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# Spain

## **Criminal Code (1996)**

Article 510 1. Those that incite to incur in discriminatory acts, hate or violence against groups or associations for racist reasons, anti-Semitic or other reasons that refer to ideology, religion or beliefs, family situation, belonging of their members to an ethnicity or race, national origin, sex, sexual orientation, illness or handicap will be punished with a penalty of prison between one to three years and a fine of six to twelve months of salary. 2. It will be punished with the same penalty the conduct of those that, with knowledge of its untrue nature, spread offensive information about groups or associations with relation to their ideology, religion or beliefs, belonging of their members to an ethnicity or race, national origin, sex, sexual orientation, illness or handicap.

**Article 515:** Illicit associations are punishable, including: e) Those that promote discrimination, hate and violence against persons, groups or associations for reasons of their ideology, religion or beliefs, belonging of their members to a ethnic group, race

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or nation, their sex, sexual orientation, family situation, illness or handicap or incite to those conducts.

**Article 519:** Incitement, conspiracy and proposition to commit the crime of illicit association will be punished with a penalty inferior in one or two levels to that applied respectively, to the acts foreseen in the previous articles.

**Article 522:** Those that incur in the following crimes will be punished with a fine of four to ten months of daily salary: 1. To impede, through violence, intimidation or other illegitimate means, a member or members of a religious confession to practice acts related to the practice of their religion beliefs. 2. To force others to practice acts of cult or rituals or act in a manner that might reveal the practice or absence of a religious belief, or to force others

**Article 525:** 1. Those that, in order to offend the feelings of members of a religious confession, make public derision, orally, by writing or through any type of document, of their dogmas, beliefs, rituals or ceremonies or mistreat, also publicly, those who practice that religion, will be punished with a fine between eight to twelve months of their salary. 2. Those that make public derision, orally or by writing, of persons who do not profess any religion will incur in the penalties set in the previous paragraph.

**Article 607:** 1. Those who with the purpose of destroying totally or partially a national group, ethnic, racial or religious, by committing the following acts, will be punished: 1) With the penalty of prison between fifteen to twenty years, if they kill any of their members. A punishment of superior level will be imposed if one or two aggravating circumstances concur in the criminal act. 2) With prison between fifteen to twenty years if they sexually attack any of their members or produce any of the injuries foreseen in article 149. 3) With prison of eight to fifteen years if they place the group or any of its members into conditions of existence that would endanger their life or provoke grave damage to their health, or if they produce them injuries foreseen in article 150. 4) With the same punishment actions that provoke forced displacement of the group or any of its members, adopt any measure with the intention to impede their way of life or reproduction, or forcibly displace individuals from one group to another, will be sanctioned. 5) With four to eight years of prison if they produce any other injury than those foreseen in numbers

2. The diffusion, through any means, of ideas or doctrines that deny or justify the crimes foreseen in the previous paragraphs of this article or intend to create regimes or institutions that allow practices resulting in those crimes, will be sanctioned with prison between one to two years.

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# Case Law

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## 20. Spain

### 20.1 Examples of or information on relevant jurisprudence on incitement to hatred and/or freedom of speech

#### A. RACIST CONDUCTS AND RELIGIOUS HATRED

##### JURISPRUDENCE

##### Regional Court of Barcelona

With regards to articles 510 and 607.2 of the Criminal Code, Pedro Varela, the owner of a book store in the city of Barcelona has been indicted several times for selling and writing material that exalts and justifies the Genocide against Jews and for organizing in his store several activities, talks and conferences of historians that deny the Holocaust, such David Irving, or the initiator of Ku Klux Klan (KKK), David Duke.

On September 25 of 1992, in a European tour, Varela was detained in Austria, accused of spreading the national-socialist ideology. He was put in prison for four months and acquitted later due to his lack of knowledge of the Austrian legislation.

In 1996 with the new Spanish Criminal Code that recognized for the first time in history the incitement to racial hate and anti-semitism as a felony (article 510), the activity of Varela and his book store became illegal and thus, punishable.

([http://observatorioantisemitismo.fcje.org/?page\\_id=88](http://observatorioantisemitismo.fcje.org/?page_id=88))

Varela was condemned in 1998 to seven months in prison for enhancement/incitement of genocide. In the indictment, the Israeli community in Barcelona acted as the prosecutor of the case.

The sentence condemned Mr. Varela for the felony of incitement to racist hate and antisemitism (article 510) and denial and justification of the genocide against Jews (article 607.2).

However in the appeal stage, the same magistrate put forward an unconstitutionality question concerning article 607.1 of the Criminal Code, applied to condemn Mr. Varela. Thus the entire process was pending a final decision of the Constitutional Court.

##### *The Constitutional Court:*

It decided in 2007 that the act of denying the genocide against the Jews (article 607.2) could not necessary constitute a crime as the freedom of expression has preeminence and denying the genocide is an irrelevant opinion as long as the act is executed in such a manner that does not imply that it can feasibly and in reality incite to racial, religious or ethnic hate. Consequently, the Court considered that article 607.2 of the Criminal Code is not unconstitutional. (Pleno. Sentencia 235/2007, 7 of November 2007).

(The sentence can be found at:

<http://www.tribunalconstitucional.es/es/jurisprudencia/Paginas/Sentencia.aspx?cod=9396>)

Of the twelve votes of the Constitutional Court, three of the judges were in disagreement as they were of the understanding that the denial of the genocide is the beginning of a discourse of hate and racism. This was stated by the European Court of Human Rights: nobody denies in abstract without continuing that denial in their discourse.

After knowing the decision of the constitutional appeal, a new hearing took place on March 5, 2008, where the Regional Court of Barcelona decided again in the following terms:

*“DECISION: I should condemn and condemn Pedro Varela Geiss as legally responsible in the degree of author for the continual crime of Genocide, which is foreseen and punished in article 607.2 of the Criminal Code, and thus, as circumstances that would modify his criminal responsibility do not concur, I impose him the penalty of two years in prison, with the inherent legal accessories, such as the payment of procedural costs. Also, I must condemn and condemn to that person as the author of a continual crime committed in the exercise of the Fundamental Rights and Public Liberties guaranteed by the Constitution, meaning, the incitement to discrimination, hate and violence against groups and associations for reasons of their race and anti-semitic acts, being all of those conducts foreseen in article 510.1 of the Criminal Code. As circumstances that would modify his criminal responsibility do not concur I impose a penalty of three years of prison and a daily fine of two thousand pesetas, with hundred and eighty days of personal responsibility in case of non payment of the fine and procedural costs”.*

Criminal Court number 23 has recently condemned to two years of prison and fine of 1.200 euros to Aitor R.E, a 23 year old man, after the Defense and the Prosecutor reach an agreement, for spreading genocide ideas through internet.

It is the first case of such nature that reaches the judicial stage. Previous cases were condemned for dissemination of this type of ideas but never through the web according to the defendant’s lawyer. The young man was condemned for a crime against fundamental rights and enhancement/incitement of genocide.

The prosecutor requested a sentence of four years and eight months imprisonment. However, an agreement was reached and the young man, who has a clean criminal record, will not be put in prison as he was sentenced to under two years imprisonment. According to the accusation, the accused included several videos in his web pages that referred to the III. Reich and Hitler’s and Goebbels’ private lives. Moreover the web contained a link to access a library holding clearly xenophobic books such as “Mein Kampf” and “The second Leuchter report”.

In the search of Aitor RE’s domicile in April 2007 a graffiti saying “F18” over a svastik and cross was found on his front door. Inside the house there were documents entitled “Compulsory reading for amateurs and future members of FNS (National Socialist Front)-F18” and “Advise on how to organize Cells”. Documents were also found that referred to conferences held in the “Europe” Bookshop as well as propaganda leaflets and templates for their design bearing messages such as “against homosexuality”, “Adolf Hitler was right” or “the white race is in danger”.

<http://www.lavanguardia.es/internet-y-tecnologia/noticias/20100616/53946302961/condenapionera-en-espana-por-difundir-ideas-genocidas-por-internet-adolf-hitler-barcelona-iiireich.html>

*[Input to OHCHR Expert workshops on prohibition of incitement to national, racial or religious hatred while ensuring respect of the freedom of expression (Addendum), pp. 32-33]*

# Spain

Constitutional Court: <http://www.tribunalconstitucional.es/fr/Pages/Home.aspx>

The screenshot shows the home page of the Tribunal Constitucional de España. The header includes the court's name and logo, navigation links (Inicio, Contacto, Enlaces, Accesibilidad, Mapa Web), and a search bar. The main content area is divided into several sections: 'Bienvenida de la Presidenta', 'Estadísticas 2009', 'Buscador de Jurisprudencia', 'Galería fotográfica', 'Composición y organización', and 'Selección de resoluciones traducidas'. A central section titled 'Visita virtual de la sede' features a virtual tour of the building. To the right, there are sections for 'Activités' (listing events like 'Toma de posesión de los nuevos Magistrados del Tribunal Constitucional' on 12/01/2011) and 'Resoluciones recientes' (listing recent judgments such as 'Sentencia del Pleno del Tribunal Constitucional sobre el recurso de inconstitucionalidad n.º 8675/2006'). A sidebar on the right contains links to 'Convocatorias en curso', 'Memorias 2009', and international conferences.

The screenshot shows the search page of the Tribunal Constitucional de España. The header is identical to the home page. The main content area is titled 'Buscador de jurisprudencia' and contains a search form with the following fields: 'Type' (set to 'Tout'), 'Referencia-número', 'AND' dropdowns for 'Fallo' and 'Fundamentos jurídicos', 'Aprobation date (dd/mm/aaaa)' (set to 'from 01/01/2000 to 12/01/2011'), 'Documents per page' (set to '15'), and 'Free text'. There are 'Buscar' and 'Limpiar' buttons at the bottom of the form. A sidebar on the left lists navigation options like 'Últimas Sentencias', 'Últimos Autos', and 'Buscador de jurisprudencia'. The footer includes 'Convocatorias' and 'Perfil del contratante' links, and a copyright notice for 2008.

Supreme Court:

<http://www.poderjudicial.es/eversuite/GetRecords?Template=cgpj/ts/principal.htm>



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# Public Policies

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El Consejo

Discriminación

Tus derechos

Red de oficinas

Recursos útiles

Novedades

17/01/2011

Se presenta el anteproyecto de Ley para la Igualdad de Trato y contra la Discriminación

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GOBIERNO DE ESPAÑA

MINISTERIO DE SANIDAD, POLÍTICA SOCIAL E IGUALDAD

## ¿has sufrido discriminación?

- Cómo saber si te han discriminado...**
- Dónde puedes informarte...**
- Qué hacer si te han discriminado...**

[Más información](#)

## Centros de asistencia



Si has sufrido discriminación, acude a cualquiera de los centros de la Red de asistencia a víctimas de discriminación.

[más info...](#)

## Novedades

13/01/2011

Ya disponible el folleto informativo de la Red de asistencia a víctimas de discriminación en 8 idiomas



10/12/2010

¿Sabrías definir qué es la igualdad? ¿Y la discriminación?

10/12/2010

¿Conoces a las organizaciones que trabajan a favor de la igualdad de trato en España y Europa?



[más noticias](#)

## Agenda

Enero 2011						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

## Tus derechos



En España, discriminar a una persona por su origen racial o étnico es una conducta prohibida por nuestra legislación.

[más info...](#)

## ¿Qué hacer?



Averigua qué puedes hacer ante un caso de discriminación.

[más info...](#)

## ¿Trabajas para la igualdad?

Tenemos recursos útiles para ti



**Biblioteca:**  
Consulta y descarga nuestras publicaciones



**Legislación:**  
Normativa y jurisprudencia

## El Consejo

El Consejo tiene como misión promover el principio de igualdad de trato y no discriminación de las personas por origen racial o étnico.

## Buscador de Publicaciones

Tipo de documento

Todos

Desde

dd/mm/aaaa

Hasta

dd/mm/aaaa



Centro de documentación y datos

Normativa / jurisprudencia

Agenda de eventos

Enlaces de interés

Directorio de entidades

Tipo de Entidad

Ámbito Territorial

Ámbito Discriminación

buscar

Programas

Ámbito Discriminación

Provincia

buscar

Living Together

Red Living Together

**CREADI**

Centro de Recursos Antidiscriminación



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I Congreso Internacional sobre Migraciones en Andalucía 16/02/11-18/02/11  
Universidad de Granada  
[+ información](#)

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## Últimas entidades registradas

CIDH "PRO IGUAL"  
Asociación MITA ONG (MITA ONG)  
Ayuntamiento de Bilbao - Área de Igualdad, Cooperación y Ciudadanía  
Ayuntamiento de Castellón  
Centro Cultural Islámico de Valencia

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## Últimos documentos

**SE AMPLÍA EL PLAZO DE INSCRIPCIÓN AL CENSO ELECTORAL HASTA EL 25 DE ENERO PARA LAS ELECCIONES MUNICIPALES Y SE INCORPORAN LOS NACIONALES DE CABO VERDE A LA RELACIÓN DE PAÍSES QUE PUEDEN EJERCER SU DERECHO AL VOTO**  
MTIN Secretaría de Estado de Inmigración y Emigración  
Dirección General de Integración de los Inmigrantes

**INSCRÍBETE EN EL CENSO ELECTORAL PARA LAS ELECCIONES MUNICIPALES DE 2011**  
MINISTERIO DE TRABAJO E INMIGRACIÓN/Secretaría de Estado de Inmigración y Emigración

"LIVING TOGETHER: Ciudadanía Europea contra el racismo y la Xenofobia". DECÁLOGO E INFORME FINAL COMPARATIVO  
MINISTERIO DE TRABAJO E INMIGRACIÓN/Dirección General de Integración de los Inmigrantes

" LIVING TOGETHER; European Citizenship against Racism and Xenophobia" DECALOGUE & FINAL COMPARATIVE REPORT  
MINISTERIO DE TRABAJO E INMIGRACION/ Dirección General de Integración de los Inmigrantes

DÍPTICO DECÁLOGO en español Proyecto Europeo  
"Living Together: DECÁLOGO la Ciudadanía Europea contra el Racismo y la Xenofobia"

GUIA " PER AL DISSENY I L'ELABORACIÓ DE PLANS LOCALS DE SENSIBILITZACIÓ"  
GRUPO DE EXPERTOS/GRUPO DE VALIDACIÓN/OBERAXE (Financia: MTIN-PROGRAMA PROGRESS)

GIDA "SENTSIBILIZAZIORAKO TOKI-PLANAK DISEINATZEKO ETA EGITEKO"  
GRUPO DE EXPERTOS/GRUPO DE VALIDACIÓN/OBERAXE (Financia: MTIN-PROGRAMA PROGRESS)

GUIDE "TO BUILD AND APPLY LOCAL PLANS ON RAISING AWARENESS"  
GRUPO DE EXPERTOS/GRUPO DE VALIDACIÓN/OBERAXE (Financia: MTIN-PROGRAMA PROGRESS)

GUÍA " PARA EL DISEÑO Y LA ELABORACIÓN DE PLANES LOCALES DE SENSIBILIZACIÓN"  
GRUPO DE EXPERTOS/GRUPO DE VALIDACIÓN/OBERAXE (Financia: MTIN-PROGRAMA PROGRESS)

EVOLUCIÓN DEL RACISMO Y LA XENOFOBIA EN ESPAÑA. Informe 2009  
M<sup>a</sup> ANGELES CEA D'ANCONA-MIGUEL S. VALLES MARTÍNEZ/Financia Dirección General de Integración de los Inmigrantes (MTIN)


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**Buscar**

Búsqueda avanzada

- >> La Defensoría para la Igualdad de Mujeres y Hombres
- >> Atención a la ciudadanía
- >> Dictámenes, recomendaciones y propuestas de modificación legislativa
- >> Publicaciones
- >> Fundamentos jurídicos
- >> Sala de prensa
- >> FAQ. Preguntas frecuentes
- >> Contacto
- >> Enlaces de interés
- >> Observatorio de Igualdad de Trato





### Eventos

- Presentación del Informe Extraordinario "La Igualdad de Género en los Convenios Colectivos" ante los agentes sociales y económicos responsables de la negociación colectiva
- La Defensoría para la Igualdad de Mujeres y Hombres de la CAE ratificada como miembro de pleno derecho en la Asamblea General Anual de EQUINET

### Novedades

- ¿Qué modelo de Defensoría para la Igualdad?
- Informe sobre la Igualdad de Género: Beijing + 15 en la UE
- EQUINET solicita a la futura Presidencia Española de la UE la continuidad de los esfuerzos para el desarrollo de los organismos de igualdad y la legislación antidiscriminatoria
- Publicado el III Encuentro Internacional "Crisis Económica, Género y Retribución"



## Third report on Spain

Adopted on 24 June 2005

Strasbourg, 21 February 2006



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

- **Victims of trafficking**

81. Spain is a country of transit and destination for trafficking in women for the purpose of prostitution. The Spanish authorities have informed ECRI that, as a rule, women who have been trafficked into Spain for purposes of sexual exploitation are returned to their country of origin, unless there are reasons to grant them humanitarian protection. However, these women may obtain residence and work permits if they denounce the traffickers or testify against them or provide essential information to bring them to justice. The Spanish authorities have informed ECRI that, in these cases, they may be awarded the special protection that Spanish law accords to those who testify against organised crime.

**Recommendations:**

82. ECRI recommends that the Spanish authorities ensure that women who are victims of trafficking are able to secure protection and obtain, as necessary, residence permits irrespective of their willingness to denounce the traffickers or testify against them.

**Antisemitism**

83. Manifestations of antisemitism in Spain since ECRI's second report have included dissemination of antisemitic propaganda through written publications and the Internet and display of antisemitic symbols at football matches<sup>34</sup>. It has also been reported that antisemitic stereotypes are present among school pupils, and that antisemitism has sometimes surfaced in articles and caricatures appeared in the press, notably in connection with events in the Middle East.

**Recommendations:**

84. ECRI recommends that the Spanish authorities monitor the situation as concerns manifestations of antisemitism and react promptly to any such manifestations. It draws the attention of the Spanish authorities to its General Policy Recommendation No. 9 on the fight against antisemitism<sup>35</sup>, which contains practical guidance on measures governments can take to this end.

**Media**

85. Since its second report, ECRI has continued to receive reports according to which some media have tended to foster hostility, prejudice and negative images of minority groups, and notably Roma, Muslims and immigrants in general. For instance, some newspapers still reveal the ethnic origin or nationality of persons arrested or convicted of crimes even when such information is irrelevant to the story. It has also been reported to ECRI that the sensational imagery and reporting resorted to by certain newspapers conveys the overall impression to the readers that the country is being invaded by immigrants coming on makeshift boats. Especially since the events of March 2004, some newspapers are also reported to have often associated Muslims and Islam with terrorist activities. In its second report, ECRI stressed the importance of self-regulatory measures within the media profession aimed at countering racism and xenophobia and promoting cultural pluralism. Although

<sup>34</sup> See above, Racist and xenophobic violence.

<sup>35</sup> CRI (2004) 37: ECRI General Policy Recommendation N°9 on the fight against antisemitism, European Commission against Racism and Intolerance, Council of Europe, June 2004

initiatives are reportedly taken by some individual newspapers, especially at national level, it has been pointed out that stigmatising or stereotyping media reports are particularly frequent in newspapers at regional and local level.

#### **Recommendations:**

86. ECRI encourages the Spanish authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups, including Roma, Muslims and immigrants. ECRI recommends that the Spanish authorities engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved both at national and at regional and local level.

#### **Conduct of law enforcement officials**

87. In its second report, ECRI was concerned that non-citizens, Roma, and Spanish citizens of immigrant background, were particularly likely to become victims of police misconduct, including insulting and abusive speech, ill-treatment and violence, notably in view of the fact that ethnic profiling practices were reportedly common within police forces. Non-governmental organisations active in the field of combating racism and xenophobia report that, since ECRI's second report, they have continued to receive numerous allegations of police misconduct of the type described in that report. These allegations concern members of all the different police forces that operate in Spain at national, regional and local level<sup>36</sup>, but also the members of private security personnel, for example the security personnel of the Madrid metro.
88. It is difficult to obtain a global picture of the formal complaints filed against all the different police forces and of the follow-up given to these complaints. However, ECRI has received consistent reports according to which non-citizens, Roma, and Spanish citizens of immigrant background who have fallen victims of police misconduct only rarely file formal complaints. When complaints are filed there is reported to be little investigation of incidents, and little transparency on the results of these investigations within the police. As already noted in ECRI's second report, counter-charges are frequently brought or threatened against those indicating their intention of lodging a complaint of police misconduct. It is also reported that, unlike the complaints filed by alleged victims of police misconduct, such counter-charges are as a rule successful and dealt with swiftly.
89. In its second report, ECRI recommended that the Spanish authorities improve the response of the internal and external control mechanisms to complaints of racist or racially-discriminatory behaviour on the part of the police, including through the establishment of an independent commission to investigate all allegations of human rights violations by the police. Non-governmental organisations have reported to ECRI that the racist dimension of alleged police misconduct is very rarely investigated and prosecuted. Although it has been unable to gather comprehensive data in this regard, ECRI is aware of one case in which such motivation was investigated and another case in which the public

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<sup>36</sup> Spain has two national police forces, the Civil Guards (Guardia Civil) and the National Police (Policia Nacional). In addition, the Autonomous Regions of Catalonia and the Basque country have established regional police forces, (*Mossos d'Escuadra* and *Ertzaintza*). A smaller regional police force has also been established in Navarra. At the same time, many municipal governments have established their local police forces.

prosecutor pressed charges against the police officers requesting that racism be taken into account as an aggravating circumstance. There has been no debate in Spain on the establishment of an independent commission to investigate all allegations of human rights violations by the police since ECRI's second report.

90. In its second report, ECRI encouraged the Spanish authorities to ensure that police training in human rights and non-discrimination has an impact in everyday policing practice. The Spanish authorities have stressed that human rights, including non-discrimination, are not only taught as specific subjects at the police academy, but shape all activities and the organisation of work of trainee police officers. They have also stressed that the content of training courses at the police academy changes so as to respond to the needs of an evolving society, including the needs highlighted by the type of complaints received by the police.
91. In its second report, ECRI invited the Spanish authorities to consider methods aimed at encouraging members of ethnic minorities to participate in the recruitment procedures for law enforcement posts. The Spanish authorities have stressed that the recruitment in the police is open to all Spanish citizens who meet the relevant requirements. They have also stressed that a greater representation of ethnic minorities within the police forces would be desirable, but that due to the fact that Spanish nationality is a prerequisite for recruitment and that ethnic minorities in Spain are still predominantly non-citizens, this greater representation will only be achieved with time. ECRI notes, however, that, even within the citizen population of Spain there are ethnic minorities, including Roma, who are reportedly under-represented in the police and that members of these groups may face special barriers preventing them from applying or succeeding in the recruitment procedure for the police.

#### **Recommendations:**

92. ECRI reiterates its call on the Spanish authorities to improve the response of the internal and external control mechanisms to complaints of racist or racially-discriminatory behaviour on the part of the police. To this end, it recommends in particular that the Spanish authorities establish an independent commission to investigate all allegations of human rights violations by the police.
93. ECRI recommends that the Spanish authorities pursue and strengthen their efforts to provide law enforcement officials with thorough initial and in-service training in human rights, including non-discrimination, and that they ensure that these principles are placed firmly within operational policing. ECRI recommends that the Spanish authorities ensure that all private security personnel benefit from the same training as police officers on these issues.
94. ECRI encourages the Spanish authorities to consider measures to stimulate a better representation of members of ethnic minority groups in the police. These measures should include the identification of any barriers which may prevent members of these groups from entering the police forces and the adoption of targeted measures to overcome such barriers.



## Monitoring the situation

95. In order to better monitor the situation of minority groups, in its second report ECRI encouraged the Spanish authorities to collect data broken down by categories such as national or ethnic origin and religion in different fields of social and economic life. At present, most of the information collected on the situation of minority groups composing Spanish society is only broken down by nationality. However, ECRI notes that there are institutions and organisations which collect personal data broken down by ethnic origin and religion and that these institutions and organisations are registered with the Agency for Data Protection, which monitors the conformity of such collection with the relevant Spanish legislation.

### **Recommendations:**

96. ECRI recommends that the Spanish authorities improve their monitoring systems by collecting relevant information broken down according to categories such as ethnic origin, language, religion and nationality in different areas of policy and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

## II. SPECIFIC ISSUES

### **Lack of awareness of racism and racial discrimination**

97. In its second report, ECRI considered that awareness of issues of racism and racial discrimination within Spanish society at large was very limited. Since then, some initiatives have been taken to promote awareness of these issues. However, ECRI considers that considerable progress is still needed in this area. Generally speaking, in Spain the notions of racism and racial discrimination appear to be limited to the most blatant manifestations of these phenomena, and notably those coming from extreme-right groups resorting to violence. However, the extent to which racism and racial discrimination affect individuals in their everyday lives and in a wide range of contexts such as school, employment, housing, the criminal justice system or relations with law enforcement agencies, is, in ECRI's opinion, much less recognised and understood in Spain. As a result, the role of racism and racial discrimination in effectively preventing certain minority groups from enjoying genuinely equal opportunities with the rest of the Spanish population is generally underestimated. ECRI is concerned that this situation of inadequate awareness of issues of racism and racial discrimination affects the institutional response to these phenomena in a negative way. This, in ECRI's opinion, happens at different levels and in different areas, some of which are examined in more detail below.
98. At a very general level, ECRI considers that the limited knowledge and recognition of issues of racism and racial discrimination is reflected in the somewhat restrictive angle from which these phenomena are currently examined in Spain. As mentioned in other parts of this report<sup>37</sup>, ECRI welcomes

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<sup>37</sup> See above, Reception and status of non-citizens : immigration.

the attention that the Spanish authorities have given in recent years to the situation of immigrants, especially those without legal status, and the measures taken to improve the labour situation of this part of the Spanish population. However, ECRI considers that the very close link currently established in Spain between, on the one hand, racial discrimination and, on the other, immigration and the labour market is excessively restrictive. In particular, ECRI notes that such a link tends to overlook the fact that victims of discrimination include not only immigrants, but also other groups, such as the Roma and Spanish citizens of non-Spanish origin and that discrimination takes place in many important areas alongside employment, such as education, housing, health, the criminal justice system or relations with law enforcement agencies. More generally, ECRI considers that the very strong link currently established between, on the one hand, racial discrimination and, on the other, immigration and the labour market tends to overlook the human rights dimension of racial discrimination.

99. ECRI also notes that a thorough understanding and recognition of issues of racism and racial discrimination would impact favourably on the level of priority given by the authorities to tackling these issues and on the approach taken to this end. In comparison, it has been noted that understanding and recognition of issues of gender discrimination and equal opportunities between men and women are much more developed in Spain and that this has resulted in the adoption of a considerable number of measures and policies in this field.

### ***Recommendations***

100. ECRI strongly recommends that the Spanish authorities promote awareness of racism and racial discrimination among Spanish society at large, particularly by encouraging public debate on these issues at national level. ECRI recommends that the Spanish authorities closely involve all relevant stakeholders in this debate, notably minority groups vulnerable to discrimination on grounds of “race”, colour, language, religion, nationality and national or ethnic origin. In particular, ECRI recommends that the Spanish authorities widen the debate on racial discrimination so as to highlight its human rights dimension.
101. ECRI recommends that the Spanish authorities give higher priority to combating racism and racial discrimination, notably by mainstreaming policies against these phenomena throughout the work of public institutions.
102. Another important area in which awareness of racism and racial discrimination should, in ECRI’s opinion, be improved concerns the implementation of the legal provisions in force aimed at combating these phenomena. Although precise figures are not available, non-governmental organisations have consistently reported to ECRI that these provisions are very rarely implemented. In particular, as mentioned above<sup>38</sup>, concern has been expressed at the very rare use made of the provision establishing racist motivation as a specific aggravating circumstance. The Spanish authorities have stated that they do not possess readily available data on the implementation of this provision and have stressed that, in any event, lack of cases does not necessarily imply lack of awareness on the part of the various actors of the criminal justice system of issues of racism and racial discrimination and their importance.

<sup>38</sup> Criminal law provisions.

103. As mentioned above<sup>39</sup>, there have been no cases of application of the new civil legislation against racial discrimination introduced in December 2003 to transpose the two European Council Directives. Awareness of these provisions among the legal community and society in general is reported to be minimal. ECRI considers that this factor plays a central role in the non-application of the new legislation. In this respect, ECRI regrets that the modalities through which this legislation was adopted have essentially contributed to minimising its impact on society. ECRI notes that the “Measures for the implementation of the principle of equal treatment” were drawn up without any meaningful consultation of civil society partners and were adopted as part of an accompanying law to the State Budget Bill without parliamentary debate. Taking into account especially the need for all sectors of Spanish society to discuss more in depth and come to terms with issues of racism and racial discrimination, ECRI considers such consultation and debate to be essential. The Spanish authorities have stated that, once the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin<sup>40</sup> is in place, they intend to carry out activities to raise awareness among society of racial discrimination and the existing legal remedies to counter it. They have also stressed that the Spanish Observatory against Racism<sup>41</sup> will work in close co-operation with the Council in carrying out these activities.

#### **Recommendations**

104. ECRI reiterates its recommendations concerning the need for training of all actors of the criminal justice system on the existing criminal law provisions against racism and racial discrimination. It also reiterates its call for measures to promote greater awareness among public servants involved in the criminal justice system of the need to take all manifestations of these phenomena seriously. ECRI also reiterates its recommendations concerning the need for readily available and accurate data to be collected on the implementation of the provisions in force against racism and racial discrimination.
105. ECRI urges the Spanish authorities to ensure that adequate resources are made available to the Council for the Promotion of Equal Treatment of All Persons without Discrimination on Grounds of Racial or Ethnic Origin for it to carry out an effective and extensive awareness raising campaign on racial discrimination and the existing legal remedies to counter it. ECRI strongly recommends that the Spanish authorities closely involve civil society partners in the elaboration, implementation and evaluation of these awareness raising activities.
106. ECRI believes that a better understanding and recognition of racial discrimination would also be beneficial in order to improve the effectiveness of programmes aimed at promoting equal opportunities of specific groups composing Spanish society. For instance, as already noted by ECRI in its second report, the Roma Development Programme<sup>42</sup> essentially focuses on social inclusion measures, but does not adequately address discrimination, a phenomenon which members of Roma communities continue to suffer from. In this respect, civil society organisations have noted that, although social

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<sup>39</sup> Civil and administrative law provisions.

<sup>40</sup> See Specialised bodies and other institutions.

<sup>41</sup> See Specialised bodies and other institutions.

<sup>42</sup> See above, Vulnerable groups – Roma.