



Strasbourg, 30 September 2004

GVT/COM/INF/OP/I(2004)004

**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION
FOR THE PROTECTION OF NATIONAL MINORITIES**

**COMMENTS OF THE GOVERNMENT OF SPAIN ON THE OPINION OF THE
ADVISORY COMMITTEE ON THE IMPLEMENTATION OF THE FRAMEWORK
CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES IN SPAIN**
(received on 10 June 2004)

Spain wishes to make the following Commentaries about the Opinion of the Consultative Committee of the Framework Convention for the Protection of National Minorities (ACFC/OP/I(2003)007) adopted at its 18th meeting on 27 November 2003 and notified to the Spanish representatives the following 12 December.

1. As expressly indicated in the Committee's Opinion, in the absence from the Framework Convention of a definition of the term "National Minority", its scope of application is defined by the Parties. For these purposes, as indicated in the Opinion, Spain limited its State Report, tabled in December 2000, to the Roma community because, although not constituting a "national minority", it is the only one which may in any way be integrated into the spirit of the Framework Convention. Spain is pleased that the Committee's Opinion accepts this with "satisfaction" (paragraph 98).

2. Spain is also pleased with the Committee's conclusion "*that Spain's internal organisation allows promotion of cultural identities and diversity, given the high degree of decentralisation and the broad powers assigned to the Autonomous Communities in a number of pertinent fields*" (paragraph 98).

3. Spain also accepts with satisfaction the Committee's acknowledgement of the Spanish Authorities' efforts to improve the situation of the Roma collective (paragraph 100), while noting with interest the considerations in the Final Observations designed to eliminate potential cases of exclusion or marginalisation, and to continue improving their socio-economic situation (paragraph 100) or the conditions of the members of this collective in other fields (paragraphs 101 and 102).

4. Apart from these considerations, Spain considers that account must also be taken of the following commentaries, in order to respond to, complement, correct or interpret some specific aspects the Committee pronounces on in its Opinion.

5. **The Committee's Opinion refers repeatedly to the question of the scope of application of the Convention in the "Summary", "II. General Observations" (paragraphs 8 and 10), "III. Specific Commentaries on Article 3" (paragraphs 18-24), "IV. Main Conclusions and Commentaries" (paragraphs 85 and 86) and "V Final Observations" (paragraphs 97 and 98) and, in paragraph 21 "*The Consultative Committee wonders, in the absence of express indication concerning groups recognised by the government as national minorities, and the extent to which the linguistic dimension is an element of fundamental identity for "peoples" or "nationalities", about the status of groups designated as such (nationalities and peoples) in relation to the Framework Convention*".** Spain feels that the following considerations must be taken into account:

5.1 According to Article 2 of the Spanish Constitution, "*The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and solidarity amongst them all*". Together with this affirmation is that in Article 1.2 which provides that "*National sovereignty is vested in the Spanish people, from whom emanate the powers of the State*".

5.2 Therefore, on the basis of the constitutional model, it can be said that nationalities and regions are elements making up the Spanish Nation, and to which the Constitution recognises the right to autonomy which is no more nor less than a manifestation of the social, historic and cultural pluralism of the Spanish Nation, linking with the democratic principle, and given form in the configuration of a compound State, using the model of autonomous organisation designed by the Constitution itself.

5.3 Moving forward a little more in the connotations of the terms, nationalities and regions share the same meaning, both referring to certain territorial zones which share historical and cultural characters and which are granted the right to autonomy.

5.4 The use of two different terms to refer to a single territorial reality is not a criterion which necessarily matches substantive differences in the fields of organisation, competences or participation.

5.5 On the other hand, there are no regional entities which have essentially reserved that conceptualisation as “nationalities”. What is decisive for the legal existence of a nationality is that its Statute of Autonomy define it as such. Thus it is the population of a territory which decides, with the approval of Parliament, through their Statute of Autonomy, to call themselves a nationality or region, in both cases defined at the same time as an Autonomous Community. Clear evidence of this is that there have from the outset been Statutes of Autonomy which classify the Autonomous Community as a nationality, whereas in other cases that has come as the result of a subsequent decision, incorporated into the Statute in a reform. The final outcome is that eight of the seventeen Autonomous Communities (Basque Country, Catalonia, Galicia, Andalusia, the Community of Valencia, Aragon, Canary Islands and Balearic Islands) are classified in their Statutes of Autonomy as nationalities, while the other nine are not.

5.6 In short, in Spanish constitutional law, the concept of nationality is subsumed into the broadest notion of the Spanish Nation, its only operational function being to disclose the form of self-identification of an Autonomous Community. The Spanish government considers it a concept which is completely different from that of national minority as characterised in the Framework Convention for the Protection of National Minorities, which refers to other situations; and this was the understanding of all political Groups in the parliamentary debate held at the time of ratification of the Framework-Convention.

5.7 In addition to nationalities and regions, another element appears in both the Constitution and in the Statutes of Autonomy, namely the notion of a people or, as stated in the Preamble to the Constitution, “peoples of Spain”. The constitutional reference has a specific translation: when the Spanish recovered their liberty, they organised as a political subject, systematised by the Constitution. In this way, with the Constitution, the Spanish people form a Nation conceived as the historical depository of the sovereignty residing in the people themselves as a whole.

5.8 The “peoples of Spain” also comprise the peoples in each of Spain’s territorial entities, its Autonomous Communities where, also, the people appears as the active element which, by democratic mechanisms, exercises its right of access to autonomy. Thus it is common to find in the Statutes of Autonomy expressions of how “the people ... are constituted into an Autonomous Community”.

5.9 However, there is in any event in the Spanish legal-political reality a concept of a people as an entity as such, with differentiated characteristics of ethnicity, religion or identity. The various peoples are identified in so far as constituting a populational and sociological base of the various Autonomous Communities sharing a cultural tradition and, sometimes, a language of their own but which, overall, constitute a single people, the “Spanish people”, holding the sovereignty and acting as constituent power when established as a State.

5.10 The populations of the various Autonomous Communities have in common the existence of historical-cultural and linguistic links, but there are no significant ethnic components. The languages of some Autonomous Communities enjoy specific constitutional protection, focused on their recognition as the “official language” along with Spanish in the area of that Autonomous Community and guaranteeing citizens the right to use it in all their relations with the Public Administrations in that territory, with specific protection covering both autonomous and state authorities. In linguistic terms, the Spanish State complies with the protection established in the European Charter of Regional and Minority Languages, duly signed and ratified by Spain.

5.11 Paragraph 24 of the Committee’s Opinion makes express reference to “non-citizens” which must, in this sense, be taken into account in relation to the immigrant population: the recentness of their arrival in Spain – as in other European States – and, therefore, scant roots and still very limited temporal links; the basically economic motivation of that migratory movement; the variety of sources (North Africa, Latin America, Asia and Eastern Europe); the territorial dispersal and lack of a homogeneous grouping into a collective with a given identity, means that this population cannot be classified as a “national minority” in the terms of the provisions and spirit of the Framework Convention. This argument coincides with the Declarations of other States signatories to the Convention.

5.12 **The Committee’s Opinion refers to the population of Berber origin in the cities of Ceuta and Melilla, in both its commentaries on Article 3 (paragraph 24) and its Final Observations (paragraph 99).**

5.13 As a preliminary question, it must be indicated that paragraph 24 of the Opinion incorrectly classifies Ceuta and Melilla as Spanish “enclaves” in North Africa. The Consultative Committee knows full well that these are not in any sense “enclaves” but rather two Spanish cities with a Statute of Autonomy and which, along with the seventeen Autonomous Communities, form the Spanish State. The territory of Ceuta and Melilla is EU territory and its citizens have always enjoyed the same rights and duties as other Spanish citizens.

The geographical situation of these two Cities and their character as bridges between the European Union and North Africa give them different characteristics. Both have a high percentage of immigrant population, from Africa, which shares some of the features indicated above, particularly the purely economic motivation for the migratory movement, to which may be added a high degree of integration with the Spanish population living there.

5.14 Linguistically, while Ceuta may be considered an “Arabphone” zone, in Melilla the Berber dialect is used, called “chelha”, significant among an important minority of the city’s total population, although there are no unquestionable data in this respect and, in any event, those using it are also familiar with Spanish.

5.15 There are major difficulties in protecting chelha, which are more than familiar to comparative linguistics, arising mainly from the fact that this is a purely verbal language, without a written literature. Thus the use of the Berber language has still not been codified, and there are even discrepancies over the possible use of the Arabic alphabet – the option most widespread in Morocco – or its Latin equivalent – more rooted in Algeria.

5.16 Notwithstanding these difficulties, the government of Melilla organises and continues a “Tamazight Seminar”, for initiation and learning by those who do not know the language. Given the lack of suitable teaching material, the City has taken the initiative to prepare some materials: a dictionary, grammar and an audio support, and to foment the broadcast of news programs on local television in this dialect. Finally, possible cooperation with Morocco offers difficulties because this dialect is not officially recognised there.

6. In the specific Commentaries on Article 3. (paragraph 17), the Consultative Committee indicates that the term “national minority” is not defined in the Spanish legislation, and that Spain lacks specific legislation for the protection of national minorities. On this point, Spain wishes to recall the following:

6.1 As pointed out, there is no formal recognition in the Spanish Constitution of national or ethnic minorities. However, it does recognise and protect all the peoples of Spain, their cultures, traditions, languages and institutions, including the Roma population, which is granted full citizenship and whose rights and liberties are guaranteed, with express proclamation of the conditions of liberty and equality of the individual and of groups. Thus all Spanish citizens are equal before the law, in accordance with the principle of equality, a fundamental principle of the Spanish legal system and constituting a higher value of its legal order (Article 1 of the 1978 Spanish Constitution).

6.2 In turn, the Constitution establishes the obligation of the “*public authorities to promote conditions which ensure that the freedom and equality of individuals and of the groups to which they belong may be real and effective, to remove the obstacles which prevent or hinder their full enjoyment of and facilitate the participation of all citizens in political, economic, cultural and social life*” (Article 9.2).

The text also enshrines the existence of rights inherent to human dignity, in the following terms in 10.1: “*Human dignity, man's inviolable and inherent rights, the free development of his personality, respect for the law and for the rights of others are fundamental to political order and social peace*”

6.3 Moreover, in Article 10.2 the Constitution provides that “*principles relating to the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain*”. There is thus a direct constitutional reference to international norms declaring rights.

6.4 In Title I of the Spanish Constitution relative to “*fundamental rights and duties*”, Article 14 establishes that “*Spaniards are equal before the Law and may not be discriminated against in any way for reason of birth, race, sex, religion, opinion or any other personal or social condition or circumstance*”.

6.5 While Article 14 refers to the equality of Spaniards before the law, the previous Article (13.1) provides explicitly that “*Aliens shall enjoy the public freedoms guaranteed by the present Title, under the terms to be laid down by treaties and the law*”, as included in Organic Act No. 4/2000 amended by Organic Act No. 8/2000 on the rights and liberties of aliens in Spain and their social integration. The Rationale of the latter Act justifies the reform on the basis that “the provisions must be in accordance with the commitments assumed by Spain, specifically with the conclusions adopted in Tampere on the creation of a space of liberty, security and justice”. Thus all fundamental rights and liberties guaranteed by our Constitution extend not just to Spanish citizens but also to foreigners and, in any event, without any distinction based on gender, in the terms of the laws and treaties.

7. In the Specific Commentaries on Article 3 (paragraph 18).- *The Consultative Committee indicates that, from the legal standpoint, gypsies (Roma) are not recognised either as a Spanish “people” or as a national minority.*

7.1 From the foregoing, it must be deduced that Spanish citizens of the Roma race or ethnicity are citizens with full rights, like remaining Spaniards (Article 14 of the Constitution), as detailed in the previous section. They therefore neither need to be nor may they be recognised as a national minority, because it is legally impossible to classify them as such. These commentaries also apply to paragraphs 21 and 23 of the Opinion.

8. In the specific Commentaries on Article 4 (paragraph 27), the Consultative Committee refers to the importance of the transfer into Spanish law of Council Directive 2000/43/CE of 29 June 2000, guaranteeing the principle of equality of treatment of persons, irrespective of their race or origin.

8.1. Spain is pleased that this concern of the Consultative Committee has been resolved since this Directive was taken into the Spanish legislation in Act No. 62 of 30 December 2003 of fiscal, administrative and social measures (gazetted on 31.12.2003). Having been incorporated into the Spanish legal system, it is in full force in this country.

8.2 In the first place, it can in general be said that the measures in this Directive were already contained in the Spanish legal regime in the form of jurisprudence. In the field of the protection of fundamental personal rights, such as the principal of equality, the Constitutional Court has, as described later with reference to paragraphs 28 and 86 of the Opinion, handed down varied and repeated case-law, taken up in full in all areas of jurisdiction, fundamentally in relation to the notions of direct and indirect discrimination and the reversal of the burden of proof when there is evidence of discrimination.

8.3 The aim of the Directive (Article 1) is to put *into effect in the Member States the principle of equal treatment, meaning that there shall be no direct or indirect discrimination based on racial or ethnic origin (Article 2).* As explained, the Spanish legislation enshrines this principle of equality of treatment in the Constitution. And as described in greater detail below, Spanish criminal legislation penalises any conduct involving discrimination against foreigners.

8.4 In turn, the systematised legal treatment provided in the new Act No. 62/2003 renders more visible the right of equality of treatment and offers new resources in the fight against racial discrimination. This Act reinforces and complements the provisions in the Spanish legal system in all areas of non-discrimination in terms of the causes covered by Article 14 of the Constitution, which include racial or ethnic origin. The provisions of Act No. 62/2003 are

designed to ensure that the application of the principle of equality of personal treatment and non-discrimination for reasons of race or ethnicity are real and effective in both the public and the private sectors, in relation to education, health, social benefits and services, housing and, in general, the availability of and access to any goods and services, and in relation to access to employment, self-employment and professional practice, membership and participation in trade union and employer organisations, working conditions, and professional, occupational and ongoing promotion.

8.5 Of the invaluable innovations of Act No. 62/2003, the following should be highlighted:

- definition of what is understood by principle of equality of treatment, direct discrimination, indirect discrimination and harassment (Article 28)
- regulation of the reversal of the burden of proof in civil, social and judicial review procedures dealing with matters relative to discrimination for reasons of the racial or ethnic origin of persons (Articles 32 and 40)
- authorisation of legal entities to act in judicial procedures on a plaintiff's behalf to make effective the principle of equality of persons for reasons of their racial or ethnic origins (Article 31)

8.6 In respect of the obligation imposed in the Directive on Member States to *ensure judicial ... procedures for the enforcement of obligations under this Directive (Article 7)*, the commentaries on paragraphs 28 and 86 of the Opinion are valid, containing ample case-law on sentences for discriminatory acts. In turn, all citizens are entitled to free legal aid.

8.7 As to the Directive's demand that *Member States will take adequate measures to promote the social dialogue between the two sides of the industry (Article 11) and the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin (Article 13)*, the commentaries on paragraph 48 of the Opinion detail the Bodies set up in Spain for this promotion of equality of treatment and to foment social dialogue.

9. In the specific Commentaries on Article 4 (paragraphs 28) and the main Observations (paragraph 87) of the Opinion, the Consultative Committee indicates that anti-discrimination provisions are rarely applied in practice, and that the matters which reach the Courts do not reflect the number of cases of discrimination or racism.

9.1 These are unsupported assertions by the Committee, without statistical backup. However, generally, this type of statement applies in principle to other criminal conduct since court action related to any criminal activity, in any country, never reflects the real number of offences. For reasons beyond the content of this Report but which can be studied in any Criminology Treatise, not all crimes are reported to the Police or come to their knowledge; those reported do not all offer sufficient evidence of guilt to be taken to Court; and finally of those taken to Court, not all lead to convictions.

9.2 In Spain, all facts reported or known to the Police seemingly criminal in nature for reasons of discrimination or any other offence, are always taken to Court [if they suggest a criminal nature], adjudged and sentenced.

9.3 Similarly, the protection of foreigners against all discrimination has been guaranteed at all judicial instances and ratified by the consolidated jurisprudence of the Constitutional Court on the principle of equality, intimately related with human dignity and the prohibition on discrimination.

9.4 Of the many decisions handed down in different judicial instances in Spain for discriminatory acts, mention may be made of the following:

- Constitutional Court Ruling No. 107/84 classifying as “indisputable” the equating of the rights of foreigners in Spain with those of Spaniards in the field of public liberties.
- Constitutional Court Ruling No. 126/1986 which classifies racial discrimination as a “juridical perversion”.
- Constitutional Court Ruling No. 214/1991 of 11 November 1991, resolving the famous Violeta Friedman case, rejecting the argument that the mantle of ideological freedom or freedom of expression might be used to protect racist or xenophobic declarations or campaigns because, among other reasons, that is counter to human dignity.
- Constitutional Court Ruling No. 176/1995 affirming that the racist message is in open conflict with the principles of a democratic system of peaceful coexistence.
- Supreme Court Ruling of 5 February 1998, which found that the legal asset protected by punishment of illegal trafficking in labour is the protection of workers in a new form of exploitation. This notion has been taken up in ample jurisprudence by the Provincial Courts (Girona, Rulings on 15.10.1998 and 10.11.1998; Las Palmas, Ruling of 31.7.1999; Cadiz, Ruling of 12.9.2000).
- Supreme Court Ruling of 29 August 1998 which convicted an individual as perpetrator of an offence against the exercise of basic rights, for refusing to sell a car to the victim because of their skin colour.
- Order of the Provincial Court of Barcelona No. 1547, from 2000, raising the matter of the unconstitutionality of Article 607.2 of the Penal Code under which the owner of a bookshop specialised in the Second World War from the standpoint of authors defending Nazism and denying the existence of the holocaust, was convicted of an offence of diffusion of ideas denying or justifying the crime of genocide. An appeal for legal protection was brought against this decision in the Constitutional Court.
- Constitutional Court Ruling of 29 January 2001, on a claim for compensation for police action classified as discriminatory for racial reasons.
- Supreme Court Ruling of 12 July 2001, which denied the possible existence of an offence of illegal detention for racist reasons by the Local Police in Vigo, in the absence of evidence that the accused proffered insults or offensive phrases alluding to the race or national origin of the detainee.
- Constitutional Court Ruling of 29 January 2001, establishing in relation to discrimination that the mantle of other basic rights like ideological freedom or freedom of expression may not be used to protect racist or xenophobic declarations or campaigns.
- Ruling of the Provincial Court of Madrid on 21 June 2001, expressly finding that action for racist reasons is an aggravating factor in an offence of causing injury, for which the accused were sentenced, and ruling that there had been an attack on a Moroccan flower vendor who was previously insulted because of his race.

10. In the Specific Commentaries on Article 4 (paragraphs 31 and 32), in the main Observations (paragraph 88) and the Final Observations (paragraph 100), while acknowledging Spanish efforts to promote full and effective equality, the Consultative Committee expresses its “concern over the considerable socio-economic differences between a large number of Roma and the rest of the population, cases recorded of marginalisation and social exclusion, and discriminatory attitudes in a number of areas. The Spanish Authorities, who share some of the Committee’s concerns in their efforts to improve the situation of the Roma collective wish to record as follows:

10.1 While it is true that part of the Roma population is in a state or at risk of social exclusion, a number of policies have been applied in the last decade to improve this situation, notably, as the Committee knows, the “Roma Development Program”, one of the main actions in favour of this group, designed to promote their access in the same conditions as the rest of the population to standard public education, health, housing, employment and other systems.

10.2 The basic lines of action of the Roma Development Program focus on:

- Inter-institutional collaboration, both inter-ministerial and with the Autonomous Community Administrations and, through them, with local Administrations, a crucial question in bettering the living conditions of the most disadvantaged Roma communities and promoting their social development. Along these lines, projects are jointly financed with the Autonomous Communities for integrated social intervention, including activities in the fields of social action, education, housing, health, employment and, as well, the fight against discrimination and racism. There are an average of 110 such projects, most of them managed by municipal corporations in 14 Autonomous Communities, with average co-financing year-on-year (1989-2002) by the three administrations of 5,860,251 euros. Overall, for the period from 1989 to 2002, the General State Administration spent 41,996.897 euros and the Autonomous Communities and local corporations 30,994,221 euros.
- Financial and technical cooperation with NGOs working with Roma in a twin sense, on the one hand with technical support to organisations dealing with the social development of the Roma people, and financial support to programs of social interest. In this area, the Ministry of Labour and Social Affairs annually grants subsidies to an average of 130 programs run by 25 NGOs in 65 localities, for a year-on-year average (1989-2002) of 2,902,617 euros. The sums subsidised against these funds for social programs with the Roma population between 1989 and 2002 amounted to 34,704,690 euros.
- Other important lines of action are those for support for and contribution to the protection of image, public awareness, promotion of Roma culture, and actions against racism, along with the training of professionals working with Roma, collaboration with international bodies, and others.

10.3 To learn about the impact of the Program, an evaluation-study was carried out (1989-2000), with the participation of all administrations, NGOs and Roma and non-Roma experts. The results and proposals from this study will be used to redefine the objectives, content, methodology and evaluation of the Roma Development Program, to deal with the weakest aspects and face the new challenges arising in the short- and medium-term future.

10.4 As a result, the process has begun to start the following:

- A new Roma Development Plan
- A new statewide Roma participation body although, until it is created, the Consultative Commission for the Roma Development Program will continue to operate.

10.5 Emphasis must also be placed on participation and collaboration in the work of the international bodies: the United Nations, the European Union, the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE), in line with this country's commitments related to the Roma population, and racism and discrimination toward minority cultural groups. In this realm, the government has transferred the anti-discrimination directives proposed by the European Commission in Article 13 of the Treaty of Amsterdam into the domestic legislation.

10.6 Similarly, the training of social services professionals working with Roma groups, the organisation of congresses and seminars, and release of publications related to the Roma population.

10.7 The Kingdom of Spain's National Plan of Action for Social Inclusion (June 2001-2003), approved by the Council of Ministers on 25 May 2001, drawn up by the Ministry of Labour and Social Affairs and forming part of the European Strategy in the fight against exclusion, includes the Roma collective as a specific group for attention. One of the activities considered is that to "develop actions in the fight against discrimination, reinforcing the policies of equality of treatment and of opportunity".

10.8 On the other hand, the measures carried out by the Autonomous Administrations must be highlighted. In four autonomous communities there is a specific administrative unit for attention to and development of the Roma population, and the competent bodies in this field in those communities are attached to the social welfare departments. The following are some of the most important measures implemented:

- The resolution on recognition of the identity of the Roma population of Catalonia, and that on the drafting of an integrated plan for the Roma population of Catalonia, in the Catalanian Parliament.
- The Motion in the Madrid Assembly for the creation of a panel for the integration and promotion of the Roma people in the Community of Madrid.
- The Integrated Plan for the Roma Community of Andalusia, implemented by the Secretariat for the Roma collective in that Autonomous Community.
- The drafting of the "Basque Plan for the Integrated Promotion and Social Involvement of the Roma people" and the creation of a participative body.

10.9 Work has been done with NGOs on the following:

- Promotion of the movement for association;
- Management of European, state, regional and local social programs;
- Management of programs in education, training and employment;
- Studies, reports and publications connected with the Roma population, discrimination and racism.

10.10 It is significant in the area of action of NGOs that, at present, the “Roma Secretariat-General Foundation” is handling the ACCEDER program as part of the Multi-Regional Operating Program for the “Fight against discrimination – European Social Fund”, co-financed by the various Spanish administrations. This program has employment facilities in a number of localities in Spain involved in a series of actions making up the “itinerary for job placement”, individualised with its users and dealing with: a) Information and reception, b) basic occupational and professional training with own resources, c) Guidance into external training, d) social escorting and e) job placement and subsequent social monitoring.

10.11 As indicators of this program, the establishment must be highlighted of centres with facilities for training and employment in 41 localities countrywide, the number of work contracts amounting to 10,000 between 2000 and 2003, 66% of them for Roma, 56% men and 44% women, with 34% non-Roma. 66% found work in the services sector.

11. In the Specific Commentaries on Article 4. (paragraph 29) and in its Main Commentaries (paragraph 87) *The Consultative Committee indicates that in Spain there is no specialised Body to combat discrimination, racism and intolerance.*

11.1 There are various specific Bodies in Spain to combat racism, discrimination and intolerance. In addition to the Ombudsman who deals with particular attention and alacrity before the competent Bodies with all complaints filed for discriminatory, racist and intolerant acts, specific institutions have been set up to handle intolerance, racism, immigrants and their social integration:

- The Senior Immigration Policy Council: created to ensure adequate coordination of action by Public Administrations with jurisdiction over the integration of immigrants, following the terms of Organic Act No. 4/2000 of 11 January on the rights and liberties of aliens in Spain and their social integration (Article 68), amended by Organic Act No. 8/2000 of 22 December. This body, in addition to seeking to establish an overall policy for the social and labour integration of immigrants, also aims to gather information from state or autonomous administrative bodies and the social and economic players about the defence of foreigners’ rights.
- The Forum for the Social Integration of Immigrants: foreseen in Article 70 of Organic Act No. 4/2000, this is a tripartite and balanced Forum involving representatives of the Public Administrations, immigrants’ associations and social support organisations, including trade unions and employer organisations interested and involved in the field of immigration, and is established as a body for consultation, information and consultancy in the area of the integration of immigrants, an activity completed with the work done by the Permanent Observatory for Immigration.
- Other institutions: there are other institutions, particularly the initiatives implemented by the Autonomous Communities as part of the development of their competences; notable in the realm of the Peripheral Administration is the work done by Government Delegations in the Autonomous Communities, Deputy Government Delegations in the provinces, and the Immigration Offices; last 12 February the Madrid Assembly approved the creation of a Parliamentary Committee to study the situation of immigrants living in the region, and their needs, concerns and demands.
- Finally, those involving Spain as a European Union member must be emphasised, such as the European Observatory for racist and xenophobic phenomena set up in 1997, based in Vienna, and the Plan of Action against racism, adopted in 1998 and focusing on four basic points: the creation of conditions for the passage of legislative measures, the integration of

the fight against racism into community policies and programs, the elaboration and exchange of new models, and the consolidation of information and communication actions.

12. In its Specific Commentaries on Article 6 (paragraph 53) there is reference to the closure in February 2003 of the newspaper “Euskaldunon Egunkaria” because of its alleged connections with terrorism, and the Consultative Committee feels that the authorities must demonstrate a balanced attitude and take precautions to ensure that measures adopted are proportional to the aims.

12.1 Spain considers the mention of the close of this newspaper improper: the matter is *sub judice* and took place because of collaboration with an armed gang.

12.2 In any event, the newspaper was closed in a court order as part of a judicial proceeding initiated by the National Court with all the legal guarantees that the Rule of Law, as in Spain, grants all citizens concerned and, in this case, those responsible for the newspaper closed, who have all the legal and procedural defence mechanisms foreseen in our legal system. In this respect, the Spanish government reiterates the total and absolute independence of the Spanish Courts from the other State Powers.

12.3 The following considerations may be added to that:

- One: In Spain freedom of expression and information are basic rights guaranteed by the Constitution.
- Two: These freedoms are limited in respect of other fundamental rights. In particular, publications may be confiscated by court order.
- Three: The closure of the Egunkaria newspaper was ordered as part of a criminal court case, by an independent court with all legal guarantees.
- Four: The measure is justified in the judicial sphere, without preclusion of a decision on the substance of the matter, because of personal and financial links between the newspaper and the terrorist group ETA, configuring it as a medium at the service of the terrorist organisation.
- Five: Basque or Euskera is constitutionally and legally recognised as an official language in the Basque Country and the Basque-speaking region of Navarre and, in this sense, it must be said that the language has no significance in the judicial procedure against the newspaper.
- Six: The introduction and use of Basque is fully recognised by the public powers and is given form in all social fields such as education or intellectual creation.

13. In the Specific Commentaries on Article 6 (Paragraph 54), the Committee indicates the existence in Spain, albeit in isolated form, of skin-heads and other active extremist groups which cause violent and racist incidents. It also refers to this concept in its Main Commentaries and Final Observations (paragraph 102).

13.1 The latest statistics available, from the Ministry of the Interior, show that throughout 2000 there were 165 racist incidents; of these, known racist or xenophobic aggressions numbered 41, 18 of whose perpetrators had links with skinhead groups. While not wishing to understate the seriousness of such action, it is clear that, given the number and scale, they do not represent an excessively worrying problem.

13.2 In criminal terms, such conduct and all that associated with racist actions are clearly

and decisively penalised in our Criminal Code. Since the 1995 reform of the Code until the latest, on 25 November 2003, there has been a succession of reforms to punish any conduct involving discrimination against foreigners.

- Thus in the Organic Act No. 4/2000 of 11 January on the rights and liberties of aliens in Spain, and their integration, there is a new section, Title XV bis, concerning offences against the rights of alien citizens, including such conduct as part of the regulation of illegal associations, as explained below.
- In connection with measures to combat human trafficking and international prostitution, the Criminal Code has been updated in Organic Act No. 11/2003 of 29 September, specific measures in matters of public safety, domestic violence and the social integration of aliens. This Act amends Articles 188, 318 and 318bis designed to combat human trafficking.
- In turn, to coordinate our domestic legislation with the jurisdiction of the International Criminal Court, Organic Act No. 15/2003 of 25 November partially amends Organic Act No. 10/1995 on the Criminal Code, affecting Articles 174 and 607bis, as detailed below.
- To summarise the foregoing, the following Articles must be listed from the Spanish Criminal Code, referring to racial discrimination, and including those introduced or amended by the legislative reforms referred to above:
 - Article 7 classifies the offence of threats against ethnic groups
 - Article 22.4 identifies racist motivation as an aggravating factor in any offence
 - Article 170 contains the offence of threats constituting a misdemeanour intended to alarm (...) an ethnic group
 - Article 174, regulating the offence of torture, introduces discrimination as a characteristic of the type of offence
 - Article 188 enlarges the description of prostitution to incriminate those profiting from the prostitution of another, even with their consent
 - Article 197.5 imposes the top half of the range of penalties for the offence of disclosure and revelation of secrets affecting data which reflects (...) the racial origin of persons (...)
 - Articles 312 and 314 refer to the recruiting of alien subjects with no work permit in conditions which are detrimental to their rights, and serious discrimination at work because of membership of an ethnic group, race or nation, among other reasons
 - Articles 318 bis and 518 penalise the illegal trafficking of persons from, in transit through or to Spain
 - Article 510 regulates the offence of incitement to discrimination, hate or violence for racist or anti-Semitic reasons, or membership of an ethnic group or race
 - Articles 511 and 512 penalise discrimination in public services and professional discrimination because of membership of an ethnic group, race or for national origin
 - Article 515.5 regulates punishable illicit associations, assigning such consideration to those promoting discrimination, hate or violence against persons, groups or associations for reason of their ideology, religion or beliefs, that their members or any of them belong to an ethnic group, race or nation, their sex, sexual preference, family situation, sickness or handicap, or which incite to that.
 - Article 607 bis introduces the offence of lese-humanity, listed in paragraph 1, among the acts constituting this offence, those committed because the victim belongs to a group or collective which is harassed for political, racial, ethnic ... or other reasons universally recognised as unacceptable according to international law, in the context of an institutionalised regime of oppression, and the systematic domination of one racial group over another or more racial groups with the intention of maintaining such a regime.

14. In its Specific Commentaries on Article 6 (paragraph 58), the Committee indicates

that there are few cases taken to Court in comparison with the number of racial incidents which, according to various sources, take place.

14.1 In this respect, the commentaries on paragraph 28 of the Opinion are valid, listing albeit not exhaustively a series of court decisions concerning cases of discrimination for racial, ethnic or other reasons.

14.2 The 2003 Annual Report of the Supreme Court Prosecutor's Office, which includes the 2002 figures, refers to the following actions related to offences connected with racial or ethnic discrimination:

- 22 preliminary procedures were initiated for discrimination (its type is not specified) and 1221 for offences related to human trafficking.
- **These figures represent a significant increase over 2001, when there were 12 preliminary procedures for discrimination and 1098 for human trafficking.**

15. In a number of its Commentaries and Final Observations, the Consultative Committee expresses concern about some aspects of the situation of the Roma population related to education and culture.

15.1 As a complement to the points made above about the Roma Development Program, the Spanish authorities would like, in relation to education and culture, to make clear that the educational situation of the Roma population has moved forward significantly as a result of shared efforts by educational institutions, education professionals, Roma associations, mediators, families and education administrations.

15.2 Nonetheless, there continues to be a variety of needs and problems causing difficulties in the educational normalisation of Roma pupils. Dealing with these deficiencies in the specific processes for schooling in centres maintained with public funds is understood as a joint responsibility of the various social sectors, particularly in the light of the Spanish system of transfers to the Autonomous Communities' educational administrations. The local schooling commissions seek to attenuate the concentration of Roma children in certain centres, according to specific space availabilities.

15.3 In this context, the Ministry of Education, Culture and Sport (MECD) has, within its existing scope of authority, developed the following lines of action, referring to a variety of aspects and seeking to alleviate the difficulties for the educational normalisation of the Roma population.

The Ministry has started and coordinated the Education Commission of the Roma Development Program as a permanent space for reflection and the exchange of ideas concerning the education of this group. In addition to representatives of Roma federations and associations, the Commission is made up of a group of Ministerial technicians (from the Ministry of Labour and Social Affairs, the Ministry of Education, Culture and Sport, from the educational administrations of the Autonomous Communities, from Universities and from the Federation of Municipalities and Provinces).

Ministry of Education proceedings for subsidies to non-profit private entities for educational compensation define the programs for schooling, monitoring and control of student absenteeism, those for cultural integration, socio-educational programs for informal education,

and those for mediation between families and educational centres as priorities for this assistance. These subsidies are offered annually and 360,000.00 euros are spent on them. Thus, in recent procedures, the Ministry of Education, Culture and Sport has assigned a variety of assistance to Roma associations which are working on facets related to Roma children's schooling. The last of these, for 2003-2004, subsidised the following entities and associations operating specifically with the Roma people: the Roma Secretariat Foundation (36,000 euros) and the Roma of Today Association (35,000 euros).

15.4 For the diffusion of Roma culture, its languages, history, cultural richness and traditions, the Education Commission for the Roma people referred to above published an Interactive CD-ROM in 2003 called *Maj Khetane (Closer Together)* as backup material for work with Roma culture. It is intended for all educational centres as a consultation and information document, providing materials for teacher training and the coordination of teaching teams working in primary and secondary schools with Roma pupils, and facilitating the programming of inter-cultural activities. It will also enable Roma pupils to recognise themselves and to discover questions about the history, their language and the singular customs of their people, in the context of the Autonomous Communities.

15.5 In May 2002, the Ministry of Education, Culture and Sport financed and coordinated working congresses on training for mediation with the Roma people, involving psychology teachers, university teachers, and Roma and non-Roma mediators in all the Autonomous Communities.

16. There is reference in the Consultative Committee's Final Observations to the situation of the Roma population in the area of health-care (paragraph 101).

16.1 The Spanish authorities are continuing to take measures in the health field. For example, on 15 December 2003, the Ministry of Health and Consumer Affairs and the NGO "the Roma Secretariat-General Foundation" signed a Framework Agreement for collaboration, whose objectives include actions to improve the health and quality of life of the Roma Community, and to foment more active social policies to offset the inequalities suffered by this Community in the health field.

16.2 At present, Addenda 2004 to this agreement is being prepared and it is hoped will be signed shortly, with the specific actions to be taken. The Ministry of Health and Consumer Affairs will provide 33,055 euros to the Roma Secretariat-General Foundation to implement the activities put in place in the Addenda.

17. The Committee has also pointed to difficulties of the Roma population in the area of housing.

17.1 The General State Administration and, specifically, the Ministry of Development approves general financing rules for low-income families, set against a maximum of 5.5 times the minimum interprofessional wage, through several-year housing plans, specifically through Royal Decree No. 1/2002 implementing the 2002-2005 Plan.

17.2 On the one hand, these housing plans help to attain or maintain adequate levels of activity and employment in the sub-sector, or to correct some differences or failures of the housing markets and, on the other, in the social realm, offer selective support to facilitate access to housing.

17.3 In compliance with the Constitution, the housing regulations make no special reference to any type of differentiated ethnic group. All that is recognised is the capacity of the General State Administration to act in the housing sub-sector, because of its economic repercussions, while not ignoring the profoundly social aspect of the matter, affecting as it does a basic human facet.

17.4. However, in line with the distribution of competences between the General State Administration and the Autonomous Communities, the latter have schemes in their specific programs for territorial action for the social integration of groups most severely disadvantaged by their socio-economic conditions. There are autonomous provisions referring to these groups of persons, to whom integration policy is addressed, through housing and other parallel activities.