

ECRI

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

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European Commission against Racism and Intolerance

ECRI's country-by-country approach:

REPORT ON SPAIN

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, *inter alia*, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.

¹ *The report prepared by the Swiss Institute (ref: CRI (98) 80), covering relevant legislation in member States of the Council of Europe is available on the web site www.ecri.coe.int and, in hard copy, from ECRI's Secretariat.*

- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

To date, three series of ECRI's country-specific reports have been made public, in September 1997 and in March and June 1998 respectively.² A fourth series of country-specific reports was transmitted to the governments of the countries concerned in November 1998, and is thus now being made public³.

The following report contains ECRI's analysis and proposals concerning Spain.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This fourth series of reports, for which the procedure was completed by November 1998, will be followed by other series of reports during 1999 on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

As from 1999, ECRI is beginning a follow-up procedure to its country reports, examining what action governments may have taken on the proposals they contained, updating their contents generally and focusing on specific issues of concern in greater depth. Some 10 countries will be addressed annually in this way, over the period 1999-2002.

² *The first three series comprise reports on Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, San Marino, Slovakia, Slovenia and Switzerland.*

³ *Reports on Denmark, Estonia, the Russian Federation, Spain and the United Kingdom.*

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Introduction

Spain was for a long time a centralised State, which under the 1978 Constitution established a decentralised system of *comunidades autonomas* (autonomous communities) granting autonomy to the 17 regions, which made use of their powers to varying degrees. This means in principle that the legislative and the executive powers are divided between the central State and the Regions. Regional self-awareness is well-developed in many parts of Spain, for example, in Catalonia, in the Basque country and in Galicia.

Until recently, Spain was a country of emigration mainly to American and other European countries. Now the trend has reversed and Spain has become a country of immigration: principally immigration for economic reasons despite Spain's own unemployment problem.

Although violent racism is not widespread, day-to-day manifestations of racism and intolerance are in evidence, particularly towards the Roma/Gypsy population, black people, North Africans and Arabs. Anti-Semitic attitudes also exist. Problems may be exacerbated by the labour market situation, with the highest unemployment rate in Western Europe (more than 20%), and a perception of non-citizen workers as unfair competition in the labour market. A resurgence of aggressive and even violent nationalism and the emergence of some violent racist groups are also subjects of concern.

In addition, one of the most serious problems in Spain is the terrorism connected with the confrontation between violent Basque separatists and the Spanish State.

Some of the key areas identified by ECRI as meriting particular attention include:

- the long-standing problem of the marginalisation of the Roma/Gypsy community in Spain;
- the more recent problem of marginalisation of immigrants, particularly those from Africa;
- swift and full implementation of the new provisions of the Penal Code to improve the protection offered under the law;
- measures to combat the activities in Spain and abroad of right-wing extremist networks;
- the need to improve and refine statistical data on vulnerable groups and racist acts.

⁴ *Note: Any development subsequent to 6 March 1998 is not covered by the following analysis and is not taken into account in the conclusions and proposals.*

I. LEGAL ASPECTS⁵

A. International Legal Instruments

1. Spain has ratified all of the relevant international instruments in the field of combating racism and intolerance, except the Charter for Regional or Minority Languages. It is considered that ratification of this instrument should be effected as soon as possible.

B. Constitutional provisions

2. Several articles of the Constitution deal with the principle of equality, which is one of the pillars of the constitutional system. Article 14 prescribes that "Spaniards are equal before the law, without any discrimination on the grounds of birth, race, sex, religion, ideology or any other condition or circumstance". Non-citizens "may enjoy the public freedoms [...] under the terms which treaties or laws may establish" (Article 13). ECRI feels that consideration might be given to the possibility of adopting a constitutional amendment expressly ensuring equality for all individuals under Spanish jurisdiction, not just for Spanish citizens. Although some distinctions may be necessary under certain circumstances, such distinctions should only be made when justified in a democratic society.

3. A constitutional decision N° 214/1991 established that neither the liberty of ideology nor the liberty of expression can allow a person to make racist or xenophobic declarations.

C. Criminal law provisions

4. There is a provision in the Penal Code punishing those who attempt to destroy any racial, ethnic or religious groups (Art. 137bis), but this only seems to cover extreme cases of the phenomenon. Other provisions deal with civil servants who engage in racial or ethnic discrimination while exercising their functions (Art. 165, 181bis). Moreover, provisions exist which outlaw associations that promote or incite to racial discrimination (Art. 173.4, 174).

5. In the new Penal Code, which entered into force in May 1996, racism, anti-Semitism and denial of the Holocaust were made criminal offences, adding "racist or anti-Semitic intent" to the list of "aggravating circumstances". Incitement to racial or anti-Semitic hatred and violence and acts of any kind which deny, justify or advocate genocide were also made criminal offences. There are also provisions concerning discrimination on ethnic or racial grounds both in employment and in the provision of goods and services in the performance of professional activities. These additions are noted and it is considered that their effects and effectiveness should be monitored.

⁵ *A full overview of the legislation existing in Spain in the field of combating racism and intolerance is provided in the publication CRI (98) 80, prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography)*

D. Civil and administrative law provisions

6. Discrimination is prohibited by many different provisions in civil and administrative law, usually in specific legislation (concerning housing, labour law, State security forces and bodies, treatment of aliens etc). For example, the Statute of Workers prohibits discrimination in the selection of employees and in the workplace. Law N° 8/1988 qualifies as a very serious infraction any unilateral decision by an employer against a worker involving *inter alia* racial discrimination or the publication of offers of employment showing an intention to discriminate.

E. Specialised bodies

7. A non-judicial institution which supervises the activities of the administration is the Ombudsman (Defensor del Pueblo) set up in accordance with Art. 54 of the Spanish Constitution. The Ombudsman can undertake any investigation on behalf of any party or on his own initiative. Racism and intolerance are not especially the domain of this institution, but are encompassed within the task of the Ombudsman to defend fundamental rights according to the organic law regulating the institution of the Ombudsman. The Ombudsman has undertaken activities in connection with issues of racism and intolerance, particularly in respect to the situation of Roma/Gypsies, and also devotes attention to the rights and freedoms of non-citizens in Spain. The office deals also with a number of complaints connected with racism and intolerance. ECRI feels that Spain might consider the possibility of setting up a specialised body in the field of combating racism and intolerance or of strengthening and focusing the powers of the Ombudsman in this domain, drawing inspiration from the guidelines set down in ECRI's general policy recommendation N° 2 on specialised bodies.

8. There are other bodies dealing with typical problems of intolerance and racism in Spain. For example, an interministerial Commission was created in 1979 to deal with the problems faced by the Roma/Gypsy community. The Congress of Deputies created an administrative supervisory body in 1985 and since 1989 an Office has existed under the patronage of the Ministry of Labour and Social Affairs. Another body is the Committee for the Prevention of Violence in Sport, which deals with the problem of hooliganism related to neo-Nazi skinhead groups.

II. POLICY ASPECTS

F. Reception and status of non-citizens

9. Spain has recently turned into a country of immigration. The figures available are not very recent and precise, but they help to give an approximate picture. By the end of 1996, there were nearly 540,000 holders of residence permits, about half of whom came from Europe, around 1/5 from Africa, particularly from Morocco, 1/5 from Latin America and around 1/10 from Asia and other regions. This amounts to somewhat more than 1% of the total population. The number of refugees is little more than 5,000. The number of clandestine immigrants - the most vulnerable group - can only be estimated, however.

The authorities state the number of illegal immigrants as being between 60-70,000, although some studies place the figure at much higher than this (from 150,000 up to 300,000)⁶. Since 1996, some regularisation of illegal immigrants has been underway.

10. The objectives of the present immigration policy are the social integration of immigrants, the control of immigration flows, co-operation with the immigrants' countries of origin, and elimination of discrimination and the mobilisation of society against racism. The Forum for the Integration of Immigrants - in which public administrations, immigrants' associations, NGOs and trade unions are represented - and the Permanent Observatory for Immigration are the bodies responsible for co-ordinating these aims. There are also examples of regional plans for the integration of immigrants on the level of the autonomous communities.

11. Some possible problem areas include discrimination in the allocation of visas for African citizens and the status of the non-citizen Muslims residing in the Spanish territories of Ceuta and Mellilla. Some concern has been expressed that this community may not be sufficiently protected against possible discrimination.

G. Education and training

- *Awareness-raising*

12. Several campaigns aimed at raising public awareness have been launched by the Ministry of Labour and Social Affairs and non-governmental organisations. These campaigns, such as "Young people against Intolerance" and "Democracy means equality" are presented through television, video announcements and the distribution of pamphlets.

- *Education*

13. The Spanish education system includes on the curriculum moral and civic education and peace education, including respect for human rights and for diversity. This aspect of the educational curriculum should be further developed and applied. Recent efforts to promote education in tolerance and solidarity as a part of teacher training are welcomed and should be continued.

14. It has been reported that Castilian-speaking children resident in Catalonia and in the Basque country sometimes face problems in obtaining education in the Castilian language. This situation should be kept under review.

- *Police training*

15. Although human rights and international humanitarian law are included in police training, more specialised courses to combat discrimination and prejudiced attitudes may be called for: in this respect, attention is drawn to the study prepared by the Steering

⁶ cf Baumgartl, B and Favell, A (eds), *New Xenophobia in Europe*.

Committee on Migration (CDMG) of the Council of Europe on "Police training concerning migrants and ethnic relations". There are reports of racist attitudes and misconduct among the police forces towards vulnerable groups in Spanish society. It is advisable that police practices be actively screened for overt and covert discrimination and that any discrimination perpetrated by members of the police force be treated with the necessary severity. An independent body such as the Ombudsman might be of help in surveying police forces in this respect.

H. Media

16. In general, the mass media in Spain report acts of racist and xenophobic violence in an appropriate fashion. Positive initiatives in the field of the media are the drawing-up of an agreement between the Catalan media and the Catalan regional government to combat discrimination on the basis of colour, race, gender, religion and ideology ("Protection of the culture and image of ethnic minorities in the media") and the Self-Regulating Agreement between the mass media and the Ministry of Labour and Social Affairs for the promotion of tolerance towards the Roma/Gypsy community.

17. Particularly prior to the adoption of the new Penal Code, several extreme-right publications and newspapers were produced in Spain, often for export to other countries. The new forms of technology, such as Internet, are used in Spain, as in other countries, to disseminate racist material. Strict law enforcement and a targeted policy against right-wing extremist networks and dissemination of racist publications remain necessary.

I. Employment

18. Several minority groups, particularly the Roma/Gypsies and North Africans, face discrimination in the labour market. Such discrimination should be combated by a firm application of the relevant legislation in force accompanied by information campaigns to raise awareness among employers and potential victims of discrimination in the labour market of this legislation. Moreover, targeted policies should be further developed to assist the members of vulnerable groups in entering the labour market. Measures might include special language training for immigrants, "conversion" training to adapt skills to the Spanish labour market, and projects on a local level to assist members of disadvantaged communities in obtaining work.

J. Statistics

19. One statistical area which should be improved is data concerning the Roma/Gypsy community (see paragraph 22). Consideration could be given to various ways of obtaining information about the size and situation of the Roma/Gypsy community at national and regional/local level. Close collaboration with representatives of the community concerned is considered to be absolutely necessary in this respect.

K. Other areas

- *Autonomous communities*

20. After a long period of centralism and political and cultural influence of the Castilian element, Spain has found its way to a regime of Autonomous Communities, close to a federalist regime, giving a right of self-government to the regions which make up the Spanish nation. This system works on a territorial basis whereby the regions enjoy autonomy and the vernacular languages (Catalan, Galician and Basque) are given official status besides Castilian in their respective territories. Although - in a nation-wide context - the groups concerned represent "minority groups", they are the dominant groups in their respective regions. Although the system of autonomous communities has settled many issues relating to cultural diversity, separatist activity in the Basque region continues, sometimes with violence.

- *Voluntary organisations*

21. Voluntary organisations play an increasingly important role in preventing and combating racism and intolerance. NGOs, immigrants associations, Roma/Gypsy associations, trade unions, universities, churches and other bodies can contribute to the fight against racism, awareness-raising among the Spanish population and assisting minority groups, particularly immigrants, to participate fully in Spanish society. Measures might be taken to co-ordinate State policies and NGO activities to the maximum extent.

- *The Roma/Gypsy Community*

22. The Roma/Gypsy Community in Spain is commonly estimated to number between 400-500,000, although some Roma/Gypsy organisations estimate that the actual figures are much higher. No reliable statistics exist. The Roma/Gypsies came to Spain as early as the 15th century but - unlike other historical communities - have no recognised area or territory of settlement. Most of the Spanish Roma/Gypsy population (i.e. nearly 70 %) live in the communities of Andalusia, Valencia and Murcia (i.e. in the southern and south-eastern part of Spain) and in the cities of Madrid and Barcelona.

23. Although the members of this Community are Spanish citizens and nowadays enjoy equal rights, they are in many respects still disadvantaged and marginalised. This results from century-old discrimination by the rest of the population and continuing rejection based on prejudice. The disadvantaged situation is demonstrated by the economic and social conditions of Roma/Gypsies. The authorities are trying to break the vicious circle of bad conditions and prejudice, especially by means of a comprehensive "Gypsy Development Programme", which is intended to reinforce the access of Roma/Gypsies to education, health, housing, employment and social welfare. Although this programme seems on the whole rather successful, there is still a long way to go before factual equality is accomplished.

24. Discrimination is particularly widespread in the field of housing: neighbourhoods often oblige Roma/Gypsies to move from the area. Governmental initiatives are underway in some Spanish cities to try to solve the housing problem, and such initiatives should be strengthened and extended. Some progress has been made in the field of schooling to improve school attendance and literacy among Roma/Gypsy children, but further efforts are still necessary. Another positive step is the organisation of training courses for social workers in order to improve their knowledge of the Roma/Gypsy culture and lifestyle.

- *Jewish Community*

25. The number of Jewish Spaniards today is about 20,000, mainly in some larger cities. Despite this comparatively small number, anti-Semitism does exist in today's Spain. Neo-Nazi or neo-Fascist-groups perhaps find inspiration in traditions of the Spanish past, most recently in the Franco period. The activities of such groups should be more strongly opposed.

- *Clandestine immigration*

26. Given that Spain, along with many other countries, is currently experiencing a wave of trafficking in illegal migrants, often with horrific humanitarian consequences, measures should be developed to combat this exploitation of migrating people, as far as possible in co-operation with countries from which such trafficking occurs.

- *Racial violence and harassment*

27. Racial prejudice in Spain is often aimed at Roma/Gypsies. There are reports of open conflicts, including attacks on Roma/Gypsy family homes in certain underprivileged areas.

28. Anti-Semitic stereotypes, partly surviving from a medieval tradition, and also stemming from the Franco period, may still linger on. Whatever the source of current anti-Semitic attitudes may be, there are reports of incidents such as telephone threats, anti-Semitic graffiti in a Jewish cemetery, and swastika-daubing in some cities⁷.

29. There are signs of an incipient racism in Spain with respect to certain groups of third world immigrants, especially those from the Maghreb who form the largest and most rapidly growing group of non-European immigrants. Acts of racial violence occur, directed primarily against immigrants by groups of young people (skinheads). Racist demonstrations are sometimes also carried out by neighbourhood groups against the integration or proximity of Roma/Gypsies or immigrants, and these sometimes degenerate into racial violence.

⁷ cf *Anti-Semitism World Report*.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Spanish government on 13 July 1994.

ECRI accepts no responsibility for the data below.

Roma/Gypsy ethnic minority

Other groups: North Africans, Africans, South Americans, including Caribbean, Eastern Europeans

* *Population: 39 241 500 (1 January 1996). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)*

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