



**International covenant
on civil and
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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 2582nd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 21 October 2008, at 3 p.m.

Chairperson: Mr. RIVAS POSADA

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (agenda item 8) (continued)

Fifth periodic report of Spain (continued) (CCPR/C/ESP/5; CCPR/C/ESP/Q/5 and Add.1;
HRI/CORE/1/Add.2/Rev.2)

1. At the invitation of the Chairperson, the delegation of Spain resumed their places at the Committee table.
2. The CHAIRPERSON invited the delegation to respond to the supplementary questions raised by the Committee at the previous meeting.
3. Mr. IRURZÚN (Spain) said that, with regard to the questions raised by Mr. Amor, a distinction should be made between non-admission at the border and expulsion procedures. Foreign nationals who were denied permission to enter Spain at the border were sent back to their country of origin by the same means of transport they had used to reach Spain. In the case of the expulsion of a foreign national who had entered the country without authorization, the procedure was punitive in nature and was therefore accompanied by a series of safeguards. Foreign nationals had the right to free legal assistance and the right to be heard before an order expelling them was issued by an administrative authority. They also had the right to free legal assistance and to appeal the expulsion order in a court of law. Once an appeal was lodged, they could request the immediate suspension of the expulsion order. Persons awaiting expulsion were detained in an internment centre specifically designed for that purpose, and only a judge could order such detention. The maximum duration of internment pending expulsion was 40 days.
4. With regard to Spain's compliance with its obligation to inform potential asylum-seekers of the procedure for requesting asylum, he said that, as a general rule, information leaflets and application forms were made available to foreign nationals to enable them to complete that procedure. It should be noted that the Office of the United Nations High Commissioner for Refugees (UNHCR) intervened at two stages of the Spanish asylum procedure: at the beginning, when it was informed of the application for asylum, and at the end, when it was invited to participate in committee meetings after processing the asylum request. Economic and humanitarian aspects of asylum requests were taken into account by the administrative authorities, as well as by judicial authorities in the course of reviews when an application for asylum was denied.
5. Additional information concerning the Melilla incident, in which 72 persons had been returned to Morocco, would be transmitted to the Committee in due course. Such information would include copies of the two court decisions explaining why, in the opinion of the judge, there had been no violation of the applicants' rights.
6. With regard to the need to combat racism and xenophobia through education and general public awareness-raising, he noted that an information campaign had been carried out through the use of posters that were displayed throughout the public transport system. In addition, a compulsory citizenship and human rights module had been introduced in the primary and

secondary education curricula. Both campaigns were aimed at promoting an appreciation of diversity, a positive culture of dialogue and a rejection of all forms of discrimination. Details concerning those curricula would also be transmitted to the Committee.

7. In response to Mr. Johnson's question regarding two incidents of an allegedly xenophobic nature, he said that those incidents were a source of concern to a large portion of the Spanish population and both had led to judicial proceedings. The investigation into the Barcelona incident was still under way, and the alleged author of that despicable act had not yet been placed in pretrial detention or convicted. The incident had provoked widespread outrage among society in many parts of the country. The Government was confident that justice would be served and that the perpetrator of the act would be convicted. With regard to the second incident, which involved a dispute between minors that had had possible xenophobic overtones, he said that juvenile court proceedings had been instituted in order to clarify the facts and punish the guilty. More detailed information concerning both incidents would be transmitted to the Committee.

8. On the matter of the bill currently before Parliament, which contained the texts of procedural provisions governing recently introduced mechanisms of appeal against convictions, he said that the Ministry of Justice was working to obtain sponsorship for the bill from both majority parties in Parliament. A special parliamentary procedure could be used to expedite the adoption of legislation on first reading, but it was up to the Parliament and not the Government to decide whether or not to use it.

9. In response to questions raised by Ms. Palm concerning minors, he said that thus far in 2008 only 7 unaccompanied foreign minors had been returned to their countries of origin, as compared with 19 during the same period in 2007. Unaccompanied young foreigners who were obviously under age were immediately transferred to the child protection authority in the autonomous community in which they were found. Where some doubt persisted as to the child's age, tests were performed at a medical centre following the transmittal of notification to the Attorney-General's Office. Under Organization Act No. 1/1996 of 15 January 1996, on the legal protection of minors, custody of both Spanish and foreign children not benefiting from the care of parents or guardians was assumed by the child protection authority of the relevant regional Government. There was also a juvenile prosecution office in each province and a juvenile prosecution service in the Supreme Court. Specific instructions had been issued to all prosecutors in Spain concerning the treatment and protection of minors.

10. The Spanish Government was of the view that the system of representation of minors under State guardianship - whether they were foreign unaccompanied minors or Spanish nationals - adequately safeguarded the best interests of such children. According to that system, minors taken into custody by the State had two representatives: a lawyer from the regional child protection authority that had assumed guardianship over the child and a representative from the Attorney-General's Office. The Attorney-General's Office was required to ensure that the best interests of the child were served; in some cases, however, the law provided for the appointment, in the course of the proceedings, of two prosecutors in order to avoid any conflict of interest within the Attorney-General's Office itself. It was worth noting that minors were cared for so well in the regional child protection centres that they often did not want to leave.

11. With regard to reports of ill-treatment of detainees, data from 2007 showed that formal complaints had been filed in only 0.6 per cent of cases of deprivation of liberty. The Spanish authorities remained committed to monitoring the treatment of detainees with a view to preventing inhuman or degrading treatment.
12. In response to questions posed by Mr. Khalil, he said that in the three Basque provinces, where the population numbered roughly 3 million persons, there were currently some 12 newspapers available to all citizens. Two of those newspapers had editorial tendencies that were very similar to the two whose operations had been shut down by the Spanish Government. The political parties in the Basque country that had been banned were considered by the Government as being no more than reorganizations of the outlawed Batasuna party. Both the Supreme Court and the Constitutional Court had found that the strategy and actions of the Batasuna party had been co-opted by the illegal armed Basque nationalist separatist organization ETA. The other banned groups, Basque Nationalist Action (ANV) and the Communist Party of Basque Lands (PCTV), were found to have had ties to and been instruments of the Batasuna party.
13. Similarly, the reasoning behind a Criminal Court decision to ban the organization Gestoras Pro-Amnistia was that that organization had been established and operated, not to seek amnesty and provide support for ETA prisoners as it had formally proclaimed, but rather to serve other objectives of ETA. In the court proceedings that had resulted in the outlawing of Gestoras Pro-Amnistia, it was held to be a proven fact that the organization had been co-opted by ETA in 1995. A copy of the corresponding judicial decision would be provided to the Committee.
14. The Government was having difficulty guaranteeing citizens' right to political pluralism throughout the territory of Spain, including the Basque provinces. In a report on the most recent elections held in Spain, the Organization for Security and Co-operation in Europe had expressed concern at incidents of intimidation involving voters whose views were contrary to those of the banned separatist political party. Examples of such intimidation included the detonation of a bomb by ETA in the offices of the Spanish Socialist Workers Party and threats against representatives of parties not sharing the Basque nationalist ideology, who required bodyguard protection when attending local government meetings. The Spanish Government was of the view that the sooner such problems were resolved the better.
15. With regard to the question of whether a climate of racism and xenophobia had begun to grow in Spain, he replied that, while the Spanish Government remained attentive to that risk, it did not feel there was any need for alarm at present. That reasoning was corroborated by the findings of a Eurobarometer public opinion survey on racism, xenophobia and the perception of foreign nationals in Spain, which would be transmitted to the Committee for its consideration. In 2005, the Government had adopted a Strategic Citizenship and Integration Plan, a key component of which was a public information and awareness-raising campaign intended to promote acceptance of persons from other countries. When the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had visited Spain in 2004, the Observatory for Racism and Xenophobia had been established but had not yet become operational. It had, however, been fully operational since 2005 and would enable the Government to remain alert to any possible increases in racism and xenophobia and to follow up the observations made by the Special Rapporteur following her visit.

16. Greater detail concerning suggestions made by civil society organizations with regard to the Criminal Code and the prosecution of offences involving racism and xenophobia in Spain would be forwarded to the Committee. Article 22 of the Criminal Code regarded as an aggravating circumstance - and consequently prescribed harsher punishment for - any offence committed for racial or anti-semitic motives or based on any form of discrimination on grounds of ideology, religion, belief, ethnicity or race. Article 114 of the Criminal Code expressly punished the conduct of any public official who, in the exercise of his or her functions, discriminated against a person on such grounds. Likewise, article 510 of the Criminal Code specifically punished those who provoked discrimination or incitement to violence or hatred on grounds of race, ethnicity or personal belief. There had been several convictions for the dissemination of racist ideas in Spain.

17. Referring to the question raised by Ms. Chanet, he said that the Supreme Court had broadened the scope of review in cassation proceedings on the basis of jurisprudence in direct application of a constitutional provision. With regard to the secrecy of legal proceedings, he explained that criminal investigation proceedings were conducted by the investigating judge, who was responsible for ensuring that the adversarial principle was respected in any trial. The judge conducted an investigation without the involvement of the parties concerned, for example, by taking confidential statements from witnesses without any participation from the prosecutor's office or the defence. Once the evidence was gathered, however, the results were communicated to all parties concerned. Secrecy applied only during the investigation by the judge. At the end of the day, all parties had to be informed of the results of the investigation, particularly the defence lawyer. His delegation would provide the Committee with the text of the relevant law governing the secrecy of proceedings.

18. With respect to police interrogation, he read out article 520, paragraph 6 (b), of the Code of Criminal Procedure, on the assistance of lawyers during investigations. Under that provision, lawyers were entitled to review statements and any other information obtained that they considered relevant to ensure that the investigation was conducted properly. An accused person always had the right to lodge a complaint about his or her lawyer if the lawyer was considered to have failed in carrying out his or her duties.

19. Turning to the request from Ms. Keller for more information on health care, particularly for undocumented foreigners in Spain, he noted that the Constitutional Court had not ruled on the issue, as it had not been brought before it. However, his delegation would provide the Committee with a text of the relevant legislation on the rights and freedoms of aliens in Spain. One such right was the right to access to health care, including for minors. One poignant image that often appeared on news broadcasts was of rickety boats arriving in Spain with people seeking refuge, including pregnant women. Under the law, such women were entitled to medical care during childbirth as well as prenatal and post-natal care. Expelling pregnant women was out of the question. Furthermore, there were provisions for granting such women residence permits under exceptional circumstances on humanitarian grounds. Similar legal provisions were made for persons suffering from incurable diseases such as HIV/AIDS.

20. In response to Ms. Majodina's questions concerning the role of the Ombudsman, he said that the Ombudsman's mandate expressly covered the promotion of human rights. The Office of the Ombudsman was recognized as a national institution in accordance with the Paris Principles. The mandate was currently restricted to monitoring and protecting human rights in the public

sector. However, there were other institutions that monitored human rights in the private sector, including the Racism and Xenophobia Monitoring Centre. In addition, the national human rights action plan included an assessment of all relevant players. The Constitutional Court considered that the main guarantor of human rights in the private sector should be the judiciary, without prejudice to the above-mentioned human rights institutions.

21. Ms. PALM said that the Committee had received reports of children being held in police stations for long periods. She had not enquired about the relevant laws to protect children against such abuses, which were perfectly adequate, but rather about the instruments in place to ensure that those laws were implemented properly.

22. Mr. IRURZÚN said that although he could not say whether Ms. Palm's sources were accurate or not, there were indeed mechanisms in Spain to prevent the kinds of violations of the law that she described, including a juvenile prosecutor's office in each province. The minors who arrived in Spain tended to be undocumented and brought to the attention of the Spanish authorities by organizations such as the International Committee of the Red Cross or UNHCR, but those organizations had never brought any cases of minors wrongly detained to the attention of the juvenile prosecutor's offices. Children were identified in police stations in Spain but never detained. If the Committee had been informed of specific cases of children being detained in police stations, he would be grateful if it would provide his delegation with the relevant details in writing so that it could follow up on them immediately and launch the necessary proceedings.

23. The CHAIRPERSON said that he wished to highlight some of the concerns raised during the dialogue with the Spanish delegation. One area of concern related to procedural guarantees and compliance with articles 9, 10 and 14 of the Covenant. Notwithstanding the considerable efforts made by Spain to address those concerns, more remained to be done, including with respect to incommunicado detention and the right of persons deprived of liberty to be brought before a court within a reasonable time. Committee members had also raised concerns over the broadening of the definition of terrorism and the impact it had on civil and human rights in practice. The Committee was aware that the large influx of immigrants from Latin America as well as neighbouring Mediterranean countries had posed significant challenges for the Spanish authorities; nevertheless, it remained concerned about the treatment of foreign nationals and related asylum issues.

24. Lastly, referring to article 14, paragraph 5, of the Covenant, he noted the high number of complaints against the State party in which it allegedly failed to guarantee the right to judicial review by a higher court. He emphasized that such a review must be carried out by a higher court and noted that jurisprudence had not always been consistent in cassation proceedings. He was encouraged, however, by the State party's demonstrated willingness to consider reforming the cassation procedure to make a second hearing in criminal cases common practice, in accordance with the Covenant.

25. Mr. GÓMEZ DE OLEA expressed his delegation's appreciation for the dialogue with the Committee. The delegation remained available to answer any further questions or provide more information and looked forward to future cooperation.

The meeting rose at 4.15 p.m.