



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Concluding observations on the combined twenty-first to
twenty-third periodic reports of Spain**

Addendum

**Information received from Spain on follow-up to the
concluding observations***

[Date received: 7 November 2017]

* The present document is being issued without formal editing.



Recommendations contained in paragraphs 12 and 28

1. Paragraph 41 of the concluding observations on the twenty-first to twenty-third periodic reports of Spain (CERD/C/ESP/CO/21-23), issued by the Committee on the Elimination of Racial Discrimination in 2016, sets out the obligation for Spain to provide information, within one year, on its follow-up to the recommendations contained in paragraphs 12 and 28.

2. Accordingly, the Government is providing the following information.

12. In the light of its general recommendation No. 20 (1996) on article 5 of the Convention and its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party reinstate universal health care so as to ensure the right to health without discrimination.

3. In relation to foreigners who are not registered or authorized to live in Spain (irregular immigration), Royal Decree-Law No. 16/2012 of 20 April 2012 on urgent measures to guarantee the sustainability of the national health system and enhance the quality and safety of its services added an article 3 ter to Act No. 16/2003 on the cohesion and quality of the national health system, establishing that these persons are entitled to receive the following types of health care in the public system, if required:

- Emergency care for a serious illness or accident, regardless of the cause, up to the time of discharge.
- Prenatal, delivery and post-partum care.
- Care for persons under the age of 18.

4. The eighth additional provision of Royal Decree No. 1192/2012 of 3 August 2012 provides that the foreigners under the age of 18 referred to in this article shall be entitled to receive public health care through the national health system to the same extent as persons having the status of insured persons. Foreign women who are pregnant shall be entitled to receive prenatal, delivery and post-partum care in the national health system to the same extent as persons having the status of insured persons.

5. In relation to emergency care, Royal Decree No. 1030/2006 of 15 September 2006, which sets out the list of core services provided by the national health system and the procedure for updating that list, states that once an emergency situation has been addressed, the patient will be discharged, referred to the most appropriate care level or, if the seriousness of the situation so requires, admitted to hospital, with the relevant clinical reports to ensure continuity of care. Therefore, the medical discharge of patients in irregular situations should not be understood as discharge from emergency care alone; these patients are entitled to receive such care and treatment as they may require until the end of the care process.

6. Furthermore, under the Public Health Act (No. 33/2011 of 4 October 2011), public health services provided by the national health system include prevention, care and monitoring and follow-up actions to preserve public health and to avoid risks associated with health alerts and emergency situations. The autonomous communities also have powers and functions in the area of public health, which are carried out independently of the national public health framework and are directed at all inhabitants, regardless of whether or not they have access to the public health-care system. The persons in question have access to all health protection and public prevention programmes, such as those involving immunization and the prevention and control of infectious diseases.

7. In addition to such activities, which fall into the category of health services provided by the national health system, the autonomous communities — exercising their exclusive jurisdiction in the sphere of social assistance — have adopted social measures to preserve the health of adult foreigners who are not registered or authorized to live in Spain but effectively reside in an autonomous community and do not have sufficient financial

resources to obtain health-care services that are not provided for under article 3 ter of Act No. 16/2003 of 28 May 2003 on the cohesion and quality of the national health system.

8. Thanks to its current legislation, Spain is the leading European country in terms of publicly funded health-care coverage for pregnant women, minors and victims of accidents and emergencies of any kind, until such time as these patients are discharged. Coverage also extends to the treatment of communicable diseases, mental health issues and situations that pose a public health risk to such persons.

9. For all of the above reasons, the Government considers that the mechanisms currently in place safeguard the right to health protection and to universal public health care for foreigners whose administrative situation is irregular.

28. The Committee urges the State party to take the necessary measures to put an end to identity checks based on racial and ethnic profiling once and for all, and recommends that such acts should be properly investigated and punished appropriately.

10. Racial discrimination is expressly prohibited by article 14 of the Constitution. That provision is reflected in different areas, such as labour relations (art. 14 (i) of Act No. 7/2007 setting out the Basic Statute of Public Employees and art. 4 (2) (a) of Royal Legislative Decree No. 1/1995 adopting the consolidated text of the Workers' Statute), sport (Act No. 19/2007 of 11 July 2007 on combating violence, racism, xenophobia and intolerance in sport) and, of course, criminal law (arts. 22 and 510 of the Criminal Code, among others). Racial discrimination is also expressly prohibited in legislation on foreigners.

11. Act No. 62/2003 of 30 December 2003 on fiscal, administrative and social measures provides for the creation of the Council for the Promotion of Equal Treatment and the Prevention of Discrimination Based on Racial or Ethnic Origin.

12. Article 5 (1) (b) of Organic Act No. 2/1986 of 13 March 1986 on the security forces and agencies establishes, as a basic principle of conduct for the members of security forces and agencies, "Performing their functions with absolute political neutrality and impartiality and, therefore, without discrimination of any kind on grounds of race, religion or opinion."

13. Similarly, Organic Act No. 4/2015 of 30 March 2015 on the protection of public safety states, in article 4 (1), second paragraph, and (2): "In particular, the provisions of chapters III and V shall be interpreted and applied in the manner most conducive to the full realization of fundamental rights and public freedoms, especially the rights of assembly and demonstration, freedom of expression and information, freedom of association and the right to strike. 2. In particular, the conduct of members of the security forces and agencies is subject to the basic principles of conduct set forth under article 5 of Organic Act No. 2/1986 of 13 March 1986 on the security forces and agencies."

14. At the end of article 16 (1), within the aforementioned chapter III of the Act, it is stipulated that "Identification procedures shall strictly respect the principles of proportionality, equal treatment and non-discrimination on grounds of birth, nationality, racial or ethnic origin, sex, religion or belief, age, disability, sexual orientation or identity, opinion or any other personal or social condition or circumstance."

15. With regard to the investigation of conduct and possible sanctions for non-compliance, the Government highlights the following:

In accordance with the provisions of the aforementioned article 16, Instruction No. 7/2015 of the State Secretariat for Security on "Identification procedures, frisking and procedures for dealing with juveniles, as provided for by Organic Act No. 4/2015 of 30 March 2015 on the protection of public safety" sets out the rules of police conduct in carrying out identification procedures.

16. Similarly, Royal Decree No. 770/2017 of 28 July 2017, which outlines the basic organizational structure of the Ministry of the Interior, establishes that the aforementioned State Secretariat for Security includes a body, the Inspectorate for Security Personnel and Services, that is responsible for inspecting, checking and evaluating the operations of the services, centres and units — both central and peripheral — of the Directorate-General of

the Police and Directorate-General of the Civil Guard and the conduct of members of the respective forces in the performance of their duties. The Inspectorate has the following specific functions: “5. To perform, within the scope of its functions, follow-up on the quality programmes set forth under Royal Decree No. 951/2005 of 29 July 2005 establishing the general framework for the improvement of quality in the central Government administration and, especially, follow-up of complaints and suggestions made by citizens in relation to State security forces and agencies. 6. To promote conduct that upholds the professional and ethical integrity of the members of the State security forces and agencies.”

17. Without prejudice to potential criminal investigations in this context, both Organic Act No. 4/2010 of 20 May 2010 on the disciplinary system of the National Police and Organic Act No. 12/2007 of 22 October 2007 on the disciplinary system of the Civil Guard provide that any behaviour constituting discrimination or harassment on grounds of racial or ethnic origin, religion or belief, disability, age, sexual orientation, sex, language, opinion, place of birth or residence, or any other personal or social condition or circumstance is a very serious offence.
