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Human Rights and immigration in Barcelona: universalizing and differentiating citizenship

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From international to local human rights: the issue of immigrants' rights and citizenship

Human rights – as commonly defined in international treaties and documents, including the Universal Declaration of Human Rights - are the interdependent and indivisible rights of the person, recognized universally and in accordance to the principle of non discrimination. The main body of human rights legislation comprises civil and political rights (the “first generation” rights: to freedom, life, individual and family life, vote, and so on), and economic, social and cultural rights (the “second generation” rights: to health, to education, to housing, to work, and so on). Apart from these two categories, there is also a so called third generation, that of collective rights, which so far has not been defined in a binding treaty. Collective rights are special rights recognized to groups defined by a certain common identity. Based on the historical and socio-economic and cultural conditions upon which groups and their identities are defined, Kymlicka provided a list of three different types of collective rights: 1) self-government rights (of indigenous peoples on their land), polytechnic rights (of ethnic minorities in respect to the preservation of their religion, language, and culture, but also their participation and visibility in public life), and 3) special representation rights (including affirmative action and quotas reserved to groups - like women - that are subject to structural and systemic discrimination).¹

¹ Kymlicka, W. 1994, “Multicultural Citizenship. A Liberal Theory of Minority Rights.” Oxford: Clarendon Press. See also Appelt, E., Jarosch, M. 2000, “Combating Racial Discrimination: Affirmative Action as a Model for Europe,” Oxford, New York: Berg.

In the international system of human rights, the state has the obligation to protect, guarantee, and fulfill all these rights, especially those inscribed in international covenants. However, in Western liberal democracies, these rights are implemented and protected in different ways and to different degrees. With respect to civil and political rights, these are often recognized by the state and protected by courts on a universal basis. Economic, social and cultural rights are usually not actionable in courts: they have a “programmatic” character, and are usually safeguarded through state social and welfare systems. With respect to collective rights, there is still a limited consensus among Western liberal states – and many scholars - on the opportunity to recognize separated identities and the rights of minorities, because these rights challenge the liberal idea of formal equality. Different states provide different degrees of recognition of collective rights, from the universalist model (which is usually reluctant to recognize collective rights) to the multicultural model (the most open to recognition) of citizenship.² States also “discriminate” with the respects to the subjects of rights, distinguishing between its citizens and non-citizens. Civil rights that concern some fundamental aspects of human life (right to life, personal freedom) are usually recognized to all the people on the territory of the state. Political rights are usually conferred only to full citizens, with some exceptions in respect to local elections. Finally, most states put limits to the extent to which non citizens are entitled to access their welfare systems.

International treaties usually provide for some kind of monitoring system centered on a committee or a court to guarantee the state’s implementation of human rights. The spectrum of monitoring systems goes from state reporting (the weakest form) to the reception by either a committee or a court of individual or group complaints in which a violation of the rights of the treaty by the state is claimed (the strongest form). The strongest form is to be found mostly in civil and political rights treaties. Depending on the system, complaint processing may refer to mediation as a tool to redress the violation of a right. Depending on the institution – a committee or a court with law enforcement power – the outcome of the process may be a simple “opinion” or a binding “judgment” (like in the case of the European Convention of Human Rights).³

With respect to this legal and institutional framework, in this paper I present a different use of human rights discourses and systems: that of the Municipality of Barcelona. This system is centered on the *Regidoria Drets Civils* (City Department for Civil Rights; hereinafter: RDC or *Regidoria*), and is supported by the work of what we could define as two “monitoring” bodies: the *Oficina per la No Discriminació* (Office for Non Discrimination; hereinafter: OND), which receives complaints of discrimination and treat them proposing either mediation or legal counseling, and the *Centre Inter-religiós* de Barcelona (Inter-religious Center of Barcelona; hereinafter: CIB), which works with religious communities and supports their religious freedom. The human rights to which these two bodies refer to are the Universal Declaration and a city charter on human rights. The scope of this paper is to evaluate the action done by the Office and the Center in favor of immigrants’ rights. The human rights issues that can be raised with respect to immigrants are many, from the right to life and personal freedom (in case of violence or illegal detention), family rights (family reunion), and the all types of discrimination that they can suffer concerning many other rights. Immigrants *qua* minorities are also obviously concerned with group rights. Some of these issues are directly related to problems that immigrants face also or exclusively in cities such as housing segregation,

² Although I have it clear, here I will not dwell upon the inner tensions within human rights themselves between universality and difference. On this see Friedman, M. et al. (eds) 2000, “Rights and Reason: Essays in Honor of Carl Wellman,” Dordrecht, Boston: Kluwer Academic Publisher.

³ Nowak, M.2003, “Introduction to the International Human Rights Regime,” Leiden, Letchworth, Herndon: Martinus nijhoff Publishers.

unemployment, social exclusion, and lack of participation.⁴ This paper, in a sense, presents the case of a local institution that deals with at least some of these problems by adopting the language and institutional framework of human rights.

Before formulating my research questions in more detail, the adoption of a human rights discourse at the local level and the protection that cities may offer to immigrants' rights need to be further contextualized by highlighting the "borders" of such action. With respect to the human rights legal and institutional framework that we have just seen, the establishment of a human rights machinery at the local level raises the obvious question of the role that local administrations can play in the protection of human rights vis-à-vis the state's. Cities – at least in Europe - cannot pass criminal law provisions that sanction violence or harassment against the person, or anti-discrimination legislation. Municipalities usually have some discretionality in regulating the enjoyment of some civil rights, like the right to demonstrate in public, or the right to association. Depending on their resources and political will, municipalities can invest in welfare policies – like public housing – but most of the resources to satisfy economic and social rights will usually come from state programs. Finally, cities can contribute in the protection of cultural and minority rights by enacting policies in areas of language, religion and participation, which are usually labeled as "multicultural policies."⁵ In the light of these different range of competences and spaces for action, a local machinery that wants to guarantee the enjoyment of human rights will have to turn in some cases to the local administration, and in other cases to turn supra-local levels of governments. Concerning this, the case of Barcelona raises the question of possible political interference in the work of the human rights institution because the latter is located within the local government, and therefore lacks at least the formal independence that international committees and courts usually enjoy.

With respect to the specific question of immigrants' human rights, then, we have to further consider the extent to which a local administration can challenge the restrictions to human rights imposed by state citizenship. And this in two respects. One is the legal notion of citizenship: the "citizen" is the legal status on the basis of which many human rights are enjoyed by the "person." With respect to their formulation, human rights and citizenship rights present many similarities, but in the case of immigrants they present substantial differences concerning entitlement and realization, with different "degrees" of citizenship starting from regular down to irregular immigrants. Usually, as I have already said, immigrants are often denied access to economic and social "welfare" rights. Human rights oppose to these restrictions an idea of openness supported by the principle of non discrimination (usually on the ground of race, ethnicity, national origin). The other notion is cultural: legal citizenship is underpinned by those set of values and habits that are supposed to define "the" people of a state. The tension here is between "alien" and "autochthon" cultures, which is triggered by the attention that human rights pay to minorities and their specific needs (rights). Both the legal and the cultural notions of citizenship determine those exclusionary mechanisms that are not part of the inclusionary ideology of human rights. While assuming that human rights will not abolish citizenship, at least not in the near future,⁶ at the same time we can say that, broadly speaking, any action to promote human rights for immigrants is, on the one hand, an effort towards the *universalization* of legal citizenship. On the other, within the same process there is also an effort towards the *differentiation* of the cultural notion of citizenship.

⁴ Musterd, S., Ostendorf, W. 1998, "Urban Segregation and the Welfare State. Inequality and Exclusion in Western Cities, London," New York: Routledge.

⁵ Rogers, A., Tillie, J. 2001, "Multicultural Policies and Modes of Citizenship in European Cities," Aldershot, Burlington: Ashgate; Musterd, S., Ostendorf, W., Breebaart, M. 1998, "Multi-Ethnic Metropolis: Patterns and Policies," Dordrecht, Boston, London: Kluwer Academic Publishers.

⁶ On human rights as the foundation of a "world citizenship," see for example Archibugi, D., Held, D., and Köhler, M. (eds.), 1998, "Re-imagining Political Community: Studies in Cosmopolitan Democracy," Cambridge, UK: Polity Press.

In the light of the above considerations, the general question that I want to answer is: what kind of citizenship is granted to immigrants by the “universalizing” and “differentiating” action of the Barcelona human rights system? Answering this question will imply focusing on the two monitoring bodies of the RDC – the OND and the CIB – and answering a set of sub-questions: on what immigrants’ issues and rights have the OND and the CIB intervened? How has they intervened? What has been the outcome of this intervention? If not entirely, in what rights has it been successful and in what rights has it “failed”? And possibly: why? The paper starts with a brief introduction of the urban context from which the RDC, the OND and the CIB generate, and in which they operate: the so-called “Barcelona model.” We will look also at the socio-economic conditions of immigrants in Barcelona, and the way in which the municipality has dealt with them. Then, I will proceed introducing the RDC and the local human rights document of the city: the European Charter for the Safeguarding of Human Rights in the City. After that, I will analyze separately the specific institutional features of the OND and the CIB, and their work on immigrants’ rights. In the case of the OND, the analysis will separate civil and political rights from economic, social, and cultural rights, and will consider for each of these areas the relevance of the regular/irregular status of the immigrants involved in the cases. At the end of the paper, I will draw my conclusions on such analysis, turning back to the issues of the universalization and differentiation of citizenship rights.

The Barcelona model and immigration in the city

Introducing Barcelona cannot but imply to make reference to the so-called and long studied Barcelona model. This model combines neo-liberal ideas of efficiency with more citizen- and social-oriented empowering strategies of the left that governs the city. Since 1992, when it hosted the Olympic Games, the city has intensified urban planning and started a process of renovation based on joint private-public partnerships, transiting from an industry- to a service-based local economy boosted by tourism.⁷ The Barcelona model has also been studied as an example of good and innovative administration open to citizens: the local government enacted measures of decentralization of funding and competences to the District level in areas such as urban planning and delivery of social services. The municipality also promoted initiatives of public participation in the decision-making process of Districts.⁸ In this process of participation, information is supposed to play a key role in making aware the city population of the topics under discussion, on which reasoned decisions are supposed to be taken.

At the same time, this model has produced also some social drawbacks, and has not been entirely successful. Urban renovation implied an increase of the cost of renting or buying housing in the market, pushing also the middle-class to try to rely on the limited public housing stock.⁹ With respect to this, there is probably another factor to consider: the geographical limits of a city that is closed between sea and the mountains, and in which land is becoming a scarce and therefore precious good. At least at its beginning, the transition to the new service economy and the process

⁷ See Borja, J. (ed.), 1995, “Barcelona, un modelo de transformación urbana,” Quito:PGU-LAC; Newsweek International, “The Barcelona Model,” February 2, 2004

⁸ Tomás, M., 2001, “Local Government and Local Democracy. A Case Study: Barcelona,” WS 21: Grenoble Joint Sessions. Gomà; R., Brugé, J., 1994, “Public Participation in a Decentralized City: The Case of Barcelona,” Barcelona: Institut de Ciències Polítiques i Socials Working Paper n.84.

⁹ Interview with Lluís Fajari i Agudo, 17 February 2005.

of de-industrialization left many unemployed.¹⁰ Furthermore, in respect to decentralization and participation, citizens' effective contribution has been uneven.¹¹ Amorós found, for example, that in the area of participation, while the managerial reforms related to decentralization were somehow achieved, the same degree of success was not achieved with respect to some important political objectives and the reduction of inequalities.¹² Finally, the massive arrival of tourists has caused great problems to the city, to the extent that in 2005 the city passed an *Ordenança de mesures per fomentar i garantir la convivència ciutadana a l'espai públic*¹³ (Ordinance on measures to promote and guarantee citizens' sharing of public space) which put a strong focus on people's "obligations" and provides administrative penalties for noise and graffiti but also prostitution, the selling of illegal products on the street, and mendicancy. The ordinance attracted some criticism from many NGOs and also from Manuel Castells, who threw doubts on the limits on the "law and order" approach of this measure.¹⁴

Immigrants' conditions in Barcelona are to be framed within both the employment opportunities that the city has offered to immigrants but also in terms of the social drawbacks of the Barcelona model. Especially in the last decade, the number of immigrants that arrived in Barcelona has enormously increased. These people did not always come from Latin American countries, from which most immigrants to Spain once came: many arrived from Africa and Asia. Between March 1996 and January 2005 the foreigners registered in Barcelona jumped from 29.354 to 230.942. Among non EU citizens, the absolute majority of foreigners is of Ecuadorians (31.828) followed by Peruvians (15.037) and Moroccans (14.508). While less numerous than the above mentioned groups, between 2004 and 2005 arrivals from Bolivia, China, and Pakistan increased of respectively 72%, 32.4%, and 17.6%. Data show that the huge majority of immigrants arrived in the city between one and five years ago.¹⁵ Immigrants have also tended to concentrate in some specific Districts: in 2002, the 49.1% of the foreign population of the city lived - in order of decreasing concentration - in *Ciutat Vella*, *Eixample*, and *Saints-Monjuïc*. At the same time, the number of immigrants with no residence grew between 2001 and 2002 from 1,584 to 4,432 (179.8% increase).¹⁶ With respect to employment, in the 1990s many women from Latin America concentrated in the domestic service sector. Immigrants can be found in the industrial sector (Polish, Moroccans), in the agricultural sector (Africans), but also in the informal economy (Moroccans).¹⁷

In respect to immigration, the municipality has showed a certain degree of attention in terms of social policy, in which we can actually see concern for human rights issues. In the Municipal Plan of the city there is a section on immigration that defines the administration strategy of intervention based on the principles of equality, social cohesion, cohabitation, integration, cultural diversity, and participation. Intervention is supposed to take place in respect to the coordination of city service,

¹⁰ Morén-Alegret, R., "Tuning the Channels: Local Government Policies and Immigrants' Participation in Barcelona," in A. Rogers and J Tillie (eds.) 2001, "Multicultural Policies and Modes of Citizenship in European Cities," Aldershot, Burlington: Ashgate.

¹¹ Gomà; R., Brugé, J., 1994.

¹² See; Amorós, M. 1995, "Decentralization and New Governance: A Comparison Between Barcelona and Birmingham", Working Paper n.110, Institut de Ciències Polítiques I Socials.

¹³ Butlletí Oficial de la Província de Barcelona, n.20, Annex 1, p.14, 24 January 2006.

¹⁴ Castells, M., "Incivismo: Local y Global," La Vanguardia, 3 September 2005.

¹⁵ Ajuntament de Barcelona, 2005 "Informes Estadístics: La població estrangera en Barcelona. Gener 2005."

¹⁶ Ajuntament de Barcelona, 2005 "Informes Estadístics: La població estrangera en Barcelona. Gener 2005."

¹⁷ M. Naïk, 2001, "Las aportaciones de la inmigración al proceso de metropolización: el caso de Barcelona," in *Revista Electrónica de Geografía y Ciencias Sociales*, n.94 (72); Jodar, P. et al., 1991, "La Confecció submergida, característiques socio.econòmiques del sector de la confecció a Sta. Coloma de Gramanet," Barcelona: Eumo Editorial/Ajuntament de Sta Coloma de Gramanet (L'Entorn 21).

the use of immigrants' language, religion and worshipping, "civic" rights, and access to education, health services, housing, and employment.¹⁸ The role of the OND is specifically mentioned in respect to civic rights and its monitoring functions. With respect to specific measures, the municipality provides a virtual residence certificate to immigrants – legal or illegal - which allows them to access health services on an equal footing with Spanish citizens.¹⁹ Within the *Regidoria Participació Ciutadana* (City Department for Participation), a *consell* (council) was set up to promote participation.²⁰

At the same time, the administration has also adopted a "law and order" approach to immigration that is more focused on security issues. For example, with respect to the city ordinance on the use of public space, it is clear that there are phenomena, like prostitution and the selling of illegal products, in which immigrants women and men are usually involved including as victims. *SOS Racisme de Catalunya* contested that the Municipality was actually criminalizing immigrants for behaviors that need a wider consideration of the immigrants' poverty and overall social and economic status in the city.²¹

The RDC and the European Charter for the Safeguarding of Human Rights in the City

The RDC and its human rights work closely reflect the liberal and leftist political values of the city. The RDC was established in 1995 by Agusti Soler, a member of *Esquerra Republicana de Catalunya* (Republican Left of Catalonia; hereinafter: ERC) and presently a NGO activist. Soler became the first *Regidor* (Head of City Department) of the RDC, to whom three women followed: all of them but one – a member of a Green group allied to the ERC - were also ERC members. Although the RDC refer in its name only to civil rights, it has actively promoted a knowledge and culture of human rights at large. The RDC funds cinema festivals, exhibitions, and competitions related to human rights topics. Among the groups that have been targeted for some of these initiatives there are women, children, and gay, lesbian, bisexual, and transgender people. Interestingly, the theme of immigration does not pop up so often in this area of the Department's action.

As I have anticipated, the human rights catalogue to which the *Regidoria* and its internal body refer to are the Universal Declaration of Human Rights and the European Charter for the Safeguarding of Human Rights in the City. This Charter was "ratified" by the City Council on the 21 of July 2000, but is not as such a binding legal tool. This document generated from a city network, the European Cities for Human Rights. The RDC and the Catalan Institute for Human Rights played a crucial role in the process that led to the elaboration of the Charter and the Charter's content itself. The Charter contains a list of all human rights, and for each of them it attempts to specify the role of local administrations. At the same time, the Charter also enlists new "urban" rights that look at crucial human rights issues emerging at the city level. In the area of the "civil and political rights of local citizenship," the Charter mentions the right of political participation, of association, meeting and demonstration, the protection of private and family life, and the right to information "in relation to

¹⁸ Ajuntament de Barcelona, Municipal Plan, www.bcn.es/diversa/plamunicipal_ing.htm, accessed 18 May 2007.

¹⁹ See OND, www.bcn.es/ond/en/fitxa_pais_angles.doc, pp.135-196, accessed 12 May 2007. Morén-Alegret, R., "Tuning the Channels: Local Government Policies and Immigrants' Participation in Barcelona," in A. Rogers and J. Tillie (eds.) 2001, "Multicultural Policies and Modes of Citizenship in European Cities," Aldershot, Burlington: Ashgate.

²⁰ For more information, see the city's web site at www.bcn.es/participacio/en/c_sectorials.htm, accessed 10 May 2007.

²¹ See SOS Racisme, www.sosracisme.org/reflexions/pdfs/alegacionssos.pdf, accessed 17 May 2007.

the social, economic, cultural, and local administrative life” (Article XI). In the area of “economic, social and cultural rights of accessibility,” the Charter recognizes a right “to the public services of social protection” (Article XII), the right to education, to work, to culture, to a home, and to health. With respect to collective and group rights, the Charter refers to the right to the environment, to a sustainable city, and the right to cultural, linguistic and religious freedom whereby municipal authorities guarantee. Concerning the latter right, the Charter states that boys and girls belonging to a minority linguistic group can study their maternal language, and that the enjoyment of religion freedom is considered from an “individual and collective” perspective (Article III). Finally, Article IV states that “The most vulnerable groups and citizens have the right to enjoy special measures of protection.”²²

The OND: an anti-discrimination agency

The OND’s web site describes the Office as “an orientation service for the defence of rights of the persons in general, with a special attention to groups who are discriminated against for reasons of gender (sex and sexual orientation), cultural identity (immigration and cultural minorities), physical and mental health (disabilities, chronic illness, AIDS/HIV and addictions) and age (especially young children and elderly people) of the city of Barcelona.”²³ In practice, the OND mainly defends human rights by both receiving complaints of discrimination and doing human rights education in schools and other private and public entities. In 2006, the OND staff comprised five officers, a psychologist, and the head of the office. Furthermore, three lawyers from the *Associació Catalana per a la Defensa dels Drets Humans*²⁴ (Catalan Association for the Defense of Human Rights; hereinafter: the ADDH) provide legal counseling to the OND staff and its clients. The three lawyers are specialized in the areas of, respectively, labor, criminal, and immigration law.

Here, I will focus on the complaint procedure, which actually replicates the monitoring mechanisms of international committees and courts. Before actually seeing on what kind of complaints related to immigrants’ issues and rights the OND has intervened, it is the case to provide some information on the kind of complaints that the OND processes, and the methodology it employs to tackle its cases. First, we have to distinguish between complaints that concern supposed cases of discrimination, and simple requests of information or legal counseling.²⁵ Complaints of discrimination may be brought by the “victims” of discrimination, or a witness, or an NGO, and can be filed against individuals, private entities like enterprises and companies, or the administration: in 2005, complaints against these three categories of “agents” constituted respectively the 14.71%, the 34.8%, and the 52.49% of the total amount of cases.²⁶ At the moment of filing a complaint, a case officer will identify 1) the right at stake in a complaint of discrimination, and 2) the ground on which the supposed discrimination has occurred, or the group identity or affiliation of the person that is claimed to have been victim of discrimination. This operation is done pretty freely by the OND staff (not the lawyers) according to their personal perception of the stakes of the case, or the perception of the

²² See the Charter and more information about the European Cities for Human Rights at www.institutdretshumans.org/index.php?lang=en, accessed the 17 May 2007.

²³ See OND, www.bcn.es/ond/en/qui.html, accessed 12 May 2007.

²⁴ The ADDH was established in 1986 within the Commission for the Defense of Human Rights which is, in turn, an internal commission of the *Col·legi d’Advocats de Barcelona*, the city Bar Association.

²⁵ In 2005, requests of information and legal counseling made up the 51.67% of the complaints filed with the OND (Source: OND, Memòria 2005).

²⁶ Source: OND, Memòria 2005.

person that reports a case.²⁷ At this stage, the complaint may be referred to another office or municipal authority for a more appropriate treatment. The OND can also instigate legal proceedings if the case presents facts that delineate a criminal responsibility of the discriminator. In all other cases, the OND elaborates a strategy of intervention that may focus either on mediation or legal counseling and the possibility – sometimes the opportunity – for the complainant to go to court. The decision by the complainant of adopting either one or the other strategy is irreversible. If the claimant opts for mediation and the respondent agrees, both meet at the OND and possibly a solution (the remedy) is found. Interested NGO can participate in the process. In case a complaint is filed against a public authority, the OND can also attempt a “vertical mediation” by contacting the authority and negotiating a solution on behalf of the claimant. If the complainant opts for court, the OND will provide legal counseling but will not itself go to court.²⁸

Finally, with respect to complaints the first thing that we have to observe is that the overwhelming majority of the cases treated by the OND between 1999 and 2006 regarded “immigrants:”

[TABLE 1 HERE]

The figures show that, until 2005, an average of more than 40% of the complaints brought to the OND have concerned “immigrants,” with a sharp decline in 2006 but in still the high percentage of the 30% of the cases. However, these percentages do not probably reflect all cases of discrimination in which immigrants were involved. As cases – included cases of multiple discrimination - are classified always under one category, immigrants’ rights may be at stake, for example, in cases of “collateral” discrimination against cultural or religious minorities that I have also reported in the table. Again, for example, cases brought by immigrant women may be classified under the “women” category if the gender factor is perceived to be the determinant but also if it weighs the same as national or racial origin. By the same admission of the OND, the category of the “sexual workers” mainly include irregular immigrant women.²⁹

As anecdotal evidence, I can provide examples of the nationalities of the people involved in discrimination related to immigration by looking at the brief descriptions of 21 cases from 1999 to 2001 that the OND has posted on its web site.³⁰ These cases show, if not clear trends of discrimination with respect to specific ethnic groups, at least the variety of the nationalities of the people involved in the complaints, from Spanish-speaking countries (the Southern and Central American region) but also from Morocco, Pakistan, and Eastern Europe. The fact that Moroccans are involved in 7 of these cases 21 may indicate that they are at least a particularly vulnerable category.

If we then look at Table 2 at the rights on which complaints of discrimination against immigrants was claimed to have occurred, we can actually see a variety of cases:

[TABLE 2 HERE]

²⁷ It is important to note that complainant may not be the person who is claimed to have suffered discrimination, but also a witness that reports an episode of discrimination, or an NGO.

²⁸ In some rare cases, if the ADDH thinks that the case is susceptible to win in court and set a precedent, it will represent the claimant in court. Interview with Isabel Santaularia, 4 December 2006.

²⁹ Interview with Gustavo Czech-Bergtholt and Guadalupe Pulido, 17 November 2005

³⁰ OND, www.bcn.es/ond/en/queixes.html, accessed 14 May 2007. With respect to this, I address the fact that there are some inconsistencies in the OND’s classification of these cases: in the three years, cases were reported either as discrimination “due to being an immigrant and/or a member of cultural minority” (1999), or “due to origin” (2000), or “racial discrimination” (2001).

The first thing to observe are the ups and downs in percentages for each violated right from one year to the other. However, there at least six (areas of) rights in which discrimination was claimed to have occurred against immigrants with a certain regularity and in a more intense way: the right to dignity, to information, to admission, housing, and labor and family rights. They are mainly civil, economic, and social rights.

In the following, relying on the 21 cases reported on the OND's web site and my interviews, I will focus on the human rights violations tackled by the OND considering separately civil rights and economic and social rights. Within each category, I will present examples of discrimination by both public and private agents. With respect to each category, I will consider the degree of "success" (positive solution for the complainant reported by the OND) and "failure" (negative solution for the complainant).

Civil rights

In the area of civil rights, we can see that the OND has secured a certain support for immigrants' rights. When discrimination is perpetrated by public authorities, the OND usually attempted "vertical mediation." It appears here that, at least with respect to the rights concerned, the OND can rely on a kind of network with the local, Catalan, and state sectors of the administration. Concerning "family rights" complaints on **family reunion** filed either by immigrants or Spanish citizens in Spain, the OND even directly contacted embassies or consulates that were supposed to issue the visas.³¹ Also the Sub-Delegation of Government or the Ministry for foreign affairs were involved. These cases present mixed outcomes. The OND was able to bring to Spain a Peruvian kid and reunite him with his father, and to grant a Cuban woman a tourist visa to join his Spanish husband in Barcelona. However, it did not succeed to grant family reunion of some Pakistani families – who had complained for some irregularities in the visa procedures applied by the Spanish consulate in Pakistan: the complaint could not be pursued "owing to the personal and employment situation of the Pakistani workers who experienced this problem."³² This formula may refer to the irregular or unemployment status of the complainants, and therefore the impossibility of claiming family reunion rights. It must also be noted that the successful cases concerned immigrants from Latin American countries, with which Spain has usually good diplomatic relations.

In the area of family rights, also cases of **custody**, at least those reported by the OND, present mixed results. In these cases, it is not very clear who actually was supposed to have discriminated, whether it is the authority responsible for the decision or the person that competed with the claimant for custody rights. On the one hand, the OND was able to have an Egyptian man to maintain custody of his children against the accusation of "extremism" by his former wife by passing the case to the city Victim Assistance Service. On the other, in a case of a Moroccan man who wanted to gain custody of his two daughters, the OND provided psychological and legal counseling and then passed the case to the Legal Advice and Social Services of the city. The case was closed "due to its irresolvable nature"³³ without any further explanation.

³¹ This strategy is still adopted by the OND. Interview with Gustavo Czech-Bergtholt and Guadalupe Pulido, 17 November 2005.

³²

³³ For all cases, see the OND, www.bcn.es/ond/en/queixes.html, accessed 14 May 2007.

The OND used the same “vertical mediation” approach in a successful 1999 case - classified as discrimination related to the acquisition of the **Spanish nationality** – of a Moroccan woman who had lived in the country for ten years and whose parents had already been nationalized. She was denied citizenship because, despite having all papers in order, she could not demonstrate that she was in the country during a school holiday period (July and August): the OND was able to get the citizenship status for the woman by getting in contact with both judicial and political authorities. This was, of course, a relatively easy case of an immigrant with a defined and prolonged permanence in the country.

The issue of the **right to information** is also crucial in the OND’s work. The agency regards as discrimination in this area the administrative dysfunction generated by the *Oficina de Extranjeros* (Office for Foreigner People) of the Sub-Delegation of the Government, which is in charge of the regularization procedures of immigrants. Immigrants complain with the OND for long queues but the final impossibility to access the *Oficina*, for lack of communication by phone, and, last but not least, the fear to be stopped or harassed by the police. In this case, according to the OND staff, ADDH lawyers provide legal counseling: no vertical mediation with the *Oficina* is attempted, and no “regularization” is granted to immigrants the way family reunion, custody, or nationality were granted. As a matter of fact, legal counseling often ends up in suggestions on the best times to go to the Office, or to check information on the internet.³⁴

In cases of discrimination perpetrated by private individuals, the OND can usually count on the legal and judicial resources that protects civil rights in liberal democracies. In a 1999 case of violation of the **right to dignity**, under which case of verbal and physical attacks are filed,³⁵ a Moroccan man was stopped in the Metro by two security guards and accused of travelling without a paid ticket. He was also insulted by the guards “due to his origin”³⁶ The complainant called the police, which proved that he actually had the ticket. The man brought the case to court, and the OND provided him with legal counseling. In the end, the court passed a sentence in his favor.

Legal support and counseling to go to court was also provided by the OND in a 2001 case of discrimination concerning the **right to image**. A man with Spanish nationality complained that a TV ad portrayed Africans as cannibals. The OND provided legal counseling to the man to start legal proceedings, and it got also in touch with the judge in charge of the case, the Audio-Visual Council of Catalunya, and the General Management of the Advertising Self-Regulation Association in order to express the OND’s legal viewpoint that the ad was discriminatory, and that it had to be withdrawn. Although the case was still open at the time it was reported, by that time the judge had already ordered the provisional suspension of the ad. The claimant’s lawyer requested that the OND be summonsed as a specialist in the field during the legal proceedings.³⁷

Even when the OND did only mediation – such as in the case of the violation of the **rights of admission** - it appears that the law could be used as a “stick” to bring private “discriminators” to reach a positive solution. The typical case is that of immigrants who are refused entry to bars and locals by doormen, although at least a few cases concerned other privately owned premises like a video-club or a hostel. Mediation gave the owners of these locals the chance to apologize that admission had been refused for “lack of information” - also in respect to the interpretation of the “Right to entry reserved” formula - or because of some “misunderstanding.” In one case, a man of

³⁴ Interview with Isabel Santaularia, 7 December 2006.

³⁵ Interview with Gustavo Czech-Bergtholt and Guadalupe Pulido, 17 November 2005.

³⁶ OND, www.bcn.es/ond/en/queixes.html, accessed 14 May 2007.

³⁷ OND, www.bcn.es/ond/en/queixes.html, accessed 14 May 2007.

color refused the apologies, but this did not lead to any further particular initiative by the OND. However, in one of the other cases, two women from South America were not only refused access to a nightclub, but also beaten by the doorman and by other doormen by adjacent clubs. The OND decided to facilitate both “counselling and legal defence.”³⁸ At the time it was reported, the case was awaiting sentence. In one case, some Romanians decided to report the refusal of admission to the police, which did “testing” to check the establishment’s admission policy and finally granted admission.

Economic and social rights

In respect to this category of rights, things seem to get definitely more complicated for the OND. From the limited cases available and my interviews, it appears that in the area of economic and social rights successful outcomes are less than in the civil rights area, and both the network and legal resources of the OND seem insufficient to tackle cases effectively. Despite the limited data, it appears that also in this case the regular/irregular status of the immigrant can be a crucial determinant of the successful outcomes of the complaints. For example, in one case of supposed discrimination by public authorities concerning the **right to socio-economic services**, a citizen from the ex USSR was refused unemployment benefits after being detained for three year in prison, and despite having worked for three years in prison, because he was not a legal resident. Apparently, the OND raised the legal argument with the competent authority that the man had been discriminated due to his administrative situation, meaning that he was in the process of obtaining regularization. Unfortunately, there is no report on the outcome of the case. Whatever it might have been, it emerges clearly that the recognition of certain welfare benefits outside the realm of minimum and universal health services may be harder to get for irregular immigrants.

In the areas of employment and housing discrimination – in which discrimination is perpetrated by private individuals and business - things are also very problematic. In both domains, we are dealing with discrimination that is often covert, usually hard to demonstrate, and that is not prosecuted ex-officio. With respect to **employment**, there have been, not surprisingly, many issues of irregular immigrants that were hired without a regular contract, and then were let go without being paid. As almost all past attempts to mediate failed, by now the OND suggests the judicial way through which at least the salary can be recuperated if discrimination is proved.³⁹

In respect to **housing discrimination**, the picture is also problematic because discrimination is hidden and, besides that, it often presents systemic features and a complexity due to the number of agents that actually discriminate: not only individual landlords, but also real estate agencies, mediators, and building administrators, who feel obliged to comply with the specific landlords’ instructions not to let flats to immigrants.⁴⁰ Some cases from 2000, which present examples of mediation attempted by the OND, illustrate this complex scenario: foreigners that wanted to rent a flat and had all the papers in order, the necessary financial guarantees, and even signed an agreement, were let go either by the landlords or by the administrators. In one case, the OND had even convinced a real estate agency to sign a declaration in which it confirmed that discrimination had occurred. However, in the end all these interventions had negative results.⁴¹ As a matter of fact, the only successful case of housing discrimination is a 2001 complaint brought from one advocacy group in which a state authority ultimately intervened. The complaint denounced the Association of

³⁸ OND, www.bcn.es/ond/en/queixes.html, accessed 14 May 2007.

³⁹ Interview with Isabela Santaularia, 7 December 2006.

⁴⁰ Interview with Isabela Santaularia, 7 December 2006.

⁴¹ OND, www.bcn.es/ond/en/queixes.html, accessed 14 May 2007.

Building Administrators for posting discriminatory ads on its web site. The OND requested the Association to withdraw the ads after consulting the legal services of the City Council. As ads were not removed, the City Council itself requested that the Sub-Delegation of the Government applied the appropriate administrative penalty in accordance with the anti-discrimination clause of the Foreign Persons Act. It is not clear whether the Government acted or not, and eventually how, but the ads disappeared from the web site. The case was successful but, it must be noted, it was a relatively simple one because it was a case of overt discrimination. Furthermore, the OND noted in 2006 that new discriminatory ads were popping up again in administrators web sites.⁴²

The CIB and the rights of religious communities.⁴³

As I anticipated, the CIB has mandate to deal specifically with religious communities and issues. The forerunner of the CIB was a commission established around 1997 when Soler was *Regidor*, which had basically no staff and put together about 20 representatives⁴⁴ of mainly the Christian religion (Catholic, Orthodox, and Protestant). Its mandate was to propose a reflection on the increasing religious differentiation in the city. Today, the CIB is organized by UNESCO Catalunya, although politically dependent on the RDC, and has been completely re-conceived. It has a permanent staff of four people: a coordinator, two cultural mediators, and an officer in charge of the administrative and legal aspects of the Center's activities. But the most notable difference is that the number of religious groups that the CIB has so far counted in the city has increased to more than 300. The CIB has also further expanded and differentiated its mandate into three different directions. First, it aims to improve reciprocal knowledge and dialogue between different religious groups by, for example, supporting or directly organizing events with religious themes, such as conferences and open-door days of worship places. This action is supposed to safeguard the right to peace and the right to a tranquil and peaceful environment. Second, the CIB tracks the formation and establishment of religious communities in the city, and maintains "bilateral" contacts with them offering to mediate their relations with the local administration. This function is considered an action in support of religious freedom. Third, the CIB offers mediation services in relation to conflicts that arise in neighborhoods where religious communities open their worship sites.

The way immigration pops up in the CIB's activities is that, although the communities are many and the religions that they worship are different, what gives emphasis to the phenomenon of religious communities is essentially immigration. Of the more than the 300 communities that the CIB has counted so far, the Catholic is the most numerous, followed more or less with the same weight by the Islamic and Evangelic communities. The Jehovah's Witnesses, the Orthodox, the Indus/Sikhs, the Buddhists, the *Adventistas*, and the Mormons follow respectively. Furthermore, each of these communities distinguishes itself from the others according to the number of members that actually attend worship sites and participate in rituals (the "first ring," of the most active participants), and those members that only occasionally participate (the "second ring"). Now, not only immigrants are the overwhelming majority in the Evangelic, Orthodox, and Muslim communities, but also the members of some of these communities, in particular the Evangelic, are particularly numerous in the first ring and are therefore very active and visible in the cities. Briefly, if there are more than 300 communities in the city is because of the arrival of immigrants in the city.

⁴² Interview with Isabela Santaularia, 7 December 2007.

⁴³ When otherwise specified, all the information reported in this Section is based on an interview with the CIB's coordinator Francesc Rovera, 7 December 2006

⁴⁴ Interview with Agusti Soler, 16 February 2005.

It is precisely the high presence of immigrants in religious communities and their internal group members that has put the CIB in the position of playing a role on the security agenda of the administration, something that was probably not foreseeable when the forerunner of the CIB was established in 1997. On the occasion of a public demonstration against the Danish cartoons on Prophet Mohammed, the administration requested information to the CIB with respect to the ideological orientation of and immigrant participation in some religious communities. Meetings were also held with the communities on security matters related to the demonstration.

In the following, I will concentrate in particular on three religious issues that emerged in the work of the CIB, which have all some implication for the group rights of communities of mainly immigrants: the right to do public acts in public spaces, the CIB's support to open worship sites, and the question of participation.

Religious acts in public squares

The issue of the religious street acts have emerged with respect to religious communities – in particular Evangelic communities – that requested the administration the possibility of using the squares of Barcelona to do public religious performances including praying and singing. In some cases, they requested the use of squares for each Sunday of the week. According to the Spanish law on religious freedom it is up to the Mayor and, by devolution, to the *Regidor del Distrito* (Head of the District) to decide whether to allow these ceremonies in public or not. According to the CIB, many people in the administration opposed the idea of allowing communities to do public ceremonies, or were at least reluctant to give them permission,. The prevalent idea was that religion had to be a private matter and ceremonies had to be held in closed spaces. In the CIB's perspective, the whole issue raised a human rights issue concerning, on the one hand, the right of the communities to meet and show in public their religion and, on the other, the obligation upon the local administration to secure a universal access and use of public spaces to all. While the Center acknowledged that doing public manifestations every Sunday was unthinkable, it also actively opposed a straightforward rejection of the idea of public ceremonies by the administration. In talks with city officials, the CIB claimed that communities had a right to make their religion public according to the Universal Declaration, the UN Covenant on Civil and Political Rights,⁴⁵ and, in particular, to the Charter for the Safeguarding of Human Rights in the City that, as we have seen, recognizes the freedom of “individual and collective religion.” As a matter of fact, referring to the Charter had its weight in doing vertical mediation with the municipality because, as observed by Rovira, the is better known by city officials of the Charter than other human rights instruments. The Charter is somehow considered as a “reference” for them, though not binding. In the end, communities were given permission to hold public acts in the street on some Sundays during the year.

In support of religious freedom: opening a worship site

Among the activities that the CIB considers in support of religious freedom there is assistance to the communities and groups to open their own worship site. In this area, the CIB functions as a *liaison*

⁴⁵ The Universal Declaration states that “ the right to freedom of thought, conscience and religion” includes “freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance” (Article 18). See the Declaration at UN web site www.un.org/Overview/rights.html, accessed 12 May 2007. More or less the same formula is used by the Covenant on Civil and Political Rights.

between the communities and the administration, providing communities with contacts with the city's Urban Department and the competent District. The crucial issue for the administration here is that communities and groups comply with the safety prerequisites related to opening a private space open to the public. However, there are costs in sticking to these rules – starting with the need for the communities to hire an engineer – which some communities may not be immediately inclined or eventually able to cover. The CIB does not cover these costs, but can eventually provide some language interpretation services.

However, at a higher level the issue for the communities is having the municipality to provide some more concrete support for the opening a worship site is an. In a recent meeting with the Mayor that was hosted precisely at the CIB, the issue was explicitly raised. What communities want is actually land on which they could build, in the case of the Muslim community, a mosque. It is unclear what the final position of the administration is on the issue, but it apparently opposed such requests raising the issue of the lack of land in the city.

The right to participate

With respect to participation, although the issue has apparently been considered by the administration, so far no council on religion has been established within the CIB despite the fact that the CIB is an “inter-religious” center and would therefore be an ideal venue for such a council. The problem here is representation: of the more than 300 groups that are somehow connected to the CIB, it is extremely difficult to select those that should sit in a council with the authority of representing one community. So far, only one meeting with the communities has been organized by the CIB, the one with the Mayor to which I have referred to in the previous sub-section. However, its organization requested a diplomatic attention on the part of the CIB to secure a fair representation of each religion and, within one community, of the appropriate and more representative groups.

Conclusions: the OND and the CIB between the substantiation and the redefinition of citizenship

The human rights system of Barcelona originates from the leftist and social-oriented policy making that characterizes the Barcelona model, and it is part of a wider network of services that aim to improve citizens' quality of life. The human rights discourse provides the RDC and its two bodies with an ideological framework that fits well this social-oriented action of the city, but also with a tool to define an all array of problems – “human rights violations” – that vary from examples of bad administration to concrete abuses with criminal relevance, up to the enjoyment of welfare rights. The OND and CIB action on immigrants' rights is also to be read in relation to a wider municipal action in favor of the integration of immigrants. The municipality has its own advantages in terms of increased capacity to control immigration. This includes monitoring immigrants' problems to eventually increase the local government's ability to define accurate social policies, but also monitoring behaviors that are supposed to threat security: this is an aspect of these services that appears less prominent than the social aspect but that cannot be eluded. It stems from the direct control of the local government on the OND and CIB, and therefore their lack of the formal independence that international monitoring bodies usually enjoy. In the same vein, we may also question the reason why among complaints reported by the OND on immigration no case concerned discrimination by the local government.

Having said that, we can now try to answer the question of what kind of impact the OND and the CIB have had on the universalization and differentiation of citizenship rights. What emerges from this paper, and it is not surprising, is that the OND is mostly concerned with universalization, while the CIB with differentiation. In both cases, this paper has shown different degrees of success of the system. Overall, it seems that the Office can better secure civil rights than economic and social rights by relying on its contacts within the state, regional, and local public administration, including embassies. Or it can use the “stick” of the law to conduct successful mediation with private individuals. At least half of the cases of vertical mediation with authorities in the area of civil rights were closed by the OND with a successful outcome. Cases of discrimination perpetrated by private individuals present the highest degree of success: the OND was able to support both the legal action of an immigrant for harassment by security guards, and of an action against a discriminatory TV ad.

In the area of economic and social rights, and especially employment and housing, the OND does not seem able to successfully mediate or to collect evidence of discrimination to support a legal claim in court, and legal counseling appears more as an exit strategy for the OND than a valid option for the complainant. The reason why mediation does not seem to work is that even the legal threat that the OND can use is weak. And this weakness is not due to the absence of legal or judicial remedies, but to the difficulty to show even in courts that employment and housing discrimination has occurred. Overall, this generates a sense of impunity on the part of the perpetrators that made the OND’s attempts to mediate useless.

In both areas of rights the regular/irregular status of immigrants is a good predictor of the successful/unsuccessful outcome of cases, especially in cases of discrimination perpetrated by public authorities. This simply confirms the limits in the enjoyment of human rights operated by the exclusionary dynamics of state citizenship and the difficulty for the OND to resist them. In the area of family rights and nationality, we can imagine that most of the (successful) cases in which the OND intervened were brought by regular immigrants trying to enjoy the rights granted to them because of their regular position (like family reunion): the role of the OND was that of putting the case under the attention of the proper agencies relying on its network. With respect to regular immigrants, we can speak more of a substantiation of citizenship rights than universalization: the OND provides an administrative and legal support to remedy rights to which regular immigrants are in principle entitled to within the citizenship regime applied to them.

In cases that clearly involved irregular immigrants, success is absent or limited. Although the OND has tried to provide a legal argument for expanding immigrants’ rights, this has seemed more a verbal arrangement to define cases than the first step to start a legal action. In cases of violations of the right to information, we have seen that the OND does not even try to mediate with the *Oficina de extranjeros* (the way it did for family reunion rights concerning regular immigrants) more than correcting the *Oficina*’s “dysfunction” in dealing with regularization procedures, the OND simply suggests ways to go escape it. Also arguing that an immigrant suffered from “administrative discrimination” for not being granted unemployment benefits did not seem to lead to a positive outcome. In the area of employment and housing, it is more difficult to assess the weight of the regular/irregular status of the immigrants as a predictor of the outcome of complaints. However, employment discrimination seems often related to the case type of the irregular immigrant that loses her job and salary.

In the work of the CIB, we have seen different aspects of citizenship differentiation. There are two elements to underline in the CIB’s activities related to human rights. First, the “cases” involved the direct responsibility and role of the local administration in the “safeguarding” of human rights. Second, this role emerges with respect to the enjoyment by religious communities *qua* minorities of

rights that in Kymlicka's words would be polyethnic rights. On the issue of public religious acts, which clearly involved the re-discussion of the assumption that worshipping should be limited to closed spaces, the response of the administration was of some openness: the CIB, relying on the human rights discourse – including the “local” one of the European Charter – was able to reduce the distance between two different perceptions of the proper place in which worshipping should take place (only in private or also in public).

With respect to the other two issues, opening a worshipping place and participation, the cases present questions that remain open. With respect to worshipping places, the CIB can provide some technical information and contacts with the administration. However, this action aims more to secure the respect by communities than a pure support to religious freedom. At a higher level, the issue is that of a more concrete support in terms, for example, of land. Here, the question is not – at least not explicitly - that of “clash” of values: offering land to communities implies a concrete, economic effort – a “positive action”? - which is not at all clear whether the municipality is ready or willing to do. And on this issue the CIB did not seem to play any crucial role of mediation. The issue also presents an interesting case of a civil rights that is supposed to be actually “fulfilled” and not simply “protected” by the administration.

The question of the establishment of a formal religious council in the CIB presents different kinds of tensions. In the eye of the administration, I would suggest that the council could provide an ideal institutional venue through which to communicate with the communities and, eventually, co-opt and engage them on certain security matters. For communities, it would be a chance to gain recognition and representation. However, precisely inter-group conflicts about “who represents who?” seem to hinder the process of establishment of the council. Here, the issue of the recognition of differences presents its “dark side:” the risk to fuel inter- and even intra-community and identity struggles.

Appendix

Table 1: OND's caseload per year broken down by subject/object of discrimination

Category	1999-2002	2004	2005	2006
Immigrants	38.5*	44.6	42.65	29.81
Women	7.1	4	10.79	8.08
Sexual orientation	6	6.8	9.80	8.08
Economic situation	1.5	2.8	4.41	3.53
Physical/Psychic disability	8.1	7.3	5.89	7.58
Chronic disease/HIV	6.5	4	2.94	4.04
Mental illness	3.8	7.3	3.43	<i>6.45</i>
Addictions	1.3	NA	0.90	<i>8.06</i>
Elderly	6.4	NA	2.79	<i>4.84</i>
Adults (40-60 y.o.)	1.3**	NA	2.16	
Children	0.2		0.90	<i>3.22</i>
Religious minorities	0.6	NA	2.16	<i>3.22</i>
Cultural minorities				4.54
(Ex)detainees	0.9	NA	0.49	<i>1.61</i>
Men	2.1	NA	0.49	<i>8.06</i>
De facto couple	0.3			
Nudists/Naturists			0.90	<i>4.84</i>
Sexual workers				3.03
Age				<i>4.84</i>
No group affiliation			9.30	<i>54.84</i>
Others	15.1	23.2		31.31 (≈151)
Total % (number)	99,7*** (265)****	100 (419)	100 (421)	100 (482)

Source: OND, 2003, "Informe evolutiu 1999-2002;" OND leaflets of years 2004, 2005, and 2006.

Legenda: NA (Not Available). Empty boxes signal that no complaint was filed with respect to the corresponding subject/object for the corresponding year. Please note: percentages reported in italics for year 2006 refer to the total "other" cases (150,9142).

* In the 1999-2002 report, the category "immigrants" was coupled with "racism" and were both considered linked with "origin" (presumably, national origin).

** In the 1999-2002, the category "adults" was coupled with "youth."

***The 1999-2002 report contains a mistake in the final sum of the percentages of the different categories of discrimination.

**** This number refers to the average amount of cases filed with the OND each of the four year covered by the 1999-2002 report.

Table 2: Immigrants' rights object of complaints, 2003-2006

Rights	2003 (%)	2004 (%)	2005 (%)	2006 (%)
Dignity	17.9	25	21.84	32.2
Labor rights	24,7	13.8	17.24	13.56
Information	12.3	10	16.09	22.03
Family rights	12.3	15	12.64	10.17
Admission	11	7.5	11.50	10.17
Housing/Accommodation		11.3	10.34	5.08
Linguistic			2.30	
Education/formation			2.30	
Health benefits			2.30	1.69
Intimacy			1.15	
Spanish nationality			1.15	
Freedom/security			1.15	2.3
Socio-economic benefits				1.69
Other	21.8	17.4		1.69
	100	100	100	100.58*

Source: OND statistic leaflets from 2004 and 2005. Data from 2006 were provided directly to me by the OND

* This number was wrongly reported in the information that were provided to me by the OND.

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