Advisory Committee. Therefore, it welcomes the implementation of innovative experiences to counteract these negative trends, such as the creation by the City of Barcelona of a "network of anti-rumours agents", trained to challenge stereotypes that are spread about immigrants.

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<sup>19</sup> See "Proposal to avoid the use of discriminatory, racist and xenophobic discourse in electoral campaigns", adopted in May 2011.

<sup>20</sup> See for instance the case of resettlement of a Roma family in La Arboleda (in the Basque Country) in 2009, which triggered hostile demonstrations in the neighbourhood and was subsequently brought to the attention of the Human Rights Commission of the Basque Parliament.

<sup>21</sup> It was notably the case, in 2009, of the municipality of Vic (Catalonia) that, additionally, announced its intention to denounce immigrants who could not provide a valid residency permit to the police.

74. The Advisory Committee notes with deep concern that foreign Roma are particularly affected by prejudices and racism. They are sometimes victims of assault by extreme-right movements and face, reportedly, very high levels of discrimination in all areas of daily life. They mostly live in isolated settlements, in very poor conditions and have limited access to health care, schools and adequate housing. For many of them, this results partly from a lack of registration with the local authorities which is a condition of access to health care, educational institutions and social housing. Moreover, the economic crisis has had a disproportionate effect on their access to employment, due to their generally low level of skills. The lack of knowledge of the Spanish language also represents a major obstacle to improving their living conditions. Against this background, the Advisory Committee welcomes the adoption by the Council for Equal Treatment of a recommendation to promote “equal treatment and fundamental rights of the Roma population from Eastern Europe in Spain”.<sup>22</sup> Moreover, it praises the flexible approach of the authorities that do not make a distinction based on citizenship concerning access to health care or education which are accessible to foreign Roma (see also remarks on Article 3 above). It also learnt with satisfaction during its visit to Andalusia that projects have been launched by NGOs, in co-operation with local authorities, such as the City of Cordoba, to find solutions to the most urgent problems facing the Roma immigrants, including access to adequate housing, education and health care.<sup>23</sup> The Advisory Committee finds this initiative very commendable and expects that it will be duly evaluated and replicated in other cities of Spain.

75. The Advisory Committee shares the view of the ECRI<sup>24</sup> that the Spanish authorities’ management of the aftermaths of the terrorist attacks of 2004 was exemplary. However, it notes with concern that expressions of Islamophobia are persisting, targeting in particular Moroccan immigrants and the building of new mosques. Whereas there is a persisting shortage of places of worship for Muslims, repeated manifestations of hostility and “anti-mosques” demonstrations by the local population are reported, particularly in Catalonia, but also in other regions. The Advisory Committee deplores the fact that they are sometimes supported by local politicians and accompanied by racist discourse and aggressions.<sup>25</sup> Public discourse around the issue of wearing a headscarf (*hijab*) in public places, notably in schools, has also contributed to singling out the Muslim community.<sup>26</sup>

76. Representatives of the Muslim community also report a persisting shortage of Muslim cemeteries and a lack of opportunities to be taught Islam at school. The Advisory Committee notes that, whereas the authorities argue that this is largely due to a lack of adequately trained teachers, representatives of the Muslim community report that trained teachers are available but that the local school authorities are reluctant to employ them.

77. Against this background of increasing intolerance, the Advisory Committee notes with satisfaction that further steps have been taken by the authorities to combat racism and intolerance and promote mutual understanding. It welcomes in particular the adoption in November 2011 of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and other Related Forms of Intolerance (see also remarks under Article 4 above).

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<sup>22</sup> Recommendation adopted on 5 May 2011.

<sup>23</sup> The programme implemented in Cordoba by the *Fundación Secretariado Gitano* involved access to “bridge-housing” (*pisos-puente*), advice and support in administrative procedures such as registration with the local authorities, and access to education, including to kindergarten.

<sup>24</sup> See fourth ECRI report on Spain, *ibid.*

<sup>25</sup> The bodies of dead pigs have on a few occasions been found at the door of mosques.

<sup>26</sup> See in this context Ombudsman’s Recommendation 156/2007 on the suppression of the request to provide a certificate of belonging to a religious community in order for photos for identity documents with a headscarf to be accepted.

Moreover, it notes with satisfaction the continuous work of the Spanish Observatory of Racism and Xenophobia (referred to hereinafter as OBERAXE), consisting *inter alia* of regularly publishing research and analysis on racism and discrimination related problems in Spanish society, and therefore, contributing to raising awareness and offering informed knowledge on these problems.

78. The Advisory Committee also notes with satisfaction that the authorities have continued to develop and implement three-yearly integration strategies (Comprehensive strategies for citizenship and integration, 2007-2010 and 2011-2014), focusing on equal treatment of immigrants. It believes that it is of utmost importance for the Spanish authorities to maintain their policies to combat racism and promote integration and social cohesion, particularly in the current context of economic crisis. To this aim, it is essential to ensure that budgetary cuts do not affect disproportionately this sector of public policy (see also remarks under Article 4 above).

79. The Advisory Committee also notes with satisfaction that the authorities have undertaken substantial work to improve the management of the various challenges arising out of cultural and religious diversity, including the publication of school textbooks on the main religions present in Spain, training of teachers of religion, training courses for local authorities on religious diversity management, among other valuable initiatives. It praises in particular the launching of the website of the “Observatory of Religious Pluralism”, which contains very useful information and guidance, in particular to local authorities, on how to deal concretely with issues such as cemeteries, food requirements, worship places, religions and beliefs in hospitals, and provides easy access to the legislation in force.<sup>27</sup> It is essential to encourage local authorities to make full use of such instruments in order to find adequate solutions to concrete difficulties connected to cultural and religious diversity and to disseminate information on them among the population in general.

#### *Recommendations*

80. The Advisory Committee invites the authorities to pursue and strengthen their efforts to combat all forms of racism and intolerance, including Islamophobia, to promote the integration of immigrants and respect for cultural and religious diversity. It is important to ensure that budgetary restrictions do not affect disproportionately the effective implementation of policies that have been launched in this respect and the work of related institutions, such as OBERAXE and the Ombudsman.

81. All expressions of racism or intolerance, including by politicians must be firmly condemned and effectively prosecuted and sanctioned.

82. All efforts to improve the situation of Roma immigrants living in difficult conditions must be supported, so as to avoid their further marginalisation, stigmatisation and rejection and in order to promote their integration in society.

83. The Advisory Committee calls on the authorities to pursue the dialogue with representatives of the Muslim community so as to find solutions to problems connected with the teaching of religion at school, the lack of worship places and other issues. In general, it is important to ensure that local authorities comply with human rights standards, including the provisions of the Framework Convention.

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<sup>27</sup> See: [www.observatorioreligion.es](http://www.observatorioreligion.es)

## **Media**

### *Recommendations from the two previous cycles of monitoring*

84. In previous monitoring cycles, the Advisory Committee recommended making further efforts to strengthen self-regulation within the media, including through the establishment of a state audiovisual body.

### *Present situation*

85. The Advisory Committee strongly regrets that a number of audiovisual and print media continue to disseminate prejudices on immigrants and minorities, especially the Roma and irregular immigrants, and are fuelling Islamophobia and antisemitism. Some media for instance regularly reveal the ethnic origin of alleged perpetrators, which strengthens existing stereotypes (see also remarks under Article 9 below). Furthermore, there is a worrying increase in racism and hate speech on the Internet, like in other States Parties.

86. The Advisory Committee therefore notes with interest the creation by Law 7/2010 on Audiovisual Communication of a State Council for Audiovisual Media, which has been granted *inter alia* the competence to sanction programmes that would trigger “hatred, contempt or discrimination on grounds of race, birth, nationality, gender, religion, opinion or any other social or personal ground” and regrets, however, that this Council is not yet operational. It believes that it could contribute to improving self-regulation of the media as far as the dissemination of prejudices and biased and racist views, including Islamophobia, are concerned.

### *Recommendation*

87. More resolute efforts must be made to combat the dissemination of racism and stereotypes in the media, including through the setting up of the State Council for Audiovisual Media. Effective mechanisms of self-regulation of the media should be put in place.

## **Combating hate crime**

### *Recommendations from the two previous cycles of monitoring*

88. In the previous monitoring cycles, the Advisory Committee urged the authorities to pursue efforts to collect data on racism and ethnically motivated violence. It also invited them to organise further training for prosecutors and judges concerning existing provisions on racial motivation in criminal law, and raise their awareness of the problem of racism and racially-motivated violence and the need to counter it.

### *Present situation*

89. The Advisory Committee regrets that both Article 22.4 of the Criminal Code, which makes the racist motivation of an offence an aggravating circumstance, and Article 510 of the Criminal Code which sanctions racially-motivated hatred or violence have been applied only in a very limited number of cases.<sup>28</sup> It is worried by concurring information indicating that there continues to be a serious lack of awareness of anti-discrimination and anti-racism legislation in the judiciary (judges, prosecutors and lawyers) as well as among law enforcement officials.<sup>29</sup> Discrimination cases are rarely recognised and qualified as such. Many cases are reportedly dealt with by courts as misdemeanours<sup>30</sup> and therefore not adequately investigated and

<sup>28</sup> See fourth ECRI Report on Spain, *ibid.*

<sup>29</sup> See fourth ECRI Report on Spain, *ibid.*

<sup>30</sup> *Juicios de falta.*

sanctioned. The Advisory Committee also regrets the persisting lack of data collection in the judiciary on racially- or religiously-motivated offences (see remarks on Article 4 above).

90. Furthermore, the Advisory Committee notes that the wording of Article 510 of the Criminal Code (criminalising the “provocation” of racially-motivated discrimination, hatred or violence) makes it very difficult to invoke this provision in courts. Therefore, it strongly supports the view expressed by many of its interlocutors that this provision would be more effective if it were to criminalise “incitement to racially-motivated hatred” instead of “provocation”. Additionally, interlocutors of the Advisory Committee have underlined that victims of racially-motivated offences would have easier access to justice, would they benefit from the simplified access to free legal aid available to victims of gender-based discrimination and terrorism.<sup>31</sup>

91. Despite these limitations, the Advisory Committee notes with satisfaction that, as a result of landmark court cases since 2009, neo-Nazi organisations have been condemned for the dissemination of national-socialist ideas and promotion of discrimination, hatred and violence against persons or groups on the grounds of their racial origin, religion or sexual orientation.<sup>32</sup> These court cases, which were widely reported in the media, should contribute to raising public awareness on the dangers of racism as well as on the remedies available according to the legislation on racism and hate crime.

92. Moreover, the Advisory Committee strongly welcomes the creation in November 2011 of a post of Public Prosecutor for Equal Treatment and Against Discrimination in the Supreme Court, as provided for in the draft anti-discrimination law, and based on the positive experience of the work carried out since 2009 by the Public Prosecutor for Hate Crime and Discrimination of the Province of Barcelona,<sup>33</sup> as well as similar experiences in Madrid, Malaga and Valencia (see remarks under Article 6 above). It expects that the work of the new specialised prosecutors will contribute effectively to improving ways in which racially-motivated hatred and discrimination cases are dealt with in the justice system, including by raising awareness and training of the judiciary on these issues.

### *Recommendations*

93. The Advisory Committee calls on the authorities to consider ways of promoting a wider implementation of the existing legislation against racism and racially-motivated discrimination. They should consider amending the Criminal Code in order to make the current provisions on hate crime more effective.

94. The authorities should also redouble efforts to improve substantially the training and awareness of the judiciary on these issues. They must develop a system of adequate registration of racially-motivated offences and, in general, of data collection in the justice system on issues related to racism and discrimination. Support to the work of the specialised prosecutors on racially-motivated hatred and discrimination should be pursued.

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<sup>31</sup> According to Law 1/1996 on Free Legal Aid, victims of gender-based violence and of terrorism do not have to prove that they lack sufficient resources to litigate in order to have access to free legal aid.

<sup>32</sup> The Hammerskin organisation was dissolved.

<sup>33</sup> The Prosecutor for Hate Crime and Discrimination of Barcelona was established in October 2009.

### Conduct of law-enforcement officials

#### *Recommendations from the two previous cycles of monitoring*

95. In the previous monitoring cycles, the Advisory Committee called on the authorities to strengthen the human rights training received by police forces in Spain, especially in relation to the treatment of persons belonging to minority groups. It also urged the authorities to strengthen existing internal systems of control of police conduct by establishing an independent complaints mechanism.

#### *Present situation*

96. The Advisory Committee is deeply concerned by numerous reports indicating that “ethnic profiling” by the police continues to be a widespread practice and that persons belonging to some minority groups are disproportionately stopped and searched, especially in public transport, in particular in the metro, on the street, in public squares, and even in bars or internet and phone centres.<sup>34</sup> This practice reportedly targets mainly persons belonging to certain groups, such as Roma and immigrants from Africa (especially Moroccans), certain regions of South-America and Asia. The Advisory Committee is particularly disturbed by information released in 2009 and 2010 indicating that quotas of detentions of irregular migrants were imposed on policemen, leading to massive and selective controls on the street. Therefore, it welcomes the statement made by the authorities in March 2012 condemning the existence of quotas of detention of irregular migrants as well as the subsequent practices of “ethnic profiling”. The Advisory Committee expects that these statements will be followed by concrete measures to eliminate such practices without delay.

97. Additionally, it is concerned by the potentially harmful consequences of the interpretation of the Law on Foreigners given in Circular N°1/2010 of the General Directorate for the Police and Civil Guard. This Circular makes it possible for the police to place irregular migrants in “preventive detention” if they fail to provide proof of regular presence in Spain when checked, even though the persons concerned show valid identity documents. However, under Spanish law, “preventive detention” can only be applied in cases of criminal offences and not for administrative offences, such as migrants being in an irregular situation. This interpretation, which leads to a disproportionate number of arrests based on “ethnic profiling” and therefore, violations of the rights of migrants, has been widely criticised, including by the State Ombudsman’s Office.<sup>35</sup> However, the Circular is still in force, which is a source of concern.

98. The Advisory Committee firmly believes that “ethnic profiling” is discriminatory, and therefore not in compliance with Article 6 of the Framework Convention. Moreover, it reinforces existing stereotypes which present immigrants as criminals, particularly immigrants in an irregular situation. It also jeopardises the relations between minorities and the police, thus creating tensions that are likely to have a harmful effect on the integration of immigrants.

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<sup>34</sup> The STEPPS project initiated by the Open Society Justice Initiative, in co-operation with the police of Fuenlabrada (Madrid) and Girona (Catalonia) in 2006-2007 shows that persons belonging to ethnic minorities are 10 times more likely to be stopped and checked by the police than persons belonging to the majority population. See also decision of the UN Human Rights Committee on the case of *Rosalind Williams v. Spain*, case N° 1493/2006, July 2009. See also “*Stop racism, not people*”, Racial profiling and immigration control in Spain, Amnesty International, December 2011.

<sup>35</sup> 2010 Report of the Ombudsman.

99. Furthermore, numerous reports indicate that witnesses of “stop-and-search” operations carried out in public places, who observed police work or asked questions to policemen about their work were subsequently charged with obstructing the work of the police.<sup>36</sup>

100. In general, the Advisory Committee is concerned by the reported general lack of training of the police on racism and discrimination. The Network of Assistance to Victims under the Council for Equal Treatment indicates that 22% of complaints that were addressed to the Network are connected to relations with the police. The Advisory Committee also received reports about police abuse, including racist insults. Although progress was made in recent years in the field of human rights training of the police, it remains reportedly of a too general nature. There seems to be a persistent lack of awareness of problems related to discrimination and a lack of capacity to handle adequately racially-motivated offences. Additionally, the Advisory Committee deplores that no independent mechanism has been established to deal with complaints of police misconduct, as recommended in its second Opinion as well as in reports of other international bodies.<sup>37</sup>

101. Against this background, the Advisory Committee welcomes the measures taken to address the practice of “ethnic profiling”, such as the pilot projects carried out in 2006 and 2007 in Girona and Fuenlabrada (see footnote N° 34) in order to promote a more efficient and responsible use of identity checks and their registration, notably through the use of registration forms. The new training programme on effective action against racism and xenophobia that was started in 2011 by the police of the Autonomous Community of Valencia is also a welcome development. The Advisory Committee believes that such projects should be replicated and disseminated widely in the country. It also welcomes the steps taken by the State Ombudsman’s Office against the practice of “ethnic profiling”. Furthermore, it expects that the agreement of November 2011 between the Ministry of the Interior and the Ministry of Labour and Immigration, aimed at improving police training on racism and discrimination issues and at improving recording by the police of racially-motivated incidents, will bring about improvements in the near future (see remarks on Article 4 above). It is therefore important to ensure that this agreement is effectively implemented and that its impact is adequately evaluated.

#### *Recommendations*

102. The Advisory Committee urges the authorities to put an end without delay to the practice of “ethnic profiling” by the police, which is not compatible with the principles and the aims of the Framework Convention.

103. It also calls on the authorities to increase training of the police in order to combat racism and discrimination, on the basis of the good practices already developed in some regions. The authorities must ensure that all instances of police misconduct are effectively investigated, prosecuted and adequately sanctioned.

104. It is particularly urgent to develop a comprehensive system of data collection on discrimination in the justice system, so as to ensure a more effective implementation of the anti-discrimination legislation in force. Training of the police in recording discrimination-related offences must also be considerably improved.

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<sup>36</sup> A number of persons acting in the framework of “Neighbourhood brigades” (*Brigadas vecinales*), an NGO observing the work of the police in public places, were charged after observing “stop-and-search” operations in public places.

<sup>37</sup> See for instance fourth ECRI Report on Spain, *ibid.*



## Article 9 of the Framework Convention

### Roma access to the media

#### *Recommendations from the two previous cycles of monitoring*

105. In the previous monitoring cycles, the Advisory Committee urged the authorities to support the participation of Roma in the media at all levels, including by providing financial assistance to Roma initiatives and training to Roma journalists.

#### *Present situation*

106. The Advisory Committee is pleased to note that a number of regular publications by NGOs, such as *Nevipens Romani*, *I Tchatchipen* and *Gitanos*, continue to be subsidised under the Roma Development Plans and other public funding schemes. Moreover, Roma are increasingly present on the Internet through a number of websites, blogs and other tools.

107. However, the Advisory Committee regrets that, in general, the participation and representation of the Roma in the media remains very limited, including in public media which have the duty to reflect the interests of the entire population. Little progress seems to have been made in this respect since the adoption of the Advisory Committee's second Opinion. Furthermore, the Advisory Committee is concerned that the representation of the Roma, and the Roma identity and culture, in mainstream media continues to be mainly negative, - associated with criminality or poverty - and when positive, it usually consists of information and cultural programmes connected to the artistic field (flamenco) (see also comments on Article 6 above).

108. The lack of unbiased information on Roma outside these two specific areas also stems from a lack of trained Roma journalists. Therefore, the Advisory Committee welcomes initiatives such as the programme launched in 2008 on Canal Extremadura (a regional channel), through which a Roma journalist provides her views on current issues of general interest. It also welcomes the launching in 2007 of a media campaign to combat prejudice against the Roma and the publication in 2010 of a practical guide for journalists on equal treatment, the media and the Roma community, published with public support.<sup>38</sup>

109. Nevertheless, the Advisory Committee is of the opinion that these initiatives are far from being sufficient to promote access of the Roma to the media and counter the generally negative image of the Roma community which is disseminated through the media. It expects that steps will be taken without delay to achieve the goal provided in the Roma Action Plan for 2010-2012 to change the image of the Roma in the media and society as a whole. This objective includes *inter alia* developing a communication strategy for Roma NGOs and organising meetings between media and Roma representatives.

#### *Recommendations*

110. The Advisory Committee calls on the authorities to take far more resolute and effective measures to promote access of the Roma to the media, including by supporting the training of Roma journalists. The public service broadcast media must also be reminded of their duty to respect and reflect adequately cultural diversity so as to take into account the interests of society as a whole.

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<sup>38</sup> See "A practical guide for journalists, equal treatment, the media and Roma community", *Fundación Secretariado Gitano*, 2010.

## Article 12 of the Framework Convention

### Equal access to education

#### *Recommendations from the two previous cycles of monitoring*

111. In the previous monitoring cycles, the Advisory Committee invited the authorities to take steps to provide appropriate support to pre-school education, school mediators and other initiatives aimed at preventing absenteeism, school drop-out and under-performance in schools.

112. It also invited the authorities to monitor the implementation of the Law on Education of 2006 as well as the measures taken by school boards to prevent the concentration of children from disadvantaged communities in some schools.

#### *Present situation*

113. The Advisory Committee notes that the situation of Roma in the field of education presents positive as well as negative aspects. It welcomes, on the one hand, the fact that the rate of enrolment of Roma pupils in primary education is fairly high, and that it is increasing for pre-school education.<sup>39</sup> Absenteeism also continues to drop considerably.<sup>40</sup> On the other hand, progression into secondary education remains a major problem, and very few Roma pupils reach university education.<sup>41</sup> Drop-out of secondary education is of particular concern, especially as far as girls are concerned, and under-achievement among Roma pupils is still disproportionately high.<sup>42</sup> Illiteracy among Roma adults remains five times higher than within the majority population.

114. The Advisory Committee notes with satisfaction that the authorities, mainly at the regional level (as education falls within the competences of the Autonomous Communities) have continued to implement important programmes to remedy the gaps identified. The central authorities are also supporting a number of programmes aimed at providing additional resources to schools located in disadvantaged areas, in the form, for instance, of provision of assistant teachers, mediators and extra-curricular support.<sup>43</sup> The emphasis put by the authorities on solving the problem of lack of continuity and drop-out from secondary education is particularly welcome.<sup>44</sup> While understanding that the results of the current efforts will be tangible only within the next few years, the Advisory Committee believes that the current programmes should be maintained and increased if the achievements of the past years in terms of school enrolment are to be repeated with regard to continuity to secondary and higher education.

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<sup>39</sup> Attendance of pre-school education increase from 59% in 1994 to 74% in 2001 and 87% in 2009. Source: *Fundación Secretariado Gitano*, referred to by the authorities in their National Roma Integration Strategy for 2012-2020.

<sup>40</sup> According to the Ministry of Education, the rate of absenteeism among Roma pupils decreased from 57% in 1994 to 31% in 2001 and to 22.5% in 2009.

<sup>41</sup> According to the Ministry of Education, the rate of Roma pupils enrolled in education by levels is as follows: 87% between the age of 3 and 6, 96% from 6 to 12, 78% from 12 to 16 and 3.3% beyond 16.

<sup>42</sup> According to the same source, only 32% of Roma pupils pass with success all the subjects in the curriculum, while this rate is of 58% for the majority population.

<sup>43</sup> These plans include among others the Plan PROA to provide additional resources to schools with specific needs and the Plan EDUCA 3 to increase access to pre-school education.

<sup>44</sup> A campaign was, for instance, launched to encourage pupils from the Roma community to complete secondary education ("*Sea cual sea tus sueños, acabarás secundaria*"). This campaign is implemented by the *Fundación Secretariado Gitano*, with support from the European Social Fund and the Ministries of Education and Health, Social Policy and Equality.

115. According to various reports and studies, mediators' programmes have borne positive results with regard to under-achievement and absenteeism. It is therefore regrettable that trained mediators working with Roma pupils continue to be mainly provided at the initiative of NGOs and following a case-by-case approach. Moreover, the economic crisis has had a negative impact on the possibilities of training, recruitment and employment of mediators. The Advisory Committee is of the opinion that a more systematic approach towards mediation work on behalf of the educational authorities could maximise the impact of the work of mediators. In this respect, it is pleased to note that a new university programme on social intervention in the Roma community started in the University of Navarra in 2009, which offers additional training opportunities and a university diploma to mediators working with Roma.<sup>45</sup> It is important to promote the access of persons undertaking such training, who mostly belong to the Roma community, to mediation jobs so as to support the process of training of mediators on a long-term basis.<sup>46</sup>

116. The Advisory Committee is deeply concerned by the continued existence of schools with a high concentration of Roma (and immigrant) pupils, located in disadvantaged urban areas. Whereas the Law on Education of 2006 intended to promote equal access of all pupils to schools and a balanced distribution of pupils in need of specific support between schools, the Advisory Committee is concerned that this aim is, reportedly, far from being achieved. It appears that the concentration of pupils in a disadvantaged situation results from various factors, starting from the geographical location of the school, but also the system of distribution of pupils between schools. The authorities informed the Advisory Committee that, in some cases, it is useful to promote a concentration of Roma pupils with specific disadvantages in certain "reference" schools, where they will be provided with adequate additional support<sup>47</sup> and will not feel isolated. However, the Advisory Committee also learnt during its visit that the concentration of Roma pupils in some schools can sometimes result from them being automatically channelled to these schools, even when they do not originate from the surrounding neighbourhood, or from being denied access to publicly-funded private schools (*colegios concertados*) due to alleged lack of places. The academic level in many of these schools is, according to various reports, lower than in other schools. Moreover, the Advisory Committee learnt with concern that in schools imparting additional support to pupils with specific difficulties (*aulas compensatorias*), this support is often provided to Roma pupils in separate classes, thus perpetuating the isolation of Roma pupils from mainstream classes and schools.

117. The Advisory Committee acknowledges that meeting the needs of pupils in a disadvantaged situation requires flexibility and differentiated solutions adapted to local situations. It also learnt during its visit to Cordoba that some schools with a high concentration of disadvantaged Roma pupils have been able to achieve impressive results, with the support of various NGOs and publicly-funded programmes.<sup>48</sup> Nonetheless, the Advisory Committee is of

<sup>45</sup> This is a joint initiative of the University of Navarra and the *Fundación Secretariado Gitano*, supported by the Ministry of Health, Social Services and Equality. Participants in this on-line programme can obtain publicly-funded scholarships.

<sup>46</sup> See also the Council of Europe programme for the training of Roma mediators (ROMED), launched in 2010 ([www.coe-romed.org](http://www.coe-romed.org)).

<sup>47</sup> Including meals, extra-curricular activities, individual support and additional "catch up" classes.

<sup>48</sup> In Cordoba, the Advisory Committee visited a primary school located in a disadvantaged area ("*Los Vikingos*") in which more than 95% of the pupils are Roma, whereas the proportion of the Roma population in the surrounding district is estimated to be around 30-40%. With the support of a number of NGOs and programmes supported by the Andalusian government and the municipality, the school director and the pedagogical team have been able, in the last five years to decrease absenteeism substantially by motivating pupils and their families and organising a large array of extra-curricular activities in the school. They also offer a number of support activities to families, in line with the principle of "learning communities" (*comunidades de aprendizaje*).

the opinion that, in general, the current concentration of disadvantaged Roma pupils in specific schools with lower academic levels puts the educational achievements of the last decade at threat. It therefore welcomes the commitment of the authorities, expressed *inter alia* in the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and other Related Forms of Intolerance of 2011, to put an end to the concentration of Roma pupils in certain schools and it expects that this will swiftly lead to tangible results.

#### *Recommendations*

118. The Advisory Committee calls on the authorities to pursue their efforts to improve the integration and achievements of disadvantaged Roma pupils in school. Continuity beyond primary education as well as successful completion of secondary education should remain key objectives for the authorities at all levels.

119. The Advisory Committee strongly encourages the authorities to consider effective ways of increasing the use of school mediators in a more systematic manner, drawing on existing good practices.

120. The Advisory Committee urges the authorities to investigate the reasons for the persisting concentration of Roma pupils in schools located in disadvantaged areas and with lower academic achievement, in order to eliminate such practices. In doing so, the authorities must ensure that the implementation of admission rules in schools do not result in discriminatory practices against Roma pupils.

### **Intercultural education**

#### *Recommendations from the two previous cycles of monitoring*

121. In the previous monitoring cycles, the Advisory Committee urged the authorities to ensure that the culture, history and traditions of Roma had an adequate presence in school curricula and teaching materials and that the intercultural dimension of the Law on Education of 2006 was implemented also to the benefit of the Roma.

#### *Present situation*

122. While the Law on Education of 2006 has generated an increase in teaching and information on cultural diversity, citizenship and human rights, the Advisory Committee learnt with regret that limited progress has been achieved concerning the introduction of adequate information on Roma in schoolbooks and teaching materials. Information contained in primary school textbooks portrays Roma mainly along the lines of social exclusion and marginalisation and, therefore, reinforces stereotypes. At higher levels of education, and particularly at university level, there seems to be hardly any information on Roma culture, identity and history. Teachers at all levels are, reportedly, also lacking adequate training on these topics.

123. Therefore, the Advisory Committee praises initiatives such as the publication by the Institute of Roma Culture of textbooks on the Roma (see remarks under Article 5 above) and it expects that the authorities will promote a wide use of this material in schools. It also welcomes the co-operation established between the Institute of Roma Culture and the University of Alcalá de Henares with a view to promote a better knowledge of Roma culture at university level (see remarks under Article 5 above). However, the Advisory Committee takes the view that far more resolute and comprehensive measures should be taken by the educational authorities to remedy this important gap. In this respect, it notes that, as part of the Action Plan for the Roma People 2010-2012, new school material on the Roma should be developed. The Advisory Committee

believes that this task should be undertaken urgently, as it is a key element in efforts to combat prejudice and racism in society.

124. The Advisory Committee is pleased to note that the Institute of Roma Culture published in 2011 a manual for primary schools on Roma culture and identity, with a view to improving knowledge and awareness of all children in primary school and to counteract stereotypes. The Advisory Committee expects that this manual will be widely disseminated in schools.

*Recommendation*

125. The Advisory Committee urges the authorities to undertake a review of school textbooks in order to ensure that sufficient and adequate information on the Roma culture, history and language is provided to all pupils, at all levels of education. It is also important for the authorities to ensure that the results of the work of the Institute of Roma Culture are effectively used and promoted, especially the work regarding the dissemination of adequate information on the Roma identity and culture in the education system.

**Article 14 of the Framework Convention**

**Teaching of the Romani and *caló* languages**

*Recommendations from the two previous cycles of monitoring*

126. In the previous monitoring cycles, the Advisory Committee invited the authorities to consult with Roma representatives to identify their needs and demands regarding teaching of the *caló* and Romani languages at school.

*Present situation*

127. There is currently no teaching of the Romani and *caló* languages as part of the school system (see remarks on Article 5 above). The Advisory Committee welcomes the publication by the Institute of Roma Culture of a textbook for teaching the Romani language in 2011. Additionally, the Institute concluded in June 2011 an agreement with the University of Alcalá de Henares to provide classes on Roma culture, history and language, for the first time in a Spanish University (see also remarks under Article 12 above).

*Recommendation*

128. The Advisory Committee invites the authorities to identify the needs and demands of the Roma with regard to studying the Romani and *caló* languages (see also recommendation on Article 5 above).

**Article 15 of the Framework Convention**

**Participation of the Roma in public affairs**

*Recommendations from the two previous cycles of monitoring*

129. In the previous monitoring cycles, the Advisory Committee urged the authorities to identify ways and means of promoting the participation of Roma in elected bodies at all levels.

130. It also invited them to ensure the effectiveness of the Consultative Council for the Roma People and its adequate and effective involvement in the preparation of the Roma Development Plans. Additionally, it invited the authorities to encourage autonomous governments and

municipalities to establish their own consultative mechanisms to ensure effective participation of the Roma in public affairs.

*Present situation*

131. The Advisory Committee regrets that the representation of Roma in elected bodies at all levels has not increased since its previous visit. The general elections of November 2011 have, in particular, not resulted in any improvement in the situation in this regard even though Roma representatives have been included on the electoral lists of some mainstream political parties. Consequently, Roma continue to be largely under-represented in Spanish political life and public affairs, even in regions where they reside in substantial numbers, such as Andalusia.

132. The Advisory Committee believes that the extensive support provided to the work of Roma non-governmental organisations by the authorities at state and regional levels for many years, although commendable, does not replace direct representation in elected bodies. This situation results in Roma representatives and organisations being mainly active in the area of projects and programmes for Roma and in a lack of effective participation of the Roma in public affairs as a whole.

133. The Advisory Committee is pleased to learn that the State Council for the Roma People, which was established in 2005, has been functioning since 2007 under the auspices of the Ministry for Health, Social Services and Equality. It is a collegial body composed of 20 representatives of Roma NGOs and 20 representatives of the State administration. Its mandate includes assessing policies, projects and legislation on the Roma community, proposing measures and projects to improve the situation and making suggestions as to the use of funds. It is also conceived as a consultative body between the administration and Roma civil society. It was widely involved in the preparation of relevant policy documents, such as the Action Plan for the Roma Population for 2010-2012. This is a welcome development.

134. However, the Advisory Committee is informed that the impact of the consultations carried out by the State Council is so far limited by a number of factors. Firstly, the Council can react to proposals and suggestions put forth by the administration, but it has limited opportunities to take initiatives on issues that it considers a priority, including on the allocation of financial support. Additionally, the Advisory Committee notes that consulting the State Council on issues of concern for the Roma is not mandatory for the administration. Furthermore, it is aware of criticism related to the composition of the State Council. While the composition of the Council is regulated according to detailed rules of procedure, including public calls for interest and a selection procedure based on a number of criteria,<sup>49</sup> complaints relate to the fact that the final selection is made by the administration, which is also chairing the Council. While welcoming the fact that the authorities have attempted to design a transparent system of representation, the Advisory Committee believes that constant attention should be paid to ensuring that the established criteria allow for sufficient representativity. It is also important for the authorities to maintain communication with NGOs that are not part of the Council.

135. The Advisory Committee notes that consultation bodies also exist at the regional level, in Barcelona (City), Extremadura, Madrid (Autonomous Community), the Basque Country and in Andalusia. However, the Advisory Committee notes with regret that, according to various interlocutors, the impact of the work of these bodies on decision-making on Roma issues is limited. It believes that increased consultation and participation of the Roma at the regional and

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<sup>49</sup> See Royal Decree 891/2005, Order of the Ministry of Labour and Social Affairs TAS/3795/2005 and Resolution of the State Secretariat for Social Services, Families and Disability of 22 March 2006.

local level is essential, especially as a number of key competencies in important areas for the integration of the Roma community (such as education or housing) are in the hands of the local and regional authorities.

*Recommendations*

136. The Advisory Committee reiterates its call to the authorities to find ways of actively promoting participation of the Roma in elected bodies at all levels. This could be achieved by raising awareness of mainstream political parties to the need for political life to reflect the diversity of society and for persons belonging to minorities to participate in decision-making, including minority groups such as the Roma.

137. The Advisory Committee invites the authorities to continue supporting the work of the State Council for the Roma People. They should, in particular, ensure regular and effective consultation of the Council on all matters of concern to the Roma and that the views of the State Council are duly taken into account by the administrations concerned. Moreover, the authorities should take all measures to ensure that the Council fully represents the diversity of the Roma movement in Spain and that communication is also maintained with organisations that are not part of the Council.

138. The authorities must promote the establishment of consultative bodies between regional and local authorities and the Roma in order to ensure a meaningful participation of the latter in decision-making on issues of concern to them.

**Participation of Roma in socio-economic life: employment**

*Recommendations from the two previous cycles of monitoring*

139. In the previous monitoring cycles, the Advisory Committee urged the authorities to seek further resources to support specific programmes aimed at ensuring effective equality of Roma in their access to employment, housing, health care and other social services, while continuing to promote full enjoyment by Roma of mainstream programmes in these areas.

*Present situation*

140. The Advisory Committee notes with satisfaction that the authorities have continued to implement long-term programmes to improve access of persons belong to disadvantaged groups, including the Roma, to the labour market. The use of EU funds, and notably of the European Social Fund (ESF) for programmes targeting Roma, is particularly welcome. In this respect, the Advisory Committee notes with interest the work of the European Social Fund Unit within the Ministry of Labour and Immigration which is in charge of implementing anti-discrimination programmes funded by the ESF with co-funding of regional and local authorities. The long-term impact of these programmes remains, nonetheless, to be fully evaluated. The Advisory Committee also appreciates the approach taken by the authorities in promoting integration in the labour market consisting of favouring individualised approaches and support in order to narrow the gap between unemployed persons and the labour market (for instance through the ACCEDER, EQUAL and “Surge” to promote the employment of persons in a very disadvantaged situation). Moreover, it notes with interest the commitment of the authorities to promote employment of unemployed persons belonging to disadvantaged groups by developing the social responsibility of companies, for instance through public tenders.

141. Despite these efforts, the Advisory Committee is concerned that unemployment among Roma is reportedly rising in a disproportionate way (see also remarks under Article 4 above)

since the beginning of the economic crisis. It is important that the authorities continue to pay specific attention to the employment situation of the Roma, despite the current budgetary restrictions, in order to avoid jeopardising the results achieved in recent years and so as to mitigate the risks of further marginalisation and social exclusion of part of the Roma population, especially young people.

142. The Advisory Committee learnt with concern that the adoption of new legislation regarding street markets (*venta ambulante*), transposing the EU Directive 2006/123/EC on services in the internal market, might result in many Roma being deprived of the opportunity to practice their traditional trade in street markets and, therefore, losing an important source of income. The Royal Decree 199/2010 regulating the exercise of trade on street markets imposes a yearly limitation of the number of licences granted to street sellers in order to safeguard free competition. Moreover, licences will have to be renewed every year with no guarantee as to their continuation, as there will be fewer licences granted than the number of sellers, in order to ensure unhindered competition. This new situation will result in increased insecurity for street sellers. Considering that it will be difficult for many of these persons to undergo retraining and have access to the labour market, the Advisory Committee is concerned that many of them might lose any form of income. The Advisory Committee notes that a moratorium on the implementation of this new legislation is currently in place and it expects that it will be prolonged, until satisfactory solutions are found to avoid many Roma families losing their sources of income.

#### *Recommendations*

143. The Advisory Committee calls on the authorities to continue their policies and programmes to promote access of Roma to the labour market. This should be done on the basis of careful evaluation of current programmes and in close co-operation with Roma organisations and representatives.

144. The Advisory Committee urges the authorities to seek ways to prevent many Roma street sellers from losing their source of income as a result of the implementation of the new legislation on street markets and itinerant trade.

### **Resettlement**

#### *Recommendations from the two cycles of monitoring*

145. In the previous monitoring cycles, the Advisory Committee called on the authorities to investigate whether the practice of relocating the inhabitants of informal settlements in “special neighbourhoods” continued in parts of Spain. The authorities were also invited, in cases of lawful evictions, to organise prior consultations with those concerned in order to reach solutions that were acceptable to all parties.

#### *Present situation*

146. The Advisory Committee is pleased to learn that the authorities have continued to work towards the eradication of slums and settlements with substandard conditions. It praises, in particular, the work carried out in Sevilla, where only two such settlements remain, and in Madrid, where the action of the Institute for Resettlement and Social Integration (IRIS) of the Madrid Autonomous Community resulted in around 2,400 families being transferred from shanty dwellings to mainstream social housing.<sup>50</sup> The Advisory Committee notes that the current

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<sup>50</sup> Out of 1,800 shanty dwellings in the Madrid area in 1998, 400 are left located in four large settlements.



positive results of the work of IRIS are the consequence of a drastic change of policy at the end of the 1990s, when it was decided to favour the integration of the families concerned by resettling them in the city rather than their segregation, which was the preferred option in the past and led to disastrous consequences.<sup>51</sup> Other positive examples brought to the attention of the Advisory Committee, aimed at integrating inhabitants of former shanty towns or dilapidated settlements, include the building of a students' dormitory within a formerly run-down district of Sevilla, inhabited mainly by Roma ("*las 3000 viviendas*").

147. However, the Advisory Committee notes with concern that there remains a number of slums populated mainly by Roma (and migrants). A study published in 2007 indicates that around 12% of the Roma population still lives in substandard housing and 4% in slums or segregated accommodation.<sup>52</sup> This situation continues to have a detrimental impact on the state of health of part of the Roma population,<sup>53</sup> as well as on other areas such as access to education and employment. Moreover, the Advisory Committee is informed that whereas successful programmes have included long-term and comprehensive support for the families concerned (sometimes over 4-5 years), including counselling, social support, support in the fields of access to education and employment, mediation with neighbours, etc, a number of resettlement operations have failed to put an end to segregation, substandard living conditions and marginalisation due to a lack of continued social support. The Advisory Committee is in particular worried by various reports indicating that the resettlement of Roma families continues to be sometimes met by acute hostility from the majority population living in the neighbourhood, leading to further relocations and tense situations (see also remarks under Article 6 above). Additionally, the Advisory Committee is informed that the support available at state level to eradicate slums or rehabilitate dilapidated urban areas through the National Housing Plan is not fully used by the autonomous authorities (which are responsible for most of the issues connected to housing and urban planning).

148. Furthermore, the Advisory Committee is concerned that the access of Roma families to the housing market remains very difficult, due to the disproportionate impact on them of general difficulties, such as the high price of rents and a lack of subsidised and social housing, but also due to problems affecting them in particular, such as the lack of security of tenure, vulnerability to evictions and reported increasing discrimination against them in the housing market (see also remarks under Article 4 above).

#### *Recommendations*

149. The Advisory Committee calls on the authorities to pursue their efforts to eradicate slums by replicating good practices in this field as appropriate, in order to promote integration of the Roma families concerned in mainstream housing. In doing so, they must pay particular attention to the need for long-term, comprehensive social support for the families affected by the resettlements.

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<sup>51</sup> Spatial segregation in substandard housing ("*barrios de tipología especial*"), lack of access to employment, reduced possibilities of schooling, disproportionate police control of the persons living in these settlements, exclusion, violence and sometimes drug trafficking, etc. See for instance Report on the situation in Valdemingomez, prepared by the Committee of Experts on Roma/Gypsies and Travellers (MG-S-ROM) in 1997.

<sup>52</sup> See *Fundación Secretariado Gitano: "Mapa sobre vivienda y comunidad gitana en España en 2007"*, *ibid.*

<sup>53</sup> See for instance: "*Hacia la equidad en salud*", a study of the health status of the Roma population compared with the majority population, *Fundación Secretariado Gitano*, 2009.

150. The authorities should also ensure that the rights flowing from the Framework Convention are respected at the local level as well as guarantee equal access of the Roma to adequate and affordable housing.

### III. CONCLUSIONS

151. The Advisory Committee considers that the present concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Spain.

#### **Positive developments following two cycles of monitoring**

152. Spain has taken important steps to develop its legal and institutional framework against discrimination. A comprehensive Bill on Equal Treatment and Non-Discrimination has been elaborated, in consultation with civil society organisations which, if adopted, would widen protection against discrimination and remedy current shortcomings of the legislation in force.

153. The Council for the Promotion of Equal Treatment of all Persons without Discrimination on grounds of Racial or Ethnic Origin was established in 2010 as an independent body in charge of monitoring the situation in the field of discrimination and raising awareness of these issues in society as a whole. The Council established a Network of assistance to victims of discrimination, operating at the local level with the support of various NGOs.

154. A Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and other Related Forms of Intolerance was adopted at the end of 2011. Special Prosecutors against discrimination and hate crime have been appointed at regional and state levels. The Spanish Observatory of Racism and Xenophobia continues to carry out research and actions to raise public awareness of these problems. The authorities have undertaken substantial work to improve the management of the various challenges arising out of cultural and religious diversity, notably through the “Observatory of Religious Pluralism”. Policies to support the integration of immigrants in society and promote tolerance and intercultural dialogue continue to be implemented.

155. The Institute of Roma Culture was established in 2007 as a public foundation in charge of supporting the preservation and development of the Roma culture. A number of Autonomous Communities have introduced in their statutory laws official recognition of the Roma people and the duty to promote their full and effective integration.

156. The authorities have taken some steps to improve the situation of foreign Roma. No distinction is made in the application of some programmes between Spanish and foreign Roma, notably in the field of education and access to health care.

157. The authorities have continued to implement Roma Development Plans. They adopted a specific Action Plan for 2010-2012. Further steps have been taken to improve access of Roma to employment, as well as to eradicate slums and other forms of substandard and segregated housing that still exist in some parts of the country. Programmes continue to be implemented, at local and national level, to provide various forms of support to disadvantaged Roma pupils in the education system and to promote continuity to secondary education. Substantial progress has been achieved with regard to school enrolment and attendance of Roma pupils at the level of primary education.

158. The State Council for the Roma People was created in 2005 and has been effectively working since 2007 as a consultative body for the Roma community. It is composed of representatives of Roma associations at different levels and of the relevant ministries.

### **Issues of concern following two cycles of monitoring**

159. Despite the numerous programmes and projects implemented over the last years and substantial progress achieved in a number of areas, Roma continue to face widespread discrimination in access to employment, housing and in the education system. Part of the Roma population continues to live in substandard housing conditions, sometimes in slums and in separated settlements, which has a detrimental effect on their state of health. They are reportedly disproportionately affected by unemployment resulting from the economic crisis and new legislation on street selling might put those Roma practising itinerant trade at risk of losing their source of income. Moreover, denial of access to public places and other manifestations of discrimination are regularly reported.

160. Comprehensive anti-discrimination legislation should be adopted without delay, possibly based on the comprehensive Bill on Equal Treatment and non discrimination that has recently been prepared in co-operation with civil society organisations. Additional support should be provided to the work of the Council for the Promotion of Equal Treatment of all Persons without Discrimination on grounds of Racial or Ethnic Origin. There is a general lack of awareness of discrimination-related issues in the judiciary and law enforcement authorities, and a lack of monitoring and data collection on cases of discrimination.

161. Although comprehensive policies and programmes of promotion of the Roma community were designed at national and regional levels, in consultation with Roma representatives, they have not always been effectively implemented. The financial allocations for the implementation of these policies appear to be insufficient to meet existing needs. Additionally, there is still a lack of up-to-date information and data on the situation of the Roma in the various regions and areas of life, despite progress achieved in this respect in recent years.

162. Support for programmes and projects aimed at promoting and developing the Roma culture is reportedly too limited. There continues to be a lack of knowledge and awareness of the Roma culture, identity and history among the majority population. School textbooks in particular still lack adequate information in this respect.

163. Increasing racism and intolerance are reported in society. Immigrants and Roma (including foreign Roma) are particularly targeted by manifestations of hostility. These include opposition of neighbours to the resettlement of Roma in their district, and hate speech expressed by extremist groups.

164. Islamophobia is also growing and “anti-mosque” demonstrations have taken place in a number of municipalities. Some politicians have used racist rhetoric, notably as part of electoral campaigns, and the media continue to disseminate stereotypes and prejudices. There is a general lack of reporting of alleged racially-motivated offences and discrimination cases. The legal provisions on discrimination and hate crime are rarely invoked.

165. Whereas cases of police misconduct and abuse continue to be reported, no independent body in charge of investigating such cases has been established. “Ethnic profiling” by the police continues, reportedly, to be a widespread practice: persons belonging to some minority groups are disproportionately stopped and searched, especially in public transport and on the street.

166. The participation and representation of the Roma in the media remains very limited, including in public media. The existing initiatives concerning Roma and the media are far from

being sufficient to promote effective access of the Roma to the media and counter the generally negative image of the Roma community which is disseminated through the media.

167. In the field of education, Roma pupils, especially those coming from disadvantaged families, continue to face difficulties in various respects: high rates of drop-out and under-achievement, despite some improvements, as well as disproportionately low participation in secondary and higher education. The continued existence of schools with a high concentration of Roma pupils, located in disadvantaged urban areas and with a generally low academic level is of deep concern.

168. Participation of the Roma in public affairs remains very limited. While the setting-up of the State Council for the Roma People is an important step forward to remedy this lack of participation, it remains to be seen whether this body will be able to have an effective impact on policy-making. Few consultative bodies of the Roma exist at the regional level.

### **Recommendations**

169. In addition to the measures to be taken to implement the detailed recommendations contained in Sections I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

#### **Issues for immediate action<sup>54</sup>**

- **Take more resolute measures to implement effectively the policies aimed at improving the situation and the integration of the Roma, in close co-operation with Roma representatives; ensure that these policies are adequately resourced and are not disproportionately affected by budgetary restrictions;**
- **Eliminate the practice of “ethnic profiling” by the police which targets persons belonging to some minority groups; increase training of the police to combat racism and discrimination, on the basis of existing good practices;**
- **Investigate the reasons for the persisting concentration of Roma pupils in schools located in disadvantaged areas and with lower academic achievement, in order to eliminate these practices; ensure that the implementation of admission rules to schools does not result in discriminatory practices against Roma pupils;**

#### **Further recommendations<sup>55</sup>**

- **Consult with representatives of the Berber community regarding a possible extension of the protection of the Framework Convention to them;**

<sup>54</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

<sup>55</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention

- Complete without further delay the process of adoption of comprehensive anti-discrimination legislation; develop a comprehensive system of data collection on discrimination and racially-motivated offences in the justice system, in order to promote a more effective implementation of the anti-discrimination legislation in force; provide adequate support to the work of the Council for the Promotion of Equal Treatment of all Persons without Discrimination on grounds of Racial or Ethnic Origin;
- Continue and improve the systematic collection of data and information on the situation of the Roma in various areas of life; carefully assess the impact of the economic crisis on their situation, so as to avoid further discrimination against them;
- Continue to provide adequate support to the Institute of Roma Culture; take more resolute measures, at the central and regional levels, to support the preservation and promotion of Roma culture;
- Pursue and strengthen efforts to combat all forms of racism and intolerance and to promote respect for cultural and religious diversity; ensure that budgetary restrictions do not affect disproportionately the effective implementation of policies that have been launched in this respect and the work of related institutions; condemn firmly and unequivocally, investigate, prosecute and sanction effectively all expressions of racism or intolerance, including in politics and in the media;
- Consider ways of promoting a wider application of the existing legislation against racism and racially-motivated discrimination; redouble efforts to improve the training and awareness of the judiciary on these issues; consider amending the Criminal Code in order to make the current provisions on hate crime more effective;
- Take far more resolute measures to promote access of the Roma to the media, including by supporting the training of Roma journalists; combat the dissemination of prejudice and stereotypes against Roma in the media;
- Ensure progression of Roma pupils beyond primary education, as well as their successful completion of secondary education; increase the use of school mediators in a more systematic manner; undertake a review of school textbooks in order to ensure that sufficient and adequate information on the Roma culture, history and language is provided to all pupils, at all levels of education;
- Promote actively the participation of the Roma in elected bodies at all levels; continue supporting the work of the State Council for the Roma People with a view to ensuring its regular and effective consultation on all matters of concern to the Roma; ensure that the composition of the Council fully represents the diversity of the Roma movement in Spain; promote the establishment of consultative bodies for the Roma at the regional and locals levels;
- Take measures to avoid Roma street sellers losing their source of income as a result of the implementation of the new legislation on street markets and itinerant trade; pursue the ongoing projects to eradicate slums and segregated and substandard housing, drawing on existing good practices, in order to promote the integration of the Roma families concerned in mainstream housing.