



Ref: CommHR/NM/sf 033-2016

Mr Jorge FERNÁNDEZ DÍAZ
Minister of the Interior of Spain

Strasbourg, 1 July 2016

Dear Minister,

Since my visit to Melilla and Madrid from 13 to 16 January 2015, I have been closely following developments regarding the human rights of immigrants and asylum-seekers in Spain, in particular at the borders of Ceuta and Melilla. At the end of that visit, I stressed that irrespective of the challenges that the management of migration flows may pose in certain contexts, Spain must uphold its human rights obligations, in particular those assumed under the European Convention on Human Rights (ECHR) and the 1951 Convention Relating to the Status of Refugees.

I reiterated this point in February 2016, following the adoption by the Spanish Parliament of an amendment to the Aliens Act, which established a special regime for Ceuta and Melilla, stressing that the new provisions did not provide clear guarantees against *refoulement* and collective expulsions nor adequate safeguards for the right of every person to seek and enjoy asylum, irrespective of the way they reach the Spanish territory.

I therefore urged the adoption of a procedural framework to ensure that border police have clear instructions on how to handle mixed migration flows in full compliance with human rights, and notably on how to implement paragraph 2 of the above-mentioned amendment, which provides that rejections at the border must be carried out while fully abiding by Spain's international human rights and refugee protection obligations. I note that, on 30 June 2015, the Ombudsperson of Spain similarly recommended the adoption of implementing regulations to ensure that this amendment is applied in compliance with Spain's Constitutional Court's caselaw as well as with international human rights and refugee protection standards.

Such standards, it should be recalled, enshrine the right for each person to be identified, to have their international protection needs duly assessed, to have access to a lawyer, an interpreter and as appropriate medical assistance. Moreover, Article 13 of the ECHR requires access to an effective remedy to challenge any violation of the Convention of which the persons concerned could allege to be the victims.

However, to my knowledge, no such procedural framework has been adopted and made public as yet. This is all the more a matter of concern to me as I have been informed that, in practice, expulsions of persons without any identification procedure or protection needs assessment have taken place on several occasions in Ceuta and in Melilla, especially since the end of 2015. I have notably been provided with video footages showing summary expulsions to Morocco of persons who managed to cross the fence in Ceuta on 4 and 18 June 2016.

These events further corroborate the conclusions I reached in written comments I submitted in November 2015 to the European Court of Human Rights in two cases (*ND and NT v. Spain*, Applications No. 8675/15 and No. 8697/15) concerning returns of the applicants from Melilla to Morocco. In these conclusions, I point to an established practice whereby migrants who attempt to enter Melilla in groups by climbing the fence surrounding the city are summarily returned by Spain's border guards to Morocco, with returns taking place outside of any formal procedure and without identification of the persons concerned or assessment of their individual situation. I also note that this practice, to which the above-mentioned legal amendments aim at providing legal underpinning, prevents the persons concerned from effectively exercising their right to seek international protection.

Given the seriousness of the human rights violations at stake, I should like to request you to provide me with further information on your authorities' position as regards the adoption of a text regulating the work of border police in Ceuta and Melilla. I would also like to strongly reiterate that the practice of summary expulsions must be stopped.

Looking forward to receiving your reply, I remain

Yours sincerely,

Nils Muižnieks