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European Commission
Against Racism and Intolerance

First report on Andorra

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law[1], information from international and national non-governmental organisations, various publications and the media.

b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.

c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.

d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

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[1] The report prepared by the Swiss Institute (ref: CRI (98) 80), covering relevant legislation in member States of the Council of Europe is available on the web site www.ecri.coe.int and, in hard copy, from ECRI's Secretariat.

To date, five series of ECRI's country-specific reports have been made public, in September 1997, in March 1998, in June 1998, in January 1999 and in March 1999 respectively[2]. A sixth series of country-specific reports was transmitted to the governments of the countries concerned in March 1999, and is thus now being made public[3].

The following report contains ECRI's analysis and proposals concerning Andorra.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This sixth series of reports, for which the procedure was completed by March 1999, will be followed during 1999 by the reports on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

As from 1999, ECRI has begun a follow-up procedure to its country reports, examining what action governments may have taken on the proposals they contained, up-dating their contents generally and focusing on specific issues of concern in greater depth. Some 10 countries will be addressed annually in this way, over the period 1999-2002.

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2 The first five series comprise reports on Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Slovakia, Slovenia, Spain, Switzerland, Ukraine and the United Kingdom.

3 Reports on Andorra, Sweden and "the Former Yugoslav Republic of Macedonia".

REPORT ON ANDORRA[4]

Introduction

The Principality of Andorra covers an area of 464 km² and has a population of slightly over 60,000. The composition of the population is rather particular, as Andorran nationals constitute about 20% of the total number of inhabitants. The rest of the population is composed of Spanish (47%), Portuguese (11%), French (7%) and British (2%) nationals. Nationals of other countries, present in smaller numbers, include Moroccans, Filipinos and Indians.

Andorra is today a parliamentary democracy with a very particular structure, whereby the head of State is an indivisible body formed by two persons: the Bishop of Urgell and the French President of the Republic. This structure has existed, with modifications, since the 13th century, when the Bishop of Urgell, who had previously become lord of Andorra following a series of exchanges and donations between the Count of Urgell and the Count of Barcelona, agreed with his most powerful vassal, the Count of Foix, to share the command of the country. These agreements (pariatges), which establish a balance of powers ensuring the independence of the country, represent Andorra's first constitutional document and the base of the current political structure: the coprincipality. Due to successive historical developments, the rights of the Count of Foix were transmitted to the French crown first and, subsequently, to the President of the Republic of France.

Through the adoption of a written Constitution in 1993, Andorra has become a modern parliamentary democracy. This basic text, coupled with a democratic tradition rooted in local customs, guarantee the state's observance of the rule of law and of the fundamental rights and freedoms. Since 1993, the General Council (i.e. the parliamentary body of the Principality) has been faced with the demanding task of bringing the country's internal legal system into line with the new constitution. At the same time, the recognition of the full sovereignty of Andorra by the international community has opened the possibility for the country to accede to many international conventions.

As a result of Andorra's economic development since the 1960s, which has given rise to considerable immigration, the population has dramatically increased during the last decades (in 1960, the country counted just over 8,000 people). The feeling that this may entail the risk of a loss of identity is a cause of concern for some members of the population.

Although it would seem that racism and intolerance do not currently constitute serious problems in Andorra, care should be taken to monitor the situation to ensure that appropriate action can be swiftly taken should such problems arise in the future.

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[4] Note: Any development subsequent to 16 October 1998 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

I LEGAL ASPECTS[5]

A. International legal instruments

1. Apart from the European Convention on Human Rights, Andorra has not as yet ratified any of the relevant international legal instruments in the field of combating racism and intolerance. It is understood that the country plans to ratify the International Covenant on Civil and Political Rights and the European Social Charter. ECRI hopes that ratification of these two instruments will be effected soon.

2. Andorra should also consider ratification of the following instruments: United Nations Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; Convention of the International Labour Organisation concerning Discrimination in Respect of Employment and Occupation; UNESCO Convention against Discrimination in Education; European Charter for Regional or Minority Languages; Framework Convention for the Protection of National Minorities; 1951 Convention relating to the Status of Refugees.

   Although the absence of manifestations of intolerance or discrimination may be felt to render the ratification of such instruments non-urgent, it is nevertheless emphasised that their ratification is both a matter of principle and of solidarity with other European States.

B. Constitutional provisions

3. The recently adopted Constitution proclaims that the actions of the Andorran State must be inspired by the principles of respect for the promotion of liberty, equality, justice, tolerance, defence of human rights and dignity of the person. The Universal Declaration of Human Rights is incorporated into Andorran Law (Article 5). Furthermore, international conventions to which Andorra is a party are automatically a part of the legal system of the country.

4. Article 6 establishes the principle of equality before the law and forbids discrimination on the basis of birth, race, sex, origin, religion, opinion or any other personal or social condition. This article further imposes on public authorities the duty of creating the necessary conditions for achieving real and effective equality and liberty of individuals.

   All persons have the right to education (Article 20). Freedom of religion is established by Article 11.

C. Criminal law provisions

5. Art. 313 of the Penal Code punishes all offensive and discriminatory acts committed against the dignity of persons on the basis of their origin, religion, race or sex. The Penal Code also criminalizes acts of profanation or destruction of religious sites (Article 122), public offence of the religious sentiment of any person as well as any disturbance caused during religious ceremonies or acts (Article 301). ECRI notes with interest that

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[5] A full overview of the legislation existing in Andorra in the field of combating racism and intolerance is provided in the publication CRI (98) 80 prepared for ECRI by the Swiss Institute of Comparative Law.

the government is currently considering the introduction of amendments to the Penal Code whereby, inter alia, racial motivation is considered as an aggravating factor, and hopes for a successful conclusion of this process.

6. Although no manifestations of violence or harassment on racial or religious grounds have been noticed so far, the authorities are encouraged to monitor the situation, inter alia through such initiatives as the ones suggested under 11.

D. Civil and administrative law provisions

7. There appears to be very little legislation dealing expressly with racial discrimination, although some civil and administrative provisions do make reference to this type of discrimination. Article 21 of the Administrative Code, for example, establishes the principle of equality before the Public Administration and forbids all discrimination on grounds of birth, race, sex, religion, opinion or any other personal or social condition.

The Andorran authorities might consider whether more precautionary and preventive measures are necessary.

II POLICY ASPECTS

E. Reception and status of non-citizens

8. As mentioned above, non-citizens make up almost 80% of the population of the Principality of Andorra. The Andorran authorities have stated that all immigrants in possession of a valid residence permit enjoy the same rights as citizens (except for political rights), including social security rights, and the right to use educational, social, cultural and recreational infrastructures. However, migrant workers with "temporary work authorisations" hold limited residence permits and must therefore leave the country when their job contracts expire. ECRI encourages the authorities to monitor the situation to ensure that this restricted residence permit situation does not affect members of minority groups in a discriminatory and disproportionate manner.

9. A considerable part of the population is reported to be in favour of a more generous granting of the Andorran nationality, notably to people considered to be integrated by a long period of residence in Andorra. For naturalisation, 25 years of residence is currently required. However, the restrictive approach to the question of citizenship appears to be connected to the particular situation of the country which has to strike a balance between a facilitated access to Andorran nationality and the preservation of its national identity. ECRI considers that legislation on nationality should be in line with the established standards of the Council of Europe.

F. Education and awareness-raising

10. ECRI considers that, given the situation prevailing in Andorra, education and awareness-raising may be more effective than legislation in preventing problems of racism and intolerance from developing. In this respect, the role of the media in the transmission of messages of tolerance and the promotion of multiculturalism is underlined. ECRI also emphasises the importance of educational projects targeting in particular the youngest generations and aimed at facilitating the harmonious integration of foreign residents

who have a different culture, religion and language or belong to a different ethnic group.

G. Monitoring the situation

11. All official sources state that no problems of racism and discrimination exist in Andorra. One possible way in which the authorities might monitor the situation would be to conduct a survey or opinion poll among the Andorran population to ascertain whether any underlying intolerance does in fact exist even if no incidents have been reported. Furthermore, and taking into account the particular composition of the population of the country, non-citizens might also be asked about their experience of living in Andorra, as some forms of discrimination may exist which are not reported.

General data as supplied by national authorities For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Andorran government on 26 March 1996. ECRI accepts no responsibility for the data below. Population: 64,169 (1996) of which 28,778 Spanish nationals; 6,885 Portuguese nationals; 4,299 French nationals; 974 British nationals; 409 Moroccan nationals; 263 Filippino nationals; 138 Indian nationals.

Population: 64 169 (1996).
This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

BIBLIOGRAPHY

This bibliography lists the main published sources consulted during the examination of the situation in Andorra: it does not cover all the various sources of information (media, contacts within the country, national NGOs etc.) which were utilised.

1. Reply to the ECRI questionnaire supplied by the authorities of Andorra
2. Recent demographic developments in Europe, Council of Europe Press, 1997
3. CRI (97) 38: Legal measures to combat racism and intolerance in the member States of the Council of Europe, Council of Europe publication
4. "Country Reports on Human Rights Practices for 1997", US Department of State
5. Council of Europe document: Opinion on the application by the Principality of Andorra for membership of the Council of Europe [N°182 (1994)], 3 October 1994
6. Council of Europe document: Report on the application by the Principality of Andorra for membership of the Council of Europe (Doc. 7152), 15 September 1994
7. Council of Europe document: Information report on the legislation of the Principality of Andorra (Doc. 7080 Addendum III), 27 May 1994