



REPRESENTACIÓN PERMANENTE DE ESPAÑA
ANTE LA OFICINA DE LAS NACIONES UNIDAS Y
OTROS ORGANISMOS INTERNACIONALES
GINEBRA

[Firma manuscrita]

La Misión Permanente de España ante la Oficina de las Naciones Unidas y otros Organismos Internacionales con sede en Ginebra saluda atentamente a la Secretaría General de las Naciones Unidas (Oficina de la Alta Comisionada para los Derechos Humanos) y tiene el honor de adjuntar comentarios iniciales del Gobierno español a la opinión 37/2012 del Grupo de Trabajo de Detención Arbitraria.

La Misión Permanente de España agradece a la OACNUDH que haga llegar los citados comentarios (junto con la traducción de cortesía al inglés elaborada de manera excepcional) al Grupo de Trabajo y a sus Miembros, a los efectos de que la misma pueda incluirse en el próximo informe del Grupo de Trabajo, de acuerdo con sus reglas de procedimiento y trabajo. Es deseo del Gobierno español que estos comentarios iniciales sean igualmente accesibles al público en la misma manera que la opinión del Grupo.

La Misión Permanente de España desea igualmente transmita al Grupo de Trabajo que el Gobierno de España está actualmente valorando la oportunidad de solicitar la revisión de la mencionada opinión, de acuerdo con las reglas de trabajo del grupo, y que espera que, de solicitarse la revisión, la misma sea convenientemente tenida en cuenta.

La Misión Permanente de España aprovecha esta oportunidad para reiterar a la Secretaría General de las Naciones Unidas (Oficina de la Alta Comisionada para los Derechos Humanos) el testimonio de su más distinguida consideración.

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INITIAL REMARKS BY THE SPANISH GOVERNMENT ON OPINION 37/2012 OF THE WORKING GROUP ON ARBITRARY DETENTION IN RELATION TO MR. ADNAM EL HADJ.

With regard to Opinion 37/2012 of the Working Group on Arbitrary Detention, the Government of Spain wishes to submit the following initial remarks and requests that they be included in the Group's annual report in order for the Human Rights Council to learn of both them and the Opinion simultaneously:

The Spanish Government firstly wishes to reiterate its apologies for not having sent in due time and proper form its response to Mr. El Hadj's complaint, which was received by Note Verbale dated 25 May 2012. This late response led the Group to take its decision on 30 August solely on the basis of the claims contained in the complaint and the investigation made by the Group itself.

The Spanish Government wishes to express its complete disagreement with the Working Group's Opinion, which was received by post at the Permanent Mission of Spain to the United Nations Office in Geneva on 1 October.

The Group states in its Opinion that the Moroccan citizen, Mr. Adnam El Hadj, "was arrested on 8 May 2012 with the intention of deporting him from the country". It says that this detention was arbitrary due to "the absence of an arrest warrant and the lack of access to prompt legal remedies to end the deprivation of his liberty", which would represent a violation of the norms of due process set out in the international instruments of which Spain is a party (Category III), and also due to his supposed deportation from Spain "in contravention of Spanish Law itself" making it impossible for him to submit an appeal (Category IV). The Group also considers the detention to be arbitrary as it was based on "discrimination due to his national, ethnic and social origin, ignoring the essential equality of all persons in the recognition and enjoyment of their human rights" (Category V).

In the Spanish Government's view, these statements are contrary to the facts. The Opinion is based on misleading information that the party deliberately provided. Moreover, the Group has been unable to take into account the State's response, sent in the form of a Note Verbale dated 27 September. It would also seem that the Group's investigations on its own motion did not prove to be sufficiently productive as the Opinion contains statements which are contradicted by established and proven facts, as well as factual errors and contradictions.

According to information available at the Ministry of the Interior and at the Ministry of Justice, Mr. El Hadj was arrested and transferred to the Migration Holding Centre on 28 March 2012 on the basis of an order by Investigating Court Number 2 of Albacete of that same date. This detention by court order was made so as to execute a court order of 28 September 2011 issued by Criminal Court Number 3 of Cartagena in final judgement 407/2011. That court order resolved the deportation of Mr. El Hadj from Spanish territory with a five-year re-entry ban in substitution of the sentence of imprisonment imposed by the same Criminal Court on 18 May 2010 that found him guilty of a charge of robbery with intimidation.

Due to all the above, the Government of Spain considers that:

1. It cannot be said that there was no arrest warrant. The detention resulted from a court order dated 28 March 2012 from Albacete which ordered the arrest so as to proceed with the execution of the deportation resolved by another court order of 28 September 2011 in substitution of the imprisonment sentence for robbery adopted by Court order of 18 May 2010.
2. It also cannot be stated that there was a lack of access to prompt legal remedies to end the deprivation of Mr. El Hadj's liberty as he enjoyed legal representation and the right of appeal in all the legal proceedings which led to the imprisonment sentence of 18 May 2010 and the following court orders of 28 September 2011 and 28 March 2012.
3. Similarly, it cannot be considered that deportation contravened Spanish Law as the deportation order was issued by the Criminal Court of Cartagena, pursuant to Article 89 of the Criminal Code which provides for the possibility for aliens who are non-resident in Spain and who have been handed down a custodial sentence of under six years substituting their punishment for deportation from Spanish territory, unless the Judge, after hearing the Public Prosecutor and the parties, finds reason to execute the sentence in Spain. This process is equally subject to all the procedural safeguards common to the rule of law, including the right of appeal and legal representation, including this being cost-free if necessary.
4. Finally, insofar as the detention resulted from a court order, with all the legal guarantees, and that this is the consequence of a prior conviction and the subsequent legal decision to substitute the punishment resulting from this conviction with deportation, we do not believe either that it can be stated that the reason for detention was "discrimination due to his national, ethnic and social origin".

The rest of the Opinion contains information which is either incorrect or which the party had distorted by alleging ill-treatment and a supposed lack of judicial control on the alleged perpetrators of such ill treatment. These allegations have already been the subject of an enquiry by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Spanish Government is preparing an official response to his enquiry of which a copy shall be sent to the Working Group.

The Spanish Government wishes to reiterate its request for these initial remarks to be included in the Group's annual report.