

ECRI REPORT ON ANDORRA

(fourth monitoring cycle)

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TABLE OF CONTENTS

FOREWORD	5
SUMMARY	7
FINDINGS AND RECOMMENDATIONS	9
I. EXISTENCE AND IMPLEMENTATION OF LEGAL PROVISIONS.....	9
INTERNATIONAL LEGAL INSTRUMENTS.....	9
CITIZENSHIP LEGISLATION.....	11
CRIMINAL LAW PROVISIONS.....	12
CIVIL AND ADMINISTRATIVE LAW PROVISIONS	15
TRAINING OF JUDGES, PROSECUTORS AND LAWYERS	18
ANTI-DISCRIMINATION BODIES AND POLICIES	18
II. DISCRIMINATION IN VARIOUS FIELDS	20
EMPLOYMENT	20
EDUCATION	22
HOUSING.....	23
HEALTH.....	23
III. CLIMATE OF OPINION AND PUBLIC DISCOURSE.....	24
MEDIA	24
IV. VULNERABLE/TARGET GROUPS.....	24
MINORITY RELIGIOUS GROUPS	24
ASYLUM SEEKERS	26
OTHER NON-CITIZENS.....	26
V. CONDUCT OF LAW ENFORCEMENT OFFICIALS	28
VI. MONITORING RACISM AND RACIAL DISCRIMINATION.....	29
VII. EDUCATION AND AWARENESS-RAISING	30
INTERIM FOLLOW-UP RECOMMENDATIONS.....	33
BIBLIOGRAPHY	35

FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 8 December 2011 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

SUMMARY

Since the publication of ECRI's third report on Andorra on 12 February 2008, progress has been made in a number of fields covered by that report.

Andorra has ratified Protocol No. 12 to the European Convention on Human Rights (ECHR). Judges and prosecutors receive training in fundamental rights. A course on how to detect and deal with skinhead movements was organised in 2010.

The Ombudsman's Office has taken measures in order to make this institution better known to the public, including the translation of the summary of the annual report into Spanish, Portuguese and French and the launch of an information campaign. A National Equality Commission has been set up in order to address anti-discrimination issues and implement a Plan for Equality.

Special reception classes continue to provide assistance to newly arrived pupils (including foreign pupils) who do not master all the required languages (Catalan, Spanish and French). Portuguese is offered as an optional language during school hours in two schools. The residence requirement established for certain housing subsidies provided at state level has been lowered.

Some measures have been taken to shorten the period required by law to secure a permanent residence permit.

ECRI welcomes these positive developments in Andorra. However, despite the progress achieved, some issues continue to give rise to concern.

There has been no progress in easing residence requirements to acquire Andorran citizenship, nor as concerns the possibility of retaining dual citizenship. The criminal legislation in place relating to racism and intolerance is not exhaustive and does not include, inter alia, a provision prohibiting public incitement to violence, hatred and discrimination (as per General Policy Recommendation No. 7). There is no comprehensive legislation against racial discrimination; the application of the civil and administrative law provisions prohibiting discrimination is not monitored. No specific training on racism and racial discrimination is provided to judges, prosecutors and lawyers. Andorra has not enacted legislation on asylum seekers and refugees.

There is no body with special capacity to combat racism, racial discrimination, xenophobia, antisemitism and intolerance at national level. The Plan for Equality has been stagnating and is not on the Government's agenda.

Civil society has indicated that in employment, forms of direct and indirect discrimination based on citizenship exist and that avenues to seek redress are weak and ineffective. Most housing subsidies remain subject to a five year residence requirement.

Journalists do not receive training on human rights or on the fight against racism and racial discrimination. There is no independent body responsible for receiving complaints against the media.

Religious communities face practical difficulties that would have disappeared had they been given special status under the law. Andorra lacks a fully fledged integration policy.

There is no independent body responsible for investigating allegations of police misconduct and which controls the activities of the police.

Andorra lacks a comprehensive data collection system, capable of assessing the situation of the various communities living in the principality.

In this report, ECRI requests that the Andorran authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.

The period of residence required to acquire Andorran citizenship should be reduced to 15 years, with a view of further reducing it to 10 years. This issue along with dual citizenship should be discussed in the context of the National Equality Plan. The criminal legislation in place relating to racism and intolerance should be strengthened and should include, inter alia, a provision prohibiting public incitement to violence, hatred and racial discrimination (as per General Policy Recommendation No. 7). Comprehensive civil and administrative legislation aimed at combating, inter alia, discrimination in key fields of life should be enacted. In particular, the principle of the sharing of the burden of proof should be introduced*. The application of these provisions should be monitored. Judges, prosecutors and lawyers should receive training on issues pertaining racism and racial discrimination and on the relevant criminal provisions*. Legislation on asylum seekers and refugees should be enacted.

Specialised capacity should be created within an independent body, to combat racism, racial discrimination, xenophobia, antisemitism and intolerance. Strong impetus should be given to the work of the National Equality Commission and the National Equality Plan

An information campaign should be carried out in order to provide seasonal workers with information on their rights and obligations in Andorra in the field of employment and on the avenues available to seek redress. The powers and outreach capacity of trade unions should be strengthened to provide workers who feel that they have been discriminated against, inter alia, on grounds of “race”, colour, language, religion, nationality or national or ethnic origin, with the necessary support to seek redress. The residence requirements for all housing benefits should be reduced to three years.

The Andorran authorities should encourage initiatives aimed at offering journalists training in human rights and on issues concerning the fight against racism and racial discrimination. An independent body should be set up and should be mandated to receive complaints against the media and monitor the latter, inter alia, for racist or discriminatory content.

The building of a mosque should be authorised and solutions should be sought to enable minority religious communities to have a cemetery, in which they can bury their dead in accordance with their religious beliefs and customs. The work of the National Equality Commission should be used to devise and coordinate an integration policy. This policy should, inter alia, address the problems faced by seasonal workers, raise the awareness of the public on the importance of the various communities present in Andorra and strive to increase the level of integration of non-Andorrans*.

The Andorran authorities should develop special capacity within an independent body to investigate complaints against members of the police force for racial discrimination and racially motivated conduct.

Qualified law 15/2003 should be amended with a view to introducing the systematic collection in different policy areas of information broken down by ethnic origin, language, religion and citizenship, with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group.

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Existence and Implementation of Legal Provisions

International legal instruments

1. In its third report, ECRI recommended that Andorra ratify Protocol No.12 to the European Convention on Human Rights (ECHR) without delay. It also reiterated its recommendation that Andorra ratify Convention No.111 of the International Labour Organisation (ILO) concerning Discrimination in respect of Employment and Occupation and the UNESCO Convention against Discrimination in Education, as soon as possible. Moreover, it recommended that Andorra ratify the Additional Protocol to the European Social Charter providing for a system of collective complaints.
2. ECRI notes with satisfaction that Andorra ratified Protocol No. 12 to the European Convention of Human Rights (ECHR) on 6 May 2008. As concerns the Additional Protocol to the European Social Charter providing for a system of collective complaints, ECRI recalls that, in its fourth monitoring cycle, it has decided to focus on the ratification of a more limited number of instruments than in the third round. As regards Convention No. 111 of the ILO, ECRI has been informed by the authorities that Andorra is “not in a position” to ratify this instrument as it is not a member of the ILO. ECRI notes that ratification of this instrument would signal a commitment to fight effectively discrimination in the field of employment, including in the situations described in paragraph 66 of this report. As regards the UNESCO Convention against Discrimination in Education, the authorities have stated that work has been carried out in order to gauge the conformity of the national legal framework to this convention and that its results are encouraging; however, the ratification process has been interrupted due to the nomination of a new government. ECRI notes that a similar response had been given at the time of ECRI’s third report and urges the authorities to complete the ratification process of this instrument.
3. ECRI recommends that Andorra become a member of the ILO and then ratify Convention No.111 of this organisation. It further recommends that the Andorran authorities give a decisive impetus to the ratification of the UNESCO Convention against Discrimination in Education.
4. In its third report, ECRI reiterated its recommendation that Andorra ratify the International Covenant on Economic, Social and Cultural Rights, the Framework Convention for the Protection of National Minorities (FCNM), the Convention relating to the Status of Refugees and the European Charter for Regional or Minority Languages.
5. ECRI regrets that no progress has been made with respect to the above instruments. As concerns the International Covenant on Economic, Social and Cultural Rights, the authorities have informed ECRI that only two impediments stand in the way of ratification: Andorran legislation does not provide for the right of workers to go on strike¹; and special economic rights are recognised to Spanish and French nationals as concerns access to the labour market². ECRI would like to remind the authorities that this instrument contains important provisions on equality of treatment in the sphere of socio-economic and cultural

¹ Under Article 19 of the Constitution of Andorra, however, “Workers and employers have the right to defend their own economic and social interests. A Law shall regulate the conditions to exercise this right in order to guarantee the functioning of the services essential to the community”.

² For instance, under Andorran law, French, Spanish and, more recently, Portuguese nationals may set-up a business after a 10 year residence period, while other nationals are subject to a 20 year period.

rights and is therefore instrumental in fighting discrimination in these fields. ECRI further reminds the authorities that Andorra is the only member State of the Council of Europe which has not ratified this instrument. As regards the FCNM, the authorities have stated that due to the geographical and historic specificity of the Principality of Andorra, Andorran citizens have never represented the net majority of the population³ and that the concept of “national minority” would therefore not be fitting. ECRI would like to remind the authorities that under the FCNM, States are granted a certain margin of appreciation as concerns the scope of application of the concept of “national minority”⁴, precisely to take into account each country’s specific circumstances. The ratification of the FCNM, notably its Articles 4 and 6, would permit to strengthen the protection of the right to equality before the law and of equal protection before the law, as well as the protection from discrimination of persons belonging to certain communities in Andorra. The same logic applies to the ratification of the European Charter for Regional or Minority Languages. As concerns the Convention relating to the Status of Refugees, its ratification would permit Andorra to address applications for asylum in an appropriate legal framework.

6. ECRI recommends that the Andorran authorities enact the necessary provisions to remove the impediments towards ratification of the International Covenant on Economic, Social and Cultural Rights. ECRI further reiterates its recommendation that the Andorran authorities ratify the Framework Convention for the Protection of National Minorities (FCNM), the Convention relating to the Status of Refugees and the European Charter for Regional or Minority Languages.
7. In its third report, ECRI recommended that Andorra ratify the European Convention on the Legal Status of Migrant Workers and the Convention on the Participation of Foreigners in Public Life at Local Level. ECRI also recommended that Andorra ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
8. As regards the European Convention on the Legal Status of Migrant Workers, ECRI recalls that, in its fourth monitoring cycle, it has decided to focus on the ratification of a more limited number of instruments than in the third round. As to the remaining above-mentioned instruments, ECRI notes that the Andorran authorities do not intend to ratify them. As for the Additional Protocol to the Convention on Cybercrime, in ECRI’s view, its ratification would be instrumental in addressing and prosecuting cases of hate speech over the internet. As concerns the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, given the high percentage of migrant population in Andorra, ratification of this instrument would signal a firm commitment towards the development of an integration policy and respect of the rights of this section of society. On the subject of the Convention on the Participation of Foreigners in Public Life at Local Level, the authorities maintain that, while the creation of bodies at local level enabling the representation of foreign residents would not pose a problem, granting them the right to vote in local authority elections is not possible at the present time. As it is later explained in this report, this last point has been cause for much debate; according to certain representatives of vulnerable communities, granting such right would greatly facilitate the integration of long-term residents in Andorran society.

³ According to official data provided by the authorities, as at 31 December 2010, there were 32 962 Andorran citizens out of a total population of 85 015. The largest foreign communities in Andorra are the Spanish, Portuguese and French with, respectively, 26 688, 13 100 and 5 087 members.

⁴ While respecting the general principles of international law and Article 3 of the FCNM.

9. In this connection, in its third report, ECRI strongly recommended that the Andorran authorities encourage debate on the possibility of allowing non-Andorrans to take part in local elections and that they grant them this right.
10. The proposal to allow non-Andorrans to take part in local elections has been discussed in connection with the National Equality Plan (see paragraph 64 of this report). Furthermore, it seems that this issue was included in the electoral programme of one political party. ECRI notes that allowing long-term non-Andorrans residents to vote in local elections would greatly increase their integration in Andorran society.
11. ECRI recommends the Andorran authorities to grant non-Andorrans the right to take part in local elections.
12. ECRI reiterates its recommendation that the Andorran authorities ratify the following conventions: the Convention on the Participation of Foreigners in Public Life at Local Level; the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Citizenship legislation

13. In its third report, ECRI recommended that the Andorran authorities further ease citizenship legislation by reducing the residence requirement for obtaining Andorran citizenship to ten years, as provided for by the European Convention on Nationality. It also recommended that they provide in Andorran legislation the possibility of dual citizenship.
14. ECRI notes that unfortunately there has been no progress in easing residence requirements in order to obtain Andorran citizenship, nor as concerns the possibility of retaining dual citizenship. In order to obtain nationality by naturalisation, it is still necessary to provide proof of permanent residence in Andorra for the 20 years preceding the application, or of 10 years preceding the application and completion of compulsory education in Andorra. Further, under the Law on Nationality, as amended by the Legislative Decree of 21 February 2007, the acquisition and retention of a citizenship other than Andorran implies the loss of Andorran citizenship.
15. ECRI was informed by the authorities that on 20 September 2010 the Government brought a draft law before the Parliament amending the Nationality Act, in order to reduce the period of residence required for the acquisition of Andorran citizenship from 20 to 15 years. The draft law was discussed by the Parliament on 25 October 2010 and was rejected as it did not obtain the majority of votes - with 14 votes for and 14 votes against its adoption. In ECRI's view, this vote shows non-negligible political support for easing the naturalisation requirements. Further, representatives of civil society have informed ECRI that legal residents deem that such amendment would greatly facilitate their integration into Andorran society and ensure that political rights are not enjoyed only by 39% of the population, as is currently the case. Finally, ECRI recalls that most countries in Europe require between five and 10 years of residence for naturalisation purposes.

16. ECRI recommends that the Andorran authorities amend the Nationality Act, reducing to 15 years the period of residence required for the acquisition of Andorran citizenship, with a view to reducing it to 10 years in the immediate future.
17. As concerns dual citizenship, it is prohibited by the Andorran Constitution. The authorities have explained that at the time of the drafting of the Constitution (1993) the need to protect Andorran identity was greatly felt as there were more foreigners than nationals in the country. Furthermore, according to the authorities, dual citizenship would create a paradoxical situation whereby most Andorran citizens would also be citizens of other European states. During ECRI's discussions with the authorities, the possibility of introducing dual citizenship with restrictions on the "active use" of the non-Andorran citizenship was evoked. ECRI encourages initiatives that would introduce the possibility of having dual citizenship, whilst respecting human rights⁵.
18. ECRI recommends that the Andorran authorities explore ways to introduce the possibility of having dual citizenship in national legislation.
19. In its third report, ECRI recommended that the Andorran authorities conduct information campaigns and initiate public debates on the possibility of acquiring Andorran citizenship and that they involve NGOs, representatives of groups of immigrant origin and other stakeholders in these campaigns.
20. From the information received by ECRI, it would appear that no such information campaign and debate have been initiated by the authorities. ECRI encourages the Andorran authorities to include the issue of citizenship in the discussions between the authorities and civil society which have been launched under the National Equality Plan (see paragraph 64).
21. ECRI recommends that the Andorran authorities include the issue of the acquisition of citizenship as well as dual citizenship in the discussions between the authorities and NGOs, civil society and migrants under the National Equality Plan.

Criminal law provisions

22. ECRI has been informed by the authorities that whilst the Criminal Code and the Code of Criminal Procedure were amended in 2008, no changes were made to the provisions in place relating to racism⁶, discrimination and intolerance. Notably, as was described in ECRI's third report, Andorran criminal legislation continues to prohibit: all forms of discrimination based on origin, nationality or ethnicity, sex, religion (...) in the fields of services, housing, contractual relations, employment and the public service (Article 338); acts or offensive expressions against members of a religious, national, ethnic (...) group or a group of persons professing a determinate belief or ideology (Article 339); the commission of a criminal offence for racist or xenophobic motives or for motives relating to (...) religion, ideology, nationality, ethnic origin (...) (Article 30 paragraph 6)⁷; apology

⁵ See the *Tănase v. Moldova* judgment of the European Court of Human Rights of 27 April 2010.

⁶ ECRI, in its General Policy Recommendation No. 7, defines "racism" as the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons or the notion of superiority of a person or a group of persons. Further, it defines "racial discrimination" as any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

⁷ Article 30 paragraph 6 also prohibits the commission of a criminal offence for motives relating to sexual orientation. In this connection, see footnote 10.

and denial of genocide (Articles 457 and 458); groups of persons organised (...) to promote discrimination or violence against persons, groups or associations on account of origin, or their belonging to a national, ethnic or religious group.

23. While ECRI commends Andorra for considering racist and discriminatory acts/expressions as criminal offences, it notes that Andorran criminal legislation does not contain a number of provisions which ECRI, in line with its General Policy Recommendation No. 7 (GPR No.7), considers essential in order to fight racism and racial discrimination. Notably, the Criminal Code does not include a provision on public incitement to violence, hatred or discrimination against a person or a grouping of persons on the grounds of their "race", colour, language, religion, nationality, or national or ethnic origin. ECRI stresses that public incitement to hatred should be provided for as a separate offence due to its insidiousness and the danger that it poses to society. Furthermore, the following acts are not prohibited under Andorran criminal law: the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates a grouping of persons on the grounds of their "race", colour, language, religion, nationality or national or ethnic origin; and the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material which incites to hatred or other material covered by paragraph 18 (f) of GPR No.7.
24. ECRI recommends that the Andorran authorities strengthen the criminal legislation in place relating to racism and intolerance and introduce in the Criminal Code the provisions outlined in the preceding paragraph, including a provision prohibiting public incitement to violence, hatred and discrimination.
25. In its third report, ECRI recommended that the Andorran authorities ensure that the courts apply the provisions of the Criminal Code punishing racist offences. It also recommended that they conduct information campaigns to make these provisions known to the general public and particularly to potential victims of this type of crime.
26. As was the case at the time of ECRI's third report, the number of investigations opened and referred to court between 2007 and 2011 for breach of criminal law provisions punishing racist offences, was very low⁸. The authorities have informed ECRI that between 2007 and 2011, eight investigations were opened for breach of Articles 338⁹, 339 and 30.6 of the Criminal Code. One investigation was opened for apology of genocide.
27. ECRI notes that one of the cases mentioned above concerned the application of Article 30.6 of the Criminal Code (racist motivation as an aggravating circumstance) in a case where a member of a visible minority of North African/Arab origin was physically attacked and verbally abused with racist statements. While the prosecutor had proposed taking the accused's racist motive into account as an aggravating factor, s/he was not followed by the court in its decision of 25 October 2011; the defendant was found guilty of having caused bodily harm and was sentenced accordingly. A similar approach was taken in a decision of 25 September 2008. In this case a Black person was physically attacked and verbally abused, once again with racist remarks. While the court condemned the defendant for bodily harm and verbal abuse, it did not apply racist motivation as an aggravating circumstance, because, in its view, the language used had already been taken into account when sentencing the

⁸ ECRI recalls that in its third report, ECRI recommended that the Andorran authorities consider measures to be taken to speed up the work of the judicial system so that, among others, victims of racism and racial discrimination may get redress as soon as possible.

⁹ As well as Article 313, which criminalised discrimination before the amendment of the Criminal Code.

defendant for verbal abuse and therefore could not be considered once more as an aggravating circumstance. ECRI does not wish to comment on the merits of these court judgments; however, it must stress that where racist motivation is apparent, be it in verbal or other types of offences, it is important that it be acknowledged and considered in itself as criminally relevant by the competent authorities¹⁰.

28. As it transpires from the above, the number of registered cases relating to racist offences is low¹¹. Moreover, few racist incidents have been communicated to ECRI. However, ECRI considers that there are also several indications that the risk of hate crime cannot be ruled out in Andorra (see paragraph 27). ECRI is therefore reluctant to accept the authorities' position that they have not launched any information campaign on racism or on the provisions in place aimed at its prevention and punishment because this is not a problem in Andorra. In ECRI's opinion, greater efforts should be made towards sensitising the public and potential victims on the above provisions in order to avert racist offences and to encourage victims to come forward.
29. ECRI reiterates its previous recommendation that the Andorran authorities conduct information campaigns to make the criminal law provisions relating to racism and intolerance known to the general public and particularly to potential victims of this type of crime.
30. In its third report, ECRI encouraged the Andorran authorities to continue collecting information on all racist offences.
31. According to the 2009 ODIHR Hate Crime report, the Ministry of Interior is responsible for collecting data on hate crime. Moreover, ECRI has been informed by the authorities that the crime statistics programme and database of the police described in ECRI's third report has been in place since 2007 and collects data on all criminal offences committed, including racist offences. Furthermore, ECRI has been informed that the Public Prosecutor's Office collects detailed statistics on all the cases that are brought to court. However, ECRI notes that the authorities had difficulties in providing statistics on the breach of criminal law provisions punishing racist offences. Moreover, ECRI was not provided with information on the outcome of the trials, per reference year. ECRI recalls that statistics on the breach of criminal law provisions punishing racist offences, broken down by the number of opened investigations, cases referred to court, discontinued pre-trial investigations and the outcome of trials is a useful tool in assessing the effectiveness and application of these provisions¹².
32. ECRI strongly recommends that the Andorran authorities strengthen the collection of data on the application of criminal law provisions punishing racist offences so that their effectiveness can be assessed. ECRI recommends that one institution be mandated to centralise the collection of this data and ensure that it is broken down according to the following categories: number of opened investigations; cases referred to court; discontinued pre-trial investigations; and the outcome of the trials, per reference year.

¹⁰ An indication of the courts' willingness to apply Article 30.6 of the Criminal Code, however, is provided by a 2008 case in which a Portuguese young man was beaten to death on account of his sexual orientation. According to information provided by civil society, in 2009, the competent court condemned the offender for murder and applied the homophobic motive as an aggravating circumstance of the offence.

¹¹ One example of unsuccessful prosecution is a case of alleged racist speech/material over the internet, which concerned a Facebook profile opened in March 2011.

¹² The authorities have informed ECRI that they intend to carry out an inquiry into public safety and victimisation which will expressly address racist crime. The inquiry will be carried out either in 2013 or in 2014 and will take place every 4 years.

33. In its third report, ECRI encouraged the Andorran authorities to remain vigilant with regard to skinhead movements and other far-right groups. It recommended that they ensure that Article 359 of the Criminal Code is applied in such cases where necessary and that they organise awareness campaigns on the dangers of this type of organisation.
34. ECRI was informed by the authorities that since 2005, and with the exception of the incident mentioned in footnote 11, the unit of the police in charge of matters concerning far-right movements has not identified any far-right movement or activity.

Civil and administrative law provisions

35. In its third report, ECRI strongly recommended that the Andorran authorities enact comprehensive legislation against racial discrimination along the lines of Chapter III of its General Policy Recommendation No. 7 and that they involve NGOs, civil society and trade unions in this process.
36. Articles 71, 67 and 72 of the Civil Service Act, provide, respectively, that any discriminatory act in the exercise of civil servants' public functions for (...) religious or racial reasons is prohibited; and that civil servants may incur disciplinary and administrative sanctions as well as civil and or criminal liability for breach of their duties.
37. Since ECRI's third report, on 21 April 2009, a new law on employment relations entered into force (Law No. 35/2008 – Code on Employment Relations – thereafter the Code). According to the authorities, the Code has maintained almost all the provisions of the 2003 Employment Contract Act (see ECRI's third report), including its provisions against discrimination. Notably, under Article 4 of the Code, both employers and employees must avoid any abuse of rights, anti-social conduct or discrimination on grounds of birth, race (...) origins, religion (...). Clauses constituting an act of discrimination are considered void and either party may apply individually or collectively to the courts for such clauses to be declared void. Under Article 159 sentence 3 of the Code, any unilateral discriminatory act of the employer which concerns the payment of salary, training, promotion and other working conditions on grounds of birth, race (...) origins, religion (...) is considered a serious administrative offence and is punished with a fine between 3 001 and 24 000 Euros. Under Article 97 in case of resignation of an employee due to a discriminatory act on grounds of birth, race (...) origins, religion (...) s/he may apply to the courts for the compensation that would be awarded for unjustified dismissal or to demand reinstatement by the company concerned, together with reparation for the discriminatory act and compensation for any damage incurred. Under Article 98, where dismissal constitutes a discriminatory act, workers are entitled either to appropriate compensation or to reinstatement together with reparation for the discriminatory act and compensation for any damage incurred¹³.
38. ECRI notes that other Andorran laws make reference to the principle of non-discrimination, including: the Prison Service Act under its Article 7 (prohibiting discrimination, inter alia, on grounds of race, religion, language and place of birth); the Police Act, under its Article 5.2 (which states that officials should impede discriminatory acts and considers discrimination on grounds of race, religion, language, birth (...) a serious misdemeanour); and the Higher Education Act (Law No. 12/2008).

¹³ The Code on Employment Relations also prohibits discrimination on grounds of affiliation to a trade union.

39. Other than the provisions described earlier on in this section, at present there is no comprehensive legislation against racial discrimination in Andorra and, since 2007, there have been no legislative developments in this sense. At the same time, the authorities have expressed willingness to explore ways in the future to introduce anti-discrimination provisions in the sectors in which they are lacking.
40. More specifically, some social fields such as housing, health and private services are still not covered by legislation banning discrimination. While the authorities maintain that the principle of equality is provided for under the Constitution and that this principle is directly applicable in national legislation, ECRI highlights that implementing legislation is of paramount importance in order to ensure effective respect for this principle. Notably, in line with ECRI's GPR No. 7, ECRI stresses the importance that anti-discrimination legislation clearly prohibit: direct and indirect discrimination, segregation, discrimination by association, announced intention to discriminate and instruction or incitement or aiding another to discriminate. In addition, anti-discrimination legislation should clearly set out the avenues to seek redress and provide for the principle of the sharing of the burden of proof¹⁴ in order to facilitate proof of discrimination by the claimant. In this connection, the authorities have confirmed that such a principle is indeed lacking in Andorran legislation; however, in labour disputes, including those involving discrimination complaints, judicial authorities are guided by the principle that, in case of doubt, the decision must be more favourable towards the employee. The current legal framework in Andorra, furthermore, lacks a provision authorising organisations which have a legitimate interest in combating racism and racial discrimination¹⁵ to bring civil cases or intervene in administrative cases even if a specific victim is not referred to¹⁶. This provision is important in cases in which the victim fears retaliation, when it is difficult to identify the victim, or when an indeterminate number of victims are affected. Lastly, the current legal framework should, in ECRI's view, provide for an obligation to suppress public financing of organisations which promote racism. Where a system of public financing of political parties is in place, such an obligation should include the suppression of public financing of political parties which promote racism.
41. ECRI reiterates its recommendation to the Andorran authorities, in order to prevent racial discrimination, to introduce comprehensive legislation aimed at combating discrimination, direct and indirect, in key fields of life such as housing, public and private services, health and education. This legislation should, inter alia, provide for: the possibility for organisations which have a legitimate interest in combating racism and racial discrimination to bring civil cases or intervene in administrative cases even if a specific victim is not referred to; and an obligation to suppress public financing of organisations which promote racism. In so doing ECRI recommends that the authorities take into account its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.
42. ECRI strongly recommends that the Andorran authorities introduce and apply the principle of the sharing of the burden of proof when discrimination complaints on grounds of "race", colour, ethnicity, nationality, religion or language are brought before civil/administrative courts. Notably, the law should provide that when persons consider themselves wronged because of a discriminatory act and they establish before the competent authority facts from which it may be presumed

¹⁴ Notably, the law should provide that, if persons who consider themselves wronged because of a discriminatory act establish before a court or any other competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no discrimination.

¹⁵ Such as, for instance, associations, trade unions and other legal entities.

¹⁶ If a specific victim is referred to, his/her consent must be obtained.

that there has been direct or indirect discrimination, it should be for the respondent to prove that there has been no discrimination.

43. ECRI has been informed that no discrimination complaints have been lodged since 2007 for breach of anti-discrimination legislation, except for one case lodged before a civil court for dismissal from employment on grounds of participation to a trade union. According to the information available to ECRI, the court found in favour of the employer, stating in its judgment that, because dismissal from employment is solely subject to compensation as provided for by the law, there was no need to analyse the reasons for such dismissal. While this particular case concerned dismissal and alleged discrimination on grounds of participation to a trade union, the above reasoning of the court could easily be applied to allegations of discriminatory dismissal on grounds of “race”, language, religion, ethnic or national origin. The decision of the court is all the more troubling as Article 98 of the Code on Employment Relations protects employees from discriminatory dismissals and provides for the right to reinstatement.
44. ECRI recommends that, in order to prevent racial discrimination, the Andorran authorities ensure that anti-discrimination legislation, including its provisions protecting employees from discriminatory dismissal from work, be applied in practice and that they not be negated by other provisions.
45. In its third report, ECRI once again recommended that the Andorran authorities ensure that civil servants receive training in provisions prohibiting discrimination in the Civil Service Code of the Principality of Andorra and that the latter are widely publicised so that the rights and obligations stemming from them are better known. It also recommended that the authorities ensure that the law on employment contracts is publicised and that they offer civil servants, employers and employees training in the implementation of this law.
46. The authorities have assured ECRI that information sessions have been organised for all civil servants on the various legal texts that they must be acquainted with, including the Civil Service Act and the Public Administration’s Code of Conduct and Ethics. ECRI notes, however, that no specific training on the anti-discrimination provisions has been carried out¹⁷. ECRI was further informed by the authorities, that, in general, trainings are organised by the Labour Inspectorate when a new labour law enters into force and that they cover the principle of equality and non-discrimination.
47. ECRI reiterates its recommendation to the Andorran authorities to ensure that civil servants receive training in the anti-discrimination provisions and that the latter are widely publicised so that the rights and obligations stemming from them are better known. This will ensure that racial discrimination is effectively prevented.
48. ECRI recommends that, once comprehensive legislation aimed at combating discrimination is in place, the authorities carry out a campaign aimed at raising society’s awareness on discrimination and the avenues available to seek redress
49. In its third report, ECRI once again recommended that the Andorran authorities ensure the monitoring of the application of the provisions prohibiting discrimination in the Civil Service Code of the Principality of Andorra.
50. ECRI has been informed by the authorities that thus far the application of these provisions has not been monitored. It would also appear that the authorities do not monitor the other provisions prohibiting discrimination in Andorran legislation.

¹⁷ The Andorran authorities, however, have stated that a website dedicated to and used by Andorran civil servants contains a section which addresses discrimination.

51. ECRI recommends that, in order to prevent racial discrimination, the authorities monitor the application of anti-discrimination provisions in civil and administrative law.

Training of judges, prosecutors and lawyers

52. In its third report ECRI recommended that the Andorran authorities offer the judiciary initial and ongoing training in issues pertaining to racism and racial discrimination and that they consider the possibility of including modules on these subjects in the agreement signed with the legal service training college in Barcelona. Furthermore, ECRI recommended that they ensure that the judiciary receive training in the articles of the new Criminal Code that punish racist offences.
53. ECRI has been informed that judges, prosecutors and judicial secretaries receive in-service training in fundamental rights, with a focus on children's rights, through the legal service training college in Barcelona. Further, court officials attend training organised every two years by the University of Andorra on children's rights and on fundamental rights (in collaboration with the UNICEF National Committee for Andorra). The authorities have stated that no specific training is provided on racism and racial discrimination, as statistics on the application of the relevant provisions show that discrimination is not a major issue in Andorra. However, according to the authorities, members of the judiciary may attend courses on these subjects through the French National College of Magistrates and the Spanish General Council of the Judiciary. Furthermore, the authorities state that in the course of 2010 a course was organised on how to detect and deal with skinhead movements.
54. As stated previously in this report, the statistics provided by the authorities show that indeed, cases of racial discrimination cannot be ruled out; for this reason, in addition to the general principles of human rights, the attention of all officials working in the judicial system should be drawn specifically to provisions on racism and racial discrimination, those punishing racist offences and on the importance of applying such provisions in every such case that it is required.
55. ECRI recommends the Andorran authorities to offer judges, prosecutors and lawyers initial and ongoing training in issues pertaining to racism and racial discrimination, as well as on the criminal legislation in place relating to racism and intolerance.

Anti-discrimination bodies and policies

56. Under the Law Creating the Office of the Raonador, the Ombudsman is a Commissioner of the Parliament mandated to: ensure the application of and respect for fundamental rights stemming from the Constitution (including the principle of equality); ensure respect for constitutional principles as well as the society's general interests by the public administration; hear complaints against the public sector; and advise the Parliament on legislative amendments on issues pertaining to his/her mandate.
57. In its third report, ECRI reiterated its recommendation that the Andorran authorities either set up a specialised body along the lines proposed in its GPR No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, or extend the Ombudsman's mandate to cover these issues specifically. It also recommended in this regard that they ensure that he receives the necessary human and financial resources.
58. ECRI notes that, to this day, the Ombudsman's mandate does not mention expressly racism, racial discrimination, xenophobia, antisemitism and intolerance,

nor has a new body been set up to receive complaints on these grounds. In this connection, the newly appointed Ombudsman (August, 2011) has informed ECRI that it has not received any complaints on discrimination since ECRI's third report.

59. ECRI is aware that the current economic situation at national (and international) level does not favour the setting up of new State bodies. On the other hand, in ECRI's experience, there have been cases in which a dedicated capacity has been created within ombudsmen's offices to deal with cases of discrimination and these institutions' mandate has been expanded to address discrimination in the private sector. ECRI notes that extending the Andorran Ombudsman's competencies as outlined above would not be in disaccord with the Ombudsman's Office mandate. ECRI reiterates the importance for Andorra to have a body with specialised capacity to combat racism, racial discrimination, xenophobia, antisemitism and intolerance with the functions and responsibilities provided by GPR Nos. 2 and 7. More specifically, in addition to receiving complaints, such a body should, *inter alia*, monitor the content and effect of legislation on issues related to racial discrimination, advise both the legislative and executive authorities and have recourse to the courts if and when necessary.
60. ECRI strongly recommends that the Andorran authorities ensure the existence of a body with specialised capacity to combat racism, racial discrimination, xenophobia, antisemitism and intolerance at national level along the lines proposed in its General Policy Recommendation Nos. 2 and 7 on specialised bodies and on national legislation to combat racism and racial discrimination. This body should, *inter alia*, monitor the content and effect of legislation on issues related to racial discrimination, advise both the legislative and executive authorities on such issues and have recourse to the courts if and when necessary.
61. As concerns the Ombudsman's human and financial resources, the current Ombudsman has informed ECRI that he is satisfied with the resources available, both human (four staff members) and financial.
62. In its third report ECRI recommended that the Andorran authorities provide the Ombudsman with the resources needed to conduct information campaigns aimed at ensuring that this institution is better known among immigrant communities and that they ensure that representatives of these communities take part in these campaigns. Furthermore, it recommended that the Andorran authorities provide the Ombudsman with the means to either translate his annual report into Spanish, Portuguese and French or publish a detailed summary in these three languages.
63. ECRI is pleased to note that since its third report, the Ombudsman's Office has published a summary of its annual report in Spanish, Portuguese, French and English. Furthermore, ECRI has been informed that the Ombudsman's Office has carried out an information campaign by means of the press and other publications to make this institution better known to the public. As a result, it would appear that the number of complaints received has risen.
64. ECRI notes that on 14 April 2010, the National Equality Commission¹⁸ was set up in order to address anti-discrimination issues and launch a National Plan for Equality (the Plan). ECRI was informed that the objective of this new body and the Plan that it is working on, is to address any inequalities and or discrimination

¹⁸ The National Equality Commission is chaired by the Head of Government. The vice-chairperson is the Minister of Health. Its members are representatives of the departments of health, welfare, employment, internal affairs and youth, the Public Prosecutor's Office and a trial judge. A member of each group represented in Parliament and the Ombudsman are also invited to participate.

present in Andorran society and to make proposals, including proposals of a legislative nature. In the context of the National Equality Plan, authorities, civil society, trade unions, professional associations and migrants met and worked side-by-side in five working groups, including a working group on migrants. During these meetings, 50 proposals were presented and suggestions were made as to the short, medium and long-term objectives to be set. One of the proposals put forward was, by way of example, to grant permanent residents who have resided in Andorra for more than three years, the right to participate in municipal elections. The authorities, however, accept that the Plan has been stagnating. They have further stated that it is not on the agenda of the Government and that since 2010 there have been no further developments. ECRI considers the setting up of the National Equality Commission as a positive initiative and urges the authorities to strengthen this body and continue the activities it has launched.

65. ECRI urges the Andorran authorities to give a strong impetus to the work of the newly established National Equality Commission and the National Equality Plan it oversees. ECRI recommends that this commission, in order to prevent racial discrimination, continue identifying any discrimination present in Andorra and finding solutions at policy, legislative and any other appropriate level, in cooperation with civil society.

II. Discrimination in Various Fields

Employment

66. According to government statistics, out of a total of 40 000 workers registered with Andorran Social Security, most workers originated from Spain, Portugal and Andorra. However, many workers were also of French, Argentinean, Chilean, Moroccan, Filipino and Brazilian nationality¹⁹. Though the Andorran authorities have informed ECRI that they have received no complaints of racial discrimination²⁰ in employment, civil society has indicated that forms of direct and indirect discrimination based on citizenship do exist. Notably, ECRI has been told that workers of Portuguese nationality are often not subject to the same working conditions as the Andorrans, the French or the Spanish. Furthermore, it has received information indicating that on more than one occasions, when the ski season had not yielded the economic gains expected due to lack of snow, employers did not fulfil contracts entered into with seasonal workers. Notably, there were allegations of unpaid work and dismissal before the end of the season. According to civil society, seasonal workers are not sufficiently informed of avenues available to seek redress. Furthermore, for many of them, the legal assistance fees associated with bringing a case before the court are very high.
67. ECRI recommends that the Andorran authorities carry out a campaign providing seasonal workers with information on their rights and obligations in Andorra in the field of employment, as well as the avenues available to seek redress in case of labour disputes.
68. ECRI's attention has been drawn to the fact that the avenues to seek support and redress in cases of discrimination are weak and ineffective. Although the Code on Employment Relations prohibits discrimination on grounds of affiliation to a trade union (see paragraphs 37 and 43), active participation in trade unions, particularly for foreigners whose permit to stay is linked to their employment, is very risky. In this connection, the information collected by ECRI indicates that

¹⁹ Notably, according to statistics provided by Andorran Social Security the above-mentioned are the most numerous communities receiving social security benefits.

²⁰ See footnote 6, for the definition of racial discrimination.

there have been cases in which workers who had attempted to elect their local representative were subsequently made redundant. Furthermore, should persons who feel they have been discriminated against turn to trade unions, the assistance they would receive would, in practice, be very limited²¹. As concerns the protection provided by labour inspectorates (including to foreign workers), when the latter open an investigation and find a breach of the legislation, they must refer the case to the competent Ministry with a view to have a sanction imposed. In fact, the only measure available to the Government is the imposition of a fine. However, there has been criticism that in cases of discrimination, the imposition of a fine if not accompanied by additional measures, is not sufficient to protect workers; on the contrary, it increases their vulnerability.

69. ECRI strongly recommends that the Andorran authorities consider strengthening the powers and outreach capacity of trade unions, with a view to providing workers who feel that they have been discriminated against, inter alia, on grounds of “race”, colour, language, religion, nationality or national or ethnic origin, with the necessary support to seek redress. ECRI also refers in this connection to its recommendation in paragraph 41.
70. In its third report, ECRI recommended that the Andorran authorities ensure that the labour inspectorate’s human and financial resources are substantially increased. It also recommended that they offer inspectors currently in post and those to be recruited in the future, training in issues of racism and racial discrimination, especially in the employment field.
71. ECRI notes that unfortunately there have been no developments which go in the sense of the above recommendation.
72. ECRI reiterates its recommendation that the Andorran authorities ensure that the labour inspectorate’s human and financial resources are substantially increased and that they offer inspectors currently in post and those to be recruited training in issues of racism and racial discrimination in the employment field.
73. In its third report, ECRI recommended that the Andorran authorities continue using the statistics collected by the employment service to monitor the situation of non-citizens as concerns racial discrimination in employment and to take any necessary measures.
74. The authorities have informed ECRI that the Department of Statistics of the Government collects data on employment via the Employment Service and publishes them regularly, including through the website www.estadistica.ad. This data (including information on those receiving social security benefits) is broken down by nationality. While this information is taken into account in devising policies on employment, ECRI has not received any indication that it is also used to monitor issues related to discrimination in employment. ECRI addresses the issue of monitoring racism and racial discrimination in Chapter VII of this report.

²¹ Notably, trade unions cannot represent workers before court ; they do not have the funds to provide legal assistance ; trade unionists are not provided by law with time-off from their regular employment to work in the trade union ; finally, it would appear that trade unionists would be at risk of retaliation were they to lodge formal complaints on behalf of workers.

Education

75. In its third report ECRI recommended to the authorities that the three school systems²² continue to teach the four languages provided for in the school curriculum (Catalan, Spanish, French and English) and that Portuguese lessons be provided during school hours. ECRI also encouraged the authorities to continue to provide schooling to seasonal workers' children and recommended that they pay special attention to these children's situation.
76. At the time of ECRI's third report, pupils between the age of 8 and 12 could receive optional Portuguese lessons, free of charge, outside school hours. As of the 2006-2007 academic year this option was extended to secondary school pupils. Portuguese is offered during school hours as an optional language in the following schools: Escola Andorrana de Baxtillerat and the Lycée Comte de Foix.
77. To ECRI's knowledge, lessons of Catalan as well as of the other two most spoken languages in Andorra (Spanish and French) are provided in the reception classes described in ECRI's third report. More precisely, the Andorran education system offers one reception class in a lower secondary school. The French and Spanish education systems, on the other hand, offer reception classes throughout secondary school. While pupils in lower secondary school can attend the reception class during regular school hours, pupils in the upper secondary school may attend this class as an extra-curricular activity. ECRI's delegation visited the reception class in the Andorran school system and was impressed by the tuition it offered. ECRI has been informed that this special reception class has been set up for new arrivals, particularly foreign pupils, who do not speak all of the required languages (Catalan, Spanish and French). Its aim is to facilitate pupils' integration in the school, teach them Catalan as well as any of the two other above-mentioned languages the pupil is deficient in and provide them information about Andorran culture. Each pupil, follows an individualised programme based on his/her needs by attending the special reception class for up to 15 hours per week. Newly arrived pupils also attend regular classes together with other pupils. As their language skills improve, they are in a position to follow all the classes taught in Catalan. Those who need it, receive full immersion in Catalan for the first month.
78. ECRI recommends that the Andorran authorities set up special reception classes for newly arrived foreign pupils in all primary and secondary schools. These classes should provide pupils with the tools to learn the language skills needed to integrate into one of the three education systems in Andorra.
79. As concerns more in particular schooling offered to seasonal workers' children, the authorities have informed ECRI that the latter are also integrated in the special reception classes and that their needs are catered for. Furthermore, the authorities have stated that there is a special working group at the Ministry of Education who tries to make pupils' move to another country smoother from an educational point of view. Notably this group assembles information concerning the education received by a pupil who is due to move to another country and transmits it to the new establishment in which he/she will enrol.
80. In its third report, ECRI recommended that the Andorran authorities use the database kept by the Ministry of Education on the situation of pupils to identify

²² There are three systems of schools in Andorra – Andorran, French and Spanish – which use Catalan, French and Spanish respectively, as the main language of instruction. Primary education covers grades one to six in the Spanish and Andorran systems and grades one to five in the French system. Lower secondary education lasts 4 years in all three school systems (it is called collège in the French school system). Upper secondary education lasts two years in the Spanish and Andorran system and three years in the French system (lycée).

problems that may be faced in the school environment by those with an immigrant background. Thus they would be able to introduce programmes to solve these problems as advocated in ECRI's General Policy Recommendation No.10.

81. The authorities continue to collect information on pupils, broken down by nationality and type of education system attended. However, no special problems have been identified in respect of pupils with an immigrant background.

Housing

82. In its third report, ECRI encouraged the Andorran authorities to pursue their efforts to provide access to housing for persons who have difficulty in finding accommodation. It recommended in this regard that they ensure that persons who have been lawfully residing in Andorra for less than five years are also able to receive housing benefits.
83. ECRI was informed by civil society that housing in Andorra continues to be expensive. By way of example, ECRI has been informed that it is common for five or six seasonal workers to live in the same flat.
84. Housing subsidies/benefits are provided at municipal and State level and can be cumulated up to 35% of the price of the rent. Housing subsidies at municipal level are subject to a five year residency requirement. As concerns housing subsidies at State level, these comprise those granted by the Ministry of Housing under the Regulation on Housing Benefits, which remain subject to a five year residency requirement, and those granted by the Ministry of Social Affairs under the Regulation on Social Security Benefits of 16 February 2011, which may be subject to a three year residency requirement. There are no residency requirements for those in high risk situations such as, for example, families with underage children who are in an insecure situation and women who are victims of domestic violence.
85. ECRI recommends that the Andorran authorities reduce the residency requirements to be eligible for housing benefits to three years, in all cases, including when housing subsidies are provided at municipal level or by the Ministry of Housing.
86. ECRI has been informed by civil society that the procedure for applying for housing benefits is cumbersome and that it is difficult to receive housing benefits even when the requirements provided by law are met²³. It invites the authorities to examine these claims.

Health

87. ECRI has been informed that prior to 2010, the Government did not consider foreigners with HIV/AIDS as eligible for a residence permit. On 20 October 2010 the Andorran Government adopted regulations on the performance of medical tests prior to the issuance of residence permits. Further to the adoption of these regulations, the Government will refuse residence permits only to individuals with an illness included in the World Health Organisation's International Health Regulations, when they pose a risk to public health or when the illness is incompatible with the job they are applying for. ECRI has not received any information which would indicate lack of respect of the above-mentioned regulation.

²³ The authorities, however, while recognising that the procedure is cumbersome, contest the fact that housing benefits are not granted when the requirements provided by law are met.

III. Climate of opinion and public discourse

Media

88. In its third report, ECRI recommended that the Andorran authorities ensure that the new broadcasting law include provisions prohibiting racial discrimination. It also recommended that they encourage any media initiatives to offer journalists training in human rights in general and in issues concerning the fight against racism and racial discrimination in particular. Furthermore, ECRI recommended setting up an independent body other than the courts, whose remit will include receiving complaints against the media.
89. ECRI notes that the broadcasting law in force at the time of ECRI's third report has not been amended. It regulates public television and radio and contains anti-discrimination provisions in its Articles 2 and 8.
90. ECRI was informed that journalists do not yet receive training on human rights or on the fight against racism and racial discrimination. Since ECRI's third report, an Association of Communications Professionals of Andorra (APCA) has been established to promote the right to freedom of information and expression, as guaranteed by the Constitution, and to oversee professional ethics. ECRI has been informed that this Association will, among other things, promote and organise training for journalists. ECRI is hopeful that this Association will play an important role in launching training in human rights and on the fight against racism and racial discrimination in particular.
91. ECRI reiterates its recommendation to the Andorran authorities to encourage any initiative aimed at offering journalists training in human rights in general and in issues concerning the fight against racism and racial discrimination, in particular.
92. ECRI notes that there is no independent body responsible for receiving complaints against the media (audiovisual, the internet and printed press). The Andorran Broadcasting Board, a body with consultative functions whose members are appointed by Parliament, as provided by the Law on Broadcasting, is mandated to ensure that programmes aired on television and radio are respectful of the rights of minorities and are not discriminatory. While it can issue non-binding reports, ECRI has been informed that the latter have never addressed the issue of discrimination or inequality. Nor is the Andorran Broadcasting Board mandated to receive individual complaints as concerns the content of broadcast programmes. ECRI has been informed that the only independent body before which persons can lodge complaints concerning the media is an NGO called the Institute of Human Rights. It acts as a mediator between the party who feels wronged and the alleged offender and transmits information to the media if it establishes that discrimination has occurred. ECRI is not aware of the manner in which this body functions and notes that it is not very well publicised or known by society.
93. ECRI recommends setting up an independent body other than the courts, whose remit will include receiving complaints against all forms of media and monitoring the latter, inter alia, for racist or discriminatory content.

IV. Vulnerable/Target Groups

Minority religious groups

94. There are 10 religious communities in Andorra, which, according to several sources, are well integrated into local society. These are: the Roman Catholic Church, the Muslim community, the Jewish community, the Seventh-Day Adventist Church, the Baha'i community, the Unification Church, the New

Apostolic Church, the “Christian community”, the Hindu community and the Anglican Church. The largest religious communities are the Roman Catholic, followed by the Muslim (between 400 and 600 people) and the Jewish (around 100 persons). These 10 communities make up the Interfaith Dialogue Group, which, in cooperation with the Andorran National Commission for UNESCO, meets regularly in order to promote dialogue between the different faiths and to discuss the problems faced by the religious communities. ECRI was informed that there are peaceful relations between the 10 religious communities and that, in 2008, UNESCO organised a concert for peace involving artists representing all of them. While ECRI commends this initiative, it was informed that there is still little knowledge about the different confessions present in Andorra and therefore urges the authorities to replicate this type of event.

95. ECRI recommends to the Andorran authorities to promote initiatives aimed at sensitising the Andorran population about the different confessions present in Andorra.
96. In its third report, ECRI recommended that the Andorran authorities take steps to provide members of minority religious groups with appropriate places of worship and for accommodating cultural or educational institutions.
97. ECRI recalls that the Andorran Constitution guarantees freedom of religion under its Article 11. However, there is no specific legislation on the treatment and recognition of religious groups or on religious freedom. While the Principality of Andorra concluded an agreement with the Holy See in March 2008, relations with the other religious communities are based on custom and, according to those consulted by ECRI, “a tradition of tolerance”.
98. Minority religious communities, in order to acquire legal personality, have to register as non-profit cultural organisations under the Law on Associations of 29 December 2000²⁴. Once they acquire legal personality, they can build places of worship. This can provide a practical solution in some cases. The Jewish community, for instance, has founded a cultural association and practices its religion in a small synagogue and a community centre. However, ECRI has been informed that religious communities in Andorra would like to be legally recognised by the State as such (to be granted special status), not as mere cultural associations. Moreover, the Muslim community encounters particular problems with building a mosque. Although it has applied - together with the Andorran National Commission for UNESCO - for permission, the authorities have not issued the authorisation needed to build a mosque. As a result, Muslims practice their religion in two community centres.
99. ECRI recommends that the Andorran authorities authorise the building of a mosque for the country’s Muslim community.
100. Lack of special status also means that the various confessions do not receive funds from the State, which are needed for their religious functions. Moreover, minority religious communities do not have cemeteries, where they can bury their dead in accordance with their religious beliefs and customs. In this connection, ECRI has been informed that it is frequent practice for members of the Jewish community to bury their relatives in Toulouse or Barcelona.
101. ECRI recommends that the Andorran authorities find a solution in order to enable the minority religious communities to have a cemetery, in which they can bury their dead in accordance with their religious beliefs and customs.

²⁴ What is required is a statute, a statement of the names of the persons appointed to the board and a statement concerning the assets of the association.

102. Generally speaking, ECRI notes that minority religious communities in Andorra must “fend for themselves” as concerns the modalities and conditions in which they exercise their right to freedom of religion. ECRI considers that, if the religious confessions present in Andorra were granted special status, the Andorran State would be more inclined to solve many of the above-mentioned problems.

Asylum seekers

103. In its third report, ECRI recommended that the Andorran authorities enact legislation on asylum seekers and refugees which is consistent with international standards in the matter.
104. Since ECRI's third report, Andorra has not enacted legislation on asylum seekers and refugees which would permit it to address applications for asylum within an appropriate legal framework.
105. ECRI reiterates its recommendation that the Andorran authorities enact legislation on asylum seekers and refugees which is consistent with international standards.

Other non-citizens

106. In its third report, ECRI recommended that the Andorran authorities devise policies to promote the integration of non-Andorrans in all areas, including in the labour market, drawing in particular on the findings of certain studies carried out in Andorra on immigration, employment and the high rate of turn-over of immigrant workers.
107. Various sources have informed ECRI that there continues to be a high turn-over rate of immigrants and seasonal workers.
108. In its third report, ECRI also strongly recommended that the Andorran authorities ensure that the new Law on Immigration does not contain any provisions that might make it more difficult for noncitizens to integrate.
109. The authorities have informed ECRI that the Law on Immigration was amended in 2007 and that, as a result, certain provisions promoting integration have been introduced therein. Notably, in its Article 52, the Law states that if upon renewal of a resident permit, a person shows sufficient knowledge of the Catalan language and Andorran culture, s/he will have his/her residence permit renewed for a period which corresponds to his/her needs. The objective of this provision is to shorten the period required by law to secure a permanent residence permit²⁵. An implementing regulation which is currently being studied by the Government will provide for a series of examinations in Catalan language and in Andorran culture which temporary residents will take on a voluntary basis in order to satisfy the conditions of Article 52. The examination in Catalan language will require language proficiency equivalent to A-level standards of the Council of Europe²⁶. The authorities have assured ECRI that failing these non-obligatory examinations will not have any detrimental effects on an applicant. ECRI stresses the importance of ensuring that this is indeed the case.

²⁵ Currently, a temporary residence permit for work purposes is granted for a one-year period; it can then be renewed for two-year periods up to three times. Subsequent renewal is for a period of ten years. As concerns Spanish, French and Portuguese nationals the initial duration of the temporary residence permit is of one year; it can then be renewed twice for two-year periods. The subsequent renewal is for a duration of ten years.

²⁶ The authorities have informed ECRI that self-learning tools are available in education centres in order to prepare for these examinations (see paragraph 116).

110. While ECRI welcomes the authorities' efforts in reducing the residency requirements to obtain a permanent residence permit, ECRI stresses the importance of providing additional tools, other than those already described in ECRI's third report (see paragraph 84 of ECRI's third report) and in this section (see paragraph 116), in order to prepare prospective applicants for the specificity of these new examinations.
111. ECRI recommends that the Andorran authorities provide additional tools, other than those already available, for the preparation of the examinations on Catalan language and Andorran culture that are due to be introduced in order to test the "level of integration" of temporary residents.
112. In its third report, ECRI once again requested that the Andorran authorities provide for family reunification for seasonal workers and recommended that they take the opportunity of the new immigration law to do so.
113. As already stated, the Law on Immigration was amended on 22 November 2007. It provides for new conditions for family reunification, notably: a certain degree of kinship²⁷, financial solvency and the need for adequate housing. Family reunification may be requested by any Andorran or any foreigner holding an immigrant's residence and work permit who has been legally residing in Andorra for a year. As concerns this last point, ECRI notes that the requirement to have resided in Andorra for one year represents a step back as compared to the situation observed at the time of ECRI's third report. Although the authorities had informed ECRI that there were plans to amend the law so as to grant a right to request family reunification as of receipt of a permit to stay and to work, ECRI regrets that this proposal is no longer being studied by the authorities.
114. As concerns more specifically family reunification of seasonal workers, the situation has not evolved since ECRI's third report. Seasonal workers are still denied the possibility of family reunification as their residence permits are for a six-month, maximum one-year, period. Seasonal workers are then required to leave the country for six months before they can work again. At the time of ECRI's third report, certain seasonal workers would, in practice, be allowed to stay beyond the above-mentioned time period as a result of the renewal of their contract. If this continues to be the case, ECRI hopes that they will be able to enjoy respect for their family life (see paragraph 113).
115. In its third report, ECRI recommended that the authorities find ways of offering free Catalan lessons at the workplace to people who need them, in order to help them integrate into Andorran society.
116. ECRI has been informed that non-nationals can attend free Catalan language classes outside of the workplace. Moreover, the Ministry of Culture offers to organise free Catalan language classes at the workplace. However, according to the authorities, few employers have shown interest in this offer, as the Ministry of Culture requires that the classes in question should be scheduled during work hours. As described in ECRI's third report, there are five language centres in which access and use of learning material is free of charge. Since autumn 2009, persons registered with the employment service and who receive unemployment benefits must enrol, free of charge, in Catalan language classes. The Ministry of Culture has also launched a programme in which Catalan mother-tongue volunteers meet with non-native speakers to help them practice the language. ECRI considers that these initiatives are commendable; however, it also stresses the importance of giving the authorities the power to require that employers

²⁷ Applicants may be reunited with their spouse, minor children or the minor children of their spouse who are in the spouse's custody, dependent relatives in the ascendant line and any other dependent person or person under the protection of the applicant (as defined in Andorran law).

accept the setting up of free language classes at the workplace for those migrant workers who need to improve their language skills and who do not have time to do so outside work.

117. ECRI recommends that the Andorran authorities acquire the power to impose on the employers the obligation to accept the setting up of free Catalan classes at the workplace for migrant workers who need them, in order to integrate into Andorran society.

118. ECRI concludes on the basis of all the above that there continue to be integration issues, which need to be addressed by the Andorran authorities. ECRI considers that the setting up of the National Equality Commission could provide a window of opportunity in this connection.

119. ECRI strongly recommends that the work of the National Equality Commission be used to devise and coordinate an integration policy. This policy should, inter alia, address the problems faced by seasonal workers, raise the awareness of the public on the importance of the various communities present in Andorra and strive to increase the level of integration of non-Andorrans.

V. Conduct of Law Enforcement Officials

120. In its third report, ECRI recommended that the Andorran authorities ensure that independent investigations are conducted into all allegations of police misconduct; and that they set up an independent body to investigate complaints against members of the police force and to punish acts of this kind. It also recommended that they ensure that police officers receive initial and ongoing training in issues concerning racism and racial discrimination as well as in the Criminal Code provisions which prohibit racist acts.

121. According to the authorities, complaints against police officers for racial discrimination and racially motivated conduct can be lodged with the head of the police, the Ombudsman, the Minister of the Interior, or before the courts. Should the police receive such complaints, it is required to transmit them to the Public Prosecutor's Office. ECRI has been informed that, with the exception of one complaint in 2011, no complaint had been lodged since 2006 for police misconduct. The above-mentioned complaint was lodged by a Portuguese citizen who had been arrested and on whom force had been applied. The complainant claimed he had been insulted with a pejorative name used for Portuguese citizens. The authorities have informed ECRI that the complaint was referred to the prosecutor.

122. ECRI is of the view that the paucity of the complaints received should not be considered as signifying that there is no police misconduct. In fact, experience shows that victims of police abuses do not generally have confidence in the complaints mechanisms internal to the police. They are often also reluctant to bring cases before institutions which cooperate closely and on a daily basis with the police, such as the prosecution authorities. It is therefore necessary to create a system whereby a victim can bring a complaint in full confidence to an independent body which has developed expertise in the relevant field or which controls the activities of the police. In this connection, ECRI notes that the Ombudsman's Office examines complaints related to human rights and could therefore possibly fulfil this role.

123. As concerns training in issues concerning racism and racial discrimination, members of the Andorran police force attend training in the Spanish and French police academies where courses on human rights with an emphasis on racism and racial discrimination are provided.

124. ECRI reiterates its recommendation that Andorran authorities develop a special capacity to investigate complaints against members of the police force for racial discrimination and racially motivated conduct. It also recommends that they strengthen the training provided to police officers in issues concerning racism and racial discrimination as well as in the Criminal Code provisions which prohibit racist acts.

VI. Monitoring Racism and Racial Discrimination

125. In its third report, ECRI recommended that the Andorran authorities consider ways of setting up a comprehensive data collection system according to the rules established by law 15/2003, in order to assess the situation of the various communities living in the Principality. ECRI emphasised that a system of this kind should comply with all European and international regulations and recommendations on data protection and protection of privacy and with the principle of informed consent. It should also ensure that the anonymity and dignity of the persons concerned are respected. This system should also take account of the dimension of equality between women and men, especially given the possibility of double or multiple discrimination²⁸. ECRI also recommended that the authorities conduct an information campaign on this law and on the Andorran Data Protection Agency, aimed at the general public, civil servants and NGOs.
126. While the Andorran Department of Statistics collects data on employment, broken down by citizenship, and data on education, broken down by citizenship and language, it does not systematically collect data in other policy areas such as housing. Nor does it break down information by ethnic origin and religion. Moreover, ECRI has been informed that the Andorran authorities have not carried out a census since 2000. According to ECRI's information, some municipalities²⁹ have already launched the process. It is not clear, however, what kind of data will be collected. Nevertheless, the authorities have informed ECRI that a non mandatory field on ethnicity and religion will be introduced in the surveys on family budgets and on the workforce which are carried out by the Department of Statistics. This, in the authorities' view, will permit to assess the financial and employment situation within the households surveyed their living conditions and the ethnic origin and religious affiliation of their individual members. Furthermore, ECRI has been informed that the Government intends to present a law on public statistics to the Parliament. Under this law, the Government would propose a four-year programme, specifying the mandatory and optional questions to be included in the statistics which would cover all policy areas. Moreover, the law would invest the Department of Statistics with the powers needed to carry out the above-mentioned statistics and will set out guarantees in respect of privacy.
127. ECRI recalls that, as it was the case at the time of its third report, Article 19 of qualified law 15/2003³⁰ prohibits the creation of files intended exclusively to collect and process personal data which indicate, directly or indirectly, the racial or ethnic origin (...) or religious opinions (...) of the persons concerned (...). ECRI considers that this provision limits considerably the authorities' ability to collect systematically data that could establish racial discrimination patterns.

²⁸ ECRI is pleased to note that at the highest political level of Andorran society, notably in its Parliament, equality between men and women does not appear to pose any specific problem. Out of 28 Members of Parliament, 15 are women and 13 are men. The Speaker is a man and the Deputy Speaker is a woman.

²⁹ This is the administrative unit which is responsible for conducting censuses under Andorran law.

³⁰ The same law provides that sensitive data may be processed and communicated only with the express consent of the person concerned. ECRI has been informed that public awareness and information campaigns on this law are conducted every year.

128. ECRI recommends that the Andorran authorities amend qualified law 15/2003 with a view of introducing the systematic collection of information in different policy areas, including employment, housing and education, broken down by ethnic origin, language, religion and citizenship. Respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group should be ensured.

VII. Education and Awareness-Raising

129. In its third report, ECRI recommended that the Andorran authorities ensure that the review of curricula in the three public school systems contains modules on teaching human rights in general and issues concerning the fight against racism and racial discrimination in particular.

130. ECRI has been informed that pupils aged 12 to 16 attend a class and tutorials on democratic participation. According to the authorities, social skills as well as human rights and the fight against discrimination are taught in this class. Furthermore, five schools are members of the UNESCO Associated Schools Project Network and participate in the commemoration of international human rights days. Andorra has also participated in the Council of Europe's Education for democratic citizenship and human rights programme since 2001 and in the United Nations World Programme for Human Rights Education. While recognising the positive contribution of these programmes, ECRI urges the authorities to organise compulsory courses for primary school pupils on human rights and the culture of the different communities living in Andorra.

131. ECRI recommends that compulsory courses be organised for primary school pupils on human rights and the culture of the different communities living in Andorra.

132. In its third report, ECRI recommended that the Andorran authorities ensure that teaching staff in all the school systems receive initial and ongoing training in issues of racism and racial discrimination.

133. ECRI has been informed by the authorities that, while no specific training has been organised on the prevention of racism and racial discrimination since 2007, there has been one course on gender equality; training focusing on conflict resolution, empathy and respect has also been organised. Further, teachers may participate in trainings organised by the Council of Europe and other organisations³¹. ECRI notes that while it is positive that teachers have the opportunity to attend trainings on human rights abroad, the organisation of this type of training for all teachers at the national level would be welcome.

134. ECRI reiterates its recommendation to the Andorran authorities to introduce mandatory initial and ongoing training in human rights and issues of racism and racial discrimination for all teaching staff.

135. In its third report, ECRI reiterated its recommendation that the Andorran authorities conduct public awareness campaigns on: issues concerning racism; and on the existence of the various communities living in the Principality and on their contribution to society. It recommended that they involve NGOs, civil society and the Ombudsman in any initiatives of this kind.

136. The authorities have informed ECRI that no awareness campaigns on racism have been carried out, as they deem that there are not any problems of

³¹ Notably, this training includes: Human Rights and Education for Democratic Citizenship; the History of the Shoah and Genocide in the XXth century; Civic Education – From Knowledge to Action; and Preparing Future Teachers for Intercultural Understanding.

discrimination in the country. ECRI notes that the cases brought before the court described in paragraph 27 show that the importance of efforts in fighting and preventing discrimination and racism should not be diminished. On the other hand, one local authority informed ECRI that a Department on Citizenship Participation has been created at municipal level, inter alia, in order to promote the various cultures present in Andorra. In this connection, a fair was organised and associations representing various communities were invited to present their culture. ECRI commends this initiative and invites the authorities to replicate at local and State level initiatives aimed at disseminating information about the different communities present in Andorra, as this is an effective way of preventing racism and racial discrimination.

137. ECRI recommends that the Andorran authorities conduct awareness raising activities on the fight against racism and racial discrimination and on the positive contribution of the various communities living in the Principality.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Andorra, are the following:

- ECRI strongly recommends that the Andorran authorities introduce and apply the principle of the sharing of the burden of proof when discrimination complaints on grounds of “race”, colour, ethnicity, nationality, religion or language are brought before civil/administrative courts. Notably, the law should provide that when persons consider themselves wronged because of a discriminatory act and they establish before the competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it should be for the respondent to prove that there has been no discrimination.
- ECRI recommends the Andorran authorities to offer judges, prosecutors and lawyers initial and ongoing training in issues pertaining to racism and racial discrimination, as well as on the criminal legislation in place relating to racism and intolerance
- ECRI strongly recommends that the work of the National Equality Commission be used to devise and coordinate an integration policy. This policy should, inter alia, address the problems faced by seasonal workers, raise the awareness of the public on the importance of the various communities present in Andorra and strive to increase the level of integration of non-Andorrans.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

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