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# Andorra

***Code pénal (1995), Article 301***

Quiconque aura offensé publiquement les sentiments religieux ou aura empêché ou perturbé les actes ou cérémonies religieuses sera puni d'un emprisonnement d'une durée maximale de six mois.

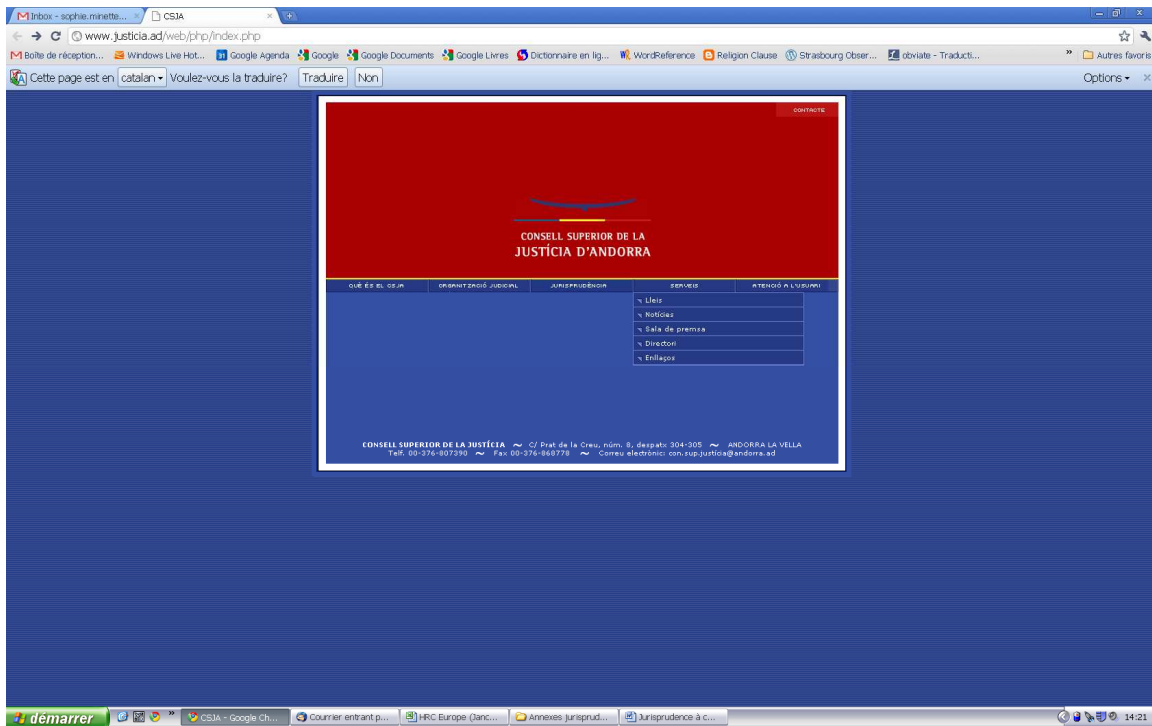
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# Case Law

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# Andorra

Judiciary organisation: <http://www.justicia.ad/web/php/index.php>



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# Public Policies

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# Third report on Andorra

Adopted on 29 June 2007

Strasbourg, 12 February 2008



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## **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.*

*One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.*

*The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.*

*The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.*

*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 evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit allows for meeting the circles directly concerned (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to 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 ECRI's final report.*

***The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 29 June 2007 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.***



### ***Executive summary***

Since the publication of ECRI's second report on Andorra on 15 April 2003, progress has been made in a number of the fields highlighted in the report. On 22 September 2006 Andorra ratified the United Nations Convention on the Elimination of All Forms of Racial Discrimination and made the declaration under Article 14 which gives individuals the right to file a complaint before the Committee on the Elimination of Racial Discrimination. In September 2005 a new Criminal Code came into force, providing for the racist motivation of a criminal offence to be regarded as an aggravating circumstance and prohibiting incitement to racial hatred as well as racist organisations. In July 2002 an employment service which helps job-seekers, including immigrants, was set up. In June 2003 the Andorran authorities also enacted a new law on employment contracts which prohibits racial discrimination in employment.

However, a number of recommendations made in ECRI's second report have not been implemented or have been partially so. Andorra has not yet ratified Protocol No.12 to the European Convention on Human Rights. Andorra does not have a detailed and comprehensive body of civil and administrative law prohibiting racial discrimination in all areas. Andorran legislation does not yet provide for the burden of proof to be shared in racial discrimination cases, including those concerning employment. A data collection system which would serve to assess the situation of groups from immigrant backgrounds in areas such as employment and access to public services and to introduce policies designed to resolve any problems they may encounter in these sectors has not yet been put in place. Moreover, foreign residents do not have the right to take part in local elections.

In the present report ECRI recommends that the Andorran authorities take further measures in a number of areas. It recommends that they ratify Protocol No.12 to the European Convention on Human Rights without delay. It also recommends that they enact a comprehensive body of civil and administrative laws prohibiting racial discrimination in all aspects of life. ECRI recommends that the Andorran authorities either set up a specialised body to combat racial discrimination or specifically broaden the Ombudsman's powers in this area. It recommends that they allow non-citizens to take part in local elections in order to improve their integration into Andorran society and enable them to exercise their rights to the full. Another recommendation made by ECRI is that seasonal workers, some of whom sometimes work in Andorra for several years, be entitled to family reunification. ECRI also calls on the Andorran authorities to ensure that the new immigration law which is in the process of being enacted does not contain any provisions that might make it more difficult for non-citizens to integrate into Andorran society.

## I. FOLLOW-UP TO ECRI'S SECOND REPORT ON ANDORRA

### International legal instruments

1. In its second report, ECRI urged the Andorran authorities to speed up the process of ratifying Protocol No.12 to the European Convention on Human Rights. It also welcomed the signature by Andorra of the revised Social Charter in 2000 and encouraged Andorra to ratify it as soon as possible.
2. The Andorran authorities have informed ECRI that on 31 May 2007, Andorra signed Protocol No.12 to the European Convention on Human Rights and that this text is being considered by Parliament. ECRI welcomes the ratification by Andorra, on 12 November 2004 Andorra, of the revised Social Charter which came into force in that country on 1 January 2005. As the majority of workers in the Principality are of foreign origin<sup>1</sup>, ratification of the Additional Protocol to the European Social Charter, which provides for a system of collective complaints, should be considered, since it would allow for their rights to be asserted before the European Committee of Social Rights.
3. In its second report, ECRI recommended that Andorra ratify the International Covenant on Civil and Political Rights and its two protocols, as well as the United Nations Convention on the Elimination of All Forms of Racial Discrimination. It also recommended that Andorra make the declaration under Article 14 of this convention which gives individuals the right to file complaints before the Committee on the Elimination of Racial Discrimination.
4. ECRI is pleased to note that on 22 September 2006 Andorra ratified the United Nations Convention on the Elimination of All Forms of Racial Discrimination and made the declaration under Article 14 of the convention. On the same day Andorra also ratified the International Covenant on Civil and Political Rights and its two protocols.
5. In its second report, ECRI again encouraged Andorra to ratify Convention No.111 of the International Labour Organisation concerning Discrimination in respect of Employment and Occupation, the UNESCO Convention against Discrimination in Education, the International Covenant on Economic, Social and Cultural Rights, the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. It also recommended that Andorra ratify the Convention relating to the Status of Refugees.
6. The Andorran authorities have informed ECRI that ratification of Convention No.111 of the International Labour Organisation concerning Discrimination in respect of Employment and Occupation will be considered, but is not planned for the time being. The Andorran authorities have further informed ECRI that ratification of the UNESCO Convention against Discrimination in Education is under consideration and that the Ministry of Education has given a favourable opinion on the subject.
7. Neither the International Covenant on Economic, Social and Cultural Rights nor the Framework Convention for the Protection of National Minorities have been ratified. Andorra has not ratified the European Charter for Regional or Minority Languages or the 1951 Convention relating to the Status of Refugees either.

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<sup>1</sup> The majority of people working in Andorra are Spanish, Portuguese and French. For further information on the subject, see "Employment" and "Specific issues" below.

**Recommendations:**

8. ECRI recommends that Andorra ratify Protocol No.12 to the European Convention on Human Rights without delay. ECRI reiterates its recommendation that Andorra ratify Convention No.111 of the International Labour Organisation concerning Discrimination in respect of Employment and Occupation and the UNESCO Convention against Discrimination in Education as soon as possible. It recommends that Andorra ratify the Additional Protocol to the revised European Social Charter providing for a system of collective complaints.
9. ECRI again recommends that Andorra ratify the International Covenant on Economic, Social and Cultural Rights, the Framework Convention for the Protection of National Minorities, the Convention relating to the Status of Refugees and the European Charter for Regional or Minority Languages.
10. The Andorran authorities have informed ECRI that they do not plan to ratify the European Convention on Nationality. Furthermore, the European Convention on the Legal Status of Migrant Workers and the Convention for the Participation of Foreigners in Public Life at Local Level have not been ratified. The Andorran authorities have explained that ratifying international legal instruments may entail a revision of the Constitution or legislation under Section 24 of the qualified law of 19 December 1996<sup>2</sup> regulating state activity with regard to treaties, which provides for domestic legislation to be brought into line with an international legal instrument before the latter is ratified.
11. Since the publication of Andorra's second report, the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, came into force on 1 March 2006. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families also came into force on 1 July 2003. The Andorran authorities have informed ECRI that they see no reason not to ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. They have also informed ECRI that ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is being considered.

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<sup>2</sup> This section provides that: 1. Treaties in force shall be directly applicable by all state judicial and administrative bodies and shall establish the rights and obligations of individuals, unless the text of the treaty or the authorisation to conclude it shows that its application is subject to the promulgation of laws or the approval of regulations. 2. If the implementation of a treaty requires legislation, the government shall submit the corresponding bill to the General Council (Parliament) as soon as possible. This bill shall be transmitted to Parliament when there is a request for the approval of the treaty. The latter must be in force in the other states or must require the member states to have the appropriate legislation when it comes into force. 3. Parliament may delegate to the government the power to prescribe the necessary rules for the implementation of treaties, taking account of the restrictions and conditions established by Article 59 of the Constitution. 4. Where appropriate, the government shall lay down the regulations required for the implementation of treaties in matters within its remit. 5. The legal effects of reservations, of objections to reservations, of territorial changes concerning the States Parties to a treaty and of those provisions of two or more treaties which are incompatible shall be determined according to the provisions of the treaties or in the light of the general standards of international law.

### **Recommendations:**

12. ECRI recommends 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 recommends 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.

### **Constitutional provisions and other basic provisions**

#### **- Citizenship legislation**

13. See “Specific issues” below.

### **Criminal law provisions**

14. In its second report, ECRI encouraged the Andorran authorities to expressly mention racist motivation as an aggravating circumstance in the Criminal Code. ECRI also noted that there was a lack of statistics on racist incidents and encouraged the police and prosecuting authorities to set up a system for monitoring, classifying and recording racist incidents brought to their attention as well as the follow-up and outcome accorded to such incidents.
15. ECRI is pleased to note that the new Criminal Code which came into force on 23 September 2005 contains several provisions on racist offences. Article 30 punishes the commission of a criminal offence “for racist or xenophobic motives or for motives relating to [...] religion, nationality [and] ethnic origin”. It also provides in paragraph 6 for the racist motivation of a criminal offence as an aggravating circumstance. This article is as yet seldom applied, partly because the Code is relatively recent and partly because few cases concerning racism have been brought to court. On average, since the publication of ECRI’s second report, two complaints have been lodged per year for racist acts or statements. The authorities have informed ECRI that racist acts are a fairly rare occurrence in Andorra. They indicated that in 2002 and 2003 a complaint was recorded for racist insults between colleagues. No complaints were received in 2004. In 2005 a complaint was recorded for the same type of offence as in 2002 and 2003, as well as another one for racist insults between minors attending the same school. In 2006 a complaint was recorded for threats involving the use of a knife between neighbours, followed by insulting racist statements. Another one was recorded on 13 March 2007 for threats against members of a religious group (against a Muslim) in breach of Article 339 of the Criminal Code which provides that “anyone who, with intent to insult and in public, commits acts or utters statements which are seriously offensive for members of a religious, national or ethnic [...] group shall be punished by a term of imprisonment.” ECRI has no information on the judicial action taken on all these complaints.
16. The Ombudsman<sup>3</sup> has informed ECRI that since taking up office in 2006, he has received two complaints of racial discrimination. The first concerned a resident who filed a complaint following a discussion during which he claimed to have

<sup>3</sup> For details of the Ombudsman’s work, see “Specialised bodies and other institutions” below.

been insulted because he is Black. The Ombudsman advised him to file a complaint to the police and before the courts. However, the case was dropped because there had been insults on both sides. The second case concerned a complaint of racial discrimination made to the Ombudsman by a Muslim who had asked the Andorran social security fund for assistance and had felt discriminated against. The case was not brought to court because the Ombudsman asked the fund for an explanation and was told that it had been a misunderstanding on the complainant's part, and the social security fund employee was supported by management. The Ombudsman therefore considered that there was insufficient evidence to pursue the matter. Therefore, ECRI notes that for the time being, there is no substantive case-law on racist offences given that the provisions of the new Criminal Code concerning racist acts are rarely applied.

**Recommendations:**

17. ECRI recommends that the Andorran authorities ensure that the courts apply the provisions of the new Criminal Code punishing racist offences. It also recommends that they conduct information campaigns to make these provisions known to the general public and particularly to potential victims of this type of crime. ECRI recommends that the authorities take awareness-raising measures aimed at persons who might be exposed to racist crimes in order to encourage them to lodge complaints.
18. The Andorran authorities have informed ECRI that on 1 January 2007 the police launched a new crime statistics programme entitled *Base générale d'informations et de statistiques criminelles (BGISC)*. This programme serves to collect data on all the criminal offences committed and all the arrests made by the police. It lists all the types of offences relating to discrimination. This system should therefore enable the Andorran authorities to monitor racist offences committed in the Principality of Andorra.

**Recommendations:**

19. ECRI encourages the Andorran authorities to continue to collect information on all racist crimes.
20. In its second report, ECRI noted that there were no criminal law provisions in Andorra intended to prohibit racist organisations.
21. ECRI welcomes the inclusion in the new Criminal Code of a provision prohibiting racist organisations. Article 359 of the Code thus provides that "an illegal association is a group of persons organised for one of the following purpose: to commit an offence or to promote the commission of an offence; or while having a lawful purpose, to resort to violent means of an unlawful nature to achieve that purpose; to promote discrimination or violence against persons, groups or associations on account of their origin or their belonging a national or ethnic group or their religion [...]". The Andorran authorities have informed ECRI that there are no racist groups or organisations in the Principality. A special police unit in charge of matters concerning far-right movements, set up in a section dealing with information gathering, has found no evidence of any organised racist movement. At one point, however, the unit noted that large numbers of young people were in contact with a person living in Andorra who is known in skinhead circles. In 2005 a number of young people associated with these groups broke off contact with skinhead circles. The authorities noted that they had never publicly formed an organised group, and they have informed ECRI that some of these young people had been directed to the social or psychiatric services or had



ceased their activities. Moreover, in 2005 a young skinhead was tried and imprisoned. ECRI therefore notes that the authorities seem to be making efforts to monitor the emergence of skinhead movements and other far-right groups and to respond to it promptly.

#### **Recommendations:**

22. ECRI encourages the Andorran authorities to remain vigilant with regard to skinhead movements and other far-right groups. It recommends that they ensure that Article 359 of the Criminal Code is applied in such cases where necessary. It also recommends that they organise awareness campaigns on the dangers of this type of organisation which are particularly aimed at young people.

#### **Civil and administrative law provisions**

23. In its second report, ECRI recommended monitoring the application of the following articles of the Civil Service Code of the Principality of Andorra: Article 21 which establishes the principle of equality before the public authorities and prohibits discrimination based on, amongst others, race or religion; Article 59-3 which provides that the public authorities are legally responsible for discriminatory acts as well as Article 70 which provides that civil servants may incur penalties under civil and criminal law, as well as disciplinary measures, in the event of damage caused in the performance of their duties. ECRI also strongly recommended that the Andorran authorities introduce a comprehensive and detailed body of civil and administrative law prohibiting racial discrimination in all aspects of life.
24. No steps appear to have been taken to monitor the implementation of Articles 21, 59-3 and 70 of the Civil Service Code of the Principality of Andorra. The Andorran authorities have informed ECRI that no cases of racial discrimination have been referred to the administrative courts. As a result, these articles have never been applied, and civil servants do not appear to have been offered training on these provisions.
25. The Andorran authorities have also stated that a new law on employment contracts was enacted on 30 June 2003. It contains several articles prohibiting racial discrimination, inter alia, with regard to compensation for dismissal. Any discriminatory dismissal on grounds such as birth, race, origin or religion entitles workers to receive compensation or to request reinstatement. Article 76 of the law provides that any discriminatory dismissal shall be punished by means of compensation that is sufficiently dissuasive for the employer and affords the employee adequate reparation. Employers may incur a fine ranging from 2,501 to 12,000 euros. ECRI welcomes this new law which is a positive step in fighting racial discrimination in employment. However, it appears that the law is seldom applied as yet.
26. ECRI regrets that a comprehensive and detailed body of civil and administrative law prohibiting racial discrimination in all areas has not yet been enacted. It wishes in this regard to draw the Andorran authorities' attention to its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, especially Chapter III. In paragraph 7 of this chapter, it advocates enacting a law prohibiting racial discrimination by any public authority and by any natural or legal person, be they in the public or private sector. General Policy Recommendation No.7 also recommends that the law should ensure that easily accessible judicial and/or administrative proceedings as well as conciliation procedures, are available to all victims of racial discrimination.

### **Recommendations:**

27. ECRI again recommends that the Andorran authorities ensure the monitoring of the implementation of Articles 21, 59-3 and 70 of the Civil Service Code of the Principality of Andorra. It recommends that they ensure that civil servants receive training in these provisions and that the latter are widely publicised so that the rights and obligations stemming from them are better known.
28. ECRI recommends that the authorities ensure that the law on employment contracts is publicised. It also recommends that they offer civil servants, employers and employees training in the implementation of this law.
29. ECRI strongly recommends that the Andorran authorities enact comprehensive legislation against racial discrimination along the lines of Chapter III of its General Policy Recommendation No.7. It recommends in this regard that they involve NGOs, civil society and trade unions in this process.

### **Administration of justice**

30. The Andorran judiciary receive their initial and ongoing training in France and in Spain. The University of Andorra also offers judges and legal experts a post-graduate course in Andorran law. The Andorran authorities have informed ECRI that the Judicial Service Commission (*Conseil supérieur de la justice*) intends to add fundamental rights issues and the case-law of the European Court of Human Rights to the subjects taught on this course. They also informed ECRI that judges and persons working in the justice system had received general training in the provisions of the new Criminal Code<sup>4</sup> which did not specifically focus on the articles punishing racist offences. The authorities stated to ECRI that the Judicial Service Commission has signed an agreement with the legal service training college in Barcelona – the institution which provides Andorran judges with ongoing training – whereby the college trainers would visit Andorra to meet the judges and design specific training courses for them. The agreement with the legal service training college in Barcelona does not appear to include modules on issues pertaining to racism and racial discrimination and for the time being, Andorran judges do not receive specific training in these issues.
31. Several sources have reported to ECRI, and the authorities have confirmed it, that the administration of justice is slow for several reasons. In the court of first instance there is a heavy workload, a limited number of judges (eleven) and frequent turnover: they often leave the profession after a few years in order to establish themselves as barristers. In the court of second instance (fourteen judges), given that the great majority of them are French or Spanish, frequent changes can be noted. Although ECRI has received no information suggesting that non-citizens suffer more damage than Andorrans as a result of this state of affairs, it considers that the question deserves to be looked into. The fact that racism and racial discrimination are particularly dangerous for the victims and for society at large means that the judicial system should be one of the channels through which acts of this kind are punished as swiftly as possible.

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<sup>4</sup> See “Criminal law provisions” above.

### **Recommendations:**

32. ECRI recommends that the Andorran authorities offer the judiciary initial and ongoing training in issues pertaining to racism and racial discrimination. It recommends that they consider the possibility of including modules on these subjects in the agreement signed with the legal service training college in Barcelona.
33. ECRI recommends that the Andorran authorities ensure that the judiciary receive training in those articles of the new Criminal Code that punish racist offences in order to prepare it to apply those provisions where necessary.
34. ECRI recommends that the Andorran authorities consider, as a matter of priority, 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.

### **Specialised bodies and other institutions**

#### **- Ombudsman**

35. In its second report, ECRI considered that the Andorran authorities should consider either setting up a specialised body to combat racism and intolerance at national level or endowing the Andorran Ombudsman with a specialised function in this area.
36. Andorra does not have a specialised body to combat racism and intolerance. Although he is not specifically responsible for dealing with these issues, the Ombudsman has informed ECRI that since he took up office in 2006, he has been asked to deal with two cases concerning racism and racial discrimination which he tried to resolve<sup>5</sup>. On this matter, he said that he received 150 complaints per year which enabled him to talk to each complainant in person. Some representatives of immigrant communities have informed ECRI that the Ombudsman is not a very well-known institution in their circles and that he very rarely receives complaints from non-citizens, although they have easy access to him. On this point, the Ombudsman explained that he endeavoured to publicise his work through the media, by means of leaflets and through the invitations received from the ambassadors of the immigrants' countries of origin which gives him opportunities to meet them directly. The Ombudsman also informed ECRI that he presents an annual report on his activities, published in Catalan, to Parliament. However, in view of the large number of Spanish, Portuguese and French-speaking people in Andorra, the Ombudsman was receptive to the idea of publishing a summary of the report in the languages spoken by these communities.

<sup>5</sup> See "Criminal law provisions" above.



### **Recommendations:**

37. ECRI reiterates its recommendation that the Andorran authorities either set up a specialised body along the lines proposed in its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, or extend the Ombudsman's mandate to specifically cover these issues. It recommends in this regard that they ensure that he receives the necessary human and financial resources.
38. ECRI recommends that the Andorran authorities provide the Ombudsman with the resources he needs to conduct information campaigns aimed at ensuring that this institution is better known among immigrant communities. It recommends that they ensure that representatives of these communities take part in these campaigns.
39. ECRI recommends 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.

### **Education and awareness-raising**

40. In its second report, ECRI encouraged the Andorran authorities to pursue and intensify their efforts to promote human rights and tolerance in schools. It suggested developing school curricula to enhance appreciation of cultural diversity stemming from the coexistence of many different national groups in Andorra.
41. As regards the teaching of human rights and tolerance at school, the Andorran authorities have informed ECRI that the general aims of education cover democratic citizenship, tolerance and non-discrimination. They stated that the three public education systems (the Andorran, Spanish and French systems)<sup>6</sup> co-operate on the subject of teaching cultural diversity, values and democratic citizenship. They also informed ECRI that these systems were each currently redesigning their curricula in accordance with their own schedule.
42. According to the authorities, there are few instances of racism and racial discrimination in schools in Andorra and only one case has been reported to the police. Although there is no register specifically recording racist incidents in schools, every conflict occurring at school is described on a general register which indicates the nature of the conflict. The authorities stated that conflicts of this kind did not go beyond insults between pupils. Given the importance of making pupils aware of issues relating to racism and racial discrimination from their earliest years, ECRI considers that its General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education can serve as a reference in this area. In this text, it recommends that the member states ensure that school education plays a key role in the fight against racism and racial discrimination in society by ensuring, amongst others, that human rights education is an integral part of the school curriculum at all levels and across all disciplines, from nursery school onwards<sup>7</sup>.

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<sup>6</sup> For details of the Andorran school system, see "Access to public services" below.

<sup>7</sup> Chapter II, paragraph 2 a).

43. The Andorran authorities have informed ECRI that teachers receive initial and ongoing training in cultural and linguistic diversity and that in general they are interested in courses offered on these subjects. They also explained that teachers were offered a number of ongoing training courses on issues concerning racism and racial discrimination. They specified that all ongoing training courses are offered to teachers in the three school systems. However, the teachers themselves choose the type of course they will attend. On this point, ECRI again wishes to draw the Andorran authorities' attention to its General Policy Recommendation No.10 in which it advises member states to train the entire teaching staff to work in a multicultural environment, by providing them with initial and ongoing training designed to foster awareness of issues pertaining to racism and racial discrimination and of the harmful consequences these have on the ability of children who are victims of these phenomena to succeed at school<sup>8</sup>. ECRI welcomes the fact that as of September 2007 teachers who will be newly recruited into the Andorra school system will attend a course covering human rights issues.

**Recommendations:**

44. ECRI recommends 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. On this matter, it recommends that they draw their inspiration from its General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education.
45. ECRI recommends 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 by drawing inspiration from, amongst others, its General Policy Recommendation No.10.

**Reception and status of non-citizens**

46. In its second report, ECRI noted that Andorra did not have any legislation on asylum seekers and refugees, mainly because Andorra did not receive any asylum applications. ECRI also noted that there was no draft legislation on the subject under examination by Parliament.
47. The Andorran authorities have informed ECRI that there is still no law on asylum seekers and refugees and that there are no plans to enact one. They informed ECRI that a number of Eritrean nationals had been admitted to Andorra on humanitarian grounds and that they had received a three-month tourist visa granted on arrival. The authorities have also informed ECRI that these persons are now fully integrated into Andorran society and ECRI welcomes this humanitarian act. However, although Andorra does not receive any asylum applications for the moment, enacting legislation on asylum seekers and refugees might enable the Andorran authorities to take this kind of action and other measures within an appropriate legal framework.

**Recommendations:**

48. ECRI recommends that the Andorran authorities enact legislation on asylum seekers and refugees which is consistent with international standards in the matter.

<sup>8</sup> Chapter III, paragraph 2.

## Access to public services

### - Access to education

49. In its second report, ECRI stated its belief that, on the one hand, the Andorran authorities should generalise the teaching of children's mother tongues other than Catalan, but also stressed the utmost importance of mastering Catalan for non-citizen pupils. ECRI also asked the Andorran authorities to pay immediate attention to the problem of access to schools for seasonal workers' children and to make all the necessary efforts to find an appropriate solution, given that these workers reside and work *de facto* in the country throughout the year.
50. The Andorran authorities have informed ECRI that four languages (Catalan, Spanish, French and English) have all been introduced into the three school systems of Andorra. Concerning Portuguese, under the treaty on co-operation on educational matters signed by the Principality of Andorra and Portugal, pupils between the age of 8 and 12 receive optional lessons, free of charge, outside school hours. Within the framework of this treaty, it is planned to extend these lessons starting from the first year of primary school. The authorities have also stated that since the 2006-2007 academic year, secondary school pupils had been offered optional Portuguese lessons. They informed ECRI that reception classes had been set up for new arrivals in the different school systems. Catalan is also taught in all schools throughout compulsory education, from nursery school onwards. ECRI has received confirmation that in general, pupils have a good knowledge of Catalan, Spanish and French by the end of their schooling.
51. ECRI is pleased to learn that since the second report, efforts have been made to provide seasonal workers' children with schooling in the same conditions as other pupils.

#### **Recommendations:**

52. ECRI encourages the Andorran authorities to continue to provide mother-tongue and Catalan lessons in the country's three school systems and recommends that they offer Portuguese lessons during school hours. ECRI also encourages the authorities to continue to provide schooling to seasonal workers' children and recommends that they pay special attention to these children's situation.
53. The Ministry of Education keeps a database containing all the data on pupils, including information on their citizenship. The authorities have informed ECRI that this database enables them to monitor the pupils' situation and collect statistics. ECRI considers that the database can also serve to monitor the progress of pupils from immigrant backgrounds in order to resolve the problems they may face.

#### **Recommendations:**

54. ECRI recommends that the Andorran authorities use the database kept by the Ministry of Education on the situation of pupils to identify problems that may face pupils from immigrant backgrounds in the school environment in order to introduce programmes to solve these problems as advocated in ECRI's General Policy Recommendation No.10.<sup>9</sup>

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<sup>9</sup> Chapter I, paragraph 2.

- **Access to housing**

55. In its second report, ECRI urged the Andorran authorities to closely monitor the situation of non-citizens regarding access to housing and to work on awareness-raising among the general public to avoid stereotypes and prejudices which might lead to difficulties in that area.
56. NGOs have informed ECRI, and the authorities have confirmed, that the cost of housing is very high in Andorra so that many people have difficulty in finding accommodation. The authorities have explained to ECRI that the Ministry of Housing set up in 2005 deals with this problem by, amongst others, awarding housing benefits. These benefits are awarded to persons who have been lawfully residing in Andorra for five years. The authorities said that they were looking into the possibility of introducing settling-in loans and that they wished to make these available, as of 2008, to persons who had been living in Andorra for less than five years. Government statistics show that in 2005 and 2006 most of the persons who received benefits were Spanish, followed by Andorrans and Portuguese. The Andorran authorities have informed ECRI that they have not received any complaints of racial discrimination in access to housing.

**Recommendations:**

57. ECRI encourages the Andorran authorities to pursue their efforts to provide access to housing for persons who have difficulty in finding accommodation. It recommends 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.

**Employment**

58. In its second report, ECRI considered that it would be very valuable to initiate an investigation into the possible existence, extent and manifestations of discrimination and racism in employment in Andorra. ECRI also suggested introducing into civil and administrative law the sharing of the burden of proof in cases of racial discrimination in employment, in order to make it easier to lodge complaints with the courts.
59. ECRI welcomes the setting up of an employment service in the Labour Department of the Ministry of Justice and the Interior, on 31 July 2002. This service, which is provided free of charge, is aimed at job-seekers and employers. According to government statistics, between 1 February 2002 and 28 November 2006, out of a total of 2,027 job-seekers registered with the employment service, 43.9% were Spanish, 22.9% Andorran, 16.9% Portuguese, 3.9% French, 2.5% nationals of other European Union member states and the remaining 9.8% from non-EU countries. Of the 385 persons who found jobs with the help of this service during the same period, 45.5% were Spanish, 27.8% Andorran, 13.5% Portuguese, 3.1% French, 1.6% nationals of other EU member states and 8.6% from non-EU countries. One should note that the percentage of non-Andorran job-seekers is partly due to the fact that there are more of them than there are nationals. The Andorran authorities have informed ECRI that two studies entitled respectively *Etude sociologique sur la rotation des immigrants* (Sociological study of immigrant turnover) and *Entretiens sur l'immigration et le travail* (Discussions on immigration and work) were drawn up in 2006. These studies address various issues concerning foreign workers, including the reasons why they come to work in Andorra, the manner in which they integrate into the country during their first year and their social and cultural integration. The Andorran authorities have

explained to ECRI that these studies were designed, amongst others, to reduce the high turnover of immigrant workers and foreigners in Andorra<sup>10</sup>. Representatives of non-Andorran workers welcomed the high quality of these studies. However, it would seem that the studies' findings have not yet resulted in government policies on employment.

60. The Andorran authorities have informed ECRI that they have received virtually no complaints of racial discrimination in employment and that no instances of such discrimination have been established by the labour inspectorate. They said that as regards the cases brought before the industrial tribunal (*Conseil des prud'hommes*) - the court with jurisdiction in all disputes initiated by a party to an employment contract - an indicator giving a full picture of the situation showed that between 1 January 2002 and 23 March 2007, 450 cases had been considered, of which three concerned complaints of discrimination in employment. Two of them concerned pregnancy and the third which is currently at the preliminary stage concerns offensive remarks. It may, however, be difficult to lodge complaints of racial discrimination in employment because Andorran legislation does not provide for sharing the burden of proof in cases of this kind. On this point, ECRI wishes to draw the Andorran authorities' attention to its General Policy Recommendation No.7 in which it recommends that member states ensure 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"<sup>11</sup>.
61. One of the other difficulties that victims of racial discrimination at work might face is the fact that associations and trade unions cannot be involved in such cases, as ECRI advocates in its General Policy Recommendation No.7. The authorities have also informed ECRI that Andorra has seven labour inspectors, three of whom deal with safety conditions (one of them is currently undergoing training), while the other four scrutinise general conditions (compliance with legislation, etc.). On this point, representatives of non-resident communities and immigrant workers expressed the wish that the number of labour inspectors be increased to improve the inspectorate's efficiency.

#### **Recommendations:**

62. ECRI recommends 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.
63. ECRI recommends that the Andorran authorities use the findings of the studies on the situation of immigrant workers, mentioned in paragraph 59, to devise policies for improving, inter alia, their integration into the Andorran labour market and to combat any racial discrimination which they suffer in this area.
64. ECRI strongly recommends that the Andorran authorities provide in Andorran legislation for the burden of proof to be shared in racial discrimination cases, as advocated in its General Policy Recommendation No.7. It also recommends, in line with paragraph 25 of the Recommendation, that Andorran legislation include

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<sup>10</sup> For a more detailed discussion of the findings of these studies, see "Specific issues" below.

<sup>11</sup> See paragraph 11.



provisions enabling organisations such as associations, trade unions and other legal entities which have a legitimate interest in combating racism and racial discrimination to bring civil cases, intervene in administrative cases or make criminal complaints, even if a specific victim is not referred to.

65. ECRI recommends that the Andorran authorities ensure that the labour inspectorate's human and financial resources are substantially increased. It also recommends 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 sector.

## Vulnerable groups

### - *Minority religious groups*

66. In its second report, ECRI expressed the hope that the Andorran authorities would take steps to ensure that suitable premises were allocated to any religious groups which, given their small size, could not raise sufficient funds among themselves to build their own places of worship and cultural or educational institutions.
67. There is a Jewish community of about 100 people in Andorra. ECRI is pleased to note that according to its representatives, the community does not face any particular problems of antisemitism and is on the whole well integrated into Andorran society. The community has a small synagogue and a community centre. The Muslim community (of about 600 people) also has a community centre. However, ECRI notes that since its second report there have been no developments regarding the building of a mosque, since there is no mosque at present. ECRI has been informed that the authorities do not provide funds to build places of worship and that there is no Jewish or Muslim cemetery in Andorra. All the deceased are buried in communal cemeteries with respect for their religious rites and their convictions.

### ***Recommendations:***

68. ECRI again recommends 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.

## Media

69. In its second report, ECRI invited the Andorran authorities to support initiatives taken by the media profession in the area of interest to ECRI. In this regard, it strongly supported the adoption and implementation by the media profession of codes of self-conduct which would favour a more responsible type of reporting.
70. ECRI welcomes the adoption of a document entitled *Livre de style de la redaction de l'information de la RTVSA* (Style book for RTVSA news writers) by the Andorran Broadcasting Company (RTVSA) in 2003. This document, which is a code of ethics for journalists, was revised in 2005 to take account of the new Criminal Code<sup>12</sup> and it prohibits, among others, racism and justification of the Holocaust. Moreover, Article 2 of the Andorran law on radio and television of 13 April 2000 provides that the public radio and television broadcasting services shall submit their programming and broadcasts to, amongst others, the principles

<sup>12</sup> See "Criminal law provisions" above.

of cultural pluralism as well as equality and non-discrimination. The Andorran authorities have also informed ECRI that Article 8 of this law provides that the Andorran Broadcasting Board shall ensure that no discrimination based on, inter alia, race or religion exists. However, ECRI has no information on the manner in which this body functions. The authorities have said that a new broadcasting law is being drafted. They have explained to ECRI that most Andorran journalists are trained in Spain and France, but that once in Andorra, they receive training in the Constitution, the broadcasting law and the principles set out in the Style book for RTVSA news writers. However, they do not appear to receive training in human rights in general and issues concerning racism and racial discrimination in particular. This training would seem to be useful, since it appears that the media still often mention the nationality of persons accused of a crime when this is unnecessary. Moreover, apart from the courts, there is no independent body able to receive complaints against the media.

**Recommendations:**

71. ECRI recommends that the Andorran authorities ensure that the new broadcasting law includes provisions prohibiting racial discrimination. It also recommends 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 recommends setting up an independent body other than the courts, whose remit will include receiving complaints against the media.

**Climate of opinion**

72. In its second report, ECRI recommended that the Andorran authorities take all relevant measures to raise the awareness of the general public on issues of racism and intolerance and to develop a culture of tolerance and respect for difference in Andorra. It also considered that measures were needed to make society aware of non-Andorran workers' contribution to the economy and to Andorran society.
73. ECRI notes that generally speaking, there are no acute manifestations of racism and intolerance in Andorra. However, it has been informed that there are a number of stereotypes, namely against Portuguese people. It has also been informed that there is a certain lack of knowledge about religions other than Catholicism, such as Judaism and Islam, although eight different religions are practised in Andorra. It appears, for example, that the distinction between nationality and religion is not always easily made. A better knowledge of other cultures also appears necessary. Measures to make the general public aware of the contribution made by the various communities of non-citizens to Andorran society still seem to be needed, among others, to foster integration<sup>13</sup> and mutual appreciation as well as better understanding of the diversity of Andorran society.

**Recommendations:**

74. ECRI reiterates its recommendation that the Andorran authorities conduct public awareness campaigns on issues concerning racism. It also recommends that they conduct awareness campaigns on the existence of the various communities living in the Principality and on their contribution to society. It recommends that they involve NGOs, civil society and the Ombudsman in any initiatives of this kind.

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<sup>13</sup> For a more detailed discussion of integration, see "Specific issues" below.

## Conduct of law enforcement officials

75. ECRI has received allegations that a number of non-Andorrans have been victims of police misconduct. Article 97 of the 2004 qualified law on the police force provides that any discriminatory act committed for reasons such as race, religion, language or place of birth is a very serious fault. Article 101 of this law provides for this type of fault to be punished by dismissal or by suspension of the person involved for at least two years. The Andorran authorities have informed ECRI that no judicial proceedings have been initiated against any police officer for racism or racial discrimination. The Ministry of Interior is the body responsible for opening an investigation when a member of the police force commits a serious fault.
76. The Andorran authorities have also informed ECRI that police officers receive initial and ongoing training which includes human rights issues. However, they do not appear to be offered training in issues pertaining to racism and racial discrimination. Nor does their curriculum appear to include the Criminal Code provisions<sup>14</sup> punishing acts of this kind.

### **Recommendations:**

77. ECRI recommends that the Andorran authorities ensure that independent investigations are conducted into all allegations of police misconduct. It recommends on this point 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 recommends 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.

## Monitoring the situation

78. In its second report, ECRI encouraged the Andorran authorities to develop systems for monitoring the situation of non-citizens in fields such as employment, housing and education.
79. Qualified law 15/2003 on the protection of personal data was enacted on 18 December 2003. Article 19 of the law provides that sensitive data (that is, data on, among others, a person's religious beliefs and ethnic origin) may be processed and communicated only with the express consent of the person concerned. Article 20 provides for a few exceptions to the requirement of express consent and Articles 38 to 43 contain provisions on the establishment and operating rules of the Andorran Data Protection Agency. The agency was set up by decree on 1 July 2004 and its powers include monitoring compliance with qualified law 15/2003, managing a public register of files containing personal data and punishing any violation of the provisions of this law<sup>15</sup>. Andorra therefore has the legal and institutional wherewithal to collect ethnic data. However, it does not have a system for collecting data able to provide an overview on the situation of the non-Andorran population in areas such as employment and access to public services.

<sup>14</sup> See "Criminal law provisions" above.

<sup>15</sup> See Section 40 of qualified law 15/2003.



### **Recommendations:**

80. ECRI recommends that the Andorran authorities consider ways of setting up a comprehensive data collection system according to the rules established by qualified law 15/2003, in order to assess the situation of the various communities living in the Principality and introduce policies designed to resolve the problems they may face. ECRI recommends 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.
81. ECRI emphasises that a system of this kind should comply with all European and international regulations and recommendations on data protection and protection of privacy, as indicated in its General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. The Andorran authorities should ensure that data is collected in a spirit of respect for the anonymity and dignity of the persons concerned and in compliance with the principle of informed consent. The system for collecting data on racism and racial discrimination should further take account of the dimension of equality between women and men, especially given the possibility of double or multiple discrimination.

## **II. SPECIFIC ISSUES**

### **Integration of non-citizens**

82. In its second report, ECRI strongly encouraged the Andorran authorities to continue to strengthen their efforts to help non-citizen residents integrate into Andorran society. ECRI also recommended that the authorities extend the right to vote in local elections to non-citizens who are long-term residents.
83. According to government figures, in 2006, out of a population of 81,222, the four main communities in Andorra were Andorrans (numbering 29,535), followed by Spaniards (27,638), Portuguese (12,789) and French (5,104). The rest of the population consisted of non-citizens from EU member states and third countries. The findings of the studies mentioned earlier entitled *Etude sociologique sur la rotation des immigrants* (Sociological study of immigrant turnover) and *Entretiens sur l'immigration et le travail* (Discussions on immigration and work)<sup>16</sup> have provided significant information on the situation of foreigners in Andorra. The authors of *Entretiens sur l'immigration et le travail* found that there were a number of stereotypes and prejudices, as well as factors sharpening divides whilst others mitigate them. One of the factors sharpening divides between communities is the fact that only a part of the population (Andorrans) is able to vote. This study also points, on the one hand to a certain economic divide, since jobs are divided on a community basis with a social pyramid topped by Andorrans, followed by French, then Spaniards, etc. On the other hand, the numerous opportunities open to immigrants' children, social mobility, mixed education in schools and the country's size foster a degree of social cohesion. The authors of this study have also informed ECRI that according to the study, the divides do not appear to be widening and although there are stereotypes against the various communities, they do not seem to be worsening either. They believe that the economic factor will be decisive in this area. As stated earlier, the findings of these studies could provide the basis for a government policy

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<sup>16</sup> See "Employment" above.

designed to improve the integration of foreigners in Andorra, since they supply information on areas that call for special attention. In this connection, ECRI has been informed that the possibility of granting foreigners the right to vote in local elections has been a talking point since 2006. Non-Andorrans consider this issue important and believe that being unable to take part in local elections prevents them from fully exercising their rights.

84. A number of measures have been taken to assist the integration of non-Andorrans, such as the authorities' provision of free Catalan lessons. Over the past five years, self-education centres have thus been opened and teacher-taught classes have been offered for several hours a day. There is also an adult education centre. ECRI has been informed, however, that people who work do not always have time to follow these lessons and that they should be provided at the workplace.

#### **Recommendations:**

85. ECRI recommends that the Andorran authorities devise policies to promote the integration of non-Andorrans in all areas, drawing in particular on the findings of the above-mentioned studies.
86. ECRI strongly recommends 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.
87. ECRI recommends 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.
88. In its second report, ECRI was concerned to learn that the new immigration law did not give seasonal workers the right to family reunification. It therefore strongly encouraged the Andorran authorities to review the matter and grant them this right.
89. The qualified law on immigration enacted on 14 May 2002 which came into force in September of that year, does not provide for family reunification for seasonal workers. A new immigration law is being discussed by Parliament and does not appear to provide for family reunification for seasonal workers. ECRI has been informed that although, in accordance with the law, seasonal workers generally have contracts which, in fact, are valid for only six months, some of them remain in Andorra for longer, if their contracts are renewed several times for instance. The fact of not being entitled to family reunification therefore places them at a disadvantage by comparison with other foreign workers living in Andorra. ECRI has also been informed that under the new immigration law, persons entitled to family reunification will be able to benefit from it only after one year's residence in Andorra.
90. As concerns the current situation of seasonal workers, the Andorran authorities have explained that Article 27 of the qualified law on immigration provides that the duration of their temporary leave to remain for immigration purposes cannot exceed twelve months and that no extension is possible. They have stated that at the end of that period, the beneficiary of a seasonal worker's leave to remain must wait five months before being able to request new leave to remain for temporary immigration purposes. They have also informed ECRI that a seasonal worker who wishes to continue working in Andorra must apply for leave to remain for temporary residential immigration and employment purposes in accordance

with Article 27 of the above-mentioned law. The authorities have finally stated that the Immigration Department informs all non-citizens who wish to obtain leave to immigrate of the different options available, the conditions to be met as well as of their rights and obligations.

#### **Recommendations:**

91. ECRI again requests that the Andorran authorities provide for family reunification for seasonal workers and recommends that they take the opportunity of the new immigration law to do so. It also strongly recommends that they ensure that the new law does not contain any provisions that might make it more difficult for non-citizens to integrate.

#### **Citizenship legislation**

92. In its second report, ECRI considered that the 25-year residence requirement for obtaining Andorran citizenship was excessive and asked that it should be reduced in order to conform more closely with European standards, taking account in particular of the fact that the European Convention on Nationality provides on this point for a residence period not exceeding ten years before the lodging of an application. ECRI also strongly encouraged the Andorran authorities to consider making the requirement for obtaining dual citizenship more flexible. It considered that the authorities should encourage the persons concerned to apply for citizenship by disseminating information about the procedure for naturalisation as widely as possible.
93. Since the publication of ECRI's second report, Andorra has enacted the qualified law of 27 May 2004 amending the qualified law on nationality. This new law is a first step towards implementing the above-mentioned recommendation. Article 11 of the law thus provides for a 20-year residence requirement before having the right to receive Andorran citizenship. For young people who have done their entire schooling in Andorra, this requirement has been reduced to ten years<sup>17</sup>. While welcoming this easing of the citizenship legislation, ECRI notes that a number of problems connected with citizenship applications remain. ECRI has thus been informed that very few people from immigrant backgrounds as yet apply for Andorran citizenship. Although this is due to several factors, the impossibility of obtaining dual citizenship seems to be a decisive factor. ECRI has been informed, for instance, that although about 5,000 Spaniards have the right to request Andorran nationality, few of them have applied for it, partly for that reason, the other reason being that after ten years' residence in Andorra they can enjoy a number of economic advantages available to nationals. The period of residence in Andorra (20 years) required for obtaining Andorran citizenship which is still much longer than that provided for by the European Convention on Nationality (not more than ten years), also seems to play a part in the decisions of persons from immigrant backgrounds to request citizenship. Moreover, a debate on Andorran citizenship issues is still necessary, on the one hand to make Andorrans aware of the issue and on the other to inform persons from immigrant backgrounds of the advantages this may have in terms of their integration into Andorran society. Although it seems that the debate is starting, ECRI has no information suggesting that specific measures have been taken to provide those eligible with information on the possibility of applying for Andorran citizenship.

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<sup>17</sup> Section 11 1) and 2) of the law.

***Recommendations:***

94. ECRI recommends 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 recommends that they provide in Andorran legislation the possibility of dual citizenship.
95. ECRI recommends that the Andorran authorities conduct information campaigns and initiate public debates on the possibility of acquiring Andorran citizenship. It recommends that they involve NGOs, representatives of groups of immigrant origin and other stakeholders in these campaigns.

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