

## SPAIN

### CCPR A/34/40 (1979)

180. At its 141<sup>st</sup> to 143<sup>rd</sup> meetings, held on 20 and 21 April 1979 (CCPR/C/SR.141, 142 and 143), the Committee considered the initial report (CCPR/C/4/Add.1 and CCPR/C/4/Add.3) submitted by the Government of Spain.

181. The representative of the State party introduced the report to the Committee and provided additional information on the process of political transition in Spain from an autocratic régime to a democracy as well as on the steps that were being taken there to guarantee the effective enjoyment of the rights recognized in the International Covenant of Civil and Political Rights. In the course of his detailed statement he referred to the status of the legislation before the present Government came to power, and the measures that were taken during the first phase when a democratic Cortes capable of performing the function of legitimizing the new political reality had been convened. During that phase Spain had ratified the major international agreements relating to the free exercise of human rights. He went on to speak of the second phase, in which general elections had been held and far-reaching legislative changes had been made, and then of the third phase during which a new Constitution had been adopted, title I of which closely reflected the provisions of the Covenant. He explained in detail the specific implementation of each article of the Covenant on fundamental rights and freedoms in relation to the rules of law established by the constitutional and legislative texts, and concluded by stating that efforts would be made through future legislative work to complete the development of the Constitution and to provide effective guarantees for fundamental rights. 8/

182. Many members of the Committee commended the collective and non-violent effort of the Spanish people to establish democratic institutions and make progressive changes in the legislation that had been in force up to 1975. Much had already been accomplished by the process of transformation, but the adoption of the new Constitution was only the first step and needed to be supplemented by legislation that was consonant with the principles embodied in it. It was felt therefore that the Committee should continue to follow developments in Spain, and appreciation was expressed of its readiness to supplement the report it had submitted by describing later developments and confirming the guarantees offers in the report that future legislation would be in keeping with the Covenant. Members also asked for further information on the announcement in the report of the promulgation of a “bill of rights” in the immediate future to guarantee the fundamental rights defined in the Constitution.

183. Some members asked for an explanation of the statement made in the report that the transition of the country towards political democracy was taking place without repudiating, in revolutionary fashion, what had been legitimate in the past, and particularly concerning measures that might be

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8/ The statement made by the representative of Spain to the Committee is reproduced in document CCPR/C/4/Add.5.

taken against supporters of the previous régime. They asked whether the law of amnesty had been

applied without any restrictions, to what extent the rights of the persons amnestied had been restored and what steps had been taken with regard to public officials who had served the former régime but who might have been unjustly dismissed from their posts.

184. Some members of the Committee asked whether article 38 of the Constitution should be taken to mean that Spain had committed itself to the system of free enterprise and could not therefore opt for socialism in any form, what was the legislative basis for the planning referred to in that article and how the Government interpreted the “social function” of property, which was mentioned in article 33, paragraph 2, of the Constitution. One member asked for an explanation of the term “social” in article 1, paragraph 1, of the Constitution, which stated that Spain constituted a “social and democratic State”. Another member inquired what steps would be taken to put into practice the concept of direct democracy, while a third asked to what extent the concept of “one person, one vote” was being applied.

185. Referring to the legislative measures taken to institutionalize the autonomous organization of the various regions of Spain, some members asked for further information on the relations between the regional and national authorities, and, in particular, on the measures designed to ensure that regional authorities acted in conformity with the Covenant.

186. Many members commended the constitutional provisions which incorporated international obligations into internal law and wished to know whether those provisions also applied to treaties that had been ratified before the Constitution entered into force, including the International Covenant on Civil and Political Rights, what provisions took precedence in the event of a conflict between the Covenant and the internal legal order, whether the provisions of the Covenant had the force of constitutional law and whether a person could invoke the Covenant before the courts and administrative authorities. As the terms of the Constitution on states of emergency were broader in scope than article 4 of the Covenant, they questioned the extent to which the two could be reconciled. One member inquired whether Spain had ratified and was applying the European Convention on Human Rights and the protocols thereto and whether Spain had accepted or intended to accept the international rules on the right of petition and the jurisdiction of the European Court of Human Rights.

187. Information was requested on the implications of regional autonomy for the enjoyment of human rights, the place of the Covenant in regional legislation and the measures envisaged to ensure that the laws and administrative decisions of self-governing regions would be consonant with the Covenant.

188. It was asked, with reference to article 2 of the Covenant, whether it was possible for a defendant to challenge a law under which he was being prosecuted on the grounds of unconstitutionality, and whether the right to lodge an appeal was reserved for government bodies or was available to private individuals as well. With regard to the effective remedies contemplated in article 2, paragraph 3 (a) of the Covenant, members noted that they were guaranteed in the Constitution “by means of a preferential and summary procedure” and asked what kind of procedure was involved and whether its summary nature might not be detrimental to the accused person. They also asked for more information on a bill for the protection of fundamental rights, which was mentioned in the report by Spain.

189. Some members inquired, in relation to article 3 of the Covenant, what measures had been taken to ensure real equality of the sexes, whether the removal of the penalty for adultery and common law unions meant that they were no longer offences or whether they were equally punishable, whether committed by men or women.

190. With respect to article 4 of the Covenant, a number of members cited articles 116 and 55 of the Constitution governing states of emergency and the suspension of rights, and noted that article 55, which provided for the suspension of the rights of certain persons in relation to the investigation of terrorist acts, might also cover persons unconnected with such groups and thus have a broader application. They asked whether in those cases the Government intended to fulfil the requirement laid down in article 4 of the Covenant that the other States Parties should be notified, whether that requirement would be incorporated into subsequent legislation, and whether the suspension of rights provided for in article 45 was currently in force in any part of Spain.

191. In relation to articles 6, 7 and 10 of the Covenant, many of the members noted with satisfaction that capital punishment had been abolished in Spain. They asked how the crime of genocide would be dealt with in judicial practice and how it was viewed in positive law. They expressed concern, however, on the fact that the death penalty had been replaced by prison sentences of 30 or 40 years for the same offences. They asked in what circumstances solitary confinement could be ordered, what provisions were made for visits and correspondence between prisoners and their families and what steps were being taken to ensure the reformation and social rehabilitation of delinquents, especially through educational activities to rehabilitate juvenile offenders. Referring to the proposed amendment of the Danger to Society and Social Rehabilitation Act, one member of the Committee asked what were the criteria for having a person declared a danger to society. Some members inquired whether the Government intended to enact laws for the prosecution and punishment of tortures.

192. With regard to article 8 of the Covenant, one member asked for information on the international conventions on slavery and forced labour that had been ratified by Spain.

193. A number of members raised questions in connection with article 9 of the Covenant and asked for details of the exceptions allowed by law since article 17, paragraph 1, of the Constitution provided that no one could be deprived of his liberty, and also on the practice of conditional release which was not mentioned in the report. They believed that article 121 of the Constitution should be interpreted in the light of article 9, paragraph 5, of the Covenant to the effect that the victim of unlawful arrest was entitled to compensation even if he had not suffered any specific damage, and they asked whether provision was made for "moral damages" as well.

194. Some members referred to article 19 of the Constitution which, in conformity with article 12 of the Covenant, expressly stipulated that the right to enter and leave the country freely could not be restricted for political or ideological grounds, and asked whether the fact that restrictions on economic grounds had not been mentioned meant that they could be invoked to limit that right. They also wished to know whether that article reaffirmed an established right or whether the Government intended to enact new laws on the subject. In view of the fact that article 11, paragraph 2, of the Constitution stipulated that no person of Spanish origin could be deprived of his nationality, it was asked whether naturalized persons were equally protected, since lack of protection for them

would be incompatible with article 12, paragraph 4, of the Covenant. They also asked whether it was possible to give up Spanish nationality without difficulty, and whether lack of knowledge of Castilian Spanish would prevent the acquisition of Spanish nationality. More general information was requested on the provisions to be put into effect in future in connection with articles 11 and 19 of the Constitution. It was also asked whether an alien who considered his expulsion to be unjustified could have recourse to the administration or the competent authorities, and whether the Government planned to grant the right of asylum, in accordance with the standards laid down by the United Nations.

195. Referring to article 14 of the Covenant, one member commended the text of the Constitution for endeavouring to ensure the independence of the judiciary, and another member asked whether judges had found it difficult to accept the political and legal changes that had taken place. Other members considered that legislation alone was not enough to ensure enjoyment of human rights and that other social measures were necessary as well. Since the judiciary played an important part in safeguarding the constitution, they were anxious to know whether the legal system was under the supervision of the same judges who had served the previous régime, what procedures existed under the new constitutional order for appointing judges and public servants and what had been done to ensure that persons from all strata of society could become judges.

196. Some members inquired about the exceptions that existed to permanency of tenure for judges and what laws contained provisions on that question as well as on the appointment, transfer, promotion, dismissal and retirement of judges and magistrates. As judges were not permitted to belong to any political party or professional association, one member asked whether they were entitled to set up informal groups to defend their interests as members of the judiciary. In addition, information was requested on the means available to judges to ensure the execution of their decisions.

197. Some members of the Committee asked for fuller information on the exceptions referred to in article 120, paragraph 1, of the Constitution in relation to public trials, the time and means allowed to prepare the defense, the right to question witnesses and the right of the defendant not to testify against himself or to make a confession of guilt. They also asked whether the measures envisaged would prevent lawyers from visiting clients who were accused of terrorism, which courts had jurisdiction in matters falling within the scope of the decree on public order, and what changes had taken place in the situation of persons who had formerly been arrested or tried by the military authorities for offences that had subsequently been placed within the jurisdiction of the civil courts. They inquired whether there were administrative, fiscal or labour courts in Spain and in what way they helped to protect civil and political rights, and asked about the jurisdiction of military tribunals at the present time. They also asked for an explanation of the powers and functions of the People's Advocate (Defensor del Pueblo) and of the Public Prosecutor (Ministerio Fiscal) and whether they formed part of the judiciary or the Executive.

198. In relation to article 17 of the Covenant, one of the members asked for an illustration of what was meant by the term the "right to honour", which was guaranteed by article 18 of the Constitution.

199. Some members referred to the rights laid down in article 18 of the Covenant, requesting clarification of the social and legal significance of the provision in article 16, paragraph 3, of the

Constitution which provides that the public authorities “will take into account the religious beliefs of Spanish society”, and how it would be applied to free thinkers, for example. They also asked whether there was a clear separation between Church and State, whether the churches were subsidized by the State, whether religious instruction was compulsory in schools, the age at which a child could choose his religion and whether persons belonging to religious persuasions other than the Catholic faith could marry under their own religious laws.

200. With regard to freedom of opinion (art. 19 of the Covenant), some members asked what social and legal criteria were followed in determining whether a group was “significant” and consequently had access to the media, under article 20, paragraph 3, of the Constitution. They inquired whether republican ideas could be propagated although the Constitution had established a constitutional monarchy, what was the meaning of the term “truthful information” which appeared in article 20, paragraph 1 (d), and who decided whether information was truthful or not.

201. Several members raised questions bearing on articles 21 and 22 of the Covenant. They pointed out under article 21, paragraph 2, of the Constitution meetings could be banned in the interests of “public order”, an expression which could be interpreted in different ways, and asked for clarification in that respect. They also asked whether more detailed laws had been passed on the right of association referred to in article 22 of the Constitution, whether the prohibition established by that article on the existence of secret associations extended to Masonic lodges, which government bodies were empowered to decide whether an association was illegal and whether their decisions were subject to appeal in courts of law. They questioned the extent to which the Constitution was consistent with international standards since it debarred public officials from the full exercise of the right of association. They also asked whether the “Workers’ Statute”, which was mentioned in article 35 of the Constitution, was equivalent to a labour code and whether workers would be taking part in its preparation.

202. With respect to article 24 of the Covenant, some members asked whether children born outside wedlock would in future enjoy the same legal status as those born in wedlock, whether a family code was to be promulgated, what legislation the Government intended to enact concerning paternal filiation, State intervention when parents failed to meet their obligations and patria potestas. Information was also sought on the matrimonial régimes it was proposed to institute in the future, on the penal consequences of adultery and common law unions and in particular whether such offences still existed and whether they were defined and penalized in the same way for men and women.

203. Turning to article 25 of the Covenant, in the light of the constitutional provisions which stipulated that political parties should respect the Constitution and the law, they asked whether it was possible for non-democratic parties to be legalized and whether political parties could advocate the reform of the Constitution.

204. Members of the Committee asked for information on questions relating to article 26 of the Covenant, inter alia, what grounds the Government had for the assurance given in its report that constitutional recognition of autonomy of nationality and region would prevent discrimination, and whether it was lawful to disseminate ideas fostering racial hatred, such as apartheid and nazism. Other questions related to the difference implicit in the Constitution between Spaniards and aliens,

since it referred to the protection of all Spaniards and peoples of Spain in the exercise of human rights, whereas States undertook in article 2, paragraph 1, of the Covenant to ensure those rights to all individuals. Consequently, they asked for clarification concerning the protection of the human rights of non-citizens and the laws or administrative procedures for taking action in cases of discrimination, and also asked whether foreign workers were covered by the social security system and why certain rights, such as that of entering into matrimony, had been included in the section that dealt with the rights and duties of citizens.

205. In relation to article 27 of the Covenant, some members inquired what steps had been taken to allow ethnic, religious and linguistic minorities to profess their faith, enjoy their culture and use their own language, whether a knowledge of Castilian Spanish, as the official language, was obligatory for autonomous communities as well and whether the right to self-determination could be exercised in favour of secession.

206. The representative of Spain thanked the members of the Committee for the understanding they had shown concerning the efforts made by Spain to comply with the obligations it had entered into upon ratifying the Covenant, and their good wishes that political transition in Spain would culminate in a system which effectively guaranteed the exercise of human rights. He explained that it was difficult to give an adequate answer to all the questions that had been raised since many of them related to matters that were currently being dealt with. He would, however, transmit them to his Government.

207. He pointed out to the Committee that the 60 legal texts submitted together with the report demonstrated that an attempt was being made in Spain to change the political system by legal methods, repealing the laws of the previous régime which had restricted the public freedoms guaranteed by the Covenant but preventing the formation of a legislative or political vacuum. Furthermore, the new democracy sought to establish itself on the basis of national reconciliation, as embodied in the Amnesty Act.

208. Referring to article 1 of the Covenant, he explained that the relevant rights had already been attained by the Spanish people upon ratification of the Political Reform Act, which had instituted the democratic régime and the new Constitution, which gave it shape. In addition to proclaiming the “indissoluble unity” of Spain, the Constitution recognized and guaranteed the right to self-government of the different nationalities. It made it the duty of Spaniards to know Castilian, but knowledge of it was not a prerequisite for acquiring Spanish nationality nor was there any penalty imposed on those who did not speak it.

209. In connection with article 2 of the Covenant, he explained that under the new Constitution the Covenant formed part of Spain’s internal law and had the force of an interpretative standard for the fundamental rights and freedoms recognized in the Constitution. Replying to another question, he stated that the People’s Advocate (Defensor del Pueblo) was a high official of the Cortes Generales, appointed by them to protect fundamental rights with supervisory powers over the activities of the Administration, and reporting thereon to the Cortes Generales. He was entitled to lodge appeals of unconstitutionality and amparo with the Constitutional Court, but had no power to lodge individual appeals since that was the province of the Public Prosecutor. There were a number of judicial remedies in existence for the protection of individual rights. Some of them were of a preferential and summary nature so as to expedite their defense. The Constitution referred in certain parts to

“Spaniards” and “citizens” and in others used the words “every person” when dealing with jurisdictional protection. The extent of the difference, on which the Constitutional Court would have the final say, had not yet been established.

210. In relation to article 3 of the Covenant, he said that the laws on the régime governing marriage had been amended and the penalties for adultery had been abolished. Those changes reflected the radical social transformation that had taken place.

211. With regard to article 4 of the Covenant concerning the suspension of individual rights, article 55 of the Constitution was more precise in that it enumerated the rights that could be suspended whereas the Covenant seemed to imply that all of them could be suspended except for those expressly indicated. An organic law, which had to be approved in Parliament by an absolute majority, would govern states of emergency, and the corresponding powers and restrictions. The law would establish the circumstances in which such states could be declared and the authorities competent to declare them and their duration, but the principle of responsibility of the Government and its agents would not be modified during those states. He also explained that the objective of anti-terrorist law which might be passed by the Government was to provide it with an effective instrument to combat terrorism while safeguarding guarantees of individual rights, including the right to have legal assistance.

212. In response to the questions put about the penalties that would replace capital punishment, he explained that the maximum penalty for the time being was 20 to 30 years’ imprisonment but that a bill had been prepared that would modify the entire system of penalties. The crime of genocide was covered by the legislation.

213. With regard to article 7 of the Covenant, he informed the Committee that two bills were under consideration, one on the classification of torture and the other on the treatment of prison inmates, which would incorporate the Standard Minimum Rules for the Treatment of Prisoners drawn up by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. There were also Penal Institution Regulations in force, which protected the rights of inmates under strict judicial control.

214. In connection with article 8, he indicated the international conventions on slavery which had been ratified by Spain.

215. Referring to article 9 of the Covenant, he said that release on bail was established by law and that bail was fixed in accordance with the financial means of the person who paid it and the magnitude of the offence. He added that compensation for unlawful arrest was not expressly provided for in the Constitution, but could be interpreted as coming under article 121 of the Constitution in view of its broad scope. A bill was currently under consideration on the subject.

216. Turning to article 12 of the Covenant, he acknowledged that the provisions of the Constitution referred only to Spaniards but said that the actual scope of the rights and freedoms of aliens would be determined by the law on aliens and by established practice. He added that political or ideological considerations could never be invoked to restrict freedom of movement.

217. In relation to article 13 of the Covenant, he pointed out that it had formerly been possible for aliens to be expelled from Spain by administrative decision under the Danger to Society and Social Rehabilitation Act, but that it had been decided to repeal the Act since the concept of “danger to society” could be construed as an interference in a person’s private life. The relevant security measures would be incorporated into the Penal Code.

218. Referring to article 14 of the Covenant, he emphasized that the Spanish judiciary had succeeded in maintaining its independence at all times and enjoyed the respect of the nation. Appointments to the judiciary and the post of Public Prosecutor had always been filled by competitive examination open to anyone with a degree in law. Membership in a political party had been considered a form of partiality that would lead to conflicts in the administration of justice. The Constitution stated that the law would lay down “the system and methods of professional association for judges, magistrates and prosecutors”. Judges were empowered to inform the Government of the need to amend any law that was manifestly unfair. The right to be given legal assistance was granted under the provisions of the Constitution to “every person” whether a Spaniard or an alien. The Code of Military Justice and the respective procedural laws were to be reformed in order to limit the scope of military jurisdiction to purely military affairs and the state of siege. The Constitution prohibited special courts on the grounds that they were contrary to the concept of an independent judiciary.

219. With regard to the questions on loss of nationality and freedom to change nationality, he explained that naturalized aliens could lose their Spanish nationality if they committed crimes of treason or offences against internal security, and that Spaniards were liable to do so if they acquired another nationality or served in a foreign armed force or in other cases covered by the Civil Code. The Right of asylum was recognized by the Constitution, and Spain had ratified the Convention and Protocol relating to the Status of Refugees.

220. Responding to the questions raised concerning restrictions on the right set forth in article 17 of the Covenant, he said that such restrictions were established by the Constitution subject to judicial control and parliamentary supervision. The offences against honour had been defined to protect that right. The right set forth in article 18 of the Covenant was likewise fully guaranteed. In specifying which associations were illegal, the Penal Code defined the actual extent of freedom of association and expression. In reply to the queries put concerning the meaning of the term “truthful information”, he said that a number of offences such as those of calumny and injury could be defended by the application of the principle of exceptio veritatis since the existence of such offences was contingent on the falsity of the information. The application of that exception set a limit on freedom of expression. Activities by republican groups or the dissemination of republican ideas were not prohibited, and the form of government could be changed in accordance with the procedures established in the Constitution. Freemasonry posed a different problem, since it was a prerequisite for the legal recognition of an association that its statutes should be made public. In answer to the question put on the criteria followed in determining which groups were significant, he said that the matter would be settled by legislation and that political and social groups which were relatively well established in the national society would no doubt be taken in account.

221. With regard to the relationship between Church and State, article 16 of the Constitution had



radically changed the situation that had prevailed in the past. It was true that the only religious wedding to have civil force was a church ceremony, but the new legislation governing relations with the Holy See and the future provisions of the Civil Code concerning marriage would determine the scope of the provisions currently in force. In answer to the inquiries about relations between parents and children, he explained that Spaniards attained their majority at 18 years of age and that the constitutional provisions should also be interpreted in the light of the rules governing patria potestas in the Civil Code.

222. Referring to the question of propaganda in favour of war, which was covered by article 20 of the Covenant, he said that, like racist ideas, it had not been dealt with specifically, but that they could be regarded as falling within the scope of illegal propaganda. However, the interpretation of penal provisions by extension or analogy was prohibited in Spain.

223. In connection with articles 21 and 22 of the Covenant, he said that the rights and limitations in question were governed by the Constitution and the Act on political parties. The Act laid down the requirement that their statutes should be registered and made available for public inspection. A review of the documents in question would then make it possible to determine whether there was any evidence of illegality. He also referred to the constitutional provisions which guaranteed the freedom and democratic operation of political parties.

224. With regard to article 23 of the Covenant, he said there was a bill under consideration to confer patria potestas jointly on the father and mother.

225. In relation to article 25 of the Covenant, the Constitution recognized the principle of one person, one vote, and many of its articles specified forms of direct participation by citizens in public affairs, such as the right of petition, popular initiatives, jury service, participation in elections and political parties and appointment to public office.

226. Referring to article 26 of the Covenant, he said that discrimination was condemned in the Constitution and that equality of the sexes was established in the Civil Code. A bill to establish equality before the law for children born in or out of wedlock was under consideration.

227. In relation to article 27 of the Covenant, he explained that there were no Jewish or Moslem minorities of Spanish origin in Spain. The gypsy minority was marginal because of socio-economic factors rather than ethnic discrimination, and an inter-ministerial commission had been set up to study the problems of that nomadic community. It was impossible for discrimination to exist against different nationalities and regions because the Constitution was based on the indissoluble unity of the Spanish nation and guaranteed the right of those nationalities and regions to be autonomous. It was his understanding that the regional legislative assemblies had to reflect the provisions of the Constitution and the Covenant in their laws.

## **CCPR A/40/40 (1985)**

465. In accordance with the statement on its duties under article 40 of the Covenant adopted at its eleventh session (CCPR/C/18) and the guidelines adopted at its thirteenth session regarding the form and content of reports from States parties (CCPR/C/20), and having further considered the method to be followed in examining second periodic reports, the Committee, prior to its twenty-fourth session, entrusted a working group with the review of the information so far submitted by the Government of Spain in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the representatives of Spain. The list, supplemented by the Committee, was transmitted to the representatives of Spain prior to their appearance before the Committee with appropriate explanations on the procedure to be followed. The Committee stressed, in particular, that the list of issues was not exhaustive and that members could raise other matters. The representatives of Spain would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

466. The Committee considered the second periodic report of Spain (CCPR/C/32/Add.3) at its 585<sup>th</sup> to 589<sup>th</sup> meetings, held on 2, 3 and 4 April 1985 (CCPR/C/SR.585-589).

467. The report was introduced by the representative of the State party who explained that, since the Committee's consideration of Spain's initial report six years ago, his country had carried on an intensive programme of legislative and political activity designed to give effect to the 1978 Constitution. One element of that programme had been the creation of the Constitutional Court, the General Council of the Judiciary and the post of People's Advocate, all of which had now become fully operational. In addition, the Spanish Parliament was currently engaged in a number of legislative and parliamentary initiatives aimed at bringing the existing legal order up to date. It was working on draft organic laws for the electoral system and the judiciary; a new military penal code and disciplinary legislation for the armed forces; a local authorities bill; draft organic laws on the rights and freedoms of aliens in Spain; the right to education and trade-union freedom; and a new extradition act. Substantial amendments were also being made to existing laws, amounting to a far-reaching reform of the existing legal system in areas affecting the protection of individual rights.

468. His country was making every effort to ensure the effective implementation of the rights recognized in the Covenant and in the Constitution. By virtue of article 2 of the Constitution, Spain had undertaken to enact necessary legislative and other measures both to give effect to such rights and to provide for effective remedies in case of violations. It had also acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Optional Protocol to the Covenant, had made declarations under article 41 of the Covenant, had recognized the competence of the European Commission of Human Rights to receive complaints of violations and had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

469. The remainder of the representative's introductory remarks were devoted to a detailed description of various features of Spanish legislation relevant to the articles of the Covenant.

Constitutional and legal framework, as well as other measures adopted to give effect to the Covenant

470. With reference to the first item, members of the Committee wished to receive information on significant changes relevant to the implementation of the Covenant that had taken place since their consideration of Spain's previous report, on the relationship between the Covenant and domestic law, on promotional activities concerning the Covenant, and on the factors and difficulties, if any, affecting the implementation of the Covenant. With regard to the question of remedies, members also asked whether Act no. 62/1978 would remain in force under article 161 (1) (b) of the Constitution; what effect the new Habeas Corpus (Amparo) Act 1984 would have and what the respective roles of the Ministerio Fiscal, the Defensor del Pueblo and the Parliamentary Committees were compared to that of the courts. They also sought additional clarification about the actual human rights situation in the country and how the relevant legislation was being implemented, how the supremacy of the Covenant over ordinary domestic legislation was ensured, the circumstances under which habeas corpus procedures could be suspended; the power of the People's Advocate, including his role in guaranteeing compensation in cases of miscarriage of justice and the manner in which the Committee's earlier proceedings had been transmitted to the Spanish Government and Legislature.

471. In his reply, the representative of the State party explained that, under article 10.2 of the Constitution, the Covenant, together with other international instruments, was recognized as a basis for interpreting the constitutional rules pertaining to fundamental rights and freedoms and could be directly invoked in the courts. Since it served as a norm for interpreting the human rights provisions of the Constitution it necessarily took precedence over the Constitution. Under article 96 (1) of the Constitution, the provisions of the Covenant also took precedence over ordinary domestic laws, with any possible conflicts being resolved by the courts in favour of the former.

472. As indicated in the report, the Constitution authorized the suspension of certain rights in all or part of the national territory under circumstances that were clearly defined. Rights that might be suspended on an individual basis in connection with the investigation of activities by armed bands or terrorist groups were also specified. Under recent legislation (Organic Law 6/1984) the right of habeas corpus could no longer be suspended in relation to terrorist acts (art. 55 (2) of the Constitution) but only during a state of emergency or siege (art. 55 (1) of the Constitution). Even in such cases - which remained theoretical since they had not actually arisen - any suspension would have to conform to article 116 of the Constitution and to the legislation governing states of alarm, emergency and siege.

473. With reference to promotional activities, he stated that the Committee's consideration of Spain's initial report had provided an impetus for the great mass of legislation that had been enacted over the past six years in order to bring domestic law into conformity with the covenant and the Constitution and to move from an autocratic régime to one that guaranteed fundamental freedoms. All collections of Spanish legislation included the Covenant and various other international instruments. The Covenant had been translated into Catalan and there were plans to translate it into other vernacular languages. As to questions concerning the People's Advocate, the representative noted that that office had been established mainly with a view to promoting human rights and preventing violations of fundamental freedoms. The People's Advocate screened out many cases, performed fact-finding functions and often channeled appropriate cases to the courts; thus, his functions were complementary to those of the courts.

474. In connection with the question of remedies, the representative stated that, although the Government intended to amend Act No. 62/1978, it remained in force, providing guarantees against abuse of power and for the suspension of administrative acts that violated individual rights. The new Organic Law on amparo, he said, was expected to have a strong impact on both legislation and judicial and police practice because it covered all possible forms of detention, whether by the police, the courts or the military authorities, as well as forcible detention in medical institutions. Conditions for compensation in cases of miscarriage of justice, such as unlawful detention, were set out in the recently adopted anti-terrorist Organic Law No. 8/1984 and in the bill on judicial power that was currently before the legislature.

#### State of emergency

475. With reference to that issue, members of the Committee wished to receive information on the relationship between article 55 of the Constitution and article 4 of the Covenant, whether a state of emergency had every been declared under article 55 (1) and on the manner in which Organic Laws Nos. 11/1980 and 8/1984 were applied in the implementation of article 55 (2) of the Constitution. Members expressed special concern about the provision in Organic Law No. 8/1984 for extending the maximum permissible period of detention under police custody from 72 hours to up to 10 days. In that regard, they asked whether the expanded period during which persons could be held incommunicado meant that such persons had no access to legal representation for as long as 10 days; whether they were free to choose their own legal representation and whether such representatives could actively assist them; whether the rights of suspects, including their protection from abuse and torture during that period were adequately safeguarded and, if so, through what measures; and whether a judge's authorization was required in order to extend the detention period beyond 72 hours. Noting that measures derogating from obligations under the Covenant could only be taken following an officially proclaimed state of emergency, as provided in article 4 of the Covenant, members questioned the compatibility with that article of provisions authorizing restrictions of rights on an individual basis, pursuant to Organic Law No. 8/1984 and article 55 (2) of the Constitution. In addition, members sought further clarification concerning the prevailing definition of terrorism, or of "members of armed bands and terrorist groups", based on Spanish jurisprudence or court decisions, including the views of the constitutional court. It was also asked whether terrorist suspects were governed by a special régime in terms of their place of detention, rights and duties and legal position and what remedies or compensation were available to persons unlawfully arrested or detained.

476. In his reply, the representative of the State party said that article 55 of the Constitution conformed strictly to article 4 of the Covenant and was even more restrictive in scope since only those rights that were specifically enumerated could be suspended. It had not been found necessary to declare a state of emergency or siege, pursuant to article 55 (1), since the adoption of the Constitution. The report contained a list of the provisions of the Covenant that could be suspended during a state of emergency, but even then the right of persons to be informed of the grounds for their arrest, their right not to be compelled to make a statement and their right to legal assistance would be respected. Article 55 (2) of the Constitution authorized the suspension of certain rights of specified persons in connection with investigations into the activities of armed bands or terrorist groups, and Organic Law No. 8/1984 incorporated into one law a number of isolated provisions relating to terrorism, including Organic Law No. 11/1980. While allowing some restrictions of

individual rights, Organic Law No. 8/1984 also contained special safeguards, including judicial intervention, the specific right of habeas corpus, a special reporting requirement to Parliament every three months on the application of such restrictions, and penal liabilities in cases of abuse of power. The prohibition on communication did not mean that lawyers could not intervene when the detainee was being questioned by the police or other authorities, since the right to such assistance was guaranteed by article 17 (3) of the Constitution, from which no derogation was possible. The role of counsel in such a situation was not a passive one - he could ensure that the detainee had been informed of his rights, find out from the judicial authorities or investigating officials the exact content of the investigation and of any statements made by the detainee, ensure that statements were not extracted under duress and interview the detainee after he had been questioned. The meaning of the requirement in article 13 of Organic Law No. 8/1984 that detainees must be “puestos a disposición del Juez” was that a judge must either visit the detainee or have the latter brought to him. The representative also noted that the period of detention could be extended up to 10 days only with a judge’s authorization. Thus, there was no lack of compatibility between article 55 (2) of the Constitution and article 4 of the Covenant. The representative informed the Committee in that connection, however, that a suit had been brought before the Constitutional Court recently challenging the constitutionality of Organic Law No. 8/1984.

477. As to the question of remedies, the representative explained that his Government was currently considering a draft law of which one chapter was devoted to the subject of compensation in cases of miscarriage of justice. He noted that individuals already enjoyed a right to compensation under article 106 (2) of the Constitution and, as provided in article 96, could also invoke article 9, paragraph 5, of the Covenant in Spanish courts. With regard to torture or degrading treatment, the Ministry of the Interior was attempting by all possible means to ensure that its officials carried out their duties lawfully and with respect for essential rights. Under the Criminal Code, all persons had the right of appeal in cases of torture. Individuals could also have recourse to amparo, could testify before the European Commission of Human Rights and invoke the European Convention for the Protection of Human Rights and Fundamental Freedoms.

#### Self-determination, including external and internal aspects

478. Members of the Committee wished to receive information concerning the actual degree to which the Autonomous Communities of Spain were self-governing and whether, in connection with the administration of non-self-governing territories, the relevant constitutional provisions would be brought into line with article 1 of the Covenant. It was asked what Spain’s position was with respect to the illegal occupation of Namibia, the situation of the Palestinian people and the apartheid régime in South Africa. In the latter regard, members asked specifically whether Spain had terminated its commercial relations with South Africa or whether it had allowed Spanish citizens and juridical entities to maintain such relations.

479. In his reply, the representative of the State party stressed that the Spanish Constitution had been adopted by an overwhelming majority in a referendum in 1978 and that his Government felt that it had fully carried out its obligation with respect to the right of self-determination of the Spanish people. He noted, with respect to the status of the Autonomous Communities, that they were authentic political entities with their own executive and legislative institutions sharing responsibilities with the State in their areas of competence, which were defined by the Constitution

and the Constitutional Court. The 17 Autonomous Communities, which made up the Spanish State, had had certain powers transferred to them from the central Government through a complex process which had now been practically concluded as far as most of them were concerned. His government had also established the basis for the self-determination of Western Sahara and would continue to support the principles which had led it to take that action. In addition, it had spoken out in favour of the self-determination of peoples in all international forums and had specifically condemned, without reservation, the delaying policies of the Government of South Africa with regard to the question of Namibia.

#### Non-discrimination and equality of sexes

480. With reference to that issue, members of the Committee wished to receive information on measures to provide for sexual equality; the degree to which women enjoyed equality in family matters and were actually availing themselves of the recent legislative changes that had been enacted to promote greater equality; and the extent of their involvement in the public service and education. Noting that Spain had ratified the Convention on the Elimination of All Forms of Discrimination against Women, one member also asked whether Spain had submitted a report for examination by the Committee established under that Convention.

481. Responding to the questions raised by members of the Committee, the representative stated that the principle of equality had been recognized, under article 1 of the Constitution, as one of the higher values of the legal order along with liberty, justice and political pluralism. Under article 9 (2) of the Constitution, public authorities were obliged to ensure the effective enjoyment of freedom and equality by individuals and groups, as well as the participation of all citizens in economic, social and cultural life. Equality before the law of all Spaniards, without discrimination, was guaranteed by article 14 of the Constitution. Legislation enacted recently and based on the foregoing principles provided, *inter alia*, for the elimination of differences in the legal status of women or of children born out of wedlock, the transmission of nationality through the mother, guardianship rights equal to those of men and equality between the sexes in the matter of penal treatment. Laws had also been passed to provide for equal opportunity for handicapped persons (Act No. 13/1982) and for equal legal treatment for conscientious objectors (Act No. 48/1984). Legislation enacted during the period 1981-1983 regarding divorce and annulment of marriage was assuming enormous importance. Finally, he noted that Spain had not yet submitted its report under the Convention on the Elimination of All Forms of Discrimination against Women but that such a report was currently in preparation.

#### Right to life

482. With reference to that issue, members of the Committee wished to receive information concerning measures that had been taken by Spain with respect to the points raised in the Committee's general comments Nos. 6 (16) and 14 (23), particularly in connection with weapons of mass destruction and increasing life expectancy, and concerning the instructions issued to the security forces regarding the use of firearms.

483. In his reply, the representative of the State party said that the death penalty had been abolished in Spain, except as provided in military criminal law applicable in time of war. Since the Penal Code reform in 1983, the death penalty had also been abolished for the crime of genocide. The

circumstances of any death, even when it occurred in the exercise of a public duty, were investigated under court procedures. A person who caused a death while acting in self-defense would be required to demonstrate that he was acting to repel illegitimate aggression involving the use of force; the issue of proportionality would also arise in determining whether the amount of force employed in repelling the illegitimate aggression might have been excessive. It was up to the judicial authorities to decide whether or not the circumstances of the death were consistent with legitimate self-defense. In police cases, proportionality was of particular importance.

#### Treatment of persons, including prisoners and other detainees.

484. With reference to that issue, members of the Committee requested further information on measures and mechanisms to prevent or punish treatment contrary to articles 7 and 10 of the Covenant and asked specifically whether there had been any cases of cruel, inhuman or degrading treatment and, if so, what action had been taken and with what result; what had been done to educate the police and the Civil Guard regarding Spain's obligations under articles 7 and 10 of the Covenant and whether the courts devoted special attention to that issue. The attention of the representative of Spain was also drawn to the Committee's general comment 7 (16) which contained suggested safeguards against ill-treatment such as avoiding holding persons incommunicado and granting access to detainees by doctors, lawyers and family members.

485. In his reply, the representative of the State party said that the Penal Code defined torture as a specific offence and the public authorities were required by the Constitution to work for the eradication of all forms of torture. Organic Law No. 14/1983 provided for legal assistance to detainees and prisoners, including those held in solitary confinement, at all stages of criminal investigation. Organic Law No. 6/1984 regulating the habeas corpus procedure established direct judicial control over both the causes and the form of detention and applied to detention which although lawful, had been unduly prolonged. Police regulations condemned the degrading or humiliating treatment of detainees, and under the General Prisons Act a supervisory judge was responsible for approving sentences of solitary confinement exceeding 14 days, resolving complaints by inmates about disciplinary measures and, in general, safeguarding the rights of inmates and redressing any abuses which might occur in the application of prison regulations. In addition, Spain's acceptance of mechanisms of international control made it possible for any person who believed he was a victim of an act of torture to bring his case to the European Commission of Human Rights.

486. The representative further stated that during the period 1983-1984 there had been 126 complaints of torture which had been brought to court, including the Olara and Olano cases, but that they were all still sub judice. In the Olano case two civil guards had been suspended on 15 October 1984 and proceedings had also been instituted against others. Some members of the armed forces had, however, been convicted of inhuman treatment. The representative was of the view that with the passage of time there would be a gradual and total renewal of the police forces and of those responsible for the administration of justice. In the meantime, the Ministry of the Interior had issued a number of disciplinary directives, which had been approved by a decree dated 11 July 1984, warning the police against harassment or inhuman treatment of prisoners. Recourse to the courts or to the People's Advocate was readily available both to victims of ill-treatment or even to non-victims, alleging that a criminal infraction had occurred. Regarding the question of access to

detainees, the representative noted that the period of detention incommunicado during which communication with family members or friends was not permitted was usually much shorter than 10 days, after which the detainee had the right to inform his family of his whereabouts as well as the right to legal assistance.

### Liberty and security of the person

487. With reference to that issue, members of the Committee wished to receive information regarding the circumstances and periods for which persons could be held in preventive detention without being charged with a criminal offence; detention in institutions other than prisons or for reasons other than crime (psychiatric institutions, social rehabilitation centres, military penitentiaries); the remedies, including habeas corpus, available to persons (and their relatives) who believed that they were being wrongfully detained; the effectiveness of such remedies; the observance of article 9, paragraphs 2 and 5, of the Covenant, particularly with respect to the promptness of judicial control of conditions of arrest and detention; the maximum period for which persons could be detained pending trial; contact between arrested persons and lawyers and the prompt notification of the family in case of arrest. Members of the Committee questioned, in particular, the compatibility with article 9, paragraph 5, of the Covenant of two specific legal provisions: the provision in Organic Law No. 8/1984 authorizing up to 10 days of detention for certain suspects prior to arraignment before a judge and the possibility of extremely lengthy periods of up to four years of pre-trial detention. In the latter connection, some members also questioned the practice of linking the period of allowable detention to the length of the possible sentence associated with the offence with which a detainee had been charged. In the view of those members the only criterion for determining the length of pre-trial detention should be the amount of time needed for the investigation and preparation of the case.

488. In his reply, the representative of the State party pointed out that the right to liberty and security of person was guaranteed under article 17 of the Spanish Constitution. In order to safeguard the right to liberty, the Criminal Prosecution Act determined the cases in which a person could be detained and for how long. Articles 503 and 504 of that Act had been amended by Organic Law Nos. 7/1983 and 9/1984 in order to establish the circumstances in which pre-trial detention could be applied and the maximum duration of such detention. Organic Law No. 6/1984 on habeas corpus established a speedy and simple procedure for obtaining, within 24 hours following the request, judicial approval of the legality and conditions of any kind of detention. Organic Law No. 14/1983 on legal assistance for detainees required that information regarding the grounds for detention and the rights of the detainee should be presented in a "comprehensible form" and established a system for the appointment of legal counsel. Under Organic Law No. 8/1984, the time-limit of 72 hours for the arraignment of the detainee could be lengthened for a maximum period of another seven days; such action must be authorized by the judge, who could at any time revoke it.

489. With regard to the length of pre-trial detention, the representative explained that the maximum limits were three months in the cases of offences carrying a sentence of one to six months; one year in the case of offences carrying a sentence of six months to six years; and two years in the case of offences carrying a sentence of more than six years. In certain complicated cases or where it was felt that the accused might try to flee from justice, the one and two year maximums could be doubled to two and four years respectively. He stressed that not everyone accused of an offence was held



in detention pending trial. Bail could be granted depending on such factors as the past record of the accused, the degree of social alarm that had been created by the offence and the frequency of similar offences. Whenever pre-trial detention or other preventive measures were ordered, the judge was obliged to explain why he had found it necessary to limit the individual's right to freedom or to privacy. However, the individual concerned was free at all times to appeal to the judge or to a higher body against a decision to keep him in detention.

490. Accordingly, in the view of the representative of the State party, the Spanish legislation governing pre-trial detentions was consistent with the requirements of the Covenant. The length of time involved in bringing an accused person to trial depended on the circumstance of each individual case and remedies were available against unreasonable delay through an action of amparo , or through appeal to the courts or to the European Commission of Human Rights.

#### Right to a fair trial and equality before the law

491. With reference to those issues, members of the Committee asked for any comments the State party might wish to make concerning the Committee's general comment 13 (21) and inquired whether legal aid was available in both civil and criminal cases, as envisaged in article 14, paragraph 3 (d), of the Covenant; whether restrictions on communications with counsel of one's own choosing or other restrictions or suspensions of procedural rights had been introduced in cases of terrorism or armed bands and, if so, what those restrictions were and how they could be justified under the Covenant; whether the procedural rights of juveniles were based on legislative enactments or only on constitutional provisions; whether legislation had been enacted to implement the rights set out in article 14, paragraphs 5 and 6, of the Covenant; and whether the last sentence of article 15, paragraph 1, was understood as applying only to cases in progress or also to cases already adjudicated. One member requested additional information on the procedures for the transfer, suspension or dismissal of judges and asked who controlled such matters, whether judges were appointed on a permanent basis or under temporary contracts, whether they enjoyed immunity from suits brought by individuals under the law of defamation for acts or omissions in the course of their duties and whether the system of incompatibilities for members of the judiciary, mentioned in article 127 (2) of the Constitution had been established. Another member, noting the vital importance of ensuring the independence of judges of the Supreme Court, asked what the procedure was for their removal from office.

492. Responding to the request for comments on the Committee's general comment 13 (21) (art. 14), the representative of the State party said that the entire Spanish legal system was based on respect for the principles of the Covenant. So far as articles 14, 15, 16 and 26 were concerned, their provisions accorded with the procedures of Spanish law. Their principles were embodied in Spanish legislation and were broadly reproduced in article 24 of the Constitution. The references in the Committee's general comment to the duration of proceedings presented no particular problem. In Spain, as elsewhere, justice was slow and there were demands for greater speed and flexibility in its administration. There were complaints about the duration of proceedings, but those concerned could invoke their rights under the Constitution and the European Convention on Human Rights. The causes of delays in the administration of justice and ways of remedying them were a constant source of concern and steps were being taken to give the judicial system greater flexibility. A number of laws had been adopted in recent years which were designed to strengthen the system of

due process, and the Constitutional Court was making rulings concerning trial proceedings on a continuing basis, with a view to implementing the principles embodied in the Spanish Constitution, the Covenant and in article 6 of the European Convention on Human Rights.

493. Before replying to other questions, the representative pointed out that legislation governing the Spanish judiciary went back as far as 1870 which would make it difficult to respond fully to all of the questions that had been asked. As to the questions concerning judicial tenure and administration, he said that a judgeship was a career appointment and was not subject to election or contract. The Constitution did not distinguish between categories of judges, none of whom could be removed from office without due cause, which had to be determined under the law governing the judiciary. The disciplinary code for judges was administered by the General Council of the Judiciary so as to ensure their autonomy with respect to other authorities, including the Supreme Court itself. The General Council of the Judiciary had no judicial functions itself but controlled the appointment, discipline and removal of judges. The majority of its members were themselves judges, but another eight were lawyers and politicians appointed by parliament to ensure that society as a whole was also represented.

494. With regard to the question of legal assistance, the representative explained that the Spanish system imposed on the bar associations the obligation to defend those in need of their services. The law on legal assistance enabled detainees to obtain immediate assistance from the system of duty lawyers operated by the bar associations, whose services were charged to the State budget. Legal assistance was thus guaranteed. The right to such assistance applied to both criminal and civil cases, subject only to the defendant's need. Anyone who could not afford to pay for legal assistance would request the appointment of a lawyer under the system.

#### Freedom of movement and expulsion of aliens

495. With reference to that item, members of the Committee wished to receive information on any new legislation, whether already adopted or under consideration, concerning the status of aliens (other than the Asylum and Refugee Status Act No. 5/1984). It was also asked whether there was any legislation allowing aliens to submit arguments against an expulsion order and to have their cases presented before competent authorities. Noting that some proposed legislation concerning aliens provided for restrictions established under unspecified laws as well as for severe restrictions for reasons of public security as determined by the Minister of the Interior, some members called attention to the incompatibility of such provisions with article 12, paragraph 3, of the Covenant.

496. In his reply, the representative of the State party noted that the right to freedom of residence and movement was guaranteed under article 19 of the Constitution. A draft law on the rights and freedoms of aliens in Spain specifically provided that aliens who were legally in Spanish territory would have the right freely to move throughout the territory and choose their place of residence, subject only to such limitations as were provided for under the law or necessary to ensure public security. If a person declared dangerous was an alien, the judge could apply the relevant legal measures or could expel him from the national territory. In that connection, the representative assured the Committee that he would convey the Committee's concerns to parliament so that it could bear in mind the issue of compatibility with the Covenant when considering the proposed legislation.

497. As to the question of recourse available to aliens, he stated that under the Constitution aliens had the same rights as nationals and could also turn to the European Commission of Human Rights if they felt that their rights had been violated. Expulsion could be ordered only as a security measure under a disused provision of the Penal Code and as an alternative to a prison sentence. The legal remedy against such an expulsion order was an action for amparo or recourse to international procedures.

#### Interference with privacy

498. With reference to that issue, members of the Committee inquired whether there had been any progress towards adopting legislation regarding the use of data processing, as envisaged under article 18 (4) of the Constitution.

499. In his reply, the representative of the State party said that there was currently no law specifically governing the use of data processing, which was however, protected in article 18 (4) of the Spanish Constitution. For the time being, Organic Law No. 1/1982 on the right to honour, to personal and family privacy and to personal reputation covered data processing and offered both civil and penal protection. In addition, Organic Law No. 2/1984 regulated the right of redress and recognized the right of any natural or juridical person to correct information circulated about him which he considered incorrect and the disclosure of which might prove harmful to him.

#### Freedom of thought, conscience and religion

500. With reference to those issues, members of the Committee wished to receive additional information regarding the relationship between the State and the churches, in particular the position of the Catholic church in law and practice; they also asked for relevant details concerning the draft law on conscientious objection and clarification of the difference, regarding the rights of parents, between “instruction” and “education” (Constitutional Court, judgement of 13 February 1981). Noting that article 3.2 of Organic Law No. 7/1980 could conceivably be used to prosecute certain sects, one member wondered what authority would decide upon their exclusion from protection under Organic Law No. 7/1980 and whether an action for amparo or other remedy would be available. It was also asked whether the freedom of activity of such sects, if judged to be non-religious, would be jeopardized, whether an unregistered religious community could govern itself as it wished and whether the provisions of article 7.1 of Organic Law No. 7/1980 referred only to the Catholic Church or also to other registered Churches and religious communities that had actually been registered under that Law. Referring to Constitutional Court judgement No. 24/1982, legal conclusion No. 4 (CCPR/C/32/Add.3, 13 (a) (1)), he also asked whether any requests had been made to the State to provide facilities in the armed forces for the practice of religions other than Catholicism. Referring to article 16 (1) of the Constitution, yet another member of the Committee asked in what way religious practice could represent a threat to public order.

501. In his reply, the representative of the State party pointed out, that in accordance with article 16 of the Constitution, Spain was a secular State without an established religion, although the religious beliefs of Spanish citizens - most of whom were Catholic - were taken into account. The long-standing relationship with the Catholic Church was a social reality, but the Catholic Church held no privileged position of any kind. Under Organic Law No. 7/1980 governing religious

freedom, all religions had equal rights under the law; once registered, as required, with the relevant office under the Ministry of Justice, a religious sect enjoyed legal personality. All religions came under the jurisdiction of the Advisory Commission on Religious Freedom created by the law.

502. As to why Organic Law No. 7/1980 did not extend protection to groups interested in psychic or parapsychological phenomena, spiritualism or humanism, the representative explained that rights provided by the constitution were not affected by the Organic Law, which simply clarified the legal status of certain religious groups. Thus, even though a group was not registered it could still exercise all of its constitutional rights, and it could avail itself of the remedy of amparo if it considered that such rights had been violated. Regarding the distinction between “instruction” and “education”, he noted that Spanish law did not differentiate between those two terms but rather between the actual act of teaching (enseñanza) and education (educación), which included the idea of instruction (formación). The distinction was significant in that it had a bearing on State assistance given to religious centres to enable parents to exercise their rights under article 18, paragraph 4, of the Covenant. In a new draft organic law relating to the right to education a change was envisaged in the existing system regarding the right to religious instruction, but the opposition has brought an action for unconstitutionality, which was currently before the Constitutional Court, against the draft law.

#### Freedom of opinion and expression, prohibition of war propaganda and advocacy of national, racial or religious hatred

503. With reference to those issues, members of the Committee wished to know whether any legislation such as that envisaged in article 20 (1) (d) of the Constitution had as yet been drafted and requested information on the meaning of the term “accurate information” in that clause, on the question of ownership, influence and control of the media and concerning actions relating to the “right to peace” and the prohibition of war propaganda. They also asked whether the State television monopoly could be challenged on grounds of unconstitutionality, how article 24 of the Radio and Television Statute, which stipulated that access to television was guaranteed to the country’s “main” social and political groups, was actually applied in practice and what the term “personal reputation”, used in article 20 (4) of the Constitution, meant and by whom it was interpreted.

504. In his reply, the representative stated that no legislation envisaged in article 20 (1) (d) of the Constitution had as yet been drafted. Two relevant laws did exist on that matter, however. Organic Law No. 2/1984 regulating the right of redress made it possible for individuals or groups to request the media publicly to correct inaccurate information published about them and to appeal to the courts if the media refused such requests. Organic Law No. 1/1982 regulating civil protection of the right to honor, to personal and family privacy and to personal reputation also protected individuals against the publication of inaccurate information about them and provided for financial compensation to be paid for any damage to their honor, privacy or reputation. The Penal Code also established penalties for violations of the above right. The term “accurate information” in article 20 (1) (d) was difficult to define; broadly speaking, it meant that events must be presented and recorded as they had occurred and must not be distorted and then presented as the truth. With regard to control of the media, the freedom of expression guaranteed by the Constitution took the form, in practice, of absolute freedom for the media and the freedom to set up communication companies. There were

some restrictions on television, however. The 1980 Radio and Television Statute regulated radio and television broadcasting as a public, State-run service. Independent radio stations existed, but there was still a State monopoly on television, although there was considerable public debate about the possibility of setting up a private television channel.

505. The representative further explained that Spanish television was overseen by an impartial Board of Governors of 12 members, elected in equal proportion by the Congress of Deputies and the Senate, which ensured that the main principles of the constitutional order, such as political, religious, social, cultural and linguistic pluralism and the right to honour, privacy and personal reputation, were properly respected. The Board was responsible, inter alia, for determining the allocations of broadcasting time to the main political and social groups. Since the Spanish Constitution firmly prohibited censorship and Spanish television was supposed to be independent, the possibility of television news being censored should not arise. Regarding the meaning of the term “personal reputation” or “propia imagen”, he noted that Organic Law No. 1/1982 defined the latter term as being the individual’s right not to have pictures of himself in his private life reproduced in photographic, film or other form or recordings of his voice in private life reproduced for commercial purposes.

506. Regarding the right to peace, the representative said that, although that right was not recognized specifically in the Constitution, in fact the entire document was inspired by it. Furthermore, an amendment to the Penal Code adopted in 1983 provided for the inclusion among illegal associations of those which promoted or encouraged racial discrimination, as well as paramilitary associations.

#### Freedom of association, including the right to form and join trade unions

507. With reference to those issues, clarification was requested concerning a provision of a draft organic law currently before the Spanish parliament providing that trade union freedom included the right to form trade unions without having to obtain prior authorization. In addition, it was asked, in connection with the constitutional requirement of democratization of political parties as a sine qua non of their legal existence or recognition, what the legal meaning of democratization was, and specifically whether it had any connection with the internal operation of political groups, their suspension, or recognition of their legal personality.

508. In his response, the representative of the State party said that a trade union wishing to have the status of a juridical person had to fulfil the conditions set forth in the law on freedom of association, which included registration with the appropriate authority. The registering authority could reject an application which failed to fulfil the requirements of the law, in which case the trade union would have recourse to the remedy of amparo. The notion of democratization, which had been included in the light of recent Spanish history, reflected the principles established in the United Nations against Fascist organizations or organizations which might use the system of freedoms to attack freedom itself. In that context, the Spanish Constitution referred specifically to secret paramilitary and other organizations which might use their rights to impair the rights of others.

#### Protection of family and children, including the right to marry

509. With reference to that issue, members of the Committee wished to receive information on the extent to which compliance with the Covenant had been ensured through the extensive legislative reforms that had been adopted.

510. In his reply, the representative stated that the protection of the family was ensured under article 39 (1) of the Constitution and that various amendments had been adopted to the Civil Code ensuring, inter alia, the legal equality of spouses and parents and the equality of spouses during marriage and at its dissolution. Regarding the rights of children, to which Spain attached the greatest importance, he referred to new legislation covering descent, guardianship, equal treatment of children born in or out of wedlock and the right of children to know their origins and to inquire into their parentage. He also noted that Spain had acceded to Convention No. 6 of the International Commission on Civil Status concerning determination of the maternal filiation of children born out of wedlock.

### Political rights

511. With reference to that issue, members requested information on legislation and practices concerning access to public office and practice regarding popular initiatives. It was also asked how the problem of political extremism was dealt with in Spain and whether persons advocating violence or the rejection of basic democratic principles could become civil servants.

512. In responding, the representative explained that access to public service was regulated by a recent law (Act No. 30/1984), which introduced a number of civil service reforms and provided for the participation of civil servants in the determination of their conditions of service through designated representatives. Access to the judiciary, the civil service or any other State service, as well as to office in the Autonomous Communities, was subject to competitive examination. The exclusion of persons from the civil service by reason of their opinions would be contrary to the principle of equality under the Constitution and the only grounds for such exclusion would be conviction for a criminal offence.

513. Regarding the practice of popular initiatives, the representative explained that the relevant provisions of the Constitution concerning popular initiatives had been given effect through Organic Law No. 3/1984. While there had been cases in which the required large number of signatures (500,000) had been collected with the involvement of trade unions, popular initiatives and referenda were exceptional measures in a democracy where the normal channels of popular participation were the political parties and regular elections.

### Rights of minorities

514. With reference to that issue, members of the Committee wished to receive information on any affirmative action that might have been taken with respect to linguistic or other minorities.

515. Responding to that request, the representative explained that the only ethnic minority in Spain was the gypsies, who had come to Spain in the fifteenth century and had remained apart from the

community, largely for economic reasons. In 1979, an international Commission had been established to study their problems and they were now being given special attention in parliament - which had one gypsy member - and through press, radio and television campaigns against social and cultural discrimination. Spain's linguistic minorities were frequently in the majority in regions where their languages were spoken, for example, in the Catalan, Basque and Galician regions. The Constitution guaranteed every community the right to its language as part of its cultural heritage, and the various languages were promoted, inter alia, through television, literature, theater and cinema.

#### General observations

516. Members of the Committee expressed satisfaction about the progressive improvement in the protection of human rights in Spain and the constructive character of the discussion that had taken place during the consideration of Spain's second periodic report. The genuine dialogue that had taken place had clarified many issues of concern to members.

517. On the Committee's behalf, the Chairman thanked the representative of Spain and asked him to convey to his Government the Committee's appreciation of its co-operation and of its efforts in the field of human rights.

## CCPR A/46/40 (1991)

142. The Committee considered the third periodic report of Spain (CCPR/C/58/Add. 1 and 3) at its 1018<sup>th</sup> to 1021<sup>st</sup> meetings, held on 29 and 30 October 1990 (see CCPR/C/SR.1018-1021).

143. The report was introduced by the representative of the State party, who recalled that the Spanish Constitution guaranteed the full exercise of human rights and noted that substantial progress had been made in that respect through reforms in the administration of justice. The courts, especially the Constitutional Court, had handed down numerous decisions based on the provisions of the Covenant.

### Constitutional and legal framework within which the Covenant is implemented

144. With regard to that issue, members of the Committee asked whether a provision of the Covenant could be directly invoked before the courts; whether any court decisions or rulings had been directly based on provisions of the Covenant; whether the authorities of the Autonomous Communities, including the legislative authorities, had been made aware of the provisions of the Covenant; and whether such provisions had been reflected in their statutes. They asked also whether the civil and political rights enumerated in title I, section 1 of the Constitution were automatically applicable within the Autonomous Communities or had to be enacted separately.

145. In addition, members of the Committee wished to know whether, in case of conflict between a law and the Covenant, the courts would apply the Covenant over and above the law, and in that case, whether the law in question would be repealed; whether it was possible for a law enacted subsequent to the Covenant but which ran counter to its provisions to be declared unconstitutional; whether there had been any proceedings before the ordinary courts which had been taken on appeal to the Constitutional Court by an individual; whether all of the rights enshrined in the Covenant were provided for in the Constitution and relevant legislation; and what was the position of the Covenant in the hierarchy of norms. They also wished to know why the grounds on which discrimination was prohibited under article 53 (2) of the Constitution differed from those mentioned in the Covenant; what were the reasons for establishing exceptions to the right of aliens to enjoy civil and political rights; whether the remedy of amparo might be used in the event of violation of rights guaranteed under the Covenant, and whether that remedy and the remedy of habeas corpus remained under a state of emergency or siege. Members of the Committee also wished to receive further information on the powers of the courts and parliaments of the Autonomous Communities; on how the Constitutional Court had resolved conflicts between those courts and the courts of the State; on the precise competence of the Constitutional Court with regard to individual cases and decisions rendered by a lower court; on the competence of the Parliamentary Committee; on the number of complaints concerning rights specifically covered by the Covenant dealt with by the People's Advocate; and on the agreements and sharing of competence between the People's Advocate and his opposite numbers in the various Autonomous Communities under Act No. 36/1985.

146. With regard to the backlog of cases, members of the Committee wished to know whether the efforts being made to overcome the backlog were producing results; what was the average length of time taken for civilian and criminal cases to come to court; whether the courts had experienced any difficulties in the accelerated training of judges and the establishment of courts during the period



under review; how long proceedings took if judicial means had to be exhausted before an application for amparo could be made; whether there was a code of ethics for public officials; and whether only naturalized citizens could be deprived of their nationality.

147. In reply, the representative stated that the provisions of the Covenant had been incorporated into domestic law and that they could therefore be directly invoked before the courts. Abundant case law invoking international human rights instruments had been developed by both the ordinary courts and the Constitutional Court. The Covenant had been elevated to the rank of constitutional law, although it did not take precedence over the Constitution. The interpretation provision on article 10 (2) of the Constitution provided that if there was any discrepancy between a particular rule of law and the corresponding provision in the Covenant, the interpretation must be in conformity with the Covenant. If a law adopted after Spain's accession to the Covenant was found to infringe its provisions, the Constitutional Court might be asked to decide whether the norm was unconstitutional in itself, without reference to a particular case, or whether it was unlawful prior to its application in a particular case. With regard to the apparent discrepancy between article 14 of the Constitution and article 2 (1) of the Covenant, he explained that the grounds of color and national origin could be considered as covered under the ground of race; the spirit of the law was that there was absolute prohibition of discrimination on any ground. The holding of public office was, however, reserved for Spanish nationals, although aliens were entitled to vote in municipal elections, in accordance with the principle of reciprocity. Under the Constitution, the rights enshrined in the Covenant were binding on all public authorities. The statutes of the Autonomous Communities recognized the fundamental rights enshrined in the Covenant and expressly established the specific duties incumbent on the public authorities of those Communities to ensure respect for the Covenant's provisions. Article 53 (1) of the Constitution provided that the Covenant should be directly applicable in the Autonomous Communities.

148. In reply to questions on the remedy of amparo, the representative said that amparo could be applied for in respect of a violation of fundamental rights and freedoms and that it continued to be available during states of emergency. The remedy of amparo could not be employed in cases of private property and inheritance rights, but it was directly applicable to the rights provided for in article 14 of the Constitution concerning equality before the law. Amparo was one of the remedies available to contest laws on the grounds of unconstitutionality. Laws could also be challenged on the grounds of unconstitutionality, as provided for in the Constitutional Court Organization Act. The Constitutional Court had the power to reverse decisions of lower courts. Parliamentary committees were purely investigative bodies which considered complaints and transmitted their findings to the appropriate authority. The State had exclusive jurisdiction in areas such as nationality, immigration, defense, international relations and the administration of justice, while the Autonomous Communities had complete or partial jurisdiction in certain other areas. In resolving conflicts between the laws of the State and those of the Autonomous Communities, the Constitutional Court relied exclusively on the provisions of the Constitution. However, in recent years the discrepancies between state and autonomous community legislation had been gradually removed.

149. With regard to the administration of justice, the representative noted that between 1982 and 1987 the personnel budget had more than doubled and the amount spent on goods and services had almost quadrupled; between 1982 and 1990 the number of judges had risen from 2,036 to 3,032.

Efforts were being made to speed up the process without sacrificing the judiciary's high standards. Experienced lawyers could now be appointed directly to the judiciary. The legal system had been completely remodeled and the backlog of cases was being gradually reduced.

#### State of emergency

150. With regard to that issue, members of the Committee asked whether there was any maximum time-limit for the detention of persons suspected of participating in terrorist offences. Noting that the suspension of certain individual rights was dealt with in the Spanish Constitution in connection with states of emergency, members wished to know whether paragraph 1 of article 55 of the Constitution was the only provision applicable to article 4 of the Covenant.

151. Concerning terrorism, members wished to know what were the respective powers of the Ministry of the Interior and the Peoples' Advocate in that respect; what difficulties were encountered with terrorism associated with some form of separatism; whether all persons arrested or detained had the opportunity to obtain the assistance of a lawyer of their own choice; whether decisions to suspend individual rights were adopted by the Cortes Generales or the Cortes of the Autonomous Communities; whether that type of legislation was subject to a time-limit and review by the legislative authorities; whether the lists of derogations applicable to suspected terrorists was exhaustive; what was the maximum length of time that a suspected terrorist could be held incommunicado and how the incommunicado procedure worked in practice; and why it had been considered necessary to make provision for extension of the custody period.

152. In reply, the representative said that in the Organization Act 4/1988 the period of detention of persons suspected of terrorists acts was 72 hours, which could be extended by a further 48 hours if a judge so decided. The same chapter of the Constitution allowed for a general suspension of rights in a state of alert, exception or siege and the suspension of individual rights in other specified cases. Only the Cortes Generales could adopt an organization act proclaiming a state of alert, exception or siege, and the duration of such state was always limited. Unjustified or abusive use of the powers recognized in such an organization act carried criminal penalties. No provision authorized the suspension of any of the rights recognized in articles 6-8, 11, 15 or 16 of the Constitution. The rights which could be suspended in order to facilitate investigations in the fight against terrorism were those set out in article 17 (2) and articles 18 (2) and (3) of the Constitution. Detention of suspected terrorists could take place only on the basis of a substantiated order issued by the judiciary. Incommunicado detention could be ordered only by a judge; the detainee had at all times the assistance of a lawyer, who in terrorist cases was appointed by the court. Suspected terrorists were examined by a doctor appointed by the judiciary.

#### Non-discrimination and equality of the sexes

153. In connection with that issue, members of the Committee wished to receive information concerning the activities and accomplishments to date as well as the future plans of the Institute for Women. They also wished to know whether the Institute could receive complaints of discrimination on grounds of sex and, if so, what action it could take; whether there was any case law with regard to violations of the principle of equality between the sexes; whether a woman could accede to the throne; what factors had impeded progress in achieving equality between the sexes; what was the

proportion of women in the education system, particularly at the university level; what the authorities had done to put an end to the practice of traffic in women along the border with Portugal; and lastly why, according to article 14 of the Constitution, only Spaniards appeared to enjoy equality before the law.

154. In reply, the representative noted that a number of major changes had been made recently in the Civil Code and the Labour Relations Code to promote non-discrimination, that maternity and paternity leave had been liberalized and that steps had been taken to enforce the payment of alimony. Measures had also been taken in 1989/90 to make it easier for women to join the armed forces, the state security force, and the Guardia Civil. Sexist stereotypes had been eliminated from school textbooks and particular attention was being paid to the portrayal of women in advertising. The Institute for Women had achieved considerable progress in the promotion of equality; for example, more and more women were passing the civil service entrance examinations. The representative said he had no knowledge of any traffic in women along the border with Portugal, but recently a crime network selling people into prostitution had been unmasked.

155. Replying to other questions, the representative explained that the reference in article 14 of the Constitution to "Spaniards" should be read in conjunction with article 13 (1), which stated that aliens in Spain enjoyed public freedoms, guaranteed in treaties and the law. The employment situation of women had improved spectacularly and the number of women in the education system was certainly over 50 per cent. Although it was not impossible for a woman to accede to the throne of Spain, there was an explicit bias in favour of men; the present King of Spain had a male heir, so the throne could not pass to a woman.

#### Right to life

156. With reference to that issue, members of the Committee wished to know whether there were any plans by Spain to ratify the Second Optional Protocol, aiming at the abolition of the death penalty; whether the authorities intended to amend the Code of Military Justice to limit the number of capital offences; whether the Code of Military Justice could be applied to civilians in certain situations; whether the death penalty was applicable also to offences under the Code of Military Justice in cases where war had not been officially declared or hostilities had not begun, or in a civil war; whether appeal could be made to a civil court against a death sentence pronounced by a military court and, if so, which civil court would hear the appeal; and, with regard to disappeared persons, whether there were procedures in Spain for investigations into deaths in custody or detention that met the criteria adopted by the United Nations General Assembly.

157. In reply, the representative said that Spain was working to abolish the death penalty and that the instrument of ratification to the Second Optional Protocol to the Covenant had been submitted to the Cortes. However, Spain would enter a reservation to the effect that the death penalty could be applied in extremely serious cases in wartime. The death penalty was not mandatory for the offences listed in the Code of Military Justice and could be imposed only during a genuine and formally declared war with a foreign Power. The problem of disappearances for political reasons was unknown in Spain. Since the establishment of democracy in Spain only a general law detainee had disappeared and those responsible had been brought to court.

## Treatment of prisoners and other detainees

158. Concerning that issue, members of the Committee wished to know whether there had been any complaints during the period under review of torture or cruel, inhuman or degrading treatment of prisoners or detainees and, if so, whether there had been any convictions on such charges. They also wished to have information on detention in places other than prisons or for reasons other than criminal offences (for example, in police precincts or psychiatric institutions), as well as on the matters covered in the 1990 report by the People's Advocate.

159. In addition, members of the Committee wished to know whether the Spanish Government intended to speed up the legal process in criminal cases; whether there was a link between incommunicado detention and the risk of ill-treatment of detainees accused of terrorist acts; how the "prison code", which allowed inmates to beat up child sex offenders, was to be understood; what was the practice relating to the employment of convicts; what regulations governed the frequency of interrogations and whether a doctor was involved; under what circumstances an oral or written confession would be considered to be voluntary; whether the courts could convict a defendant on the strength of a confession; whether it was incumbent on the prosecution to prove that the evidence had not been obtained by irregular means; what measures were taken to educate the police about human rights; whether people suffering from AIDS could be hospitalized on the grounds that they were a danger to public health; why the right not to be subjected to medical or scientific experimentation without one's free consent was not guaranteed; whether the Spanish authorities intended to draw up regulations governing in vitro fertilization and human embryo research; and lastly, why the talks with the International Committee of the Red Cross about conditions of detention had been broken off.

160. In reply, the representative said that the only complaint concerning prisoners or other detainees had been made by members of the terrorist group GRAPO, who had been force-fed while on hunger strike. The Government had been able to prove before the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that their action had in no way violated any of the fundamental rights of the hunger strikers. In some cases, members of the police force and the Guardia Civil had been convicted on charges of ill-treatment but there had been no convictions relating to cases of torture. Conditions of detention were governed by the provisions of the Constitution and the Penal Code; the maximum length of custody at a police station was 72 hours.

161. Replying to other questions, the representative emphasized that Spain had made considerable effort to modernize the prison regime. The Government had approved an Organization Act on 21 July 1989 which prescribed penalties specifically for torture. Cases of ill-treatment did occur but it was not a systematic practice, and such cases were dealt with as quickly as possible. Confessions did not constitute proof capable of securing the conviction of the accused. Evidence obtained through violations of the accused's rights was entirely inadmissible and was considered not to exist for the purposes of the case. A judge from the Office of the Government Attorney visited prisons frequently, as did a visiting magistrate who received any complaints about prison conditions. There was no forced labour in Spanish prisons. Detainees in incommunicado detention had the right to be examined by a doctor of their choice. A mentally ill person could not be detained against his will except by order of a court and on the recommendation of two physicians appointed by a judge. The

same rules applied to a mentally ill person who was serving a prison sentence. Human rights training courses were provided in police academies, and refresher courses were offered under the auspices of the Council of Europe.

### Liberty and security of the person

162. With regard to that issue, members of the Committee wished to know how the new arrangements set out in Organization Act No. 4/1988 were being implemented; whether the maximum period of pre-trial detention for serious offences of two years could be considered as a reasonable period; whether serious offences included acts of terrorism; why the length of detention depended on the seriousness of the offence; whether detainees, including suspected terrorists, were entitled to request the presence of a lawyer of their own choice after arrest; whether the rules for persons suspected of terrorist offences were the same as those for persons suspected of other offences; and how the remedy of habeas corpus was applied in cases of terrorists.

163. In reply, the representative said that Organization Act No. 4/1988 had been amended, subsequent to a Constitutional Court ruling, to provide for a maximum period of five days of detention without charge of suspected terrorists. Since the adoption of that Act, there had been no allegations of torture or ill-treatment of detainees. Suspected terrorists were frequently brought before a judge immediately after arrest, and in such cases the accused was assisted by a lawyer appointed ex officio, in order to avoid certain types of communication during the initial period of detention. The lawyer so appointed advised the accused from the time of arrest up to a period of up to five days, at which time the detainee was entitled to choose his own counsel and to exercise all of his rights. There were no special provisions regarding pre-trial detention of terrorist suspects. In ordinary criminal proceedings an arrested person was entitled to a lawyer of his own choice. Depending on the nature of the offence and the complexity of the investigation, the accused was generally freed on bail pending the outcome of a protracted investigation. The remedy of habeas corpus was frequently used, particularly in cases involving acts of terrorism.

### Right to a fair trial

164. With reference to that issue, members of the Committee wished to know what further progress had been achieved in implementing the plan provided for in the Judicial Districts and Establishment Act; the extent to which criminal procedures had been simplified during the reporting period; how respect for the principle of confidentiality of communication between a lawyer and his client was ensured; what were the rules governing in absentia trials and for the review of trials; and whether politicians served as members of the General Council of the Judiciary. In addition, clarification was requested of the statement that the presumption of innocence could be overturned by a “minimum amount of evidence”.

165. In reply, the representative said that the Judicial Districts and Establishment Act envisaged one magistrate per 10,000 citizens; this plan had been 85 per cent fulfilled and would be completed in 1992. Numerous courts had been set up in the communities surrounding Spain’s largest cities and each Autonomous Community had been provided with a Higher Court of Justice. The salaries of judges and magistrates had been set above the average remuneration of the most senior civil servants. Judges were independent and their transfer was a matter of their own free will. The self-

governing General Council of the Judiciary used its disciplinary powers mainly against judges who had not fulfilled their duties. Courts and tribunals were frequently visited by members of the Judicial inspection service.

166. The requirement for the appointment, ex officio, of a defense counsel in cases involving terrorist offences related to the need to facilitate a proper and impartial examination of a case. Examining cases and giving decisions on them were two separate functions performed by different judges in order to ensure the maximum impartiality of the judiciary. There had been a shorter procedure for less serious offences, but that had been abandoned because the Constitutional Court had required that there should be absolute observance of jurisdictional guarantees. The principle of the presumption of innocence was always completely respected, and in one case even suspected terrorists had been released.

167. Trials in absentia were very infrequent and were largely limited to cases involving traffic accidents. The remedy of review was a special procedure involving a court consisting of magistrates from various courts acting as a supreme court in cases where fresh facts had come to light since the passing of the original sentence. The Spanish Constitutional Court was very strict in its observance of the guarantees to ensure that “defencelessness” did not occur. The General Council of the Judiciary was elected from among magistrates, lawyers and jurists of recognized competence and with over 15 years’ professional experience. The fact that lawyers sometimes occupied judicial posts did not mean that they were political appointees.

#### Freedom of movement and expulsion of aliens

168. In connection with that issue, members of the Committee asked whether an expulsion order was automatically suspended when an appeal through amparo or other procedures for the suspension of administrative decisions was lodged with a judge by the concerned individual; whether the remedies under articles 34 and 35 of Organization Act No. 7/1985 addressed both the form and the substance of decisions; what further restrictions, if any, had been placed on aliens since 1985; and what specific legal provisions governed the right of Spaniards freely to enter and leave Spain.

169. In his reply, the representative said that there was no automatic suspension of an expulsion order but, in practice, there was a high percentage of suspensions of expulsion orders. Actions taken under the Aliens Act were subject to review by the courts and must neither be unreasonable nor disproportionate. The Act itself was currently under review in the Constitutional Court. Spaniards did not require passports in order to enter or leave the country, and no one could be denied a passport except for criminal reasons. Travel restrictions on political grounds had been abolished.

#### Right to privacy

170. With regard to that issue, members of the Committee wished to know whether the possibility of drafting legislation relating to data processing was being actively pursued by the Government; whether it was intended to maintain legislation permitting telephone tapping in cases of suspected terrorism; what was the difference in application of the law on house searches as between the public at large and persons suspected of engaging in terrorist activities; and what was the legal basis for

considering the act of insulting the flag as an offence.

171. In his reply, the representative noted that under the Constitution the use of data processing had to be limited so as to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights. Spain had ratified the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Several legal measures had been taken for the protection of privacy, and a specific bill on data processing was also currently under consideration. A decision by the Minister of the Interior to authorize telephone tapping had to be communicated to a court, together with the grounds on which it was taken, and the court had to confirm or reject that authorization within 72 hours. The Criminal Prosecution Act provided that the police could, on their own authority, arrest a person found in flagrante delicto who had taken refuge in his home, which could be entered for that purpose. Persons suspected of terrorist activities could be arrested at any place of refuge. Homes were sometimes search, in cases involving major drug offences, for example, in the presence of a judge, who directed the operation.

#### Freedom of thought and religion

172. With reference to that issue, members of the Committee wished to know what procedure existed for determining whether conscientious objection on grounds of belief was genuine; whether the duration of alternative service was the same as that of military service; whether churches, faiths and religious communities were ever refused registration, and if so, for what reasons; why the penalty for absence without due cause for over three consecutive days from the place where alternative social service was to be performed could be as much as six years' imprisonment; and why a person who had begun military service was compelled to continue his service if his conscience no longer permitted him to do so.

173. In reply, the representative stated that the principle of conscientious objection was accepted and that the length of alternative service was twice the length of military service. The matter was currently under judicial review. The registration of churches, faiths and religious communities was an automatic procedure and all of them enjoyed equal protection of the law. However, protection was also given against pseudo-religious organizations that caused harm to children.

#### Freedom of expression; prohibition of propaganda for war and incitement to national racial and religious hatred

174. In regard to that issue, members of the Committee wished to know how the right to seek information envisaged in article 19 (2) of the Covenant was guaranteed; whether there was any legislation to regulate professional secrecy as provided for under article 20 (1) (d) of the Constitution; whether any legislative measures were being considered to give effect to article 20 of the Covenant; whether sentences passed in relation to the exercise of freedom of expression were perceived as a restriction on such freedom; whether the standards of libel applied were more flexible when the reputation of people in public life was involved; whether legislation existed allowing private individuals to obtain information from the authorities; what procedures governed the granting of television concessions to the private sector; and whether measures had been taken to ensure the political neutrality of the channels.

175. Replying to questions raised concerning article 20 of the Spanish Constitution, the representative said that the right to freedom of the press could be invoked directly before the courts. Government and Parliament were of the opinion that no legislation was the best legislation where information was concerned; this explains why to date there was no legislation on the press or the media. Freedom of the press was limited only by the provisions of the Penal Code and a law on the protection of honour. The Constitutional Court had ruled that freedom of expression and the right to information overrode the right to honour. There was general agreement among politicians that the law should be amended to make serious slanders on political personalities no longer liable to prison sentences but only to fines. The Spanish Administration was required to make available to the public any information in its possession, limited only by the Official Secrets Act. No press organ was in state ownership and the number of concessions had been limited to prevent groups or individuals gaining control of those media. Autonomous regions each had the right to set up their own television channel. Impartiality was guaranteed by the channels' boards of directors, which were made up of representatives of the various political parties. Violation of the channels' political neutrality during election campaigns constituted an electoral offence. Administrative penalties were the responsibility of the Minister of Transport, Tourism, and Communications and could be appealed before the courts.

#### Freedom of assembly and association

176. With regard to that issue, members of the Committee wished to receive more information concerning the sentencing of Guardia Civil members to comparatively heavy terms of imprisonment for having tried to form a trade union.

177. In reply, the representative said that the question of converting the Guardia Civil from a military to a civilian institution was a very controversial one. The sentences referred to by members of the Committee were never served.

#### Protection of children

178. With reference to that issue, members of the Committee wished to be provided with information regarding the law and practice relating to the employment of minors.

179. In reply, the representative stated that the age of legal majority had been set at 18 but was 16 for employment purposes. Some forms of work were forbidden for persons below the age of 18. Administrative legislation had been adopted forbidding the employment of minors in occupations liable to interfere with their general education.

#### Rights of persons belonging to minorities

180. In connection with that issue, members of the Committee asked the representative of the State party to comment on the accomplishments to date of the relevant Autonomous Communities in their efforts to integrate the gypsy minority and about any continuing difficulties being faced in that regard. They also wished to know whether changes could be envisaged to the existing structure of the Spanish State in response to the claims of the Basque minority; whether the various languages other than Spanish could also be used in the courts; and what measures had been taken to preserve



gypsy culture and to encourage the use of their language.

181. In reply, the representative said that there had been a long history of harmonious coexistence among the various ethnic groups in Spain. The Ministry for Social Affairs had had housing built for the gypsy minority and had been instrumental in setting up an interministerial group with the task of encouraging the adoption of measures to improve their integration and development. The Autonomous Communities had also adopted social and other legislation which made special provisions for gypsies. Article 2 of the Constitution provided that “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards”. If a party standing for self-determination was ever voted into power by a majority of Basque electors, that would be the time to consider the consequences of such a vote. Spanish and the local language were the official languages of the Autonomous Communities and the official gazette of each community was published in both languages. The local language was used in the courts if it was understood by all those present. There was no gypsy language as such in Spain but only some gypsy words in Spanish slang. The Government was making all possible efforts to respect gypsy customs and culture.

#### Concluding observations

182. Members of the Committee expressed satisfaction with Spain’s informative report and thanked the State party’s delegation for engaging in a constructive and fruitful dialogue with the Committee, which had provided an opportunity to observe at first hand the progress of democratic Spain. The steady improvement in the human rights situation in Spain, particularly through the strengthening of the legal system and the judiciary, deserved respect and it could confidently be said that Spain was continuing to make progress on all fronts.

183. Nevertheless, members noted that there were a number of problems that still gave rise to concern, some of which were the same as had been expressed during the consideration of the second periodic report. Among such concerns were the number of offences carrying the death penalty; the suspension of the rights of terrorist suspects under article 55 (2) of the Constitution and the fact that circumstances had given rise to what amounted to permanent emergency legislation; the need to take action aimed at preventing cases of torture and ill-treatment, such as police and security force training, as recommended in the report of the People’s Advocate; the military nature of the Guardia Civil; the excessive length of the pre-trial detention period and its linkage to the length of the maximum allowable sentence; and conscientious objection. Members also expressed the hope that future reports would include more information on factors and difficulties encountered in implementing the Covenant.

184. The representative of the State party thanked the members of the Committee for their interest and cooperation and assured them that the Committee’s concerns and observations would be duly conveyed to his Government.

185. Concluding the consideration of the third periodic report of Spain, the Chairman thanked the delegation for the quality of the report and the dialogue it had initiated, which had revealed many positive factors, particularly the Government’s commitment to strengthening the machinery of justice.



## **CCPR A/51/40 (1996)**

167. The Committee considered the fourth periodic report of Spain (CCPR/C/95/Add.1 and HRI/Core/1/Add.2/Rev.2) at its 1479<sup>th</sup> to 1481<sup>st</sup> meetings (fifty-sixth session), on 20 and 21 March 1996, and at its 1498<sup>th</sup> meeting, on 3 April 1996, adopted the following comments.

### **1. Introduction**

168. The Committee thanks the State party for submitting, within the allotted time, a report which is in conformity with the Committee's guidelines, and for engaging, through its highly qualified delegation, in a constructive dialogue. It notes with satisfaction that the information provided in the report and orally by the delegation has given the Committee an appreciation of the manner in which Spain is acquitting itself of its obligation under the Covenant.

### **2. Factors and difficulties affecting the implementation of the Covenant**

169. The Committee notes with concern that terrorist groups continue to perpetrate bloody attacks which result in loss of life and affect the application of the Covenant in Spain. It also notes the re-emergence of racist and xenophobic theories and behavior.

### **3. Positive aspects**

170. The Committee notes with satisfaction that Spain has come a long way in the promotion of and respect for human rights. In this connection it welcomes the accession of Spain, on 22 March 1991, to the Second Optional Protocol, aiming at the abolition of the death penalty.

171. The Committee welcomes the fact that efforts have been made to disseminate information on respect for human rights in schools as well as information on the Committee's report to the general public.

172. The Committee notes that the new law of 15 January 1996 concerning the status of minors should contribute to the application in Spain of the Convention on the Rights of the Child and the relevant provisions of the Covenant, particularly article 24.

173. The Committee welcomes the progress made by the State party in promoting equal opportunity for women in all sectors of public and professional life.

174. The Committee notes with satisfaction that the Penal Code drawn up in 1995 includes provisions establishing penalties for acts of racial discrimination and xenophobia.

175. Finally, the committee notes that many decisions in the national courts refer to the Covenant as the legal basis, in conformity with articles 10 and 96 of the Constitution.

### **4. Principal subjects of concern**

176. The Committee is concerned at the numerous reports it has received of ill-treatment and even torture inflicted by members of the security forces on persons suspected of acts of terrorism. It notes

with concern that investigations are not always systematically carried out by the public authorities and that when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released early or simply do not serve the sentence. Moreover, those who perpetrate such deeds are seldom suspended from their functions for any length of time.

177. The Committee is concerned that proof obtained under duress is not systematically rejected by courts.

178. The Committee expresses concern at the maintenance on a continuous basis of special legislation under which persons suspected of belonging to or collaborating with armed groups may be detained incommunicado for up to five days, may not have a lawyer of their own choosing and are judged by the Audiencia Nacional without the possibility of appeal. The Committee emphasizes that those provisions are not in conformity with articles 9 and 14 of the Covenant. Also in regard to those two articles, the Committee notes with concern that the duration of pretrial detention can continue for several years and that the maximum duration of such detention is determined according to the applicable penalty.

179. With regard to the increase in the number of asylum seekers, the Committee notes that anyone whose application for asylum or for refugee status is denied can be held for seven days prior to being expelled.

180. The Committee deplores the poor prison conditions that exist in most prisons, generally resulting from overcrowding and depriving those detained of the rights guaranteed in article 10 of the Covenant.

181. Finally, the Committee is greatly concerned to hear individuals cannot claim the status of conscientious objector once they have entered the armed forces; that does not seem to be consistent with the requirements of article 18 of the Covenant, as pointed out in the Committee's general comment No. 22 (48).

## 5. Suggestions and recommendations

182. The Committee invites the State party to take the necessary steps, including educational measures and information campaigns, to avert racist and xenophobic tendencies.

183. The Committee recommends that the State party establish transparent and equitable procedures for conducting independent investigations into complaints of ill-treatment and torture involving the security forces, and urges it to bring to court and prosecute officials who are found to have committed such deeds and to punish them appropriately. The Committee suggests that comprehensive human rights training should be provided to law enforcement officials and prison personnel.

184. The Committee recommends that the legislative provisions which state that persons accused of acts of terrorism or those suspected of collaborating with such persons may not choose their lawyer should be rescinded. It urges the State party to abandon the use of incommunicado detention

and invites it to reduce the duration of pretrial detention and to stop using duration of the applicable penalty as a criterion for determining the maximum duration of pretrial detention.

185. The State party is strongly urged to institute a right of appeal against decisions of the Audiencia Nacional in order to meet the requirements of article 14, paragraph 5, of the Covenant.

186. The Committee urges the State party to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces.











