



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination Sixty-fourth session

Summary record of the 1617th meeting

Held at the Palais Wilson, Geneva, on Friday, 25 February 2004, at 10 a.m.

Chairperson: Mr. Yutzis

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A consolidated corrigendum to the summary records covering the public meetings of the Committee will be issued shortly after the session.

The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (item 6 of the agenda) *(continued)*

Sixteenth and seventeenth periodic reports of Spain (CERD/C/431/Add.7) (continued)

1. *At the invitation of the Chairperson, the members of the Spanish delegation took their places at the Committee table.*

2. **Mr. Cabrera** (Spain) acknowledged that the periodic report of Spain was relatively short, since Spain had followed the Committee's recommendations as well as those of the Human Rights Committee requesting States parties to submit succinct periodic reports highlighting relevant events that had taken place in their country since the submission of their previous report.

3. Responding to Mr. Kjaerum who, at the Committee's previous meeting, had noted the absence of any reference to anti-Semitism in the State party's report, the representative said that anti-Semitic incidents in Spain were extremely rare. The absence of information on the subject should therefore not be seen as meaning that Spain did not punish with the greatest severity incidents of that kind, even if they were minor.

4. Responding to the question posed by Mr. Herndl, who wished to know why the Spanish State had not ratified the amendment to article 8 of the Convention, Mr. Cabrera said it was a legislative gap that Spain was going to try to fill as quickly as possible. He regretted that a Committee expert had seen fit earlier to refer to Spain's position in the Iraqi conflict, which concerned the foreign policy of a sovereign State and bore no relation to the Committee's mandate or racial discrimination.

5. **Mr. Goma** (Spain) said that the Forum for the Social Integration of Immigrants had been set up under the Organization Act on the rights and freedoms of aliens in Spain and their social integration (CERD/C/431/Add.7, para. 18), adopted in 2000. It was a tripartite advisory body (para. 26 (d)) which reported to the central Administration, autonomous communities and local authorities. The Forum was responsible for formulating proposals for promoting the integration of foreigners in Spanish society. It also collected information on the programmes implemented by public authorities and forwarded proposals by social organizations for furthering the inclusion of immigrants in Spanish society. The Forum submitted an annual report that examined and evaluated the various plans and programmes that could affect immigrants. It consisted of eight members representing public authorities concerned with the integration of immigrants, eight members representing legally constituted migrant and refugee associations, and eight members of trade union and employers' organizations concerned with immigration issues.

6. The Immigration Monitoring Centre was a collegial body under the Ministry of the Interior which was responsible for collecting and analysing data on immigrants and disseminating the information obtained among relevant public and social bodies. It also received information from organizations and associations active in the immigration field. It published an annual statistical report on immigration, which did not take into account the racial or ethnic origin of immigrants but rather their nationality.

7. The GRECO Programme, adopted in 2001 (para. 26), was a Government initiative aimed at addressing all aspects of the issue of the presence of foreigners and immigration. The aim of the programme was to guide, promote and coordinate the different actions concerning aliens and immigration in four basic areas: overall design and coordination of immigration in the context of the European Union; integration of immigrants and their families in Spanish society and, in some cases, their return to their country of origin;

regulation of migratory flows; and maintenance of the system of protection of refugees and displaced persons. The programme budget for 2003 was over €161 million.

8. Mr. Goma explained that the Department of the Civil Guard (para. 30) was an internal policing body responsible for ensuring respect for human rights, in particular the principle of non-discrimination, and for combating corruption. It investigated police officers to determine whether abuses had been committed and whether the administrative regulations of the Civil Guard had been breached. Sanctions were applied where appropriate.

9. Concerning the situation of illegal immigrants, Mr. Goma explained that the new Organization Act adopted in 2003 in no way affected the rights prescribed in the Organization Act on the rights and freedoms of foreigners in Spain, adopted in 2000. Foreigners had the right to possess identity documents, to circulate freely in the country, and to join trade unions. They also enjoyed the right to strike and the right to work, to social security cover, to health insurance and to housing. It should however be noted that some of those rights were subject to conditions. For example, the right to freedom of assembly and demonstration as well as the right to organize only applied to persons possessing a valid residence permit. It meant in practice that the authorities recognized that foreigners had rights but did not necessarily exercise them.

10. On the other hand, certain rights such as the right to education were not subject to any restriction. All foreigners under 18 years of age, whether residing legally or illegally on Spanish soil, enjoyed the right to education in the same way as Spanish minors. Moreover, illegal foreigners enjoyed medical protection in cases of emergency, and pregnant women also had access to ante- and postnatal care as well as to obstetrical care. Similarly, any foreigner who considered that he or she had been the victim of a "discriminatory act" as defined in article 23 of the Organization Act on the rights and freedoms of aliens in Spain and their social integration (para. 21) could lodge a complaint with the relevant authorities, whether the individual was legally resident or not in Spain.

11. In accordance with the relevant international conventions, the entry of immigrants into Spain was subject to very precise rules and conditions. Spain no longer delivered visas on humanitarian grounds, but the authorities concerned granted temporary residence permits on humanitarian grounds. Foreigners having to attend the bedside of a close relative resident in Spain or to repatriate a relative's body to the country of origin were also granted such permits.

12. Under the Aliens Act, illegal residence in Spain was a serious offence punishable by a fine and, in the worst case, by the expulsion of the individual concerned. The Act also provided for illegals whose administrative expulsion order was in the process of being drawn up to be placed in an internment centres for foreigners, with the authorization of a competent investigating judge. Such establishments were in no way comparable to prisons, and the persons interned there had very clear rights: they could receive visits, communicate freely with their family or lawyer through the Internet or a portable telephone, enjoy the services of an interpreter if they did not speak Spanish and, if necessary, receive medical treatment. Their physical and mental well-being was safeguarded and their internment was overseen by the judicial authorities. They also had responsibilities, in particular to be at the disposal of the investigating judge who had ordered their placement, to undergo a medical examination on entering and leaving the centre, and finally to respect the premises in which they were interned. It should be noted that, as in the case of other administrative decisions, the decision to place foreigners in an internment centre was subject to appeal, with suspensive effect on the expulsion procedure.

13. Mr. Goma said that unaccompanied minors were never subject to an expulsion procedure since Spain made a distinction between "expulsion" and "return to the country of

origin", which involved entrusting a minor to a close relative at the frontier. The measure was frequently applied in the autonomous towns of Ceuta and Melilla and was the subject of a memorandum of agreement with Morocco. Because of their proximity to Morocco, the two towns had registered a large number of asylum requests. However, only persons whose life or physical integrity was threatened in their country of origin could claim that status.

14. The population of Ceuta and Melilla, although multicultural and multi-ethnic, was mainly composed of persons of foreign origin who had acquired Spanish nationality through marriage or birth and who had full enjoyment of their basic rights. The disturbances linked to the influx of immigrants in those towns in the past, in particular the presence of makeshift camps caused by overcrowding in the reception centres, were a thing of the past, so that Médecins sans frontières had wound up all the programmes it had put in place to cope with the situation.

15. **Ms. Diez Gutierrez** (Spain) said that article 197 of the Criminal Code defined the offence of seeking and divulging confidential data, established the fundamental right of everyone to privacy and laid down the penalties for violations of that right, such as the interception of mail and telephone tapping. Any person who divulged, revealed or communicated confidential data was subject to two to five years' imprisonment. The minimum sentence was three years (and the maximum five years) when the offence was committed by a person who had access in a professional capacity to confidential computer files and other archives or media. Finally, the medium to maximum sentences were imposed in cases where the data divulged revealed the victim's racial or ethnic origin, religion, state of health or sexual orientation and, lastly, when the individual concerned was a minor or disabled person.

16. Ms. Diez Gutierrez explained that the law on female genital mutilation was recent and that the legislator had preferred to restrict the scope of an undeniably innovative initiative to acts committed on Spanish soil, thereby excluding the possibility of bringing charges against someone who had engaged in that practice abroad.

17. She noted that article 515 of the Criminal Code was aimed at organizations that incited to discrimination, hatred or violence against persons, associations or particular groups on a variety of discriminatory grounds, such as race or ethnic origin. The article in question made it an offence for an organization to engage in such acts and thereby to jeopardize the domestic legal order. The judge could thus declare illegal and then dissolve such organizations when the criminal proceedings had determined the existence of an offence of that kind. It should be noted that criminal prosecution could be instituted by the victim of the act in question and that an organization could only be dissolved through judicial proceedings respectful of freedom of association. The speaker also pointed out that secret and paramilitary associations were prohibited and that generally speaking, in order to be officially registered, associations had to possess statutes in conformity with the Constitution. If there were grounds for believing that an association might be discriminatory in its practices, it was possible for its statutes to be revised to bring them into line with the Constitution or, where an offence had clearly been committed, for criminal proceedings to be instituted.

18. Finally, Ms. Diez Gutierrez assured members of the Committee that the Ministry of Justice was aware that it did not possess sufficient data on judicial rulings. It would take steps to ensure better follow-up of such rulings in future and to provide the Committee with more detailed information on the matter when Spain's periodic reports were next examined.

19. **Mr. Cisneros Garcia** (Spain) said that a growing number of foreign pupils were being educated in Spain, in schools attended by a wide range of ethnic groups and nationalities, lending education in that country a truly intercultural character. The autonomous communities had established educational programmes to cater for foreign

pupils, under which they received linguistic support to facilitate their integration. A cultural mediator had been appointed, teachers were given courses to promote awareness of the special cultural problems of the autonomous towns of Ceuta and Melilla, and all children of immigrant origin – no distinction being made between legal and illegal immigrants – enjoyed free school meals and school transport. The ultimate aim was not only to promote the integration of the young people but also to combat failure at school, which affected the immigrant community disproportionately, to place the emphasis on the wealth represented by that melting pot of cultures and nationalities and, finally, to establish harmonious relations between the different communities within the education system. Making young people aware of such issues from the earliest age was a way of combating racism and xenophobia in the long term.

20. In the cultural field, Mr. Cisneros Garcia said that Castilian was the only official language of the autonomous community of Melilla but that Berber culture, in particular Berber dialects such as Tamazigh, was promoted through seminars and lectures. Concerning the teaching of the Spanish in the autonomous community of Catalonia, he explained that existing legislation provided for four hours of Spanish-language teaching per week at the primary level. Compulsory secondary education set aside three hours per week for Spanish and Catalan respectively, as did preparatory classes for the baccalaureate, the medium of instruction being Catalan at all other levels. Complaints of discrimination levelled at the autonomous community stemmed from the fact that Catalonia threatened not to comply with the minimum hours Spanish classes at the primary level stipulated by the Organization Act on the quality of education.

21. **Mr. Cabrera** (Spain) explained, with regard to the role of the mediator (ombudsman) and the new Council for the promotion of equal treatment and non-discrimination, that the mediator had been appointed by Parliament to defend the rights laid down in Part I of the Spanish Constitution and to monitor the activities of the public authorities in that regard. He could initiate investigations *ex officio* or at the request of any interested party and hear complaints from any natural or legal person. The newly established Council exercised its functions without prejudice to the activities of the mediator, whose work it complemented.

22. With regard to the multiple forms of discrimination to which the disabled and women were subject, Mr. Cabrera replied that the issue was a priority concern in the fourth Equal Opportunities Plan of the Women's Institute for the period 2003-2006. Furthermore, in the context of activities to improve the professional status, qualifications and social welfare of immigrants at risk or excluded, programmes were being implemented under Spain's National Social Inclusion Plan submitted to the European Union.

23. Concerning the results of the Durban Conference, a publication by the State party entitled "Vivir y convivir" (Living and Living Together), which was available for consultation by the Committee, disseminated information on that subject and on the follow-up to the decisions of the European Conference against Racism organized by the Council of Europe.

24. With regard to measures to address the underlying causes of the acts of racist aggression in El Egido, near Almería, Mr. Cabrera pointed out that the Forum for the Social Integration of Immigrants had examined and approved a comprehensive plan on migratory movements in Andalusia, matched by a budgetary allocation of €171 million, covering issues such as cooperation for development and social, humanitarian, educational and social awareness issues. In 2002, the Institute of Migration and Social Services (IMSERSO) had signed an agreement with the city of Almería to launch the first provincial immigration plan, which included programmes for the promotion of equality.

25. **Mr. Porras Muñoz** (Spain) explained, in response to a question by the country rapporteur concerning the reasons for discrimination against Gypsies, that the long history of intolerance towards that minority was the cause of persistent prejudice within the majority population. The fact that Gypsies, who rejected the way of life of the majority, formed clans made the challenge that much more difficult to meet.

26. Concerning a possible link between the risk of exclusion and the risk of aggression, Mr. Porras Muñoz explained that the need was to establish a link between social integration and access to the labour market, which was a key factor of social integration. The main aim of the Gypsy Development Programme was therefore to increase access to public services and employment. Mr. Porras Muñoz said that Gypsies, like all other vulnerable social groups, enjoyed improved access to public and social services. For example, access to university by Gypsies was increasing, the slums in which they lived were tending to disappear, almost 100% of Gypsy children aged 3 to 16 attended school, and employment programmes for young people were being introduced on an experimental basis.

27. With regard to trends in discrimination generally, research by the Centre for Sociological Studies revealed a continuing high level of intolerance within the majority population. It was difficult to say whether that factor penalized the Gypsy community more than others. That being said, the proportion of the Gypsy population subject to discrimination was a minority since over 70 per cent of citizens belonging to that community were wholly integrated in society, some of them even being celebrities in the worlds of the arts and entertainment.

28. **Mr. Aboul-Nasr** deplored the fact that the Spanish press identified the Arab world with terrorism, which was contrary to the provisions of the Convention.

29. **M. Boyd**, referring to the concerns aroused within the Committee at the fact that Catalans living outside the autonomous community of Catalonia felt themselves relegated to the rank of second-class citizens, while Spanish speakers living in areas where the majority spoke Catalan felt themselves socially excluded, asked whether there were any plans to unite the linguistic minorities.

30. Concerning the allegedly racist conduct of the police and the Civil Guard, and the anti-discrimination training provided to the law enforcement services, Mr. Boyd asked what measures had been taken to evaluate the effectiveness of such training, to identify acts of racial discrimination committed by the services concerned and to remedy those problems.

31. **Mr. Pillai** drew attention to the situation of asylum seekers in Ceuta — the Spanish town in which they were most numerous. Asylum seekers often lived in very precarious conditions, particularly those who could not be lodged in the overcrowded town reception centre. Given its extremely limited capacity, new arrivals were totally dependent on private assistance. Moreover, there were deplorable delays of 3 to 4 months in processing requests for asylum. During that period, asylum seekers remained in a legal limbo, at risk of being expelled from the country. It would be helpful to know how Spain intended to remedy that situation.

32. **Mr. Thornberry** welcomed the fact that a wide range of projects had been implemented within the autonomous communities to promote and recognize Gypsy culture (para. 115 of the report), but asked whether there was a programme of action covering the State party's territory as a whole. He commended the efforts of the Spanish Government in the sphere of intercultural education involving Spanish nationals and immigrants, but thought it would be equally useful to promote tolerance among the autonomous communities through education.

33. **Mr. Shahi** noted with satisfaction that the State party had a vast array of legislative provisions concerning the rights and duties of aliens. However, according to certain

sources, much remained to be done to promote and defend the rights of foreigners, whether illegal immigrants or not, particularly in the labour sector since many immigrant workers had no kind of social and medical protection.

34. Mr. Shahi had gathered from its report that the State party was sparing no effort to improve the living conditions of the Gypsy community, but he was surprised that it continued to be marginalized and to live in a state of great deprivation. He would like to have the views of the delegation on the reasons for that situation. He also wished to know why Spain had lowered the age at which a person could be expelled from its territory from 18 to 16 years.

35. **Mr. Calitzay** asked the Spanish delegation to confirm the information that some Spanish municipalities kept a register of foreign inhabitants, which could be used in certain cases by the police. He underlined that every individual had the right to privacy and that the processing of personal data was subject to certain rules under international instruments.

36. **Mr. Amir** asked whether the State party had granted compensation to Gypsies who had been the victims of discrimination during the Second World War. At the same time, he congratulated Spain on its excellent policy of promoting its Judeo-Arabic-Muslim heritage.

37. **Mr. Cabrera** (Spain) assured Mr. Aboul-Nasr that nobody in Spain identified Arabs and Muslims with terrorists, his country having a very long tradition of friendship with the Arab people. He said that the Constitution did indeed recognize only one official language, Castilian, but that a number of co-official languages were spoken in the autonomous communities.

38. Mr. Cabrera emphasized that incidents of a racial character involving police officers were very few in number but were closely scrutinized by the authorities. As the delegation had indicated, Spain had undertaken an extensive programme of training in the area of human rights in general and discrimination in particular, aimed at young police recruits.

39. Concerning asylum seekers in Ceuta, there had been a notable improvement compared with the previous year as a result of close cooperation between Spain and the Office of the United Nations Commissioner for Human Rights. Mr. Cabrera assured members of the Committee that all asylum seekers were cared for and provided with shelter.

40. It was true that a number of Spanish municipalities kept a register of all those not holding Spanish nationality. However, the register did not include any data on a person's race, ethnic origin or skin colour, referring only to nationality. The police did not normally have access to it.

41. In conclusion, Mr. Cabrera welcomed the constructive dialogue established with the Committee and assured its members that their observations and recommendations would be given close consideration by the State party.

42. **Mr. Lindgren Alves** (Rapporteur for Spain) thanked the Spanish delegation for the high quality of the information provided in its report and during the discussion. If members of the Committee had sometimes appeared critical with regard to Spain, it was because they expected a great deal of a State party that pursued a determined campaign to combat racial discrimination and intolerance.

The meeting rose at 1 p.m.