

## THE INTERNATIONAL DIMENSION OF HUMAN RIGHTS DURING THE POLITICAL TRANSITION IN SPAIN

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1. On September 27, 1976, shortly before the Law on Political Reform was passed, a Spanish Minister of Foreign Affairs addressed the General Assembly of the United Nations for the first time. Mr. Oreja Aguirre began his speech with the following statement:

“My country is undergoing a process of transformation in its internal structures which is leading it, in accordance with the will of the Spanish people, the Government and the Crown, to the establishment of a democratic system based on the recognition of the principle of popular sovereignty”<sup>1</sup>.

After pointing out that human rights are an essential factor in the preservation of peace, — as only by guaranteeing the effective exercise of these rights can an indestructible foundation be built for peace and stability among nations — the Minister of Foreign Affairs announced that the Spanish government had adopted these principles and therefore, as a representative of his government, he would, on the following day, sign the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of December 16, 1966. With this action, Mr. Oreja added, “the Spanish government wants to express its firm intention of making respect for human rights and fundamental liberties a key part of its domestic and foreign policies”.

On April 27, 1977, the President of the Spanish government deposited the instruments of ratification for both covenants with the Secretary General of the United Nations<sup>2</sup>.

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1. *Discursos y Declaraciones del Ministro de Asuntos Exteriores*, Ministerio de Asuntos Exteriores (Ministry of Foreign Affairs), Oficina de Información Diplomática, (Ed.), Madrid, 1978, January, pp. 17 *et seq.*, p. 18.

2. *BOE* n. 103, 30.4.77.

Thus, human rights and Spain's acceptance of precise legal obligations related to them became key factors in Spain's foreign policy during the period of political transition. But, why were the United Nations Covenants chosen instead of the European Convention on Human Rights?

This question did not escape the acute political sensibility of the journal *Cuadernos para el Diálogo*. In an interview with Mr. Oreja Aguirre<sup>3</sup> published November 6, 1976, the following question was posed:

"Why have the United Nations Pacts been chosen instead of the European Convention on Human Rights which provides for better individualized protection of the rights of man by giving citizens the right to appeal directly to the International Court that it created?"

This question made undeniable political sense but was quite uninformed as only member states of the Council of Europe could be parties to the European Convention on Human Rights, and Spain was not a member in November of 1976. Moreover, the Convention does not provide for a direct appeal by citizens to the European Court of Human Rights but rather states that an individual can appeal to the European Commission of Human Rights if he is within the jurisdiction of one of the member states and if he considers himself to be the victim of a violation of one of the rights recognized in the Convention, and then only if the State being accused of the violation recognizes the jurisdictional authority of the Commission to hear individual complaints. (art. 25 of the Convention).

In his reply, Mr. Oreja Aguirre preferred to limit himself to the political aspects of the question — that is, to the political question of individual access to an international court or regulatory organ — and he responded in the following manner:

"Direct appeal by citizens is provided for not only in the European Convention but also in the optional clause of the United Nations Covenant which Spain has not yet signed. It seemed appropriate to take this first step, which has been pending since 1966 when the Covenant was signed, and of course, as I announced in New York, the next step will be to adopt the aforementioned clause"<sup>4</sup>.

The Minister of Foreign Affairs's lack of technical-legal precision is evident: when he spoke of "the optional clause" he was referring to the Optional Protocol of the International Covenant on Civil and Political Rights, and when he alluded to "Spain's adoption of the aforementioned

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3. *Revista Cuadernos para el Diálogo*, 6 November 1976. Reproduced in *loc. cit.* note 1 *supra*, 136-162, pp. 141-142.

4. *Ibidem.*, p. 142.

clause" it seems obvious that he had in mind Spain's signing and ratification of, or accession to, that additional protocol<sup>5</sup>.

The signing and ratification of the International Covenants of the United Nations was, therefore, a first step. And the only important aspect apart from the technical-legal ones, was what that step meant politically: the Covenants had been adopted on December 16, 1966, and Spain — the Spain prior to the beginning of the process of political transition — had not signed them nor, obviously, ratified them.

The political significance just mentioned becomes clear if we keep in mind that fifteen days after the instruments of ratification for the International Covenants of the United Nations were published in the *Boletín Oficial del Estado*, (Official Journal of the State) the instrument of ratification for Convention number 98 of the International Labour Organization (ILO) (regarding the application of the principles of unionization and collective bargaining dated July 1, 1949)<sup>6</sup> was published, followed the next day by the publication of the instrument of ratification for Convention number 87 of the ILO dated July 9, 1948, which addressed union rights and protection of the right to carry out union activities<sup>7</sup>.

The political significance here is equally clear and did not escape the attention of the newspaper *Le Monde*, which made the following observation in an interview with the Minister of Foreign Affairs<sup>8</sup> before the signing of the ILO Conventions:

"The democratization of Spanish unions is at least as important as that of its political institutions. The obstacles to this process are considerable in Spain as in other countries. The bill on union reform that the Suárez

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5. This last did not take place until 2 April 1985, *BOE* n. 79, 2.4.85. On that date, Spain was already a member of the Council of Europe and party to the European Convention on Human Rights, therefore there was nothing strange about the fact that the instrument of accession included the following declaration:

"The Spanish government declares its accession to the Optional Protocol of the International Covenant on Civil and Political Rights and interprets article 5, paragraph 2 of this Protocol to mean that the Committee of Human Rights will not consider any communication from an individual unless it has been proven that the matter has not been submitted or is not being submitted to any other international procedure for its study or resolution."

The declaration is in line with the provisions of article 62 of the European Convention on Human Rights.

6. *BOE* n. 111, 10.5.77.

7. *BOE* n. 112, 11.5.77.

8. *Loc. cit.* in footnote 1 above, p. 134: interview given to Marcel Niedergang of *Le Monde*, published on October 31 and November 1, 1976.

government just sent to Parliament does not satisfy the demands of democratic trade union organizations”.

The Spanish Minister of Foreign Affairs’ answer went as follows:

“The goal of union reform is to assure total freedom to join or organize a union. I do not see how such reform could hinder the democratization process. On the contrary, the Government of the Monarchy feels that this reform is one of the fundamental points of that process without which the set of measures designed to establish democracy in Spain would make no sense. *We must not forget that Spain will soon sign Conventions 87 and 98 of the International Labour Organization*, and that by signing will thereby make a formal commitment to respect union rights”<sup>9</sup>.

In other words, Spain’s acceptance of international obligations in matters of human rights *is one of the key steps in the democratization process during these first moments of political transition*. This, together with free elections in June of 1977, contributed to the normalization of Spain’s relationship with various international organizations made up of democratic states, such as the Council of Europe, the European Communities and the North Atlantic Alliance.

2. On November 24, 1977, in fact two years after the Crown’s Address before the Spanish *Cortes* after Franco’s death (November 22, 1975), and with the unconditional support of all of the political forces representing the Spanish people, Spain was admitted as a Member State to the Council of Europe. Article 3 of the Statute of this international organization states that each one of the member states, “must recognize the principles of rule of law and the right of all people in its jurisdiction to take full advantage of their human rights and basic liberties”<sup>10</sup>.

Spain’s accession to the Council of Europe meant that it did indeed meet the conditions stipulated in article 3 in spite of the fact that at that time Spain did not yet have a Constitution. The political significance of its accession was, consequently, quite clear, and the Spanish Minister of Foreign Affairs could rightly assert in his speech before the Committee of Ministers that:

“Our entrance into the Council of Europe, as with all of the process by which Spain comes into closer contact with other European institutions, is the result of the collective will directed towards the consolidation of

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9. *Ibidem*. Emphasis added.

10. Spain’s instrument of accession to the Statute of the Council of Europe (London, May 5, 1949) is dated November 24, 1977, *BOE* n. 51, 1.3.78.

the structures and the values of the cultural heritage of the West and of its political structures”<sup>11</sup>.

As a sign of the times and as a legal expression of the objectives sought by Spain, the Spanish Minister of Foreign Affairs signed the European Convention for the Protection of Human Rights and Fundamental Freedoms on the day of Spain’s accession to the Council of Europe. This then was Spain’s contribution to what years later would come to be an established practice, with Hungary, the Federal Republic of Czechoslovakia, Poland and Bulgaria following suit and linking accession to the Council of Europe to the signing of the European Convention on Human Rights<sup>12</sup>.

Soon afterwards, Mr. Oreja Aguirre recalled these facts in a speech he gave on January 23, 1978, before the Assembly of the Council of Europe when he stated that the ratification of the European Convention on Human Rights was a foregone conclusion and announced that at that time the Spanish government was studying the following points favorably:

- the signing of the European Social Charter;
- the signing of Additional Protocols 1, 2 and 4 to the European Convention on Human Rights; and
- the acceptance of a system of maximum control and guarantees within the framework of the Convention. Mr. Oreja insisted that this required that declarations be made under articles 25 and 46 thereby accepting
  - a) the competence of the Commission to deal with individual claims, and
  - b) the jurisdiction of the European Court of Human Rights.<sup>13</sup>

The Minister of Foreign Affairs concluded by saying that these measures confirm the Spanish government’s willingness to collaborate on the development of rules and guidelines in International Law in matters concerning human rights. More importantly, it also demonstrates Spain’s intention to contribute to the development of the institutional mechanisms needed to guarantee and monitor these matters because it considers human rights to be an area in which guarantees are even more important than definitions. Thus, according to Mr. Oreja Aguirre, Spain hopes “to help

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11. *Loc. cit.* in footnote 1 above, pp. 98-110, especially pp. 99-100.

12. At the time of Spain and Portugal’s accession, a Member State of the Council of Europe was not obliged legally or politically to sign the European Convention on Human Rights. In subsequent cases, especially after the accession of Hungary, the Republic of Czechoslovakia, Poland and Bulgaria, in practice this became a requirement.

13. *Discursos y Declaraciones del Ministro de Asuntos Exteriores*, Ministerio de Asuntos Exteriores (Ministry of Foreign Affairs), Oficina de Información Diplomática (Ed.), Madrid, November, 1978, pp. 49 *et seq.* and especially pp. 54-55.

avoid selective humanitarianism at the international level by making a double effort to develop both rules and impartial mechanisms to guarantee these rights”<sup>14</sup>.

Spain has kept the vast majority of the promises made by the Minister of Foreign Affairs, as the following data prove:

1) Spain ratified the European Convention on Human Rights in an instrument dated September 26, 1979<sup>15</sup>, a few days before the visit made by their Majesties the King and Queen to Strasbourg (investiture of His Majesty the King as doctor *honoris causa* of the University of Strasbourg on the morning of October 8, 1979, and the speech given by His Majesty the King before the Assembly of the Council of Europe on the afternoon of the same day).

2) Spain signed Additional Protocols 1 and 2 on February 23, 1978, ratified Additional Protocol 2 on May 10, 1982<sup>16</sup>, and much later, in fact almost thirteen years after its signing, ratified Additional Protocol 1<sup>17</sup>.

3) Spain signed Additional Protocol 4 on September 16, 1963<sup>18</sup>, although it has not yet been ratified.

4) Spain introduced a declaration into the instrument of ratification of the Convention which recognized the jurisdiction of the European Court of Human Rights to hear all matters concerning the interpretation and application of said Convention that arose after October 15, 1979. The duration of the declaration was for a period of three years and it stipulated the condition of reciprocity<sup>19</sup>.

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14. *Ibidem*, p. 55. Months later, in his speech to the General Assembly of the United Nations given October 2, 1978, Mr. Oreja Aguirre reiterated the Spanish government's conviction that the principle of non-intervention in domestic affairs cannot be invoked to prohibit the international community from examining serious violations of fundamental human rights, and he insisted that the Spanish government wanted to contribute to the articulation of more efficient procedures to protect human rights. Therefore he announced the government's intention to recognize the jurisdiction of the Committee on Human Rights within the framework of article 41 of the International Covenant on Civil and Political Rights, as well as its proposal to accept the optional protocol attached to this covenant. He stated Spain's support for "the creation of a High Commissioner for Human Rights and for the United Nation's right to constitute and send investigatory missions when circumstances so warranted." *Ibidem*, p. 149.

15. BOE n. 243, 10.10.79.

16. BOE n. 111, 10.5.1982.

17. BOE n. 11, 12.1.1991.

18. Additional Protocol 4 took effect on May 2, 1968, and by January 1, 1992, had been ratified by sixteen Member States of the Council of Europe and signed by another four: Czechoslovakia, Spain, Hungary and the United Kingdom of Great Britain.

19. BOE n. 243, 10.10.79.

5) By ratifying the European Convention on Human Rights, Spain declared its intention to formulate the declaration stipulated in article 25 of said Convention regarding the Commission's competence to receive individual claims as soon as the legislative process following the promulgation of the Constitution would allow. In a declaration dated June 11, 1981, Spain recognized the Commission's competence for a period of two years beginning July 1, 1981, as regarded acts, decisions, deeds or events that occurred after that date<sup>20</sup>.

6) Spain also signed the European Social Charter on April 27, 1978, and ratified it on June 26, 1980<sup>21</sup>.

3. Fulfillment of the promises made by the Spanish Minister of Foreign Affairs before the Assembly of the Council of Europe was facilitated by two facts that contributed in an extraordinary way to proving the Spanish people's determination to institute a democratic system based on the recognition of the principle of popular sovereignty and human rights: the trip made by Their Majesties the King and Queen to Argentina, and the adoption and promulgation of the Constitution.

The parliamentary left, — the *Partido Comunista de España* or the PCE (the Spanish Communist Party) and the *Partido Socialista Obrero Español* or *PSOE* (the Socialist Worker's Party of Spain) — saw in Their Majesties' visit to Argentina a possible endorsement of that country's military dictatorship. As a result, the Socialist parties in the Congress and the Socialists of Catalonia requested that a special session be called of the Standing Committee of Congress so that the Minister of Foreign Affairs could inform them of the motives and circumstances that had led the government to accept the Argentinian government's invitation to the King of Spain to visit that country. The official communiqué said:

“In response to the announcement made by the Office of Diplomatic Information concerning the upcoming visit of the King of Spain, as Head of State, to Argentina, the Socialist Group in Congress requests that the President urgently call a special session of the Standing Committee of the Congress so that the Minister of Foreign Affairs can

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20. *BOE* n. 243, 10.10.79 and *BOE* n. 155, 30.6.1981. Thus Spain accepted the Commission's competence to hear individual cases soon after the ratification of the Convention. Here it is interesting to make a comparison with the French case: France, which became a party to the European Convention on Human Rights in 1950, did not ratify it until 1974 and did not accept the Commission's competence over individual cases until October, 1981.

21. *BOE* n. 153, 26.6.80. The Additional Protocol to the European Social Charter, dated May 5, 1988, still not in effect, was signed by Spain but has not yet been ratified.

inform this body of the motives and circumstances had led to the government's acceptance of this invitation, *taking into account the resolutions passed by the Congress relative to the fundamental rights and freedoms of human beings in accordance with parallel resolutions also adopted by the Consultative Assembly of the Council of Europe on this matter*". (Emphasis added).

On August 28, 1978, the Standing Committee rejected a Socialist motion for the postponement of the visit by a vote of 20 against (*Unión de Centro Democrático* or *UCD*, the Central Democratic Union, and *Alianza Popular* or *AP*, the Popular Alliance) and 16 in favor (Socialists, Communists, Catalanian Minority and the Mixed Group). The *Partido Nacionalista Vasco* (the Basque Nationalist Party) did not attend the session.

Socialists and Communists explained the situation in Argentina at that time and the systematic violation of human rights by its military government. In his intervention, Mr. Luis Yáñez-Barnuevo (Socialist), for example, asked if the King's visit had been demanded by the Argentinian Military Junta as a concession to the vigorous trade relations that existed between the two countries and insisted that in Buenos Aires the trip would be manipulated to represent it as a sign of international support for the Videla regime.

The fears of the minority were not confirmed by the facts as His Majesty the King, in his speech before the Argentinian Military Junta on November 27, 1978, stated the following:

"We are convinced, and the historical changes is undergoing today prove, that change is always possible through pacific means, because problems can be presented and resolved politically. We are also convinced that political order and social peace must be based on the dignity of man, the inviolable rights that are inherent to him and on a deep respect for the Law, because order can and should be built and defended with procedures based on the human aims of established power".

His Majesty the King thus expressed ideas that were already proclaimed in the draft of the Constitutional text approved by the Parliament on October 31, 1978, and ratified by the Spanish people in a national referendum on December 6 of the same year. Spain became a social and democratic state based on the Rule of Law that defends liberty, justice, equality and political pluralism as the supreme values of its legal system (art. 1.1). The article that begins Title I of the Constitution "On fundamental rights and duties" (art. 10), states the following:



“1. The dignity of the individual, the inviolable rights that are inherent to him, the free development of his personality, and respect for the law and for the rights of others form the foundation of political order and social peace.

2. The rules concerning the fundamental rights and liberties recognized by the Constitution will be interpreted in accordance with the Universal Declaration on Human Rights and the international treaties and agreements on these matters ratified by Spain”.

4. The Spanish Government's sound judgement as regards the acceptance of the collective guarantee system instituted by the European Convention on Human Rights is evident. It first accepted the jurisdiction of the European Court of Human Rights in 1979 knowing that this Court could only exercise its jurisdiction in cases of interstate complaints, that is, those brought by another State against Spain, as it is in these cases that the competence of the European Commission of Human Rights is compulsory and not optional (art. 24). Only later, on June 11, 1981, did Spain recognize the Commission's competence with respect to petitions filed after July 1, 1981, by any person, non-governmental organization or group of individuals that by reason of acts, decisions, deeds or events *that occurred after said date* could be considered a victim of a violation of the rights recognized in the Convention and attributable to Spain<sup>22</sup>.

In 1979 and in 1982 the jurisdiction of the Court was recognized for periods of three years. The 1979 declaration included in the instrument of ratification of the European Convention on Human Rights said that, in accordance with the provisions of article 46, for a period of three years beginning October 15, 1979, Spain would recognize

“as compulsory by law and without any special agreement, and on the condition of reciprocity, the jurisdiction of the European Court of Human Rights to hear all matters related to the interpretation and application of said Convention that arise after October 14, 1979”.

These conditions were reiterated in the declarations dated September 24, 1982, and October 9, 1985, although in the latter, the Court's jurisdiction was accepted for a period of five years. One more step was taken on October 10, 1990, when Spain recognized the jurisdiction of the European Court of Human Rights for a period of five years beginning on October 15, 1990, with the same conditions established in the October 9, 1985, declaration, but further stipulated that “the current Declaration [would] be automatically renewed for subsequent periods of five years if no

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22. BOE n. 155, 30.6.81.

notification to the contrary [was] made before the expiration of the period in course"<sup>23</sup>.

The acceptance of the Commission's jurisdiction over applications brought by individuals occurred in a similar fashion: the June 11, 1981, declaration was renewed in 1983 and 1985. The October 18, 1985, declaration, however, in addition to accepting the competence of the Commission in the framework of article 25 of the Convention for a period of five years and under the same conditions as the 1981 declaration, added that "the current Declaration [would] be automatically renewed for subsequent periods of five years if no notification to the contrary [was] made before the expiration of the period in course"<sup>24</sup>.

On January 1, 1992, therefore, Spain was not part of the minority group of States that accepted the Commission's competence to receive individual petitions or the jurisdiction of the European Court of Human Rights for an indefinite period of time; but, together with Portugal, it introduced automatic renewal in its unilateral declarations within the framework of articles 25 and 46 of the European Convention on Human Rights, which was, without a doubt, a positive step and in keeping with the Minister of Foreign Affairs's promise to the Assembly of the Council of Europe on January 23, 1978, to accept the "maximum system of international guarantee within the framework of the Convention"<sup>25</sup>.

The most committed position and the one most favorable to the jurisdiction of the jurisdictional organs of Strasbourg (beginning in 1985 as

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23. *BOE* n. 247, 15.10.90.

24. *BOE* n. 292, 6.12.85. Therefore, the system of automatic renewal was accepted for the Commission earlier than it was for the Court.

25. Eight states accepted the Commission's competence based on article 25 of the Convention, for a period of three years (Austria, Cyprus, Greece, Italy, Liechtenstein, San Marino, Switzerland and Turkey); eight for a period of five years (Germany, Belgium, Denmark, France, Luxemburg, Malta, Norway, and the United Kingdom of Great Britain); five States accepted it for an indefinite period of time (Finland, Ireland, Iceland, the Netherlands and Sweden). Spain and Portugal accepted it with the conditions marked in the text (the period for the Portuguese declaration was two years, for Spain's it was five years).

As for the jurisdiction of the European Court of Human Rights (art. 46 of the Convention), seven States accepted for a period of three years (Austria, Cyprus, Greece, Italy, Liechtenstein, San Marino and Turkey); ten for a period of five years (Germany, Belgium, Denmark, France, Iceland, Luxemburg, Malta, Norway, the United Kingdom of Great Britain, and Sweden); four for an indefinite period of time (Finland, Ireland, the Netherlands and Switzerland). Spain and Portugal accepted with the conditions marked in the text (the period for the Spanish declaration is five years, even though the declaration will be automatically renewed for new five-year periods if there is no notification to the contrary made before the end of the period in course; the Portuguese declaration is for two years.)

regards the Commission and 1990 as regards the Court) is undoubtedly due to internal political factors, and, in my opinion, to the fact that reality has not born out initial fears about the European system for the protection of human rights. In 1979 and 1981 different sectors of public opinion almost certainly feared that the Commission and the Court, in short the European Convention on Human Rights, could be used by destabilizing forces to harm the recently established democracy. The facts, however, quickly proved that the Commission and the Court are independent jurisdictional bodies that help to strengthen the Rule of Law and that they have never, during their long existent, been susceptible to political manipulation by antidemocratic groups (the I.R.A., Baader-Meinhoff, the Red Brigade, E.T.A. etc.).

5. The same sound judgement is evidenced in the reservations and interpretive declarations Spain made when it ratified the European Convention on Human Rights.

The terms 'reservations' and 'human rights' seem to be incompatible at first glance. But reservations are authorized in article 64 of the European Convention on Human Rights, and practice has shown that many States that are party to the Convention formulate reservations and interpretive declarations at the time of ratification.

In 1979, Spain reserved the application of:

"1. Articles 5 and 6, to the extent that they were incompatible with dispositions that are contained in Title XV of the Second Treaty and Title XXIV of the Third Treaty of the Code of Military Justice on the disciplinary system of the Armed Forces.

2. Article 11, to the extent that it is incompatible with articles 28 and 127 of the Spanish Constitution"<sup>26</sup>.

In addition, Spain declared that it interpreted the provision "of the last phrase of paragraph 1 of article 10 as compatible with the system of organization of radio and television broadcasting in Spain" and the provisions of articles 15 and 17 in the sense that "they permit the adoption of the measures contemplated in articles 55 and 56 of the Spanish Constitution".

The provisions of the *Código de Justicia Militar* (Code of Military Justice) mentioned earlier were replaced by those included in Chapter II, Title III, and Chapters II, III and V of Title IV of Ley Orgánica 12/1985 (Organic Law 12/1985), dated November 27, on the *Régimen Disciplinario de las Fuerzas Armadas* (Disciplinary System of the Armed Forces) that

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26. *Vid.*, footnote 15 above.

went into effect on June 1, 1986. The legislation amended the previous law in order to reduce the duration of punitive detentions that can be imposed without judicial intervention and it increased the procedural safeguards for the affected individuals; nevertheless, Spain *has kept its reservation to articles 5 and 6* to the extent that they might still be incompatible with the provisions concerning the disciplinary system of the Armed Forces<sup>27</sup>.

As regards Additional Protocol 1 — signed by Spain on February 23, 1978, and ratified on January 12, 1991, almost thirteen years after the signing — and with the hope of avoiding any uncertainty as to the application of article 1 of the Protocol (the first section of which states that every natural or legal person is entitled to the peaceful enjoyment of his possessions, and that no one can be deprived of his property except for reasons of public utility and under the conditions provided for by Law and in accordance with the general principles of international law) Spain formulated the following reservation based on article 33 of the Spanish Constitution:

- “1. The right to private property and to inheritance is recognized.
2. The social function of these rights will limit their content, in accordance with the law.
3. No one can be deprived of his/her goods or rights without just cause based on public utility or social concern, and upon payment of the appropriate compensation and in accordance with the provisions of the law”<sup>28</sup>.

The determination of the validity and effects of these reservations and declarations is not Spain's responsibility, but rather the responsibility of the European Court on Human Rights as is made clear in the April 29, 1988, decision in the *Belilos* case<sup>29</sup>.

In any case, the number of reservations and interpretive declarations formulated by Spain is low when compared to those of other States that are party to the European Convention on Human Rights.

6. Spain's accession to the Council of Europe and the subsequent ratification of the European Convention on Human Rights contributed, as

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27. *BOE* n. 234, 30.9.86.

28. *BOE* n. 11, 12.1.91. In accordance with article 5 of the Additional Protocol, Spain declared that it reiterates its declarations regarding articles 25 and 46 of the Convention, and thereby recognizes the Commission's competence and the jurisdiction of the Court over matters which arise after the date of deposit of the instrument of ratification, and especially over those expropriatory cases initiated in the domestic arena after said date.

29. *Publications of the European Court of Human Rights*, Series A, Vol. 132, Strasbourg, 1988.

the above analysis indicates, to the process of democratic transition and the establishment and consolidation in Spain of a government based on the Rule of Law. Reference to the international dimension of human rights, in fact, was all but obligatory during the years of the transition beginning with the Crown's Address of November 22, 1975, and the *Ley para la Reforma Política* ( Law for Political Reform) until the adoption of the Spanish Constitution on December 6, 1978.

Spain is a party to the European Convention on Human Rights and to its Additional Protocols 1 and 6; it has signed Additional Protocols 4 and 7, although they have not yet been ratified; it is likewise a party to the European Social Charter<sup>30</sup>, the European Convention for the Repression of Terrorism<sup>31</sup>, and the European Convention for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment<sup>32</sup>.

As regards the mechanisms for jurisdictional guarantee established by the European Convention on Human Rights, Spain has accepted the competence of the European Commission of Human Rights to hear individual claims as well as the jurisdiction of the European Court of Human Rights.

The promises made January 23, 1978, before the Assembly of the Council of Europe have been fulfilled almost in their entirety. Therefore it is hoped that in the future Spain will put this same emphasis on the *development* of a European system for the protection of human rights — as the European Convention is no more than a first step towards establishing a universal guarantee of some of the rights stated in the Universal Declaration of Human Rights — and not be satisfied with the *mere administration* of the collective achievements already attained, however important they may be<sup>33</sup>.

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30. *Vid.* footnote 21 above.

31. *BOE* n. 242, 8.10.80.

32. *BOE* n. 159, 5.7.89.

33. In this regard, it is surprising that Spain has not signed Additional Protocol 9, which was opened for signature in Rome on November 5, 1990, as this Protocol perfects the judicial mechanism for oversight and enforcement by recognizing the active legitimacy of an individual to bring suit before the European Court of Human Rights, a right which is currently only enjoyed by the Commission and the State or States concerned (art. 48 of the Convention).

## SUMMARY

The international dimension of human rights was extraordinarily relevant both politically and legally during the political transition in Spain.

The signing and ratification of the United Nations International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights in 1976 and 1977 respectively, are clear examples of the relevance of the international dimension of human rights during those key years.

The same is true, and perhaps to an even greater extent, in the context of the Council of Europe. On the very day of Spain's accession to the Council, November 24, 1977, and as a sign of the times and manifest testimony to the objectives sought by Spain, the Spanish Minister of Foreign Affairs signed the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is undoubtedly the most important achievement of the Council of Europe.

Soon afterwards, in a speech given on January 23, 1978, to the Assembly of the Council of Europe, the Minister of Foreign Affairs announced that the ratification of the European Convention on Human Rights was a foregone conclusion, and that the Spanish government was then studying the following measures: the signing of the European Social Charter, the signing of Additional Protocols 1, 2 and 4 of the European Convention on Human Rights, and the acceptance of a system for maximum oversight and enforcement of the rights within the framework of the Convention which would require the formulation of the unilateral declarations that are mentioned in articles 25 and 46 of said Convention regarding the Commission's competence to hear individual cases as well as the jurisdiction of the European Court of Human Rights.

All of these promises were kept: Spain ratified the European Convention on Human Rights on October 10, 1979; it signed and ratified Additional Protocols 1 and 2 (although it took almost thirteen years from the signing on February 23, 1978 to ratify Protocol 1); it signed (though has not yet ratified) Additional Protocol 4; it recognized the jurisdiction of the European Court of Human Rights — which in accordance with the Convention is optional — in the instrument of ratification for the Convention; on October 10, 1979, it announced its intention to accept the competence of the European Commission of Human Rights to hear individual cases; it recognized that competence in a declaration dated June

11, 1981; and finally, it signed and ratified the European Social Charter in 1980.

Spain, therefore, took on a great number of conventional obligations in the area of human rights during the transition period, especially in the context of the Council of Europe. Therefore it is reasonable to believe that Spain will maintain this openly favorable attitude towards the progressive development of a European system for the protection of human rights and not limit itself to the mere administration of the collective achievements already attained within the system.