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Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Spain is dated March 1998 (published in January 1999). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to Spain took place on 28-31 October 2002. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the national authorities of Spain for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the national liaison officer for Spain whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 13 December 2002 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Spain has taken a number of steps towards combating racism and intolerance, including the adoption of criminal law provisions in the field of combating racism and racial discrimination and educational initiatives aimed at helping children at risk of exclusion, notably Roma/Gypsy and immigrant children. Spain has also continued to implement its strategy for the improvement of the situation of its Roma/Gypsy population across a range of areas, which it is now in the process of evaluating.

Problems of racism and xenophobia, however, persist and concern particularly Roma/Gypsies and non-EU citizens. This situation appears to be partly linked to an inadequate implementation of the existing legislation to fight against these phenomena but also to the widespread use in public debate of arguments and imagery that create a negative climate around immigration and immigrants. The implementation of certain aspects of Spain's immigration policy and other relevant legislation in some parts of its territory, notably the Canary Islands, Ceuta and Melilla, is a cause for concern.

In the present report, ECRI recommends that the Spanish authorities take action in a number of fields. These recommendations cover, *inter alia*: the need to improve the implementation of the existing criminal, civil and administrative law provisions against racism and racial discrimination; the need to improve the situation of Spain's Roma/Gypsy communities through a strategy elaborated and implemented in close co-operation with the communities concerned; the need to ensure that human rights, including the principle of non-discrimination, are thoroughly respected while implementing immigration policy and legislation throughout Spain.

SECTION I: OVERVIEW OF THE SITUATION

A. International legal instruments

1. Spain has ratified most international legal instruments relevant in the field of combating racism and intolerance. ECRI urges the Spanish authorities to sign and ratify Protocol N°12 to the European Convention on Human Rights.
2. ECRI welcomes the signature by Spain, in October 2000, of the European Social Charter (revised), and encourages the Spanish authorities to ratify this instrument as soon as possible. It also encourages the Spanish authorities to sign and ratify the European Convention on Nationality and the Convention for the Participation of Foreigners in Public Life at Local Level.
3. According to Article 96 of the Spanish Constitution, validly-concluded international treaties, once officially published in Spain, shall constitute part of the internal legal order and can therefore be applied by domestic courts. The Spanish authorities have stated that the practice in Spain is not to ratify international instruments until domestic legislation has been brought into conformity with their provisions. If, however, statutory law is found to contradict the provisions of a ratified international instrument, the provisions of the international instrument prevail. In order to ratify a treaty whose provisions are not in conformity with the Spanish Constitution, the latter must first be amended. In case of conflict between a ratified international instrument and the Spanish Constitution, however, the latter prevails.

B. Constitutional provisions and other basic provisions

4. The Spanish Constitution of 1978 contains several articles which are relevant for the fight against racism and discrimination. Article 1 (1) of the Constitution includes equality among the superior values of Spain's legal order. Article 14 of the Constitution stipulates that "all Spaniards are equal before the law, without any discrimination for reasons of birth, race, sex, religion, opinion or any other personal or social condition or circumstance". As already stated in its first report, ECRI believes that equality before the law should formally be recognised in the Constitution as regards all individuals and not just Spanish citizens.
5. Article 9 (2) of the Constitution stipulates that it is the responsibility of the public authorities: to promote the conditions allowing for real and effective equality and liberty of individuals and groups; to remove those obstacles which impede or make difficult their full implementation; and to facilitate participation of all citizens in the political, economic, cultural and social life. ECRI believes that this provision constitutes a solid legal basis for the adoption of positive action for disadvantaged individuals and groups and encourages the Spanish authorities to rely on this constitutional principle for extending their action in favour of disadvantaged individuals and groups in Spain.
6. According to Article 13 of the Constitution, foreigners shall enjoy the freedoms enumerated in Title I of the Constitution (which include the rights to life and personal integrity, personal liberty, honour, privacy and secrecy of communication as well as freedom of religion and belief, assembly and association) under the terms which treaties or laws may establish. In December 2000, Spain adopted Organic Law 8/2000 "On the Rights and Freedoms of Aliens in Spain and their Social Integration", which modified Organic

Law 4/2000 “On the Rights and Freedoms of Aliens”, adopted in January that same year. The Law 8/2000 grants to foreigners legally present in Spain many rights under conditions of equality with Spaniards¹, thereby extending the set of rights which the Constitution grants to this category of persons. According to Law 8/2000, all aliens, irrespective of their legal or illegal status, are entitled to basic compulsory education, basic social services and benefits and to public medical aid in cases of emergency. However, Law 8/2000 does not grant to workers whose situation is not legal the right to associate, strike, or join a trade union. This provision has been widely criticised by certain segments of Spanish civil society. ECRI understands that the constitutionality of these provisions has been challenged and hopes that a decision on this question will be reached as soon as possible.

C. Criminal law provisions

7. Spain possesses a wide range of criminal law provisions against racism and racial discrimination. Article 607 (1) penalises genocide. Article 515 (4) prohibits associations promoting discrimination, hate or violence against persons, groups or associations by reason of, *inter alia*, their ideology, religion or beliefs and belonging to a race, ethnic or national group. Article 517 provides for imprisonment and fines for the founders, directors and presidents of such associations as well as for their active members. Article 520 allows for the dissolution of these associations. According to the jurisprudence of the Supreme Court, the mere existence of such an organisation results in criminal sanctions, even if the organisation does not carry out its aims².
8. Article 510 (1) punishes incitement to discrimination, hate or violence against groups or associations for racist or antisemitic motives or for other motives relating, *inter alia*, to race, ethnicity and national origin. Article 510 (2) punishes the dissemination of offensive false information on groups or associations in relation with, *inter alia*, their ideology, religion or beliefs, their belonging to a race or ethnicity, or their national origin. Article 607 (2) punishes the dissemination by any means of ideas or doctrines which deny or justify the crimes detailed in art. 607 (1) or purport to rehabilitate regimes or institutions which advocate these crimes.
9. Article 511 of the Criminal Code criminalises racial or ethnic discrimination against natural or legal persons committed by persons in charge of a public service. According to the same Article a public official convicted of having committed these offences shall receive an increased sentence and be suspended from his or her duties. Article 314 punishes those producing a “serious discrimination” in employment, public or private, against a person based, *inter alia*, on grounds of ideology, religion or beliefs, or belonging to a race or ethnicity.

¹ These include: the right to freedom of movement and choice of residence; the right of vote in municipal elections under the condition of reciprocity; the right of assembly and right to demonstrate; the right of association; the right to education; the right to work and social security in employment and self-employment; the right to work in the public services; the right to belong to a union and the right to strike; the right to medical aid; the right to assistance for housing; the right to social security and to social services.

² Supreme Court decision of 11 May 1970

10. Article 312 (1) punishes those engaging in the illegal traffic of workers. Article 312 (2) punishes those employing foreigners without a working permit in conditions that jeopardise, restrict, or suppress their rights under the law, collective conventions, or individual employment contracts.
11. Article 22 (4) of the Criminal Code includes among the aggravating circumstances of a crime the racist or antisemitic motives of the offender, as well as motives connected with the ideology, religion or beliefs of the victim or the victim's ethnic, racial or national affiliation. In addition, any offence aggravated by a racist purpose is prosecuted *ex officio*.
12. Although it has been unable to obtain figures on the application of these provisions, ECRI is concerned at reports that such provisions are currently rarely applied and that the cases brought before the courts do not reflect the actual numbers of racist or discriminatory acts occurring in Spain. In particular, ECRI feels that the implementation of the provisions establishing the racist motivation as an aggravating circumstance, those concerning incitement to discrimination, hatred and violence related to race, ethnicity and national origin and those targeting associations promoting discrimination, hatred or violence related to such grounds, should be improved. To this end, ECRI encourages the Spanish authorities to provide further training on these subjects to all actors involved in the criminal justice system, from the police to the prosecuting authorities and the judges; such training should enable, in particular, the racist dimension of all offences to be duly taken into account through the various stages of the criminal proceedings. All actors involved in the criminal justice system should also be further sensitized to the need to actively counter racially-motivated crime, incitement to racial discrimination, hatred and violence and associations promoting racism. At the same time, ways should be considered to encourage victims of such acts to come forward. As concerns more specifically racial discrimination, in addition to the criminal law provisions (Articles 511 and 314) mentioned above, ECRI stresses that the adoption of comprehensive civil and administrative legal provisions would be essential to effectively counter this phenomenon³.

D. Civil and administrative law provisions

13. The principle of non-discrimination is reiterated in a number of laws covering different fields of life. These include: Law 5/80 "Basic law on Employment"; Law 8/88 "On Violations and Sanctions of Labour Laws"; Law 7/80 "On religious freedom"; and Law 1/90 "On the Education System". In the Organic Law 10/2002 "On the Quality of Education" mention is made of the intention of acting pursuant to the principle of non-discrimination in educational matters. Article 23 of Law 8/2000 also contains anti-discrimination provisions applicable to all fields of life. However, since they are included in legislation regulating the rights of foreigners, these provisions only cover this category of persons. ECRI has not been made aware of any cases where these provisions have been applied.
14. While welcoming the adoption of these anti-discrimination provisions as an instrument potentially enhancing the protection of certain groups of persons vulnerable to discrimination, ECRI encourages the Spanish authorities to consider the adoption of a more comprehensive body of civil and administrative

³ See below, *Civil and administrative law provisions*

provisions in all spheres of life prohibiting discrimination on such grounds as race, colour, religion, language, nationality, national and ethnic origin. In this respect, ECRI draws the attention of the Spanish authorities to its General Policy Recommendation N°7 “on national legislation to combat racism and racial discrimination”, in which ECRI describes the main elements of a comprehensive legislation in this field. As will be mentioned below⁴, ECRI stresses the fundamental role that could be played by a specialised body on combating racism and intolerance in supervising the implementation of such anti-discrimination legislation. ECRI believes that the review of national legislation currently being undertaken by the Spanish authorities in order to comply with the Council Directive 43/2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin – a preliminary bill has been prepared to this end -- constitutes an important opportunity in this respect. It also strongly encourages the Spanish authorities to closely involve civil society in the debate around the adoption of anti-discrimination legislation.

E. Administration of justice

15. ECRI notes that the representation of foreigners in the detainee population of Spain is disproportionate in relation to the percentage of foreigners in the general population. Although the Spanish authorities have sometimes been quoted by Spanish newspapers as reporting remarkably higher figures, they have informed ECRI that foreigners represent 17.5% of the total number of persons serving prison sentences and 46% of the total number of persons held in police custody. Roma/Gypsies are also disproportionately represented in Spanish prisons. This phenomenon particularly affects Roma/Gypsy women who, according to some non-governmental estimates, make up 25% of the total female prison population of Spain. There have also been reports of discrepancies between the sentences handed down to Roma/Gypsies and foreigners and those handed down to Spanish defendants convicted of comparable crimes and of disproportionately limited access of Roma/Gypsy women to non-detention types of sanctions. ECRI encourages the Spanish authorities to carry out research on these issues.

F. Specialised bodies and other institutions

16. The Defensor del Pueblo (Ombudsman) is a constitutionally established non-jurisdictional institution that monitors the activities of the administration. It investigates complaints of human rights violations by the Spanish authorities *ex officio* or on the basis of individual complaints. In so doing, it may ask for the collaboration of regional ombudsmen, established at the level of the autonomous communities, and has moreover access to information from all administrative bodies. The Ombudsman may make recommendations to public authorities, but cannot modify acts or regulations or consider complaints concerning the functioning of the authorities competent for the administration of justice. Discrimination and racism are not expressly listed within the Ombudsman’s competence, however they are considered part of its general mandate to defend fundamental rights and freedoms.

⁴ *Specialised bodies and other institutions*

17. Very few complaints of racism and racial discrimination are filed with the Ombudsman's Office. However, the Office receives complaints which are to some extent related to issues of racism and discrimination. Roma/Gypsies and foreigners have submitted complaints to the Ombudsman's Office and this has resulted in recommendations, for instance in the fields of housing and education of Roma/Gypsies.
18. ECRI attaches great importance to the establishment and functioning of specialised bodies which can effectively and independently monitor the situation as concerns racism and racial discrimination in a particular country and assist in providing effective means of redress to victims. While welcoming the existing national and regional ombudsmen, ECRI, as already suggested in its first report, encourages the Spanish authorities to establish a national specialised institution which could deal with these problems. ECRI draws the attention of the Spanish authorities to its General Policy Recommendation N° 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, which contains detailed suggestions on the forms that such bodies might take, and to its General Policy Recommendation N° 7 on national legislation to combat racism and racial discrimination. As mentioned above, ECRI considers that the establishment of such an institution at national level should also be examined within the context of the adoption of a more comprehensive anti-discrimination legislation in view of the central role this institution could play in supervising the implementation of such legislation⁵.

G. Education and training/awareness-raising

19. The Spanish authorities have emphasised the adequacy of the legislative framework in place for combating racism and racial discrimination. However, ECRI notes the scarce implementation of the relevant legal provisions and the low level of awareness on the part of Spanish society at large concerning racism and racial discrimination, the ways in which these phenomena operate in everyday life, and the need to take action against them through the relevant legislative provisions. ECRI welcomes the existing initiatives aimed at raising awareness of these issues in Spanish society, including studies on immigration and racism in the media and on employment discrimination carried out under the auspices of the Institute for Migrations and Social Services (IMSERSO). However, it believes that further efforts are necessary both in the field of research in specific areas, some of which are highlighted in this report, and in the field of awareness-raising. ECRI strongly encourages the Spanish authorities to support civil society initiatives in these fields, and to ensure that research is used to inform policy-making in strategic areas.
20. Education in tolerance and respect of difference is not a separate subject in Spanish primary and secondary education, but constitutes one of the fundamental values which must be reflected in all disciplines. ECRI encourages the Spanish authorities to consider strengthening the human rights dimension of the curricula, with particular emphasis on non-discrimination and respect of difference. It considers that, in the long term, the teaching of human rights should be made compulsory at the primary and secondary level. The Spanish authorities have informed ECRI that the Organic Law 10/2002 "On the Quality of Education" introduces a compulsory subject within secondary education

⁵ See *Civil and administrative law provisions*

called "Society, Culture and Religion" that conveys knowledge on cultural diversity and provides an introduction to differences in cultures and religions. As concerns teacher training, ECRI welcomes the fact that most universities offer classes in intercultural education. It notes, however, that, although frequently chosen by students, intercultural education is an optional class, and encourages the Spanish authorities to ensure that all students are trained in this subject. ECRI also encourages the Spanish authorities to ensure that all institutions providing on-going training to teachers include training in intercultural education in their programmes. Finally, ECRI encourages the Spanish authorities to monitor the extent to which intercultural education is concretely integrated in everyday teaching practice in Spanish schools and to provide, as necessary, formal guidelines and encouragement in this respect.

21. ECRI also notes with concern the report of the Council of Europe Commissioner for Human Rights, according to which, in schools in the Basque country, «the use of means of transmitting culture and knowledge based on a legitimate concept of nationalist positions, but unfortunately involving the option of exclusion and aggression against those who are not nationalists, sometimes borders on the giving of encouragement to racist and xenophobic positions»⁶.

H. Reception and status of non-citizens

- Refugees and Asylum seekers

22. Under a 1994 law, asylum requests are adjudicated in a two-stage process with the Office of Asylum and Refugees proposing to the Ministry of Interior an initial decision on the admissibility of the application for processing. The Interministerial Committee for Asylum and Refuge, which includes representatives from the Ministries of Interior, Justice, Labour, Foreign Affairs, and a non-voting member of the United Nations High Commissioner for Refugees (UNHCR), examines the applications accepted for processing. The UNHCR advises the Spanish authorities throughout the process and applicants for asylum have the right to have their applications sent immediately to the local office of this agency. Appeals of rejection at either stage may be made to the National High Court, and appeals of the National High Court's decisions may be made to the Supreme Court.
23. There have been reports of difficulties by potential applicants in accessing the asylum procedure particularly in the Canary Islands, but also in the North African Spanish cities of Ceuta and Melilla. In the Canary Islands, access to the asylum procedure is remarkably restricted by limited access to information on the procedure in a language that applicants understand and by limited access to legal counsel. It has also been reported that, in the Canary Islands, Ceuta and Melilla, three main points of entry into Europe from Africa, nationals of Morocco and Nigeria encounter particular difficulties as they are often hastily returned to their countries of origin, with whom Spain has concluded readmission agreements.

⁶ Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his visit to Spain and the Basque Country (5-8 February 2001) for the Committee of Ministers and the Parliamentary Assembly, Council of Europe, March 2001

24. ECRI also notes the limited number of asylum applicants who are granted asylum or temporary protection. In 2001, for instance, out of 9,490 applications for asylum, the Spanish authorities granted asylum to 303 persons and admitted 252 others for humanitarian or other reasons. Most of the applicants in 2001 came from Colombia (26.7%), Cuba (25%), Nigeria (14.2%) and Sierra Leone (6.5%). ECRI notes that, especially following the introduction of visa requirements for Colombians and Cubans, the total number of asylum applications has dropped (around 4,000 from January to September 2002).
25. ECRI encourages the Spanish authorities to address these issues and continue their close co-operation with UNHCR in doing so.

I. Racial violence

26. ECRI has signalled above that the racist dimension of offences tends to be overlooked. Such offences also include acts of violence, which, when prosecuted, are as rule considered as ordinary offences of assault, battery, etc. ECRI is furthermore concerned that, although there have been some efforts on the part of the central and local authorities to collect and interpret data on racially-motivated violence, this phenomenon is still considerably under-reported.
27. ECRI considers that the racist element of all offences should be recognised and reflected in the official response to such offences, including in criminal prosecutions, even when racism may not be the only identifiable motive of an offence. ECRI believes that, in Spain, this has often not been the case, and is concerned, in this respect, by instances of violence against members of minority communities by the local majority population. ECRI is particularly concerned at the February 2000 events in El Ejido, where, following tensions between the immigrants and the rest of the local population, North African immigrants were the subject of violent attacks. ECRI deeply deplores these occurrences. It considers that the social conditions fostering these events, which have generally been identified by the Spanish authorities as the root causes of the latter, should be addressed, as highlighted in other parts of this report. However, such underlying social conditions should not overshadow the racist dimension of these events. In this respect, ECRI notes that the fight against racism necessitates a firm public condemnation of all its manifestations by the political leadership. ECRI is concerned at reports that some local political leaders have not only abstained from doing so, but have instead contributed to fuelling tensions and conflicts by displaying an overtly xenophobic attitude.
28. Following the El Ejido events, a package of measures was proposed by the government and agreed to by immigrant organisations, employers, local authorities and trade unions, involving payment of compensation for destroyed property, decent accommodation and opportunities for the legalisation of their situation. Although progress is reported as concerns compensations, the situation as concerns the other areas, and notably housing, do not appear to have significantly progressed. ECRI strongly urges the Spanish authorities to take swift action in this respect.
29. ECRI also draws the attention of the Spanish authorities to the existence of extremist organisations, which are active on the Internet, during football matches and in the hate music market and whose members have been responsible for racist violent acts. ECRI encourages the Spanish authorities to

strengthen their efforts to counter such organisations and their activities, including, as mentioned above⁷, through a better implementation of the existing criminal law provisions.

30. ECRI expresses its concern at the existence of aggressive nationalism in the Basque country, where an important part of the non-nationalist population is subjected to social exclusion, threats and violence, sometimes resulting in deaths. In accordance with its mandate, ECRI is particularly concerned at the xenophobic and ethnic dimension of the violent actions carried out by the terrorist organisation ETA.

J. Access to public services

- Access to social services such as health care, welfare and housing, and access to public places

31. There have been reports that advertisements concerning rental of private property sometimes exclude certain categories of persons, such as Roma/Gypsies or foreigners, from applying. It has also been reported that, when property is actually rented to these categories of persons, discriminatory conditions, notably higher rent, are in many cases applied to them. There are also reports of discriminatory refusal of access to public places as regards North Africans, other immigrants and, more generally, people of immigrant background, sometimes degenerating into violence. ECRI urges the Spanish authorities to address this problem, including through properly-implemented legislative measures.

- Access to education

32. The Service for Compensatory and Intercultural Education of the Ministry of Education is tasked with promoting initiatives for children at risk of exclusion. Apart from Ceuta and Melilla, for which it has direct competence, the Service only has co-ordination functions in the autonomous communities and while it can finance institutions and organisations to carry out projects in schools, it cannot carry such projects out directly. The Spanish authorities have stated that all autonomous communities have support classes in Spanish language and culture. These are offered either as part of the curriculum (i.e. allowing for the possibility to diversify teaching within the normal curriculum) or as complementary education (i.e. additional extra-curricular classes). In Ceuta and Melilla, the Ministry of Education is also piloting "transition classes" for immigrants, where immigrant children spend a few months before they integrate into mainstream schools. ECRI encourages the Spanish authorities to strengthen their efforts in the field of teaching of Spanish as a second language, notably as concerns training of teachers and preparation of teaching material. ECRI notes that mother tongue education is provided in State schools to Portuguese and Moroccan children. ECRI encourages the Spanish authorities to continue and expand their efforts to provide, parallel to teaching in Spanish, mother tongue education for foreign children.

⁷ See *Criminal law provisions*

33. ECRI also highlights the need to ensure that Spanish mother-tongue children following the immersion programme in schools in the Autonomous Community of Catalunya have the opportunity to follow parallel teaching in Spanish.

K. Employment

34. There are indications that discrimination of members of certain groups, such as Roma/Gypsies and foreigners, is a daily reality. Private employers have openly refused to employ or even interview persons from these groups, and there are reports that public companies have in some cases resorted to private employment agencies to screen applicants. Foreigners without legal status constitute a category at particular risk of discrimination and exploitation by employers. They are paid less and work in poorer conditions than other workers, a situation linked to their precarious position, where the threat of possible expulsion hangs over them, and compounded by their lack of the right to associate, strike, or join a trade union⁸.
35. ECRI encourages the Spanish authorities to carry out research on the incidence of direct and indirect racial discrimination in employment. It also encourages the Spanish authorities to ensure that the existing provisions against labour discrimination are applied in practice and to pay particular attention to this area when considering the adoption of comprehensive anti-discrimination provisions, as suggested above⁹.

L. Vulnerable groups

This section covers certain minority groups which may be particularly vulnerable to problems of racism, discrimination and intolerance in the country in question. It is not intended to provide an exhaustive overview of the situation of all minority groups in the country, nor to imply that groups not mentioned face no problems of racism and discrimination.

- ***Roma/Gypsies***

36. See Section II of this report

- ***North Africans and Muslims***

37. About one fifth of the immigrant population regularly residing in Spain comes from North African countries, especially Morocco. North Africans constitute the vast majority of the Muslim population of Spain. Although manifestations of societal prejudice vis-à-vis this group of persons is not a recent phenomenon in Spain, it has reportedly increased after the events of 11 September 2001, as reflected in the number of acts of discrimination but also of violent behaviour against members, and supposed members, of the Muslim communities, and against their property. The situation has reportedly improved in the course of 2002. However, some public figures supported in some cases by mass media continue to speak about the dangers of multiculturalism and of the alleged impossibility for certain groups, notably Muslims, to integrate into Spanish society and culture. ECRI also notes reports that, since the El Ejido events,

⁸ See above, *Constitutional provisions and other basic provisions*

⁹ See *civil and administrative law provisions*

legal immigration from countries other than North African has been comparatively more successful. ECRI draws the attention of the Spanish authorities to its General Policy Recommendation N° 5 on “Combating intolerance and discrimination against Muslims”, which proposes a range of legislative and policy measures which governments can take in order to counter such phenomena.

M. Conduct of certain key institutions at national and local level

- Law enforcement officials

38. An increase over the last few years has been reported in the number of allegations of police misbehaviour vis-à-vis ethnic minorities or persons of non-Spanish origin. Such allegations include discriminatory checks, insulting and abusive speech, but also ill-treatment and violence, in some cases resulting in death. ECRI is concerned that certain groups of persons, including foreigners, Roma/Gypsies, and Spanish citizens of immigrant background, are particularly likely to become victims of this behaviour as, in spite of the existence of laws and codes that attempt to guard against discriminatory or arbitrary conduct by state agents, racial profiling is reportedly common.
39. Although many of these incidents do not in any case result in a complaint being filed by the victim, there is reported to be little investigation of incidents, and little transparency on the results of these investigations within the police. Counter-charges are frequently brought or threatened against those indicating their intention of lodging a complaint of ill-treatment against law enforcement officers. Police officers with criminal records, or against whom disciplinary proceedings are pending, have been allowed to continue to work. ECRI stresses the urgent need for the improvement of the response of the internal and external control mechanisms to the complaints of racist or racially-discriminatory behaviour on the part of the police. To this end, it encourages the Spanish authorities to consider the establishment of an independent commission to investigate all allegations of human rights violations by the police.
40. The Spanish authorities have informed ECRI that human rights training, including issues of non-discrimination, is provided to law enforcement officials, both in the police academy and during service. ECRI encourages the Spanish authorities to evaluate the effectiveness of such courses, and to strengthen their efforts to ensure that such training has an impact in everyday policing practice. ECRI also invites the Spanish authorities to consider methods aimed at encouraging members of ethnic minorities to participate in the recruitment procedures for law enforcement posts. Moreover, ECRI encourages the Spanish authorities to monitor the work of cultural mediators and to address any difficulties concerning their effectiveness.

N. Monitoring the situation in the country

- Data and statistics

41. The Spanish authorities have on several occasions stated that the Spanish Constitution and primary legislation do not allow for the collection of data and statistics broken down according to categories such as race, religion, and ethnic origin. They have also stated that, apart from data and statistics based on

nationality, quantitative information of this kind presently available in Spain is therefore based on surveys rather than on collection of personal or statistical data. However, it seems to ECRI that the Constitution¹⁰ does not prohibit the collection of such data and statistics, although, understandably, primary legislation such as the 1999 Law on Data Protection and the legislation on Public Statistics, do actually subject the collection of this type of data and statistics to certain safeguards¹¹. ECRI considers that more accurate information on the real position of different groups in society across a number of fields of social and economic life would be desirable, as it would help uncover the presence of direct and indirect discrimination or situations of disadvantage. It therefore encourages the Spanish authorities to improve their monitoring systems by collecting information broken down according to categories such as race, religion, and ethnic origin, with due respect to the principles of confidentiality and the voluntary self-identification of persons as belonging to a particular group.

O. Media

42. ECRI notes that the Spanish print and electronic media have often resorted to biased reporting on issues of immigration. Much of the information in the Spanish media touching upon immigrants or immigration appears to be connected with negative situations such as the commission of crimes. Media portrayals of the Roma/Gypsy communities predominantly focus on their involvement in traditional activities or on illegal activities, such as the drug trade, or internal conflicts. ECRI is of the opinion that such reporting may fuel and perpetuate prejudice, misconceptions and stereotypes in society, and feels that there is a need for more balanced and diversified information on immigration and for a more balanced attention to be paid to the portrayal of groups composing Spanish society, including Roma/Gypsies. To this end, ECRI strongly encourages the Spanish media professions to adopt codes of self-regulation or charters aimed at countering racism, xenophobia, antisemitism and intolerance, and at promoting cultural pluralism and equal opportunities. These should include guidelines on reporting, but also a commitment to reflect cultural pluralism in all sectors and to respect the human dignity of all persons. Efforts could also be made to improve the representation of members of minority groups in the media. In this respect, ECRI notes that the Ministry of Labour and Social Affairs has taken initiatives to prevent the use of inappropriate language on Roma/Gypsies in the press, and that some of the autonomous communities have signed agreements with mass media representatives concerning the protection of the culture and image of minority groups. ECRI encourages the Spanish authorities to strengthen their efforts in these areas.

¹⁰ Article 16.2 of the Constitution stipulates that "nobody can be obliged (emphasis added) to make statements pertaining to his ideology, religion or beliefs"

¹¹ According to the 1999 Law on Data Protection, data on ideology, trade union affiliation, religion or belief can only be processed with the express written consent of the person, and the entity which collects the information must inform the person concerned about his/her right to refuse to provide this information; data on racial origin, health and sexual life can be gathered, processed and transmitted only if a law permits it for public interest reasons or the person concerned explicitly agrees with processing this type of information.

SECTION II: ISSUES OF PARTICULAR CONCERN

In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Spain, ECRI would like to draw attention to the situation of the Roma/Gypsy population and to some aspects concerning immigration policy and practice.

P. The situation of the Roma/Gypsy population

43. Although precise figures are not available, the Roma/Gypsy population of Spain is estimated by the Spanish authorities at around 600,000 persons. Non-governmental estimates are of 800,000 persons or more. The Roma/Gypsy population of Spain is very heterogeneous and, although it has preserved a strong sense of identity and common roots, it comprises persons with very different levels of education and professional attainment, lifestyles and beliefs. Generally speaking, however, a large segment of the Roma/Gypsy population in Spain is still in a situation of – in many cases serious -- marginalisation and exclusion from mainstream society. Roma/Gypsies suffer from societal prejudice and face disadvantage and discrimination in many areas of life, spanning from education to employment, housing and health. They are also sometimes victims of acts of violence.

44. The Spanish authorities have stated that education is one of the fields to which, over the last few decades, they have devoted priority attention and resources. Positive results have been achieved, particularly in increasing school enrolment. However, ECRI notes that, in spite of initiatives taken, school drop-out rates and absenteeism are still very high among Roma/Gypsy children and concern approximately 70% of children over 14 and 90% of girls over 14. Difficulties have also been reported in Roma/Gypsy children's access to pre-school education. While a certain resistance on the part of Roma/Gypsy families to entrust small children to non-Roma/Gypsy institutions has been reported, uneven territorial distribution of such institutions, disadvantaging eligibility requirements and discrimination are also reported to be important factors in determining the low representation of Roma/Gypsy children in pre-school education. The rate of adult illiteracy is still very high, and, although slowly increasing, the number of Roma/Gypsy university students is still extremely limited. ECRI considers that these areas should be addressed as a matter of priority by the Spanish authorities. It notes that an Educational Commission composed of representatives of the public administration and of some Roma/Gypsy organisations works to promote equal access to the state education system. A further priority area to be tackled is the high concentration of Roma/Gypsy children in certain schools – this concerns State schools as very few Roma/Gypsy children attend State-funded (*colegios concertados*) or privately-funded private schools. ECRI is aware of measures taken both at central and at autonomous community level to ensure that pupils with special educational needs stemming from social or cultural disadvantages are evenly distributed throughout the State-funded schools; it is also aware of the existence of compensatory programmes designed to promote equality of opportunities for disadvantaged children. ECRI strongly encourages the Spanish authorities to closely monitor the effectiveness of such measures, including, as will be mentioned below, through participatory forms of assessment involving the target group. It furthermore encourages initiatives

aimed at increasing the active involvement of Roma/Gypsy families in the educational opportunities available for their children.

45. Lack of education and training impact negatively on employment opportunities for the members of the Roma/Gypsy communities. These opportunities are further reduced by widespread prejudice and by discrimination on the part of potential employers. There is research indicating that discrimination at point of recruitment and in the workplace is particularly severe *vis-à-vis* Roma/Gypsy women. ECRI notes that the National Action Plan for Social Inclusion (2001-2003) identifies Roma/Gypsies as a group deserving specific attention. ECRI is also aware that a number of schemes have been funded through the Roma Development Programme¹² including training schemes, counselling to help young people integrate into the labour market, vocational training for groups excluded from standard training and training for intercultural mediators. Furthermore, ECRI notes the EU-sponsored "Acceder" programme, which works in partnership with autonomous communities and municipalities to secure employment for several thousand persons from disadvantaged groups, and especially Roma/Gypsies, through a specialised parallel network of employment offices, providing training, counselling and mediation services. ECRI welcomes these initiatives and hopes that they will be extended in the future. It emphasises, however, the urgent need to address the issue of labour discrimination, notably through research, awareness-raising initiatives and properly-implemented legislative measures.
46. Although the housing situation of the members of the Roma/Gypsy population varies widely, a significant part of this population lives in sub-standard housing and the vast majority of the inhabitants of shanty-towns are in fact Roma/Gypsies. Many of these areas are located around or within big cities and are affected by problems related to extremely unhealthy conditions, drugs and violence. The Spanish authorities have taken initiatives to eliminate shanty towns -- housing represents one of the most important areas of the Roma Development Programme. Such initiatives have included transitional housing schemes, whereby tenants were offered temporary shelter until proper housing could be supplied. However, the effectiveness of many of these measures has been challenged, including in specific cases by the Ombudsman, and the concern has been expressed that, in some cases, these measures have perpetuated or even worsened situations of marginalisation. ECRI stresses the need to conceive and implement housing policies in close consultation with the members of the communities concerned. ECRI furthermore notes that, although the number of complaints filed with the Ombudsman concerning Roma/Gypsies' access to housing has decreased, the Ombudsman has, in the past, intervened in cases of forced evictions of Roma/Gypsy families from the places of their residence. ECRI strongly urges the Spanish authorities to devote attention to this problem. ECRI furthermore emphasises the role played by discrimination in excluding Roma/Gypsies in practice from the private housing sector and urges the Spanish authorities to address this problem, including through properly-implemented legislative measures¹³.

¹² See below

¹³ See above, access to public services

47. The health situation of the members of the Roma/Gypsy communities also reflects their generally disadvantaged situation. Such disadvantage is linked to several factors such as poverty and unhealthy living conditions, but also reflects the inability of the health system to cater for the specific needs of these communities and, in some cases, prejudice on the part of those providing the service. Although there are no statistics on the health situation of this segment of the Spanish population at the national level, information collected at the local level indicates that infant mortality rates are significantly higher within these communities and that health conditions and life expectancy are considerably lower than the average. ECRI strongly urges the Spanish authorities to evaluate the initiatives currently undertaken in the field of health and to increase their efforts to facilitate Roma/Gypsies' access to health care.
48. ECRI is also concerned at manifestations of racial violence, notably on the part of local communities, against the Roma/Gypsy population and urges the Spanish authorities to ensure a prompt and effective official response to any such actions.
49. A matter of concern for the Roma/Gypsy communities in Spain is also the lack of a coherent legal and policy framework for the protection and the promotion of their culture, traditions and language, and the need for mechanisms to ensure meaningful participation of Roma/Gypsies in political and social structures. ECRI encourages the Spanish authorities to give serious consideration to these proposals.
50. Since the end of the 1980s, the Spanish government has been implementing the Roma Development Programme (hereafter "the Programme"). Administered by the Ministry of Labour and Social Affairs, the Programme aims to: raise the quality of life of Roma/Gypsies to an equal level with the rest of the population; facilitate their social integration through access to the social protection system; establish avenues for the participation of Roma/Gypsies as regards issues that concern them; and promote better coexistence of different social and cultural groups and prevent racist attitudes and behaviour, by promoting solidarity and respect for the Roma/Gypsy culture. The Government allocates to the Programme approximately €3.3 million per year and the Ministry of Labour and Social Affairs concludes agreements with the autonomous communities to co-finance and implement projects which must cover the areas of social protection, education, employment, housing, health and culture. It is generally acknowledged that the Programme has yielded positive results in some areas, such as promoting school enrolment among Roma/Gypsy children and participation in society among Roma/Gypsy women. It is also recognised that, by providing funds to Roma/Gypsy organisations, the Programme has also contributed to the development of the Roma/Gypsy movement. However, the Programme has also been criticised for being an instrument overly oriented towards delivering social assistance and for not adequately addressing other priority areas for the Roma/Gypsy communities, such as identity, participation in political life and discrimination. It has also been noted that an excessive rigidity in its structure has prevented it from adapting to social changes which have intervened during the 13 years of its implementation. Finally, although one of the stated objectives of the Programme is to promote the participation of Roma/Gypsies on issues that concern them, many Roma/Gypsy and non-Roma/Gypsy observers complain that there has been almost no genuine participation of the Roma/Gypsy communities in designing, implementing or

evaluating the Programme at the national level and that, as a consequence, the Programme fails to reflect some of their main priorities.

51. ECRI has been informed that an overall qualitative evaluation of the Programme is currently being undertaken for the first time. ECRI welcomes this initiative and strongly encourages the Spanish authorities to ensure a thorough participation of the Roma/Gypsy communities in this process. ECRI believes that genuine involvement of the Roma/Gypsy communities at all levels of the development, implementation and evaluation of a strategy aimed at improving their situation is essential to ensure its success. In accordance with its General Policy Recommendation N° 3 on «Combating racism and intolerance against Roma/Gypsies», ECRI therefore encourages the Spanish authorities to develop institutional arrangements to promote an active role and participation of Roma/Gypsy communities in the decision-making processes, through national, regional and local mechanisms, with priority placed on the idea of partnership on equal footing. The attention of the Spanish authorities is drawn more generally to all the suggestions contained in ECRI's General Policy Recommendation N° 3, which proposes a range of legislative and policy measures which governments can take in order to develop a comprehensive strategy to improve the situation of the Roma/Gypsy population. Finally, ECRI stresses the need to ensure that the responsibility for the administration of any such strategy be placed at the level which can best ensure effective decision-making and co-ordination among Ministries.

Q. Immigration policy and practice

52. The number of foreigners with legal status in Spain stands at present at around 1.300.000 (or 3.2% of the total population). Around 30% of them are from South America, 27% from the EU, 20% from Northern Africa, 9% from non-EU European countries, 8% from Asia and 6% from Sub-Saharan Africa. The number of foreigners without legal status in Spain is by definition not known, however estimates vary between 250,000 and 500,000.
53. In spite of the relatively low number of foreigners residing in Spain, there is a widespread perception in Spanish society that the population of foreigners is at a level which, it is considered, is detrimental to security and the availability of employment opportunities. ECRI believes that such misconception is, at least in part, linked to the widespread use of stereotypes, misrepresentations and sensational imagery by public figures and reflected in the media. Typically, immigrants are represented as coming to Spain in "avalanches", invading the country by boats and posing a threat to security and, in some instances, to national or local identity. ECRI also regrets that immigrants have consistently been held responsible for a deterioration of security conditions in Spain, a claim that has been supported by the publication of sometimes conflictual information on criminal activities of foreigners. ECRI considers that these occurrences run counter to efforts to develop a culture of tolerance and respect for difference in Spain. It stresses that politicians should resist the temptation to approach the subject of immigration in a way which may result in racist, xenophobic or discriminatory attitudes by society at large *vis-à-vis* certain segments of Spanish society. They should, rather, emphasise the positive contribution made by different groups to Spanish society, economy and culture. ECRI believes that all political parties should also take a firm public stand against any forms of racism, discrimination and xenophobia as part of a more general commitment to respecting and guaranteeing human rights. As concerns statistics on the

criminal activities of foreigners, in addition to research on the reasons behind the over-representation of foreigners in the detainee population of Spain as suggested above¹⁴, ECRI feels that there is a need for more balanced and transparent information, for instance on the nature of the offences on the basis of which detentions are carried out, which often include illegal stay or acts directly flowing from the irregular situation of the immigrant in Spain, such as use of false documents etc.

54. Approximately 430,000 of the total number of foreigners with legal status living in Spain have regularised their situation in the last few years either through the ordinary regularisation regime or through the special regularisation procedures which have subsequently been opened. ECRI welcomes the efforts of the Spanish authorities to regularise the position of these persons. It notes however, that, at the time of writing, some of the persons who have obtained work permits are at risk of again falling in an irregular situation, since they face difficulties obtaining resident cards and renewing their work permits and that these persons are therefore limited in the exercise of some rights attached to the possession of such permits, including family reunification. This situation is not generalised throughout the country, but is reported to be a cause for concern in Madrid, where, however, a significant part of the immigrant population of Spain resides. ECRI encourages the Spanish authorities to address this situation, including by allocating sufficient resources to ensure that applications are processed in a reasonable time. Concern has also been expressed at the suspension, since January 2002, of the ordinary regularisation regime. At present, new work permits can only be obtained through the national contingent, a quota of work permits established each year for jobs for which Spanish workers are not available. The quota -- which has been fixed for 2002 at 32,000, of which 22,000 permits for seasonal jobs -- can be accessed only by workers residing abroad, which means that foreigners already in Spain cannot apply for work permits. Concerns have been expressed that this situation has resulted in many thousands of foreigners already in Spain and available for work becoming unemployed. It has also been noted that the contingent is being used by companies, which play a considerable role in fixing the contingent, to replace workers from certain countries, especially North African countries, with workers from other countries, notably Eastern European and South American countries¹⁵. It has been explained to ECRI that, through the contingent, the Spanish authorities endeavour to match new entries into Spain with the needs of the Spanish labour market. However, ECRI stresses that, in so doing, the Spanish authorities should ensure that adequate avenues for obtaining work permits and for regularising their situation are available to foreigners already in Spain and that discriminatory practices in the selection of workers are avoided. In order to avoid possible situations of exploitation of foreign workers ECRI also encourages the Spanish authorities to ensure that they are provided with the fullest possible information concerning their rights.
55. Spain has a consultation body on questions of immigration, the Forum for the Social Integration of Immigrants, established under the Ministry of Interior. Its remit is to enable dialogue with representatives of civil society, to channel requests from immigrants and to present to the competent bodies proposals relating to the social integration of immigrants. There have been complaints that

¹⁴ Administration of justice

¹⁵ See above *Vulnerable groups – North Africans and Muslims*

the reform of the Forum introduced by the Law 8/2000 and its implementing regulations has weakened the competence of this institution and affected the representation of civil society within it. ECRI encourages the Spanish authorities to ensure that the expertise and the central role of civil society in questions of immigration and social integration are adequately reflected in the composition of the Forum and in its competences.

56. Although Spanish immigration laws apply without exceptions throughout the Spanish territory, it has been reported to ECRI that the practical application of Law 4/2000 as modified by Law 8/2000 and of its implementing regulations varies considerably in the different regions of the country. ECRI is particularly concerned at reports concerning the implementation of certain aspects of the immigration legislation, and of other related legal provisions, in the Canary Islands, in Ceuta and in Melilla.
57. Internment centres (*Centros de internamiento*) in Spain host persons who have been apprehended without documents -- either upon entering Spain or once inside -- and rejected asylum-seekers, for a maximum of forty days. ECRI is seriously concerned at reports that migrants arriving illegally in the Canary Islands face extremely harsh conditions prior to and during detention in the airport facilities of Lanzarote and Fuerteventura, including overcrowding and poor health and hygienic conditions, and lack of communication with the outside world. Inadequate access to information, legal assistance, interpretation and translation and, as mentioned above¹⁶, ensuing difficulties in accessing the asylum procedure, constitute further problems. The judicial control of detention, which the law requires for migrants deprived of their liberty for more than seventy-two hours, is also reported to often be on an only formal level. It is not clear to ECRI whether these facilities are in fact to be considered internment centres. However, ECRI strongly urges the Spanish authorities to address the problems highlighted above and, in this framework, to ensure that the minimum standards provided for by the law for internment centres are applied to the facilities of Lanzarote and Fuerteventura.
58. Spanish legislation affords protection to unaccompanied foreign children at the same level as Spanish children, including the right to education, health care, temporary residence status and protection from repatriation if such repatriation puts the child or the child's family at risk. However, ECRI is concerned at reports that, in Ceuta and Melilla, unaccompanied migrant children, and especially Moroccan children, have in some cases been denied access to education, health care and temporary residence status and have in some instances been removed from the country without previous verification of their return to family or appropriate agencies in the country of origin. There have also been reports that some children have been ill-treated by staff or by other children during their stay in residential centres and by police officers during removals. While the situation is reportedly improving as concerns removals, instances of ill-treatment continue to be reported. ECRI has been informed that the Spanish authorities have prepared a Protocol identifying the responsibilities of the various public services entrusted with taking care of unaccompanied foreign children at different stages. ECRI strongly urges the Spanish authorities to monitor the implementation of this Protocol and to ensure that the rights of

¹⁶ Reception and status of non-citizens

these children, as provided for by Spanish law, are thoroughly respected in practice.

59. In March 2001, the Spanish Government approved the Global Programme to Regulate and Co-ordinate Foreign Residents' Affairs and Immigration in Spain (plan GRECO), a four-year action plan aimed at implementing immigration policy in all its aspects. The Programme identifies actions to be taken and institutions responsible in four different sectors: overall organisation of immigration as a desirable phenomenon for Spain; integration of foreign residents and their families; regulation of migration flows so as to ensure peaceful coexistence within Spanish society; and management of the system of protection of refugees and displaced persons. ECRI encourages the Spanish authorities to ensure that actions in the field of social integration of foreign residents are allocated an appropriate share of the resources devoted to the implementation of the Programme.

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