

ECRI REPORT ON SPAIN

(fourth monitoring cycle)

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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.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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 provide, if they consider it necessary, comments on 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 fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. Except where expressly indicated, it covers the situation up to 23 June 2010 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.

SUMMARY

Since the publication of ECRI's third report on Spain on 21 February 2006 progress has been made in a number of fields covered therein.

Spain has invested human and financial resources into fighting racism and racial discrimination. Specialised prosecutors have been appointed to protect victims and combat cybercrime. In Barcelona, a prosecution service dealing with hate crimes and discrimination has been set up. The Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, Spain's specialised body, was set up in 2009 to assist victims and collect data on complaints. A comprehensive response to racism in sport includes new legislation and institutions, in particular the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport, which develops policies and proposes sanctions against federations, clubs or spectators. In education, the school curriculum now includes the subject "education for citizenship and human rights" and the Holocaust has become a compulsory part of history teaching.

Measures have been taken to promote the integration of non citizens. The 2009 Law on the Rights and Freedoms of Foreigners and their Social Integration provides the means, through registration in the population register, for all persons, whatever their status, to access basic social services and free healthcare. The asylum procedure has improved; the UNHCR gives its opinion on all applications; reception centres are of a high standard and offer recreational and vocational opportunities.

Another Plan for Roma Development will run from 2010 to 2012. The National Roma Council was set up in 2005 to advise the Government on policies that affect this community. The Foundation Institute for Roma Culture, created in 2007, promotes Roma identity. Programmes to eradicate slums and relocate the inhabitants to standard housing are on-going around the country and some cities no longer have any slums. Measures have been taken to facilitate access of immigrants and Roma to the housing and employment markets.

ECRI welcomes these positive developments in Spain. However, despite the progress achieved, some issues continue to give rise to concern.

Data is not collected on acts of racism and racial discrimination or on the application of the criminal, civil and administrative law provisions in force. The Council for the Promotion of Equal Treatment is not an independent body and is not well known by the public. By a decision of the Constitutional Court, Holocaust denial has been removed from the Criminal Code. Racism on the Internet is increasing and Spain has a high number of neo-Nazi movements. Problems in education include the uneven distribution of immigrant and Roma pupils and continued existence of "ghetto" schools. Contradictory provisions exist on racial profiling and there is no independent commission to investigate allegations of police misconduct.

The new Law on the Rights and Freedoms of Foreigners and their Social Integration has opened a possibility for discriminatory restrictions by guaranteeing the right to housing aid on equal terms with Spaniards only to "long term" foreign residents and leaving decisions in other cases to the discretion of the autonomous communities with responsibility in this area. Moreover, only legal foreign residents have access to higher education. Non citizens cannot vote or stand for election at local level. Difficulties for Muslims include obstacles in obtaining permission to build mosques and the often unobserved right of Muslim pupils to receive religious instruction based on Islam.

The new Asylum and Subsidiary Protection Law of 2009, despite some positive developments, limits the right to seek asylum to non-EU nationals and stateless persons. The quality of the asylum procedure, especially concerning the asylum

interview, has been compromised in favour of speed. There is a lack of social workers in internment centres. As regards the treatment of unaccompanied foreign minors, a number of deficiencies exist, including the absence of independent legal representation in all repatriation proceedings, lack of information about the right to seek asylum and the use of outdated and unreliable age determination methods.

In this report, ECRI requests that the Spanish authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.

The Government should collect and publish data on acts of racism and racial discrimination and on the application of the legal provisions in force to combat these.* Initial and in-service training for police, private security personnel, prosecutors, forensic doctors, lawyers and judges should include compulsory courses on human rights, equal treatment, non-discrimination and the provisions in force to combat racism and racial discrimination.

In education, the authorities should review the admission procedures to ensure an even distribution of Spanish, immigrant and Roma pupils*, and take steps to reduce significantly the drop out rates of Roma pupils. The restriction on access to university education to legally resident foreigners should be removed. The curriculum for training journalists should include a study of the codes of conduct and issues related to racism and xenophobia. Regarding housing, the authorities are encouraged to pursue their objective of definitively eradicating slums, thus significantly improving the living conditions of vulnerable groups. Housing aid for all legal residents should be re-introduced.

The right to worship together with others, in accordance with Article 9 ECHR, should be respected in practice by granting Muslims' requests to build sufficient mosques. Muslim pupils should also enjoy in practice their right to receive religious instruction based on Islam in public schools. The rise in neo-Nazi movements and violent youth gangs should be closely monitored and criminal proceedings initiated where appropriate. Football federations, clubs and fans' associations should be encouraged to develop self-regulatory measures against racism and xenophobia and codes of conduct should address the racist conduct of fans.

Non citizens should be granted the possibility to vote and be elected in local elections. The law should be amended to remove the restriction on the right to request and enjoy international protection to non-EU nationals and stateless persons. Efforts should be pursued to improve access for interned foreigners to lawyers and the assistance of NGOs and to assign more social workers to internment centres. Training should be provided to border guards and law enforcement officials on human rights and asylum matters, as well as special training in conducting an asylum interview. As for unaccompanied minors, the authorities should ensure that independent legal representation is afforded to them in all repatriation proceedings and that information about the right to seek asylum is provided. They should also update the age determination methods and improve mechanisms for data collection.

An effective prohibition of all racial profiling practices by the police should be ensured, taking account of ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which provides guidance on defining and prohibiting this practice. An independent mechanism for the examination of complaints against law enforcement officials should be set up.

* The recommendation in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Existence and Application of Legal Provisions

International legal instruments

1. In its third report, ECRI recommended 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 also recommended that Spain ratify the European Convention on Nationality and the European Social Charter (Revised). Moreover, it recommended that Spain ratify the Convention on the Participation of Foreigners in Public Life at Local Level and that the authorities 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 recommended that Spain 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.
2. ECRI notes with satisfaction that Spain ratified Protocol No. 12 to the ECHR on 13 February 2008 and the Convention on Cybercrime on 3 June 2010. ECRI also notes that Spain is considering ratifying the European Social Charter (Revised), although the authorities have indicated that the economic implications mean that this is unlikely in the near future. Spain is also considering ratifying the European Convention on Nationality and the Convention on the Participation of Foreigners in Public Life at Local Level. As for the Additional Protocol to the Convention on Cybercrime, ratification has been approved at ministerial level and is due to be submitted to Parliament for approval in the near future. ECRI has been informed that Spain does not intend to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Indeed, this instrument is not included in the Human Rights Plan (discussed below) among the international treaties to be signed by the Spanish Government.
3. ECRI regularly stresses the importance of Article E of the revised European Social Charter, enshrining the principle of non-discrimination in the enjoyment of the rights guaranteed thereunder. The European Social Charter can also provide guidance in addressing issues related to the protection of and assistance to migrant workers and their families, as well as poverty, social exclusion and housing questions affecting some of the vulnerable groups discussed in this report. Ratification of the Additional Protocol to the Convention on Cybercrime would help Spain to overcome some of the Internet problems identified below. As regards the Convention on the Participation of Foreigners in Public Life at Local Level, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the European Convention on Nationality, ratification would confirm Spain's commitment to the integration of its growing immigrant population.
4. ECRI recommends that Spain completes the ratification process for the Additional Protocol to the Convention on Cybercrime. It also reiterates its recommendation for Spain to ratify the European Social Charter (Revised), the European Convention on Nationality, the Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Constitutional provisions

5. In its third report, ECRI recommended 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.
6. ECRI noted in its third report that a debate on amending the Constitution in a number of different areas was ongoing in Spain. The conclusion was that reforming the Constitution was not essential. The rights of foreigners continue to be governed by Section 13 (1) of the Constitution: "Aliens in Spain shall enjoy the fundamental freedoms guaranteed by the present Part [Fundamental Rights and Duties], under the terms to be laid down by treaties and the law." According to the authorities, Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration, as amended four times, most recently in December 2009, recognises the fundamental rights of foreigners in Spain independently of their administrative status and puts Spaniards and foreigners on "practically" the same level in relation to the exercise of rights and freedoms.
7. ECRI is aware of the difficulties involved in amending the Constitution. Nevertheless, it believes that 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 should be enshrined in the Constitution and not in laws which can be regularly amended.
8. ECRI recommends again that the right to equality before the law is formally granted by the Constitution to all individuals and not just Spanish citizens.

Criminal law

9. In its third report on Spain, ECRI strongly recommended that the Spanish authorities take steps to improve the application of the criminal law provisions against racism¹ and racial discrimination² in force and, in particular, Article 22(4) of the Criminal Code, which establishes racist³ motivation of an offender as a specific aggravating circumstance.
10. The situation regarding application of the provisions in force against racism and racial discrimination remains unchanged. A lack of awareness of the provisions and appropriate training have been cited as the main factors contributing to their limited application, as discussed below. The Spanish authorities have stated that Article 22(4) is rarely invoked because it is difficult to prove racist motivation. There have been only ten instances since 2005 where racist motivation was accepted by the court as an aggravating circumstance. Similarly, Article 510 of the Criminal Code on provocation to discrimination, hatred or violence for racist reasons is rarely applied. According to the authorities it is a type of crime that is seldom committed. Only four cases could be cited since 2005 involving a successful prosecution.

¹ According to General Policy Recommendation No. 7, racism is the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons or the notion of superiority of a person or a group of persons.

² According to General Policy Recommendation No. 7, racial discrimination is any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

³ According to General Policy Recommendation No. 7, motives relating to "race" are not the only ones to be taken into account; those relating to colour, language, religion, nationality or national or ethnic origin are also relevant.

11. Both public officials and civil society organisations have informed ECRI that part of the problem concerning Article 22(4) is that the police rarely identify any possible racist motivation in their crime reports. This is related to the data system used by the police, which requires registration of the type of crime committed but not the aggravating circumstances. ECRI notes with approval that a pilot project has been launched in various police and civil guard services requiring the aggravating circumstances, including racist motive, to be included in police records. This project is part of the national comprehensive strategy to combat racism and xenophobia (see Human Rights Plan below).
12. ECRI recommends the authorities to pursue their efforts in requiring that police records identify any possible racist motivation in criminal offences and in instructing the police to be more rigorous in including such information in their crime reports.
13. The Spanish authorities have recently taken a number of initiatives in the criminal law field to improve the response to racially motivated crime. The prosecution service in particular has undergone important changes since ECRI's third report. Specialised prosecutors have been established in each prosecution office throughout the country: one for the protection of victims of all types of crime and one for issues related to cybercrime. A third prosecutor specialised in hate crimes and discrimination has been appointed in Barcelona and ECRI wishes to highlight this initiative as an example of best practice.
14. The hate crimes and discrimination service of the Barcelona prosecution office was set up in October 2009 following two highly publicised trials of owners of Barcelona bookstores selling publications justifying and promoting genocide. It receives complaints related to crimes allegedly committed with a racist motive or based on other forms of discrimination (sex, religion, age, etc) from individuals or NGOs and carries out its own investigations. It closely follows public events having a racist or hate component, such as music concerts and debates with Holocaust deniers. According to the authorities, there are no plans at present to reproduce this service in other cities in Spain and it is too early to evaluate its effectiveness.
15. ECRI recommends that the Spanish authorities conduct, in due course, an evaluation of the effectiveness of the hate crimes and discrimination service of the Barcelona prosecution office. They should then consider appointing further special prosecutors for hate crimes and discrimination in other parts of Spain.
16. The other notable initiative is the appointment of a special prosecutor at the National Court for Special Crimes in Madrid to investigate and prosecute offences of terrorism, including the activities of extremist organised groups promoting hate through violence (Article 577 of the Criminal Code). ECRI welcomes that, as a result, and for the first time in Spain, a series of high-profile trials have taken place and convictions obtained against members of several violent Neo-Nazi groups (e.g. "Hammerskin", "Blood and Honour").
17. ECRI is concerned about the 2007 decision of the Constitutional Court declaring criminalisation of Holocaust denial to be unconstitutional. The judgment states that the simple, neutral denial of some facts without any intention to justify or incite to violence, hatred or discrimination, has no criminal relevance. Four of the twelve judges voted against the ruling. ECRI draws the attention of the Spanish authorities to its General Policy Recommendation No. 9 on the fight against antisemitism which calls upon Governments of the member States to ensure that criminal law in the field of combating racism covers antisemitism and punishes the public denial, trivialisation, justification or condoning of the Shoah.

18. ECRI recommends that, in line with its General Policy Recommendation No. 9 on the fight against antisemitism, the necessary steps are taken to ensure that public denial of the Holocaust is punished.

Civil and administrative law

19. In its third report, ECRI recommended that the Spanish authorities keep the effectiveness of the existing civil and administrative law provisions against racial discrimination under close review. It recommended that, in so doing, they considered fine-tuning this legislation taking into account ECRI's General Policy Recommendation No.7.
20. ECRI notes that the law transposing the European Council Directives 43/2000 and 78/2000 has not been fine-tuned and that the legislation remains deficient. The transposition was effected in a law known as an Accompanying Law (Ley de acompañamiento) in which over fifty existing laws were amended. As a result of this profusion of different measures, as well as a general lack of awareness of the legislation, non-governmental organisations have reported that practically no cases have been brought to court under the provisions.
21. However, ECRI has been informed that the group of specialists on legislation of the Ministry of Equality⁴ is currently preparing a comprehensive equal treatment and non-discrimination bill with the objective of improving transposition of the European Council Directives. This is one of the objectives of the Government's Human Rights Plan.
22. ECRI recommends that the Spanish authorities adopt new legislation on equal treatment and non-discrimination as soon as possible, taking account of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

Data on the application of criminal, civil and administrative law provisions

23. In its third report, ECRI recommended that the Spanish authorities collect readily available and accurate data on the application of the criminal law provisions in force against racism and racial discrimination, including the number and nature of complaints filed, the investigations carried out and their results, charges brought, as well as decisions rendered and/or redress or compensation awarded.
24. ECRI has been informed that the first statistics ever to be collected relating to crimes having a component of discrimination are due to be published next year by the Barcelona prosecution office. ECRI notes with concern, however, that national data is not collected according to the above recommendation. The only way to find information is through long and complex research. ECRI stresses that the collection of data on the application of the criminal law provisions against racism and racial discrimination is essential for obtaining a global picture of racially motivated crime and assessing whether it is increasing or decreasing in order to respond effectively.
25. In its third report, ECRI recommended that the Spanish authorities collect data on the implementation of the new civil and administrative law provisions against racial discrimination, notably on the number of complaints filed and the outcome of these complaints, including redress or compensation awarded.

⁴ Although this report covers the situation up to 23 June 2010, ECRI notes that in October 2010 the Ministry of Equality was dissolved. The Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin was transferred to the Ministry of Health, Social Policy and Equality, under the competence of the Secretary of State for Equality.

26. ECRI notes that data is not collected or published on incidents of discrimination or on the registration of complaints concerning discrimination in courts. As a result, ECRI has not been able to obtain an accurate picture of the application of the civil and administrative law provisions in force. However, ECRI has been informed that the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin will have a future role in collecting data on complaints of discrimination on grounds of racial or ethnic origin.⁵
27. ECRI recommends that the Spanish authorities collect and publish data on acts of racism and racial discrimination and on the application of the criminal, civil and administrative law provisions in force to combat racism and racial discrimination.

Anti-discrimination bodies

28. In its third report, ECRI urged the Spanish authorities to complete the work currently underway for the establishment of a specialised body to combat racism and racial discrimination. It strongly recommended that they draw inspiration from ECRI's General Policy Recommendations No. 2 and No. 7. In particular, ECRI drew the attention of the Spanish authorities to the need for such a body to be independent and to the guidelines it formulated on how to guarantee such independence.⁶ ECRI also drew the attention of the Spanish authorities to the guidelines it has provided on the functions that should be attributed to such a specialised body.⁷
29. ECRI notes with satisfaction that the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, established by law in 2003, was finally set up in October 2009. It is attached to the Ministry of Equality⁸ and its work plan was approved in January 2010. Its main focus will be assistance to victims through a network of offices throughout Spain. Assistance will include providing information about lodging a complaint, procedures to follow, legal advice, mediation, as well as practical assistance in various fields including housing, health and education. ECRI is pleased to note that the offices will also collect data on complaints of discrimination on grounds of racial or ethnic origin and produce a guide on best practices in combating it.
30. Since the Council is currently at pilot stage, ECRI considers it essential to point out its shortcomings which can still be easily rectified. Firstly, the Council lacks some of the elements necessary for a specialised body, according to ECRI's General Policy Recommendation No. 7, in particular, investigation powers and the right to initiate and participate in court proceedings. Secondly, the Council is not independent according to ECRI's General Policy Recommendation No. 2: it does not have adequate safeguards against interference from the State (the Chair is appointed by the Minister of Equality and half of its members must be representatives of central, regional or local Government; the other half are from employers' organisations, trade unions and organisations and associations active in the field of non-discrimination against people because of their racial or ethnic origin); moreover, it does not have the freedom to appoint its own staff.
31. ECRI recommends that the Spanish authorities take urgent steps to ensure that Spain's specialised anti-discrimination body, the Council for the Promotion of

⁵ Further information on this is provided in § 29.

⁶ ECRI General Policy Recommendation No. 2, Principle 5.

⁷ ECRI General Policy Recommendation No. 7, paragraph 24 (and paragraphs 50-55 of the Explanatory Memorandum) and ECRI General Policy Recommendation No. 2, Principle 3.

⁸ See footnote 4.

Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, functions according to ECRI's General Policy Recommendations No. 2 and No. 7, in particular as concerns its independence.

32. In its third report, ECRI urged the Spanish authorities to ensure that adequate resources are made available to the future 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 recommended that the Spanish authorities closely involve civil society partners in the elaboration, implementation and evaluation of these awareness raising activities.
33. According to the authorities, the current budgetary allocation to the Council is sufficient for it to carry out its activities. One of its functions is to undertake awareness-raising campaigns, although none are underway yet.
34. ECRI has been informed that the new anti-discrimination body is not known to the public and there is very little public information currently available on Internet.
35. ECRI recommends that steps are taken to raise awareness of the new Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin and to ensure that full information is publicly available about it.
36. In its third report, ECRI recommended 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 future Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin.
37. The Spanish authorities have informed ECRI that the Observatory for Racism and Xenophobia is part of the Council for the Promotion of Equal Treatment and is present in the Council's permanent commission and in all the working groups which have been created under it. The Observatory promotes studies, research, data compilation and analysis, and understanding of the current situation and its future evolution through an information network, specialised training, and public awareness and information campaigns. Its activities promote the principle of equal treatment and non-discrimination and it cooperates with different public and private actors in Spain and internationally in combating racism and xenophobia.

Training for members of the judiciary and law-enforcement authorities

38. In its third report, ECRI made a number of recommendations to the Spanish authorities regarding training: (i) to 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; (ii) to raise the awareness of all those involved in the criminal justice system of the need actively to counter racially-motivated crime, incitement to racial discrimination, hatred and violence and associations promoting racism; (iii) to consider establishing specialised units within the police and the Office of the Prosecutor to deal with these crimes; (iv) to pursue and strengthen their efforts to provide law enforcement officials with thorough initial and in-service training in human rights, including non-discrimination, and ensure that these principles are placed firmly within operational policing; (v) to ensure that all private security personnel benefit from the same training as police officers on these issues.

39. According to most people interviewed, lack of awareness and relevant training at all levels of the criminal justice system of Articles 22(4) and 510 of the Criminal Code explain their extremely limited application. As far as prosecutors are concerned, no specific training is given to trainees on the application of the provisions and in-service courses are not compulsory. Courses are organised periodically for lawyers and judges but again these are not mandatory. In addition, it is reported that training tends to target human rights with limited focus on non-discrimination.
40. As for police, compulsory basic training includes human rights and issues related to racism and discrimination, but in-service training is on a voluntary basis. According to some sources, human rights have only a marginal presence in police training. The training is theoretical and designed to transmit knowledge rather than shape attitudes and values.
41. The training of private security personnel is the responsibility of the Ministry of Interior and is carried out in private academies. Training modules include the code of conduct, but do not include human rights and non discrimination. Public officials have drawn ECRI's attention to problems with private security personnel and their lack of adequate training. ECRI considers that they should receive the same training as police in issues related to human rights and non-discrimination and that both initial and in-service training in these areas should be mandatory.
42. ECRI notes that the Human Rights Plan includes a section on human rights training for members of the justice system. It states that initial and on-going training in human rights targeting public prosecutors, court secretaries, forensic physicians, lawyers and judges will be organised and promoted. ECRI is not aware that any specific training has been organised to implement these measures, other than what has already been mentioned. Furthermore, the Spanish authorities have informed ECRI that there is an initiative to include in the 2nd National Plan for the Alliance of Civilizations specific training in diversity and religious freedom for the police, judges, prosecutors and civil servants involved in the management of religious pluralism.
43. ECRI recommends that not only initial but also in-service training for police, private security personnel, prosecutors, forensic doctors, lawyers and judges includes compulsory courses on human rights, equal treatment, non discrimination and the Criminal Code provisions in force to combat racism and racial discrimination.
44. As for specialised units to deal with racially motivated crime, these have not been established within the police but have been created in the Barcelona prosecution office and a Madrid court, as discussed above. ECRI notes that there is full cooperation between the special prosecution service on hate crimes and discrimination and the Mossos d'Esquadra (Catalonian police). It would be a logical next step to establish a specialised unit dealing with this type of crime in the police as well. If such services prove to be effective, ECRI encourages their extension to other parts of the country, and has already issued a recommendation along these lines.⁹

II. Human Rights Plan

45. ECRI notes that in December 2008 the Government of Spain adopted the first Human Rights Plan ("Plan de Derechos Humanos"), which will be in effect from 2009-2012 under the authority of the Secretary of State for Constitutional Affairs. The Plan sets out 172 concrete measures to be taken relating to

⁹ See § 15.

equality, non-discrimination, integration and human rights guarantees. It covers both foreign and domestic action, including a series of objectives on equal treatment, integration and combating racism and xenophobia.

46. ECRI is pleased to note that the approval and implementation of a national and comprehensive strategy to combat racism and xenophobia is one of the objectives of the Human Rights Plan, under "Measure 47". Different initiatives are currently being developed, including the creation of support resources for victims of discrimination or racist or xenophobic aggression, analysis of citizens' attitudes towards immigration, public-awareness campaigns at regional and local levels, and training and awareness-raising for the police.
47. ECRI encourages the Spanish authorities to take the necessary steps to draw up and implement a comprehensive national strategy to combat racism and xenophobia. This will necessarily involve a new approach to the collection and publication of data on acts of racism and racial discrimination, since complete and accurate statistics are essential for establishing an effective strategy which responds to reality.

III. Discrimination in Various Fields

Criminal justice system

48. In its third report, ECRI reiterated its call on the Spanish authorities to conduct research into possible patterns of discrimination facing ethnic minority groups in the criminal justice system. ECRI has no knowledge of any such research having been carried out.

Social services and healthcare

49. In its third report, ECRI recommended that the Spanish authorities keep the provisions of the Aliens Law under close review, particularly to ensure that they do not restrict the right of non-citizens to access social services. ECRI also recommended 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 and take timely measures to address these manifestations.
50. Under Article 15 of Law 7/1985 on local government, all individuals living in Spain must be enrolled on the municipal register of the town or city where they habitually reside. The new Organic Law 2/2009 of 11 December 2009 on the Rights and Freedoms of Foreigners in Spain and their Social Integration allows a number of rights to be acquired by foreigners who are entered in the register, regardless of their legal status: the right to free healthcare, the right to basic primary social services and the right to urgent social aid.
51. ECRI has been informed of incidents which occurred in January 2010 in the towns of Vic in Catalonia and Torrejón de Ardoz, a Madrid suburb, clearly demonstrating hostility towards irregular immigrants originating from a perception that they benefit excessively from the provision of social services. Vic, which has an immigrant population of 26%, and Torrejón de Ardoz refused to register irregular immigrants in the municipal register.
52. ECRI notes that the national Government's reaction, as well as that of the Government of the autonomous community of Catalonia, was immediate and firm. It insisted that the action was illegal and promptly sent a memorandum to every town and city council in the country recalling their obligations under the new law. Nevertheless, the incidents are clear manifestations of racism and hostility towards irregular immigrants.

53. While ECRI welcomes the provisions on registration, which are a step forward in ensuring that at least the basic needs of irregular immigrants can be met, it has been made aware of an important obstacle. Registration in the population register requires the presentation of a valid passport, foreigner identity card or provisional asylum seeker document and evidence of place of residence. Many irregular immigrants do not have a valid passport or other accepted identity document and often cannot provide proof of residence. These people are unable to register even if they wished to do so and thus remain without access to basic social services or free healthcare, other than emergency treatment.
54. ECRI is pleased to note, on the other hand, that undocumented children under the age of 18 and undocumented pregnant women are entitled to access the Spanish national health system free of charge under the same conditions as nationals.
55. ECRI recommends that the Spanish authorities review the conditions for registration of immigrants whose status is irregular to ensure that those who do not possess the necessary documents are not automatically excluded.
56. ECRI recommends that the Spanish authorities ensure that nobody is illegally refused registration.

Education

57. In its third report, ECRI recommended that the Spanish authorities pursue and strengthen their efforts to teach Spanish as a second language to non-Spanish mother tongue children. It recommended that, in parallel, they expand their efforts to provide mother tongue education to non-Spanish mother tongue children.
58. Regarding teaching Spanish as a second language, ECRI has been informed that due to the massive increase in foreign pupils in the last years, this continues to be a major challenge. Nevertheless, ECRI is pleased to note that much effort has been made. Special reception or welcome classrooms have been established to promote an effective transition into regular schooling. Students remain in these classrooms temporarily and psychological, social, language and educational support is provided. This is followed by full linguistic immersion in the normal classroom. This appears to work well and children reportedly learn Spanish quickly.
59. Concerning mother tongue education to non-Spanish mother tongue children, the situation is less clear. Responsibility for education has been devolved to some of the autonomous communities. Thus, for example, in Catalonia supplementary programmes for teaching in Arabic, Bengali, Urdu, Chinese, Romanian and Amazigh (Berber) have been established. ECRI does not know if such programmes exist in other parts of the country.
60. ECRI also takes note of the creation of “official language schools” throughout the country where any person over the age of 16 can learn any one of 22 foreign languages as well as the six official languages of Spain free of charge. This initiative, which is established in the new Law on Education of 3 May 2006, appears to be unique in Europe and a note-worthy example of best practice.
61. In its third report, ECRI encouraged 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.

62. ECRI is pleased to note that the Law on Education takes up almost word for word this recommendation: “There will be an adequate, balanced distribution between the different schools of students who need specific educational support”. According to the law, the education administrations will regulate student admission to public and publicly-funded private schools in order to guarantee the right to education, equal conditions of access and freedom of choice for parents. When there are not sufficient places, the admission procedure will be governed by priority criteria, one of which is proximity to the home. In allocating pupils to schools in such cases, the law specifically states that there will be no discrimination for reasons of birth, race, gender, religion, opinions or any other personal or social condition or circumstance.
63. Despite these positive developments, it is clear that the law is not always effective in practice and leaves scope for manipulation. ECRI has received consistent reports of “ghetto” schools of immigrant or Roma children in certain parts of the country, and discriminatory practices in the admissions procedure, enabling publicly-funded private schools to pick and choose pupils.
64. In addition, the proximity criterion, which ECRI has been told is the most frequently applied in allocating pupils to schools, is contributing to the problem. As immigrants and Roma tend to live in communities, large numbers of pupils from these groups attend one particular school closest to their residence, while other schools in the same area receive fewer pupils and mostly Spanish nationals. Apart from the ethnic composition in the classrooms, with the accompanying needs for special educational support, class sizes can vary greatly from one school to another. All this has consequences on the quality of education received as well as the integration possibilities of the children concerned.
65. ECRI strongly recommends that the Spanish authorities review the way in which pupils are admitted to public and publicly-funded private schools and take other necessary measures to ensure an even distribution of Spanish, immigrant and Roma pupils in the various schools.
66. As regards Roma pupils, ECRI has been told that around 85% do not complete compulsory secondary education. This is part of a more general phenomenon of early school drop out which affects around 30% of all pupils. Many are attracted by working opportunities in unskilled sectors. To counter this, the Ministry of Education has agreed on 126 measures against early school leaving, in cooperation with the autonomous communities having competence in education matters. One programme involves an agreement with employers: wherever they employ a school drop-out aged 16, the Ministry will finance four hours per day from the eight hour working day to be spent in completing school studies in order to obtain the school-leaving certificate as well as half of the employee’s salary. ECRI commends this initiative which responds to the needs of young people while maximising their chances of future employment.
67. ECRI is concerned about illiteracy among Roma children, which particularly affects girls. Roma representatives have said that there is pressure from both parents and peers not to attend school. ECRI considers that more efforts are needed to enhance belief in the benefits of education.
68. Roma organisations have indicated that concrete assistance and material support to families, such as free school meals, materials and transport, could be used as incentives. ECRI believes that vocational training possibilities in school could also attract and benefit Roma pupils. For those who inevitably drop out, alternative ways of obtaining qualifications for employment should be provided.

69. ECRI strongly recommends that the authorities take steps to reduce significantly the secondary school drop-out rates of Roma pupils. This could be achieved, for example, through material incentives and a greater use of vocational options in school. ECRI also recommends that the authorities provide access to vocational training programmes for early school leavers and young people, with particular attention paid to training Roma girls and women.
70. Furthermore, the fact that the compulsory school curriculum does not address Roma history, culture, traditions, language or the contribution of the Roma people to the history of Spain does not help Roma children to feel valued in the education environment.
71. ECRI notes in this respect that the Institute for Roma Culture, sponsored by the Ministry of Education and the Ministry of Culture, provides training for teachers in Roma culture and rewards those who demonstrate the positive influence of the Roma in their work. It is regrettable that this positive initiative is not reflected in the compulsory curriculum of pupils.
72. ECRI strongly recommends that the positive contribution of the Roma people to Spanish history and culture should be a compulsory part of the curriculum for all pupils in Spain. The teacher training syllabus should also include this component.

Employment

73. In its third report, ECRI recommended that the Spanish authorities strengthen their efforts to combat discrimination and labour exploitation of immigrants. It recommended that the Spanish authorities ensure that the anti-discrimination legislation in force is used to counter racial discrimination in employment in all its manifestations.
74. The European Union Agency for Fundamental Rights, in its Annual Report 2010, notes that the area of employment continues to be identified as the area of social life where discrimination is reported the most in Spain. However, as discussed above, the anti-discrimination legislation in force is not well-known by the public nor by legal professionals. As a result it is rarely applied. ECRI hopes that the future law on equal treatment and non-discrimination (discussed above) will address employment questions and result in progress in the area of racial discrimination in employment.
75. The labour situation in Spain has been affected by the economic crisis. Unemployment is currently close to 20% of the population and 30% of the immigrant population. The higher rate of unemployment of immigrants has not been attributed to racial discrimination, but rather to the collapse of industries, in particular construction, where predominantly immigrants worked. Furthermore, despite the recession, immigrants continue to arrive in Spain and add to the unemployment figures.
76. ECRI has been informed that the group most affected by discrimination in the labour market is North African Muslims. One reason cited is the respect of the month of Ramadan which reduces working capacity.
77. Wage discrimination and other forms of labour exploitation appear to be widespread for immigrants in general. However, NGOs have told ECRI that trade unions play an important role in protecting immigrants and the situation is improving.
78. ECRI recommends that the authorities conduct research into wage discrimination in Spain in order to respond appropriately to this type of labour exploitation.

79. In its third report, ECRI recommended that the Spanish authorities keep the provisions of the Aliens Law under close review, particularly to ensure that they do not restrict the right of non-citizens to associate, strike or join a trade union.
80. ECRI notes that the Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration is, in part, the result of a Constitutional Court decision of 2007 recognising immigrants' right to associate, join trade unions and strike, regardless of their administrative situation. It also incorporates the EU Directives in this field.
81. As for Roma, this community has traditionally been self-employed. ECRI notes that the nation-wide ACCEDER programme, initiated in 2000 and currently in its second programming period from 2008-2013, has been very successful in encouraging Roma youth to access salaried employment as an alternative to self-employment or family business. It is a partnership between public administrations, the business sector and civil society. ECRI commends this important initiative which derives from the Roma community itself and demonstrates a will for self-improvement. It is also a good example of multi-sector partnership with Roma.

Housing

82. In its third report, ECRI recommended that the Spanish authorities take further steps to address racial discrimination in the private housing market. In particular, it recommended 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.
83. ECRI has received reports of discrimination targeting both the Roma community and immigrants in the field of housing. This, in combination with the high cost of private housing and the scarcity of social housing, has resulted in the continued existence of slums in certain parts of Spain. ECRI is pleased to note that the Spanish Plan for Housing and Rehabilitation includes the eradication of shanty towns and slum dwellings, inhabited mainly by Roma. According to data reported by the European Union Fundamental Rights Agency in its Case Study "Improving Roma housing and eliminating slums, Spain" (October 2009), 3.9% of Roma live in slums and caves. Several programmes to relocate families from slums into standard housing where rent is subsidised and significantly below market value are on-going around the country. Thanks to these programmes, certain cities such as Barcelona no longer have any slums. Roma generally now live alongside other citizens in standard housing.
84. ECRI encourages the Spanish authorities to pursue their objective of eradicating shanty towns and slum dwellings, to end completely and definitively such housing in Spain and to relocate the inhabitants to standard housing, thereby significantly improving the living conditions of vulnerable groups, especially Roma.
85. The European Union Agency for Fundamental Rights, in its Comparative Report on Housing Conditions of Roma and Travellers in the European Union (October 2009), states that a positive example of improving home ownership among Roma is to be found in Spain, which implements a housing policy promoting home-ownership through state subsidies in preference to the provision of rented social housing. It is estimated that around half of the Roma homeowners acquired their house through this policy.
86. A further development which ECRI notes with satisfaction is that recent legislation has been designed to encourage landlords to rent their properties to low-income tenants, particularly Roma and immigrants. An agreement is signed

between the landlord, the local authorities and the tenant. The rent is lower than market value but payment is guaranteed by the local authorities. ECRI has been told by the Spanish authorities that this initiative is working well and has resulted in more housing being put on the market. Landlords feel safe, tenants rarely default as the rent is low and the local authorities seldom need to intervene to cover arrears.

87. ECRI is concerned that the new Law of 2009 on the Rights and Freedoms of Foreigners in Spain and their Social Integration has opened a possibility for the responsible autonomous communities to introduce discriminatory limitations on access to housing aid. The law states that “long-term” foreign residents, meaning those who have been legally resident for five years, are entitled to this aid under the same conditions as Spaniards. This is a step backwards from the previous law which granted access to all legal residents.
88. ECRI recommends that access to housing aid is guaranteed for all legal residents who otherwise qualify for it.

Access to services and goods

89. In its third report, ECRI recommended 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 respect it in their work.
90. It has been reported to ECRI that sometimes immigrants, particularly North Africans, and Roma experience discrimination when trying to gain access to goods and services offered in the private sector. However, NGOs have stated that progress has been achieved in this field with the increase in purchasing power of this group of the population. ECRI encourages the authorities to raise awareness of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin, which can provide assistance and legal advice to victims of discrimination (see also the recommendation in § 35).

IV. Climate of Opinion and Public Discourse

Climate of opinion and political discourse

91. In its third report, ECRI encouraged the Spanish authorities to pursue their efforts to promote a more balanced political debate around immigration and immigrants. In particular, ECRI recommended 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.
92. Spain has traditionally been a country of emigration but in recent years it has transformed into a major destination of immigration. The decade-long economic boom saw Spain’s immigrant population rise from 2% to 12%. Immigrants were big contributors to Spain’s economic success and many reports suggest that Spain prided itself on being immigrant-friendly. However, recession has put a stop to the surge of immigrants reaching Spain. Unemployment has just gone over four million and is almost at 20% of the population (30% of the immigrant population). Opinion polls demonstrate that many Spaniards consider immigration as a problem and that the Government is not managing this phenomenon well. Many also believe that immigrants take away jobs and increase crime. As observed in the section below on racist violence, this has led to occasional outbursts of social unrest.
93. ECRI has been informed that there is only one openly xenophobic party in Spain, the Platform for Catalonia. It has seats at municipal council level. Other

than this small party no extremist political party exists legally in Spain. However, ECRI has been informed that the local party leader of the Popular Party has been promoting hate speech in Badalona, a city near Barcelona, for several years, accusing Romanian and Roma immigrants of being the cause of criminality in the city. Furthermore, it is worth mentioning that the European Court of Human Rights, in its judgment of 30 June 2009, rejected an application against Spain's decision to dissolve the Herri Batasuna and Batasuna political parties due to their links with the terrorist organisation ETA.

94. Racism is condemned in public discourse and policies reflect a welcoming attitude to immigrants in a legal situation. However, growing concerns about irregular immigration as a threat to society have been expressed, and the decreasing tolerance is reflected in increased police controls and expulsions, which are discussed in other parts of this report.
95. ECRI has been informed that while racism is publicly condemned, it is privately tolerated. Civil society organisations have expressed concern about the "invisibility" of racism and racial discrimination in Spain, as well as a passivity and lack of will to acknowledge and deal with the problem at lower levels of Government. The fact that there is no data available related to racism or racial discrimination contributes to the impression that racism does not exist (see recommendation in § 27 and interim follow-up recommendations).

Media, including the Internet, and publications

96. In its third report, ECRI encouraged 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 recommended 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.
97. ECRI notes that the Human Rights Plan includes an objective to raise awareness of and to promote human rights by fostering collaboration with public and private media. The Spanish Observatory for Racism and Xenophobia has drawn up, in cooperation with media professionals, a practical guide for those working in the media, promoting understanding of the phenomenon of immigration and setting out recommendations for professionals, media companies, and training centres.
98. ECRI has been informed that several codes of conduct for the public media exist but are seldom respected in practice. No code of ethics appears to exist for the private media. Media associations have reported that the university curriculum for journalists does not cover the codes of conduct.
99. ECRI recommends that the authorities promote the establishment of regulatory mechanisms for all media, compatible with the principle of media independence, making it possible to enforce compliance with ethical standards and rules of conduct, including rules against intolerance. ECRI further recommends that the curriculum for training journalists should include a study of the codes of conduct as well as issues related to racism and xenophobia.
100. In its third report, ECRI recommended that the Spanish authorities strengthen their efforts to counter the dissemination of racist, xenophobic and antisemitic propaganda through the Internet. ECRI notes that, according to NGOs and other organisations, racism on the Internet is increasing alarmingly in Spain. Currently there are reported to be more than 200 websites, blogs and forums set up by neo-Nazi groups. Public officials have told ECRI that there is a

general acceptance in Spain of freedom of expression with no limits. The other main problem reported is the practical difficulty of investigating Internet crimes across borders, identifying the “owner” of the site and proving liability. The response of the authorities has initially been slow, and convictions extremely rare, but, as noted in the criminal law section, the situation appears to be changing.

101. ECRI notes with approval Spain’s investment of resources into the fight against this form of crime by the appointment of a special prosecutor for cybercrime in every prosecution office in the country. In addition, ECRI has been informed of plans to establish special police services to monitor Internet sites and, in cooperation with the prosecution office, shut down ones disseminating illegal content. As already observed, ratifying the Additional Protocol to the Convention on Cybercrime would enhance the potential for international cooperation in this field.

Sport

102. In its third report, ECRI encouraged the Spanish authorities in their efforts to prevent and punish manifestations of racism and xenophobia in football and urged them to provide a firm and unambiguous response to all such manifestations and to impress on all the relevant actors in the world of football the need actively to counter all such manifestations.
103. ECRI notes with approval that Spain has developed a global policy against racism in the field of sport, from a legal and institutional point of view. In July 2007, Law 19/2007 against Violence, Racism, Xenophobia and Intolerance in Sport was adopted. It specifically declares in its preamble that Directive 2000/43 on equal treatment of persons irrespective of racial or ethnic origin must be applied to the field of sport. The law establishes specific offences and sanctions, including closures, suspension and demotion in divisional standings, against teams and stadiums for prohibited actions perpetrated by professional athletic clubs, players or fans. The Spanish authorities have assured ECRI that its General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport was taken into account in drafting the law.
104. Regarding institutional initiatives, ECRI notes two important developments. Firstly, the Observatory on Violence, Racism, Xenophobia and Intolerance in Sport, which was initially set up in 2004, has been given a new impetus following the adoption of the 2007 law, with new regulations concerning its members and competences. It functions under the Superior Council for Sport, the main public body responsible for sport at national level which has recently been placed under the Presidency of the Government, thus raising its profile. The Observatory’s tasks include studying, analysing, submitting and monitoring proposals towards preventing violence, racism and xenophobia in sport.
105. Secondly, ECRI notes the creation in 2008 of the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport. Among its members are State representatives, local entities, members of the press association, referee associations and non-governmental organisations. Its mission is to define and develop active policies against violence, racism and intolerance in sport. It proposes sanctions, which include fines and bans, against federations, clubs or spectators for infringements of the law. The competent administrative body in the region concerned then decides the punishment. A large number of fines have been levied, mostly against individual spectators for inciting or involvement in altercations, but also against clubs. For example, a fine of 6,000 Euros and a ban from any sports stadium for a period of 12 months was imposed on a spectator who, in the game Club Atletico de Madrid - Real Madrid, shouted racist insults against several players. Vallecano football club was

punished for issuing 53 invitations to an ultra-right group to attend a football match.

106. ECRI notes that the disciplinary functions of the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport are limited to professional competitions in football and basketball. Although the vast majority of racist incidents occur in football, ECRI has received reports of racism in other sports, for instance Formula One motor racing. ECRI considers that the disciplinary functions of the State Commission should extend to professional competitions in all sports.
107. ECRI recommends that the disciplinary functions of the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport should extend to professional competitions in all sports.
108. As for codes of conduct in sport, ECRI is also pleased to note that the Royal Spanish Football Federation has several articles on racism and xenophobia in its disciplinary code. ECRI encourages similar self-regulatory measures by other football federations, clubs and fans' associations. In particular, ECRI encourages codes of conduct addressing the question of the racist conduct of fans.
109. ECRI recommends that the authorities encourage football federations, clubs and fans' associations to develop self-regulatory measures against racism and xenophobia. Codes of conduct should address in particular the question of racist conduct of fans.
110. Since the introduction of the measures described above, the authorities have noted a decrease in incidents of aggression towards referees, invasion of the playing fields by fans and throwing of firecrackers. ECRI considers that the steps taken deserve praise and encourages the authorities to undertake a regular evaluation of the effectiveness of the new policies and institutions against violence, racism, xenophobia and intolerance in sport.

V. Racist Violence

111. Since ECRI's third report there have been few reports of serious racist violence. NGOs estimate that around 4000 incidents of racist violence take place each year. As already observed, the absence of official data on racist violence and crime makes it difficult to determine the extent of the problem. Reports have highlighted that victims rarely complain to the authorities, indicating either a lack of confidence in the complaints system or a lack of awareness of its existence.
112. In its third report, ECRI urged the Spanish authorities to monitor closely the situation of immigrants working in the agricultural industry in the El Ejido area. It strongly recommended 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 called on the Spanish authorities to bring to justice and punish all those responsible for acts of racist and xenophobic violence against immigrants.
113. According to NGOs and other sources, most of the agreed short-term measures have been implemented, including those related to compensation and rehabilitation. As for the medium and long-term measures, ECRI has received conflicting reports, some stating that no further developments have taken place, others saying that the situation has improved. The Spanish authorities highlighted a number of steps taken to improve the lot of immigrants in the area in their observations concerning ECRI's second report on Spain. No indication

was given as to whether those responsible for the acts of racist violence against the immigrants were brought to justice.

114. ECRI has heard about incidents having similar root causes taking place since its third report. For example, local residents in the Catalonian town of Salt recently held protests against immigrants whom they blamed for high unemployment and crime. Confrontations between the two groups were reported. These did not reach the scale of the El Ejido events, but ECRI encourages the authorities to remain vigilant and ensure that such incidents do not flare up into full riots. Attention should be paid to dealing appropriately with the problems caused by unemployment and homelessness faced by seasonal migrant workers in Southern Spain.
115. In its third report, ECRI recommended that the Spanish authorities promptly address any manifestations of violence directed against minority groups collectively. It reiterated 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.
116. The Spanish authorities have informed ECRI that they have taken note of this recommendation and are ready to ensure the appropriate response. ECRI notes that in general physical violence against the Roma is rare. Isolated incidents of violence in neighbourhood conflicts between Roma and non-Roma occasionally occur.
117. In its third report, ECRI urged the Spanish authorities to strengthen their efforts to counter racist organisations, including neo-Nazi and skinhead groups promoting violence. ECRI is very concerned at reports of Spain having the largest number of neo-Nazi movements in Europe. As already discussed, successful prosecutions have been brought against several illegal groups promoting racist violence. ECRI encourages the authorities to continue their action against other organisations disseminating racist and xenophobic propaganda.
118. It has also come to ECRI's attention that a number of violent youth gangs from specific ethnic backgrounds have recently emerged in Spain. The most well-known and feared group is the "Latin Kings", whose members are Ecuadorians, but there are similar gangs of other immigrant youth. They have mafia-type structures and engage mostly in organised street crime. Although there appears to be no specific racist or xenophobic aim in their activities, ECRI is nevertheless concerned about reports of growing tensions between the different gangs themselves with a potential for serious inter-ethnic conflict. Some NGOs have pointed to a lack of coherent youth policy in Spain targeting immigrants and ethnic minorities, resulting in a marginalisation of this section of the community. ECRI encourages the Spanish authorities not to neglect this issue.
119. ECRI recommends that the Spanish authorities closely monitor the rise in neo-Nazi movements and violent youth gangs and take steps to ensure that criminal proceedings are initiated where appropriate.
120. In its third report, ECRI encouraged 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 to prevent racist violence. As mentioned in the criminal law section (see § 14), the Barcelona special prosecutor on hate crimes and discrimination will closely monitor public events having a hate component, including hate music concerts. ECRI has issued a recommendation on the evaluation of the effectiveness of the service with a view to appointing further special prosecutors for hate crimes and discrimination in other parts of Spain (see § 15).

VI. Vulnerable/Target Groups

Roma

121. In its third report, ECRI made a number of recommendations concerning the Roma: (i) pursuing and strengthening 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; (ii) tackling the situation of the Roma in a multi-dimensional way and, in particular, alongside measures aimed at equipping members of Roma communities with the skills to participate as equals in society, including also measures aimed at the majority population in order to combat discrimination; (iii) ensuring adequate funding for the implementation of any new strategy; (iv) drawing the attention of the Spanish authorities to General Policy Recommendation No. 3¹⁰, 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; (v) taking further steps to improve the situation of Roma communities in education, employment, housing and health; (vi) promptly reacting to any manifestations of violence against members of Roma communities; (vii) considering, 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.
122. Many of the above issues have been addressed in other parts of this report and ECRI has issued a number of recommendations.
123. ECRI is pleased to note that by all accounts Spain has addressed the social exclusion of its Roma population in a largely successful manner. Roma organisations have reported to ECRI that the situation of the Roma is infinitely better than it was even ten years ago. There is a general recognition among the Roma that they are a protected group. They are aware that the authorities have made important efforts to take their needs into account and invested significant sums in various forms of assistance.
124. ECRI recalls that the Plan for Roma Development has been operational since 1985. Another Plan will function from 2010 to 2012 targeting social inclusion, non-discrimination and equal treatment. The Spanish authorities have informed ECRI that the annual budget for the Plan for Roma Development is now around 6,5 million Euros, which is double the budget funds reported in ECRI's third report.
125. Among other positive developments, ECRI notes with satisfaction the establishment in July 2005 of the National Roma Council. The Council, which operates under the Ministry of Health and Social Policy, is made up of 40 members: half are Government representatives from different ministries, and the other half represent Roma NGOs. Its aim is to consult and advise the Government on general policies that affect Roma and on specific policies aimed at promoting effective equality and non-discrimination of Roma. The Council has set up five working groups: employment and social action, education, culture, health and housing. It will also participate in the development of the new Plan for Roma Development, mentioned above. The Roma have reported that the Council is politically important for them as it represents an opportunity for communication between Roma, Roma organisations and the public authorities and it guarantees the involvement of Roma in the preparation and implementation of policies that will affect them.

¹⁰ CRI (98) 29: ECRI General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies, European Commission against Racism and Intolerance, Council of Europe, March 1998.

126. Yet, despite these advances, the Roma continue to suffer from discrimination, poverty and social exclusion. This particularly affects the recently arrived Roma from Eastern Europe who suffer double discrimination on account of being both immigrants and Roma. According to most accounts, including the Roma, responsibility for this is shared by the Roma themselves and by the authorities. As already observed, many Roma remain skeptical about the benefits of education. As a result, there continue to be few Roma in leading positions and a lack of Roma role models with strong educational and professional backgrounds. As for the authorities, while it is clear that they have done much *for* the Roma, they appear reluctant to allow much to be done *by* the Roma. There has been criticism, for example, that Roma participation in the National Roma Council is only of an advisory nature, without official decision-making power or control over budgets.
127. ECRI encourages the authorities to continue improving the Plan for Roma Development and the National Roma Council, giving Roma the opportunity to hold leading positions with decision-making powers.
128. Regarding the call to consider the establishment of a comprehensive legal and policy framework for the promotion of the culture, traditions and language of the Roma population, ECRI notes that the Foundation Institute of Roma Culture, attached to the Ministry of Culture, was created in 2007 with the aim of promoting Roma culture and identity through research and publications.

North African Muslims

129. In its third report, ECRI recommended that the Spanish authorities take steps to counter manifestations of prejudice, discrimination and violence directed against members of Muslim communities. It recommended in particular that the Spanish authorities take all opportunities to challenge associations between these communities and terrorism in public debate. To these ends, ECRI drew the attention of the Spanish authorities to its General Policy Recommendations No. 5 on combating intolerance and discrimination against Muslims¹¹ and No. 8 on combating racism while fighting terrorism.¹²
130. Regarding the link between Muslim communities and terrorism, ECRI commends the Spanish authorities' handling of the situation following the 2004 terrorist attacks in Madrid and the subsequent trial of the perpetrators in 2007. ECRI is pleased to note that no rise in Islamophobia was detected during either of these periods.
131. Certain difficulties for Muslims have been brought to ECRI's attention, however, notably concerning the building of mosques and burial sites. There has reportedly been some improvement in recent years, but the persisting problem indicates that there is prejudice and discrimination against Muslims. There are currently only 12 Muslim cemeteries and approximately 700 mosques in Spain, for a Muslim population estimated at 1.4 million. ECRI has received consistent reports of obstacles in obtaining permission to build new mosques, particularly in urban areas where they are most needed. This has led to the phenomenon of "garage" mosques, whereby large numbers of Muslims, having no place of worship to attend, gather to pray in a private garage. Local residents are reportedly uncomfortable about the disturbance and there have been claims that illegal activities may be taking place in the garages.

¹¹ CRI (2000) 21: ECRI General Policy Recommendation No. 5: Combating intolerance and discrimination against Muslims, European Commission against Racism and Intolerance, Council of Europe, April 2000.

¹² CRI (2004) 26: ECRI General Policy Recommendation No. 8: Combating racism while fighting terrorism, European Commission against Racism and Intolerance, Council of Europe, March 2004.

132. ECRI stresses the importance of respecting the right to manifest one's religion, as guaranteed under Article 9 of the European Convention on Human Rights. In view of Spain's large and growing Muslim population and relatively small number of mosques, it is unreasonable that requests to build new mosques are frequently refused. ECRI considers that the authorities should find ways to overcome this problem in cooperation with Muslim representatives.
133. ECRI recommends that the Spanish authorities ensure that the right to worship together with others, in accordance with Article 9 of the European Convention on Human Rights, is respected in practice by granting Muslim communities' requests to build an adequate number of mosques.
134. In its third report, ECRI encouraged 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 enjoyed in practice.
135. Concerning religious instruction, ECRI notes a situation that amounts to discrimination. Every public school in the country is required to teach Roman Catholicism, although attendance by pupils is optional. Regarding non-Catholics, where there is a demand of at least ten pupils, a class in their creed or an alternative in ethics must also be offered. ECRI has been informed that there remains an unmet demand for around 400 teachers of Islam. Currently only 46 teachers of this religion are employed in Spain.
136. The Islamic Commission has stated that there is no lack of teachers of Islam and that it regularly presents lists of candidates to the Ministry of Education. The Ministry has informed ECRI that it is obliged to reject the majority of these because they do not have university degrees, which are required by all teachers in Spain. ECRI understands the dilemma, but regrets that religious education in schools quite often remains a theoretical possibility for a large number of Muslim pupils. ECRI encourages the authorities to engage Muslim communities in contributing to a solution.
137. ECRI recommends again that the Spanish authorities take steps to ensure that the right granted by Spanish law to Muslim pupils to receive religious instruction based on Islam in public schools is enjoyed in practice.
138. It appears that the situation differs from one autonomous community to another. Where the State retains competence for education, more teachers of Islam are recruited, while in the autonomous communities having responsibility for education there are usually none at all. Thus, for example, in Andalusia, where education is under the authority of the State, there are 16 teachers of Islam. In Catalonia, which has the highest concentration of Muslim pupils in Spain, there is not a single teacher of Islam. ECRI believes that this situation could be avoided if competence for all matters concerning religious instruction in schools remained at State level.
139. ECRI recommends that measures be taken to ensure uniformity in all matters concerning religious instruction in schools.

Jews

140. In its third report, ECRI recommended that the Spanish authorities monitor the situation as concerns manifestations of antisemitism and react promptly wherever necessary. It drew the attention of the Spanish authorities to its General Policy Recommendation No. 9 on the fight against antisemitism¹³,

¹³ CRI (2004) 37: ECRI General Policy Recommendation No. 9 on the fight against antisemitism, European Commission against Racism and Intolerance, Council of Europe, June 2004.

which contains practical guidance on measures Governments can take to this end.

141. ECRI has been informed that there continue to be incidents of antisemitism against persons and property. For example, the Israeli Ambassador was verbally abused in Madrid in 2009 when he returned home from a football match. Several synagogues in Barcelona have been subject to arson attacks. Such incidents are nevertheless rare.
142. Most manifestations of antisemitism are to be found in the press, including in the mainstream media. As Spain is a country with a small Jewish presence (about 40,000 people) and little public visibility, it is Israel, as the Jewish State, that shapes most of the opinions and attitudes about Jews in Spain. Cartoons demonising Jews or equating Jews and Israelis with Nazis are frequent. Moreover, Jews also reported that the popular view of Jews having too much power was a misplaced stereotype, since Spain does not have a powerful Jewish community and no particular influence in the political or financial arena. These types of prejudice contribute to the feelings of vulnerability of Jews in Spain.
143. ECRI notes that the Federation of Jewish Communities of Spain has recently established an observatory on antisemitism which gathers data on acts of antisemitism against persons and property and monitors antisemitism in the media.
144. The Jewish community has expressed concern over the removal of Holocaust denial as a criminal offence, as discussed above. This has led to an increase in renowned Holocaust deniers coming to Spain and giving talks and interviews with the media, including mainstream media. Jews fear that Spain is becoming a safe haven for the expression of antisemitism. ECRI has already recommended the re-introduction of Holocaust denial as a criminal offence (see § 18).
145. ECRI notes a number of positive developments regarding Jews since its third report. Firstly, Casa Sefarad-Israel, a Government institution of the Foreign Ministry and the community of Madrid, was established in February 2007 to help further knowledge and appreciation of Jewish culture in Spain. It has also become the central organisation for promoting education on the Holocaust and its commemoration in Spain and for developing teaching materials.
146. Secondly, ECRI notes with satisfaction that the Holocaust is now part of the compulsory curriculum in schools. Some representatives of the Jewish community felt that extending teaching of the Holocaust to cover also the history, culture and positive contribution of Jews in Spain could play an important role in eliminating antisemitism. ECRI draws the attention of the authorities to this aspect which is highlighted in its General Policy Recommendation No. 9 on the fight against antisemitism.
147. ECRI recommends an extension of the compulsory teaching of the Holocaust to cover also the history, culture and positive contribution of Jews in Spain.

Non-citizens

- Integration

148. The situation regarding the integration of non-citizens has evolved since ECRI's third report. The legal immigrant population has grown to around 4.5 million persons. As observed in the section on climate of opinion, the general attitude of the authorities towards legal immigrants is welcoming, with a focus on social

inclusion and integration. At the same time, the Government has declared a strong fight against illegal immigration.

149. ECRI notes with approval that a Strategic Plan for Citizenship and Integration has been drawn up, running from 2007 to 2010. Its aim is to engage immigrants and the Spanish population in a two-way mutual adaptation process by fostering social, economic, cultural and institutional development. It is based on the principles of equality and non-discrimination, citizenship and interculturality. The plan contains 12 areas of action, amongst which, education, employment, housing, social services, and health, to be implemented at State, regional and local levels. Also noteworthy is the creation of the Support Fund for Immigrant Reception and Integration, which also provides for educational assistance. This has involved a significant mobilisation of resources through cooperation between the national Government and the autonomous communities.
 150. As already observed, the new Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration provides access to social aid and healthcare for registered foreigners, regardless of their legal status. ECRI welcomes this measure taken by the Spanish authorities to include all non-citizens in the provision of basic needs.
 151. ECRI has been informed by the authorities that “welcoming offices” in municipalities around the country have been created to provide information to registered immigrants, whether regular or irregular, about the services available. These vary from place to place but generally include legal advice, counseling, assistance with housing and social integration programmes, such as language courses.
 152. In general, responsibility for immigration lies with the State. Some executive powers have been devolved to two autonomous communities, Catalonia and Andalusia, but it is not foreseen that the autonomous communities assume jurisdiction over the processing and issue of residence permits, which is under the exclusive authority of the State. Catalonia is the only autonomous community which has jurisdiction over the granting of work permits. ECRI notes that Catalonia has begun to implement an integration plan based on personal attention to each immigrant and including courses in Catalan language, introduction to the labour market, and rights and duties. ECRI commends these positive developments aimed at the integration of non-citizens.
- *Administrative procedures concerning status, residence and work permits*
153. In its third report, ECRI encouraged 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 encouraged 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. In addition, ECRI encouraged the Spanish authorities to pursue their efforts to improve the processing of non-citizens’ applications for residence and work permits.
 154. The “normalisation” procedure of 2005 allowed approximately 560,000 people who were working and residing illegally in Spain to legalise their situation by registering at the town or city council and providing proof of their employment contract. This procedure has not been repeated nor are there plans to do so. In order to work legally in Spain non-citizens must apply for a work visa through the Spanish embassy in their country and have a valid job offer or employment contract from an employer in Spain. Except in cases of family reunification or where a person has independent means, a residence permit is only granted in conjunction with a work permit.

155. ECRI notes that the 2009 Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration allows migrants in an irregular situation who have been living in Spain for three years and who have a job to apply for residence. This measure was introduced to address the situation of those who may have arrived legally in Spain, but who lost their jobs, remained in the country and whose status became irregular. They may subsequently find jobs again but their administrative status remains irregular. It has been reported that there are substantial numbers of people who have drifted from legality to illegality in this way. ECRI approves of the steps taken by the authorities to deal with this problem, which indicate a welcoming attitude towards non-citizens.
 156. Foreigners in Spain may obtain Spanish nationality “due to residency”. The length of residence required varies depending on a person’s original nationality. For example, Latin Americans, Philipinos, Equatorial Guineans or Sephardic Jews require two years of legal residence in Spain to obtain Spanish nationality. For most others a period of legal residence of ten years is required. Because many immigrants shift between periods of legality and illegality, as mentioned above, it has been estimated that the average time needed for non-citizens to acquire Spanish citizenship is 15 years.
 157. ECRI understands that the above nationality rules are based on the special ties certain countries have with Spain. However, ECRI finds the requirement for some immigrants of ten years legal residence in Spain to be excessive. Although this is in line with the European Convention on Nationality (to which Spain is not a party), which stipulates that the period of residence required of an applicant by a State should not exceed ten years, ECRI notes that most countries in Europe require between five and ten years of residence. Both public officials and civil society organisations have indicated that five years would be a reasonable requirement.
 158. ECRI recalls that granting citizenship is a way of furthering the integration of non-citizens. Reducing the number of years of legal residence required to acquire Spanish nationality would permit more immigrants to participate in the political life of the community, discussed below. It would also indirectly stimulate a better representation of members of ethnic minority groups in the public sector, notably the police, since public service employment requires Spanish nationality. ECRI, therefore, invites the Spanish authorities to consider revising the current nationality rules.
- *Non-citizens in the electoral process*
159. ECRI notes that “Measure 44” of the Human Rights Plan, stating that “the Elections Act will give non-European Community alien residents the right to vote in municipal elections”, has not yet been implemented. Currently, other than through reciprocity agreements with some countries (Chile, Colombia, Ecuador, Norway, New Zealand, Paraguay and Peru), non-citizens cannot vote. These agreements do not confer the right to stand for election.
 160. ECRI invites the Spanish authorities to be mindful that many Spanish towns have high proportions of foreign residents who participate actively in the life and prosperity of the local community and should be able to contribute to the local decision-making process on matters which affect them. Civil society organisations have called for greater flexibility in this area to improve the political integration of non-citizens at local level. As observed already, the European Convention on the Participation of Foreigners in Public Life at Local Level provides guidance on this matter.

161. ECRI recommends that the authorities pursue their stated goal of enabling non-citizens to vote in local elections, and consider also extending this to standing for local elections.

- *Detention of non-citizens in an illegal situation*

162. In its third report, ECRI recommended that the Spanish authorities ensure that persons detained in internment centres, notably in the Canary Islands, enjoy adequate living conditions. It strongly recommended that the Spanish authorities take steps to improve access of persons held in internment centres to legal information and assistance. ECRI urged 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.

163. Internment centres, which are the responsibility of the Ministry of Interior and guarded by the police, are places of administrative detention for the purpose of expulsion. ECRI notes that the new Law on the Rights and Freedoms of Foreigners and their Social Integration has increased the maximum length of detention in internment centres for irregular immigrants from 40 to 60 days. After 60 days a person must be either expelled or released pending expulsion. Many civil society organisations have criticised this measure, even though it is well below the maximum limit of 18 months established by the EU Directive on common standards and procedures in Member States for returning illegally staying third-country nationals.

164. The Spanish authorities have informed ECRI that foreigners in internment centres in Spain (in the Canary Islands or in any other region) are allowed to be in contact with their families and with the Consulates of their countries, and that they have the right to legal aid with interpretation. Positive developments in the Canary Islands and in Malaga include measures to allow lawyers from NGOs or *pro-bono* lawyers access to provide legal orientation and assistance to potential asylum-seekers.

165. ECRI notes the distribution of leaflets in four languages (Spanish, English, French and Arabic) providing information about the possibility of seeking asylum to all new arrivals at internment centres. ECRI encourages the use of other languages as well, in particular African languages. ECRI also encourages the simplification of the leaflets to facilitate understanding.

166. ECRI recommends that the Spanish authorities pursue their efforts to provide information about the asylum procedure to all new arrivals in internment centres by distributing leaflets in additional languages, particularly African ones. It also recommends that these leaflets are simplified to facilitate understanding.

167. As for living conditions, ECRI has received conflicting reports. Some indicate that these have improved and are generally acceptable, although certain internment centres are reportedly former prisons or military buildings which are old and not well equipped for the purpose. Other reports describe shortcomings related to medical care, living conditions, visits and information. Consistent reports of difficulties with access to lawyers and the assistance of NGOs have been reported. The rules on this appear to vary from one internment centre to another. ECRI also notes a serious lack of social workers in internment centres. ECRI stresses the key role of social workers in the psychological support they provide as well as practical help with understanding and accessing the asylum procedure.

168. ECRI recommends that the Spanish authorities pursue their efforts to improve access to lawyers and to the assistance of NGOs in internment centres. It also recommends the assignment of more social workers to internment centres.

- *Unaccompanied minors*

169. In its third report, ECRI strongly recommended 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 urged 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 recommended that the Spanish authorities take steps to improve the access of unaccompanied minors to residence permits. ECRI also recommended 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.

170. ECRI notes that in recent years there have been extremely few repatriations of minors (11 in 2008; 10 in 2009). The Spanish authorities have informed ECRI that the Asylum Law of 2009 requires the investigation of the family situation of the minor before any repatriation is carried out. A report from the tutor of the minor is requested as well as a report from the services for the protection of minors and the Public Prosecutor. The State Administration then decides on the return of the minor to his or her country of origin.

171. Once repatriation proceedings have been instigated, the law provides for legal representation only in certain cases. According to one organisation, a fundamental flaw in Spain's repatriation of unaccompanied migrant and refugee children is the Government's failure to provide all such children with independent legal representation during repatriation procedures.

172. Other organisations have expressed concern that repatriation agreements with some countries do not always respect international law and children's rights. Such agreements can be signed by central Government or by the regional Governments. The Catalanian Regional Government, for example, has agreed with the Moroccan authorities a programme for the assisted return of minors.

173. ECRI urges the Spanish authorities to ensure that all unaccompanied children who face repatriation are afforded independent legal representation, and that international law and children's rights are respected in all cases.

174. Furthermore, ECRI is concerned that there is no obligation to inform unaccompanied minors about their right to seek asylum.

175. ECRI recommends that the Spanish authorities take steps to ensure that unaccompanied minors are always informed about their right to seek asylum.

176. ECRI has been informed that responsibility for the care and guardianship of unaccompanied minors lies with the autonomous communities. The General Prosecutor is responsible for guaranteeing their protection and determining their age, even in cases where the unaccompanied minor is in possession of identifying documents. There appears to be no reliable test available but the most common method of age assessment in use is bone measurement. The results are interpreted by the General Prosecutor who has exclusive authority in this domain. ECRI has been informed that this method dates back to the 1950s when children were generally smaller than today's children and does not take ethnic or cultural considerations into account. The test can result in minors being classified as adults and thereby denied the protection measures available to minors.

177. ECRI recommends that the Spanish authorities revise and update the age determination methods to ensure that genuine minors are not classified and treated as adults.

178. Concerning allegations of ill-treatment of unaccompanied minors, according to the Spanish authorities the situation has improved since ECRI's third report, in particular regarding the conditions at the Canary Islands reception centre. ECRI has been informed that four emergency centres in the Canary Islands have been closed since January 2010 and another three are scheduled for closure before the end of the year.

179. ECRI notes that there is a serious lack of centralised statistical data relating to unaccompanied minors in Spain and recommends that the authorities address this issue.

180. ECRI recommends that the Spanish authorities improve their data collection mechanisms in relation to unaccompanied minors.

- *Refugees and asylum seekers*

181. In its third report, ECRI made a number of recommendations to the Spanish authorities regarding refugees and asylum seekers: (i) to ensure that the right of individuals to seek asylum is respected in practice; (ii) to provide border control officials and law enforcement officers, especially in Ceuta, Melilla and the Canary Islands, with thorough training in asylum and refugee issues; (iii) to ensure that adequate legal information and assistance are available to asylum seekers; (iv) to ensure that all persons entitled to refugee status or humanitarian protection actually secure this status; (v) to improve the quality of the interviews and legal assistance, notably in the admission phase of the asylum procedure; (vi) to avoid legislation on carrier companies resulting 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.

182. ECRI notes that, by all accounts, there have been substantial improvements in the asylum procedure in general. Efforts have been made to ensure that the right to seek asylum is respected in practice. For example, ECRI has been informed that the UNHCR has been granted the possibility of giving its opinion on all asylum applications. Although the opinions are non-binding, the role of the UNHCR has become part of the established asylum procedure in Spain. ECRI commends this measure, which guarantees to some extent that those entitled to refugee status or other protection actually secure this status.

183. In November 2009, a new Asylum and Subsidiary Protection Law entered into force, aiming to transpose the EU Directives related to asylum. On the positive side, ECRI notes that the law ensures a standard of treatment to beneficiaries of subsidiary protection and provides protection of their basic rights almost at the same level as for individuals granted refugee status.

184. However, ECRI draws the attention of the authorities to two elements of the law which raise concerns. Firstly, the new legislation limits the right to request and enjoy international protection to non-EU nationals and stateless persons, specifically excluding EU citizens. It interprets, to this effect, in a particularly restrictive manner Protocol (No. 24) to the Lisbon Treaty on asylum for nationals of member states of the European Union (1997). ECRI acknowledges that it is rare for EU citizens to seek asylum but there are situations which could qualify a person for protection under the 1951 Geneva Convention. Therefore, ECRI considers the provisions of the new law to be discriminatory and encourages the authorities to amend them.

185. ECRI recommends that the Asylum and Subsidiary Protection Law is amended to remove the restriction on the right to request and enjoy international protection to non-EU nationals and stateless persons.
186. Secondly, it has been reported to ECRI that the new law attempts to speed up the asylum procedure, with a resulting reduction in quality. In particular, concerns have been expressed about the poor handling of interviews in the admission phase of the asylum procedure. Only one interview is carried out by a police officer. No specific training is provided on how to conduct such an interview effectively.
187. ECRI stresses the importance of the quality of the asylum interview to ensure that sufficient information relevant to the claim is obtained. It considers that quality should not be compromised in favour of speed. The current practice is all the more inappropriate in view of the small number of asylum requests received by Spain (in 2009, according to data available from January to September, Spain studied 2314 asylum applications, compared with 2007, when Spain processed 7664 asylum applications).
188. ECRI recommends that training be provided for border guards and law enforcement officials on human rights and asylum matters. In particular, it recommends special training in conducting an asylum interview to ensure that all information relevant to the claim is obtained.
189. Those who are accepted in the asylum procedure are transferred from an internment centre to a reception centre. Reception centres are under the responsibility of the Ministry of Labour and Immigration. ECRI notes with approval consistent reports of the high standards of the Spanish reception system. Living conditions are good and include access to Spanish language classes, psychologists, leisure activities, vocational training and the services of an employment counselor. The maximum stay is six months, after which work permits are granted.
- *The situation of persons from sub-Saharan Africa trying to gain access to Spanish territory through Ceuta and Melilla*
190. In its third report, ECRI issued the following recommendations to the Spanish authorities in relation to the situation of persons from sub-Saharan Africa trying to gain access to Spanish territory through Ceuta and Melilla: (i) to investigate and address the situation of sub-Saharan immigrants and asylum seekers who try to gain access to Spanish territory through Ceuta and Melilla; (ii) to ensure that the right of individuals, and particularly persons from sub-Saharan Africa, to access the asylum procedure is respected in practice; (iii) to 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; (iv) 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*; (v) to ensure that no one is deported from Ceuta and Melilla outside the procedure established by law for deportations; (vi) to 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; (vii) to investigate thoroughly any allegations of ill-treatment by Spanish border control and law enforcement officials and to prosecute the perpetrators.
191. The situation as regards sub-Saharan Africans trying to enter Spain through Ceuta and Melilla who, as described in ECRI's third report, were exposed to life-threatening conditions, has changed. According to consistent reports, people no longer attempt to gain entry by scaling the fences surrounding the cities and the

problems previously cited are no longer an issue. Most people arriving in Ceuta and Melilla now come by land hidden inside vehicles.

192. ECRI has been informed that the reduced number of arrivals to Ceuta and Melilla, and low number of asylum seekers in general, is due mainly to a heavy investment in border control and bi-lateral return agreements with Morocco.
193. Those who manage to gain access to Spanish territory without the necessary documentation are arrested by police and placed in internment centres. ECRI is pleased to learn that conditions in the centres in Ceuta and Melilla were improved in 2005 and are reported to be adequate.
194. ECRI has received consistent reports that asylum seekers in Ceuta and Melilla have full access to the asylum procedure. No information concerning violations of Article 3 of the European Convention on Human Rights and the principle of *non refoulement* has been received by ECRI. The right to seek asylum is formally upheld in Spain. As already noted, leaflets in various languages are distributed to new arrivals explaining this possibility.
195. However, regarding training of border guards and law enforcement officials in Ceuta and Melilla, ECRI has received consistent reports that there have been no improvements. In particular, as mentioned above, no specific training is given on conducting an asylum interview. This and the procedural deficiencies mentioned above affect the quality of the asylum procedure and have consequences on the decision on admissibility to the asylum procedure.
196. If an asylum application is declared admissible, the asylum seeker is transferred to a reception centre on the Spanish mainland. If not, the refused applicant might remain in the cities of Ceuta or Melilla for several years pending expulsion.
197. In this connection, it has been brought to ECRI's attention that there is a small number of people (at the time of writing, around 40) from India and Bangladesh who have been in Ceuta and Melilla for two or three years. Their asylum claims have been rejected but it is not possible to return them. Their basic needs are met but they remain in limbo. ECRI is concerned about the prolonged situation of such people and encourages the authorities to find a solution for them.
198. ECRI encourages the authorities to find a solution for non-citizens who remain in Ceuta and Melilla once their asylum applications have been rejected but who cannot be expelled.
199. Finally, ECRI has received no information on ill-treatment by Spanish border control or law enforcement officials in Ceuta or Melilla.

VII. Conduct of Law-enforcement Officials

200. In its third report, ECRI recommended that the Spanish authorities conduct research into the extent of racial 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.
201. Regarding racial profiling, as stated in the second report, a 2001 Constitutional Court ruling declared identity controls based on appearance by the police to be constitutional. ECRI is concerned about consistent reports of large-scale unmotivated identity checks being carried out with increasing frequency in neighbourhoods with a high presence of foreign citizens. It has been brought to ECRI's attention that a police trade union made public a Government memorandum laying down orders to arrest a monthly quota of immigrants at a Madrid police station.

202. Furthermore, in July 2009 Spain was found to be in violation of Article 26 (right to equality before the law) of the International Covenant on Civil and Political Rights in the case of Ms Rosalind Williams Lecraft, who had been singled out for an identity check at a railway station solely on the grounds of her skin colour. ECRI has been informed by the Spanish authorities that an apology has been delivered in person and in writing to Ms Lecraft and that the decision of the United Nations Human Rights Committee has been sent to all bodies with jurisdictional functions or related to the courts of law in Spain. The Note Verbale of the Permanent Representation of Spain to the Human Rights Committee stated that the current legislation governing the State Police Forces and Corps and the draft bills on staff of the National Police Corps and the Civil Guard ensure the prohibition of using racial profiling in police work.
203. ECRI notes the contradictory legal positions relating to racial profiling. As stated in its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, such practices by the police reinforce prejudice and stereotypes against certain ethnic groups and legitimise racism and racial discrimination against them in the general population.
204. ECRI urges the Spanish authorities to ensure an effective prohibition of all racial profiling practices by the police throughout the country, taking into account ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which provides guidance on defining and prohibiting racial profiling.
205. In its third report, ECRI reiterated 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 recommended in particular that the Spanish authorities establish an independent commission to investigate all allegations of human rights violations by the police.
206. As regards control mechanisms, ECRI notes that there is still no independent commission to investigate allegations of human rights violations by the police. Complaints of police misconduct continue to be dealt with internally through the Ministry of Interior. This is true also for complaints against private security personnel. If necessary, action can be pursued through the courts. Despite the authorities' assurances, ECRI is not convinced that this system can work effectively. It refers in this connection to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.
207. ECRI strongly recommends the setting up of an independent mechanism for the examination of complaints against law enforcement officials, drawing inspiration from ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.
208. In its third report, ECRI encouraged 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.
209. ECRI has been informed about efforts in the Catalanian police to implement social diversification programmes for the recruitment of members of ethnic minorities, but these have had little success. According to public officials, there are two main barriers to ethnic minorities joining the police. First, as noted in ECRI's third report and mentioned in the section above on non-citizens, it is necessary to have Spanish nationality. Since ethnic minorities are still

predominantly non-citizens and obtaining Spanish citizenship can be a lengthy process, this situation is not likely to change quickly.

210. Second, there is a general mindset of both fear and disrespect towards the police which prevents members of ethnic minorities even considering a career in this service. In order to make progress in this field, the authorities need to promote a culture of respect for the police and by the police. Public officials interviewed by the ECRI delegation on this matter stated that more members of ethnic minorities in the police would be very beneficial. ECRI, therefore, invites the Spanish authorities to consider all ways to make this possible.
211. ECRI recommends again that the Spanish authorities intensify their efforts to recruit members of ethnic minority groups in the police.

VIII. Monitoring Racism and Racial Discrimination

212. In its third report, ECRI recommended 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.
213. ECRI has already noted in various sections of this report that no changes have been made since its third report concerning the collection of data. ECRI considers that the authorities should review their position and provide for the systematic collection of disaggregated data. ECRI has repeatedly stressed that the collection of such data need not present a threat for human rights if the principles of anonymity, informed consent and voluntary self-identification are respected.
214. ECRI recommends again that the authorities collect disaggregated ethnic data in accordance with the principles of anonymity, informed consent and voluntary self-identification.

IX. Education and Awareness-raising

215. In its third report, ECRI addressed a number of recommendations to the Spanish authorities in connection with education and awareness-raising: (i) to promote awareness of racism and racial discrimination among Spanish society at large, particularly by encouraging public debate on these issues at national level, (ii) to involve closely 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; (iii) to widen the debate on racial discrimination so as to highlight its human rights dimension; (iv) to give higher priority to combating racism and racial discrimination, notably by mainstreaming policies against these phenomena throughout the work of public institutions; (v) to address adequately discrimination in any overall strategies aimed at promoting equal opportunities for disadvantaged groups; (vi) to elaborate and implement, as part of these programmes, specific measures targeted at the majority population; (vii) to 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.
216. In the previous chapters, ECRI has highlighted a number of initiatives demonstrating the priority given to combating racism and discrimination in recent years in Spain. Examples include the setting up of the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds

of Racial or Ethnic Origin, new legislation and institutions to combat racism in sport, and the creation of a special prosecutor to deal with hate crimes and discrimination in Barcelona. As many of these are very recent developments which cannot be assessed at this stage, they will be revisited during ECRI's next monitoring round.

217. In its third report, ECRI encouraged 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 recommended that they ensure that any new subjects introduced extensively address the principle of non-discrimination and the need for respecting difference.
218. ECRI notes with satisfaction that the subject "education for citizenship and human rights" has been introduced into the compulsory curriculum at primary and secondary school levels. It is designed to ensure that all students are exposed to the values of citizenship in a democratic society, the purpose of which is the full development of one's personality in a climate of respect for the democratic principles of co-existence and human rights. It includes a long list of topics, among which: social, cultural and religious diversity; respect for different customs and ways of life; discrimination and social injustice.
219. In its third report, ECRI encouraged 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 reiterated 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.
220. The Human Rights Plan includes an objective on monitoring implementation of the new subject on education for citizenship and human rights, which incorporates the principle of intercultural education. By all accounts, the subject is being widely taught throughout Spain, although there have been some objections, mainly by Catholic private schools.
221. The Human Rights Plan also aims to train teachers in human rights. The Spanish authorities have informed ECRI that teacher training includes the following objectives: the fundamental values of democracy; awareness of antisemitism and racial or social exclusion; developing responsibility, tolerance, solidarity and respect for others. Courses and seminars are organised for the teaching of the Holocaust, which ECRI notes has now become a compulsory part of history teaching in Spain.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Spain, are the following:

- ECRI recommends that the authorities collect and publish data on acts of racism and racial discrimination and on the application of the criminal, civil and administrative law provisions in force to combat racism and racial discrimination.
- ECRI recommends that not only initial but also in-service training for police, private security personnel, prosecutors, forensic doctors, lawyers and judges includes compulsory courses on human rights, equal treatment, non discrimination and the Criminal Code provisions in force to combat racism and racial discrimination.
- ECRI strongly recommends that the Spanish authorities review the way in which pupils are admitted to public and publicly-funded private schools and take other necessary measures to ensure an even distribution of Spanish, immigrant and Roma pupils in the various schools.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

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APPENDIX: GOVERNMENT'S VIEWPOINT

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

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Spain on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 23 June 2010, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

A P P E N D I X

The Spanish authorities thank the European Commission against Racism and Intolerance (ECRI) of the Council of Europe for its accurate fourth report on Spain and take note of its recommendations.

Nevertheless, the Spanish authorities would like to make the following comments concerning nine of the 220 paragraphs of the Report:

- Paragraphs 49 and 52.

The wording of these two paragraphs can be interpreted in the sense that the rights these two paragraphs deal with (the right to healthcare, the right to basic primary social services and the right to urgent social aid) are granted only to foreigners who have registered in the municipalities where they live.

This is not the case. All foreigners enjoy these rights.

- Paragraph 85.

The Law of 2009 on the Rights and Freedoms of Foreigners in Spain and their Social Integration is a national law. The autonomous communities have to implement this law and they are not allowed to use it as an element to introduce discriminatory limitations on access to housing aid.

- Paragraph 122.

The report says the annual budget for the Plan for Roma Development is now around 6,5 million Euros. The correct figure is 8 million Euros.

- Paragraph 124.

The last but one sentence says “As for the authorities, while it is clear that they have done much for the Roma, they appear reluctant to allow much to be done by the Roma”.

This sentence does not reflect the reality. The relevant Spanish authorities, not only have done much for the Roma, but have facilitated the empowerment of the Roma people to integrate and take control by themselves of their own lives and of their communities.

- Paragraph 150.

This paragraph states that the Catalanian Autonomous Government has jurisdiction over the granting of work permits.

In fact, the Community of Catalonia has competence on the issue of the procedure to request a work permit for foreigners wishing to work in Catalonia but the final decision on residence permits pertains exclusively to the national authorities.

- Paragraph 152.

This paragraph might lead to the conclusion that in Spain foreigners are only allowed to work only as employees. In fact they can also be self-employed; obviously, in this case they do not need a valid job offer or a contract.

Furthermore, article 41 of the law 4/2000 includes a list of activities for whose exercise foreigners do not need a work permit, but only a residence permit.

- Paragraph 168.

In the second sentence of this paragraph there is a reference to the “Asylum Law of 2009”, but its content refers to the Law of 2009 on the Rights and Freedoms of Foreigners in Spain and their Social Integration.

In the next sentence, it is said that a report from the tutor of the minor is required, but that is not the case: a report from the Services for the Protection of Minors is required as well as a report from the Public Prosecutor, but not from the tutor.

It is relevant to mention, in this regard, that, according to the Spanish law, when minors under 16 years are not satisfied with their tutor or representative, upon their request they are provided with a judicial representative. Those who are older than 16 can choose his or her own representative or act by themselves without the need of legal representation.

- Paragraph 192.

This paragraph states that foreigners who manage to gain access to Spain crossing the borders of Ceuta or Melilla without the necessary documentation “are placed in internment centres”. In fact, they are not sent to internment centres but to “Centros de Estancia Temporal” (Temporary Stay Centres). These are open centres where, within the established opening hours, the residents can freely go in and out.

