



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

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# Third report on Spain

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## **Foreword**

*The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.*

*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.*

*The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.*

*The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.*

*The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.*

*ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.*

***The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 24 June 2005 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.***

### **Executive summary**

Since the publication of ECRI's second report on Spain on 8 July 2003, progress has been made in a number of the fields highlighted in that report. There has been a recent willingness on the part of the Spanish authorities to move from an aliens policy to an immigration and integration policy. This shift in approach is reflected, for instance, in the opening of a "normalisation" procedure which allowed around 700 000 non-citizens who had been working in Spain without legal status to obtain work and residence permits, and in a number of steps taken to rationalise and speed up the process of issuing these permits. The tone of public, and notably political, debate on immigration has improved since June 2004. Measures have been taken to reduce the disadvantage faced by many members of the Roma communities of Spain and some of these measures, notably in the field of employment, are reported to have yielded tangible positive results. A State Council for the Roma People is being established and will be central to developing new strategies for promoting equal opportunities for this part of the Spanish population. A reform of the education system which aims, *inter alia*, to promote equal opportunities for children in need of special educational support, including many Roma children and non-Spanish mother tongue children, is under discussion.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. Lack of awareness of issues of racism and racial discrimination across Spanish society affects the institutional response to these phenomena in a negative way. Thus, for instance, legislation in the field of combating racism and racial discrimination, including the provisions establishing racist motivation as an aggravating circumstance, still need to be adequately implemented. A specialised body to combat racism and racial discrimination has not yet been established. Racial discrimination in a wide range of areas, including employment, housing and access to public places still affects the daily lives of members of ethnic minority groups, including Roma, North Africans, people from sub-Saharan Africa and South Americans. These persons are also particularly affected by ethnic profiling practices by the police which increase the likelihood of them falling victims of police misconduct. Racial and xenophobic violence still needs to be adequately recognised and countered. Furthermore, certain aspects of immigration and asylum policy remain of concern, such as those concerning adequate access to the asylum procedure, notably in certain geographical areas, the position of unaccompanied minors and the situation of persons from sub-Saharan Africa trying to gain access to Spanish territory through Ceuta and Melilla.

In this report, ECRI recommends that the Spanish authorities take further action in a number of areas. As concerns legislation, these areas include: ratification of Protocol No. 12 to the European Convention on Human Rights, which lays down a general prohibition of discrimination; the need to adequately implement existing legislation against racism and racial discrimination, including racially motivated crime; and the need to establish a specialised body to combat racism and racial discrimination. ECRI also recommends that the Spanish authorities take steps to raise awareness of issues of racism and racial discrimination among society. Other areas addressed by ECRI's recommendations include: the need to further develop and implement, in close co-operation with the Roma communities, adequately funded equal opportunities strategies targeting these communities; the need to counter racist organisations, including neo-Nazi and skinhead groups; the need to counter discrimination and labour exploitation of immigrants; and the need to provide border control and law enforcement officials, especially in the Canary Islands, Ceuta and Melilla, with thorough training in human rights, non-discrimination and refugee law.

## I. FOLLOW-UP TO ECRI'S SECOND REPORT ON SPAIN

### International legal instruments

1. In its second report, ECRI recommended that Spain sign and ratify Protocol No.12 to the European Convention on Human Rights (ECHR), the European Convention on Nationality and the Convention on the Participation of Foreigners in Public Life at Local Level. It also recommended that Spain ratify the European Social Charter (Revised). ECRI is pleased to note that, following the adoption by Parliament of a bill envisaging the ratification of Protocol No. 12 to the ECHR on 28 May 2004, the Spanish authorities have started the necessary inter-Ministerial consultation process. There are no developments since ECRI's second report on Spain as concerns the signature of the European Convention on Nationality and the Convention on the Participation of Foreigners in Public Life at Local Level or the ratification of the European Social Charter (Revised).
2. ECRI notes that Spain has not yet signed the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

#### **Recommendations:**

3. ECRI recommends that the Spanish authorities complete the work in view of the ratification of Protocol No. 12 to the ECHR without delay and that they ratify this instrument. ECRI recommends that the Spanish authorities ratify the European Convention on Nationality and the European Social Charter (Revised). It also recommends that Spain ratify the Convention on the Participation of Foreigners in Public Life at Local Level and that they apply all the provisions contained in this instrument, including Chapter C, which concerns the attribution of eligibility and voting rights to foreign residents. ECRI finally recommends that the Spanish authorities ratify the Additional Protocol to the Convention on Cybercrime and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

### Constitutional provisions and other basic provisions

4. In its second report, ECRI noted that Article 14 of the Spanish Constitution grants Spanish citizens the right to equality before the law and recommended that this right be formally recognised in the Constitution with respect to all individuals and not just Spanish citizens. There have been no amendments to Article 14 of the Constitution since ECRI's second report. ECRI notes, however, that debate is ongoing in Spain on the need to revise the Constitution. In this context, ECRI draws the attention of the Spanish authorities to its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination<sup>1</sup>, according to which, in particular, "[t]he constitution should enshrine the principle of equal treatment, the commitment of the State to promote equality as well as the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin".

<sup>1</sup> CRI (2003) 8: ECRI General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination, European Commission against Racism and Intolerance, Council of Europe, February 2003.

### **Recommendations:**

5. ECRI recommends that the Spanish authorities ensure that the right to equality before the law is formally granted by the Constitution to all individuals and not just Spanish citizens. ECRI recommends that any review of the Constitution undertaken by the Spanish authorities take into account ECRI's General Policy Recommendation No. 7, in particular as concerns the areas highlighted above.

### **Criminal law provisions**

6. In its second report, ECRI expressed concern at the fact that the criminal law provisions against racism and racial discrimination in force in Spain were rarely applied. In particular, ECRI considered that the implementation of the provisions establishing 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 recommended that the Spanish authorities provide further training on these subjects to all actors involved in the criminal justice system and raise their awareness of the need to actively counter racially-motivated crime, incitement to racial discrimination, hatred and violence and associations promoting racism.
7. As was the case in the second report, ECRI has been unable to obtain figures on the implementation of the provisions in question during the last few years. ECRI understands that such data is not systematically collected and that it is at present either not possible to gain a global picture of the situation as concerns the implementation of these provisions or, for some of them, such a picture can only be obtained at the cost of long and complex research. However, non-governmental organisations have reported to ECRI that the situation has not changed since ECRI's second report and that the criminal law provisions referred to above are still very rarely applied. Non-governmental organisations stress that this situation is in contrast with the number of cases of racism and racial discrimination which are reported to them by victims of these phenomena.
8. In particular, civil society organisations have expressed concern at the non-application of Article 22 (4) of the Criminal Code (which establishes the racist motivation of an offender as a specific aggravating circumstance) even in cases when such motivation was reportedly easily detectable. It has been pointed out that problems in the implementation of these provisions can be found at all stages of the criminal justice system: from the police, who reportedly sometimes fail to record the racist dimension of the offences reported to them by the alleged victims, to the prosecutors and judges. In this respect, ECRI understands that there are no specialised units within the police and the Office of the Prosecutor to deal with racially-motivated crime, incitement to racial discrimination, hatred and violence and associations promoting racism, as there are for other types of crimes. More generally, ECRI has not been made aware of particular initiatives undertaken by the Spanish authorities since its second report aimed at improving the implementation of the criminal provisions mentioned above, although it notes that some civil society organisations plan on training law enforcement officials on these issues. The Spanish authorities have also reported that specific training sessions on hate crimes are being introduced for professors and students at training centres for law enforcement officials. As mentioned below<sup>2</sup>, ECRI considers that a better awareness and recognition of

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<sup>2</sup> See Section II - Lack of awareness of racism and racial discrimination.

issues of racism and racial discrimination would be beneficial to ensuring a better implementation of the existing criminal law provisions against these phenomena.

**Recommendations:**

9. ECRI strongly recommends that the Spanish authorities take steps to improve the implementation of the criminal law provisions against racism and racial discrimination in force and, in particular, article 22 (4) of the Criminal Code, which establishes racist motivation of an offender as a specific aggravating circumstance.
10. ECRI recommends, in particular, that the Spanish authorities increase their efforts to ensure that all those involved in the criminal justice system, from the lawyers to the police, the prosecuting authorities and the courts, are equipped with thorough knowledge of the provisions in force against racism and racial discrimination. ECRI also recommends that the Spanish authorities raise the awareness of all public servants involved in the criminal justice system of the need to actively counter racially-motivated crime, incitement to racial discrimination, hatred and violence and associations promoting racism. ECRI further recommends that the Spanish authorities consider establishing specialised units within the police and the Office of the Prosecutor to deal with these crimes.
11. ECRI recommends that the Spanish authorities collect readily available and accurate data on the implementation of the provisions in force against racism and racial discrimination. These data should cover the number and nature of the complaints filed, the investigations carried out and their results, charges brought, as well as decisions rendered and/or redress or compensation awarded.

**Civil and administrative law provisions**

12. In its second report, ECRI recommended that Spain adopt a comprehensive body of civil and administrative law provisions against discrimination covering different fields of life. Noting that the Spanish authorities were at the time drafting such legislation in order to transpose the two European Council Directives 43/2000 and 78/2000<sup>3</sup>, ECRI recommended that the Spanish authorities take into consideration ECRI's General Policy Recommendation No. 7 in the drafting process and that they closely involve civil society organisations in the debate around the adoption of such legislation. ECRI notes that, in December 2003 the Spanish Parliament transposed the two European Council Directives in Chapter III ("Measures for the Implementation of Equal Treatment") of Title II ("Social Measures) of Law 62/2003 "on fiscal, administrative and social measures". ECRI has no knowledge of its General Policy Recommendation No. 7 having been taken into account in the process leading to the adoption of the new legislation. Furthermore, it notes that the Measures for the Implementation of Equal Treatment were adopted without any meaningful participation or consultation of civil society actors and without

<sup>3</sup> Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation.

parliamentary debate, an aspect that ECRI addresses in another part of this report<sup>4</sup>.

13. ECRI welcomes the fact that the new provisions prohibit discrimination on grounds of racial or ethnic origin in key fields of life such as employment, vocational training, education, housing, social protection, social advantages, and access to and supply of goods and services. However, ECRI draws once again the attention of the Spanish authorities to its General Policy Recommendation No. 7, which contains detailed guidance on the elements that ECRI considers should feature in an effective body of antidiscrimination legislation. In particular, ECRI draws the attention of the Spanish authorities to guidance concerning: the areas that such legislation should cover<sup>5</sup>; the acts which should expressly be considered as forms of discrimination<sup>6</sup>; the sanctions incurred by those who discriminate<sup>7</sup>; and the establishment of a duty on public authorities to promote equality and prevent discrimination in carrying out their functions<sup>8</sup>.
14. The Measures for the Implementation of Equal Treatment have been in force since 1 January 2004. ECRI has been unable to obtain information concerning the implementation of these provisions. Non-governmental organisations have reported to ECRI, however, that they are unaware of any cases of application of the new provisions.

#### **Recommendations:**

15. ECRI recommends that the Spanish authorities keep the effectiveness of the existing civil and administrative law provisions against racial discrimination under close review. It recommends that, in so doing, they consider fine-tuning this legislation taking into account ECRI's General Policy Recommendation No.7, in particular as concerns the areas highlighted above.
16. ECRI recommends that the Spanish authorities collect data on the implementation of the new provisions against racial discrimination, notably on the number of complaints filed and the outcome of these complaints, including redress or compensation awarded.

#### **Administration of justice**

17. In its second report, ECRI recommended that the Spanish authorities carry out research into possible patterns of discrimination experienced by ethnic minority groups in the criminal justice system. Among the priority areas of investigation identified by ECRI featured the disproportionate representation of foreigners in police custody and prisons, the disproportionate representation of Roma women in prisons as well as the discrepancies between sentences handed down to foreigners and Roma and those handed down to Spanish defendants

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<sup>4</sup> See below, Lack of awareness of racism and racial discrimination.

<sup>5</sup> ECRI General Policy Recommendation N°7, paragraph 7 (and paragraphs 17-26 of the Explanatory Memorandum).

<sup>6</sup> ECRI General Policy Recommendation N°7, paragraph 6 (and paragraphs 15-16 of the Explanatory Memorandum).

<sup>7</sup> ECRI General Policy Recommendation N°7, paragraph 12 (and paragraphs 31-34 of the Explanatory Memorandum).

<sup>8</sup> ECRI General Policy Recommendation N°7, paragraph 8 (and paragraph 27 of the Explanatory Memorandum).

convicted of comparable crimes. ECRI is not aware of new research having been conducted in these areas. Since its second report, however, ECRI has continued to receive reports which, in its opinion, require further investigation. For instance, it has been reported to ECRI that non-citizens account for 30% of the total number of persons arrested for having committed a crime, but only represent 10% of those finally convicted. It has been noted that these figures may point at a propensity of the criminal justice system to arrest non-citizens on less solid grounds than Spanish citizens.

18. ECRI has also received consistent reports according to which members of ethnic minorities are disproportionately subject by law enforcement officials throughout the country to stops, requests for identification and searches<sup>9</sup>. The groups most heavily affected by these practices of ethnic profiling, which ECRI already noted in its second report, are reported to be Roma and non-citizens, notably Moroccans, South Americans and sub-Saharan Africans. The Spanish authorities have explained to ECRI that they do keep data broken down by nationality -- not ethnic origin -- of the persons subject to stops and requests for identification, although this information is generally not made public. Civil society organisations have reported to ECRI that, although ethnic profiling practices exist in all the different police forces which operate in Spain at national, regional and local level, they are particularly common among municipal police forces. ECRI notes that there are legal provisions against ethnic profiling<sup>10</sup>. However, it also notes that the Spanish Constitutional Court has ruled that it is not discriminatory for the police to single out a person for a request for identification based on the fact that the person does not appear to be of Spanish origin, provided that this action is carried out in order to verify the person's compliance with the aliens legislation<sup>11</sup>. ECRI also notes that, although the Supreme Court has clarified that the suspicion of a law enforcement officer leading to identifications and searches cannot be "illogical, irrational or arbitrary"<sup>12</sup>, there is reported to be no absolute clarity at present on the grounds that may justify the suspicion leading to this type of control.

#### **Recommendations:**

19. ECRI reiterates its call on the Spanish authorities to conduct research into possible patterns of discrimination facing ethnic minority groups in the criminal justice system. In particular, it recommends that such research address the areas highlighted above.
20. ECRI recommends that the Spanish authorities conduct research into the extent of ethnic profiling practices in the different police forces which operate in Spain at national, regional and local level and take all the necessary measures to counter any such practices. For instance, the Spanish authorities could consider the introduction of a system of registration in connection with police checks that enables individuals to document how frequently they are checked, in order to identify possible patterns of direct or indirect racial discrimination.

<sup>9</sup> See also below, Conduct of law enforcement officials.

<sup>10</sup> Organic Law 2/1986 of 13 March on Security Forces states that the police must act in all situations "with absolute political neutrality and impartiality, and therefore without discrimination based on race, religion or opinion".

<sup>11</sup> Decision 13/2001 of the Constitutional Court, 29 January 2001.

<sup>12</sup> Decision of the Supreme Court, 15 April 1993.

### Specialised bodies and other institutions

21. In its second report, ECRI recommended that Spain establish a national specialised body to deal with issues of racism and racial discrimination and to assist with the implementation of antidiscrimination legislation. ECRI notes that the Measures for the Implementation of Equal Treatment<sup>13</sup> provide for the establishment of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin. The functions of the Council are: to provide assistance to victims of discrimination in pursuing individual complaints, conduct research and make recommendations. It has been pointed out to ECRI, however, that the legal norms that establish the Council do not provide for the independent nature of these functions, as required by the European Council Directives. ECRI notes that the Spanish authorities are presently working on the decree which will develop the provisions establishing the Council. In this respect, the Spanish authorities have conveyed to ECRI their willingness to set up a body with a meaningful participation and influence of the non-governmental sector and with functions that are not only consultative but also executive in nature.
22. ECRI notes that the Aliens Law 14/2003<sup>14</sup> established the Spanish Observatory for Racism and Xenophobia, whose functions are to study and monitor these phenomena in Spanish society, and recommend policy development to counter them. Non-governmental organisations have reported to ECRI that the Observatory has so far not been very active. The Spanish authorities have informed ECRI that the Observatory has been moved from the Ministry of Interior to the Ministry of Labour and Social Affairs and that they intend to make this body more effective.
23. As already noted in ECRI's second report, although racism and racial discrimination are not covered by the mandate of the Ombudsman (Defensor del Pueblo) as specific areas, they are considered part of its general mandate to protect the fundamental rights and freedoms of individuals in their relations with the administration. The Office of the Ombudsman has reported to ECRI that ethnic minority groups do file complaints – complaints filed by non-citizens in the area of immigration are in fact amongst the most numerous since ECRI's second report. However, such complaints virtually never concern the right to be free from racism and racial discrimination but other rights and interests.

#### **Recommendations:**

24. ECRI urges the Spanish authorities to complete the work currently underway for the establishment of a specialised body to combat racism and racial discrimination. It strongly recommends that they draw inspiration from ECRI's General Policy Recommendations No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level<sup>15</sup> and No. 7, which provide detailed guidelines on the establishment, functions and working methods of these bodies. In particular, ECRI draws the attention of the Spanish authorities to the need for such a body to be independent and to the guidelines

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<sup>13</sup> See above, Civil and administrative law provisions.

<sup>14</sup> See below, Reception and status of non-citizens: Immigration.

<sup>15</sup> CRI (97) 36: ECRI General Policy Recommendation n° 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, European Commission against Racism and Intolerance, Council of Europe, June 1997.

it formulated on how to guarantee such independence<sup>16</sup>. ECRI also draws the attention of the Spanish authorities to the guidelines it has provided on the functions that should be attributed to such a specialised body<sup>17</sup>.

25. ECRI recommends that the Spanish authorities take steps to improve the effectiveness of the Spanish Observatory for Racism and Xenophobia and that they ensure thorough co-ordination of this institution with the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin.

### **Education and awareness-raising**

26. In its second report, ECRI noted that education in human rights, including non-discrimination and respect for difference, was not imparted in Spanish schools as a separate subject, but constituted a cross-cutting theme reflected in all disciplines. ECRI recommended that the Spanish authorities strengthen the human rights component of the curriculum and that they consider, in the longer term, making human rights a specific compulsory subject. The Spanish authorities have informed ECRI that a bill introducing reforms to the 2002 Law on the Quality of Education will be discussed by the Parliament during the course of 2005. ECRI is pleased to note that the bill envisages introducing in primary and secondary education a new compulsory subject, "Education in values for citizenship", which would include specific human rights education.
27. In its second report, ECRI recommended that the Spanish authorities monitor the extent to which the principle of intercultural education is concretely integrated in everyday teaching practice. It also recommended that intercultural education be made a compulsory subject in the curricula for trainee teachers and for ongoing training of teachers. The Spanish authorities have informed ECRI that the bill mentioned above envisages the establishment of an Observatory on interculturalism, which will, *inter alia*, collect and promote good practices on intercultural education from and among the Autonomous Regions. ECRI also notes that a Resource Centre for Attention to Cultural Diversity in Education has been established within the Centre for Research and Documentation in Education (*Centro de Investigación y Documentación Educativa*).

### **Recommendations:**

28. ECRI encourages the Spanish authorities in their efforts to introduce specific human rights education as a compulsory part of the curriculum of primary and secondary schools. It recommends that they ensure that any new subjects introduced extensively address the principle of non-discrimination and the need for respecting difference.
29. ECRI encourages the Spanish authorities in their efforts to monitor the implementation of the principle of intercultural education in schools and to collect and promote good practices in this area. It reiterates its call on the Spanish authorities to make intercultural education a compulsory subject in the curricula for trainee teachers and for ongoing training of teachers.

<sup>16</sup> ECRI General Policy Recommendation N°2, Principle 5.

<sup>17</sup> ECRI General Policy Recommendation N°7, paragraph 24 (and paragraphs 50-55 of the Explanatory Memorandum) and ECRI General Policy Recommendation N°2, Principle 3.

## Reception and status of non-citizens: immigration

### - *Climate of opinion*

30. ECRI notes that, since its second report, the overall responsibility for immigration questions, with the exception of border control, has shifted from the Ministry of Interior to the Ministry of Labour and Social Affairs. The Spanish authorities have underlined that this redistribution of responsibilities reflects a willingness to move from an “aliens policy” to an “immigration and integration policy”, which is also reflected in the establishment of a Support Fund for the reception and integration of immigrants. ECRI welcomes this change of approach, which it hopes will lead to a better recognition of problems of racism and racial discrimination faced by immigrants in Spain. In this respect, ECRI noted in its second report that the discourse and sensational imagery resorted to by politicians and the media had fostered within Spanish society a widespread perception of the immigrant population as a threat to security and the availability of employment opportunities. However, civil society organisations have consistently reported to ECRI that, since the government which was formed in June 2004 took power, the political discourse on immigration has significantly improved. While ECRI welcomes this change, it notes that there are indications that prejudice and hostility towards immigrants are still very significant. For instance, a study recently published by the Centre for Sociological Research found that the percentage of people who declare unwelcoming attitudes towards immigrants has grown from 8% to 32% from 1997 to 2004, with a particularly marked increase from 2000. In addition, some 60% of the population appear to link immigration with crime.

### **Recommendations:**

31. ECRI encourages the Spanish authorities to pursue their efforts to promote a more balanced political debate around immigration and immigrants. In particular, ECRI recommends that special care be taken to counter the link sometimes made by the general public between immigration, on the one hand, and crime and unemployment, on the other.

### - *The Aliens law and the “normalisation” procedure*

32. In its second report, ECRI recommended that the Spanish authorities open adequate avenues for foreign workers living in Spain without legal status to obtain work and residence permits. ECRI notes that in December 2004 the Spanish Government adopted new Implementing Regulations<sup>18</sup> to the Aliens Law (which had itself been modified since ECRI’s second report by Organic Law 14/2003). The Regulations provided for a special (so-called “normalisation”) procedure which allowed non-citizens who had been working in Spain without legal status for a certain period of time to obtain work and residence permits. ECRI welcomes the “normalisation” procedure, which resulted in approximately 700 000 applications filed during its three-month duration (from 7 February to 7 May 2005). Civil society organisations have been generally very supportive of the normalisation process, although some have pointed out that an estimated 600 000 persons who did not or could not meet the requirements of the normalisation procedure will continue to live in Spain without legal status. In this respect, these organisations have cast doubts on the adequacy of the ordinary avenues in force for people already living in Spain

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<sup>18</sup> Royal Decree 2393/2004.

without legal status to obtain permits. The Spanish authorities have pointed out, however, that the Regulations have introduced new ordinary avenues for normalisation, notably based on the notion of social integration (*arraigo social*).

33. In its second report, ECRI noted that many non-citizens encountered serious difficulties in obtaining and renewing residence and work permits. ECRI encouraged the Spanish authorities to address this situation, since it prevented non-citizens from exercising certain rights attached to possession of such permits. ECRI notes that in 2004 the Spanish authorities initiated a series of measures aimed at rationalising and speeding up the process of issuing residence and work permits. These measures include human and financial resources and improved co-ordination between the different ministries involved. The Spanish authorities have reported to ECRI that, as a result of these measures, some 400 000 additional applications could be processed between June and December 2004 alone.
34. Civil society organisations have pointed out to ECRI that, although the Spanish authorities have addressed certain important emergency situations, such as the presence of many immigrants without legal status, through the Regulations, certain aspects introduced by the Aliens law adopted since ECRI's second report remain unchanged and are of concern. These aspects include the attribution of powers (whose exercise has not yet been regulated) to the police to access the municipal registers where immigrants, irrespective of their legal status, need to register in order to access social services. Other provisions of concern include the attribution of border control responsibilities to carriers companies. ECRI also notes that, in September 2003, Organic Law 11/2003<sup>19</sup> introduced a provision in the Criminal Code which allows for the immediate expulsion of a non-citizen charged (but not convicted) with the commission of a crime punishable with a maximum of 6 years' imprisonment, without taking into account the person's links with Spanish society. However, ECRI understands that, following a decision of the Supreme Court, this provision has been abrogated. In its second report, ECRI noted that the Aliens Law did not grant workers without legal status the right to associate, strike or join a trade union. It noted that the constitutionality of these provisions had been challenged. However, ECRI understands that the Constitutional Court has not yet rendered its judgment on this question.

#### **Recommendations:**

35. ECRI encourages the Spanish authorities in their efforts to provide foreign workers without legal status with work and residence permits, notably through the special "normalisation" procedure. It encourages the Spanish authorities to ensure that adequate ordinary avenues continue to be in place for non-citizens living in Spain without legal status to obtain such permits.
36. ECRI encourages the Spanish authorities to pursue their efforts to improve the processing of non-citizen's applications for residence and work permits.
37. ECRI recommends that the Spanish authorities keep the provisions of the Aliens law under close review. In particular, it recommends that the Spanish authorities ensure that these provisions do not restrict the right of non-citizens to access social services, or their right to associate, strike or join a trade union. It also

<sup>19</sup> Organic Law 11/2003 on concrete measures concerning citizens' security, domestic violence and social integration of aliens.

recommends that the Spanish authorities do their utmost to avoid that legislation on carriers companies result in an increased likelihood that an asylum seeker is refused admission to safety or is hampered in the exercise of his or her right to seek protection.

- ***Internment centres***

38. In its second report, ECRI addressed the situation of non-citizens held in internment centres (*Centros de Internamiento*) in the Canary Islands, notably as concerns living conditions in these centres, access to legal assistance and the quality of judicial control on detentions. It has been reported to ECRI that, since its second report, living conditions in the internment centres of Lanzarote and Fuerteventura Islands have improved. However, ECRI has received consistent reports according to which persons held in internment centres, especially in the Canary Islands, still do not have adequate access to legal information and assistance, a situation which impacts negatively on potential asylum seekers. In this respect, the Spanish authorities have informed ECRI that measures are being taken to improve access to legal information and assistance by persons held in internment centres, including a pilot agreement with the non-governmental sector for provision of assistance to these persons and the dissemination of a multi-lingual standard information sheet. As concerns judicial control, it has been reported to ECRI that, since its second report, there have been some improvements. For instance judicial staff have been increased in Fuerteventura for dealing with immigration cases. However, ECRI notes with concern reports according to which detention in internment centres in Fuerteventura is automatically applied to persons from sub-Saharan Africa and not to other non-citizens.

***Recommendations:***

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

- ***Unaccompanied minors***

40. In its second report, ECRI addressed the situation of unaccompanied minors in Spain, and especially of Moroccan children in Ceuta and Melilla. In particular, ECRI expressed concern at reports according to which these minors had in some cases been removed from Spain without previous verification of their return to family or appropriate agencies in the country of origin. ECRI also expressed concern at allegations that these minors had in some cases been denied access to education, health care and temporary residence status and that they had been ill-treated by staff or other children during their stay in reception centres or by law enforcement officials during removals. ECRI notes that, in October 2003 the General State Prosecutor issued an instruction establishing that foreign unaccompanied minors over 16 years of age had to be considered as adults and could therefore not benefit from the general protection regime provided for minors who are wards of the State. ECRI notes that, following much criticism at national and international level, notably concerning

the conformity of this instruction with Spanish and international law, the instruction was amended in November 2004. Since its second report, however, ECRI has continued to receive reports according to which, on being returned to Morocco, children have sometimes been ill-treated, fined, or found themselves in a situation of neglect. ECRI also notes reports of difficulties for unaccompanied minors to obtain residence permits in different regions of Spain, including Madrid, a situation which affects their enjoyment of certain rights, notably access to higher education.

#### **Recommendations:**

41. ECRI strongly recommends that the Spanish authorities ensure that Spanish and international law concerning the protection of unaccompanied minors is thoroughly applied in practice throughout Spain. In particular, ECRI urges the Spanish authorities to ensure that children who are returned to their countries of origin are actually returned to family or appropriate agencies in all cases. It recommends that the Spanish authorities take steps to improve the access of unaccompanied minors to residence permits. ECRI also recommends that the Spanish authorities investigate all allegations of ill-treatment of minors in reception centres and by law enforcement or border control officials, notably in Ceuta and Melilla, and that they address any such instances.

#### **Reception and status of non-citizens: refugees and asylum seekers**

42. In its second report, ECRI recommended that the Spanish authorities address the difficulties met by potential applicants in accessing the asylum procedure, particularly in the Canary Islands and in Ceuta and Melilla. ECRI notes that since its second report, the number of immigrants and asylum seekers arriving in the Canary Islands has decreased, a phenomenon which is reportedly linked to the reinforced border control exercised by the Spanish authorities. More generally, the decrease registered since ECRI's second report in the number of people arriving in Spain by sea, notably on makeshift boats (*pateras*), reflects the reinforced border control exercised by the Spanish authorities through the Surveillance System of the Strait (SIVE), which can detect vessels on clandestine journeys as soon as they leave the Moroccan coast. As mentioned in other parts of this report, ECRI has continued to receive consistent reports according to which non-citizens are faced with significant barriers in accessing the asylum procedure. These difficulties stem notably from the conduct of border control and law enforcement officials, who reportedly sometimes ignore requests for asylum<sup>20</sup>, but also from the unavailability of adequate legal assistance to potential asylum seekers<sup>21</sup>.
43. Figures of asylum applications covering the period since ECRI's second report show that increasingly less people apply for asylum in Spain. Thus, for instance there were 9 490 applications in 2001 and 5 401 in 2004. In its second report, ECRI noted that the number of people granted refugee status or humanitarian protection as a proportion of the total number of applications was very low. ECRI notes that, since its second report, the situation in this area has not changed. Thus, for instance, only 2,7% and 3,2% of asylum applicants in 2004 were granted refugee status and humanitarian status respectively. Although different factors come into play in determining such a low recognition rate, it has

<sup>20</sup> See below, The situation of persons from sub-Saharan Africa trying to gain access to Spanish territory through Ceuta and Melilla.

<sup>21</sup> See above, Reception and status of non-citizens – Immigration.

been reported to ECRI that the quality of the interviews and legal assistance, notably in the admission phase of the asylum procedure, play a very important role.

**Recommendations:**

44. ECRI recommends that the Spanish authorities take steps to ensure that the right of individuals to seek asylum is thoroughly respected in practice. To this end, it recommends in particular that the Spanish authorities provide border control officials and law enforcement officers, especially in Ceuta, Melilla and the Canary Islands, with thorough training in asylum and refugee issues. ECRI also reiterates its call on the Spanish authorities to ensure that adequate legal information and assistance are available to asylum seekers.
45. ECRI recommends that the Spanish authorities take steps to ensure that all persons entitled to refugee status or humanitarian protection actually secure this status. To this end, it recommends that the Spanish authorities take steps to improve the quality of the interviews and legal assistance, notably in the admission phase of the asylum procedure.

**Racist and xenophobic violence**

46. In its second report, ECRI recommended that the Spanish authorities ensure that the racist element of all offences be recognised and reflected in the institutional response to these offences, even when racism may not be the only identifiable motive for such conduct. In this respect, ECRI was concerned that the social conditions which the Spanish authorities had identified as the root causes of the violent February 2000 events in El Ejido had overshadowed the racist dimension of those events. ECRI recommended that the Spanish authorities take swift action to implement the package of measures agreed by the government, local authorities and civil society following the El Ejido events, which included, *inter alia*, the payment of compensation for destroyed property, the provision of decent accommodation and opportunities for obtaining legal status. The Spanish authorities have stated that most measures of the package have been implemented. However, ECRI has received reports from non-governmental organisations which indicate that virtually no progress has been made in the field of providing decent housing, ensuring respect of collective work agreements and building better relations between the authorities, notably municipal authorities, and the immigrant communities. ECRI notes disturbing reports according to which many immigrants still live in sub-standard housing, including huts made of cardboard and plastic, where their health is put seriously at risk, and are gravely exploited at work. ECRI expresses particularly serious concern at reports which indicate that, since its second report, racist and xenophobic violence in the El Ejido area has continued and has manifested itself, for instance, in deliberate physical attacks following which in some cases immigrants had to be hospitalised.

**Recommendations:**

47. ECRI urges the Spanish authorities to monitor closely the situation of immigrants working in the agricultural industry in the El Ejido area. It strongly recommends that they step up their efforts to ensure that the package of measures agreed following the February 2000 El Ejido events is thoroughly implemented in practice, particularly in the field of provision of housing, respect of collective work agreements and building better relations between the authorities and the immigrant communities. ECRI calls on the Spanish

authorities to bring to justice and punish all those responsible for acts of racist and xenophobic violence against immigrants.

48. ECRI notes that, since its second report, instances of violence directed against certain minority groups collectively have continued to occur. For instance, ECRI notes that in January 2004 a demonstration organised in Cortegana (in the Huelva area), following the death of a non-Roma person at the hands of a member of the local Roma community, degenerated into attacks directed against the whole Roma community, during which property was destroyed or damaged and people intimidated and threatened. Although these cases are less and less frequent, there are still some similar occurrences on a smaller scale. ECRI also notes that locally-established communities other than Roma have been the victims of violent attacks. ECRI notes for instance that, in September 2004, a group of entrepreneurs and workers of the shoe-making industry in Elche (in the Alicante area) organised a spontaneous demonstration to protest against the presence of Chinese-owned shoe-making businesses in the area and that during this demonstration property belonging to Chinese entrepreneurs was destroyed or damaged and racist slogans were uttered.

#### **Recommendations:**

49. ECRI recommends that the Spanish authorities promptly address any manifestations of violence directed against minority groups collectively. It reiterates its call on the Spanish authorities to ensure that the institutional response to these manifestations, including, as necessary, criminal prosecutions, recognise and reflect their racist dimension.
50. In its second report, ECRI recommended that the Spanish authorities strengthen their efforts to counter racist organisations, including neo-Nazi and skinhead groups. Figures provided by the Spanish authorities for the period since ECRI's second report indicate that the Guardia Civil has registered between 10 and 20 racist incidents, including violent incidents, per year and the National Police between 80 and 110. However, non-governmental organisations have registered approximately 4 000 cases of violence committed by members of racist groups per year, including against immigrants, especially from North Africa, sub-Saharan Africa and Latin America. ECRI also notes that these non-governmental organisations estimate the real figures on racist violence to be considerably higher. As already noted in ECRI's second report, members of racist organisations (who are estimated to number between 11 000 and 15 000 persons), disseminate racist, xenophobic and antisemitic propaganda through books and other publications and on the Internet. In this respect, ECRI notes that the number of racist, xenophobic and antisemitic websites based in Spain is reported to have increased since ECRI's second report. Since then, racist organisations have also continued to be active on the hate music market, notably through the organisation of concerts and the production and selling of CDs. ECRI notes that, since its second report, the Spanish authorities have arrested members of some neo-Nazi organisations. The Spanish authorities have also reported to ECRI that human and financial resources to counter neo-Nazi and skinhead groups have been increased since ECRI's second report and that, in some cases, investigations have been carried out in order to prosecute those responsible for posting racist, xenophobic and antisemitic propaganda on the Internet.

51. In its second report, ECRI expressed concern at the display of racist behaviour during football matches. While it notes that the role of racist organisations in promoting racist and antisemitic conduct during football matches is central, ECRI notes that racist behaviour in football is not only resorted to by members of these organisations. In this respect, ECRI regrets that, since its second report, the inadequate response of the Spanish football authorities to racist behaviour displayed by persons under their authority has contributed to a considerable increase of racist behaviour in Spanish football stadiums. ECRI notes that fines have more recently been imposed on clubs and supporters responsible for racist conduct and that, in March 2005, a Protocol containing measures to prevent, control and punish manifestations of racism and xenophobia was signed by the Spanish football federation, most professional clubs and other stakeholders. The Observatory for Racism and Violence in Sports, established in December 2004, has been assigned the task of monitoring the implementation of this Protocol.

***Recommendations:***

52. ECRI urges the Spanish authorities to strengthen their efforts to counter racist organisations, including neo-Nazi and skinhead groups. To this end, it reiterates its recommendations concerning the need to improve the implementation of the existing criminal law provisions against racially-motivated offences; it recommends that the Spanish authorities strengthen their efforts to counter the dissemination of racist, xenophobic and antisemitic propaganda through the Internet; it encourages the Spanish authorities to take the necessary measures to counter the organisation of hate music concerts and the dissemination and selling of hate music CDs.
53. ECRI encourages the Spanish authorities in their efforts to prevent and punish manifestations of racism and xenophobia in football and urges them to make a firm and unambiguous response to all such manifestations and to impress on all the relevant actors in the world of football the need to actively counter all such manifestations.

**Access to public services**

- ***Access to social services such as health care, welfare and housing***

54. In its second report, ECRI recommended that the Spanish authorities take measures to counter racial discrimination in the private housing market, which manifested itself, for instance, in the publication of discriminatory advertisements or in the application of more disadvantageous terms to tenants from minority groups. ECRI notes that the anti-discrimination legislation introduced in Spain since its second report covers the private housing sector, although ECRI understands that such legislation has not been applied so far<sup>22</sup>. ECRI also notes that a Public Agency for Lets has recently been established with the aim of making available to potential tenants a wider range of housing possibilities and providing better guarantees to the landlords. The Spanish authorities have underlined that the Agency will take into account the specific needs of groups who face particular difficulties in accessing the private lets market.

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<sup>22</sup> See above, Civil and administrative law provisions.

55. In its second report, ECRI noted reports of discriminatory refusal of access to public places, such as bars, restaurants or discotheques. ECRI has been made aware of initiatives taken at the regional level, for instance in Madrid, to train doormen, on a voluntary basis, on the need to avoid racial discrimination in their work. However, ECRI has continued to receive consistent reports indicating that immigrants, and notably persons from North and sub-Saharan Africa are still often refused entry in certain establishments solely on grounds of their ethnic origin and that, in some cases, such refusals have escalated into violence.
56. More generally, it has been reported to ECRI that provision of social services for the general population in Spain is rather limited. Thus, the fact that immigrants also benefit from these services is increasingly being perceived by some segments of the majority Spanish population as a threat, a situation which sometimes results in the display of hostility or racist attitudes. The Spanish authorities report that they are aware of this situation (particularly in certain fields of social provision, such as health, and geographical areas) and that they plan to address it by providing more services for the general population in these areas.

#### **Recommendations:**

57. ECRI recommends that the Spanish authorities take further steps to address racial discrimination in the private housing market. In particular, it recommends that the newly-established Public Agency for Lets pay special attention to those persons who experience particular difficulties in accessing private lets because of their ethnic origin or nationality.
58. ECRI recommends that the Spanish authorities strengthen their efforts to raise awareness among those working in the entertainment industry of the legislation in force against racial discrimination and of the need to thoroughly respect it in their work.
59. ECRI recommends that the Spanish authorities closely monitor manifestations of hostility and racism towards minority groups originating from the perception that members of these groups benefit excessively from provision of social services. It recommends that the Spanish authorities take timely measures to address these manifestations.

#### **- Access to education**

60. In its second report, ECRI recommended that the Spanish authorities strengthen their efforts to teach Spanish as a second language to non-Spanish mother tongue children. The Spanish authorities have indicated that, since ECRI's second report, they have continued to address this issue through compensatory education measures, i.e. measures that aim to address learning difficulties for children who are disadvantaged, *inter alia* because of their mother tongue. They have also stressed that the bill introducing reforms to the 2002 Law on the Quality of Education<sup>23</sup> contains measures aimed at better meeting the needs of non-Spanish mother tongue children in Spanish schools.
61. In its second report, ECRI noted that, on the basis of agreements signed by Spain with Portugal and Morocco, two programmes were implemented in a number of public schools in Spain to impart education in Portuguese and

<sup>23</sup> See above, Education and awareness raising.

Arabic. ECRI recommended that the Spanish authorities expand their efforts to provide mother tongue education for non-Spanish mother tongue children. The Spanish authorities report that the two programmes have continued to expand, both in terms of children who have taken up the courses – approximately 9 500 students are, for instance, receiving education in Portuguese -- and in terms of geographical spread – for instance, the programme of education in Arabic is being implemented in schools in the 12 Autonomous Regions of Spain where Moroccan children are most represented. The Spanish authorities have stated that they are working to develop these two programmes further.

62. ECRI notes reports according to which children from countries other than those of the European Union are over-represented in certain schools – this concerns public schools and, to a lesser extent, publicly-funded private schools (*colegios concertados*), as these children rarely go to private schools. The Spanish authorities have highlighted that the bill introducing reforms to the 2002 Law on the Quality of Education includes measures directed at providing a better distribution of children who need special educational support in public schools and in publicly-funded private schools as well as offsetting inequalities in education and schooling in publicly-funded private schools.

**Recommendations:**

63. ECRI recommends that the Spanish authorities pursue and strengthen their efforts to teach Spanish as a second language to non-Spanish mother tongue children. It recommends that in parallel, they expand their efforts to provide mother tongue education to non-Spanish mother tongue children.
64. ECRI encourages the Spanish authorities in their efforts to ensure a more even distribution of non-Spanish children and other children who need special educational support in public schools and in publicly-funded private schools.

**Employment**

65. ECRI addresses the employment situation of particular ethnic minority groups in other parts of this report<sup>24</sup>. Here, ECRI stresses that, as already noted in ECRI's second report, immigrants without legal status are particularly vulnerable to discrimination and labour exploitation, including longer working hours, non-payment of salaries and job precariousness. ECRI hopes that the "normalisation" procedure<sup>25</sup> will considerably reduce these practices. It notes, however, that immigrants with regular work permits are also reported to suffer discrimination, notably unfair dismissals. Furthermore, there continue to be reports of discriminatory job advertisements excluding non-citizens.

**Recommendations:**

66. ECRI recommends that the Spanish authorities strengthen their efforts to combat discrimination and labour exploitation of immigrants. It recommends that the Spanish authorities ensure that the anti-discrimination legislation in force is used to counter racial discrimination in employment in all its manifestations.

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<sup>24</sup> Vulnerable groups – Roma.

<sup>25</sup> See above, Reception and status of non-citizens: Immigration

## Vulnerable groups

### - Roma

67. In its second report, ECRI noted that members of Roma communities in Spain faced prejudice, disadvantage and discrimination across many areas of life, including education, employment, housing and health. ECRI recommended that the Spanish authorities evaluate the Roma Development Programme, which had been in place since the end of the 1980s to improve the situation of the Roma population. It recommended that they ensure thorough participation of Roma communities in such an evaluation and in the development of any further strategies aimed at promoting equal opportunities for the members of these communities. The Spanish authorities have reported to ECRI that an evaluation of the Roma Development Programme was carried out in 2002 and that Roma representatives were involved in this process. According to this evaluation, the Programme had yielded positive results, including a better recognition of Roma issues into the work of the different branches of the administration, the promotion of the Roma voluntary sector and advances in the fields of education, health, employment and housing. However, the evaluation also highlighted a series of shortcomings, including the need for measures taken under the Programme to better complement each other and the inadequate development of the Programme in terms of both funding and priority areas for action. In this respect, ECRI notes that, since its second report, the annual budget of 3,3 million euros for the Roma Development Plan has remained stable, while the budget for Personal Income Tax Withholdings (IRPF) and other general calls for tenders have increased. More generally, it has been pointed out to ECRI that, as mentioned below<sup>26</sup>, the Roma Development Plan does not sufficiently take into account the different dimensions of the situation of disadvantage of the Roma and notably the discrimination which the members of these communities still face. ECRI is pleased to note that a State Council for the Roma People will be established shortly by Royal Decree. The Spanish authorities have indicated that a new plan aimed at promoting equal opportunities for the Roma population will be drafted in close consultation with the Council once the latter is in place. ECRI also notes that, in addition to the Roma Development Plan, the National Action Plan on Social Exclusion 2003-2005 also includes specific measures targeted at the Roma population.

### **Recommendations:**

68. ECRI encourages the Spanish authorities to pursue and strengthen their efforts to ensure that representatives of Roma communities are thoroughly associated to the elaboration, implementation, evaluation and development of all strategies aimed at improving the situation of the members of these communities. It recommends that any new strategy tackle the situation of the Roma in a multi-dimensional way and, in particular, that alongside measures aimed at equipping, where necessary, members of Roma communities with the skills to participate as equals in society, such strategies also include measures aimed at the majority population in order to combat discrimination. ECRI also recommends that the Spanish authorities ensure that adequate funding is made available for the implementation of any new strategy.

<sup>26</sup> Lack of awareness of racism and racial discrimination.

69. ECRI draws once more the attention of the Spanish authorities to its General Policy Recommendation No. 3<sup>27</sup>, which proposes a range of measures that governments can take in order to develop a comprehensive strategy to improve the situation of the Roma population.
70. In its second report, ECRI recommended that, in order to improve the situation of the Roma population in education, the Spanish authorities address as priority areas: school drop out and absenteeism; access to pre-school education; adult illiteracy; the high concentration of Roma children in certain schools. It has been reported to ECRI that the absence of data broken down by ethnic origin in education makes it particularly difficult to monitor progress in all of these areas. However, the Spanish authorities have reported that progress has been achieved especially in primary education, notably through compensatory education, which, as mentioned above<sup>28</sup>, targets specific educational measures to socially disadvantaged children, among which Roma children are over-represented. In fact, Roma children are reported to be the beneficiaries of approximately half of all compensatory education measures taken. However, ECRI notes that, on average, Roma youth, and particularly girls, still drop out of school much earlier than their non-Roma counterparts. ECRI has also received reports of persisting patterns of rejection of Roma children by non-Roma peers, parents and teachers and of a need for considerably more attention to be paid to cultural diversity in schools. In this respect, the Spanish authorities have reported that awareness-raising measures addressing these areas are carried out both by the Ministry of Education and by parents' associations. Non-governmental organisations have also expressed concern at the fact that Roma continue to be over-represented in certain schools and that they are virtually not represented in schools other than public schools. The Spanish authorities have highlighted that the bill introducing reforms to the 2002 Law on the Quality of Education<sup>29</sup> includes measures directed at providing a better distribution of children with special educational needs, including Roma, in public schools and in publicly-funded private schools, as well as measures aimed at the promotion of better attention to cultural diversity, including teacher training, and of better relations between the school and its environment.
71. The Spanish authorities report that, since ECRI's second report, they have continued to implement measures in the field of employment and vocational training as part of the Roma Development Programme and the National Action Plan on Social Exclusion 2003-2005. In its second report, ECRI recommended that this type of measure be extended and that particular attention be given to countering discrimination against Roma in employment. ECRI notes reports according to which discrimination is still widespread both at point of recruitment – it has been reported to ECRI, for instance, that Roma women sometimes pretend that their ethnic origin is other than Roma to increase their chances to be recruited – and in the workplace. In its second report, ECRI noted that ACCEDER, a programme financed essentially by the European Union Social Fund, the Autonomous Regions and the Municipalities, was being implemented to secure employment for persons from disadvantaged groups, and especially Roma, through a specialised parallel network of employment offices, providing training, counselling and mediation services. ECRI is pleased to note that this

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<sup>27</sup> CRI (98) 29: ECRI General Policy Recommendation n° 3: Combating racism and intolerance against Roma/Gypsies, European Commission against Racism and Intolerance, Council of Europe, March 1998.

<sup>28</sup> Access to public services – Access to education.

<sup>29</sup> See above, Education and awareness raising.

programme has yielded positive results: at the end of 2003, over 17 000 individuals were reported to have used the services provided in the framework of the programme and some 10 000 work contracts had been signed. ECRI welcomes the fact that Roma women represent a very significant part of the beneficiaries of this programme.

72. Although no updated figures are available, around 7% of the Roma population of Spain is reported to still live in sub-standard housing or shanty towns. Non-governmental organisations have reported that, since ECRI's second report, there have been positive initiatives in certain Autonomous Regions, including Madrid, aimed at the relocation of Roma families. However, these organisations also report that there is a lack of political will and clear strategies in this area within regional and local governments. *De facto* segregation and over-representation of members of the Roma communities in areas that suffer from increasing deterioration and overcrowding are also reported to be serious problems, which are exacerbated by discrimination in access to private housing. The Spanish authorities have highlighted that the newly-established Public Agency for Lets<sup>30</sup> will take into account the specific needs of groups who face particular difficulties in accessing the private lets market.
73. In its second report, ECRI recommended that the Spanish authorities strengthen their efforts to improve the Roma's access to health care. ECRI notes that, since then, the Spanish authorities have continued to implement measures under the Roma Development Programme and the National Action Plan on Social Exclusion 2003-2005. ECRI notes, however, reports according to which members of Roma communities continue to show lower health indicators than the majority population. Although this situation is connected in part to poverty and exclusion, discrimination is also reported to play a significant role. The Spanish authorities have reported to ECRI that they are closely co-operating with the non-governmental sector in order to identify priority areas for intervention to remedy this situation.
74. In its second report, ECRI expressed concern at instances of violence targeting the Roma population and recommended that the Spanish authorities ensure a prompt and effective response to these incidents. As mentioned above<sup>31</sup>, ECRI notes that instances of violence directed against members of Roma communities have continued to occur.
75. In its second report, ECRI called on the Spanish authorities to establish a comprehensive legal and policy framework for the promotion of the culture, traditions and language of the Roma population. Since ECRI's second report, initiatives aimed at promoting Roma culture, traditions and language have continued. However, a comprehensive legal and policy framework in this respect is still missing. ECRI considers that the establishment of the State Council for the Roma People will provide an ideal opportunity for the Spanish authorities to address this question.

#### **Recommendations:**

76. ECRI recommends that the Spanish authorities take further steps to improve the situation of Roma communities in education, employment, housing and health. It recommends that the Spanish authorities promptly react to any manifestations

<sup>30</sup> Access to social services - Access to social services such as health care, welfare and housing.

<sup>31</sup> Racist and xenophobic violence.

of violence against members of Roma communities. ECRI furthermore reiterates its call on the Spanish authorities to consider, in close co-operation with representatives of Roma communities, the establishment of a comprehensive legal and policy framework for the promotion of the culture, traditions and language of the Roma population.

- **North Africans and Muslims**

77. In its second report, ECRI noted that, particularly since the events of 11 September 2001, members of Muslim communities, and notably Moroccans, were vulnerable to manifestations of prejudice, discrimination and, in some cases, acts of violence directed against them or their property. ECRI has received consistent reports according to which the reaction of Spanish society in general to the terrorist attacks carried out in Madrid in March 2004 was not characterised by expression of hostility towards Muslim communities. However, ECRI has also received reports according to which, after these events, members of Muslim communities have been more frequently discriminated against by private employers, have been disproportionately subject to stop and search procedures by the police and have experienced opposition, sometimes with explicitly racist content, when pursuing plans to open places of worship. ECRI also notes reports according to which Muslims have sometimes been associated with terrorism in public debate, and notably in the media, a situation which exposes them even further to stigmatisation, prejudice and discrimination.
78. Teaching of religion in Spanish schools is non compulsory. Children whose parents do not wish them to attend religious courses have a right to carry out alternative activities. In addition, Muslim pupils have a right to receive religious education based on Islam in public schools if their parents so request. However, there are reports which indicate that, with the exception of schools in Ceuta and Melilla, this right has not been thoroughly implemented in practice. ECRI notes that the Spanish authorities have announced plans to develop religious teaching based on Islam in Spanish public schools to complement the non-compulsory religious education based on Catholicism which is at present organised in public schools as a matter of course.

**Recommendations:**

79. ECRI recommends that the Spanish authorities take steps to counter manifestations of prejudice, discrimination and violence directed against members of Muslim communities. It recommends in particular that the Spanish authorities take all opportunities to challenge associations between these communities and terrorism in public debate. To these ends, ECRI draws the attention of the Spanish authorities to its General Policy Recommendations No. 5 on combating intolerance and discrimination against Muslims<sup>32</sup> and No. 8 on combating racism while fighting terrorism<sup>33</sup>.
80. ECRI encourages the Spanish authorities in their efforts to ensure that the right granted by Spanish law to Muslim pupils to receive religious instruction based on Islam in public schools is implemented in practice.

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<sup>32</sup> CRI (2000) 21: ECRI General Policy Recommendation n° 5: Combating intolerance and discrimination against Muslims, European Commission against Racism and Intolerance, Council of Europe, April 2000.

<sup>33</sup> CRI (2004) 26: ECRI General Policy Recommendation n° 8: Combating racism while fighting terrorism, European Commission against Racism and Intolerance, Council of Europe, March 2004.

- **Victims of trafficking**

81. Spain is a country of transit and destination for trafficking in women for the purpose of prostitution. The Spanish authorities have informed ECRI that, as a rule, women who have been trafficked into Spain for purposes of sexual exploitation are returned to their country of origin, unless there are reasons to grant them humanitarian protection. However, these women may obtain residence and work permits if they denounce the traffickers or testify against them or provide essential information to bring them to justice. The Spanish authorities have informed ECRI that, in these cases, they may be awarded the special protection that Spanish law accords to those who testify against organised crime.

**Recommendations:**

82. ECRI recommends that the Spanish authorities ensure that women who are victims of trafficking are able to secure protection and obtain, as necessary, residence permits irrespective of their willingness to denounce the traffickers or testify against them.

**Antisemitism**

83. Manifestations of antisemitism in Spain since ECRI's second report have included dissemination of antisemitic propaganda through written publications and the Internet and display of antisemitic symbols at football matches<sup>34</sup>. It has also been reported that antisemitic stereotypes are present among school pupils, and that antisemitism has sometimes surfaced in articles and caricatures appeared in the press, notably in connection with events in the Middle East.

**Recommendations:**

84. ECRI recommends that the Spanish authorities monitor the situation as concerns manifestations of antisemitism and react promptly to any such manifestations. It draws the attention of the Spanish authorities to its General Policy Recommendation No. 9 on the fight against antisemitism<sup>35</sup>, which contains practical guidance on measures governments can take to this end.

**Media**

85. Since its second report, ECRI has continued to receive reports according to which some media have tended to foster hostility, prejudice and negative images of minority groups, and notably Roma, Muslims and immigrants in general. For instance, some newspapers still reveal the ethnic origin or nationality of persons arrested or convicted of crimes even when such information is irrelevant to the story. It has also been reported to ECRI that the sensational imagery and reporting resorted to by certain newspapers conveys the overall impression to the readers that the country is being invaded by immigrants coming on makeshift boats. Especially since the events of March 2004, some newspapers are also reported to have often associated Muslims and Islam with terrorist activities. In its second report, ECRI stressed the importance of self-regulatory measures within the media profession aimed at countering racism and xenophobia and promoting cultural pluralism. Although

<sup>34</sup> See above, Racist and xenophobic violence.

<sup>35</sup> CRI (2004) 37: ECRI General Policy Recommendation N°9 on the fight against antisemitism, European Commission against Racism and Intolerance, Council of Europe, June 2004

initiatives are reportedly taken by some individual newspapers, especially at national level, it has been pointed out that stigmatising or stereotyping media reports are particularly frequent in newspapers at regional and local level.

**Recommendations:**

86. ECRI encourages the Spanish authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups, including Roma, Muslims and immigrants. ECRI recommends that the Spanish authorities engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved both at national and at regional and local level.

**Conduct of law enforcement officials**

87. In its second report, ECRI was concerned that non-citizens, Roma, and Spanish citizens of immigrant background, were particularly likely to become victims of police misconduct, including insulting and abusive speech, ill-treatment and violence, notably in view of the fact that ethnic profiling practices were reportedly common within police forces. Non-governmental organisations active in the field of combating racism and xenophobia report that, since ECRI's second report, they have continued to receive numerous allegations of police misconduct of the type described in that report. These allegations concern members of all the different police forces that operate in Spain at national, regional and local level<sup>36</sup>, but also the members of private security personnel, for example the security personnel of the Madrid metro.
88. It is difficult to obtain a global picture of the formal complaints filed against all the different police forces and of the follow-up given to these complaints. However, ECRI has received consistent reports according to which non-citizens, Roma, and Spanish citizens of immigrant background who have fallen victims of police misconduct only rarely file formal complaints. When complaints are filed there is reported to be little investigation of incidents, and little transparency on the results of these investigations within the police. As already noted in ECRI's second report, counter-charges are frequently brought or threatened against those indicating their intention of lodging a complaint of police misconduct. It is also reported that, unlike the complaints filed by alleged victims of police misconduct, such counter-charges are as a rule successful and dealt with swiftly.
89. In its second report, ECRI recommended that the Spanish authorities improve the response of the internal and external control mechanisms to complaints of racist or racially-discriminatory behaviour on the part of the police, including through the establishment of an independent commission to investigate all allegations of human rights violations by the police. Non-governmental organisations have reported to ECRI that the racist dimension of alleged police misconduct is very rarely investigated and prosecuted. Although it has been unable to gather comprehensive data in this regard, ECRI is aware of one case in which such motivation was investigated and another case in which the public

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<sup>36</sup> Spain has two national police forces, the Civil Guards (Guardia Civil) and the National Police (Policia Nacional). In addition, the Autonomous Regions of Catalonia and the Basque country have established regional police forces, (*Mossos d'Escuadra* and *Ertzaintza*). A smaller regional police force has also been established in Navarra. At the same time, many municipal governments have established their local police forces.

prosecutor pressed charges against the police officers requesting that racism be taken into account as an aggravating circumstance. There has been no debate in Spain on the establishment of an independent commission to investigate all allegations of human rights violations by the police since ECRI's second report.

90. In its second report, ECRI encouraged the Spanish authorities to ensure that police training in human rights and non-discrimination has an impact in everyday policing practice. The Spanish authorities have stressed that human rights, including non-discrimination, are not only taught as specific subjects at the police academy, but shape all activities and the organisation of work of trainee police officers. They have also stressed that the content of training courses at the police academy changes so as to respond to the needs of an evolving society, including the needs highlighted by the type of complaints received by the police.
91. In its second report, ECRI invited the Spanish authorities to consider methods aimed at encouraging members of ethnic minorities to participate in the recruitment procedures for law enforcement posts. The Spanish authorities have stressed that the recruitment in the police is open to all Spanish citizens who meet the relevant requirements. They have also stressed that a greater representation of ethnic minorities within the police forces would be desirable, but that due to the fact that Spanish nationality is a prerequisite for recruitment and that ethnic minorities in Spain are still predominantly non-citizens, this greater representation will only be achieved with time. ECRI notes, however, that, even within the citizen population of Spain there are ethnic minorities, including Roma, who are reportedly under-represented in the police and that members of these groups may face special barriers preventing them from applying or succeeding in the recruitment procedure for the police.

#### **Recommendations:**

92. ECRI reiterates its call on the Spanish authorities to improve the response of the internal and external control mechanisms to complaints of racist or racially-discriminatory behaviour on the part of the police. To this end, it recommends in particular that the Spanish authorities establish an independent commission to investigate all allegations of human rights violations by the police.
93. ECRI recommends that the Spanish authorities pursue and strengthen their efforts to provide law enforcement officials with thorough initial and in-service training in human rights, including non-discrimination, and that they ensure that these principles are placed firmly within operational policing. ECRI recommends that the Spanish authorities ensure that all private security personnel benefit from the same training as police officers on these issues.
94. ECRI encourages the Spanish authorities to consider measures to stimulate a better representation of members of ethnic minority groups in the police. These measures should include the identification of any barriers which may prevent members of these groups from entering the police forces and the adoption of targeted measures to overcome such barriers.

## Monitoring the situation

95. In order to better monitor the situation of minority groups, in its second report ECRI encouraged the Spanish authorities to collect data broken down by categories such as national or ethnic origin and religion in different fields of social and economic life. At present, most of the information collected on the situation of minority groups composing Spanish society is only broken down by nationality. However, ECRI notes that there are institutions and organisations which collect personal data broken down by ethnic origin and religion and that these institutions and organisations are registered with the Agency for Data Protection, which monitors the conformity of such collection with the relevant Spanish legislation.

### **Recommendations:**

96. ECRI recommends that the Spanish authorities improve their monitoring systems by collecting relevant information broken down according to categories such as ethnic origin, language, religion and nationality in different areas of policy and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

## II. SPECIFIC ISSUES

### **Lack of awareness of racism and racial discrimination**

97. In its second report, ECRI considered that awareness of issues of racism and racial discrimination within Spanish society at large was very limited. Since then, some initiatives have been taken to promote awareness of these issues. However, ECRI considers that considerable progress is still needed in this area. Generally speaking, in Spain the notions of racism and racial discrimination appear to be limited to the most blatant manifestations of these phenomena, and notably those coming from extreme-right groups resorting to violence. However, the extent to which racism and racial discrimination affect individuals in their everyday lives and in a wide range of contexts such as school, employment, housing, the criminal justice system or relations with law enforcement agencies, is, in ECRI's opinion, much less recognised and understood in Spain. As a result, the role of racism and racial discrimination in effectively preventing certain minority groups from enjoying genuinely equal opportunities with the rest of the Spanish population is generally underestimated. ECRI is concerned that this situation of inadequate awareness of issues of racism and racial discrimination affects the institutional response to these phenomena in a negative way. This, in ECRI's opinion, happens at different levels and in different areas, some of which are examined in more detail below.
98. At a very general level, ECRI considers that the limited knowledge and recognition of issues of racism and racial discrimination is reflected in the somewhat restrictive angle from which these phenomena are currently examined in Spain. As mentioned in other parts of this report<sup>37</sup>, ECRI welcomes

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<sup>37</sup> See above, Reception and status of non-citizens : immigration.

the attention that the Spanish authorities have given in recent years to the situation of immigrants, especially those without legal status, and the measures taken to improve the labour situation of this part of the Spanish population. However, ECRI considers that the very close link currently established in Spain between, on the one hand, racial discrimination and, on the other, immigration and the labour market is excessively restrictive. In particular, ECRI notes that such a link tends to overlook the fact that victims of discrimination include not only immigrants, but also other groups, such as the Roma and Spanish citizens of non-Spanish origin and that discrimination takes place in many important areas alongside employment, such as education, housing, health, the criminal justice system or relations with law enforcement agencies. More generally, ECRI considers that the very strong link currently established between, on the one hand, racial discrimination and, on the other, immigration and the labour market tends to overlook the human rights dimension of racial discrimination.

99. ECRI also notes that a thorough understanding and recognition of issues of racism and racial discrimination would impact favourably on the level of priority given by the authorities to tackling these issues and on the approach taken to this end. In comparison, it has been noted that understanding and recognition of issues of gender discrimination and equal opportunities between men and women are much more developed in Spain and that this has resulted in the adoption of a considerable number of measures and policies in this field.

#### **Recommendations**

100. ECRI strongly recommends that the Spanish authorities promote awareness of racism and racial discrimination among Spanish society at large, particularly by encouraging public debate on these issues at national level. ECRI recommends that the Spanish authorities closely involve all relevant stakeholders in this debate, notably minority groups vulnerable to discrimination on grounds of “race”, colour, language, religion, nationality and national or ethnic origin. In particular, ECRI recommends that the Spanish authorities widen the debate on racial discrimination so as to highlight its human rights dimension.
101. ECRI recommends that the Spanish authorities give higher priority to combating racism and racial discrimination, notably by mainstreaming policies against these phenomena throughout the work of public institutions.
102. Another important area in which awareness of racism and racial discrimination should, in ECRI’s opinion, be improved concerns the implementation of the legal provisions in force aimed at combating these phenomena. Although precise figures are not available, non-governmental organisations have consistently reported to ECRI that these provisions are very rarely implemented. In particular, as mentioned above<sup>38</sup>, concern has been expressed at the very rare use made of the provision establishing racist motivation as a specific aggravating circumstance. The Spanish authorities have stated that they do not possess readily available data on the implementation of this provision and have stressed that, in any event, lack of cases does not necessarily imply lack of awareness on the part of the various actors of the criminal justice system of issues of racism and racial discrimination and their importance.

<sup>38</sup> Criminal law provisions.

103. As mentioned above<sup>39</sup>, there have been no cases of application of the new civil legislation against racial discrimination introduced in December 2003 to transpose the two European Council Directives. Awareness of these provisions among the legal community and society in general is reported to be minimal. ECRI considers that this factor plays a central role in the non-application of the new legislation. In this respect, ECRI regrets that the modalities through which this legislation was adopted have essentially contributed to minimising its impact on society. ECRI notes that the “Measures for the implementation of the principle of equal treatment” were drawn up without any meaningful consultation of civil society partners and were adopted as part of an accompanying law to the State Budget Bill without parliamentary debate. Taking into account especially the need for all sectors of Spanish society to discuss more in depth and come to terms with issues of racism and racial discrimination, ECRI considers such consultation and debate to be essential. The Spanish authorities have stated that, once the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin<sup>40</sup> is in place, they intend to carry out activities to raise awareness among society of racial discrimination and the existing legal remedies to counter it. They have also stressed that the Spanish Observatory against Racism<sup>41</sup> will work in close co-operation with the Council in carrying out these activities.

#### **Recommendations**

104. ECRI reiterates its recommendations concerning the need for training of all actors of the criminal justice system on the existing criminal law provisions against racism and racial discrimination. It also reiterates its call for measures to promote greater awareness among public servants involved in the criminal justice system of the need to take all manifestations of these phenomena seriously. ECRI also reiterates its recommendations concerning the need for readily available and accurate data to be collected on the implementation of the provisions in force against racism and racial discrimination.
105. ECRI urges the Spanish authorities to ensure that adequate resources are made available to the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin for it to carry out an effective and extensive awareness raising campaign on racial discrimination and the existing legal remedies to counter it. ECRI strongly recommends that the Spanish authorities closely involve civil society partners in the elaboration, implementation and evaluation of these awareness raising activities.
106. ECRI believes that a better understanding and recognition of racial discrimination would also be beneficial in order to improve the effectiveness of programmes aimed at promoting equal opportunities of specific groups composing Spanish society. For instance, as already noted by ECRI in its second report, the Roma Development Programme<sup>42</sup> essentially focuses on social inclusion measures, but does not adequately address discrimination, a phenomenon which members of Roma communities continue to suffer from. In this respect, civil society organisations have noted that, although social

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<sup>39</sup> Civil and administrative law provisions.

<sup>40</sup> See Specialised bodies and other institutions.

<sup>41</sup> See Specialised bodies and other institutions.

<sup>42</sup> See above, Vulnerable groups – Roma.

exclusion and discrimination are obviously interconnected, they affect different parts of the Roma population in a different way and therefore each need to be addressed through distinct specific measures.

107. ECRI furthermore considers that improved awareness of racial discrimination among society in general is essential to gaining society's support for positive measures aimed at improving the situation of certain disadvantaged groups, without which, in ECRI's opinion, it is very difficult to achieve genuine equality. In this respect, ECRI notes that positive measures are already being taken in Spain with respect to certain disadvantaged groups, for instance through compensatory education or in fields such as housing and employment. However, ECRI also notes reports according to which segments of Spanish society are unconvinced about the need for such measures or, in some cases, hostile to them.

### **Recommendations**

108. ECRI recommends that the Spanish authorities adequately address discrimination in any overall strategies aimed at promoting equal opportunities for disadvantaged groups. To this end, it recommends that they elaborate and implement, as part of these programmes, specific measures targeted at the majority population.
109. ECRI recommends that the Spanish authorities take steps to raise awareness within society of the need for any genuine equal opportunities policy to include positive measures aimed at improving the situation of certain disadvantaged groups.

### **The situation of persons from sub-Saharan Africa trying to gain access to Spanish territory through Ceuta and Melilla**

110. ECRI is seriously concerned at reports of human rights violations and of inhumane and life-threatening conditions, sometimes resulting in death, faced by persons, mostly from sub-Saharan Africa, who try to gain access to Spanish territory through Ceuta and Melilla. Although precise figures are not available to ECRI, hundreds of these people are reported to transit through Morocco every month and to try and gain access to the two Spanish cities, located on the westernmost part of the Mediterranean coast of Africa, in many cases putting their physical integrity at risk by climbing the walls that surround these cities. These persons include individuals fleeing difficult economic situations in their own countries of origin, but also asylum seekers, women and children, including sometimes unaccompanied children.
111. The Spanish authorities have stressed that Ceuta and Melilla experience a very significant migratory pressure. While ECRI recognises that immigration and asylum pose particularly significant challenges in these two cities, it considers that these challenges must be met by ensuring full respect of the human rights of immigrants and asylum seekers. ECRI expresses concern at reports according to which persons from sub-Saharan Africa trying to gain access to Ceuta and Melilla have in some instances been ill-treated and verbally abused by border guards and law enforcement officials. ECRI has also received consistent reports of regular street patrols being carried out by law enforcement agencies in these cities aimed at rounding up sub-Saharan immigrants without legal status and at deporting them without following the procedure established by law for deportations. ECRI notes that many persons do file asylum applications in Ceuta and Melilla – the authorities have indicated that Ceuta is

Spain's second most important entry point for asylum seekers, with approximately 1900 applications filed in 2004. However, ECRI also notes reports which indicate that persons unlawfully expelled have also included potential asylum seekers. In fact, non-governmental organisations have reported to ECRI that, in December 2004, the Guardia Civil of Ceuta expelled persons from Sub-Saharan Africa who had already applied for asylum or formally stated their intention to apply.

112. ECRI is all the more concerned at this situation as it has received consistent reports of extremely serious human rights violations faced by immigrants from sub-Saharan Africa, once they are returned from the two Spanish cities to Morocco<sup>43</sup>. Non-governmental organisations have reported to ECRI that, in some cases, Spanish law enforcement officials have taken part in actions carried out on Moroccan territory, during which such violations have occurred.

**Recommendations:**

113. ECRI strongly recommends that the Spanish authorities investigate and address the situation of sub-Saharan immigrants and asylum seekers who try to gain access to Spanish territory through Ceuta and Melilla.
114. ECRI recommends in particular that the Spanish authorities ensure that the right of individuals, and particularly persons from sub-Saharan Africa, to access the asylum procedure is thoroughly respected in practice. In this respect, it strongly recommends that the Spanish authorities strengthen their efforts to train border control and law enforcement officials in service in Ceuta and Melilla in human rights, including the right to be free from discrimination and the right to seek asylum.
115. ECRI urges the Spanish authorities to ensure that no one is deported from Ceuta and Melilla in violation of Article 3 of the European Convention on Human Rights and the principle of *non refoulement*. It recommends that the Spanish authorities ensure that no one is deported from Ceuta and Melilla outside the procedure established by law for deportations. ECRI recommends that the Spanish authorities ensure that any decision to deport is communicated to the person in question in a language that she or he can understand and that such a decision is subject to suspensive appeal.
116. ECRI urges the Spanish authorities to thoroughly investigate any allegations of ill-treatment by Spanish border control and law enforcement officials and to prosecute and punish the perpetrators.

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<sup>43</sup> A readmission agreement is in force between Spain and Morocco, covering both citizens of the two countries and third-country nationals.

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## APPENDIX

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

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

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

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



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## "Observations of the Ministry of the Interior"

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

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

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

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

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

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

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

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

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

*For this reason, the Unit responsible for asylum in the Interior Ministry issued instructions in November concerning information on international protection for foreigners who have recently arrived in Spain on board pateras and other irregular vessels and who are held in Internment Centres. The instructions aim to facilitate*

*effective information on international protection available to such persons - who arrive in Spain in conditions of particular vulnerability and uncertainty, with no knowledge of Spanish - and also to set out the response the Spanish legal system may provide to their situation.*

*Specifically, the instructions underline the need for Internment Centres to have multiple copies of the new asylum information booklet (translated into English, French, Arabic, Chinese, Portuguese, Russian, Armenian, Georgian, Farsi, Peul and Swahili), together with specific information on international protection to complement the information provided on arrival in the Centre."*

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

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

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

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

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

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

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

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

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

With regard to the problems with legal assistance, the remarks already made above need to be reiterated. Any foreigner who is affected by a procedure for enforced

departure from Spain is entitled to receive legal assistance free of charge, even if the quality of the assistance is doubtless improvable. Mention is appropriate here also of the initiative referred to above concerning the organisation of a specific seminar on the subject.

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

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

The following wording is suggested:

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

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

The following paragraph is therefore proposed:

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

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

3.3 In the same section, and in the recommendations made, the Report further emphasises that the number of people granted refugee status or subsidiary protection is low, adding that many factors explain these low rates of protection. However, it notes also that *“it has been reported to ECRI that the quality of the*

*interviews and legal assistance, particularly in the admission phase of the asylum procedure, play an important role".* ECRI sets out a recommendation in this regard.

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

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

3.4 Regarding the comment included at the end of the same section, "*it has been reported to ECRI that the quality of the interviews and legal assistance, notably in the admission phase of the asylum procedure, play a very important role*", and the recommendation in paragraph 45, also concerning the need for the Spanish authorities to work towards improving the quality of interviews, notably in the admission phase, we would like to reiterate the explanations submitted to the report of June 24 and would recommend the following paragraph be added:

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

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

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

*"Nonetheless, with respect to quality, information has been received from the Spanish asylum authorities underlining the significant increases recorded in the admissibility rate, which has reached 40% for the year 2005 to date. This is the*

highest rate since 1999 (the average rate for admissions for the period 2000-20004 being 27.3%).

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

- Joint interviewing of asylum seekers by staff of the Asylum and Refugees' Office and UNHCR officials, at the request of the Interministerial Committee on Asylum and Refugees, has been introduced in the Office.
- All asylum interviews are recorded, thus affording additional guarantees to applicants and offering a mechanism for evaluating interview quality.
- Priority is given to applications in cases where the accounts furnished and the details of the applicant's circumstances leave room for no doubt as to the need for international protection.
- Priority has also been given to applications submitted by unaccompanied minors in order to adapt practice to the recommendations of the different international bodies for the protection of minor's rights.
- Current legislative instruments have been adapted to take account of new forms of persecution, and refugee status granted to women whose circumstances (serious and continuous abuse received, lack of protection in their country of origin, no means of avoiding abuse in their country, situation of married women in said countries, etc ...) fully warranted such international protection status on account of their belonging to a differentiated social group which suffers persecution in their country of origin. In this way, a new avenue in the commitment to the Geneva Convention and other ratified international instruments is consolidated. This measure is also in line with recently-adopted Community Directives on asylum, without prejudice to their future and mandatory transposition in domestic law.

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

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

Specifically, it states:

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

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

*"Together with other units within the Department, the asylum unit of the Interior Ministry is studying the setting up of training and refresher programmes for all*

*officials intervening in the area of international protection, with special emphasis on legal assistance".*

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

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

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

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

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

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

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

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

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

*However, given that three foreigners who had filed asylum applications and a fourth who had still to formalise his application were in Moroccan territory, the Spanish authorities reacted immediately, at the request of the Interior Ministry, and conducted the necessary formalities to have said persons returned to Spain. All four were transferred to Spain (Madrid and Malaga) at the beginning of 2005.*

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

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

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

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

Specifically, the following aspects should be added:

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

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

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

However, the Council of Europe Convention does not include the reciprocity criterion and is based solely on lawful residence in the country (at least five years). Hence, Spain cannot subscribe to the aforementioned requirement of the Council of

Europe's 1992 Convention regarding the participation of foreigners in public life at local level without prior amendment of the Constitution, as indicated above, or unless the reciprocity criterion is included in the text of the Convention.

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

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

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

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

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

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

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

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

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

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

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

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

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

Madrid, 2 December 2005

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

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

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

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

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

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

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



