



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Seventy-eighth session

Summary record of the 2066th meeting

Held at the Palais Wilson, Geneva, on Thursday, 24 February 2011, at 10 a.m.

Chairperson: Mr. Kemal

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

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

Eighteenth to twentieth periodic reports of Spain (continued) (CERD/C/ESP/18-20; CERD/C/ESP/Q/18-20; HRI/CORE/ESP/2010)

1. *At the invitation of the Chairperson, the delegation of Spain took places at the Committee table.*
2. **Mr. Sánchez Saudinos** (Spain), speaking as a representative of the Ombudsman, which was the national human rights institution in Spain, said that the relatively small number of complaints did not accurately reflect the situation regarding racist and discriminatory acts committed in the country. The perpetrators of racist and xenophobic acts often did not recognize their racist motivation and cited other reasons, such as differences in customs or problems living alongside foreign neighbours. The media's increasingly frequent sensationalist reports that included details of the ethnic or racial origin of perpetrators of offences and the publication of slipshod sociological studies on the number of foreigners in prison or with convictions did little to strengthen anti-discriminatory policies. In order to remedy that situation, the Racism and Xenophobia Monitoring Centre had compiled a handbook for professionals working in the media on how to handle news related to immigration.
3. The Ombudsman had received numerous complaints from foreign citizens who had been placed in detention after undergoing identity checks. In the wake of his investigations, the Ombudsman had concluded that identity checks carried out in the street often resulted in provisional detention in police stations. According to a group of 140 associations and trade unions, the provision in Circular No. 1/2010 of the General Commissariat for Aliens and Borders that allowed for individuals to be detained in police stations while their identities and residence permits were checked encouraged discriminatory practices. In the Ombudsman's opinion, the wording of Circular No. 1/2010 gave rise to interpretation problems which ended up restricting foreigners' rights. In addition, other complaints had highlighted the fact that the decision to check a person's identity in the street was usually based on purely physical characteristics. The Ombudsman had launched an investigation and was monitoring the situation closely.
4. In the light of the fast-track deportation of several citizens of sub-Saharan African countries in 2004, the Ombudsman had reminded the General State Administration of its obligation to comply with the Organization Act on the rights and freedoms of aliens in Spain and their social integration (Aliens Act), particularly the obligation to interview aliens subject to a deportation order so that they could request asylum if they so wished. Furthermore, the Ombudsman made regular visits to migrant detention centres to monitor the living conditions and avert any risks of mistreatment. He had noted that the fast-track deportation of Moroccans intercepted off the Spanish coast had violated Spain's international obligations under the Convention relating to the Status of Refugees and the European Convention on Human Rights, since the migrants had been deported without having had the opportunity to request asylum. As to the cases in which police officers from Ceuta and Melilla had stopped asylum-seekers from being transferred to mainland Spain, investigations had revealed that the asylum-seekers' right of free movement on the national territory had been unjustifiably restricted. However, the Ombudsman was no longer dealing with the matter because prosecutions had been initiated before the courts for unlawful violations of freedom of movement.
5. The Ombudsman had inspected the situation in the centres for unaccompanied minors in the Canary Islands and Ceuta. He had reminded the General State Administration

that a new centre should be built in Ceuta immediately, since the current premises did not meet the minimum standards required to house minors. Regarding the repatriation of minors to their country of origin, the Ombudsman noted with satisfaction that in the light of his recommendations, guarantees had been incorporated into the legislation so that in repatriation procedures the child's opinion and best interest were duly taken into account and the child could file an appeal against the administrative decision to repatriate.

6. The Ombudsman had continued his investigations into the use of the Internet by racist and neo-Nazi groups that aimed to incite hate and violence. The Racism and Xenophobia Monitoring Centre had indicated that racist discourse on the Internet was analysed within the framework of the transnational "Living Together" project. Furthermore, the *Audiencia Nacional* had tasked a prosecutor with investigating and prosecuting international neo-Nazi groups operating in Spain, on the ground of their violent activities. The Ombudsman would shortly be contacting the Spanish Government to discover how it planned to implement the Human Rights Committee decisions in the case of *Williams Lecraft v. Spain* (case No. 1493/2006 of 27 July 2009).

7. **Mr. Marugán Zalba** (Spain) said that the Human Rights Plan, adopted in December 2008, had been assessed and the results, which were not yet available, would be published on the website of the Ministry of the Presidency. The first Alliance of Civilizations Plan, covering the period January 2008 to May 2010, had now ended. According to initial assessments, 42 of the 57 measures (74 per cent) included in the Plan had been implemented. A second Alliance of Civilizations plan covering the period 2010–2014 would focus on youth, education, the media and migration. The Strategic Plan for Citizenship and Integration (2007–2010) was also being evaluated; that was proving to be a relatively complicated process owing to the large number of participants.

8. Other plans the Government had implemented included the 2008–2011 plan to promote equal opportunities and the 2009–2012 plan to combat sexual violence, which particularly highlighted migrants' vulnerability. Between 2007 and 2009, Spain had provided grants in the amount of €54 million to NGOs. The State had implemented no fewer than 90 programmes in collaboration with NGOs.

9. On the issue of discrimination in the labour market and in companies, several awareness-raising campaigns had been conducted as well as a programme promoting diversity. Steps had also been taken to prevent employees from being harassed on the grounds of their ethnic and racial origin. Addressing the phenomenon that could be termed "new racism", given that it was based on cultural differences rather than biological considerations, Spain was participating with other European countries in the Living Together project. Surveys had been carried out among the European population, which had been asked intentionally provocative questions such as "Do migrants get special treatment in host countries?" and "Should migrants receive assistance in maintaining their traditions in host countries?". The aim was to encourage interviewees to express their feelings freely and identify different forms of "subtle racism".

10. Spanish legislation clearly provided that unaccompanied minors should be placed in the care of the child protection services, that due account should be taken of the best interests of the child and that the child's right to be heard should be respected.

11. **Mr. Santamaría** (Spain) said that his country had implemented a series of programmes to ensure that children of immigrant parents were able to pursue their compulsory education under the same conditions as Spanish pupils. The admission procedures for students in State-funded schools had been adapted so as to avoid segregated schooling. Measures had also been taken to overcome the effects of social disadvantage, particularly on Gypsy and immigrant students, and to give individual attention to those who needed it and to adapt school syllabuses.

12. **Mr. Blázquez Martín** (Spain) said that unaccompanied minors received the same treatment as all other people requiring State protection. Spanish procedure required that, when members of the security forces or services were informed about an undocumented alien whose underage status could not be definitely established, they must inform the child protection services so that they could immediately provide the necessary care, as established in the legislation on the legal protection of minors. Once it had been determined that the alien was a minor, the Public Prosecutor's Office placed him or her with the competent child protection services. If, during the procedure to determine age, the minor required immediate care, the State security forces and services sought such care from the competent child protection services.

13. The General State Administration, in accordance with the principle of reuniting the minor's family, after interviewing the minor and reading the report from the child protection services, decided whether to return the minor to his or her country of origin or to the country where his or her relatives were living, or else to allow the minor to remain in Spain. In accordance with the principle of the best interests of the child, a decision to return the minor to his or her country of origin was taken only if the conditions were in place for genuine family reunification or if the child protection services in the country of origin could provide adequate protection.

14. Also, Spain had long been taking steps to improve the Gypsy population's right to housing. As a result of that active policy, 88 per cent of that population currently lived in accommodation that met housing standards. Spain had also followed up on the recommendations of the Committee on the Elimination of Discrimination against Women in order to guarantee the exercise of Gypsy women's and girls' economic, social and cultural rights. That policy had resulted in an employment rate of 72 per cent among Gypsies aged between 16 and 65, higher than the 63 per cent employment rate among the majority population.

15. **Mr. Sola** (Spain), turning to the situation of foreign women victims of gender-based violence, said that a plan adopted in 2004 included several specific prevention and casualty management programmes. Thus, for example, deportation orders against non-authorized women victims of gender-based violence had been suspended until such time as the proceedings were concluded. Such women were granted a work permit and provisional right of residence, which was also extended to their children, where relevant. If the perpetrator of the act was sentenced, the victim's temporary residence and work permits became permanent. Between 2005 and 2011, some 2,364 foreign women had been granted the right of temporary residence in Spain and no female victims of violence had been deported.

16. The reversal of the burden of proof was no longer applicable only to cases of racial or ethnic discrimination, but also to cases involving sexual orientation, religion or beliefs.

17. **Mr. Arrabal Villalobos** (Spain) said that the Spanish police did not conduct ethnic profiling. The procedure for checking identity papers was never based on ethnic criteria and was carried out in accordance with requirements established in the legal norms in force.

18. Detention centres for foreigners were public, non-penal institutions, where the maximum length of stay was 60 days. Foreigners were informed about their situation, had access to health care, the right to the assistance of a lawyer, including a court-appointed lawyer if necessary, and the services of an interpreter if they did not speak Spanish. The 2009 law had amended the Aliens Act (CERD/C/ESP/18-20, para. 16) and had improved the protection of persons placed in those centres, particularly by allowing them to have contact with national and international NGOs and by strengthening the centre's judicial supervision. In order to improve the living conditions in the centres, some €10 million had been spent on substantial refurbishments. There were nine such centres on Spanish

territory, with an average occupancy rate in 2011 of 906 persons out of a total of 1,900 places.

19. Regarding a question on the treatment meted out to Brazilian nationals at Madrid Airport, the police had no particular strategy for Brazilians. In 2010, only 1 per cent of the Brazilians arriving in Spain had been guilty of illegal entry. Were the country of origin kept informed of Spain's entry conditions, the figure would be even lower.

20. **Mr. Ortiz de Urbina** (Spain) said that article 22, paragraph 4, of the Criminal Code provided that racist or anti-Semitic grounds or any other form of discrimination on racist or ethnic grounds constituted an aggravating circumstance, a provision somewhat rare in other countries and which was being applied to more and more offences that now included physical injury, manslaughter or attempted manslaughter and racist threats or insults. A unit specializing in racially motivated and discriminatory offences had been opened in Barcelona. Numerous NGOs had requested the Government to establish identical units in other cities.

21. Spain had set up a mechanism for independent investigation into complaints brought against police officers, and the Criminal Procedure Act had identified the courts as the only bodies competent to investigate crimes committed by law enforcement officers and impose penalties. Regional ombudsmen took up complaints against civil servants in the different autonomous communities with a view to establishing the facts.

22. Judges and other staff of the Office of the Attorney-General received human rights training during their studies and throughout their careers in courses that formed part of their ongoing training.

23. **Ms. Didic** (Spain) said that the issue of people of African descent constituted an important part of the international cooperation programme between Spain and Latin America. The 2009–2012 master plan, which set out the main tenets of the programme, provided for partnership agreements with NGOs working on development in the field, and with other multilateral bodies. It aimed to increase the resources of people of African descent by devising and implementing inclusive policies and eventually enabling them to exercise all their fundamental rights. Given its success, the programme, which had originally focused on Colombia, Ecuador and Panama, had been extended to all Latin American countries. Some 25 projects were under way, including one for the period 2010–2012 entitled “Recovering the memory of people of African descent”.

24. The Ombudsman was an independent institution and could not therefore participate in the preparation of reports submitted by Spain. The Ombudsman took part in meetings with the treaty bodies and other United Nations bodies on an independent basis, providing ample opportunity to make constructive criticism of Spain's policies.

25. That was not the case with civil society organizations, which the Ministry of Foreign Affairs and Cooperation and the Human Rights Office systematically ensured were involved in preparing reports submitted to treaty bodies. By way of example, she cited the meeting on 3 March 2009 at which the Spanish Government had submitted a first draft of the report currently under consideration to about 50 NGOs working in the country, including Amnesty International and the International Human Rights Law Society. In the wake of the meeting, three of the NGOs had submitted written comments.

26. **Mr. Peter** said that, while Spain was a great sporting nation, given the public's passion for sport, it was disappointing that it had been tainted by numerous manifestations of racism and xenophobia. He wished to know whether, four years after its entry into force, Act No. 19/2007 on violence, racism, xenophobia and intolerance in sport had proved successful.

27. Referring to paragraphs 153 et seq. of the report, which indicated that all the fundamental rights enshrined in the Constitution, except for the right to vote and to stand for election, extended to Spanish citizens and foreigners alike, he would like to know why the State party had found it necessary to adopt the Aliens Act and whether there were any contradictions between any of the two instruments' provisions.

28. He would appreciate additional information on the case of *Rosalind Williams v. Spain*, which the Human Rights Committee had examined and for which a resolution was now overdue. Observing that the Aliens Act discriminated against the children of migrants since it guaranteed them access to education up to the age of 18 only, he wished to know whether the State party intended to compel those young people to do manual work by preventing them from attending university.

29. **Ms. García Blanco** (Spain) said that, given the role that sport could play in transmitting the values of tolerance and respect and in integrating people of all origins, the Spanish Government had adopted Act No. 19/2007 on violence, racism, xenophobia and intolerance in sport, which aimed to eliminate racism and racial discrimination and guarantee the principle of equal treatment in sport. The Act specified the penalties applicable to perpetrators of racist violence committed by sports players themselves, supporters, or sporting event organizers. What Spain was endeavouring to do was clean up the sporting environment and guarantee that law and order was maintained during sports events.

30. The mandate of the Commission against violence, racism, xenophobia and intolerance in sport, which came under the Higher Council for Sports of the Ministry of the Republic, was to formulate active policies to combat those phenomena. During the 2010–2011 season, 12 of the 649 acts of violence (1.85 per cent) that had been reported in sports had been racially motivated.

31. **Mr. Marugán Zalba** (Spain) said that the Aliens Act, which had incorporated Constitutional Court penalties and European Union guidelines on immigration issues, afforded protection of a wide range of rights.

32. In connection with its presidency of the European Union in the first half of 2010, Spain had approved an agreement on the implementation of a pilot project aiming to ensure better recognition of migrants' economic, social and civil rights, with the exception of the right to vote and to be elected. The European Union had also established indicators to compare the situation of migrants in different European countries in the fields of education, employment, social integration and active citizenship. The indicators were particularly useful in determining the percentage of migrants that had access to higher education, comparing the salary levels of migrant and indigenous workers and the unemployment rate among the two groups, and working out the percentage of immigrants occupying national, regional or local political office. Spain had therefore laid the foundations of a system that aimed to prevent any distinction between the exercise of fundamental rights by migrants and the rest of the population within EU member States.

33. **Mr. Arrabal Villalobos** (Spain) confirmed that the security forces and services had not been given any instructions about checking the identity of persons with specific physical traits. He stressed that identity checks were carried out because of the need to fight crime, protect human rights and maintain law and order.

34. **Mr. Ortiz de Urbina** (Spain) explained that in the Rosalind Williams case, Spain had followed up on all the recommendations set out in the Human Rights Committee's Views dated 27 July 2009. In compliance with the procedure, the Views had been published in the Information Bulletin of the Ministry of Justice which was consulted by all professionals in the justice system and was accessible to the public on the Ministry's website. Ms. Williams had been personally notified of the Views by post. Furthermore, a

copy had been sent to the main judicial bodies and organs related to them, including the General Council of the Judicature, the Constitutional Court, the Supreme Court, and the Public Prosecutor's Office. Spain had not merely published the Views: delegates had invoked them before international bodies, including different United Nations treaty bodies such as the Committee against Torture.

35. Among the measures taken to prevent a repetition of events similar to those to which Ms. Williams had been victim, Spain had placed emphasis on human rights training. As Ms. Williams had been informed, a training handbook for State security forces and services which summarized the principles of equal treatment and the fight against discrimination had been prepared in conjunction with the Ministry of Labour and Immigration, the Spanish Racism and Xenophobia Monitoring Centre and the Alliance of Civilizations. The Minister for Foreign Affairs and other high-ranking officials had met Ms. Williams and apologized for the way she had been treated. In the Government's opinion, it had therefore complied with the Human Rights Committee's recommendations. It had informed Ms. Williams that it would not accede to her other requests, including the award of damages of €60,000, since Spanish law made no provision for the payment of compensation in such cases.

36. **Mr. Santamaría** (Spain) underscored the fact that one of the distinctive features of Spain's education law was the promotion of foreigners' integration. The right to education included access to State schools free of charge throughout the years of compulsory schooling, from the ages of 6 to 18. Moreover, the legislation guaranteed foreign pupils equal access to grants and other educational support, and ensured that foreign students aged over 18 had equal access to post-secondary education at university or elsewhere.

37. **Mr. de Gouttes** pointed out that, given the presumption of innocence, a reversal of the burden of proof was unacceptable in criminal matters. He asked whether Spain planned to engage in the practice of testing – a simulation used in some countries to establish whether discrimination was actually taking place, such as in access to employment or to public places. He also wished to know whether there were any data available on the composition of the prison population by nationality.

38. **Mr. Sola** (Spain) confirmed that Spanish law prohibited the reversal of the burden of proof in criminal matters. As for testing, under existing practice, which was regulated by the general system, evidence was submitted at the beginning of the procedure; it was then up to the judge to accept the evidence or not. Nevertheless, the reversal of the burden of proof was accepted in non-criminal procedures, such as when bringing evidence of an act of indirect discrimination against a specific group of people in the workplace.

39. **Mr. Ortiz de Urbina** (Spain) said that he had figures on the composition of the prison population by nationality and would ensure they were sent to the Committee.

40. **Mr. Prosper** asked the delegation to give a concise account of the problem of racial discrimination in Spain from a general standpoint. He wished to know about the nature of the problem and how it was perceived by the authorities and the public.

41. **Mr. Marugán Zalba** (Spain) said that, for several years, the Sociological Research Centre had been researching the Spanish public's attitude to foreigners and that a review of the results had provided a clearer picture of the general situation and how it had developed over time. The study had given rise to two observations. Firstly, the unemployment rate had risen sharply in Spain: unemployment affected 20 per cent of the general public, 30 per cent of the foreign population and 40 per cent of young people. That explained the public's changing attitude and why 30 per cent of the young people polled admitted to negative feelings about immigration, while 30 per cent said they were tolerant of it, and 30 per cent that they were neutral. In general, it was worrying to note that young people's attitudes had changed because of the economic situation and that they had previously been more tolerant of immigration-related problems. Secondly, however, the study had shown a positive

change in attitudes towards coexistence. Foreigners and Spaniards had been reassuring in their replies in that connection and had made a clear distinction between economic realities and issues related to coexistence. From those positive reactions, it was clear that the Spanish public remained very tolerant.

42. **Mr. Avtonomov** asked whether the reservations Spain had entered to the Schengen Agreement had any effect on freedom of movement on Spanish territory. He particularly wished to know whether people with refugee status living in Ceuta or Melilla experienced any difficulties when travelling to other parts of Spain, and whether immigrants and foreign citizens were in any way affected by the reservations, for example with regard to visas.

43. **Mr. Marugán Zalba** (Spain) said that article 5 of the Aliens Act provided that foreigners had the right to freedom of movement throughout Spanish territory and could choose their place of residence with no restrictions other than the general limitations contained in treaties and laws. There were no restrictions on the freedom of movement of foreigners to or from the towns of Ceuta and Melilla.

44. **Mr. Murillo Martínez** asked whether there still remained in Spain vestiges of legal texts dating to the distant past and therefore contrary to the current principles of human rights and the progressive legislation on combating racism and racial discrimination.

45. **Mr. Sola** (Spain) said that the Constitution provided that any legislation that was in conflict with it was declared null and void. Given that the Constitution guaranteed the right to equality and non-discrimination as fundamental rights, all norms that were contrary to that principle and had been adopted before the promulgation of the Constitution were automatically abrogated.

46. **Mr. Lindgren Alves** raised the issue of reports of excessive zeal and abusive treatment during controls at Spanish borders, particularly at Madrid airport. Referring to the case of Brazilian citizens who had been victims of such abuse, might one conclude that some sort of social or racial profiling was taking place during border controls?

47. **Mr. Arrabal Villalobos** (Spain) said that his country respected the norms regulating immigration control under the Schengen Agreement and that persons wishing to enter the territory had to fulfil the relevant conditions established. Police officers had no room for manoeuvre within those fixed norms: they ensured that the norms were respected. Moreover, at Madrid airport, the main point of entry into Spain, only 1 per cent of passengers was deported.

48. **Mr. Calí Tzay** (Country Rapporteur) welcomed the progress made under the Human Rights Plan and awaited with interest the evaluation of the Plan's implementation, which was to be published in the near future on the Government website. He commended the State party for having already implemented 42 of the 57 recommendations. While taking note of the effective measures for improving the living conditions of the Gypsies, he remained concerned at the low school enrolment ratio among Gypsy girls. He was also concerned at the high number of cases of rape and acts of sexual harassment which, according to information provided by several NGOs, were not always reported, especially by undocumented people who were reluctant to lodge complaints because they feared deportation. He took note, however, of the delegation's affirmation that no female victims of sexual violence had been deported from the country. He would be grateful if the State party would include additional information on that subject in its next periodic report.

49. While he was aware that in Spanish culture, jokes with a racist connotation were very common and were not considered to be discrimination, he stressed the importance of paying serious attention to the prohibition against disseminating racist and discriminatory ideas in any form, in accordance with article 4 of the Convention. In that regard, there was need for an education and awareness-raising campaign among police officers and

magistrates regarding the legislation on combating racial discrimination. Highlighting the case of a Canadian citizen of Ghanaian origin who had been subjected to racist slurs and abuse at Madrid airport before being deported, despite the fact that he had been invited to a conference in Spain, he urged the Spanish authorities to conduct thorough investigations into such incidents and to encourage victims to report them. Lastly, he recalled that the Committee had remarked on the lack of disaggregated demographic data, particularly on the composition of the prison population by nationality.

50. **Mr. Garrigues** (Spain) said that the Government's policies on equality and the fight against all forms of discrimination were at the heart of its political priorities. The fight against discrimination was imperative for the development of a modern society built on democratic participation, the inclusion of all, and appreciation of diversity, and in order to make the most of all the human potential that it represented. He emphasized the fact that the policy of non-discrimination implemented in Spain did not pertain to minorities alone, but to all citizens. Spain awaited the Committee's observations and recommendations with interest; they would help the country forge ahead with its commitment to fight all forms of discrimination.

The meeting rose at 1 p.m.