

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

SPAIN, Situation as of 1 December 2004

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY: SPAIN	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Yes. Art. 1.1, Art. 10, Art. 13, Art. 18.	No.	Yes.	Yes. See Estatuto de los Trabajadores, Law n° 8/88 of 7 April 1988.
Norms concerning racism	Yes. Art. 14 Const.	No.	Yes. Arts. 137 bis, 165, 181 bis, 173.4 Criminal Code.	No.
Relevant jurisprudence	Yes.	No.	No.	No.

EXPLANATORY NOTE

SPAIN / GENERAL OVERVIEW

Today, the main problems concerning discrimination loom affect two groups: Romany and foreigners who have immigrated from third world states, particularly the Maghreb and sub-Saharan Africa. There have also been a number of anti-Semitic offences.

In November 1992, after the murder of a Dominican national, the national government, together with the government of Catalonia and Murcia, issued declarations condemning all forms of racism and xenophobia. The Spanish Senate and

the Cortes of Valencia issued similar declarations on 22 March 1994, after a young Valencian nationalist was murdered for racist motives in 1994¹.

The NGO "SOS Racisme" has deplored the fact that never in its nine years of monitoring cases of discrimination in Spain had it noted such serious instances of this phenomenon as in 2003. The organisation complains in particular about the spread of Islamophobia after the terrorist attacks on 11 March 2004. In its Report on Racism in Spain for 2004², this NGO sounds the alarm and proposes vigorous action against the racist and xenophobic attitudes that have resulted from the attacks.

Individual acts of racism or incitement to hatred were not, until the reform of the Penal code which took place in 1996, specifically covered by Spanish legislation. The consequence of this legal vacuum was that anti-semitic, xenophobic and racist activities which are forbidden and condemned by the legislation of other democracies, could be conducted with relative freedom in Spain. In May 1992, a meeting of European neo-Nazi leaders and ideologues took place in Madrid. The same meeting had been prohibited in almost all other European countries. The *Cecade* (a Spanish political party of the far-right whose headquarters were in Barcelona and which was dissolved in the summer of 1994) served as host for the congress, where the *Cecade's* national secretary stated that: "We are going to work legally because Hitler came to power through perfectly free and legal elections. But, unlike Hitler, we do not support the abolition of political parties, since we accept the Constitution³. There was criticism in the sense that, in practice, incitement to hatred and violence could be justified under the cover of freedom of expression. In fact, some "revisionist" publications which have been prohibited in other countries circulate more or less freely in Spain. There are reports that such publications have even been exhibited and sold at the National Book Fairs in Madrid and Barcelona⁴. On 8 September 2004 the Spanish newspaper ABC published an article on the dissemination of an abridged version of "Mein Kampf" which reported that the book was in 10th place on the bestseller list of a major Spanish bookstore chain⁵.

The Co-ordination Forum for Countering Anti-Semitism reports on a large number of incidents since 2002⁶: the daubing of swastikas on public monuments and in other public sites, attacks or insults against Jews, anti-Semitic graffiti and vandalism in places of worship and cemeteries, and even an art gallery in Malaga which refused to exhibit works by an Israeli artist for anti-Semitic reasons.

Some reports mention assaults by neo-Nazi groups⁷. For instance, the "SOS Racisme" report for 2004⁸ points out that such groups are now better co-ordinated. It describes a case in Castellar del Vallés (Barcelona), where a large crowd of skinheads assembled to disrupt the municipal festivities, frightening the local population and preventing a concert performance. The disturbances apparently continued for several days. The report points out that in Castellar del Vallés over 60 official complaints were received of acts of violence by these groups, and that immigrants has also been attacked. The Government is using mediators in an attempt to solve the problem.

Before the adoption of the reformed criminal code in 1996, the authors stated that the anti-Semitic acts, books and declarations found in Spain could not be attributed exclusively to the legal vacuum. The root of the problem seemed to be the lack of psychological barriers when racist or anti-semitic views were expressed, perhaps due

to the fact that Spain did not suffer the effects of racism and anti-Semitism during the Second World War⁹.

The main anti-discriminatory provisions are to be found in the Constitution and in the Criminal Code. Spain joined the UN Convention on the Elimination of All Forms of Racial Discrimination on 4 January 1969.

Autonomous Communities

Legislative powers in Spain are distributed between the central state and the Autonomous Communities (*Comunidades Autónomas*). The Autonomous Communities have their own constitution (*Estatutos de Autonomía*) on the basis of which they exercise their territorial competences.

According to Articles 139 and 149 of the Constitution, Spanish citizens enjoy the same rights in all parts of Spanish territory and the central state has exclusive competence for regulation of the basic conditions guaranteeing equality to all Spanish citizens in the exercise of their rights. It is for this reason that the Statutes of Autonomy of the Spanish Autonomous Communities effectively refer back to the basic rights enshrined in the Constitution. In this respect, and as representative examples, reference is made to the following provisions:

Institutional law 6/1981 of 30 December *Estatuto de Autonomía para Andalucía*

Art. 1 (2) states that the Statute of Autonomy intends to realise the principles of liberty and equality in a framework of solidarity and equality with all of the other peoples and regions of Spain.

Art. 11 states that all Andalusian citizens enjoy the rights established in the Spanish constitution. This article also states that Andalusia guarantees respect for the resident minorities.

Art. 12 states that Andalusia shall promote effective conditions of equality and liberty among individuals and groups.

Institutional law 7/1981 of 30 December *Estatuto de Autonomía para Asturias*

Art. 9 (1) states that all Asturian citizens enjoy the rights established in the Spanish constitution.

Art. 9(2) states that Asturia shall guarantee the adequate exercise of fundamental rights within its territory and promote measures to develop effective equality and liberty among individuals and groups.

Institutional law 3/1983 of 25 February, *Estatuto de Autonomía de la Comunidad de Madrid*

Art. 1 declares that the Community of Madrid aspires to crystallise the principles of equality, liberty and justice for all Madrilenians.

Art. 7(1) states that all citizens of the Autonomous Community shall enjoy the rights established in the Spanish constitution.

Law No. 7/2003 of 27 March 2003 of the *Comunidad de Valencia*, Advertising law

Article 6 para. 2 provides that institutional advertising must not comprise contents linked to the violation, or support for the violation, of constitutional or human rights values or which promote or incite violence, racism or other forms of behaviour contrary to human dignity.

Law No. 4/2003 of 6 March 2003 of the *Comunidad de Valencia* on public entertainment, public establishments and recreational activities

Article 3 prohibits public entertainment and recreational activities that constitute offences, incite to or promote violence, racism, xenophobia or any other form of discrimination, or that infringe human dignity.

Article 27 requires the public to refrain from exhibiting symbols, items of clothing or objects liable to incite to violence or condone activities contrary to the fundamental rights recognised by the Constitution, including those inciting to racism or xenophobia.

Law No. 11/2002 of 19 July 2002 of Castile and Leon on youth

Article 85.3 a) provides that any youth activities which promote racism, xenophobia, violence or other forms of behaviour contrary to democratic values constitute very serious offences.

Law No. 7/2001 of 12 July 2001 of Andalusia on voluntary associations

Article 5 provides that voluntary associations can work in general interest sectors such as social and health services, human rights protection, and combating social exclusion, discrimination and inequality, particularly where they are caused by racist or xenophobic phenomena.

Law No. 4/2000 of 25 October 2000 of La Rioja on public entertainment

Article 25 c) provides that audiences at public shows must refrain from activities incompatible with respect for human rights, particularly those involving incitement to racism and xenophobia.

Decree No. 41/2000 of 22 February 2000 setting up the Extremadura Committee against Racism, Xenophobia and Intolerance

This Decree set up a Committee responsible for implementing local and regional public awareness campaigns on the subject of discrimination, particularly by:

- co-ordinating local and regional activities and linking up the national and regional levels, as well as promoting relations with other Autonomous Communities;

- proposing and implementing projects and initiatives likely to help combat racism, xenophobia and intolerance;
- promoting the participation and committed involvement of educational centres, the media, non-governmental organisations, etc;
- encouraging the setting up of local committees.

Law No. 17/1997 of 4 July 1997 of Madrid on public entertainment

Article 5 prohibits public entertainment and recreational activities inciting to racism, xenophobia and any other form of discrimination that infringe human dignity.

Constitutional Law : Spain

Preliminary Note: this table is accompanied by an explanatory note

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Art. 1.1 Equality.	States that Spain is a democratic state, respecting liberty, justice and equality.	Constitutional Court Decision n° 177/88 10 October RTC 1988 p. 177, stated inter alia that the principle of equality also applies to legal relations among private persons.	
Art. 9.2 Freedom and equality.	Prescribes measures to establish real and effective freedom and equality.		
Art. 10 Human dignity, individual rights, development of personality, respect for the law and the rights of others.	Declares that human dignity, the inherent inviolable rights of the individual, free development of personality, respect for the law and the rights of others are the foundation of the political order. The standards relating to the fundamental rights recognised in the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and the relevant international treaties and agreements that have been ratified by Spain.		

<p>Art. 13 Rights of foreigners.</p>	<p>Accords to foreigners the liberties consecrated in the Constitution, under the conditions laid down by treaties and the law.</p>	<p>Institutional Law No. 14/2003 of 20 November 2003, reforming Institutional Law No. 4/2000 of 11 January 2000 on the rights and fundamental freedoms of foreigners in Spain and their social integration, modified by Institutional Law No. 8/2000 of 22 December 2000; Law No. 7/1985 of 2 April 1985 laying the foundation for the local system; Law No. 30/1992 of 26 November 1992 on the legal regulations governing the public administration and common administrative procedure, and Law No. 3/1991 of 10 January 1991 on unfair competition.</p>
<p>Art. 14 Equality.</p>	<p>Prescribes equality before the law and non-discrimination on racial grounds.</p>	<p>Constitutional Court decision n° 11/1982 of 29 March stated that the principle of equality falls within the scope of Law 62/1978 of 26 December 1978 on judicial protection of</p>

human rights.
 A Supreme Court decision of 13.1.88 declared that the measures taken by the City of Madrid with the aim of isolating a piece of land where a population of about 400 members of the Romany community was settled, were contrary to the principle of equality established in Article 14 of the Constitution.

<p>Art. 18 Right to honour, privacy, and one's own image.</p>	<p>Guarantees the right to honour, privacy, and one's own image.</p>	<p>Constitutional Court decision n° 214/1991 of 11 November. The case concerned declarations by León Degrelle, an ex-Nazi, in a journal in which he expressed his doubts about the reality of the Holocaust. Constitutional Court decision n° 176 of 11 December 1995. The case concerned a publication of comics including violence and offensive sexual aberrations committed by the Nazis on Jewish people during the</p>	<p>See Institutional Law n° 1/1982 of 5 May on the civil protection of honour, privacy and one's own image.</p>
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		Second World War.
Art. 27 Right to education.	Everybody has the right to education. This Article also recognises the freedom of education.	Constitutional Court Decision n° 359/1985 of 29 May stated that the State should refrain from imposing any religious education on pupils.
Art. 53.2 Procedure.	Procedural protection of human rights.	Constitutional Court Decision n° 126/86 dealt with a case in which Romany were disparagingly described as "people of gypsy race" by the Chief of the provincial police.
Art. 54 Ombudsman.	Regulates the institution of Defensor del Pueblo.	

EXPLANATORY NOTE

SPAIN / CONSTITUTIONAL LAW

General Remarks

Until the 1960s, it was easy to find expressions of clearly antisemitic character in Spanish literature (history and religious textbooks officially approved by the Education Ministry). This material, full of prejudice and antisemitic stereotypes, influenced the image which the Spanish have of Jewish people.

The Spanish Constitution of 1978 contains several articles dealing with the principle of equality, which is one of the pillars of the constitutional system. Some Constitutional articles provide only a general framework that is to be completed and developed by specific legislation. Other articles have a directive character, instructing public authorities to "promote" or "provide incentive for" equality in different fields, but contain no concretely anti-discriminatory dispositions.

Despite the "reconciliation" of the Spanish State and the Jewish community in 1992, deeply rooted prejudices cannot disappear overnight. At the village of La Guardia, a child whose assumed ritual murder has been groundlessly attributed to the Jews is still revered. A similar case is that of Dominguito del Val, revered in Saragossa, for whose

death the Jews have been blamed. In both cases, the medieval tradition of accusing the Jews of ritual crimes has been perpetuated¹⁰

Comments on the table

Art. 1.1 Constitution

provides that Spain is a democratic state, respecting liberty, justice and equality.

A judgment of the Constitutional Court (177/88 10 October RTC 1988 p. 177) stated that notwithstanding that, in principle, the constitutional dispositions on equality govern only the relations between the state and individuals, they are also applicable to legal relations among individuals, because Art. 1.1 of the Constitution provides that one of the superior values of the Spanish legal system is the principle of equality, and Art. 9.2 of the Constitution instructs public authorities to promote conditions for an effective and real equality between private persons and groups¹¹.

Art. 9.2 Constitution

instructs public authorities to take the necessary measures for promoting real and effective freedom and equality and to remove the obstacles preventing or impeding their enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.

Art. 18 Constitution

guarantees the right to honour, privacy and one's own image.

Institutional Law n° 1/1982 of 5 May on the civil protection of honour, privacy and one's own image.

The Constitutional Court's decision n° 214/1991 of 11 November¹² concerned declarations by Léon Degrelle, an ex-Nazi, in a journal in which he expressed his doubts about the existence of the crematories and injured the Jewish people by expressing his desire for the rise of another Führer.

The question of the balance between the right to honour on the one hand and the free expression of opinions and freedom of information on the other was posed. The Constitutional Court decided that:

1. Degrelle did not only express his opinion (i.e., his doubts on the existence of the crematoria), but had also formulated racist declarations (the desire for a new Führer and his statement that, "if today there are so many Jews, it is difficult to believe that they have escaped alive from the crematoria").
2. Neither the liberty of ideology (Art. 16 of the Constitution) nor the liberty of expression (Art. 20.1 of the Constitution) can allow a person to make racist or xenophobic declarations. Such declarations are not only contrary to the right to honour, but also to other fundamental constitutional principles, such as the protection of human dignity (Art. 10 of the Constitution). Hatred and deprecatory attitudes towards a people or an ethnic group are incompatible with human dignity.

3. The right of a person to honour has, in the Spanish Constitution, a personal character. However, that character does not prevent identifiable individuals, members of an ethnic group insulted by the declarations in question, being protected by the law. In other words, the personal character of the right to honour does not mean that the insulting declarations must be addressed to a certain individual, it is sufficient that these declarations are addressed to an ethnic group of which the complainant forms a part.

The Constitutional Court's decision n° 176 of 11 December 1995¹³ concerned the publication, by a Barcelona's editing house, of a comic album (drawings and text) entitled Hitler-SS, relating various episodes from the Nazi extermination camps during World War II, including sexual aberrations, using extremely offensive mocking and contemptible language towards the Jewish victims. The associations B'nai B'rith Spain and Amical de Mathausen (an association of former Spanish inmates of Nazi concentration camps) filed a criminal complaint against the people responsible for the publication. The examining judge in Barcelona decided to confiscate the publication and the printing equipment¹⁴. However, the court acquitted the manager of the publishing house on the grounds of lack of criminal intention. An appeal was brought against the acquittal to the Provincial Court of Barcelona, which partially upheld the appeal and partially sentenced the manager to one month and one day of major imprisonment (*arresto mayor*), a fine of 100.000 pesetas and half of the legal fees (however, the Court acquitted the manager of the offence of mocking a religious faith).

According to the judgment, the contents of the comic entail "contempt for an historical event in which [the Jewish] people is one of the protagonists". The Court held that the publication clearly contains the potential to hurt the sensibility of the Jewish people, which was directly affected by the Nazi genocide. The provincial Court stated:

"The existence of the concentration camps and what happened there is known to citizens all over the world ... and those facts must be respected and remembered by citizens all over the world, in order to avoid their possible repetition"

The manager of the publishing house petitioned the Constitutional Court for protection, alleging the violation of his fundamental right to freedom of speech and to the free dissemination of thoughts, ideas and views. The public prosecutor, the B'nai B'rith Association and the Amical de Mathausen Associations opposed this petition. The issue at stake before the Constitutional Court was the limits of the freedom of expression of the publisher of the offensive comics, with respect to the right to honour and dignity of the victims of the holocaust.

The Constitutional Court rejected the publisher's petition stating:

1. the legitimisation of the collective defence of those who, like the Jewish people, are attacked as a collective:

"the Jewish people as a whole, its geographic dispersal notwithstanding, identifiable by its racial, religious, historical and sociological features, from the Diaspora to the Holocaust, is subjected as such a human group to invective, insults, and global

disqualification. It seems fair that if it is attacked as a collective, it should be entitled to defend itself in the same collective dimension, and it is legitimate [for the purposes of that defence] to substitute [the action of] individual persons or legal entities belonging to the same [Jewish] cultural or human field. once and for all, that is the solution which ... was accepted by this Constitutional Court in its judgment 214/1991".

2. that the comics were highly offensive against the Jewish people, and their aim was to humiliate those who suffered during the holocaust:

"A reading [of the comics] reveals the global aim of the work, namely, to humiliate those who were prisoners in the extermination camps, primarily the Jews. Each vignette - word and drawing - is aggressive by itself ... in that context, it applies a pejorative concept to a whole people, the Jewish [people] because of its ethnic traits and its convictions. A racist approach, contrary to the ensemble of constitutionally protected values"

3. that the influence that the comics could have in the young generation, should be taken into account, since the comics were mainly addressed to them. This influence was extremely negative because the comic was aimed to "deprave, corrupt and deform them".

4. that the publication contained an intolerable incitement to hate and violence:

"Throughout its almost one hundred pages the language of hate is spoken, with a heavy charge of hostility which incites, sometimes directly and sometimes by a subliminal gimmick, to sadistic violence ... a 'comic' such as this, which turns an historic tragedy into a funny farce, must be defined as a libel, because it seeks, deliberately and without scruple, the vilification of the Jewish people, with contempt for its qualities, in order to reduce its worth in the eyes of others, which is the definitive element of the offence of defamation or disgrace".

Art. 27(2) Constitution

The aim of education is the full development of the human personality with respect for the democratic principles of cohabitation and human rights and fundamental freedoms.

Art. 27(3) Constitution

Public authorities must guarantee the right of parents to give their children such religious and moral education as they consider to be proper.

Implementing the constitutional direction, the Institutional Law on the Right to Education of 3 July 1985 recognises the right of every citizen to education and to respect for the right of equality and opportunity without discrimination of any type. The Institutional Law on the Organisation of the Education System of 3 October 1990 requires the public authorities to take remedial measures in favour of disadvantaged persons or groups.

Constitutional Court Decision n° 359/1985 of 29 May¹⁵ states that the State should refrain from imposing any religious education on pupils. All public institutions should be neutral from a religious point of view.

Institutional law n° 8/1985 grants the right to education to foreigners resident in Spain on the same terms as to citizens (Art. 1.3). Article 9 of Institutional Law No. 4/2000 (drawn up in accordance with Institutional Law No. 8/2000) lays down the following rules:

1. all foreigners under the age of 18 years shall have the right and duty to receive education under the same conditions as Spanish nationals. This right shall embrace access to free, compulsory basic education, the right to obtain the corresponding academic qualifications and access to the public grant and support system. In the case of non-compulsory education, the relevant government departments shall ensure the availability of an adequate number of places.
2. all foreigners resident in Spain shall have the right of access to non-compulsory education under the same conditions as Spanish nationals.
3. the public authorities shall take the requisite action to ensure that resident foreigners can, if necessary, receive education geared to improving their social integration, under conditions acknowledging and respecting their cultural identity.
4. resident foreigners must have access to employment in teaching and scientific research. They shall also be allowed to set up and direct research centres, in accordance with the provisions of current legislation.

Procedural provisions

Art. 53.2 Constitution

states that every citizen has the right to apply to the ordinary courts in order to defend his constitutional rights (Art. 14 of the Constitution is specifically mentioned). The Article also provides the right to initiate a procedure of *amparo* before the Constitution tribunal for violations of human rights (the remedy of *amparo* is regulated by Institutional Law 2/1979 of 3 October, Articles. 41-58).

Despite the fact that Article 53 uses the term "citizens", the Constitutional court has determined that it also applies to non-citizens and in fact to all persons to whom the human rights enshrined in the Constitution are addressed¹⁶.

Institutional Law 2/1979 of 3 October

Articles. 41-58 lay down the procedure known as *amparo*.

Once the appropriate judicial avenues are exhausted, the Constitutional remedy of *amparo* protects all citizens against violations of their rights by orders, legal measures or acts of violence on the part of public authorities. The application for *amparo* must be lodged by the People's Advocate, the Government Attorney or the party concerned within 20 days of notification of the judgment handed down in the previous court proceedings.

The applicants in Constitutional Court case n° 126/86¹⁷ were Romany (gitanos) who had been convicted by a criminal court of a crime against public health. Before the Constitutional tribunal (procedure of *amparo*), the applicants claimed that they were disparagingly described as "people of gypsy race" by the Chief of the Provincial Police of Salamanca. According to them, the inclusion of such a description in the report of the Chief of the Police of Salamanca influenced the investigating judge's decision against the applicants. The Constitutional Court rejected the application, finding that no discrimination had occurred. The Constitutional Court noted that reasons for judgment of the Provincial Court did not mention at all the fact that the applicants were Roma/Gypsies. As to the mention of that characteristic by the Court of Cassation, the Constitutional Court stated that it was included only in order to reply to and reject the applicants' argument. The Constitutional Court was of opinion that the remark in the police report to the effect that certain "gypsy families" were engaging in drug trafficking was not discriminatory, but "only" a "quality useful for the purposes of identification" (*rasgo identificador útil*). The Constitutional Court established (in a way that is not fully consistent) that:

1. public authorities should refrain from referring to ethnic elements even for descriptive purposes, in order to avoid inflaming irrational prejudices that are present in Spanish society;
2. the utilisation of ethnically-based descriptions is not in itself a discriminatory action. This finding was justified by the fact that the applicants had described themselves as Roma/Gypsies in their declarations and in their statement of defence.

On 29 January 2001 the Constitutional Court was called upon to pronounce on a case of racial discrimination (Decision no. 13/2001, Second Chamber, in RTC 2001/13).

The facts of the case involved a police request for identification of a coloured person. This person had been the only one whose identity papers had been demanded by the police officers, and the plaintiff had considered that the reason for this was that he was black. The Constitutional Court declared that discrimination occurred when the racial criterion was immaterial to the police action but was nonetheless used, which was not the case here because the police officers had not infringed the criteria of proportionality and reasonability. In another section of the judgment the Court pointed out that the prohibition of discrimination comprises not only manifest but also hidden discrimination, including conduct which appears neutral but, because of the particular circumstances, has a discriminatory effect on the victim.

Criminal Law : Spain

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Crimes against ethnic groups.	Art. 607 Criminal Code.	Punishes those attempting to destroy any racial, ethnic	Imprisonment.		

		or religious group.		
Racial and ethnic discrimination in the public service.	Art. 511 Criminal Code.	Criminalises racial or ethnic discrimination against natural or juridical persons by persons in charge of a public service.	Imprisonment and fine.	
Racial segregation during an armed conflict	Art. 611 (6) of the Penal Code	Punishes persons practising racial segregation of protected persons during an armed conflict	Imprisonment	
Threats	Art. 170 of the Penal Code	Penalises threats to an ethnic, cultural or religious group	Imprisonment	
Promotion of and incitement to racial discrimination.	Art.4, 515 (5) and 517 Criminal Code.	Outlaws associations inciting people to discrimination.	Promoters, directors, presidents, collaborators and members may be punished by imprisonment, disqualification and fine. Associations may be dissolved art. 520 Criminal code).	Supreme Court Decision of 11 May 1970 stated that the mere existence of such an organisation attracts criminal sanctions, even if it does not carry out its aims.
Torture practised by civil servants	Article 174 of the Penal Code	Penalises torture carried out by the authorities or civil servants, particularly on	Imprisonment	

		discriminatory grounds	
Racial and ethnic discrimination by public officials.	Art. 511 (3) Criminal Code.	Public officials having committed offences within the scope of Article 511 shall receive the maximum sentence provided for therein and shall be suspended from their duties.	Imprisonment and fine.
Discrimination perpetrated by service providers	Article 512 of the Penal Code	Punishes persons refusing to provide a service on discriminatory grounds	Prohibition to exercise trade or profession
Prohibition of exercise of public office	Article 616 of the Penal Code	Officials or private and public authorities having been found guilty of an offence involving discrimination may be banned from holding public office	Prohibition of exercise of public office
Anti-discriminatory measures in prisons.	Art. 3 Institutional law 1/1979 of 26 September.	States that measures taken by prison authorities should not discriminate, inter alia, on racial grounds.	

Discrimination as aggravating circumstance	Art. 22(4) Criminal Code.	Under this Article, the commission of a crime, inter alia, for racist or anti-Semitic motives, or because of the ideology, religion or beliefs of the victim, the victim's ethnic, racial or national affiliation, is deemed to be an aggravating circumstance.		Supreme Court, decision 364/2003 of 13 March 2003. Decision 2004/71982 by the Barcelona Provincial Court (5th chamber), 4 March 2004
Provocation to discrimination	Art. 510 (1) Criminal Code.	This article provides for the offence of provocation to discrimination, hate, or violence against groups or associations for racist or anti-Semitic motives.	Imprisonment from 1 to 3 years and fine	Decision by the Barcelona Provincial Court (5th chamber), 4 March 2004
Dissemination of offensive information	Art. 510 (2) Criminal Code.	Punishes the dissemination of offensive false information with respect, inter alia, to the ideology, religion or beliefs, racial or ethnic grounds or national origin of groups or associations.	Imprisonment from 1 to 3 years and fine	
Holocaust denial	Art. 607 (2) Criminal Code.	Punishes the denial of the	Imprisonment from 1 to	

	Code.	Holocaust, dissemination by any means of ideas or doctrines which deny or justify the crimes detailed in art. 607 (1) related to genocide or purport to rehabilitate regimes or institutions which advocate these crimes.	2 years.	
Crimes against humanity	Article 607 bis of the Penal Code	Punishes specified acts carried out as part of a general or systematic attack on a population of a section thereof, including acts carried out on the ground of the victims' belonging to a group persecuted on racial, ethnic, cultural or religious grounds	Imprisonment	
Discrimination at work	Art. 314 Criminal code.	Punishes those producing a serious discrimination at working places, public or private, based, inter alia, on grounds of	Imprisonment from 6 months to 2 years or fine.	

		ideology, ethnic, race, religion or beliefs.		
Restriction of foreign workers rights	Art. 312 and 318 bis Criminal code.	Art. 312.1 and art. 318 bis punish those engaging in the illegal traffic of workers. Art. 312.2 punishes those employing foreigners without a working permit in conditions that jeopardise, restrict, or suppress their rights under the law, collective conventions, or individual employment contracts.	Imprisonment.	Cadiz Provincial Court, Decision 157/2004 (6th Chamber), 22 June 2004

EXPLANATORY NOTE

SPAIN / CRIMINAL LAW

General remarks

Prior to the revision of the Penal Code in 1995, anti-discriminatory measures concentrated on associations promoting and inciting to racial discrimination and on racial discrimination by civil servants and public employees.

As for anti-Semitic incidents before the adoption of the reformed Penal Code, the writer of a play in La Coruña, Par del Castro, argued that the Talmud is a guidebook for murderers with instructions for human sacrifices. Recent years have also seen the desecration of a Jewish cemetery in Barcelona, an attack on a restaurant called "Tel Aviv" in Seville, anti-Semitic articles in the press and anti-Semitic graffiti¹⁸.

A general reform of the Criminal Code had place in 1995, and the new Criminal code entered in force in mid 1996¹⁹. Successive amendments were subsequently made²⁰. Among the salient points in this reform, racial ethnical and religious grounds were

added as aggravating circumstances in the perpetration of a crime. Furthermore, Spanish law, unlike other national legislations, now recognises anti-Semitism as a specific form of racism, and the term *anti-Semitic* is specified in texts as an aggravating circumstance in unlawful incitement to discrimination, hatred, or violence (Arts. 503 and 22 (4) of the Penal Code).

In recent years there have been reports of cases of racist violence, primarily against immigrants. The Spanish courts have convicted a number of perpetrators of such acts²¹.

Comments on the table

Art. 607 Criminal Code

punishes with imprisonment those attempting to annihilate, totally or partially, a racial, ethnic or religious group by murder, castration, sterilisation, mutilation or other serious injuries and those subjecting such a group or some of its members to threats to life or health. The Article also punishes those forcing the group or its members to move, or adopting any measure tending to hinder the group's reproduction or way of life, or transferring members of one group to another.

Art. 616 Criminal Code

stipulates that civil servants and private individuals convicted of offences involving discrimination shall suffer, in addition to criminal punishment, absolute disqualification from holding public office. For civil servants and public employees the period of disqualification is from ten to twenty years and for private individuals from one to ten years.

Art. 511 Criminal Code

criminalises racial or ethnic discrimination committed by civil servants and individuals responsible for a public service. According to the commentators, the effect of this provision is very limited, since State employees do not frequently issue formal resolutions²².

Article 511 (3) Criminal Code

states that public officials convicted of having committed offences referred to in Article 165 shall receive the maximum sentence provided for therein and shall be suspended from their duties.

Art. 512 Criminal Code

punishes persons who, in the framework of their occupational or entrepreneurial activities, refuse to provide a service to a person entitled to receive it on the grounds of his/her ideology, religion, beliefs, or membership of an ethnic group, race or nation.

Art. 515 (5) and 517 Criminal Code

outlaw associations promoting or inciting to racial discrimination.

In a decision of 11 May 1970, the Supreme Court stated that it is settled jurisprudence that the crime of illegal association has a clear formal and passive character. In other

words, the mere existence of such an organisation results in criminal sanctions, even if it does not carry out its aims.

Art. 520 Criminal Code

allows the dissolution of associations outlawed by Art. 515 of the Criminal Code and Art. 517 prescribes imprisonment and fines for founders, directors and presidents of such associations.

Art. 526 Criminal Code

punishes the desecration of tombs and insults to the dead. In the draft revision of the Criminal Code, this Article has been introduced into the chapter dealing with crimes against religious feelings. Some authors criticise this proposal, because, according to them, insults to tombs and the dead are not always motivated by religious hatred²³.

Institutional law 1/1979 of 26 September *Ley general penitenciaria*

Art. 3 states that prison authorities should respect human personality and that prisoners should not suffer discrimination based upon race, political or religious opinion, social condition or any other ground.

Art. 54 provides that the authorities must guarantee the religious freedom of prisoners and facilitate exercise of this freedom.

Royal Decree n° 1.201/1981 of 8 May *Aprobación del Reglamento penitenciario*

Art. 3 (1) and (2) state that prison authorities should respect human personality and dignity. Prisoners enjoy the fundamental rights established in the Constitution despite their incarceration.

Art. 4(1) prohibits differentiation on grounds of birth, race, political or religious opinion, social circumstances or any other reason.

Art. 230 guarantees freedom of religion in prisons.

Supreme Court, Decision No. 364/2003 (Criminal Division) of 13.3.2003²⁴

The Supreme Court rejected an appeal against the application of Article 22 (4) of the Penal Code (racism as an aggravating circumstance). The case concerned an unmotivated attack on an Egyptian man selling flowers in the street: his assailants had insulted him using racist expressions.

Lleida Provincial Court, Decision No. 360/2002 (Division 1) of 4.6.2002²⁵

The court accepted the aggravating circumstance of racism in the case of an assault during which the assailant had shouted “moros out” and other racist insults.

Lleida Provincial Court, Decision No. 606/2002 (Division 1) of 13.9.2002²⁶

In a case of robbery with intimidation, the court accepted the aggravating circumstance of racism because “it has been amply demonstrated by the victim’s statement, which has not been altered and is devoid of any contradictions, hesitations or ambiguities and presents the prerequisites for subjective credibility, that the defendants had said that he was a “moro” and that they were attacking him for that reason, shouting that he had no right to live and was going to die, which, precisely constituted the reason for the unjustifiable assault”.

Guipúzcoa Provincial Court, Decision of 29.5.2002 (Division 3) ²⁷

The court rejected racism as an aggravating circumstance in the case of an assault during which the assailants had said that they “had got a ‘moro’ to help pass the time”. The court held that for a racist remark to constitute an aggravating circumstance, racism had to constitute the motive for the attack, and in this case it had only been a secondary contingency²⁸.

In 2004, several judicial decisions were given in pursuance of Article 318 bis of the Penal Code, inter alia in connection with offences encouraging illegal immigration, often endangering the victims’ lives (eg Cadiz Provincial Tribunal, decision 157/2004 (6th Division), 22 June 2004, JUR 2004\211920; Ceuta Provincial Tribunal, decision 136/2004 (6th Division), 1 June 2004, JUR 2004\213622; Almería Provincial Tribunal, decision 107/2004 (2nd Division), 24 May 2004, JUR 2004\193066; Ceuta Provincial Tribunal, decision 133/2004 (6th Division), 21 May 2004, JUR 2004\214088).

Civil and Administrative Law : Spain

Preliminary Note: this table is accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Estatuto de los Trabajadores Art. 4.2.(c).	Establishes the right of workers not to be discriminated against inter alia on racial and religious grounds.	Fine.		
Estatuto de los Trabajadores Art. 16.2	Prohibits discrimination in the activities of worker recruitment agencies			
Estatuto de los Trabajadores Art. 17.1.	Protects against discriminatory measures in the workplace.	Annuls all decisions taken by and contractual clauses presented by employers on discriminatory grounds.		
Royal Legislative Decree 5/2000, Article 8.12	Qualifies as very serious infractions (infracciones muy graves) all unilateral decisions by employers involving inter alia racial or	Fine.		

	religious discrimination, whether positive or negative.			
Royal Legislative Decree 5/2000, Article 16.2	Qualifies as very serious infractions (infracciones muy graves) the publication of offers of employment showing an intention to discriminate inter alia on racial or religious grounds.	Fine.		
Institutional Law No. 8/2000 of 22 December, Art. 23.2 and 54.1 c)	Describes as indirect discrimination and a very serious offence any treatment detrimental to foreigners on grounds of race, religion, ethnic belonging or nationality	Fine		
Institutional Law No. 8/2000 of 22 December, Art. 54	Describes as very serious any activities encouraging illegal immigration	Fine		
Order of 19 July 1978 of the Ministry of Interior.	Elimination of references to Roma/Gypsies in the Reglamento para el servicio del cuerpo de la guardia civil.			
Law No. 10/1990 of 15 October 1990, Art. 66.1	Prohibits racist and xenophobic behaviour at sports events	Fine		

EXPLANATORY NOTE

SPAIN / CIVIL AND ADMINISTRATIVE LAW

1. General remarks

The Spanish legal system contains several dispositions intended to guarantee equality and non-discrimination. Such dispositions are for the most part to be found in specific legislation (concerning housing, labour law, treatment of aliens, etc.).

At a friendly football match between Spain and England on 17 November 2004, despite a law which prohibits racist and xenophobic acts at sports events, some of the spectators engaged in racist behaviour directed against coloured players on the English team²⁹. According to one newspaper, similar incidents had already taken place at an earlier friendly fixture between the under-21 sides³⁰.

2. Comments on the table

*Estatuto de los Trabajadores*³¹

protects against discrimination in the process of selection of employees and in the workplace in general.

Article 4.2 (c) establishes the principle of non-discrimination against workers on grounds of race, religious opinion, social condition, age, sex or language³².

Article 16. 2 provides that recruitment agencies (where such bodies are authorised) must avoid discrimination, notably on grounds of race or religion, in their work.

Article 17.1 declares void any clause in an individual or collective agreement and any unilateral decisions by employers which discriminate against particular workers on the basis of their race or religious convictions.

Article 53.4 declares void any decision by an employer to cancel a contract of employment if it can be shown that he or she acted in a discriminatory manner in breach of the fundamental rights; Article 55.5 declares discriminatory dismissal void.

Article 8(12) of Royal Legislative Decree No. 5/2000³³ qualifies as a very serious infraction (*infracciones muy graves*) any unilateral decision by an employer involving positive or negative discrimination against workers in matters of salaries, working hours, training, promotion and other working conditions, on grounds of race, origin, sex, social condition, religious ideas, membership or non-membership of a trade-union, or language.

Article 16(2) of Royal Legislative Decree No. 5/2000 qualifies as a very serious infraction (*infracciones muy graves*) the inclusion, in any advertised offer of employment, of conditions which are discriminatory in that they restrict access to the employment on grounds of race, sex, religion, political or religious opinions, descent or family links, social origin, or affiliation to a union.

Article 40 of Royal Legislative Decree No. 5/2000 fixes the sanctions (fines) for violation of labour legislation.

Article 36 of Royal Legislative Decree No. 5/2000 declares the following acts very serious offences: 1. the setting up of any type of immigrant recruitment agency; 2. pretence or deception in recruitment of immigrants; 3. abandonment of immigrant workers abroad by the contracting employer or his/her official representatives; 4. receipt of a commission or other payment by workers for their recruitment.

- Law 30/92 of 26 November and BOE n° 285 of 27 November as amended by BOE n° 311 of 28 December create the *Régimen jurídico de las administraciones públicas y del procedimiento administrativo común*.

Article 35 i) establishes the right of citizens to be treated by the administrative authorities with respect and honour in order to facilitate their enjoyment of their rights and the fulfilment of their obligations.

Article 62 renders void all administrative acts violating the substance of the constitutional rights and freedoms.

Article 616 Penal Code

provides that civil servants and private individuals who are convicted of offences comprising discrimination shall be subjected, in addition to criminal punishment, to total disqualification from holding public office. In the case of civil servants and public employees, the period of disqualification is between ten and twenty years, and between one and ten years for private individuals.

Article 54.1 c) of Institutional Law No. 8/2000 of 22 December

describes as "very serious" the profit-making activities of anyone belonging to an organisation engaged in facilitating, promoting and encouraging unlawful immigration. This administrative sanction must be imposed where the facts charged do not constitute a criminal offence. Indent d) makes the recruitment of foreign workers without work permits a punishable administrative offence.

Order of 19 July 1978 of the Ministry of Interior³⁴

abrogates the references to "gypsies" in Articles 4, 5 and 6 of the second part of the Reglamento para el Servicio del Cuerpo de la Guardia Civil³⁵.

Article 66.1 of Law No. 10/1990 of 15 October 1990

prohibits the introduction into and display at sports events of signs, symbols, emblems or placards potentially inciting to violence, xenophobia, racism or terrorism. The event organisers are required to remove any such signs immediately.

3. Programmatic measures

- The Institutional law 1/1990 on the Organisation of the Education System of 3 October 1990 requires the public authorities to take remedial measures in favour of disadvantaged persons or groups.

- At least Two campaigns aimed at raising public awareness have already been launched. One is called "Young people against intolerance" and the other "Democracy means equality". Campaigns include television and video announcements, distribution of pamphlets, etc., and are run by a branch of the Ministry of Social Affairs and Non-Governmental Organisations.

- Since 1988, the Ministry of Social Affairs (General Directorate of Social Action) has been conducting a development programme aiming to eliminate marginalisation of Roma/Gypsies by improving living conditions and integration on the basis of equality, by fostering a better community life for all citizens, by cultivating respect for the

Romany culture and by setting up fora enabling Roma/Gypsies to participate in the discussion of matters affecting them. Projects include measures in the fields of education, health, housing, employment and social welfare. Roma/Gypsies have been included in the National Plan for Social Inclusion in the Kingdom of Spain as a vulnerable community³⁶.

- In 1991, the Government of the Autonomous Region of Madrid initiated a programme to relocate Roma/Gypsies families living in shacks on the outskirts of the capital into housing projects in established communities. In 1993, however, the programme ran out of funds and was discontinued³⁷.

- In an effort to mitigate violence against foreigners, the Ministry of Social Affairs initiated a campaign called "Democracy means Equality" aimed at sensitising the Spanish to immigrants and tolerance. At least 12 non-governmental organisations took part in the campaign through television, press, etc.³⁸.

- Since the Second Vatican Council, the Vatican has adopted a new approach to the Jews, and has been trying to establish a dialogue between Judaism and Catholicism. The Spanish Episcopal Conference recently published a series of documents under the title: "Christians and Jews - Ways to Dialogue"³⁹.

- A large number of courses, seminars and workshops are being or have been run on integration, immigration and intercultural mediation⁴⁰

Non-judicial institutions : Spain

Ombudsman (Defensor del Pueblo)

Art. 54 of the Spanish Constitution states that an Institutional Law shall regulate the institution of *Defensor del Pueblo*. The *Defensor del Pueblo* is appointed by the Parliament (*Cortes Generales*) in order to supervise the activities of the administration⁴¹. The *Defensor del Pueblo* can undertake any investigation on behalf of any party or on his own initiative in the light of Art. 162.1 of the Constitution and Art. 32.1 of Institutional Law of the Constitutional Court. The *Defensor's* authority extends to the activities of Ministers, administrative authorities and public officers. No written complaint is necessary for the *Defensor* to act.

Commissions

A Government Commission was created in 1979 to study the problems of the Roma/Gypsies. The Congress of Deputies created an administrative supervisory body in 1985 and since 1989 an Office has existed under the patronage of the Ministry of Social Affairs⁴².

Law 62/1978 of 26 December *Protección jurisdiccional de los derechos fundamentales de la persona*

Art. 2.1 states that crimes against human rights shall be tried by the ordinary courts according to their jurisdiction.

Institutional Law No. 14/2003 of 26 November 2003 ⁴³

Amends the Law on rights and freedoms of foreigners in Spain; Article 71 provides for the setting up of a Spanish observatory on the combat of racism and xenophobia, mandated to study and analyse the situation in Spain and propose measures in the field of action against racism and xenophobia.

Institutional Law No. 4/2000 of 11 January 2000 ⁴⁴

Article 61 provides for the setting up of a Higher Council on Immigration Policy (Consejo Superior de Política de Inmigración) responsible for co-ordinating the activities of the various government departments in the field of integration of immigrants. Made up of representatives of central Government, the autonomous communities and the municipalities, the Council is responsible for laying the foundations and setting out the criteria for overall policy in terms of the social and occupational integration of immigrants. To that end the Council gathers information from administrative bodies (at both the State and Autonomous Region levels) and the social and economic agents involved in the field of immigration and protection of foreigners' rights.

Article 63 provides for the setting up of a forum for immigration (Foro para la Inmigración) made up of representatives of the administration, immigrants' associations, social organisations supporting immigrants and other bodies concerned with the immigration phenomenon (trade unions and employers' organisations). The Law describes the Forum as a body providing for "consultation, information and advice on immigration issues". Special regulations were set out on the organisation of the Forum⁴⁵.

GRECO Programme (PROGRAMA GLOBAL DE REGULACIÓN Y COORDINACIÓN DE LA EXTRANJERÍA Y LA INMIGRACIÓN) ⁴⁶

This Programme aims to deal comprehensively with the issue of immigration and foreigners in Spain. There is an annual assessment of the Programme, largely consisting in evaluating objectives. Responsibility for Programme co-ordination and management goes to the Government Delegation on Immigrants. The Programme is drawn up on the basis of proposals from Ministries with responsibility for immigration (Ministry for Foreign Affairs, Justice, Interior, Education, Culture and Sport, Labour and Social Affairs, Public Administrations, Health and Consumer Affairs). The Programme has four mainstays, viz overall co-ordinated conception of immigration as a desirable phenomenon for Spain in the European Union context, integration of foreign residents and their families, regulating migration flows, and retaining the system for protecting refugees and displaced persons. Each of these main lines is further developed by means of 23 different activities, which are in turn broken down into 72 practical measures. Article 2.7 of the 2004-2004 Programme⁴⁷ sets out measures to combat racism and xenophobia, particularly through the adoption of the following measures:

a) improving infrastructures and human and material in the State security forces by means of security strategies, with a view to eliminating racist or xenophobic acts. This includes training for members of the State security forces, particularly by

disseminating material on pluricultural society and action against racism and xenophobia (research, prevention, etc);

b) implementing information campaigns on immigration as a positive phenomenon;

c) promoting values in the education system to combat racism and xenophobia.

Note

¹ European Commission, Legal instruments to combat racism and xenophobia, Comparative assessment of the legal instruments implemented in the various Member States to combat all forms of discrimination, racism and xenophobia and incitement to hatred and racial violence, updated report, November 1994, p. 6.

Note

²

<http://www.sosracisme.org/sosracisme/dossier/Dossier%20de%20premsadib.pdf>

Note

³ Yaakov Cohen, Anti-Semitism in Spain, in "The International Association of Jewish Lawyers and Jurists Newsletter", n° 9, 1993, p. 27.

Note

⁴ Ibid.

Note

⁵ Tulio demicheli, El «Mein Kampf» alcanza en la Casa del Libro un inquietante décimo puesto entre los libros más vendidos, ABC | 08/09/2004; see also: The coordination Forum for Countering Anti-Semitism, in:

<http://www.antisemitism.org.il/frontend/english/ForumReport.asp>

Note

⁶ The Coordination Forum for Countering Anti-Semitism, in: <http://www.antisemitism.org.il/frontend/english/ForumReport.asp>: "1. 15 September 2004 Spain – Seville – Swastikas daubed on a bridge; 2. 12 September 2004 Spain – Madrid – Swastikas daubed on wall at Madrid airport; 3. 8 September 2004 Spain – Arrest of neo-Nazi group on suspicion of having torched the statue of Shmuel Levi; 4. 8 September 2004, Spain – the Spanish newspaper ABC publishes information on the disseminations of Mein Kampf by Adolf Hitler; 5. 1 September 2004 Spain – Melilla (Spanish enclave in North Africa) – Stones thrown at a Jewish man; 6. 29 August 2004 Spain – Melilla (Spanish enclave in North Africa) – Jewish family harassed; 7. 25 August 2004 Spain – Statue of Shmuel Levi in Toledo burnt; 8. 24 August 2004 Spain – Arrest of a neo-Nazi group; 9. 6 August 2004 Spain (Melilla) – Stones thrown at a synagogue and worshippers insulted; 10. 6 August 2004 Spain (Melilla) – Jewish worshipper attacked; 11. 29 July 2004 Spain – publication of an anti-Semitic caricature in the newspaper El Pais; 12. 26 June 2004 Spain – Desecration of - monument to Holocaust victims in the Montjuic cemetery in Barcelona; 13. 4 June 2003 Spain – anti-Semitic

caricature in a Spanish newspaper; 14. 22 March 2003 Spain – anti-Semitic graffiti in Madrid; 15. 1 March 2003 Spain – Measures against an art gallery owner who refused to exhibit works by an Israeli artist for anti-Semitic reasons; 16. 15 November 2002 – Desecration of a Jewish cemetery in Melilla; 17. 15 November 2002 Spain – torching of Jewish owned cars in Melilla; 18. 11 April 2002 Spain – Anti-Semitic caricature in the Spanish press; 19. 30 March 2002 Spain – neo-Nazi demonstration in Madrid; 20. 30 March 2002 Spain – anti-Semitic incident near a synagogue in Madrid; 21 7 March 2002 Spain – synagogue set on fire in Ceuta; 22. 11 January 2002 Spain – anti-Semitic graffiti and broken windows at Messina synagogue, Madrid; 23. 5 January 2002 Spain – blasphemous graffiti on the walls of a synagogue in Madrid.

Note

⁷ Movimiento contra la intolerancia, informes Raxen, Violencia urbana y agresiones racistas en España (Por CC. Autónomas Abril – Junio 2004) in: <http://www.imsersomigracion.upco.es/>

Note

⁸ See footnote 2 above.

Note

⁹ Ibid.

Note

¹⁰ Yaakov Cohen, Anti-Semitism in Spain, in "The International Association of Jewish Lawyers and Jurists Newsletter", n° 9, 1993, p. 27.

Note

¹¹ Aranzadi, *la Constitución española*, by Manuel Pulido Quecedo, Elcano 1993 p. 847.

Note

¹² Antonio Cano Mata, *Sentencias del tribunal constitucional sistematizadas y comentadas*, 1991 vol. 3 p.147.

Note

¹³ La Ley, 1996, 720.

Note

¹⁴ Taken from Alberto Benasuly, Spain's Constitutional Court endorses the prohibition of the "Hitler-SS" comic because of its racist nature, in Justice (Review of the International Association of Jewish Lawyers and Jurists) n° 8, march 1966, p. 41.

Note

¹⁵ Manuel Pulido Quecedo, *La constitución española*, Elcano 1993, p. 348 s.

Note

¹⁶ Constitutional Tribunal, decision 64/1988 of 12 April, in Manuel Pulido Quecedo, *La constitución española*, Elcano 1993, p. 965.

Note

¹⁷ Antonio Cano Mata, *Sentencias del tribunal constitucional sistematizadas y comentadas*, 1986 vol. 2 p. 361

Note

¹⁸ Yaakov Cohen, Anti-Semitism in Spain, in "The International Association of Jewish Lawyers and Jurists Newsletter", no. 9, 1993, p. 27.

Note

¹⁹ Law n° 19/1995, of 23 November.

Note

²⁰ Ley Orgánica 2/1998, du 15 juin, por la que se modifican el Código Penal y la Ley de Enjuiciamiento Criminal; Ley Orgánica 7/1998, du 5 octubre, de modificación de la Ley Orgánica 10/1995, du 23 novembre, del Código Penal; Ley Orgánica 11/1999, du 30 avril; Ley Orgánica 14/1999, du 9 juin; Ley Orgánica 2/2000, du 7 janvier; Ley Orgánica 3/2000, du 11 janvier; Ley Orgánica 4/2000, du 11 janvier; Ley Orgánica 5/2000, du 12 janvier; Ley Orgánica 7/2000, du 22 décembre; Ley Orgánica 8/2000, du 22 décembre; Ley Orgánica 3/2002, du 22 mai; Ley Orgánica 9/2002, du 10 décembre; Ley Orgánica 1/2003, du 10 mars; Ley Orgánica 7/2003, du 30 juin; Ley Orgánica 11/2003, du 29 septembre; Ley Orgánica 15/2003, du 25 novembre; Ley Orgánica 20/2003, du 23 décembre, de modificación de la Ley Orgánica del Poder Judicial y del Código Penal.

Note

²¹ Movimiento contra la intolerancia, Informes Raxen, Violencia urbana y agresiones racistas en España (Por CC. Autónomas Abril – Junio 2004).

Note

²² Angel Calderón y José Antonio Choclán, *Código penal comentado*, Barcelona, 2004, p. 1029..

Note

²³ Calderón y José Antonio Choclán, *Código penal comentado*, Barcelona, 2004, p. 1051.

Note

²⁴ Recurso de Casación núm. 2904/2001, RJ 2003\2902.

Note

²⁵ Sentencia de la Audiencia Provincial Lleida núm. 360/2002 (Sección 1ª), 4 June 2002, Sumario núm. 4/2001, Aranzadi 2002\485

Note

²⁶ Sentencia de la Audiencia Provincial Lleida núm. 606/2002 (Sección 1ª), 13 September 2002 Aranzadi 2002\257217.

Note

²⁷ Sentencia de la Audiencia Provincial Guipúzcoa (Sección 3ª), 29 May 2002, Jurisdicción:Penal, Procedimiento abreviado núm. 3008/2002, Aranzadi 2002\223444.

Note

²⁸ Ibid: "The victim's race was a secondary element because it was used not as a motive for committing the offence but as an element to describe a suitable victim: the victim was a particularly vulnerable individual because of his situation as an unlawful immigrant, which the assailants thought would help

secure their impunity, which was the aim of the modus operandi used". Cf. Sentencia de la Audiencia Provincial Badajoz núm. 114/2004 (Sección 3ª), 18 May 2004, Aranzadi 2004\173883; Sentencia de la Audiencia Provincial Barcelona (Sección 5ª), 4 March 1982, Aranzadi 2004\71982; Sentencia de la Audiencia Provincial Barcelona núm. 1043/2003 (Sección 2ª), 2 December 2004, Aranzadi 2004\29063.

Note

²⁹ ABC, 19.11.2004, in:

[HTTP://WWW.ABC.ES/ABC/PG041119/PRENSA/NOTICIAS/DEPORTES/DEPORTES/200411/19/NAC-DEP-070.ASP](http://WWW.ABC.ES/ABC/PG041119/PRENSA/NOTICIAS/DEPORTES/DEPORTES/200411/19/NAC-DEP-070.ASP) EDICIÓN IMPRESA – DEPORTES, El Gobierno condena de forma tajante los «intolerables» gritos del Bernabéu

Note

³⁰ ABC, 19.11.2004, in:

<http://www.abc.es/abc/pg041119/prensa/noticias/Deportes/Deportes/200411/19/NAC-DEP-068.asp> Tony Blair afirma que «no podemos permitir el racismo en ningún sitio» EMILI J. BLASCO, CORRESPONSAL.

Note

³¹ Real Decreto Legislativo 1/1995, de 24 marzo MINISTERIO TRABAJO Y SEGURIDAD SOCIAL BOE 29 marzo 1995, núm. 75 , [pág. 9654]; ESTATUTO DE LOS TRABAJADORES. Texto refundido de la Ley, Aranzadi 1995\997.

Note

³² This principle prohibits employers from investigating the personal and intimate life of workers in order to obtain information that could be used for discriminatory purposes (race, religion, etc.). See José Luis Goñi Sein, *El respeto a la esfera privada del trabajador*, Madrid 1988 p. 47.

Note

³³ Real Decreto Legislativo 5/2000, de 4 agosto MINISTERIO TRABAJO Y ASUNTOS SOCIALES BOE 8 agosto 2000, núm. 189, [pág. 28285]; rect. BOE 22 septiembre 2000, núm. 228 [pág. 32435](castellano); BOE 18 octubre 2000, núm. 10-Suplemento [pág. 666] (gallego); TRABAJO-SEGURIDAD SOCIAL. Aprueba el Texto Refundido de la Ley sobre Infracciones y Sanciones en el Orden Social, Aranzadi 2000\1804.

Note

³⁴ *Aranzadi Legislación*, 1978 n° 1584.

Note

³⁵ Order of 14 May 1943, in Aranzadi, *Nuevo Diccionario de Legislación* n° 15126.

Note

³⁶ Programa de desarrollo gitano de la Administración general del Estado, in:

<http://www.mtas.es/SGAS/Gitano/Programa/Programa.htm>

Note

³⁷ Country Reports on Human Rights, p. 1065.(ISDC A 38 C CORH)

Note

³⁸ Country Reports on Human Rights, *op. cit.*, p. 1065

Note

³⁹ Yaakov Cohen, Anti-semitism in Spain, in "The International Association of Jewish Lawyers and Jurists Newsletter", n° 9, 1993, p. 27.

Note

⁴⁰ The Institute for migration and social services helps to organise seminars on immigration and integration; see <http://www.imsersomigracion.upco.es/> (under "acciones formativas") and <http://www.mtas.es/publica/catalogo04/unidades/IMSERSO.pdf>

Note

⁴¹ That Institutional Law was enacted in 1983: Institutional Law n° 3/1981 of 6 April. By Institutional Law n° 2/1992 of 5 March, a Mixed Commission of the Congress and Senate was instituted in order to maintain contacts with the *Defensor del Pueblo*. There is also a law (Law n° 36/1985, of 6 November) regulating relations between the *Defensor del Pueblo* and similar institutions appertaining to the Autonomous Communities.

Note

⁴² Commission of the European Communities, Legal instruments to combat racism and xenophobia, December 1992 p. 67.

Note

⁴³ RCL 2003\2711 Ley Orgánica 14/2003, de 20 noviembre EXTRANJEROS. Reforma de la Ley Orgánica 4/2000, de 11-1-2000 (RCL 2000\72, 209), sobre derechos y libertades de los extranjeros en España y su integración social, modificada por la Ley Orgánica 8/2000, de 22-12-2000 (RCL 2000\2963 y RCL 2001\488), de la Ley 7/1985, de 2-4-1985 (RCL 1985\799, 1372; ApNDL 205), Reguladora de las Bases del Régimen Local, de la Ley 30/1992, de 26-11-1992 (RCL 1992\2512, 2775 y RCL 1993, 246), de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común, y de la Ley 3/1991, de 10-1-1991 (RCL 1991\71), de Competencia Desleal in: <http://www.granada.org/ordenanz.nsf/0/c2b49d9a4d7e4997c1256de5003c7096?OpenDocument>

Note

⁴⁴ JEFATURA DEL ESTADO, BOE 12 enero 2000, núm. 10, [pág. 1139]; rect. BOE 24 enero 2000, núm. 20 [pág. 3065] (castellano) EXTRANJEROS. Derechos y libertades de los extranjeros en España y su integración social, RCL 2000\72.

Note

⁴⁵ RCL 2001\872 Real Decreto 367/2001, de 4 abril. MINISTERIO PRESIDENCIA BOE 6 abril 2001, núm. 83, [pág. 13000]; FORO PARA LA INTEGRACIÓN SOCIAL DE LOS INMIGRANTES. Composición, competencias y régimen de funcionamiento.

Note

⁴⁶ Delegación del gobierno para la extranjería y la inmigración, in: <http://www.mir.es/dgei/introducci.htm>

Note

⁴⁷ In: <http://www.mir.es/dgei/acciones.htm>