

**National Analytical Study
on Racist Violence and Crime**

RAXEN Focal Point for SPAIN

DISCLAIMER: This study has been compiled by the National Focal Point of the European Monitoring Centre on Racism and Xenophobia (EUMC). The opinions expressed by the author/s do not necessarily reflect the opinion or position of the EUMC. No mention of any authority, organisation, company or individual shall imply any approval as to their standing and capability on the part of the EUMC. This study is provided by the National Focal Point as information guide only, and in particular does not constitute legal advice.

EXECUTIVE SUMMARY

The 2002 report on racial violence and discrimination in Spain analyses whether this type of violence has increased over the last year and the causes of this increase.

When analysing specific examples of violence, one of the difficulties encountered has been distinguishing between violence in general and racial violence in particular, that is, the type of violence which is motivated by racial discrimination or xenophobia. As a subcategory of violence in general, it is necessary to examine cases where only foreigners are involved. Although this does not seem quite to sit with the idea that we have of racial violence, it is particularly relevant because both the attacker and the victim are foreigners and the reporting in the media of these cases contributes to reinforce the mistaken belief that immigration and violence are related.

From the data available we have been able to conclude that violence in general has continued to increase during 2003 and, most certainly, there has been an increase in the cases of violence in which foreigners have been involved, both as attackers and as victims. The data also leads us to the conclusion that racial or xenophobic violence continues to increase, almost in tandem with the increase in immigration. Discrimination against gypsies, which has existed in Spain for years, continues to exist.

The media are perpetually referring to cases of violence in which immigrants are involved, whether as victims or as attackers, and this is producing a two-pronged response from society: on the one hand, there is a media-driven perception that immigration is causing an increase in violence; on the other, those who reject racial violence and call for the protection of foreigners who already live or are arriving in Spain are becoming more vociferous. However, and since bad and sensationalist news sells more than good news, these movements in defence of foreigners do not receive as much media cover as would be desirable.

The number of citizens is increasing who, feeling frightened by the constant news about violence in which in one way or another foreigners are involved, think it would not be strange if in the future a xenophobic political party such as Le Pen's in France should appear in Spain. The torrent of news of violence in which foreigners participate contributes to the rejection of groups of immigrants, particularly of single men, and to their marginalisation. This marginalisation prevents normal integration into Spanish society and, in turn, contributes to the increase in violence in general and to the rejection of immigrants by society.

When analysing the increase in violence in Spain over the last few years, it is also important to consider the new types of violence that are developing, such as gangs and mafias of people traffickers for cheap labour and prostitution.

It is important not to ignore those more subtle and less apparent forms of racial violence, such as denying access to public places to some foreigners. This type of discrimination, which has been present in Spain for many years, is not exclusively racial or xenophobic and when targeted against native Spaniards has more to do with class.

The fight against racial violence needs to be addressed from various angles. Firstly, it is important to tackle institutionalised racism; then, it is necessary to educate society and raise awareness about xenophobia and racism to remove the perception entrenched in a sector of society frightened by constant references to violence. Thirdly, resources need to be made available to those communities to which most immigrants flow because without the necessary means to help the less affluent people, be they Spanish or foreign, integrate into society, get work, study and have access to public services, they will be condemned to marginalisation and, to a degree, to crime and prostitution as means of survival.

TABLE OF CONTENTS

Executive Summary	3
Table of contents	5
Glossary of Terms.....	6
1. Introduction.....	7
2. Short overview of past and current political/cultural situation related to the theme of the study	9
3. Concise description of the current legal situation related to the theme of the study.....	12
3.1. The Spanish Constitution	12
3.2. The Criminal Code.....	13
3.3. Law on Foreign Status.....	14
3.4. Legislative initiatives.....	14
3.5. Case law.....	15
4. Theoretical and methodological approach for analysing data	17
5. Description and analysis of existing and non-existing data and sources	19
5.1. Statistics	19
5.2. Legal texts	20
5.3. Case law.....	20
5.4. Reports.....	20
5.5. Press	22
5.6. Web sites.....	26
6. Analysis of strategies, initiatives and good practices for reducing racism and supporting diversity.....	26
7. Summary and conclusions	30

GLOSSARY OF TERMS

Autonomous Community: Political and territorial division of Spain. There are a total of 17 Autonomous Communities in Spain. Each AC has its own local government and parliament that can and must legislate on those matters that the Constitution has declared as not being of the exclusive competence of the central Spanish Government.

Constitutional Tribunal: Court of justice that deals exclusively with Constitutional matters, including the protection of the fundamental rights and freedoms.

Criminal Code: Piece of organic legislation which establishes what acts, actions and omissions amount to an offence deserving punishment, and the measure of punishment applicable to each crime. For an act, action or omission to be a crime, it must be in the Criminal Code. All other acts, actions or omissions not so contained may be an administrative or a civil wrong, but are not a crime.

Discrimination: Different treatment afforded to foreigners who are in exactly the same situation as Spanish nationals, or same treatment afforded to Spanish nationals and foreigners whose different circumstances would justify a diverse treatment. The Law on Foreign Status, for its own purposes, defines discrimination as “any act which, directly or indirectly, implies a distinction, exclusion, restriction or preference against a foreigner on the grounds of race, colour, ascendancy or national or ethnic origin, religious convictions and practices, and the objective or effect of which is to destroy or limit the recognition or the exercise, on an equal basis, of the human rights and the political, economic, social or cultural fundamental freedoms”.

Foreigner: For the purposes of this report, a foreigner is considered to be a non-Spanish national., **Immigrant:** A person who has settled in Spain, but who is not Spanish native.

Law: Secondary piece of legislation which that deals with all matters other than those which must necessarily be legislated for by organic law. Laws are approved by simple majority of the Congress.

Law on Foreign Status: Generic term by which is known the Law on the rights and liberties applying to foreigners and on their integration into society, which was first published in 1985 and has been amended several times since, twice in 2000 and again in 2003.

Ministry of Interior (Home Office): Government department charged with the maintenance of law and order, including, amongst others, immigration control, nationality and residence issues, as well as with criminal, penitentiary and police issues.

Minor: A person who has not yet attained the age of 18, the age of criminal responsibility in Spain.

Organic Law: Secondary piece of legislation that deals with fundamental rights and public freedoms, Local Statutes, electoral systems and any other matters specifically determined by the Constitution. An organic law can only be passed, repealed or amended

with the absolute majority of the Congress. An Organic Law may not regulate matters that can be regulated by simple Law.

Public authorities: Governmental bodies, whether central, autonomous or municipal.

Public opinion: The prevailing or popular belief or view that can be gathered from the media, polls, surveys and similar methods for assessing views.

Racial violence: In this report, it refers to violent acts motivated by the victim's race or national origin.

Spanish Constitution: Piece of legislation in which are enshrined the political principles on which the Kingdom of Spain is governed. It is the primary source of legislation in Spain and all other secondary sources must respect its contents.

Violence: Includes physical attacks as well as insults, social exclusion, offences, vexatious behaviour, refusal of a right or entitlement.

1. INTRODUCTION

The aims of this report, which updates the data set out in the 2002 report on racial violence, are as follows:

- To point out, within the context of violence in society, those cases which are considered to be racial violence, as defined in Section 2.
- To report on opinion trends in society and on the relationship that, according to public opinion and public authorities, there exists between immigration and crime.
- To explain current legislation in force the specific object of which is to tackle and punish racial violence.
- To explain the legal initiatives which, directly or indirectly, relate to racial violence.
- To use examples taken from the media to explain the type of violence to which immigrants and ethnic minorities are subjected.

The main difficulty when analysing the data available has been the lack of systematic studies on racial violence, so we have had to consider a variety of independent reports prepared by a variety of independent organisations preoccupied with the issues of racial violence. We have also considered the news published by the media which, inevitably, focus mainly on the most scandalous items, rather than on the day-to-day problems and forms of moderate but persistent violence against immigrants.

To put in context the changes undergone by Spanish society in the last twenty years, a few facts on immigration are included below, extracted from the Foreign Status Statistics Yearbook 2002¹:

There are 1,448,671 foreigners registered as living in Spain, which amounts to 3.2% of the population. Of those, 538,144 (35.5%) are European and the rest have arrived from the American continent (28.7%), Africa (27.7%) and Asia (7.9%). In the first six months of 2003, the number of persons from outside Spain increased by 124,670. All of the above have a valid resident permit, but it is estimated that only 900,000 of them do also have a valid work permit.

Since 1996, the number of foreigners resident in Spain has tripled. This increase has been particularly noticeable amongst the Moroccan community, which with 282,432 immigrants is the largest foreign group, the Ecuadorian community with 115,301 people and the British, with 90,091 residing in Spain.

The average age of foreigners from the E.U. is 44, for those of African origin it is 29 and 33 for Latin Americans.

Immigrants are mainly men, although lately the amount of women has increased to make 45 per cent of the total foreign population. Of the women, 56% come from South America and, of those, 72% are from Brazil. Their main occupation is as home help.

The clearest indication of the fact that immigration is now an established trend is the increase in the number of births amongst foreign women and the number of foreign children starting primary school. In 2002, 43,469 children were born of foreign mothers, which amounted to 10.44% of the total number of births in Spain. One in every four was born to a Moroccan woman.

In the school year 2001-2002, 201,518 foreign children, or 2.76% of the total, registered for primary or secondary school in Spain. About 1% of the university students (14,414 in total) were foreign.

The Autonomous Communities with the most foreign residents are, in order of importance, Catalonia, Madrid, Andalusia, Valencia, the Canaries and the Balearic Islands.

In 2002, there were 6,309 applications for asylum. In decreasing order of importance, the applicants were from Nigeria, Cuba, Colombia, Algiers and Sierra Leone.

¹ www.mir.es/dgei/documentos/anuario (12-7-2003)

2. SHORT OVERVIEW OF PAST AND CURRENT POLITICAL/CULTURAL SITUATION RELATED TO THE THEME OF THE STUDY

During 2003 the social and political debate placed a particular emphasis on the issue of crime and lack of security in the streets, a subject that, as became apparent during the electoral campaign leading to the local elections held on 25 May 2003.

The issue of the increasing concern about crime resurfaced again during the electoral campaign leading to the local elections in Madrid on 26 October 2003, when there were numerous references, particularly from the Partido Popular (conservative), to street violence and the presence of police in the street, (newspaper *La Razón*, of 9 October 2003).

Some politicians have asked that xenophobic politicians be punished at the May elections, as reported in the press on *12/05/2003 Catalonia*: , a candidate for mayor in the city of Barcelona with the left-wing green party, ICV-EUiA, asked the electorate to punish those political parties who show xenophobic behaviour and link immigration with crime. She referred, in particular, to the Popular Party and its candidate, as an example of attitudes that ought to be rejected, while promising that her party would actively fight against them.

At the same time as this campaign was developing, the Minister of Interior, , reported the crime statistics². The Minister stated that crime in Madrid has decreased by 1.21% with respect to last year, although homicides and smaller offences are on the increase. He attributed most of the violent deaths to score settling and revenge killing amongst organised gangs.

According to the Minister, from January to October 2003 there were 83 homicides just in Madrid, compared to 66 during the whole of 2002. However, the figures reported by the press and the parties in opposition are rather higher and point to 90 violent deaths, as they include those deaths caused in confrontations with the police.

An MP of the leading opposition socialist party, PSOE, questioned the Minister with respect to a poll in Madrid according to which 53.7% of the population believe that crime in the streets is the major cause of concern for citizens. He added: "According to the data published by the Ministry itself, homicides have increased by 39.1%. Figures are clear in the Community of Madrid: in 1999 there were 60 violent deaths, 64 in 2000, 66 in 2001, 71 in 2002 and 93 so far in 2003, with part of the year still left to run". For this reason, the PSOE member suggested that an agency, commission or institute should be created to evaluate and monitor crime. This body should include representatives from the Ministry of Interior, the Statistics National Institute, the Public Prosecutor Office, the Autonomous Communities and the local councils, «so that everyone may work on the basis of objective data» (newspaper *La Voz de Galicia*, 16 October 2003).

² Senate's session of 15 October 2003.

During his presentation, the Minister highlighted the increase in the number of police and civil guards on the street and the creation of a new group devoted to the investigation of organised crime. He also referred to legal reforms, such as the “expulsion of immigrants who come here to commit crimes”. Additionally, the Minister attributed most violent deaths to organised criminal gangs settling scores and revenge killings.

The Director General of the Police, said that although Spain is not a xenophobic country, it must be accepted that “some crimes are linked to illegal immigration”, something that “is not a statement, but a confirmation of the facts”. He also reported that of the more than 90 violent deaths that have happened in Madrid, “60% of the victims were foreigners”. Thus, he added, “as most of these foreign victims were illegal immigrants”, this confirms that “the facts point to crimes which take place outside of Spain and which then result in revenge killings or score settling in Spain”.

The association between crime and immigration is also reflected in the press, in editorials and opinion articles. For instance, the director of the newspaper *La Razón*, stated in his editorial of 21 October 2003 that “70% of those killed in violent attacks in Spain are either foreigners or their deaths have been caused with the involvement of immigrants”. In turn, the news on TV has reported that 50% of the deaths are related to drugs.

Furthermore, citizens wake up every day with news of killings in broad daylight, in central and well-populated parts of town and, in some cases, shootings from cars or the killing of children at the school entrance. In most of the cases, the victims are foreigners.

There is no agreement as to the actual figures and it is difficult to obtain all the facts about the types of crimes committed and the groups or persons who commit them. However, the comments heard in the street and those made by politicians, particularly during the electoral campaign, have gone more or less along the lines mentioned above. The recently elected President of the Autonomous Community of Madrid, on being interviewed and asked about the 50% increase in homicides in Madrid and its link to illegal mafias, commented as follows: “There is a link in the case of assassinations. But one cannot link crime with immigration. Most [foreigners] come here to work. Another issue is that mafias who traffic with people take advantage of the situation” (newspaper *La Razón*, 24 October 2003).

In turn, a conservative candidate to the presidency of the Autonomous Community of Catalonia, recently criticised the policies on immigration put forward by most of the left wing parties, and said that: “Contrary to what it may seem, the [policy of granting papers to every immigrant] is not the best way to protect immigrants and their rights, but on the contrary, it protects the mafias which illegally traffic with people”. He added “I cannot think of a better way of turning immigration into a real problem for everyone. If we follow the route of granting papers to everyone or legalising everyone’s position, in the end immigration will become a very serious problem that will generate racism, xenophobia and will overwhelm all of us, and will overwhelm society and its capacity to integrate immigrants in the right way... We must be aware that there is not room for everyone; of course legal immigration is welcome, as far as we can cope with it and can guarantee the integration of immigrants in society”. Nevertheless, the candidate considered that immigration is ‘positive’, because without immigration we would not be able to support our society. “If we deal with the issue properly, we should be able to guarantee social cohesion”, he said (newspaper *La Razón*, 5 November 2003).

In general, the elections in May 2002 did not produce surprising results anywhere in Spain, with the exception of a few small villages in Catalonia, as follows from the piece of news published in *EL PAÍS* on 27 May 2002: The xenophobic political group ‘Plataforma por Cataluña’ has obtained four councillors, who may be in a position to determine who will be the next mayor. In an exercise of self-examination, the rest of the political parties wondered what has driven over 2,500 people in these villages to vote for a party whose only motto was: *For a better control of immigration*. In Vic, Plataforma por Cataluña had 7.5% of the votes, with one councillor.

When the result of the Swiss elections was known, the following commentary was published: “Switzerland has not voted in favour of the extreme right, but against immigration” (editorial by José M. Ansón, newspaper *La Razón*, 21 October 2003).

The press, television and radio stations refer relatively frequently to the violent acts, some of them really monstrous, to which immigrants are subjected. This type of violence also causes dismay to the Spanish population in general who, for the most part, live quite happily alongside immigrants. During the month of October the trial of the so-called ‘the Maremagnum case’ has been reported on a daily basis. The background to the case is as follows: the door keepers at a disco prevented a South American man entering the premises and after severely hitting and kicking him, he was thrown in the sea, where he drowned. The video scenes were broadcasted in every channel on various occasions, causing revulsion.

In contrast with the above, it is also necessary to refer to the different response given by Spanish society in general depending on whether a violent crime in which the victim is Spanish has been committed by a European from the EU or a white North American, or by an immigrant from a poor country, such as Morocco or Nigeria. This, for instance, was the case in the rape and killing of a teenage girl in a small town in Malaga at the beginning of September. The confessed killer is an Englishman with a serious criminal record. Although the population was horrified about the violence of the crime, there have been no serious references to the fact that the killer was a ‘foreigner’ (even if his nationality was referred to) and, as it is normal, no-one has asked for measures to be taken against the English community living in the area. It would not be foolish to think that if the same violent crime had been committed by, let’s say, a Moroccan man, the Spanish society would have been scandalised. The latter is not an outrageous conclusion because, in fact, we have witnessed it. When last June a Greek woman visiting Madrid was knifed by a Moroccan minor, all the media widely reported the news; however, when a young man from North Africa was severely beaten and caned to near death in the Casa de Campo (the green belt surrounding Madrid), it hardly made the news.

Along with the news of violent crime against immigrants, normally reported in the media, one should not forget the daily abuse to which immigrants and other ethnic minorities, including Spanish gypsies, can be subjected. They are insulted, denied access to public places and even to municipal or state-owned facilities. Most of these incidents go unnoticed as there rarely is a record of them and they are only known to those upon whom they are inflicted.

The charitable organisation, Caritas, has recently alerted to the increase in xenophobia and social rejection of immigrants in Spain. This statement contrasts, however, with the

findings of an official poll in the Basque Country, according to which 60% of its citizens are tolerant.

3. CONCISE DESCRIPTION OF THE CURRENT LEGAL SITUATION RELATED TO THE THEME OF THE STUDY

Before proceeding to analyse the subject, it is necessary to clarify that the term ‘violence’ is understood to include not just physical violence, but also any discriminatory act or action, insult or affront. In the term ‘racial’ we include also ideas and religion, ethnic background, xenophobia, ideology and personal or social circumstances.

Racial violence as a specific form of violence requires the study of various legal provisions: those that relate to violence in general and those relating to discrimination on the grounds of birth, race, sex, religion, opinion or any other personal or social condition.

Given that the Spanish Constitution of 1978 is the fundamental and primary source of law in Spain from which the rest of the laws derive their validity, a methodical study requires a first reference to its text, to determine the way things ought to be. However, it is the Criminal Code of 1995 that deals with the practical consequences of violence in general and racial violence in particular.

3.1. THE SPANISH CONSTITUTION

Various articles are relevant, but the report focuses on two of them:

Firstly, **article 10** must be noted. It opens the section relating to fundamental freedoms and obligations, stating in paragraph two that “the laws relating to fundamental rights and freedoms recognised by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and international treaties and agreements on the subject that have been ratified by Spain”. This way, the following provisions of the Universal Declaration of Human Rights are incorporated into the Spanish legal system by reference:

Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Article 7: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.

Despite the above it is worth noting that article 14, which opens Chapter II, dedicated to rights and freedoms, and standing on its own, provides that *Spaniards* are the ones who “are equal before the law, and there cannot prevail any discrimination on the grounds of birth, race, sex, religion, opinion or any other social or personal condition or circumstance”.

3.2. THE CRIMINAL CODE

The Criminal Code does not typify racial violence as a separate crime, but the fact that a crime or misdemeanour has been committed for a racial motive (or xenophobic, religious, or otherwise discriminatory reason) is deemed an aggravating circumstance. On the other hand, the Criminal Code does define as criminal various conducts consisting of provoking racial discrimination, or denying a right or benefit to someone who is entitled to it on the grounds of race, xenophobia, etc. Besides the sections specifically referring to racial issues, there are several sections that refer to the abuse by a person of a position of power, or authority or superiority and which aggravate the penalty attaching to the crime. The existence of these aggravating circumstances has been found to apply in various cases in which the victim was a foreigner or of ethnic minority background, but not in others which, at first sight, seemed to be entirely motivated by racism.

Section 22.2 defines the following aggravating circumstance: “the commission of a crime for racist or anti-Semitic motives or for some other discriminatory reason relating to the ideology, religion or beliefs of the victim, his or her race, ethnic background or nation of origin, illness or disability that he or she may suffer”. When this aggravating circumstance is found to exist, the penalty applicable to the specific crime is applied in its more severe form.

The Spanish Criminal Code distinguishes between crimes and misdemeanours (or lesser offences), depending on the seriousness of the facts or the resulting consequences. All acts relating to racism, xenophobia and discrimination are considered crimes.

The following are highlighted as specific forms of racial crimes. They are included in a separate chapter devoted to criminal offences affecting the exercise of fundamental rights and freedoms.

Section 510.1 provides that: “Those who provoke discrimination, hatred or violence against groups or associations, for racist, anti-Semitic or any other motive relating to ideology, religion, beliefs, family situation, belonging to another race or ethnic group, or because of national origin... shall be punished with imprisonment for one to three years and a fine of six to twelve months”.

Paragraph 2 of section 510 also punishes the dissemination of injurious information about groups or associations in relation to their ideology, religion or beliefs, the belonging of their members to an ethnic group or race or their national origin. This paragraph is particularly important because it sets boundaries to the freedom of expression, enshrined in the Constitution, and by reference to which xenophobe and anti-Semitic organisations have tried to protect the propagation of their ideas.

Sections 511 and 512 punish those who deny a person, because of race, ideology, religion or beliefs, ethnic background or race or national origin, a benefit to which that person is entitled.

Section 515.5 criminalises those associations that promote discrimination, hatred or violence against persons, groups or associations by reason of their ideology, religion or beliefs, the fact that one of their members or one of them belongs to an ethnic group, race or nation.

3.3. LAW ON FOREIGN STATUS

The Law on Foreign Status, as amended, includes a brief section on anti-discriminatory measures. It gives a definition of ‘discrimination’ and states that certain behaviour by persons in authority, civil servants, employers, business people or any other person will necessarily constitute acts of discrimination. This law then goes on to say that discriminatory practices can be challenged in the courts of justice, both in ordinary proceedings and, also, in proceedings before the Constitutional Tribunal.

The Law on Foreign Status is analysed in detail in the Legislation Report.

3.4. LEGISLATIVE INITIATIVES

The ‘Programme against crime’, launched by the Government on 12 September 2002, considers a number of organisational and legal measures aimed at reinforcing security in the streets, tackling domestic violence and promoting the integration of foreigners into the Spanish society. Furthermore, certain legal reforms have either been implemented during the last few months or are currently underway:

Citizen’s Safety, Domestic Violence and Integration into Society of Foreigners: Organic Law 11/2003, introducing specific measures relating to citizen’s safety, domestic violence and integration into society of foreigners was published in the State Official Gazette no. 234/2003, of 30 September and came into force on 1 October 2003³.

Certain provisions have also been implemented in the criminal code and criminal procedure law:

Penitentiary Laws: On the 2nd of July came into force Organic Law 7/2003, of 30 June, which introduced measures to ensure that criminal sentences are served effectively and in full. Organic Law 6/2003, of 30 June, which modified Organic Law 1/1979, of 26 September, on the Penitentiary System, also came into force on the 2nd of July⁴.

Quick Trials: This is a new form of quick trial for certain crimes (such as theft, robbery, theft of vehicles) punished with five years’ or less imprisonment, where the accused is caught red-handed. The purpose of this law is to confront the widely held opinion that street crime goes unpunished in Spain and it takes years to see delinquents in court, by

³ www.boe.es, www.reicaz.es (12-11-2003)

⁴ BOE 156, 1 July 2003, www.boe.es

which time it is almost impossible to prove their guilt. The new measures were introduced by Law 38/2002, of 24 October, which reforms the Criminal Procedure Act⁵ Other relevant laws that address the reform of the Criminal Procedure Act are Organic Law 8/2002, of 24 October⁶ and the Regulatory Agreement 2/2003, of 26 February, of the General Council of the Judicial Power⁷.

Still awaiting publication are a further reform of the Criminal Procedure Act, on the subject of remand, and the reform of the Law on Criminal Responsibility of Minors. With respect to the latter, the law currently in force applies to people aged 18 and under, whereas before the age of full criminal responsibility started at 16. This law has been heavily criticised throughout, although some critics consider that it has never been given the opportunity of being properly applied due to lack of funds (newspaper El Mundo, 22 October 2003).

Although the legislation referred to above does not directly address racial violence, it is nevertheless of interest given that its aim is to prevent crime and promote safety and it will also obviously apply to any foreigners who are accused of committing crimes in Spain.

3.5. CASE LAW

The case law relating to racial violence is scarce. On the one hand, only the most violent forms of crime, such as homicides, assassinations and grievous bodily harm are heard by the higher courts, the only ones whose judgments are published. On the other, only serious crimes are reported by the media. Therefore, there is little case law relating to non-violent but humiliating or vexatious treatment inflicted upon immigrants or persons with an ethnic minority background which are motivated by racism or xenophobia. These cases either never make it to the courts of justice or they are tried in the lower courts and are not reported.

The study of judgments issued in 2002 and 2003 has proved negative when searching for cases relating to the application of sections 510, 511 or 512 of the Criminal Code. However, it is not infrequent for the behaviour punished in section 511 to take place, even if the victims do not always report it to the police or file a claim against the perpetrator. By way of example, let us refer to a piece of news published on 15 July 2003, relating to a situation reported by a group of gypsy women who were denied access to a municipal pool in the town of Linares, in Jaen, on account of their being gypsies.

Only one judgment has been found where the aggravating circumstance of section 22.4 has been found to exist:

Judgment of the Audiencia Provincial of Lerida, dated 13 September 2002, number 606/2002, rollo 189 (Ref. Bosch BDB AP Lérida 27069/2002). The case is one of theft with violence in which the aggravating circumstance is found to exist because, “as it is clear from the declarations made by the victim, the persons who attacked him told him

⁵ BOE 258, 28 October 2002, www.boe.es

⁶ BOE 258, 28 October 2002, www.boe.es

⁷ BOE 59, 10 March 2003

that he was a ‘moro’ (moor) and beat him up for that very reason, at the same time as they shouted at him that he had no right to life and would die, and that is precisely the motive for this unjustifiable attack”.

To investigate further the application, or lack of application, of this aggravating circumstance, we have searched for earlier judgments, but found only one passed in 2001, which considered racial discrimination as an aggravating circumstance. Nonetheless, in Section 7 we refer to more recent cases where it has been found to apply.

The Judgment of the Audiencia Provincial of the Balearic Islands, dated 11 June 2001, number 53/2001 (Ref. Bosch BDB AP Balears 25360/2001) considers whether the aggravating circumstance of racism existed at the time, but decided against it. The matter relates to a dispute between a drug supplier and his black client which resulted in the death of the black man. The tribunal considered that although the perpetrator of the homicide called his victim ‘puto negro’ (fucking black) and ‘negro de patera’ (referring to immigrants who arrive by boat in precarious conditions in the South of Spain), these were hurtful comments which were part of the dispute, but not its objective or purpose.

Some cases are not reported in Law Reports, but referred to in the press. A few examples follow:

15/07/2003 Base

A man has been charged with racism (an offence against public freedoms) for denying access to family of gypsies to the local swimming pool. The man in charge of issuing the tickets denied access to three gypsy women and their seven children. According to the police, access was denied to them exclusively on account of their being gypsies.

05/09/2003 El País -Barcelona

A 31 year-old man who had been sentenced to 26 years in jail for the assassination in 1991 of a French supporter of the football team Espanyol and served 9 of them was again arrested, together with two other *boixos nois* (hooligans who support the football team Barça), for attacking two Moroccans on the day of the Gamper trophy in the football stadium Camp Nou. The *boixos* justified the attack on the grounds that the victims were wearing a shirt with the name ‘Raul’, a player in the rival team. The judge remanded on bail the three attackers on the grounds that the injuries caused to their victims were not serious. It remains to be determined whether the attackers, all of whom have a criminal record including drugs, theft and robbery, will be tried for a crime or a minor offence.

14/06/2003 Valencia

A head-waiter and a porter of the disco ‘Cerebro’ have been sentenced to a one year job suspension for denying access to a client on account of his being a gypsy. The tribunal has found them guilty of committing a crime against the fundamental rights and public freedoms.

06/06/2003 Valencia

A jury has found Richard P. M. guilty of the stabbing to death of two Algerian citizens. The jury did not consider that the aggravating circumstance of xenophobia applied in this case.

27/03/2003 Madrid, EFE Madrid

The Supreme Court has confirmed the sentence passed by a lower court of justice in Madrid whereby two men and two women were sentenced in 1997 to two years imprisonment for beating up with canes and a metal rod an Egyptian man who sold flowers, at the same time as they chased him shouting 'get the moro'. In June 2001, the Court in Madrid sentenced the attackers to two years imprisonment for the grievous bodily harm caused with the aggravating circumstances of abuse of power and racist motivation of the attack. On appeal, the accused alleged that the aggravating circumstance of racism was incorrectly taken into account, but the Supreme Court has confirmed that the attack was specifically motivated by the racial origin of the victim.

4. THEORETICAL AND METHODOLOGICAL APPROACH FOR ANALYSING DATA

In preparing this report it has been considered necessary to distinguish between violence in general, meaning that which is not motivated by racist hatred or xenophobia, even if either the perpetrators or the victims are immigrants or Spanish with an ethnic minority background, and racial or xenophobic violence, understanding by it racially motivated or xenophobic attacks. Indeed, there are many cases where it is not possible to determine whether a racial motive exists or not, as it happens when both the aggressor and the victim are foreigners. As an example, of the more than 90 violent deaths in Madrid since the beginning of 2003, it is estimated that over half have been cases of revenge killings or score settling amongst foreigners or drug related, rather than racist or xenophobic attacks.

When talking about 'racial violence' we have referred to violent acts motivated by the victim's purported race or national origin. When talking about 'violence', we include physical attacks as well as insults, social exclusion, offences, vexatious behaviour towards immigrants by the mere fact of their being foreign.

This report refers to acts of racial violence and the way in which they have been reported by the media. It also refers to trends in public opinion and about the link that some sectors in society and in politics establish between immigration and crime.

The report further comments on the legal provisions aimed at tackling racial violence and the application of the law by the courts of justice, thereby updating what is already mentioned in the 2002 Racial Violence report. In this respect, it is important to highlight the difficulties encountered in trying to paint a complete picture of the legal and judicial scene as there are no reports specifically dealing with this subject and because many cases of less severe racial violence are never tried in a court of law.

Sources of information

To prepare this report we have accessed the following sources of information:

Firstly, we have analysed public opinion expressed in polls, surveys and commentary made by citizens. We have either been able to consult the reports themselves or, in the majority of cases, the information has been collected through press reports, newspapers, television and radio bulletins. References to specific cases of racial violence have been collected from the written press and, occasionally, from legal reports.

We have also considered the reports prepared by Amnesty International⁸, the Ombudsman⁹, the Centre for Sociological Investigations¹⁰ and other groups, such as the charitable organisations Caritas¹¹, SOS Racismo¹², Movement against Intolerance¹³, Unión Romani¹⁴, as well as articles and commentaries prepared by lawyers and other multidisciplinary teams.

With respect to the legal regulation of crimes relating to xenophobia, racism, discrimination and the different criminal forms that they take, we have analysed the legal texts themselves (the Spanish Constitution and the Criminal Code).

The report also considers the two legal initiatives which more closely relate to the punishment of racial violence in Spain: the reform of the Criminal Code and the initiatives for the reform of the Law regulating the criminal responsibility of minors. An effort has been made to describe these pieces of legislation and to evaluate some of their potential consequences, reflecting on some of the criticisms that have been voiced against them by various groups involved with immigrants.

The report on racial violence does not consider the reform of the Law on Foreign Status, which is analysed in detail in the legislation report.

With respect to trials and court orders, we have analysed the case law of the last two years, but as it is pointed out above, cases brought to court are scarce and the absence of a systematic classification of the trials by reference to the subject matter makes it very difficult to determine when a case of racial violence is being tried. The information on case law has been obtained from the databases published by Aranzadi and Bosch, access to which is possible on payment of a licence fee, except for the most recent cases, information on which has been obtained in the press.

⁸ www.a-i.es

⁹ www.defensordelpueblo.es

¹⁰ www.cis.es

¹¹ www.caritas.es

¹² www.sosracisme.org , www.sosracismo.org

¹³ www.movimientocontralatolerancia.com

¹⁴ www.unionromani.org

5. DESCRIPTION AND ANALYSIS OF EXISTING AND NON-EXISTING DATA AND SOURCES

To get an accurate idea of the situation we are analysing in this report, we have first selected some data on how Spanish people perceive immigrants. We then consider, as far as reliable information is available, the number of foreigners who have settled in Spain against the background of the share of immigrants currently in prison (prison data published in 2002). To complete the picture, we have referred to the legislation applying to foreigners and to the legislative initiatives currently underway; we have also referred to opinions and reports issued by specialists and a variety of reports published by authorised institutions. Finally, we have selected pieces of news published in a variety of Spanish newspapers from January to October 2003.

5.1. STATISTICS

One of the documents we have analysed is the ‘Barometro del CIS’, a monthly report published by the Centre for Sociological Investigations. In an effort to determine what are the problems, that, according to those interviewed, have been the main source of concern for Spain in general and for those interviewed in particular throughout 2003, we have considered the surveys of the months of January, March, June, July and September.

These reports indicate that crime is considered to be the third most important problem for Spain in general, with unemployment and terrorism taking the first and second places. However, when those interviewed were asked whether they felt personally affected by these problems, crime became the second most important source of concern, after unemployment, and terrorism became relatively unimportant.

With respect to immigration, only 15% of those interviewed consider it as one of the three most important problems for Spain and half of those feel personally affected by it. When asked about racism, only 0.7% consider it one of the three most important problems in Spain and less than half (0.3%) feel personally affected.

The Barometro of June 2003, focused on the subject of crime, shows that very few of the interviewees (1.8%) associate crime and immigration and the majority refer to terrorism and crime as the most important problems. When asked about the frequency with which xenophobic or racist incidents take place in their neighbourhood, 3% replied that very frequently, 9% quite frequently, 25.3% not very frequently and 55.5% almost never.

However, the poll carried out by ‘Sigma – dos’ in the Autonomous Community of Madrid, and published in the journal *El Mundo* on 19 October 2003, reflects, amongst others, the following facts:

48% of the interviewees believe that illegal immigration has had an impact on the increase in crime in the area; 36.9% believe that it has a big impact and 10%, on the contrary, think it has had a small impact. In their view, the second source of crime is drugs. 47% replied that drugs have a great influence on crime and 42.6% believe that they are closely related. Another factor deemed to be related to violence is poverty. 25% think

that it is very closely related and 39% believe that it is quite related. Only 14% consider that unemployment is the cause of crime in the streets, whereas 36% believe that unemployment impacts on crime (rather than being its cause). About 190.000 residents in Madrid are registered as unemployed.

The statistics¹⁵ show that the number of foreigners in Spain has greatly increased in the last twenty years. Until 1999, the increase in immigration was moderate, but since then to date, the rise in immigrants has been striking. In 1981 the number of foreigners resident in Spain was 198,042, 801,329 in 1999 and 1,448,671 in June 2003 (about 3.75 to 4% of the total population). The prison population in Spain in 2002 was 50,031 of which more than one fifth were foreigners¹⁶.

We have no knowledge of whether any statistics or graphs have been produced and made publicly available that specifically analyse racial violence and crime. We have not had access to statistics on crime kept by the Ministry of Interior.

5.2. LEGAL TEXTS

The Constitution and the Criminal Code are analysed in detail in Section 5.

We also refer to legal, procedural and penitentiary initiatives that may shed some light on the issue and the rules and regulations aimed at tackling violence, in all its forms, for the prevention of marginalisation and crime.

5.3. CASE LAW

We have analysed some judgments issued by the higher courts in relation to crimes committed against foreigners and have already referred to them in Section 5. The pieces of news included in the pages that follow refer to other judgments in which the aggravating circumstance of racism and xenophobia are found to apply.

5.4. REPORTS

We have considered the reports published by Amnesty International in November 2002 and March 2003 as well as the commentary made about them. The annual report confirms that xenophobia is on the increase. We have also taken into account the Ombudsman's report.

In October, the Institute for Studies on Security and Police reported a serious increase on the number of violent crimes committed by youths, which has multiplied by five between 1992 and 2002.

¹⁵ Annual Statistics on foreign status 2002, July 2003 -www.mir.es/dgei/documentos/Anuario

¹⁶ Immigration and xenophobia in cultural and religious institutions, Beristain Piña, Antonio, La Ley, Daily 5660, 21 November 2002.

2002 REPORT ISSUED BY THE DEFENSOR DEL PUEBLO (THE OMBUDSMAN)¹⁷

Amongst various other matters, the 2002 Ombudsman's report deals with the following issues:

It shows great concern about the increase in racist and xenophobic attacks in Spain. The various events reported have been analysed with the objective of trying to determine to what extent the violence is caused by racist, ethnic or national background motives. In this respect, the report states that there are serious difficulties to clearly separate racist motives from other factors which are generally present in certain environments, such as massive alcohol consumption or, in other cases, extreme poverty.

The report also mentions that in many cases the persons implicated in the violent events refuse to acknowledge that their behaviour is motivated by racial prejudice. Rather, other motives such as the difference of cultures, hygienic habits, timetables and noise, which would make it difficult to live together are often mentioned. It is extremely complex to consider these matters in depth, but there is no doubt that these domestic conflicts seriously undermine all chances of peaceful coexistence.

During 2002 a number of incidents were reported relating to the set up or opening of places of worship, which have caused the Ombudsman some concern on at least two grounds: firstly, because it affects a fundamental freedom (freedom of religion) and, secondly, because opposition to these religious centres is normally at the heart of groups which, more or less overtly, support clearly xenophobic ideas.

On the positive side, the report has highlighted the powerful role undertaken by audio-visual companies in the informal way in which they are promoting education to the masses.

The Ombudsman reflects on the precarious conditions of the internment centres for immigrants, which had been reported before, and includes the government's response which includes the proposal to update existing facilities as well as the construction of various new centres with more and better facilities. The updating and improvement of several centres has, according to the report, already been accomplished. A specific point of action has been the creation of centres where families of immigrants with young children can live together. Whilst welcoming the improvements, the Ombudsman continues to reflect on the fact that these internment centres, which are more akin to prisons, are not an adequate place to keep immigrants who are not accused of committing crimes and, therefore, have not been deprived of their rights. Nonetheless, some centres, such as the one in Barcelona, continue to be a source of numerous complaints on account of the severe restrictions on movement imposed upon interns and the tensions that this causes.

The Ombudsman's report also condemns the practice of notifying decisions at such a late stage that immigrants are unable to seek legal protection in the courts for failing to meet deadlines and reports on several cases where access to legal advice has been denied to immigrants. Particular attention is paid to a case in Melilla where a whole family,

¹⁷ <http://www.defensordelpueblo.es/index.asp?destino=informes2.asp> , last accessed on 22 January 2004.

regularly resident in that city, were subjected to an expulsion process on account of their minor children having been found guilty of violent and criminal actions, an expulsion process that the Ombudsman considers totally unjustified.

5.5. PRESS

The news collected in the press between January and October 2003 could be classified in various sections. On the one hand, there is news referring to specific cases of racial violence, such as attacks on immigrants or ethnic minorities. The media have informed on the most notorious cases and, when heard in the courts of justice, on the judgments passed. On the other hand, there is violence related to sport and related to xenophobic feelings. Lastly, the news reports on the comments made by politicians during the electoral campaigns celebrated in 2003. We have selected some pieces of news that refer to the most brutal cases of racial violence. Some are included below, others have been inserted in sections where they helped illustrate other comments made.

21/10/03 El Mundo (newspaper)

In October, the police arrested three neo-nazis who were planning a ‘punishment action’ with cocktails Molotov. The youths belong to an organised group in the city of Valladolid and information found included references to immigration. A self-denominated ‘Raza Politico-Militar’ group had a postal box also in Valladolid. Their web page was used to attack gypsies and call for weapons and explosives.

The 2002 Report on Racial Violence reported on the ‘Maremagnum crime’, that has greatly impacted on public opinion. The case concerns the killing of Mr Wilson Pacheco, a man from Ecuador, who was denied access to a disco by the door keepers and after being severely beaten was thrown into the sea, where he drowned. The video recording the brutal beating has been shown on various occasions on most television channels. The trial, heard by a jury in October, found that the attackers had not acted motivated by racist or xenophobic feelings, even though the videos recorded comments of that nature.

8/09/2003 El País (newspaper) Catalonia

The police have arrested nine ‘skinhead’ youths who were physically attacking people and making xenophobic comments against them, particularly if their victims were not white. Three people reported to the police that they had been physically attacked by those who had been detained.

24/09/2003 El País (newspaper) Madrid

The Police Headquarters have informed that a 30 year-old man has been arrested on suspicion of physical attacks and xenophobic and racist acts. The crimes were reported by two Moroccan brothers and the wife of one of them, of Chilean origin. According to the police report, the young man who attacked, threatened and insulted them shouted insults such as “go back to your fucking country” or “bastards”. The man had been arrested on numerous occasions for similar offences. He had also been detained on 4 March, together with a group of hooligans, for carrying neo-nazi articles and magazines at the time of the Bayer Leverkusen against Real Madrid football match.

11/09/2003 El País (newspaper) Andalusia-Malaga,

A mosque has been covered with the following graffiti: “More than 19 centuries of Christian faith. No mosque in a Christian neighbourhood. Blessed be the blood of the thousands of mozarab Christian martyrs who fell victim of the radical intolerance of Al-Andalus and subsequent Taifa kingdoms” (Taifa kings were the Moorish kings who ruled part of Spain after the breaking up of the caliphate of Cordova in 1031).

14/08/2003 Catalonia

The local police of Girona have arrested a 34 year-old man accused of having thrown inflammable liquid against the front door of a mosque in the city. The man arrested, who resides in Girona, has a criminal record. This is the fourth attack on the mosque in three years.

07/07/2003 Madrid

In a letter to the editor, a resident in Madrid complained about the violence and the damages caused in the metro by a group of violent South Americans. Apparently, the security guards did nothing to stop the group of violent men or to demand that they repair or pay for the damage caused. The writer comments that this is a case of discrimination against the local population, stating “... and I am sure that if these [violent] actions had been perpetrated by a Spaniard, the security guards would have reacted quite differently. However, there are certain acquired rights, even if there is no law to grant them, that many immigrants are claiming for themselves”.

03/06/2003 El País (newspaper) Andalusia

A group of men have been arrested for killing an immigrant and thrashing another two on Easter Thursday. All the men arrested have long criminal records including grievous bodily harm and robbery and lived in a poor and marginalised district in the South West of Huelva. Never, until the morning of Easter Thursday, had they attacked immigrants before. The government’s representative in Huelva, Carmelo San Martín, has dismissed the claim that the aggressors, who covered their heads with hoods and were armed with sticks, were part of an organised band and points out that their motivation was to attack defenceless people. The Association of Moroccan Workers and Immigrants in Spain (ATIME, in its Spanish acronym) has brought to the light similar attacks on foreigners in the same part of town, but the government insists that these are acts of general violence and attacks on those who are defenceless [as opposed to racist attacks].

16/05/2003 Catalonia

A group of skinheads killed a young man from the Maghreb in a district of Terrassa on 3 May. All political parties were unanimous in their condemnation of the killing, which has shocked the neighbourhood.

16/05/2003 Catalonia

The public prosecutor has asked that the five youths accused of beating up two men from Gambia be sentenced to 18 years imprisonment for grievous bodily harm with the

aggravating circumstance of racism. The private prosecutor asks for 25 years imprisonment.

04/05/2003 Catalonia

The Public Prosecution Service in Lleida has asked that Mateo Figuerola Niubó, candidate for mayor in the town of Cervera with the extreme right-wing party Plataforma per Catalonia, be fined with €6,480 if found guilty of the damages caused to a mosque and a Muslim butcher's shop in the town.

30/04/2003 Valencia

SOS Racismo denounces that there has been an increase in the mafias dedicated to exploiting immigrant women and workers. According to the recently published annual report prepared by SOS Racismo in Valencia, the activities of these organised networks have substantially increased during 2001 and 2002. SOS Racismo highlighted the lack of legal assistance to stowaways arriving in the ports of Valencia. Of all the xenophobic offences reported to the police, 44.3% were related to immigration and legal status issues, 23.8% referred to fundamental rights, 11.77% were racist attacks, 4.5% social racism, 3.7% were neo-nazi activities, 1.5% were violent acts against minors and 1.2% were violent attacks against gypsies.

28/04/2003 Andalusia

The Chairman of ATIME, Association of Moroccan Workers and Immigrants in Spain, Mr Kamal Rahmouni (born in Tetuan in 1970), has brought to light a number of events that had been so far silenced even though they took place before the assassination of a Moroccan man in Huelva. Rahmouni claims that there is an increasing rejection of the immigrant arriving from North Africa, the 'moro' (moor), and this results from the commentary made by the president of the government, José María Aznar, or the president of Catalonia, Jordi Pujol, who defended their decision [to employ East European immigrants to collect strawberries in preference to Moroccans] on the grounds of religion and race which, they said, would contribute to the integration [of immigrants into society]. It is obvious that the more conflictive areas are those where there are more immigrants. In Andalusia there are more than 100,000 legal immigrants and about 70,000 to 80,000 illegal immigrants, therefore, politicians are responsible because small incidents can grow out of proportion. Immigration matters cannot be sorted out with the stick.

22/03/2003 Catalonia

SOS Racismo has noted an increase in the number of cases of ill-treatment of immigrants. With the imminent arrival of the local elections campaign, SOS Racismo has alerted against the 'dangerous spiral' of declarations made by politicians which make a connection between immigration and crime or who warn that the arrival of foreigners is a threat to the 'Catalonian identity'. SOS Racismo has asked all political parties not to look for votes in this type of speech, highlighting the number of cases of violence against immigrants that have been reported to the police. SOS Racismo has reported that it received 35 such complaints during last year. The charity has also reported an increase in the number of cases of ill-treatment towards immigrants by the police. Besides the above,

SOS Racismo has insisted on the need once and for all to end the discrimination encountered by foreigners when trying to enter leisure centres and referred the numerous incidents of this nature that have taken place in the Maremagnum complex in Barcelona which, in spite of the “guilty judgment passed against the company Odisea 2000 has never acknowledged that there were cases of discrimination”.

19/03/2003 Valencia

The Public Prosecution Service has decided to shelve the complaint filed by the ‘Green Left’ party against the mayor of the town of Almoradi, Antonio Hurtado, on account of his “xenophobic and racist comments” that were recorded and made public. The order issued by the Public Prosecutor states that the declarations attributed to Mr Hurtado were “not made in public, but recorded by a hidden camera and made available to the press, and they relate to a private conversation made public by third parties”. As can be heard on tape, on 25 February, the mayor of Almoradi accused a businessman of selling a house to a gypsy. Hurtado then said that he was going to shut down “as many businesses run by ‘moros’ as possible” and suggested a singular solution to stop illegal immigration: “place a row of frigates in the straight and fire a missile against any boat with immigrants that may pass by”.

07/03/2003 El País Barcelona

The Catalanian police have arrested three young skinheads suspected of knifing a young man from North Africa in the tube in Barcelona. The events took place on a Saturday. Two of the men arrested were over 18 years old and have been sent to prison. According to the police, one of the attackers, Jaime C.D. “has links with extreme right and fascist groups”.

28/02/2003 Andalusia

Caritas has reported an attack against poor people in Jerez by a group of youths. According to the declarations made by the victims, the looks of the aggressors suggested that they were not members of any gang but were clearly motivated by racist and xenophobic feelings, as most of the victims were foreign. Movimiento contra la Intolerancia (Movement against Intolerance) has offered help to the victims.

18/02/2003 Valencia

Six people have been arrested for setting houses on fire where gypsies live. They have been accused of racism.

08/01/2003 Andalusia

According to researchers, Spanish society continues to be racist, although their attitude is expressed in a more subtle way than a few years ago. Research carried out by the University of Granada shows that the majority of those who were questioned believe that gypsies and immigrants are to blame for their own social exclusion and lack of employment. The four-year research undertaken by the Department of Social Psychology of the University of Granada has helped to show that the prejudice and racism felt towards certain races or groups is still latent in society, but it has undergone important

changes. “We now have new and more subtle forms of racism. People are unwilling openly to admit that they are prejudiced, so they show their feelings by contrasting their values against those of the other groups”, explained Miguel Moya, who has co-ordinated the studies, which are part of the National Plan D+I. The people interviewed do not describe immigrants or gypsies as delinquents, but they do attribute them certain cultural and religious differences and other values that would justify their exclusion from the employment market. Mr Moya added that “it is easier to reject someone by exaggerating the cultural differences and ignoring the similarities. The different values are used to justify the racist attitude”.

09/11/2003 El Mundo

The Ombudsman and the Defender of Minors have criticised the policy that requires children to prove resident status before they are allowed to play football with official associations. SOS Racismo has also criticised that in Spain some immigrant children are unable to join the federated leagues because they do not have a residence permit.

5.6. WEB SITES

The web sites www.boe.es, www.aranzadi.es, www.reicaz.es, www.mir.es have been and continue to be monitored on a daily basis. The remaining web sites were last checked on or about 20 November 2003, prior to submitting the report, but have been checked on various occasions subsequently.

6. ANALYSIS OF STRATEGIES, INITIATIVES AND GOOD PRACTICES FOR REDUCING RACISM AND SUPPORTING DIVERSITY

This section refers to initiatives undertaken by independent groups, the public administration and certain charitable organisations aimed at tackling racism and encouraging social diversity.

One of the main problems that immigrants have to confront is the absence of a work permit to have access to employment in secure conditions and with pay equivalent to that which a Spaniard would be prepared to work for. The absence of papers promotes abuse and illegal and insecure working conditions. For instance, of the deaths caused by accidents at work in the Community of Madrid during 2003, 50% were foreigners even though the proportion of immigrants to Spanish natives is well below that figure. To fight employers who take advantage of foreigners, the fines imposed upon those found guilty of employing illegal immigrants have been substantially increased. However, this is a double edged sword, because it does not encourage better work conditions among all immigrants, even if it contributes to protect those who are legally resident and working in Spain.

The representative of the association of strawberry growers in Huelva commented in January 2003 that following the problems encountered when East Europeans were employed to pick strawberries, leaving unemployed many Moroccans who had been previously employed in this activity, a meeting had been arranged with the Andalusian Government's delegate, a central government delegate, unions and business representatives during which important solutions were found.

During 2003, the government offices have designed and applied new policies aimed at establishing in certain areas settlements of immigrant population. In turn, the integration of immigrants into society has been mostly fostered by cultural and religious associations and groups.

Amongst the non-governmental organisations, it is important to highlight the role played by the charity Caritas, which declared in Barcelona that it will be thoroughly engaged in educating society and raising awareness on immigration issues. Caritas is aware that, as an organisation and to an extent, it does not always observe the law and says that people are not 'illegal', but they simply lack the necessary papers. To have access to health and education immigrants simply need to register with the Barcelona city council and in Caritas they will help them find employment which must necessarily be in illegal conditions, although Caritas will aim to provide them with private insurance. Caritas is deeply involved in helping immigrants arriving in Spain and are outspoken in opposing any suggestion that immigration and crime may be related. The following piece of news was published in El País on 08/10/2003: The "increase in xenophobia" was one of the main topics addressed by the new chairwoman of the charitable organisation Caritas, Nuria Gispert. "The words which are being drilled into society are the false statement that immigration and crime go hand in hand. We have noticed that there has been an increase in the rejection suffered by immigrants", said Silverio Agea, who has been re-elected as Secretary General of Caritas. "It must be clearly said that immigration does not mean invasion, it does not take our jobs away, it does not mean delinquency. Immigration is a need for those people who come here and the future of Spain. Caritas believes that it is necessary to control immigration and impose quotas. But once they are here, it must be clearly stated that the Gospel does not say anything about papers".

Similarly involved is SOS Racismo, which as reported in the press on 16/05/2003 *Catalonia*, as one of the organisations that work with immigrants that have asked for a more rigorous application of policies against xenophobia. The association *SOS Racismo* has complained that the minor racist incidents which took place in the neighbourhood of Can'Anglada were perpetrated with total impunity. This anti-racist association has criticised the lack of effective solutions and practical policies to promote peaceful coexistence in Catalonia. "There is no legal framework to guarantee equality and there is a lack of social resources", explained Begoña Sanchez, one of the spokespersons for the organisation. For SOS Racismo, "the gangs of skinheads are the most apparent form of racism that is settling in Europe, a fact that we believe is directly linked with the growth in Europe and in Spain of extreme right wing parties and the influence that these are having in other sectors".

The impact of immigration and the consequences of racism have once again brought to the light an ever present subject in Spanish society: the discrimination against the gypsies. The press have closely followed an event in which a gypsy family was denied access to a public swimming pool in a town in Andalusia for the simple reason that they were

gypsies. The victims reported the event to the police and have been supported in their claim by the Federation of Cultural Christian Associations of Andalusia (FACCA). Mr Luis Guillermo Cortés, the regional director of FACCA stated that “this is a consummated offence of racism and it is not the first time that access has been denied in this place to persons of gypsy origin”. He believes that there are enough reasons to close down the pool. The Andalusian Ombudsman, who was asked to consider the matter by FACCA, stated that the event was an absolute barbarity. The government’s representative in Andalusia condemned all acts of a xenophobic nature.

The Cultural Week in Fuenlabrada (Madrid) against Racism and Xenophobia was loaded with activities. Under the motto “*Fuenlabrada, a city for integration*” the city town hall¹⁸ invited the Chinese, Arab and gypsy communities settled in the town with the objective of “educating the younger and raising awareness among the older on tolerance and respect for others”. A debate was celebrated to discuss the subject of the coexistence of the Chinese community in Madrid and the event ended with a culinary oriental feast. Other activities included a photographic exhibition organised by the gypsy association Clan Caló and the first anti-racist comic competition, in which children and young people aged between 6 and 18 were awarded prizes. The week presented the first Nelson Mandela film festival and showed films such as *Bwana, Cry Freedom, Life is Beautiful or Schindler’s list*. The social services councillor explained that the objective of the week was to prevent racist and xenophobic attitudes using various tools such as film projection; they are interested in hearing everyone’s opinion about a social subject as important as immigration which is imposing fast changes in society.

In March (2003), in the city of Madrid, SOS Racismo showed three films a day in a bookshop (FNAC) to raise awareness about racial discrimination amongst citizens. Additionally, SOS Racismo has called on political parties to extend voting rights in local elections to non-EU citizens. “We want to know when they will be granted [voting] rights that they should be able to exercise in Spain in the same conditions as EU citizens”.

In Almería, the education centres have taken part in a municipal campaign to raise awareness against racism and xenophobia. The campaign, entitled “This is the way we are”, has been launched by the Social Services department of the town hall of Almería and has the support of the Government Council. Its aim is that the various schools and other social and neighbourhood associations should engage in activities focused on promoting understanding and tolerance. The project has been well accepted by many groups and associations, explained the Social Services Councillor, Ms Arancha Locubiche. The first to join in were the city schools, followed by the adult education centres. “Each centre will engage in the activities that they think will be most effective. We have not imposed anything, the idea being to foster tolerance and promote the fight against racism by allowing each association to be creative. What we do is to offer means and resources, such as tools, flyers, stickers, CD-ROM and posters”, explained Ms Locubiche.

In January, the Barcelona Football Club announced that it would ban access to the Camp Nou football stadium to people with swastikas, which are some times used by the most radical sectors of the *Boixos Nois* (Barça hooligan supporters).

¹⁸ www.fuenlabrada.com (10-12-2003)

In December 2002, twelve Autonomous Communities expressed to the Sports Supreme Council their wish that all obstacles should be removed that prevent minors from taking part in federated sporting activities. The legal advisor of the Madrid Sports Federation rejected the accusation that they had denied the constitutional right to practising sport, because foreigners who do not have a residence permit may take part in municipal team sports and practise sport in their free time. However, he said, “federated sports are regulated by the law and certain conditions must be met”.

Patrick Gasser, in charge of the campaign “UEFA against racism in football stadiums”, has urged football clubs to break away from violent groups. During the launch of the “Guide of good practices against racism”, he said that “the Spanish league, as one of the most important leagues in the world, must be directly involved in this matter”.

7. SUMMARY AND CONCLUSIONS

In a context of increasing violence in general in the country, the social rejection of immigrants and the number of racist attacks have continued to grow during 2003.

Violent racist attacks are generally explained to be due to two factors: on the one hand, there is a sector in society that fears the changes that immigrants bring with them (a sort of fear of the unknown or fear of change); this would include the fear of job competition in the knowledge that immigrants will accept lower wages and worse work conditions, and the association of immigration and crime. This is mainly a problem of ignorance and confusion. On the other hand, the fracture of traditional social structures which started about 20 years ago, has resulted in the formation of groups of marginalised youths whose main occupation is violence. The arrival of immigrants from poorer countries or in political turmoil is just another excuse for these relatively young people to focus their violent hatred. Indeed, the information we have analysed shows that most acts of racial violence are committed by poor, uneducated young men of between 20 and 30 years of age.

As Spain has become a country that attracts immigration and there has been an increase in crime in recent years, there has also been an increase in xenophobic feelings which results from the idea that immigration and crime go hand in hand.

At the same time as these violent and discriminatory attacks become more frequent, a number of groups and movements have appeared for the defence and protection of immigrants. But these organisations are not paid as much attention as would be necessary to educate society and raise awareness about the need to peacefully coexist with immigrants. On the other hand, what is indeed widely reported by the media is the increase in crime, particularly when an immigrant originating from a poor country is involved.

The facts contrast with the idea that Spaniards have of themselves and of the issues that they think are most important for the country. For instance, it is generally thought that crime is one of the most important problems that Spain needs to address, and a large part of the population feels particularly vulnerable in this respect. However, very few people think that immigration and racism are a problem in Spain and even fewer would admit to being racist or contrary to immigration. In fact, the majority of the people say, and probably believe, that drugs are the most important cause of crime and this is corroborated by information that suggests that half of the violent deaths which have occurred in Madrid during 2003 are drug related.

With respect to the solutions put forward to address the problems related to immigration and xenophobia in Spain, we can identify two radically different approaches: the most widely extended is that which expects those who arrive from abroad to integrate and embrace Spanish habits, traditions, language and way of life (assimilation). This proposal does not expect immigrants totally to abandon their traditions, language and culture, but it does suggest that these should be observed in private or in an inconspicuous manner, so that natives do not feel threatened. The less popular approach is that which suggests that racial and cultural diversity should prevail at all cost and immigrants should continue to observe and practice all their traditions.

In between both extremes there are conciliatory positions which propose that both Spaniards and immigrants need to be flexible and whilst Spaniards have to be flexible and accepting of cultural and racial diversity, immigrants need to understand and, to a point, share, the traditions of the country in which they want to settle, observing the laws in force which, in principle, should not be discriminatory and where they are found so to be, they can be challenged.

Last but not least, at the period of reporting the Spanish government has persisted in ignoring the presence of illegal migrants, thereby making them susceptible to abuse and ill treatment, as well as making it difficult for them to exercise the rights that the Law on Foreign Status and the Spanish Constitution grants them. Simply stating that those in an irregular situation are guilty of a serious administrative fault does not sort out a problem which will continue to grow. This is an area which, if left unattended much longer, might become a serious source of conflicts.