SPAIN

Follow-up - State Reporting
(i) Action by Treaty Bodies, Including Reports on Missions

CCPR, CCPR/C/SR.2738/Add.1 (2010)

Human Rights Committee
Ninety-ninth session

Summary record of the second part (public) of the 2738th meeting
Held at Palais Wilson, Geneva,
on Wednesday 28 July 2010, at 11:25 am

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Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Report of the Special Rapporteur for Follow-up on Concluding Observations (CCPR/C/99/2/CRP.1)

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2. **Mr. Amor**, Special Rapporteur for Follow-up on Concluding Observations, said that, while he commended the excellent work of the secretariat, it was regrettable that the relevant staff did not have more time to devote to follow-up on concluding observations. At the Committee's request, he had undertaken to supply details of the contents of the letters sent to States parties concerning follow-up in which the Committee asked for further information, urged the State to implement a recommendation or, alternatively, noted that a reply was satisfactory.

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51. **Mr. Amor** said that additional replies received from Spain to the Committee's request for information on its fifth periodic report were currently being translated and would be considered at a later date.

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CCPR, A/65/40 vol. I (2010)

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Chapter VII: Follow-up to Concluding Observations

203. In chapter VII of its annual report for 2003,[16] the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report,[17] an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2010.

204. Over the period covered by the present annual report, Mr. Abdelfattah Amor acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-seventh, ninety-eighth and ninety-ninth sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

205. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.[18] Over the reporting period, since 1 August 2009, 17 States parties (Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, Denmark, France, Georgia, Japan, Monaco, Spain, the former Yugoslav Republic of Macedonia, Sudan, Sweden, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland and Zambia), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, 12 States parties (Australia, Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Nicaragua, Panama, Rwanda, San Marino and Yemen) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the preparation of the next periodic report by the State party.[19]

206. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, the report does not cover those States parties with respect to which the Committee has completed its follow-up activities, including all States parties which were considered from the seventy-first session (March 2001) to the eighty-fifth session (October 2005).

207. The Committee emphasizes that certain States parties have failed to cooperate with it in

the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Equatorial Guinea, Gambia).

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Ninety-fourth session (October 2008)

...

State party: Spain

Report considered: Fifth periodic (due on 28 April 1999), submitted on 11 December 2007.

Information requested:

Para. 13: Speed up the process of adopting a national mechanism for the prevention of torture in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 7).

Para. 15: Limit the length of police custody and pretrial detention, in a manner compatible with article 9; end the practice of setting the length of pretrial detention according to the length of the sentence incurred (art. 9).

Para. 16: Ensure that the decision-making process in matters concerning the detention and expulsion of foreigners complies fully with the procedure set out by law, and that humanitarian reasons can always be invoked in asylum proceedings; ensure that the new asylum law is in full conformity with the Covenant (art. 13).

Date information due: 31 October 2009

Date information received:

16 June 2010 Follow-up report received.

Action taken:

23 April 2010 A reminder was sent.

Recommended action: The additional replies of the State party should be sent for translation and considered at a later session.

Next report due: 1 November 2012

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[16] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40,* vol. I

(A/58/40 (vol. I)).

[17] Ibid., *Sixty-Fourth Session, Supplement No. 40,* vol. I (A/64/40 (vol. I)).

[18] The table format was altered at the ninetieth session.

[19] As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Austria, Brazil, Central African Republic, Democratic Republic of the Congo, Hong Kong (China), Mali, Namibia, Paraguay, Republic of Korea, Sri Lanka, Suriname and Yemen.

Follow-up - State Reporting
(ii) Action by State Party

CCPR, CCPR/C/ESP/CO/5/Add.1 (2009)

Comments by the Government of Spain on the concluding observations of the Human Rights Committee (CCPR/C/ESP/CO/5)

[8 January 2009]

1. The Spanish Government takes note of the concluding observations made by the Human Rights Committee following its consideration in Geneva on 20 and 21 October 2008, at its ninety-fourth session, of the fifth periodic report of Spain submitted under article 40 of the Covenant.

2. Spain reiterates its firm commitment to the Covenant and to ensuring strict observance of all fundamental rights and civil liberties, a fundamental objective of the policies of the Spanish Government, in accordance with Spain's international obligations and its Constitution. Spain is keen to dialogue with the Committee, with a view to improving every aspect of the observance of fundamental rights and civil liberties.

3. The Spanish Government wishes to state that, despite the intense dialogue with the Committee on the fifth periodic report, the general impression that the concluding observations give of the situation in Spain does not reflect reality or Spain's written and oral contributions during the review process. The Spanish Government takes the view that the Committee has, on the contrary, accepted a wide range of distorted views on the situation, with the result that the draft observations are unbalanced.

4. The Government is surprised that the Committee has not, as it should normally have done, reiterated that Spain is complying with its obligations under the Covenant and making progress in the promotion of and respect for human rights, as the Committee stated in its concluding observations on Spain's fourth periodic report (CCPR/C/79/Add.61, 3 April 1996). The recommendations in relation to the fifth report do not recognize the progress made between 1996 and 2008.

5. Likewise, the Government regrets that the Committee does not recognize that Spain strictly respects human rights and civil liberties despite the activities of domestic and international terrorist groups, which continue to carry out attacks and which in recent years have killed or injured more people in Spain than in any other European country. Spain, unlike some countries, has never temporarily or partially repealed legislation on human rights, despite constitutional provisions that would allow this.

6. Spain takes note of the Committee's recommendations, which are contained in paragraphs 8 to 21 of the concluding observations. It recognizes that some of the recommendations are rightly directed towards a constructive dialogue with a view to improving every aspect of the

observance of fundamental rights and civil liberties. The Spanish Government will provide the information requested and will submit its sixth periodic report in accordance with established procedure. However, Spain has no choice but to reject some of the Committee's assertions in relation to the principal areas of concern and recommendations.

7. The Committee does not explain which provision of the Covenant provides the grounds for its recommendations in paragraph 9. The Spanish Government fails to see how these recommendations fall within the mandate of the Committee. Moreover, Spain was not able to exercise its right to reply on all the points in paragraph 9 during the current review process.

8. All States that are subject to an international review process must be able to respond to the substantive issues that will be included in concluding recommendations. In particular, during the current process, the Committee transmitted no considerations, doubts or questions of any kind on the repeal of the Amnesty Act. The Committee limited itself to asking a few questions, in the oral stage only, about the proceedings now before the National High Court in relation to persons who disappeared and about ratifying the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

9. The Spanish Government further wishes to stress that the Committee is calling into question a decision that was supported by the whole of Spanish society and that contributed to the transition to democracy in Spain. The law in question was called for by the entire democratic opposition and was one of the first laws to be approved by consensus by the same parliament that approved the 1978 Constitution. Not only Spanish society, but also public opinion worldwide knows about and has always supported the transition process in Spain, which was made possible in part by this law.

10. The Spanish Government therefore regrets the inclusion of this point in the Committee's observations, and believes the Committee has made procedural errors in terms of its sphere of competence (failure to refer to the relevant provision of the Covenant), due process (failure to provide an opportunity for defence during the process) and ascertaining the facts (lack of knowledge of the origin and social significance of the Amnesty Act).

11. With respect to the recommendations in paragraph 10, the Committee notes that the definition of terrorism in the Spanish Criminal Code could lead to violations of several of the rights enshrined in the Covenant, but does not state that any violation actually occurred. The Committee fails to specify which particular articles or rights have been violated by the definition of the offence of terrorism in the Spanish Criminal Code. The Spanish Government fails to understand which international definition of the offence of terrorism is being followed by the Committee, or to see how proposing such a definition falls within the Committee's mandate.

12. Spain firmly maintains that the definition of terrorism in the Criminal Code does comply with international law and, at the regional level, with the Council Framework Decision of 13 June 2002 on combating terrorism, which is legally binding on Spain and which respects human rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Each article of the Code is adapted to the corresponding article of the Framework Decision. The Spanish Supreme Court, following a meticulous analysis of the

applicable legislation, has declared that the provisions of the Code comply with international legislation. In addition, the Court applies this legislation scrupulously and restrictively. Consequently, the Spanish Government takes the view that there are no grounds for the Committee to cast doubt on the Spanish legal system in this connection.

13. With respect to the recommendations in paragraph 21, Spain reiterates the explanations in its written report and in its additional written and oral comments, as follows.

14. The best interest of the child is the legal principle on which all Spanish legislation on child protection is based and governs, among other things, procedures relating to unaccompanied foreign minors, in which being a minor takes precedence over being foreign.

15. The Spanish State security forces are obliged to inform the Public Prosecutor's Office immediately of the arrival on Spanish territory of an unaccompanied foreign minor. As of that moment, the Public Prosecutor's Office ensures that the minor's interests are protected.

16. As well as having a role in child protection, the Public Prosecutor's Office, as the body that monitors the administrative activities of the social services relating to child protection, supervises the administration in its child-protection role.

17. In 2007, 5,408 unaccompanied foreign minors entered Spanish territory and were cared for by the Spanish child-protection services. In the same year, the Spanish Government repatriated 23 minors, complying with all the guarantees set out in Spain's legislation to safeguard the best interests of the child. In order for repatriation to take place with all the requisite guarantees, the child-protection services require information on the minors' families or, failing that, on their counterparts in the minors' countries of origin. Until this information is provided by the relevant consulates or embassies, the minors remain with the Spanish child protection services.

CCPR, CCPR/C/ESP/CO/5/Add.2 (2010)

Replies to the recommendations of the Human Rights Committee in respect of the fifth periodic report of Spain

[16 June 2010]

Point 13 of the Committee's concluding observations

1. By Organization Act 1/2009, of 3 November, the Ombudsman was designated national mechanism for the prevention of torture (national preventive mechanism), in compliance with the undertaking made by Spain on ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and as provided in measure 4 of Spain's Human Rights Plan, whereby "a national mechanism for the prevention of torture shall be established as provided in the Optional Protocol to the Convention against Torture".

2. One of the justifications for designating the Ombudsman as national preventive mechanism was the Ombudsman's mandate, dating from 1983, to formulate recommendations to the Government, the channels of communication between the Office and the authorities, and the ease with which the authorities have usually responded to the Ombudsman's recommendations. Designating the Ombudsman as national preventive mechanism meant that the mechanism would inherit the Ombudsman's legacy of a culture of recommendations, which in turn meant the Government and other authorities would have to continue to act accordingly, i.e., accept or reject those recommendations in duly reasoned fashion, in a spirit of cooperation and receptiveness to the points made by the Ombudsman/national preventive mechanism. The Ombudsman will be supported by the ombudsmen of the autonomous communities, who are required under Organization Act 3/81 to coordinate their work with that of the Ombudsman, while the Ombudsman may in turn seek their cooperation.

3. In order to enable the Ombudsman to discharge this new task, a new sole final provision has been added to Organization Act 3/1981, of 6 April, on the Office of the Ombudsman, whereby:

> 1. The Ombudsman shall act as national mechanism for the prevention of torture, in accordance with the Constitution, the present Act and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
>
> 2. An Advisory Board is established to provide technical and legal cooperation in the exercise of the functions of the national preventive mechanism, to be chaired by a deputy to whom the Ombudsman shall delegate the functions established in this provision. The structure, composition and operation of the Board shall be established by regulation.

4. Work on the appointment and start-up of the Advisory Board provided for in the Act is nearing completion. Membership will be based on nominations by NGOs and other

representative organizations specializing in combating torture.

5. It should be noted that the Ombudsman, continuing the practices established in more than 25 years of institutional development, has stepped up inspections of places of deprivation of liberty. Since Organization Act 1/2009 of 3 November entered into force, the Office of the Ombudsman has continued with its visits to places of deprivation of liberty (see list in annex). The first of its annual reports will provide detailed accounts of the visits carried out and the relevant recommendations, proposals and comments under article 19 of the Optional Protocol.

Point 15 of the Committee's concluding observations

(a) Police custody

6. Regarding the duration of police custody, article 520, paragraph (b) (1), of the Criminal Procedure Act stipulates that persons detained for terrorist offences must, generally speaking, be brought before the competent judge within 72 hours of arrest. However, it provides for a possible extension of that time limit by a further 48 hours, provided that such extension is requested within the first 48 hours of detention and is authorized by the judge within the following 24 hours by a reasoned decision.

7. Such exceptional extension of the period of detention is based on article 55, paragraph 2, of the Constitution, which must in all cases be interpreted in accordance with article 17, paragraph 2, of the Constitution and article 520, paragraph 1, of the Criminal Procedure Act in the sense that the additional periods are "maxima" and detention must in any case cease once "the time strictly required in order to carry out the necessary investigations aimed at establishing the facts" is past.

8. The 2003 amendments to the Criminal Procedure Act strengthened the safeguards protecting the rights of detainees by better defining the requirement that the duration of police custody should not exceed the time strictly necessary to achieve its purposes and by establishing a clear maximum of five days.

9. No legal reform tending towards a reduction of those periods is currently envisaged.

(b) Pretrial (provisional) detention

10. From the outset it must be made clear that the length of pretrial or provisional detention in Spain is not determined with reference to the length of the sentence.

11. The Spanish Constitutional Court has placed tight restrictions on provisional detention from its earliest rulings, on the basis of the requirements of the international human rights conventions and in particular article 9 of the International Covenant on Civil and Political Rights.

12. The fundamental right to personal freedom is considered "pre-eminent" in the Spanish Constitution. The Constitutional Court has therefore placed special emphasis on the need for

specific requirements to be met for provisional detention to be lawful.

1. There must be reasonable indications that the person in question has committed an offence;

2. The purpose of provisional detention must be one of the following, in accordance with the law:

    1. To prevent the accused from evading justice;

    2. To prevent the accused from concealing, altering or destroying evidence;

    3. To prevent the accused from committing further offences. Provisional detention can of course not be ordered on the general grounds that the accused might commit an offence of some kind: it must be shown that there is a specific risk of reoffending.

3. There must be no other, less coercive measure that might achieve the same ends;

4. There must be a recent court ruling, following a hearing of the accused in the presence of counsel, demonstrating that all the above requirements have been met.

13. All these requirements must be met not only in ordering, but also in maintaining, provisional detention. Provisional detention can legitimately be maintained only if one of the purposes for which it was originally ordered still applies. The courts should be prepared at any moment to check that the requirements are met and should release the prisoner as soon as this is no longer the case, either *proprio motu* or at the request of defence counsel.

14. Thus provisional detention should only last strictly as long as needed to achieve the stated purposes, regardless of the length of the possible sentence. The duration of detention is directly related to the attainment of the legitimate aims of an exceptional measure, and never to the length of the sentence.

15. The Constitutional Court has explicitly stated that provisional detention may not constitute punishment for an offence that has not been legally proved. The length of the sentence that the alleged offence might carry operates only as an upper limit for provisional detention.

16. Organization Act 13/2003 of 24 October 2003, amending the Criminal Procedure Act in respect of provisional detention, brought the provisional detention regime into line with Constitutional Court case law.

17. The Spanish legislator has been guided by two essential principles: exceptionality and proportionality. The exceptionality of provisional detention is an indication that, in the Spanish legal system, the general rule must be the freedom of the accused and deprivation of liberty the exception.

18. These requirements must be met in ordering and maintaining provisional detention since,

under article 504 of the Criminal Procedure Act, provisional detention may not last indefinitely but only so long as the constitutionally legitimate aims in a specific case pertain.

19. Relevance of the length of sentence carried by the alleged offence.

20. The length of the sentence applicable to the alleged offence effectively acts as a dual constraint. In the first place, even where the cited risks exist, provisional detention will never be imposed unless warranted by the seriousness of the offence. Provisional detention is ruled out if the maximum sentence for the alleged offence does not exceed 2 years' imprisonment, save in exceptional cases provided for in law.

21. The second limitation is that provisional detention may not exceed 1 year if the maximum sentence is less than 3 years' imprisonment, or 2 years if the maximum sentence is more than 3 years' imprisonment. Exceptionally, a six-month extension may be granted in the first case and a two-year extension in the second. Where a trial court conviction is appealed, then provisional detention may be extended, pending final judgement, to a maximum of half the sentence effectively imposed.

22. In fact provisional detention lasts as long as is strictly necessary to meet the purposes for which it was imposed. At any moment, either *proprio motu* or at the request of a party, the court must be prepared to check that the circumstances that warranted such an exceptional measure still pertain. If the accused is unjustifiably kept in provisional detention, they may appeal to a higher court and in the last resort apply for *amparo* to the Constitutional Court.

Applicable law

23. Article 502 [Provisional detention: imposition]

> 1. Provisional detention may be ordered by the investigating judge, the judge responsible for preliminary enquiries or the criminal trial judge or court.
>
> 2. Provisional detention may be ordered only when objectively necessary in accordance with the following articles and where there is no other measure, less restrictive of the right to freedom, that will achieve the same ends as provisional detention.
>
> 3. In ordering provisional detention, the judge or court shall weigh its possible impact on the accused, taking account of their personal circumstances and the facts of the case, and the length of the possible penalty.
>
> 4. Provisional detention shall in no case be ordered where the enquiries have given reasonable grounds for supposing that the act in question do not constitute an offence or that there was some justification for those acts.
>
> Amended by article 1 RCL 2003\2547 of Organization Act 13/2003, of 24 October (RCL 2003\2547).

24. Article 503 [Conditions for provisional detention]

1. Provisional detention may be ordered only when all the following conditions are met:

1. There is evidence of the existence of one or more acts qualifying as an offence carrying a maximum sentence of 2 or more years' imprisonment, or a shorter term where the accused has a criminal record which has not been and is not likely to be expunged and which arises from a conviction for a premeditated offence.

Where there are several charges, the special sentencing rules shall apply, in accordance with the Criminal Code, book I, title III, chapter II, section 2.

2. There are sufficient grounds to believe that the person who will be the subject of the detention order is the person criminally responsible for the offence.

3. Provisional detention is intended to achieve one or more of the following purposes:

(a) To guarantee the accused's appearance at the trial when it is reasonable to assume that there is a risk of them absconding;

In determining whether such a risk exists, account shall be taken of the nature of the act, the length of the possible sentence, the family, employment and financial situation of the accused, and whether a trial is imminent, particularly in situations subject to the fast-track procedure under book IV, title III, of this Act;

Provisional detention of the accused may be ordered on these grounds where the record shows that at least two summons and arrest warrants have been issued against the accused by a court within the past two years. In such cases the limit in respect of penalties provided for in paragraph 1 shall not apply;

(b) To prevent the concealment, alteration or destruction of evidence relevant to the trial, provided a specific risk is established;

Provisional detention may not be ordered on these grounds when such risk is claimed solely with reference to the exercise of the right to a defence or the accused's failure to cooperate with the investigation;

In determining whether such risk exists, account shall be taken of the accused's access to the evidence, whether on their own account or through third parties, and their ability to influence other accused, witnesses, experts or other persons;

(c) To prevent the accused from violating the victim's legal rights, particularly where the victim is one of those referred to in article 173, paragraph 2, of the Criminal Code. In such cases the limit set in subparagraph 1 by reference to the

sentence shall not apply.

2. Provisional detention may also be ordered where the conditions in subparagraphs 1 and 2 of the preceding paragraph are met, in order to prevent the accused from committing other offences.

In determining whether such a risk exists, account shall be taken of the circumstances of the act and the seriousness of the offences that might be committed.

Provisional detention may be ordered on these grounds only when the alleged offence is premeditated.

However, the limit provided for in subparagraph 1 of the preceding paragraph shall not apply where it can be reasonably inferred from the accused's record and other information and facts submitted by the judicial police or arising from the proceedings that the accused either was acting in collusion with another person or persons deliberately in order to commit criminal offences, or is a habitual offender.

Amended by article 1 RCL 2003\2547 of Organization Act 13/2003, of 24 October (RCL 2003\2547).

Paragraph 1 (3) (c) amended by final disposition 1 (1) (d) RCL 2003\2744 of Organization Act 15/2003, of 25 November (RCL 2003\2744). Note final disposition 5, whereby this amendment shall enter into force on the day after publication, i.e., 27 November 2003.

25. Article 504 [Duration of provisional detention]

1. Provisional detention shall last as long as is necessary to attain any of the purposes set forth in the preceding article and provided the grounds on which it was originally ordered still apply.

2. Where provisional detention is ordered under paragraph 1 (3), (a) or (c), or paragraph 2, of the preceding article, it may not exceed one year if the offence carries a sentence of 3 years' imprisonment or less, or 2 years if the offence carries a sentence of more than 3 years. However, where circumstances make it likely that the case cannot be tried within that time, the judge or the court may, under article 505, order a single extension of up to 2 years if the offence carries a sentence of more than 3 years' imprisonment, or up to 6 months if the offence carries a sentence of 3 years' imprisonment or less.

Where the accused is convicted and appeals the sentence, then provisional detention may be extended to a maximum of half the sentence effectively imposed.

3. Where provisional detention is ordered under paragraph 1 (3) (b) of the preceding article, it may not exceed six months' duration.

However, in cases where incommunicado detention or secrecy of proceedings has been ordered, if such order is lifted before the end of the period established in the preceding paragraph, the judge or court shall be required to justify the maintenance of provisional detention.

4. Release on completion of the maximum term of provisional detention shall not prevent provisional detention being ordered should the accused fail without good reason to comply with a summons from the judge or the court.

5. In calculating the periods established in this article, account shall be taken of any time spent by the accused in detention or provisional detention on the same grounds.

Such calculation shall not, however, include time spent in delays not attributable to the administration of justice.

6. Where the term of provisional detention is more than two-thirds of the maximum, the trial judge or court and the public prosecutor shall notify the administrative division and the chief prosecutor of the court, respectively, so that appropriate steps can be taken to expedite the proceedings. To that end, proceedings in such cases shall take priority over all others.

Amended by article 1 RCL 2003\2547 of Organization Act 13/2003, of 24 October (RCL 2003\2547).

Paragraph 2 (1) amended by final disposition 1 (1) (e) RCL 2003\2744 of Organization Act 15/2003, of 25 November (RCL 2003\2744). Note final disposition 5, whereby this amendment shall enter into force on the day after publication, i.e., 27 November 2003.

Paragraph 6 inserted by final disposition 1 (1) (f) RCL 2003\2744 of Organization Act 15/2003, of 25 November (RCL 2003\2744). Note final disposition 5, whereby this amendment shall enter into force on the day after publication, i.e., 27 November 2003.

26. Article 505 [Hearing following detainee's appearance before the court]

1. Where the detainee has been brought before the investigating judge or the court trying the case, the judge or court, unless they have ordered conditional release without bail, shall convene a hearing in which the prosecutor or plaintiffs may argue for the accused to be placed in provisional detention or released on bail.

In proceedings regulated under book IV, title III, of this Act, such hearings shall be conducted in accordance with article 798, except where a hearing has already been held.

2. The hearing provided for in the preceding paragraph shall be held as soon as possible within 72 hours of the detainee's appearance before the court; the accused shall be summoned to attend and shall do so in the presence of counsel - whether of their choice or appointed by the court - the public prosecutor and other parties present. Such a hearing

shall also be held to seek and order, where appropriate, provisional detention for an accused not in custody or their conditional release on bail.

3. At the hearing, where the public prosecutor or a plaintiff requests that the accused should be placed in provisional detention or released on bail, the parties concerned may present claims and submit any evidence that can be examined immediately or within 72 hours, in accordance with the preceding paragraph.

4. The judge or court shall determine the applicability or otherwise of provisional detention or bail. Where no such request is made by any of the parties, the judge or court is obliged to order the immediate release of an accused being held in custody.

5. Where the hearing cannot be held for any reason, the judge or court may order provisional detention, provided the conditions under article 503 are met, or conditional release on bail.

The judge or court shall nevertheless convene another hearing in the next 72 hours and take whatever measures may be required as a result of the failure to hold the first hearing.

6. Where the detainee is brought before a court that is not the court that is trying or is to try the case, and they cannot be brought before the latter in 72 hours, the former shall proceed in accordance with the provisions of the preceding paragraphs. However, once the judge or court trying the case has received the preliminary proceedings, they shall hear the accused, in the presence of counsel, as soon as possible and shall rule as appropriate.

Amended by article 1 RCL 2003\2547 of Organization Act 13/2003, of 24 October (RCL 2003\2547).

27. Article 506 [Provisional detention order]

1. Rulings on the personal situation of the accused shall be issued as court orders. An order imposing or extending provisional detention shall set forth the grounds for the necessity and appropriateness of such a measure in terms of the purposes for which it is ordered.

2. Where secrecy of proceedings has been ordered, the provisional detention order shall include details of the case that must then be omitted, for reasons of confidentiality, from the copy to be issued. In no case shall the order issued omit a summary of the alleged offence and which purpose or purposes under article 503 detention is intended to achieve. When the secrecy order is lifted, the full text of the detention order shall immediately be transmitted to the accused.

3. Orders relating to the personal situation of the accused shall be notified to any persons directly affected or harmed by the offence and whose safety might be affected by the ruling.

Amended by article 1 RCL 2003\2547 of Organization Act 13/2003, of 24 October (RCL 2003\2547).

28. Article 507 [Remedies against rulings on the personal situation of the accused]

1. Rulings ordering, extending or denying provisional detention or ordering the release of the accused may be challenged by an appeal under article 766 which shall be expedited as a matter of priority. Appeals against a provisional detention order shall be decided within 30 days at most.

2. Where the full text of a detention order has not been issued to the accused under paragraph 2 of the preceding article, the accused may appeal against the complete order when this is transmitted, in accordance with the preceding paragraph.

Amended by article 1 RCL 2003\2547 of Organization Act 13/2003, of 24 October (RCL 2003\2547).

29. Article 508 [Alternatives to provisional detention]

1. On grounds of illness, where imprisonment would entail serious risk to the accused's health, the judge or court may order provisional detention to be served in the accused's residence, subject to any necessary security measures. The judge or court may authorize the accused to leave their residence for as long as necessary for treatment of their condition, subject to the necessary security measures.

2. In cases where the accused is undergoing drug or alcohol rehabilitation treatment and imprisonment might interfere with the aims of that treatment, provisional detention may be replaced by admission to an official or duly accredited centre in order to continue treatment, provided that the events giving rise to the procedure took place before treatment started. In such cases the accused may not leave the centre without authorization from the judge or court ordering the measure.

Amended by final disposition 1 (1) (g) RCL 2003\2744 of Organization Act 15/2003, of 25 November (RCL 2003\2744). Note final disposition 5, whereby this amendment shall enter into force on the day after publication, i.e., 27 November 2003.

Point 16 of the Committee's concluding observations

(a) Guarantees of the rights of foreign detainees

30. In criminal matters, foreigners in detention in Spain have the same rights and guarantees as Spanish citizens, including the right to free legal aid where they do not have sufficient means. Moreover, article 520 of the Criminal Procedure Act establishes two special guarantees for foreign detainees: the right to inform their consulate of their arrest and the place where they are being held, and the right to receive the services of an interpreter free of charge to translate any information the detainee wishes concerning their rights and any questions they may have in that

regard, as well as any relevant explanations of court procedure in their case (there are standard leaflets giving information on rights in various languages), in order to improve response and expeditiousness at the various stages of proceedings.

(b) Legality of expulsion procedures

31. Under the Aliens Act, "aliens present in Spain and without adequate financial means shall be entitled to free legal aid, subject to the provisions of the legislation on such aid, in administrative or judicial proceedings that may entail denial of entry to, or their return or expulsion from, Spanish territory, as well as in all asylum proceedings. They shall also be entitled to assistance by an interpreter if they do not understand or speak the official language used."

32. In addition, State Secretariat for Security Instruction No. 12/2007 provides that police stations should have available information leaflets on rights, in the most commonly-spoken languages, and that interpreters shall be available as required under aliens law.

33. As to expulsion of foreign nationals from Spanish territory, this measure is intended as a punishment for certain serious or very serious offences as specified in the Aliens Act; consequently it can be applied only through a special, individual administrative procedure, which rules out collective expulsions.

34. Decisions on expulsion, like all punitive sentences, are subject to appeal through administrative and judicial channels; appellants are entitled to free legal aid in submitting their appeals.

35. Spanish law also provides that expulsion or return may not violate the fundamental rights of foreigners under the Universal Declaration of Human Rights and the international agreements and treaties on the matter that are in force in Spain.

36. Expulsion and return procedures are carried out in accordance with the principle of non-refoulement, which basically - though not exclusively - means no expulsion to countries where the foreign person would be at risk of their life, physical integrity or freedom, in accordance with the European Convention on Human Rights (art. 3) and the Convention against Torture (art. 3).

(c) Right to cite humanitarian reasons in asylum proceedings and compatibility of the new Asylum Act with the Covenant

37. The purpose of the new Asylum Act (Act No. 12/2009, of 30 October), which regulates the right to asylum and subsidiary protection, is to incorporate European Union law on the matter, as adopted under the so-called phase 1 of the common European asylum system (CEAS) and consequently compatible with the Covenant, into domestic law.

38. Act No. 12/2009 provides a right to cite humanitarian reasons in seeking international protection, insofar as, under article 46, paragraph 3, residence in Spain may be granted for

humanitarian reasons other than those set forth in the subsidiary protection statute to anyone applying for international protection under the provisions of applicable aliens and immigration law.

39. In addition, article 37 of Act No. 12/2009, on the effects of decisions denying international protection, provides that such decisions shall determine, as appropriate, return, refoulement, expulsion or compulsory exit from Spanish territory, or transfer to the State responsible for consideration of the application, except where the conditions for remaining in Spain are met or stay or residence in Spain is authorized on humanitarian grounds.

40. That is to say, in examining and evaluating applications for international protection, humanitarian grounds are also admitted where no grounds can be found to grant asylum under the 1951 Convention relating to the Status of Refugees, or subsidiary protection under Act No. 12/2009, and stay or residence may be granted on those grounds, albeit in the framework of aliens law.