



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/ESP/5  
5 February 2008

ENGLISH  
Original: SPANISH

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Fifth periodic report**

**SPAIN \***

[11 December 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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**FIFTH REPORT ON THE PROVISIONS ADOPTED AND THE PROGRESS MADE BY  
SPAIN TO GIVE EFFECT TO THE RIGHTS RECOGNIZED IN THE  
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**I. CONSTITUTIONAL AND LEGAL FRAMEWORK FOR THE  
IMPLEMENTATION OF THE COVENANT (ART. 2, PARAS. 2 AND 3)**

1. The Kingdom of Spain is submitting its fifth report on article 40 of the International Covenant on Civil and Political Rights, thus fulfilling the obligations arising out of the ratification of the Covenant. The first, or initial, report was considered by the United Nations Human Rights Committee at its sixth session from 9 to 27 April 1979. The second report was considered at the Committee's twenty-fourth session, held from 24 March to 12 April 1985. The third report was considered at the fortieth session, on 29 and 30 October 1990. The fourth report (CCPR/C/95/Add.1 and HRI/CORE/1/Add.2/Rev.2) was considered by the United Nations Human Rights Committee at its fifty-sixth session, on 20 and 21 March and 3 April 1996.
2. Like the preceding periodic reports, this fifth report will focus on the progress made in protecting individual rights and fundamental freedoms recognized by the Covenant and on the continuation of the constructive dialogue with the Committee, in accordance with the guidelines the Committee has adopted.
3. In this connection, some of the information given in previous reports will be given again, together with updates. Updated information on territory and population included in the introductory part of earlier reports is contained in annex I hereto.

**A. System of guarantees**

4. The general framework within which the civil and political rights recognized by the International Covenant on Civil and Political Rights are protected in Spain is to be found in the Spanish Constitution. As stated in preceding reports, the civil and political rights recognized by the International Covenant are basically contained in title I, section 1, chapter II, of the Spanish Constitution ("Fundamental rights and duties"). Article 53 of the Constitution establishes the system of guarantees for these rights, which is arranged as follows.

(a) A legislative guarantee: The exercise of these rights may only be regulated by law, which shall, in every case, respect their essential contents. The law setting out fundamental rights and public freedoms must be an organization act, which shall require a majority final vote of the Congress on the bill as a whole if it is to be adopted, amended or waived (art. 39, paras. 1 and 2). The substantive concept of organization act and related matters has been defined by the Constitutional Court (rulings of 13 February 1981, No. 76/1983 of 5 August 1983, No. 25/1984 of 23 February 1984 and No. 160/1986 of 16 December 1986). The Constitutional Court ensures the effectiveness of this guarantee by means of an action of unconstitutionality in respect of laws and enactments (art. 161, para. 1(a)), which may be brought by the President of the Government, the Ombudsman, 50 deputies, 50 senators, the executive collegiate bodies of the Autonomous Communities and, when appropriate, their legislative assemblies (art. 162, para. (a)). In addition, the State is required to obtain prior authorization from the Cortes Generales with respect to treaties or agreements affecting the fundamental rights and duties provided for in title I (art. 94, para 1(c)) of the Constitution.

(b) Judicial protection: Any citizen may assert his claim to protection of the freedoms and rights recognized in article 14 and section 1 of chapter II (in addition to the right to

conscientious objection recognized by article 30) in the ordinary courts. Act No. 62/1978 of 26 December 1978, providing "legal protection of the fundamental rights of the individual", lays down the procedure for such protection. The second transitional provision of the Constitutional Court Organization Act extends the protection provided by that Act to all the rights included in article 53, paragraph 2, of the Constitution. The Judicial Power Organization Act (No. 6/1985) of 1 July 1985 (art. 7, para. 1) stipulates that the rights and freedoms recognized in chapter II of title I of the Constitution are in their entirety binding on all judges and courts by whose effective protection they are guaranteed. In this respect, article 5, paragraph 4, of the Act stipulates that "a breach of the Constitution shall constitute sufficient grounds for an appeal to vacate in all cases provided for by law".

(c) Once they have exhausted judicial remedies, citizens may apply to the Constitutional Court by an application for amparo (art. 53, para.2, of the Constitution). This principle is embodied in article 41 of the Constitutional Court Organization Act, paragraph 1 of which states that the rights and freedoms recognized by articles 14 to 29 can be protected by the constitutional remedy of amparo, in the cases and in the manner determined by the Act, without prejudice to general protection by the courts of law. Similar protection extends to conscientious objection, which is recognized by article 30, paragraph 2, of the Constitution, whereby "The constitutional remedy of amparo protects all citizens, under the terms of this Act, against violations of the rights and freedoms referred to in the previous paragraph by orders, legal acts or acts of violence on the part of the public authorities of the State, the Autonomous Communities or other territorial, corporate or institutional public entities or by their officials or agents". Consequently, in order to appeal to the Constitutional Court for amparo, judicial remedies must first have been exhausted (rulings of the Constitutional Court, inter alia, rulings Nos. 73/1982, 29/1983 and 30/1984) and it has also been specified that the remedy in question does not constitute a third instance (ruling No. 11/1982 of the Constitutional Court). The persons entitled to file an application for amparo are those directly concerned by the order or administrative act and any party to the respective court proceedings, as well as the Ombudsman and the Public Prosecutor, who shall always be a party to any amparo proceeding (Constitutional Court Organization Act, art. 46, para. 1 (a) and (b) and art. 47, para. 2);

(d) Pursuant to article 54 of the Constitution, the Ombudsman is "a High Commissioner of the Cortes Generales, appointed to defend the rights of the individual and authorized to supervise the activities of the Administration and to report on them to the Cortes Generales". In addition to this supervisory role over the activities of the Administration, the Ombudsman, in his capacity as a defender of the rights of the individual, is authorized to file an application for amparo in respect of those rights (Constitution, art. 162, para. 1, and Constitutional Court Organization Act, art. 46). He coordinates with parallel institutions in the Autonomous Communities (Sindic de Greuges in Catalonia, the Community of Valencia and the Balearic Islands, Ombudsman in Andalusia, Castilla la Mancha and Navarra, Ararteko in the Basque Country, Valedor do Povo in Galicia, Diputado del Común in the Canary Islands, Justicia Mayor in Aragón and Procurador del Común in Castilla and León). This institution is highly effective in protecting human rights, as illustrated by the number of complaints with which it has dealt:

- (i) 23,512 relating to the environment, territorial administration and organization and housing;
- (ii) 3,693 to economic administration;
- (iii) 3,268 to education and culture;

- (iv) 2,636 to health and social services;
- (v) 2,046 to justice;
- (vi) 1,661 to the civil service and employment;
- (vii) 1,553 to defence and internal affairs;
- (viii) 1,375 to alien affairs and immigration.

For the purpose of organizing the relationship between the Ombudsman and his opposite numbers in the various Autonomous Communities, Act No. 36/1985 of 6 November 1985 lays the foundation for an orderly relationship with a view to the better achievement of their objectives. A summary of the report of the Ombudsman for 2005 is contained in annex II hereto.

(e) As stated in preceding reports, in the Spanish legal system, the Office of the Public Prosecutor is a judicial body and its role is laid down in the Constitution, within the framework of the Judiciary (art. 124, Title VI, of the Constitution). Pursuant to this article, it is responsible for "promoting the working of justice in the defence of the rule of law, of citizens' rights and of the public interest, as safeguarded by law". In accordance with the Organizational Statute of the Office of the Public Prosecutor (Act No. 50/1981 of 30 December 1981), its mission is to "ensure respect for the constitutional institutions and fundamental rights and public freedoms by whatever means are required for their defence" (art. 3, para. 3) and "to take part in any court proceedings for amparo" (art. 3, para. 11); it is also authorized to file an application for amparo with the Constitutional Court (art. 3, para. 12, relating to art. 162, para. 1(b) of the Constitution and arts. 46 and 47 of the Constitutional Court Organization Act).

(f) Parliamentary Committee: The Regulations of the Congress of Deputies, of 10 February 1982 (arts. 40 to 53) govern the competence of the Standing Constitutional Committee and the Standing Petitions Committee and authorize the latter to examine individual or collective petitions received by Congress and to decide to refer them (a) to the Ombudsman; (b) to the Congressional Committee dealing with the issue concerned; and (c) to the Senate, the Government, the courts, the Office of the Public Prosecutor or the relevant public administration. The Regulations of the Senate, of 26 May 1982, also provide for committees to promote and protect human rights (arts. 49 to 68).

## **B. Obligation under the Covenant**

5. Taking account of practice over these years, the Kingdom of Spain undertakes, in accordance with its obligation under the Covenant, not only to respect, but also to ensure "to all individuals within its territory and subject to its jurisdiction the rights recognized in the ... Covenant".

6. As to the recognition of rights, it must once again be stressed that the Covenant has been fully incorporated into internal legislation in Spain, in accordance with article 96, paragraph 1, of the Constitution. The recognition of the fundamental rights and freedoms set out in the Constitution and the wide range of organizational legislation on these rights and freedoms must also be reiterated.

7. Respect for the rights recognized in the Covenant is reinforced in Spain by article 10, paragraph 2, of the Constitution, which stipulates that "the principles relating to the fundamental

rights and freedoms recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain".

8. The importance of the remedy of amparo and its extraordinary usefulness in protecting fundamental rights have already been highlighted in earlier reports. In order to update information on this point, the State has had to take steps in response to the disproportionate use that has been made of amparo, which many have regarded as an additional remedy in cases of personal litigation. The increase in the number of applications for amparo, often devoid of genuine substance, was threatening to paralyse or at least delay the work of the Constitutional Court. Organization Act No. 6/1988 was therefore adopted on 9 June 1988 and amends article 50 of the Constitutional Court Organization Act to provide for the rejection of applications for amparo devoid of genuine substance by unanimous decision of sections composed of three magistrates.

9. Despite the amendment, the number of applications for amparo has kept going up, amounting to 9,467 in 2005, an annual increase of 22 per cent.

10. The system of protection of civil and political rights outlined above is supplemented by the international guarantee deriving from Spain's recognition of international agreements relating to the protection of those rights. Spain acceded to the Optional Protocol to the International Covenant on Civil and Political Rights, adopted in New York by the United Nations General Assembly on 16 December 1986. The instrument of accession, dated 17 January 1985, was published on 2 April 1985; the sole interpretative statement concerned article 5, paragraph 2, of the Protocol and specified that the Human Rights Committee should not consider any communication unless it had ascertained that it was not being examined under another procedure of international investigation or settlement.

11. This reservation, similar to those entered by Denmark, France, Iceland, Italy, Luxembourg, Norway and Sweden, can be explained by the fact that Spain, like those countries, had agreed that the European Commission of Human Rights is competent to receive petitions from individuals about alleged violations of the rights recognized by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

12. Spain ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, by an instrument dated 10 October 1987. In its instrument of ratification, Spain declared, under articles 21, paragraph 1, and 22, paragraph 1, of the Convention, that it recognized the competence of the Committee against Torture to receive and consider communications from a State party or an individual alleging violations of the provisions of the Convention by the State concerned.

13. In 2006, Spain also ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 18 December 2002, the entry into force of the Optional Protocol generally and for Spain on 22 June 2006 having been determined by ratification, in accordance with article 28 of the Protocol.

14. The Kingdom of Spain ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 2 May 1989 and has routinely been receiving periodic visits of the Committee established by the Convention.

### **C. Legislative progress made since the last report**

15. Spanish democracy, re-established in 1978, has moved on from its initial phase and today practically all the principles relating to fundamental rights and freedoms are fully operational, as described in the various paragraphs of this report.

### **D. Publicity**

16. The International Covenant on Civil and Political Rights is widely disseminated in Spain, as evidenced by the constant references made to it by the courts. Since it has been incorporated into national legislation, the Covenant is included in all basic textbooks on law, together with the other treaties on fundamental rights and freedoms ratified by Spain.

## **II. INFORMATION RELATING TO EACH OF THE RIGHTS REGONIZED IN THE COVENANT**

### **A. Introduction**

17. The fifth periodic report will focus on new legislative provisions and on the practice and decisions of the courts and other Government bodies. The information on legislative matters contained in earlier reports will thus be updated and examples will be provided of practice in the Kingdom of Spain in the area of protection of fundamental rights and freedoms.

### **B. Self-determination (art.1)**

18. The so-called "State of Autonomies", pursuant to recognition in article 2 of the 1978 Constitution of the right to autonomy of the nationalities and regions forming part of it, has been fully established and is in the process of being consolidated.

19. At present, most of the Autonomy Statutes of the various Communities forming part of Spain are being or have recently been amended.

### **C. State of emergency (art.4)**

20. Earlier reports described the regime applicable to states of alert, emergency and siege in the Spanish legal system after the 1978 Constitution; to date, however, it has never actually been applied.

### **D. Non-discrimination and equality of the sexes (art. 2, para. 1, and arts. 3 and 26)**

21. With regard to the prohibition of discrimination, reference is made below to the relevant article of the 1995 Penal Code.

22. Article 22 establishes as an aggravating factor the commission of an offence for reasons of racism, anti-Semitism or other kinds of discrimination connected with the victim's ideology, religion or beliefs, his ethnic group, race or nation, sex or sexual orientation, or illness or disability.

23. Discrimination is taken into account in article 174 in defining an aggravated form of the offence of torture.

24. Labour discrimination is defined specifically in article 314, incitement to discrimination or hatred against groups in article 510 and associations which encourage discrimination in article 515.

25. Act No. 62/2003 on fiscal, administrative and social measures includes, in title II, chapter III, "Measures for the implementation of the principle of equality of treatment", which establishes measures for the full and effective implementation of the principle of equality of treatment and non-discrimination, particularly on the grounds of racial or ethnic origin, religion or belief, or disability, age or sexual orientation (see annex III).

26. The Act also establishes the Council for the Promotion of Equality of Treatment and Non-Discrimination against Persons Based on Racial or Ethnic Origin.

27. Along with other effects and causes, the world economic crisis and migration movements have led to a re-emergence of racially discriminatory theories and behaviour in certain countries which make it necessary to move forcefully to prevent and combat such thoroughly condemnable practices. In view of the difficulties that might arise in guaranteeing the right to non-discrimination, the Kingdom of Spain is strengthening protection against racial discrimination by attempting to nip in the bud dangerous and inadmissible attitudes in this sphere, contrary to equality.

28. Organization Act No. 14/2003 on the rights and freedoms of aliens in Spain established the Spanish Racism and Xenophobia Monitoring Centre to study and monitor racist phenomena and recommend policies to combat them.

29. The aim of Act No. 51/2003 of 2 December 2003 is to adopt measures to guarantee and give effect to the right to equality of opportunity of disabled persons (see annex IV).

30. With regard to equality of the sexes, it should be pointed out that the Kingdom of Spain ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

31. At present and for the first time, the Government of the Kingdom of Spain is composed of equal numbers of men and women and has made the promotion of equality of men and women one of its main areas of activity.

32. On 7 March 2005, measures were adopted to promote equality of men and women in employment, enterprises, working and family life, research, solidarity and sport and the Gender Equality Plan was adopted within the General State Administration itself (see annex V).

33. Organization Act No. 1/2004 of 28 December 2004, to which reference will be made in connection with articles 7 and 10 of the Covenant, establishes comprehensive measures to protect against gender-based violence (see annex VI).

34. In addition to State legislation, measures to promote the equality of men and women have been adopted by the parliaments of various Autonomous Communities, including the Basque Country (Act No. 4/2005 of 18 February 2005 on equality of men and women), Galicia (Act No. 7/2004 of 16 July 2004 for equality of men and women, together with Act No. 3/1991 establishing the Galician Service for the Promotion of Equality of Men and Women), the Valencian Community (Act No. 9/2003 of 2 April 2003 for equality of men and women), Navarra (Autonomous Act No. 33/2002 of 28 November 2002 on equality of opportunity for men and



women) and Castilla and León (Act No. 1/2003 Of 3 March 2003 on equality of opportunity for men and women).

35. The State and the Autonomous Communities periodically adopt plans on equality of opportunity for men and women. Copies of the fourth State Equality Plan covering the period 2003-2006 and a comparative study of the national and Autonomous Communities' plans on equality of opportunity are contained in annex VII hereto.

36. Since October 2003, the procedure for the drafting of bills has had to include a report on the gender impact of the measures being provided for in the bill in question (annex VIII).

37. Act No. 33/2006 of 30 October 2006 provides for full equality of men and women in line for succession to titles of nobility. As stated in its article 1, men and women therefore have the same right to succeed to the title of Spanish Grandee and titles of nobility and no person may be given preference in the regular line of succession on the grounds of sex (see annex IX).

38. At present, the Government is submitting to Parliament a draft Organization Act on Equality of Men and Women, which reproduces the wording of Community Directive 2002/73/CE on equal treatment for men and women.

39. Statistical data also show that there has been an increase in genuine equality between men and women as far as education, including university education, is concerned, as well as a constantly growing number of women in all types of work and political activity. This trend is illustrated in the statistical report "Men and Women 2006" contained in annex X hereto.

40. Two rulings of the Spanish Constitutional Court (No. 70/2003 of 9 April 2003 and No. 200/2001 of 4 October 2001) stating its views on "equality in law enforcement" and "equality before the law" are contained in annex XI hereto.

41. Reference should also be made to the information on these articles provided in earlier reports.

42. A report on the implementation of these measures is contained in annex XII hereto.

#### **E. Article 5 of the Covenant**

43. Once again, no question has arisen in this respect under the Spanish system.

#### **F. Right to life (art. 6)**

44. Reference is made to the discussion of this article in earlier reports and updated information is provided in this regard.

45. Spain is a State that has abolished the death penalty. As laid down in article 15 of the Constitution, "The death penalty is abolished, except as provided for by military criminal law for time of war".

46. It was for that reason that Spain was able promptly to ratify the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, which was adopted by the United Nations General Assembly on 15 December 1989 and ratified by Spain on 22 March 1991.

47. In accordance with article 2 of the Second Optional Protocol, Spain reserves the right to apply the death penalty in the exceptional and highly serious cases referred to in Organization

Act No. 13/1985 of 9 December 1985 containing the Military Penal Code, in time of war, as defined in article 25 of the above-mentioned Organization Act.

48. However, Organization Act No. 11/1995 of 27 November 1995 provided for the abolition of the death penalty, including in time of war, thus amending accordingly the Military Penal Code and the corresponding procedural acts (annex XIII).

49. In Spain, the death penalty is therefore not applicable in any case, not even in military criminal legislation for time of war.

**G. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and prison system (arts. 7 and 10)**

50. As already pointed out, in 2006, Spain ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 18 December 2002, the entry into force of the Optional Protocol generally and for Spain on 22 June 2006 having been determined by ratification, in accordance with article 28 of the Protocol.

51. Book II, title VII, of the 1995 Penal Code deals with the regulation of “offences of torture and other offences against mental integrity”. Organization Acts No. 11/2003 of 29 September 2003 and No. 15/2003 of 25 November 2003 improved some aspects of such regulation, defining domestic violence as “degrading treatment” and expressly mentioning discrimination as a motive in the definition of “torture”.

52. Special mention should also be made of Organization Act No. 5/2000 of 12 January 2000 on Criminal Responsibility of Minors, which establishes a flexible framework to enable juvenile courts to decide which measures are applicable to juvenile criminal offenders, taking particular account of their best interests. The principles on which the treatment of juvenile offenders are based include the substantially corrective-educational nature of the procedure and the measures applicable to juvenile offenders and, consequently, flexibility in the adoption and implementation of the measures required by the circumstances of each particular case (see annex XV).

53. In addition to detention in a closed, semi-open or open facility, such measures may include detention in a therapeutic establishment, outpatient treatment, attendance at a day centre, detention with tasks to perform at weekends, probation, residence with another person, a family or an educational group, community service, tasks to educate for life in society, reprimand and forfeiture of driving licence or weapons permit.

54. Special reference must also be made to the measures introduced to combat violence against women in Organization Act No. 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender Violence. The measures adopted are designed to provide a global response to violence against women, bearing in mind the recommendations of international organizations and, in particular, those made by the United Nations.

55. The Act provides for educational awareness-raising and action measures. With specific reference to advertising, it gives an improved image of respect for the equality and dignity of women. It provides support to victims through recognition of rights such as the right to information, free legal assistance, social welfare and financial support and provides an across-the-board legal response that includes procedural rules and the establishment of new courts, as well

as substantive criminal and civil provisions for the training of health care, police and judicial officials responsible for gathering evidence and enforcing the law.

56. In the institutional sphere, attention is drawn not only to the establishment of over 400 courts dealing with violence against women, a prosecutor in charge of violence against women and specialized units in all public prosecutor's offices, but also to the establishment of the Special Government Delegation for Violence against Women and the State Violence against Women Monitoring Centre. Statistical information for the first quarter of 2006 on judicial activity relating to violence against women is contained in annex XVI hereto.

57. With regard to the prison system, it should be noted that the 1995 Penal Code provides for a new system of penalties, replacing custodial sentences in many cases by others affecting less basic legal rights. Royal Decree No. 515/2005 of 6 May 2005 lays down the conditions for the enforcement of sentences involving community service, house arrest and specific security measures, as well as the suspension of the enforcement of custodial sentences (annex XVII).

58. Organization Act No. 1/1979 of 26 September 1979 continues to be the basic regulation governing the enforcement of custodial sentences. The Prison Administration operates under the constant supervision of the Prisons Inspection Judge, who is responsible for the enforcement of sentences, ruling on appeals relating to changes which might be made in accordance with the laws and regulations, protecting the rights of prisoners and correcting abuses and failure to obey prison rules.

59. The Prisons Inspection Judge's functions are, inter alia:

- (a) To adopt all necessary decisions to ensure compliance with rulings relating to custodial sentences, assuming the functions of the courts handing down the sentences;
- (b) To rule on proposals for the conditional release of detainees and grant the appropriate reversals;
- (c) To approve proposals by prisons for privileges that might serve to reduce the length of a sentence;
- (d) To approve penalties of solitary confinement for more than 14 days;
- (e) To rule on appeal on complaints by detainees relating to disciplinary sanctions;
- (f) To rule, on the basis of studies by Monitoring and Treatment Teams and, as appropriate, the Monitoring Centre, on appeals relating to initial classification and changes in level;
- (g) To rule as appropriate on petitions and claims by detainees relating to the prison system and treatment as they affect detainees' fundamental rights and prison rights and privileges;
- (h) To carry out visits to prisons, as provided for in the Criminal Procedure Act; for the exercise of this function, the central prison inspection judge may request judicial assistance from prison inspection judges in the place where the prison to be visited is located;
- (i) To authorize detainees, except those with a third-level classification, to have a leave of absence from prison for more than two days;

(j) To decide on transfers of detainees to closed facilities on the proposal of the prison director.

60. In 1996, new prison regulations (Royal Decree No. 190/1996 of 9 February 1996) were established for the purpose of making the most of the innovative potential of the Organization Act, with particular emphasis on the rehabilitation component. In addition to therapeutic-assistance activities, the treatment of detainees includes training, educational, work, socio-cultural, recreational and sports activities.

61. Special arrangements have been made for the serving of sentences in social rehabilitation centres, open facilities, dependent units (ordinary dwellings with services provided by associations and organizations not forming part of prisons), apartments for young people, units for mothers, mixed apartments and units outside prisons (addiction centres, psychiatric wards).

62. There has been a process of opening up prisons to society, which has been making requests for greater participation and is becoming more involved in prison activity through contacts with the outside world (leaves of absence, special communications, promotion of the open system, treatment outside the prison) and cooperation with public and private organizations providing assistance to detainees. In this regard, special reference should be made to health care, since all detainees are guaranteed medical and health care equivalent to that available to the population as a whole.

63. The consolidated text of the Prison Regulations in force is contained in annex XVIII hereto, together with a copy of Royal Decree No. 782/2001 of 6 July 2001, which governs the special labour relations of detainees working in prison workshops and the social security coverage of persons performing community service (annex XIX).

64. As a result of the considerable increase in the prison population in Spain in the last four years, measures have had to be adopted to create more places in prisons.

65. Statistics on the prison population are contained in annex XX hereto.

66. In December 2005, the Spanish Council of Ministers amended and updated the Prison Amortization and Establishment Plan, which contains forecasts for new prison infrastructure up to 2012 and authorizes the construction and entry into operation of 18,000 new cells for different purposes over a period of seven years.

67. With an additional investment of €1,647 million and a total cost of over €1,800 million, the Plan calls for the construction of:

(a) Eighteen prisons for detainees serving ordinary sentences. Four are being built, 32 social rehabilitation centres of various sizes are about to be inaugurated and work is starting on eight others;

(b) Five women's units outside the ordinary prison and intended particularly to house minors serving their sentences; two such units will be completed in the first quarter of 2008; action to guarantee the availability of a large enough number of quality hospital units in the areas in question.

68. The Plan is designed to strengthen semi-open imprisonment strategies either in social rehabilitation centres or in special types of open prisons available to 14 per cent of the prison

population; to increase resources for ordinary imprisonment so that there will be one person per cell by 2012; to have sentences executed near detainees' places of origin by putting new resources into areas where migratory and demographic pressure is the greatest, crime rates are the highest and the largest number of prisoners is detained outside the areas in question; to create special resources to enable children to remain with their mothers while their mothers are serving their sentences in premises separated from ordinary prison cells and with special organization, operating and living conditions; to tailor the size of new facilities to the real prison needs of each geographical area by creating various types of buildings with different capacities; to improve the general quality of facilities by amortizing and renovating existing units, creating infrastructure suited to the prison system's rehabilitation function, establishing appropriate accommodation, personal development and living conditions and guaranteeing respect for the rights not excluded by the detainees' sentences.

69. The mesh design of the basic type of prison facility, which varies in size, is modular and pseudo-urban, thus making for a system that provides for the individual treatment and classification of detainees, their supervision and changes in their classification level; it guarantees proper treatment by means of the modular system, which has small buildings with shared general services, spacious, multi-purpose common areas, workshops, training classrooms, health care and places for meetings with families. Proper coordination allows for more the rational, complete and effective management of all these components.

70. The differentiation between living, central equipment, work and surrounding areas guarantees that, in new facilities, the results of the obligation to ensure detention and custody are nearly absolute levels of security. The level of sports, educational and work activity in such facilities is much higher than in older prisons in Spain.

71. There has been a gradual reduction in the size of the population detained in closed facilities as a result of the adoption of new classification criteria. Initial level-one classifications thus declined by 21 per cent in 2004 compared to 2003 (148 as compared to 187) and by 12 per cent from 2005 to 2006 (130 as compared to 148). Regressions to level one increased by 10 per cent in 2004 as compared to 2003 (597 as compared to 543) and regressions dropped by 25 per cent from 2004 to 2005 (447 as compared to 597). The total number of level-one classifications was 3.6 per cent in 2003, 3.4 per cent in 2004, 2.6 per cent in 2005 and 2 per cent in the first quarter of 2006, i.e. a drop of 1.6 per cent during the three-year period. Closed facility classifications thus declined by 44 per cent in three years.

72. The prison administration has set itself the objective of becoming more directly involved with detainees in closed facilities by increasing the number of professionals in such facilities, encouraging personal relations between detainees and teachers, psychologists, prison staff and the head of department and bringing in larger numbers of behavioural and specialized clinical experts. To this end, a specialized and permanent team (two years' continuity) composed of a psychologist, a head of department, a chief of service, a jurist and a social worker has been set up in each closed facility or department. Specific training has been designed and provided for such staff, 100 of whom have taken part in 22 prisons. An individual treatment programme is to be prepared for each detainee.

73. In accordance with article 3, paragraph 4, of the General Prison Organization Act (LOGP), one of the prison administration's obligations is "to guarantee the life, integrity and health of detainees". It has adopted a policy of zero tolerance towards any conduct which might involve

torture, ill-treatment or degrading treatment of detainees by public servants. The policy covers the preventive aspects of any such conduct, including disciplinary action or criminal prosecution.

74. In a large number of cases, complaints by detainees of ill-treatment are made in the context of the use of coercion. The administration imposes disciplinary sanctions for any conduct by officials which is deemed inappropriate in the use of the coercive measures available to them to deal with disturbances inside prisons. Such disciplinary action may be accompanied by a possible criminal penalty when the conduct in question constitutes a criminal offence; in such cases, possible offences are brought before the Office of the Public Prosecutor.

75. During the period 2002-2006, 126 inspection reports were prepared and 10 disciplinary cases were brought for alleged ill-treatment. All but one are still pending because the judicial proceedings are still under way after having been brought before the Office of the Public Prosecutor or the competent judicial authority. During this period, one official was convicted for sexual harassment and four others for the use of unnecessary force and injuries.

76. The conduct of the State Security Forces and Bodies is governed by the basic principles contained in article 5 of Organization Act No. 2/1986 of 13 March 1986 on the Security Forces and Bodies, which are in turn based on the United Nations Code of Conduct for Law Enforcement Officials and the Council of Europe Declaration on the Police.

77. Training for police officers in the protection of and respect for human rights is a basic objective that is reflected in the various police training academies.

78. The Police General Operative Section Instruction of 20 January 2003 on imprisonment of detainees and Office of the State Security Secretary Instruction No. 19/2005 of 13 September 2005 on personal search methods were issued and implemented during the period 2002-2006, both on the basis of the principle of full respect for human rights.

79. In another connection, statistical data is given below on complaints filed against General Police Department officials and on disciplinary proceedings instituted during the period from October 2002 to April 2006 for acts committed in the exercise of their functions and allegedly amounting to torture, ill-treatment, discrimination on any grounds or cruel, inhuman or degrading treatment or punishment.

	2002	2003	2004	2005	2006
No. of cases	1	7	8	12	1
No. of officials involved	1	7	10	15	1
Penalty/criminal conviction	1	5	6	5	
Cases filed/dismissed		1	1	1	
Ongoing		1	1	6	1

#### **H. Liberty and security of person (art. 9)**

80. The following relate to the right to liberty and security of person, as recognized in the Covenant.

81. With regard to detention, reference is made to what was stated in earlier reports, especially in respect of article 520 of the Criminal Procedure Act (LEC). The text of the provisions of this Act governing detention and pre-trial detention is nevertheless attached herewith (annex XXI).

82. In connection with pre-trial detention, reference must be made to various amendments to the Act introduced by Organization Act No. 13/2003 of 24 October 2003 for the purpose of increasing the security of the pre-trial detention system. These amendments to the regulations governing pre-trial detention were based partly on the doctrine established by the Constitutional Court in its ruling No. 47/2000, a copy of which is contained in annex XXII hereto.

83. Only the examining magistrate or the judge hearing the case may order pre-trial detention; it must be objectively necessary in accordance with legal parameters and there must not be any other less harsh measures that would make it possible to achieve the same objectives. The judge must take account of the way the measure may affect the accused, bearing in mind his circumstances, the circumstances of the offence in question and the penalty that may be imposed (art. 502).

84. The new article 503 of the Act now contains a more detailed definition of the requirements for pre-trial detention, for the adoption of which:

(c) There must be evidence of the existence of one or more acts which qualify as an offence punishable by a penalty of at least two years' imprisonment or more or a custodial penalty of a lesser duration if the accused has a criminal record which has not been and is not likely to be expunged and which is the result of a conviction for a premeditated offence. If there is more than one such act, the provisions of the special rules for the imposition of penalties remain valid;

(d) There must be sufficient reason to believe that the person against whom the detention order is to be handed down is criminally responsible for the offence;

(e) Pre-trial detention must be intended to achieve one or more of the following objectives:

- (i) Guarantee that the accused is present at the trial when it may be rationally inferred that there is a risk of flight. In order to determine whether such a risk exists, account will be taken of the nature of the act, the severity of the penalty which might be imposed, the family, employment and financial situation of the accused, as well as the imminence of the oral proceedings, particularly in cases where proceedings are to be instituted rapidly. It is appropriate to order the pre-trial detention of the accused when, in the light of the record of the proceedings, at least two arrest and search warrants have been issued against him by a judicial body within the past two years. In such cases, the time limit in respect of penalties provided for in subparagraph (a) is not applicable;
- (ii) Prevent the concealment, alteration or destruction of the relevant sources of evidence in cases where there is a well-founded and specific danger. Pre-trial detention is not to be ordered in this case when such a danger is claimed to be inferred from the exercise of the right to defense or failure by the accused to cooperate during the course of the investigation. In order to determine whether such a danger exists, account will be taken of the ability of the accused on his own or with the assistance of third parties to have access to the sources of

evidence or to influence other accused persons, witnesses, experts or anyone else;

- (iii) Prevent the accused from acting contrary to the legal rights of the victim, particularly when the victim is one of the persons referred to in article 173, paragraph 2, of the Penal Code (domestic violence). In such cases, the time limit in respect of penalties provided for in subparagraph 1 is not applicable.

85. When the above-mentioned requirements apply, pre-trial detention may also be ordered to prevent the risk that the accused might commit other offences.

86. In order to determine whether such a risk exists, account will be taken of the circumstances of the act and the seriousness of the offences which might be committed.

87. Pre-trial detention may be ordered in such a case only when the wrongful act in question is premeditated. Nevertheless, the time limit in respect of the penalty is applicable only when it may be rationally inferred from the accused's record and other information and circumstances submitted by the judicial police or resulting from the proceedings that the accused was either acting in a concerted and organized manner with another person or other persons in order to commit criminal offences or habitually engages in wrongful activities.

88. As a general rule, pre-trial detention lasts as long as is necessary to achieve the intended objectives and as long as the grounds warranting it continue to exist, and at most:

- (a) One year if the applicable penalty is three years or less;
- (b) Two years if the applicable penalty is more than three years;
- (c) Six months if it was ordered for the purpose of preventing the destruction or concealment of evidence.

89. In the first two above-mentioned cases, the judge may order a six-month or two-year extension if it may be foreseen that the case cannot be tried within the initial time limits for pre-trial detention.

90. Pre-trial detention is ordered following a hearing before the judge in the presence of all the parties and, in particular, the accused, who is assisted by a lawyer, and at the request of the Office of the Public Prosecutor or any other accusing party and by means of a substantiated judicial decision. Decisions on pre-trial detention may be appealed and an appeal must be decided on within 30 days at most (arts. 505, 506 and 507).

91. With regard to the modalities of pre-trial detention following the reform, the usual attenuated detention is maintained and detention incommunicado is changed considerably, in accordance with article 509 of the Criminal Procedure Act:

92. In exceptional cases, the examining magistrate or court may order incommunicado detention or imprisonment to prevent persons allegedly involved in the offences under investigation from evading justice, from acting contrary to the victim's legal rights, from concealing, altering or destroying evidence relating to the commission of the offences under investigation and from committing further offences. The decision in which incommunication is ordered or, as appropriate, extended must state the reasons for which the measure was adopted.



93. Incommunicado detention lasts as long as is strictly necessary to conduct urgent inquiries aimed at averting the above-mentioned dangers.

94. Incommunicado detention may not be extended for more than five days. In cases where imprisonment is ordered for any of the terrorist and other offences committed in a concerted and organized manner by two or more persons, incommunicado detention may be extended for another period not to exceed five days. In such cases, however, the competent judge or court may order that the detainee return to being incommunicado, even after having been placed in communication when the ongoing investigation or case so warrants. This second period of incommunication may last no longer than three days.

95. During incommunicado detention, detainees may not communicate or receive any communication. However, the judge or court may authorize communications which do not defeat the purpose of incommunicado detention. Organization Act No. 15/2003 of 25 November 2003 determined that an incommunicado detainee who so requests is entitled to be recognized by a second forensic doctor appointed by the judge (art. 510).

#### **I. Prohibition of imprisonment for debt (art. 11)**

96. The relevant information concerning the content of this article has already been supplied in earlier reports.

#### **J. Freedom of movement and expulsion of aliens (arts. 12 and 13)**

97. In the last few decades, Spain has gone from being a country of emigration to a country of immigration. Spain's open nature in respect of immigration is clearly demonstrated by the fact that, although the phenomenon of immigration is relatively recent, there are, according to the Population Census Bureau, 3.88 million aliens residing in Spanish territory. The orderly regulation of migratory flows must nevertheless be ensured so that immigration may allow the necessary legislative and social changes and the integration of immigrants.

98. The rights and freedoms of aliens in Spain are governed not only by the applicable constitutional principles, but also by Organization Act No. 4/2000 of 11 January 2000 on the rights and freedoms of aliens in Spain and their social integration. The consolidated version of this Act is contained in annex XXIII hereto.

99. The consolidated version of the regulations implementing the Organization Act, as adopted by Royal Decree No. 2393/2004 of 30 December 2004, is contained in annex XXIV hereto.

100. It is established as a general principle that, on the same conditions as Spaniards, aliens in Spain enjoy the rights and freedoms recognized in title I of the Constitution and the legislation giving effect to it, as provided in the Organization Act. As a peremptory legal rule, the provisions relating to the fundamental rights of aliens are interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on the same subject matter in force in Spain; no religious beliefs or ideological or cultural convictions of a different kind may be put forward to justify any action or conduct contrary thereto (art. 3 of Organization Act No. 4/2000).

101. In particular, resident aliens are entitled to the right to participate in the conduct of public affairs, the right to freedom of assembly, freedom of association and trade union freedom, the right to strike and the right to social security, social services and housing assistance. The right of

minors under age 18 to education and the right to health care are recognized regardless of the fact that an alien may be in Spain illegally.

102. Aliens who are in Spain legally are entitled to freedom of movement throughout Spanish territory and to choose their residence with no further restrictions than those generally established by treaties and enactments, those established by a judicial authority for protective purposes or in criminal or extradition proceedings in which the alien has the status of an accused person, victim or witness, or as a consequence of a final judgement.. Specific restrictive measures may nevertheless be established when ordered under a declaration of a state of emergency or siege, as provided for in the Constitution, and, in exceptional cases, in an individualized manner by the Minister of the Interior for reasons of public safety (art. 6 of Organization Act No. 4/2000).

103. The internment of an illegal alien must be decided by the examining magistrate of the place in which he has been interned, at the request of the Government authority who ordered the internment and for a maximum period of 72 hours. Internment takes place in a non-prison facility for no more than 40 days. Aliens subjected to internment are entitled to be informed of their situation and to guarantees of respect for their life, physical integrity and health; they may not in any case be subjected to degrading treatment or verbal or physical abuse; they are entitled to protection of their dignity and privacy and to facilitation of the exercise of the rights recognized by the legal system, with no other restrictions than those deriving from their status as detainees; to receive adequate medical and health care and to be assisted by the social welfare department of the facility; to have the person of their choice in Spain, their lawyer and the consular official of the country of which they are nationals informed of their admission to the facility; to be assisted by a lawyer, who will be appointed by the court, as appropriate, and to communicate in private with the lawyer, even outside the facility's regular hours, with members of their family, consular officials of their country and other persons, who may be restricted only by court order; to be assisted by an interpreter if they do not speak or understand Spanish, free of charge, if they cannot afford one, and to have their minor children with them, provided that the Office of the Public Prosecutor approves such a measure and the facility has premises where family unity and privacy can be guaranteed.

104. In its ruling of 23 May 2003 (see annex XXV), the Constitutional Court confirmed that, regardless of their administrative situation, all aliens are entitled to the assistance of a lawyer in the same conditions as Spaniards. The right to an interpreter free of charge is also guaranteed to persons subject to expulsion proceedings. Both rights are expressly provided for in the Aliens Act and both have been expressly incorporated into Spanish law.

105. The Act provides that a residence permit may be granted on humanitarian grounds to aliens who are victims of racial discrimination, xenophobia or gender violence and that an expulsion order against illegal aliens who have helped identify human trafficking networks may be rescinded.

106. The expulsion of an unaccompanied minor will be ordered only if there are guarantees of the reunion of the minor's family and adequate supervision by child protective service in his country of origin. A copy of the Instruction by the State Attorney-General of 26 November 2004 on the legal treatment of unaccompanied minor aliens, which is based on the Convention on the Rights of the Child and the European Charter of Children's Rights, is contained in annex XXVI hereto.

107. Spain has been making considerable efforts to integrate immigrants, 2.8 million of whom have a residence and/or work permit (annex XXVII), which is not required by the nationals of the

member States of the European Union in the conditions determined by the Act, in accordance with Community rules.

108. These efforts are reflected in the Strategic Citizenship and Integration Plan for the period 2006-2009, which will shortly be adopted by the Government following a wide-ranging process of participation (a copy of the version submitted for public information last June is contained in annex XXVIII hereto) and for which over €2 billion have been budgeted.

109. With regard to the process of integration, attention is drawn not only to the direct efforts being made by Government authorities and institutions, but also to the fact that the participation of civil society is being particularly encouraged. By way of example, copies are attached of the Agreement by the Council of Ministers of 14 March 2006, which establishes the criteria for the distribution of the fund for the support of the reception and integration of aliens and educational measures on their behalf, and the Decision calling for the granting of subsidies for the integration of immigrants, asylum seekers and other internationally protected persons (annex XXIX).

#### **K. Right to a fair trial (art. 14)**

110. Reference is made to the information supplied in earlier reports, which is updated as follows:

(a) The number of lawsuits in Spain has been constantly increasing since 1998. There were 7,728,699 cases in the Spanish courts in 2005, i.e. 175.22 cases per 1,000 inhabitants. Judicial statistics for 2005 are contained in annex XXX hereto;

(b) The Kingdom of Spain has continued to make considerable efforts to improve human and material resources for the administration of justice. A clear indication is that 642 courts were established between the time of the submission of the fourth periodic report and 2005; there is thus a total of 2,896 single-judge courts.

111. The judiciary has also been restructured on the basis of the amendment to the Judiciary Organization Act contained in Organization Act No. 19/2003 of 23 December 2003, for the implementation of which an ambitious plan was adopted at a cost of over €10 million and should be completed in 2008. The amendment is designed to relieve judges of management and administrative tasks, thereby enabling them to concentrate more on the exercise of strictly jurisdictional functions.

112. During the period since the submission of the fourth periodic report, changes have also been made in procedural rules. Particular attention is drawn to:

(c) Act No. 1/2000 of 6 January 2000 adopting the new Criminal Procedure Act to replace the Nineteenth Act of 1881;

(d) Act No. 29/1998 of 13 July 1998 establishing new administrative jurisdiction regulations to replace the 1956 regulations.

113. With regard to the criminal courts, attention is drawn to the establishment of the Jury Court by Organization Act No. 5/1995 of 22 May 1995 and to various amendments to the Criminal Procedure Act, including those contained in Organization Act No. 8/2002 and Act No. 38/2002 of 24 October 2002, which establish the procedure for the speedy and immediate trial of specific offences and misdemeanors and the amendment of the shortened procedure.

114. In relation to article 14, paragraph 5, of the Covenant, it should be pointed out that the Senate is discussing the draft Organization Act adapting procedural legislation to Judiciary Organization Act No. 6/1985 of 1 July 1985, amending the remedy of review and making dual criminal jurisdiction more widespread. The promulgation of this draft Act will make second criminal courts more widespread, as provided for by the above-mentioned Organization Act No. 19/2003 and as a result of the introduction of the remedy of appeal against rulings handed down by provincial courts and by the criminal chamber of the National Court.

115. For the purpose of guaranteeing access to the courts on equal terms for all citizens, a new system of free legal assistance (Act No. 1/1996 of 10 January 1996) has been established and broadens already existing benefits to include new benefits such as counseling and guidance prior to the start of trial.

#### **L. Principle of criminal legality (art. 15)**

116. There have been no changes since the previous report.

#### **M. Legal personality (art. 16)**

117. There is nothing to add to what was stated in the previous report.

#### **N. Right to privacy (art. 17)**

118. It is worth noting that, although Spain suffered the worst terrorist attack in Western Europe on 11 March 2004, it has not introduced any legislative changes in the system of prevention and punishment. In particular and unlike other countries, it has not introduced any rules restricting privacy of communications or the protection of personal data.

119. The regulations relating to the protection of personal data are contained in Organization Act No. 15/1999 of 13 December 1999, whose promulgation was the result of Constitutional Court ruling No. 292/2000 of 30 November 2000 declaring certain provisions of earlier regulations unconstitutional (see annex XXXI).

120. With regard to telephone tapping in the context of criminal investigations, the European Court of Human Rights expressed the view that flaws which had been found in the provisions of the Criminal Procedure Act on telephone tapping had been largely remedied by case law. A copy of the European Court's decision of 25 September 2006 is contained in annex XXXII hereto.

121. Developments in case law relate to the acceptance by the Spanish courts and, in particular, the Constitutional Court of the doctrine of the European Court of Human Rights, which includes the prohibition of excessive and unjustified environmental interference in the protection of the right to privacy and the home. By way of example, the Constitutional Court ruling of 23 February 2004 is contained in annex XXXIII hereto.

122. The Constitutional Court rulings of 27 March 2006 and 3 July 2006 on the right to privacy of detainees and the rulings of 20 September 2004 and 15 November 2004 on the right to privacy in the workplace, which are also examples of case law developments in this regard, are contained in annex XXXIV hereto.

123. We also reiterate what was stated in earlier reports.

**O. Freedom of thought, conscience and religion (art. 18)**

124. Reference should also be made to the provisions of the new Penal Code on the protection of freedom of religion. Articles 522 and 523 thus penalize anyone who uses violence, intimidation, force or any other unlawful constraint to prevent a member or members of a religious faith from engaging in or taking part in acts related to the beliefs they profess or who by the same means forces another person or other persons to engage in or take part in acts of worship or rites, to engage in acts which demonstrate that they profess or do not profess a religion or to change their religion or prevents, interrupts or disrupts acts, functions, ceremonies or manifestations of registered religious faiths. Article 524 provides for the punishment of acts of profanation in places of worship and article 525, those who, in order to offend the sentiments of the members of a religious faith orally, in writing or by means of any kind of document, publicly mock their dogmas, beliefs, rites or ceremonies or publicly harass those who profess or practice them or mock those who do not profess any religion or belief. Article 526 refers to the conduct of any person who, lacking in respect for the memory of the dead, desecrates tombs or graves, defiles a corpse or its ashes or, as an affront, destroys, alters or damages funeral urns, graveyards, gravestones or burial niches, is liable to a penalty of 12 to 24 weekends of detention and a three-to-six-month fine.

125. Attention is drawn to the disappearance in Spain of compulsory military service, in connection with which the right to conscientious objection is recognized in article 30 of the Constitution, and to Organization Act No. 2/1997 of 19 June 1997, which governs the right of data processing professionals to the conscience provision (annex XXXV) enabling them to rescind their contract with the communications company where they work and obtain appropriate compensation in the event of a change by the company of data processing or ideological orientation.

126. We also refer to what was stated in earlier reports.

**P. Freedom of expression and prohibition of propaganda for war and any advocacy of national, racial or religious hatred (arts. 19 and 20)**

127. On this subject, the information provided in earlier reports is stated again. Recent Constitutional Court jurisprudence continues to confirm that "the expansive force of the right to freedom of expression necessitates a restrictive interpretation of its limits, including the right to honour" and that "criticism of the conduct of a public personality which is considered to have been proved can certainly be distressing - at times, extremely distressing - for the person concerned, but, in a system based on democratic values, exposure to such criticism is an integral part of any office of public significance". Similarly and, as already stated in earlier reports, with regard to freedom of information, it is required that information should be correct and, if it is erroneous or unproved, that "the person conveying the information has performed his duty to verify its truthfulness, showing the thoroughness required in the particular case, the yardstick being respect for the behaviour which a professional should normally adopt in similar cases". The Constitutional Court ruling of 3 July 2006 is contained in annex XXXVI hereto.

128. With regard to advocacy of national, racial or religious hatred, it should also be pointed out that article 510 of the new Penal Code provides that anyone who provokes discrimination, hatred or violence against groups or associations for reasons of racism or anti-Semitism or on other grounds connected with ideology, religion or beliefs, family circumstances, ethnicity or race, national origins, sex, sexual orientation, illness or disability is liable to one-to-three years' imprisonment and a six-to-12-month fine.

129. The same punishment is applicable to anyone who, knowing it to be false or showing reckless contempt for the truth, disseminates offensive information about groups or associations in connection with their ideology, religion or beliefs or the ethnicity or race, national origin, sex, sexual orientation, illness or disability of their members.

130. With regard to the prevention of racial and religious hatred, reference should also be made to the establishment of the Spanish Observatory for Racism and Xenophobia, which carries out analyses of and makes proposals on prevention and which has already been mentioned in earlier reports.

131. In order to prevent football from being used by racist, xenophobic and violent persons as a means of engaging in or encouraging deplorable conduct and in order actively to combat any conduct that is abusive, discriminatory or in any way offensive, unlawful or intimidating towards ethnic communities and their members, the Royal Spanish Football Federation, the National Professional Football League, the Spanish Football Players' Association and sports authorities have signed the attached Protocol, in which they undertake to adopt the various measures of prevention, dissemination and discipline for which it provides (see annex XXXVII).

132. In this context, a draft Act against violence, racism, xenophobia and intolerance in sports is being submitted to Parliament (see annex XXXVIII).

#### **Q. Right of peaceful assembly (art. 21)**

133. We refer to the information contained in earlier reports.

#### **R. Right to freedom of association (art. 22)**

134. Organization Act No. 1/2002 of 22 March 2002 gives effect to article 22 of the Constitution, which recognizes the right to freedom of association. The new regulation replaces the old 1964 Act and establishes a common system that is compatible with the specific modalities dealt with in special laws and the rules giving effect to them for political parties, trade unions, employers' associations, religious faiths, sports associations and professional associations of judges, magistrates and prosecutors. It establishes a minimum common system, which is, moreover, the system to which associations not covered by special legislation must adapt. According to article 22 of the Constitution, the Government lacks powers which may involve material control of legalization and recognition and the Organization Act therefore governs the procedure for inclusion in the registry of associations within the above-mentioned limits, thereby establishing a system of positive silence consonant with the fact that the establishment of an association involves the exercise of a basic right.

135. Section T. below, which relates to the implementation of article 25 of the Covenant, refers to the adoption of a new Act on political parties and its implementation.

136. The information contained in earlier reports is repeated.

#### **S. Protection of the family and children (arts. 23 and 24)**

137. We reiterate what was stated above with regard to equality of the sexes and action to combat gender violence.

138. Act No.13/2005 of 1 July 2005 amended the Civil Code, providing in article 44, paragraph 2, that "matrimony shall have the same requirements and effects when the two contracting parties are of the same or opposite sex". Since 3 July 2005, homosexuals may therefore enter into marriage with one another.

139. In this regard, the action taken by the Autonomous Communities and local corporations in adopting legislation to protect and support families is particularly important.

140. A copy is attached of the family social welfare guidelines, which contain a simplified summary of information on family social security benefits: adopted or foster children, disabled children, parental leave, reduced working hours and unpaid leave for child care; employment benefits: welfare benefits and job creation; tax deductions (physical persons' income tax) for dependent children; support for large families; benefits of the Government family social welfare system; services for care of children under age 3; programme of support for families in special circumstances (underprivileged or at risk, single parent, situation of domestic violence), with family guidance and/or mediation and family meeting points; housing assistance (see annex XXXIX).

141. In addition to the above-mentioned action by the Government to promote equality of the sexes and action to combat gender violence, attention is drawn to the recent enactment of new legislation on large families, as contained in Act No. 40/2003 of 18 November 2003 and the regulations thereto, adopted by the Royal Decree of 30 December 2005 (see annex XL). A large family is regarded as one with one or two parents with three or more dependent children, whether or not they are children of both parents. Provision is made for social security allowances for the hiring of child minders, preferences in obtaining scholarships, admission to schools, access to educational housing and tax exemptions and incentives.

142. With regard to the protection of children, legislation includes Organization Act No. 1/1996 of 15 January 1996 on the legal protection of minors and Organization Act No. 5/2000 of 12 January 2000 on criminal responsibility of minors and the regulations thereto, to which reference has been made in an earlier paragraph of this report.

143. Special reference should be made to Act No. 2/2006 of 3 May 2006 on education (see annex XLI), which provides that all young persons must attend school until age 17 and is also designed to improve general educational results, reduce school drop-out rates and guarantee equality of opportunity.

144. In organizational terms, we draw attention to the establishment in 1999 of Children's Watch and the post of Deputy Ombudsman for matters relating to children. The Autonomous Communities have also set up special children's agencies and services and, in some of them, independent bodies have been established to deal with violations of children's rights at the Autonomous Community level.

145. It should also be noted that both the Government and the Autonomous Communities have established various social programmes and policies for children relating to social services, poverty eradication and support for families in special situations, as well as the adoption, in accordance with the recommendations of the Committee on the Rights of the Child, of national plans concerning children.

146. A copy of the National Strategic Plan for Children and Adolescents is contained in annex XLII hereto. A copy of the second Plan of Action to Combat the Sexual Exploitation of Children and Adolescents is contained in annex XLIII.

#### **T. Participation in public affairs (art. 25)**

147. Organization Act No. 6/2002 of 27 June 2002 established the political parties regime (annex XLIV), which replaces the pre-constitutional 1978 Parties Act and aims to give effect to the provisions of article 7 of the Constitution defining political parties as basic instruments of political participation and requiring their structure and financing to be democratic. The constitutionality of the Act was confirmed by the Constitutional Court in ruling No. 48/2003 of 12 March 2003 (see annex XLV).

148. In accordance with the Act, on a motion by the Parliament and on the proposal of the Government Attorney and the Office of the Public Prosecutor, the Supreme Court, in a ruling of 27 March 2003, declared illegal and ordered the dissolution of the Herri Batasuna, Euskal Herritarrok y Batasuna parties, which were carrying out terrorist support and assistance activities as part of a strategy of operational succession and full identification with the ETA terrorist gang (see annex XLVI).

149. In rulings it handed down on appeal on 16 January 2004, the Constitutional Court confirmed the constitutionality of the dissolution (see annex XLVII). The outlawing of the parties does not mean that its members are deprived of the right to vote, but only that they cannot use an organization dissolved for its identification with a terrorist gang as a channel of participation.

150. In this connection, reference should also be made to the new regulation on the right to petition Government authorities introduced by Organization Act No. 4/2001 of 12 November 2001 (annex XLVIII), which gives effect to the fundamental right recognized in article 29 of the Constitution.

#### **U. Respect for minorities (art. 27)**

151. The information provided in earlier reports is repeated here.

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