

GOVERNMENT COMMENTS ON THE REPORT ON SPAIN

APPENDIX: GOVERNMENT'S VIEWPOINT

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

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Spain on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 23 June 2010, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

A P P E N D I X

The Spanish authorities thank the European Commission against Racism and Intolerance (ECRI) of the Council of Europe for its accurate fourth report on Spain and take note of its recommendations.

Nevertheless, the Spanish authorities would like to make the following comments concerning nine of the 220 paragraphs of the Report:

Paragraphs 49 and 52.

The wording of these two paragraphs can be interpreted in the sense that the rights these two paragraphs deal with (the right to healthcare, the right to basic primary social services and the right to urgent social aid) are granted only to foreigners who have registered in the municipalities where they live.

This is not the case. All foreigners enjoy these rights.

Paragraph 85.

The Law of 2009 on the Rights and Freedoms of Foreigners in Spain and their Social Integration is a national law. The autonomous communities have to implement this law and they are not allowed to use it as an element to introduce discriminatory limitations on access to housing aid.

Paragraph 122.

The report says the annual budget for the Plan for Roma Development is now around 6,5 million Euros. The correct figure is 8 million Euros.

Paragraph 124.

The last but one sentence says “As for the authorities, while it is clear that they have done much for the Roma, they appear reluctant to allow much to be done by the Roma”.

This sentence does not reflect the reality. The relevant Spanish authorities, not only have done much for the Roma, but have facilitated the empowerment of the Roma people to integrate and take control by themselves of their own lives and of their communities.

Paragraph 150.

This paragraph states that the Catalanian Autonomous Government has jurisdiction over the granting of work permits.

In fact, the Community of Catalonia has competence on the issue of the procedure to request a work permit for foreigners wishing to work in Catalonia but the final decision on residence permits pertains exclusively to the national authorities.

Paragraph 152.

This paragraph might lead to the conclusion that in Spain foreigners are only allowed to work only as employees. In fact they can also be self-employed; obviously, in this case they do not need a valid job offer or a contract.

Furthermore, article 41 of the law 4/2000 includes a list of activities for whose exercise foreigners do not need a work permit, but only a residence permit.

Paragraph 168.

In the second sentence of this paragraph there is a reference to the “Asylum Law of 2009”, but its content refers to the Law of 2009 on the Rights and Freedoms of Foreigners in Spain and their Social Integration.

In the next sentence, it is said that a report from the tutor of the minor is required, but that is not the case: a report from the Services for the Protection of Minors is required as well as a report from the Public Prosecutor, but not from the tutor.

It is relevant to mention, in this regard, that, according to the Spanish law, when minors under 16 years are not satisfied with their tutor or representative, upon their request they are provided with a judicial representative. Those who are older than

16 can choose his or her own representative or act by themselves without the need of legal representation.

Paragraph 192.

This paragraph states that foreigners who manage to gain access to Spain crossing the borders of Ceuta or Melilla without the necessary documentation “are placed in internment centres”. In fact, they are not sent to internment centres but to “Centros de Estancia Temporal” (Temporary Stay Centres). These are open centres where, within the established opening hours, the residents can freely go in and out.