European Commission against Racism and Intolerance
Commission européenne contre le racisme et l'intolérance

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ECRI CONCLUSIONS ON THE IMPLEMENTATION OF THE RECOMMENDATIONS IN RESPECT OF SPAIN SUBJECT TO INTERIM FOLLOW-UP

Adopted on 5 December 2013[1]

[1] Any developments which occurred after 27 March 2013, date on which the response of the Spanish authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

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FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007[1], not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

[1] CM/Del/Dec(2007)986/4.1.

1. In its report on Spain (fourth monitoring cycle) published on 8 February 2011, ECRI recommended that the authorities compile and publish data on acts of racism and racial discrimination and on the application of the criminal and civil provisions in force to combat racism and racial discrimination.

ECRI has been informed by the Spanish authorities that a Comprehensive Strategy against racism, racial discrimination, xenophobia and related intolerance was approved by the Council of Ministers on 4 November 2011. Its chapter 4 provides for the compilation of data on acts of racism and racial discrimination and their publication.

As a result, in the criminal field, changes to the Crime Statistics System have permitted police (National Police, Civil Guard and police of the autonomous communities of the Basque Country, Catalonia and Navarre) to record data on the number of complaints and type of offences linked to racism, xenophobia or related intolerance since 2011. Racist incidents, moreover, are now defined as "any incident which is perceived to be racist by the victim or any other person". The Ministry of Interior is responsible for publication of this data.

The Comprehensive Strategy also provides for statistical data to be collected by courts and prosecutors in relation to criminal offences motivated by discrimination, including the number of complaints lodged; the investigation procedures initiated; the court proceedings; the types of offences; the number of criminal cases involving aggravating circumstances of racial or other discriminatory motivation under Article 22(4) of the Criminal Code; the outcome of the proceedings; the sentences and penalties imposed and, if applicable, the compensation awarded to victims. The body responsible for publication of the data is the Ministry of Justice.

As regards the civil law field, according to the 2011 annual report of the Council for the Promotion of Equal Treatment and Non-discrimination on the Grounds of Racial or Ethnic Origin, there is still no mechanism for the systematic collection of data on the implementation of laws prohibiting discrimination on racial or ethnic origin. ECRI has been informed that, in June 2010, the Council set up a Network of Assistance Centres for Victims of Discrimination based on Racial or Ethnic Origin which records and responds to incidents of discrimination. ECRI has also been informed that the Directorate-General for Equal Opportunities of the Ministry of Health, Social Services and Equality is designing a map of discrimination, which will include protocols for collecting data on incidents of racial discrimination.

ECRI welcomes the positive measures taken, as well as planned, to compile and publish data on acts of racism and racial discrimination and on the application of the relevant legislative provisions. It notes that in the civil law field there is still insufficient data collection on incidents of and responses to racial discrimination in the different areas of everyday life. ECRI, therefore, considers that the recommendation has been only partially implemented.

2. In its report on Spain (fourth monitoring cycle), ECRI recommended that not only initial but also in-service training for police, private security personnel, prosecutors, forensic doctors, lawyers and judges includes compulsory courses on human rights, equal treatment, non-discrimination and the Criminal Code provisions in force to combat racism and racial discrimination.

Concerning police, ECRI has been informed by the authorities that the project "Training to identify and record racist incidents" was launched in 2012 by the Spanish Observatory on Racism and Xenophobia, in collaboration with the Ministry of Interior. The aim is to promote effective application of the principle of equal treatment and non-discrimination on the basis of racial or ethnic origin, with a special emphasis on the

detection and recording of racist or xenophobic incidents. Compulsory training activities were conducted for 2 690 specialists from the Civil Guard, the National Police, the police of the autonomous communities and local police. The project ended in November 2012 but the activity continues in the form of a "cascade" programme to extend training to other members of the security forces. One of the outcomes of the project was the publication of a training guide, "Handbook for training security forces to identify and record racist and xenophobic incidents".

As for private security personnel, the above-mentioned Comprehensive Strategy states that private security companies must include training on the principle of equality and non-discrimination in all of their courses. Private security employees will be required to prove that they have appropriate training in this subject before qualifying and before being hired.

Concerning prosecutors, lawyers and judges, ECRI notes that the General State Prosecution Service provides training programmes on the principles of equality and non-discrimination as part of law-degree courses. The authorities have also indicated that, by law, the entrance examinations for all civil service posts have to cover the principle of equality. Moreover, training must be offered, periodically, in this topic. Lastly, doctors who train to become forensic doctors are required to study a number of subjects, one of which is related to non-discrimination and equal treatment.

ECRI notes, therefore, that positive steps have been taken to ensure that training of all the above mentioned professionals includes both initial and/or in-service compulsory courses on equal treatment and non-discrimination. ECRI is pleased to conclude that its recommendation has been implemented.

3. In its report on Spain (fourth monitoring cycle), ECRI strongly recommended that the authorities review the way in which pupils are admitted to public and publicly-funded private schools and take other necessary measures to ensure an even distribution of Spanish, immigrant and Roma pupils in the various schools.

ECRI notes that the Comprehensive Strategy against racism, racial discrimination, xenophobia and related intolerance, in its chapter on education, sets as an objective "the reduction of segregation and high foreign background and/or ethnic minority density in schools and a balanced distribution of pupils by providing guidance and information on admissions criteria and free education in state and publicly-funded private schools".

Moreover, the National Strategy for the Social Inclusion of the Roma Population in Spain 2012 to 2020 (approved by the Council of Ministers on 2 February 2012) includes, as a strategic line of action in the area of education, "the fostering of measures to avoid the concentration of Roma pupils in certain schools or classrooms". In addition, ECRI notes that the Strategic Plan for Citizenship and Integration II, 2011 to 2014 (approved by the Council of Ministers on 23 September 2011) states that high levels of concentration and segregation should be avoided when integrating foreign students into schools.

ECRI has been informed that the current rules governing enrolment are based on catchment areas and the continuity of primary into secondary education in the same area. As a result, school segregation is often associated with residential segregation. However, a 2012 study found that in some schools the percentage of Roma pupils was much higher than the percentage of Roma who lived in the area. This indicates that there are still discriminatory practices in the channeling of certain pupils to certain schools. Moreover, concerns have been raised about the new draft Law for the Improvement of the Quality of Education which sets out admission rules granting school governing bodies the power to select pupils. In ECRI's view, in order to avoid

exacerbating segregation, not within but between schools, these should be accompanied by guidelines on selection criteria, including the achievement of an even distribution of Spanish, immigrant and Roma pupils where relevant.

Therefore, although ECRI is pleased to note that the authorities have addressed, in various policy documents, the uneven distribution of Spanish, immigrant and Roma pupils in certain schools, as highlighted in ECRI's fourth report, it nevertheless considers that they need to do more to ensure that the goals in these strategies are achieved. They also need to take care to ensure that new legislation does not compromise these efforts. ECRI concludes that its recommendation has been partially implemented.