

## APPENDIX

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

ECRI wishes to point out that the analysis contained in its third report on Spain, is dated 24 June 2005, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Spain was subject to a confidential dialogue with the Spanish authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Spanish authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.



## **"Observations of the Ministry of the Interior**

With regard to the latest version of the Council of Europe's ECRI report, and ahead of the submission of the report for definitive adoption at the meeting in Strasbourg on 13 and 15 December, the reiteration of comments on asylum already submitted by this Directorate on 29 July is necessary, in view of the fact that they have been **partly overlooked in the latest version**:

### **1. 'The Aliens law and the 'normalisation' procedure' (p. 12)**

The end of paragraph 37 sets out a recommendation to the Spanish authorities to ensure that legislation on carrier companies does not prevent asylum seekers from seeking protection or exercising their right to apply for asylum.

It should be noted in this regard that Organic Law 4/2000 of 11 January, on the rights and freedoms of foreigners in Spain and their integration in society, stipulates that carriage to the Spanish border of a foreigner who submits without delay an application for asylum which is accepted for consideration is not considered to be an offence. Moreover, safeguards are provided for cases where international protection is required.

### **2. "Internment Centres" (p. 13)**

In the previous version of the Report, the ECRI noted that "persons held in internment centres, especially in the Canary Islands, still do not have adequate access to legal information and assistance, a situation which impacts negatively on potential asylum seekers".

In the current version, the ECRI notes that improvements have been observed in the conditions in some Centres. However, it states that it has received reports according to which persons held in internment centres still do not have adequate access to legal information and assistance, a situation which impacts negatively on potential asylum seekers.

This Unit welcomes the fact that in the new version the ECRI then mentions the two measures on which the Unit responsible for asylum issues in the Interior Ministry was working at the time it submitted its comments to the earlier report and which were a direct response to the complaint received, as set out in the paragraph above. Given that one of the two measures has already been implemented and is in operation, it deserves to be included in the definitive report. The following paragraph is therefore suggested:

"The Spanish authorities are aware of the need to strengthen the mechanisms enabling persons who meet the conditions for international protection afforded by the Spanish authorities in the cases provided for by law to have more effective knowledge of these possibilities, particularly in the case of immigrants from countries in conflict whose situation on arrival is one of particular uncertainty, on board 'pateras', and entirely unaware of their legal position.

For this reason, the Unit responsible for asylum in the Interior Ministry issued instructions in November concerning information on international protection for foreigners who have recently arrived in Spain on board pateras and other irregular vessels and who are held in Internment Centres. The instructions aim to facilitate effective information on international protection available to such persons - who arrive in Spain in conditions of particular vulnerability and uncertainty, with no knowledge of Spanish - and also to set out the response the Spanish legal system may provide to their situation.

Specifically, the instructions underline the need for Internment Centres to have multiple copies of the new asylum information booklet (translated into English, French, Arabic, Chinese, Portuguese, Russian, Armenian, Georgian, Farsi, Peul and Swahili), together with

specific information on international protection to complement the information provided on arrival in the Centre.”

Consequently, this Unit cannot agree with the recommendation made on p. 14 of the Report, in which the ECRI states as follows:

“It strongly recommends that the Spanish authorities take steps to improve access of persons in internment centres to legal information and assistance. ECRI urges Spanish authorities to ensure that detention in internment centres notably in the Canary Islands, is used in all cases in conformity with the law, and without any discrimination on grounds such as “race”, colour, language, religion, nationality or national or ethnic origin”.

It cannot be accepted insofar that another of the comments submitted to the earlier version of the Report on 24 June has not been taken into account in the latest version. In response to the previous report, it was indicated that “the Interior Ministry unit responsible for asylum has offered a number of Lawyers’ Associations the opportunity to conduct training activities aimed at raising awareness among lawyers who provide legal assistance to foreigners on asylum-related matters and enhancing their knowledge of such issues”.

We would insist reference be made to this initiative, with the following wording:

*“The Interior Ministry unit responsible for asylum issues is currently studying the possibility of organising seminars on legal assistance for the benefit of all those involved in any way with the procedure; the seminars would serve as a forum to detect problems and seek solutions.”*

### **3. “Reception and status of “non-citizens”: refugees and asylum seekers” (pp. 14-15)**

#### **3.1 Page 15 of the new version received still states that:**

“ECRI has continued to receive consistent reports according to which non-citizens are faced with significant barriers in accessing the asylum procedure. These difficulties stem notably from the conduct of border control and law enforcement officials, who reportedly sometimes ignore requests for asylum, but also from the unavailability of adequate legal assistance to potential asylum seekers”.

*As was already noted with respect to the previous version of the report, the Spanish authorities have not received any complaints regarding law enforcement or border officials ignoring a request for asylum.*

With regard to the problems with legal assistance, the remarks already made above need to be reiterated. Any foreigner who is affected by a procedure for enforced departure from Spain is entitled to receive legal assistance free of charge, even if the quality of the assistance is doubtless improvable. Mention is appropriate here also of the initiative referred to above concerning the organisation of a specific seminar on the subject.

**3.2** Concerning the second paragraph of this chapter (43), we note that the report still states that the number of asylum seekers in Spain has fallen since 2001. Since the Report does not offer an evaluation of this circumstance, the mere mention of this fact could be interpreted in a negative light or it might be associated with conduct deserving of reproach on the part of the Spanish authorities.

*This Unit considers necessary a specific explanation that the fall in numbers is part of an overall trend in the European Union, as indeed was made known to the ECRI representatives, who were given the relevant data. Hence, we would insist either that the reference to a fall in numbers be removed and replaced with the figures for 2004 alone, or a commentary added noting the similarity between the Spanish figures and those for the majority of European countries.*

The following wording is suggested:

*“Although the number of asylum seekers in Spain has fallen from 6,309 in 2002 to 5,553 in 2004, with 4,681 recorded thus far in 2005, this trend -as ministerial sources have noted- is in line with the overall fall in numbers in the European Union, which are very similar to the levels recorded in the late 1980s”.*

This Unit also considers appropriate specific mention of the reinforcement given to another international protection instrument already set out at Community level in Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).

The following paragraph is therefore proposed:

*“Although it is true that this fall is consistent with the general trend in the EU, it is worth underlining that the Spanish authorities, through the unit in the Interior Ministry which is responsible for asylum issues, is strengthening in practice so-called subsidiary protection, i.e. that used to protect persons who, while not refugees, are afraid to return to their countries because they fear they may face torture, capital punishment or serious threat in a context of widespread conflict.*

*In this regard, the body responsible for granting such protection - the Interministerial Committee on Asylum and Refugees (CIAR) - has laid down criteria for subsidiary protection and has adopted other general protection criteria for nationals of countries in conflict (Cote d'Ivoire,, Iraq, Palestinian Territories, Russian Federation -Chechnya-,...), thus providing an effective response for persons who do not meet the profile of refugee under the Geneva Convention but nonetheless require protection. In this way also, the principle of “non-refoulement” is fully respected.*

3.3 In the same section, and in the recommendations made, the Report further emphasises that the number of people granted refugee status or subsidiary protection is low, adding that many factors explain these low rates of protection. However, it notes also that “it has been reported to ECRI that the quality of the interviews and legal assistance, particularly in the admission phase of the asylum procedure, play an important role”. ECRI sets out a recommendation in this regard.

Here too some of the comments made above deserve to be reiterated. As mentioned, ECRI representatives were informed that a large number of applications submitted in Spain are from economic migrants, who avail themselves of the asylum route as an almost ritual formality in the migratory process. Since the vast majority of such applications are turned down or are not admitted, the overall results for the system are viewed as being lower.

By way of illustration, all the immigrants who entered Ceuta on 29 September last (249) have submitted asylum requests, which are being processed in accordance with established procedure. The ECRI representatives were informed that, in Ceuta (where in 2004 over a third of the total number of applications were submitted), the applicant profile presented special characteristics, such as the fact that nearly 100% of the people had no identity papers and there was a high proportion of persons not from countries deemed “a priori” to suffer from widespread conflict or mass systematic human rights violations. Moreover, there were very few women among the applicants, despite the fact that these were from countries in which the situation of women might well give rise to the need for protection.

3.4 Regarding the comment included at the end of the same section, “it has been reported to ECRI that the quality of the interviews and legal assistance, notably in the admission phase of the asylum procedure, play a very important role”, and the

recommendation in paragraph 45, also concerning the need for the Spanish authorities to work towards improving the quality of interviews, notably in the admission phase, we would like to reiterate the explanations submitted to the report of June 24 and would recommend the following paragraph be added:

*“The Unit of the Interior Ministry responsible for asylum issues is drawing up, with participation by UNHCR and specialised NGOs, guidelines for formalising asylum requests and aimed at improving the quality of this initial phase, which is crucial to the subsequent consideration of the application. The guidelines lay down, among other aspects, criteria concerning the conditions to be met by premises where applications are formalised, so as to facilitate communication with applicants and ensure confidentiality of their explanations; also included are instructions for formalising applications by women, unaccompanied minors or vulnerable persons, as well as on the correct use of interpreters and the participation of lawyers.*

In this way the perception of the importance of the admission phase of the asylum procedure is reflected and attention is drawn to the measures being taken to enhance and maintain interview quality. The inclusion of this paragraph is deemed necessary, since otherwise the impression given is that problems exist with the quality of the interviews, but no clear details are given as what these problems are.

Moreover, and with regard to the quality of the procedure, it is considered necessary to include details of the advances achieved by Spain’s asylum system this year. We propose adding the following information, either in paragraph 43 itself or as a response or additional information to recommendation 45:

*“Nonetheless, with respect to quality, information has been received from the Spanish asylum authorities underlining the significant increases recorded in the admissibility rate, which has reached 40% for the year 2005 to date. This is the highest rate since 1999 (the average rate for admissions for the period 2000-20004 being 27.3%).*

*Additionally, the Unit responsible for asylum issues in the Interior Ministry has implemented new management practices for asylum applications in order to improve the procedure. By way of illustration:*

- *Joint interviewing of asylum seekers by staff of the Asylum and Refugees’ Office and UNHCR officials, at the request of the Interministerial Committee on Asylum and Refugees, has been introduced in the Office.*
- *All asylum interviews are recorded, thus affording additional guarantees to applicants and offering a mechanism for evaluating interview quality.*
- *Priority is given to applications in cases where the accounts furnished and the details of the applicant’s circumstances leave room for no doubt as to the need for international protection.*
- *Priority has also been given to applications submitted by unaccompanied minors in order to adapt practice to the recommendations of the different international bodies for the protection of minor’s rights.*
- *Current legislative instruments have been adapted to take account of new forms of persecution, and refugee status granted to women whose circumstances (serious and continuous abuse received, lack of protection in their country of origin, no means of avoiding abuse in their country, situation of married women in said countries, etc ...) fully warranted such international protection status on account of their belonging to a differentiated social group which suffers persecution in their country of origin. In this way, a new avenue in the commitment to the Geneva Convention and other ratified international instruments is consolidated. This measure is also in line with recently-adopted Community Directives on*

*asylum, without prejudice to their future and mandatory transposition in domestic law.*

Lastly, regarding legal assistance, the remarks made in respect of previous points above may be reiterated here also.

**3.5** Regarding paragraph 44 of the same chapter, ECRI sets out a number of recommendations which require amendment.

Specifically, it states:

*“ECRI recommends that the Spanish authorities take steps to ensure that the right of individuals to seek asylum is thoroughly respected in practice. To this end, it recommends in particular that the Spanish authorities provide border control officials and law enforcement officers, specially in Ceuta, Melilla and the Canary Islands, with thorough training in asylum and refugee issues. ECRI also reiterates its call on the Spanish authorities to ensure that adequate legal information and assistance are available to asylum seekers”.*

In response to the recommendation made by ECRI concerning training in asylum issues for law enforcement officers and officials dealing with applications, particularly in Ceuta, Melilla and the Canary Islands, the inclusion of the following paragraph is considered necessary:

*“Together with other units within the Department, the asylum unit of the Interior Ministry is studying the setting up of training and refresher programmes for all officials intervening in the area of international protection, with special emphasis on legal assistance”.*

It is considered that the recommendation made by ECRI in another section of the report (paragraph 114, p. 31) should be deleted.

Lastly, on access to information and legal assistance by asylum seekers, we can but reiterate the comments already provided above.

#### **4. “The situation of persons from sub-Saharan Africa trying to gain access to Spanish territory through Ceuta and Melilla” (p. 30 ff.)**

In this chapter (paragraph 111), the report states that although ECRI notes that many people have submitted asylum applications in Ceuta and Melilla, it

*“also notes reports which indicate that persons unlawfully expelled have also included potential asylum seekers”,*

...referring specifically to incidents which took place in December 2004.

Remarks submitted to the report of June 24 have not been taken in to account. In view of the particular importance of some of these, they are reiterated here:

- The use of the expression *“potential asylum seekers”* is unfortunate, since in principle all foreigners are ‘potential’ asylum seekers. However, if no application is made or the intention to do so is not made known there is no way of identifying who is really an asylum seeker and thus the corresponding protection mechanisms may not enter operation.
- With regard to the incidents of December 2004, the insertion, after the relevant part of the Report, of the following clarification is considered necessary:

*“In fact, the Spanish authorities investigated the incidents and senior law enforcement officials reported that no foreigner documented as an asylum seeker or person who had expressed their intention to seek asylum was expelled.*

The inclusion of this clarification is necessary and should lead to the removal of the Recommendation set out in paragraph 115 on page 31, which is based on inaccurate information and is of crucial importance due to the inference made. It is a well-known fact that Spain is firmly committed to human rights and to the legislative instruments which seek to ensure their defence and protection. Indeed, this is acknowledged by the Council of Europe’s Commissioner for Human Rights in his report following his visit to Spain in March of this year, where he expressly acknowledges (p. 47) the Spanish government’s rapid response to the incidents which took place.

- A new comment, not made to the previous version of the ECRI report, is considered appropriate here to underline the initiatives which have been undertaken by the unit responsible for asylum issues in the Interior Ministry in order to ensure access to information and the accessibility of the asylum procedure. To this end, the Unit has:
  - o Published a new information booklet setting out all the information of use to asylum seekers. Clear and concise information is provided in various languages. UNHCR, which plays an important role in the asylum procedure in Spain, and NGOs dealing with asylum seekers, stateless and displaced persons, participated in the preparation of the information
  - o Included in the aforementioned booklet, in contrast to the practice up to now, express mention of the NGOs, including those offering free legal assistance to asylum seekers.
  - o Issued Instructions on procedural aspects relating to the possible exercise of asylum rights by foreign stowaways, in order to guarantee that stowaways in need of international protection can obtain such protection. Police boarding a vessel for the purpose of completing the appropriate formalities are instructed to ask stowaways a range of questions designed to ascertain whether they are in need of international protection.

5. Lastly, the situation described through the comments above should be reflected in the Executive Summary (p.3), since it shows that the recommendations on international protection made by ECRI throughout its Report have been addressed and implemented.

Furthermore, it is considered necessary to reiterate once again the comments made by this Directorate with respect to home affairs policy and electoral processes, given the failure to take these into account in the latest version of the report received.

Specifically, the following aspects should be added:

- **Recommendation 3** (included in chapter on “International Legal Instruments”): in its current form, the recommendation calls on Spain to ratify the Convention on the participation of foreigners in public life at local level, according to which foreigners who have lived legally in the country for a minimum of five years would enjoy the right of active and passive suffrage in local elections.

In this regard, it should be recalled that, under the Spanish Constitution of 1978 (art. 13.2), *“Only Spaniards hold the rights set out in article 23, save where by virtue of reciprocity the right of active and passive suffrage in local elections may be established by treaty or by law”*.

Spain may, therefore, enter into treaties or promulgate laws which, as long as the reciprocity requirement set out in the Constitution is guaranteed, extend the right of active and passive suffrage in local elections to citizens of other nationalities. This is the case at present with citizens of other EU member states and Norway.

However, the Council of Europe Convention does not include the reciprocity criterion and is based solely on lawful residence in the country (at least five years). Hence, **Spain cannot subscribe to the aforementioned requirement of the Council of Europe's 1992 Convention regarding the participation of foreigners in public life at local level without prior amendment of the Constitution, as indicated above, or unless the reciprocity criterion is included in the text of the Convention.**

- **Recommendation 25** (in the chapter on "Specialised bodies and other institutions"): this recommendation urges Spain to improve the effectiveness of the Observatory for Racism and Xenophobia, and to ensure better coordination with the Council of Europe.

**It would be appropriate at this point to acknowledge the efforts made in the field of sport**, through the creation on 22 December 2004 of the Observatory for Racism and Violence in Sports, a body which oversees compliance the Protocol of Actions to combat Racism, Xenophobia and Intolerance in Football, as well as the fight against discrimination in different sporting contexts and the defence of ethical values in sport.

- **Recommendation 53** (in the chapter on "Racist and Xenophobic Violence"): this recommendation focuses specifically on the fight against racism and xenophobia in football, and calls on Spain to give an unambiguous response in this field.

As indicated in this report and also in paragraph 51 of the ECRI Report, Spain has promoted clear measures to combat racism and xenophobia in football and these measures have been articulated around the aforementioned Observatory and Protocol. They cover prevention, protection, detection and control, in addition to repression and sanctions, and involve the various Public Administrations, representatives of the professional game and football fans, as well as other organisations which combat racism and intolerance.

It would therefore be appropriate to remove Recommendation 53, since it calls for the adoption of measures which are already being implemented.

### **Observations by the Directorate General for Immigrant Integration**

In connection with the third and final version of the ECRI report on Spain, and after scrutiny of the observations previously submitted by this Directorate General, some of which, ultimately, were not taken over into the report, the Directorate General suggests adding the following observations in an appendix.

The new **Immigrant Reception and Integration Support Fund**, which operates according to the principles of equality and non-discrimination, was given a substantial 2005 increase in finance (120 million euros) for immigrant-integration programmes. In addition, attention must be drawn to next year's planned increased budget allocation to it, which will help improve integration programmes.

As regards **unaccompanied minors**, the point should be made that entry to Spanish territory by unaccompanied foreign minors is illegal. Once the minor is identified by the national security forces, in accordance with Article 92.1 of the regulations further to Organic Law 4/2000 of 11 January (Royal Decree 2393/2004 of 30 December) on foreigners' rights and freedoms in Spain and social integration of foreigners, the matter is notified to the public prosecution service, which makes an order placing the minor in the care of the appropriate juvenile welfare services (Article 92.2), which provide the necessary assistance.

Nine months after this placement, and if attempts to return the minor to the family or transfer him or her to the care of the juvenile welfare services of the country of origin have been unsuccessful, residence authorisation proceedings are started under Article 35.4 of Organic Law 4/2000 and Article 92.5 of the regulations to it.

As well as having effective legal protection, the minor is entitled to education under Article 92.5 of the regulations on foreigners' rights and legislation for the protection of minors in force, in particular Article 10 of the Protection of Minors Act (Law 1/1996 of 15 January). Under these provisions, minors receive schooling appropriate to their age.

In addition, unaccompanied foreign minors are entitled to health care on the same basis as nationals under Article 12 of Organic Law 4/2000 on foreigners' rights and freedoms in Spain and Article 10 of the Protection of Minors Act, which likewise recognises their entitlement to social services.

Lastly, it must be pointed out that the prosecution service Instruction 6/2004 of 26 November lays down new criteria for repatriation of minors, in particular by establishing a refutable assumption that any foreigner under the age of 18 is a minor and giving priority to the minor's best interests when the decision is taken whether to repatriate him/her or allow him/her to remain in Spain.

Madrid, 2 December 2005

#### **Observations of the Ministry of Education and Science**

78. As regards Muslim pupils' right to be given Islam-based religious instruction in public schools, recent agreements with the representatives of the Islamic, Jewish and Evangelical faiths are regarded as a very significant step forward in ensuring that these religions have the same rights as Catholicism as regards religious instruction in schools.

There is no mention either of the information supplied by Ministry of Education and Science representatives that, among the cultural objectives of the programme of instruction in Arab language and Maghreb culture (LACM), are civic and religious objectives which match the Council of Europe Steering Committee for Education's European project, "The new challenge of intercultural education: religious diversity and dialogue in Europe".

#### **Observations by the Directorate General of the Guardia Civil**

With regard to Recommendation 11 which calls for the compilation of data in cases of this type, it should be pointed out that this information is already collected and forwarded annually to the Europol Terrorism Unit. This information includes not only details of the complaints lodged, but also all the facts of the matter noted by officers, whether or not the injured parties have submitted a complaint.

Concerning Recommendation 44, referring to the need for thorough knowledge of asylum and refugee-related issues for border control officers, this matter is dealt with from both an administrative and social point of view in the programmes of formal training, with due account being taken of national and international legislation and provisions in force.

Recommendation 92 calls for the setting up of an independent commission to investigate all allegations and violations of human rights by the police. During the visit made by ECRI in 2005, the Guardia Civil and the National Police explained the procedures and bodies responsible for internal monitoring of such behaviour. In essence this matter is dealt with by the Internal Affairs Department.