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# **ECRI REPORT ON ANDORRA**

**(fifth monitoring cycle)**

Adopted on 6 December 2016

Published on 28 February 2017

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members 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 monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States on an equal footing. The work takes 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, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to 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 provides the opportunity to meet with the parties directly concerned (both 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 ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation at 30 June 2016; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of the fourth ECRI Report on Andorra on 21 March 2012, progress has been made in a number of fields covered by that report.**

The Andorran authorities have made extensive legislative revisions to the Criminal Code bringing it fully in line with the recommendations made by ECRI in its General Policy Recommendation No. 7. A bill is under preparation to introduce comprehensive legislation on gender equality and anti-discrimination.

In terms of preventing and combating racist and homo/transphobic prejudice and stereotypes, Andorra has developed a particularly advanced inclusive educational programme within its three education systems.

Several training courses on human rights and efforts to tackle discrimination have been run for judges, prosecutors, lawyers and civil servants in order to raise their awareness of racism and intolerance, and several measures have been taken to strengthen information and assistance for the general public.

**ECRI welcomes these positive developments in Andorra. However, despite the progress that has been made, some areas of concern remain.**

A body with specialised capacity to combat racism, racial discrimination, xenophobia, antisemitism and intolerance at national level has not been set up. The Ombudsman's remit is still limited. He cannot deal with discrimination in the private sector and does not explicitly have the authority to deal with actions concerning racial or homo/transphobic discrimination.

The rule regarding the sharing of the burden of proof where discrimination complaints on grounds of race, colour, ethnic origin, nationality, religion or language are brought before civil or administrative courts has still not been introduced into law, although this principle is a legal standard and is already being applied positively by the Andorran courts.

The collection of data on the application of the criminal law provisions against racist offences is incomplete and insufficient to provide a full picture of the situation.

No progress has been made in easing residence requirements for obtaining Andorran citizenship or with regard to the possibility of retaining dual nationality.

Despite some legislative initiatives, integration policies are not sufficiently developed.

**In this report, ECRI calls on the Andorran authorities to take additional measures in certain areas; it makes a number of recommendations, including the following.**

ECRI strongly reiterates its recommendation to ensure the existence of a body with specialised capacity to combat racism, racial discrimination, xenophobia, antisemitism and intolerance at national level in the public and private sectors in line with its GPR Nos. 2 and 7 on specialised bodies and on national legislation to combat racism and racial discrimination.\*

ECRI strongly recommends to the authorities to finalise the bill providing for specific and comprehensive civil and administrative legislation against direct and indirect discrimination, taking account of its GPR No. 7 and adopt the law as soon as possible.

ECRI strongly recommends that the authorities introduce into the law the principle of sharing the burden of proof where discrimination complaints on grounds of "race",

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\* This recommendation shall be subject to a process of interim follow-up by ECRI no later than two years after this report is published.

colour, ethnic origin, nationality, religion, language, gender identity and sexual orientation are brought before civil or administrative courts.\*

The authorities should strengthen data collection as concerns racist and homo/transphobic hate crime; such data should include aggravating circumstances to make it easier to identify the racial or discriminatory motivation behind an offence.

An independent body with responsibility for receiving complaints against all forms of media and monitoring the media should be set up in order to identify any racist or discriminatory hate speech.

The Nationality Law should be amended to reduce significantly the period of residence required to obtain Andorran citizenship to 10 years as defined by Article 6 of the European Convention on Nationality.

ECRI recommends that the authorities collect data on LGBT persons in Andorra and conduct surveys into any possible discrimination and intolerance that they may suffer.

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\* This recommendation shall be subject to a process of interim follow-up by ECRI no later than two years after this report is published.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism and racial discrimination<sup>1</sup>

##### - Existence of criminal, civil and administrative law provisions as per General Policy Recommendation (GPR) No. 7

1. ECRI has examined on several occasions the provisions of criminal, civil and administrative law from the point of view of its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. The analysis set out below focuses mainly on new developments and persisting lacunae.

##### - Criminal law

2. In its fourth report, ECRI recommended that the Andorran authorities strengthen the criminal legislation in place relating to racism and intolerance and in particular introduce in the Criminal Code a provision prohibiting public incitement to violence, hatred and discrimination.

3. ECRI is pleased to note that the Criminal Code was amended in December 2014<sup>2</sup> and now includes acts which had not previously been penalised.<sup>3</sup> Article 338 (discrimination) criminalises public incitement to violence, hatred or discrimination against a person or a group of persons, public insults and defamation and threats, in line with ECRI's GPR No. 7 § 18 a, b and c.

4. ECRI further notes that Article 338 now contains a provision which makes it a criminal offence to express publicly an ideology which claims the superiority of, or which depreciates or denigrates a grouping of persons as recommended in paragraph 18 d of GPR No. 7.

5. ECRI also notes with satisfaction that the Criminal Code now punishes the denial and condoning of crimes against humanity and similar forms of aggression, in line with GPR No. 7 § 18 e.<sup>4</sup>

6. In addition, the public dissemination or distribution of images or expressions, as well as their production or possession (see Article 338 *bis*), containing the racist material are criminalised, as per GPR No. 7 § 18 f.

7. ECRI observes that the Criminal Code does not contain any specific provision<sup>5</sup> making it an offence to create or lead a group which promotes racism, to support such a group or to participate in its activities, as stipulated in GPR No. 7 § 18 g. However, the new wording of Article 338 of the Criminal Code on "unlawful associations", supplemented by Articles 359 and 360 of the same Code, makes it possible to punish these offences.

8. As concerns the grounds, ECRI notes that the above-mentioned offences are punishable if committed "with a discriminatory motive". The specific grounds set

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<sup>1</sup> In accordance with ECRI General Policy Recommendation (GPR) No. 7, "racism" means 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. In addition, "racial discrimination" means any differential treatment which is based on these grounds, and which has no objective and reasonable justification.

<sup>2</sup> by Law No. 40/2014 of 11 December 2014 amending Law No. 9/2005 of 21 February 2005 of the Criminal Code.

<sup>3</sup> See the new Article 338 of the Criminal Code.

<sup>4</sup> See articles 465 bis, 465 ter, 475 bis and 475 ter.

<sup>5</sup> ECRI refers to the terms of paragraph 3 of the Explanatory Memorandum for GPR No. 7 and underlines that criminal law has a symbolic aspect which raises the awareness of society of the seriousness of racism and racial discrimination and has a strong dissuasive effect.

out in GPR No. 7 (race, colour, language, religion, nationality or national or ethnic origin) are not explicitly mentioned. However, the Criminal Code provisions relating to aggravating circumstances, as set out in Article 30.6, state that a motive is considered to be discriminatory where it is based on a person's "birth, background, national or ethnic origin, colour, sex, religion, philosophical, political or trade union opinion, or any other personal or social condition, such as physical or mental disability, lifestyle, customs, language, age, identity or sexual orientation".

9. ECRI notes that this article makes no explicit reference to "race", a term whose retention ECRI has justified on several occasions, despite its rejection of theories based on the existence of different "races", in order to prevent persons who are generally and erroneously perceived to belong to a "*different race*"<sup>6</sup> from being left with no legal protection. However, the authorities assert that the courts can still refer to the criteria of national or ethnic origin and skin colour in order to punish this type of discrimination
10. ECRI is pleased to note that the motives set out in Article 30.6 apply to all offences of the Criminal Code, as per GPR No. 7 § 21.
11. ECRI congratulates the Andorran authorities for the extensive legislative revisions made to the Criminal Code.

- **Civil and administrative law**

12. In its fourth report, ECRI reiterated its recommendation to the Andorran authorities to introduce comprehensive legislation aimed at combating racial discrimination, direct and indirect, in key fields of life such as housing, public and private services, health and education, taking into account its GPR No.7.
13. ECRI notes that a bill is under preparation on gender equality and anti-discrimination inspired by the Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.
14. ECRI welcomes this development. It nevertheless draws the authorities' attention to the fact that the above-mentioned directives do not fully cover protection against discrimination: one of the directives calls for equal treatment in all main areas of everyday life (employment, training, social security, health care, education, access to goods and services) but only in respect of racial or ethnic origin, while the other requires equal treatment on wider grounds (religion or belief, disability, age, sexual orientation) but only in the field of employment. ECRI recalls that the prohibition of discrimination should apply in all areas of life and should cover the grounds of race, colour, language, religion, nationality or national or ethnic origin, as set out in its GPR No. 7.
15. The only relevant equality and anti-discrimination legislation existing in Andorra at present is Article 6 of the Constitution<sup>7</sup> which proclaims that all persons are equal before the law and that no one may be discriminated against on grounds of birth, race, sex, origin, religion, opinions or any other personal or social condition. By virtue of the hierarchy of norms, this constitutional provision applies to all civil and administrative proceedings.
16. ECRI considers that the absence of comprehensive anti-discrimination legislation in all fields and covering all grounds continues to be a shortcoming in Andorra. It notes that the majority of the key elements of national legislation against racism and racial discrimination, set out in its GPR No. 7 §§ 4-17, are lacking. These include clear definitions and prohibition of direct and indirect discrimination; the

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<sup>6</sup> GPR No. 7, paragraph 1a.

<sup>7</sup> Constitution of the Principality of Andorra of 1993.

maintenance or adoption of special measures designed to prevent or compensate for disadvantage suffered by persons on account of their race, colour, language, religion, nationality or national or ethnic origin; the sharing of the burden of proof in discrimination cases; and effective, proportionate and dissuasive sanctions for discrimination.

17. ECRI strongly recommends that the Andorran authorities finalise the bill providing for specific and comprehensive civil and administrative legislation against direct and indirect discrimination, taking account of its GPR No. 7 on national legislation to combat racism and racial discrimination, and adopt the law as soon as possible.

- **National specialised bodies<sup>8</sup>**

18. In its fourth report, ECRI strongly recommended 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 in line with its GPR Nos. 2 and 7. 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.

19. ECRI regrets that this recommendation has not been implemented. The Ombudsman remains the only relevant independent authority in Andorra.<sup>9</sup>

20. Pursuant to the Law establishing the Office of the “Raonador del Ciutadà”,<sup>10</sup> the Ombudsman is appointed by Parliament to: guarantee that the fundamental rights deriving from the Constitution are applied and upheld; guarantee that constitutional principles are upheld and ensure that government departments serve the public interest; hear complaints against the public sector; and advise parliament on amendments.

21. However, it is a typical Ombudsman with competence only in the public but not the private sector and has no specific mandate to combat racism, xenophobia, antisemitism and intolerance. ECRI maintains its view that such a body is needed in Andorra and should have the following main competences: assistance to victims; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; and awareness-raising.

22. ECRI strongly reiterates its recommendation to ensure the existence of a body with specialised capacity to combat racism, racial discrimination, xenophobia, antisemitism and intolerance at national level in the public and private sectors in line with its General Policy Recommendation Nos. 2 and 7 on specialised bodies and on national legislation to combat racism and racial discrimination.

**2. Hate speech<sup>11</sup>**

23. For ECRI, hate speech is the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, , as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect

<sup>8</sup> Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

<sup>9</sup> The Andorran authorities wished to clarify that they are currently working on a draft amendment to the Law on the “Raonador del ciutadà”, which should make it possible to extend its powers in line with ECRI's recommendation. This bill should be sent to the General Council (Parliament) at the end of 2016 or beginning of 2017.

<sup>10</sup> Law from 4 June 1998 modified by the law No. 79/2010, 25 October 2010.

<sup>11</sup> This section deals with racist, homophobic and transphobic speech. For a definition of hate speech, see Recommendation R (97) 20 of the Committee of Ministers to member states on “hate speech”, adopted on 30 October 1997.

of such a person or group of persons and the justification of all these types of expression, on grounds, among others, of “race”, colour, national or ethnic origin, language, religion or belief, gender identity and sexual orientation.<sup>12</sup>

- **Climate of opinion and public discourse**

24. The Police Department of the Ministry of Justice and Interior has not recorded any complaints or reports regarding hate crime, including hate speech, since 2009. This exceptional situation in Andorra was confirmed by the NGOs and representatives of religious faiths whom the ECRI delegation was able to meet.

- **Response of the authorities**

25. ECRI considers hate speech particularly worrying not only because it is often a first step in the process towards actual violence but also because of the pernicious effects it has on those who are targeted emotionally and psychologically. Appropriate responses to hate speech include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as prevention, self-regulation and counter speech.
26. With regard to the criminal law response, ECRI notes some positive legislative developments. Incitement to violence, hatred or discrimination (hate speech) is now punished under Article 338 of the Criminal Code. At this stage, as noted above, there have been no cases recorded by the police and no cases prosecuted or sentenced under this provision. It is too early to draw any conclusions from this.
27. In its fourth report, ECRI had also recommended that the Andorran authorities provide initial and in-service training to judges, prosecutors and lawyers pertaining to racism and racial discrimination, and on the existing criminal law provisions relating to racism and intolerance. This recommendation is all the more relevant due to the above-mentioned amendments to the Criminal Code. ECRI had also recommended that the authorities run an awareness-raising campaign specifically for the general public on the legal provisions concerning racism and intolerance.
28. ECRI notes with satisfaction that, in addition to the training on fundamental rights for judges and prosecutors, the Judicial Service Commission and the Andorran Bar Association held a conference on “crimes of incitement to hatred and discrimination in the European and supra-European domain” for Andorran judges, prosecutors, registrars and lawyers on 8 October 2015. In addition, the In-service Training Plan for 2016 includes a course for judges, prosecutors and registrars on “the offences of incitement to hatred and discrimination”.
29. As concerns the media, in its fourth report, ECRI recommended that the Andorran authorities set up an independent body other than the courts to receive complaints against the media. ECRI regrets that there is still no independent body which is responsible for receiving complaints against the media.
30. The (sole) purpose of the Andorran Broadcasting Board (CAA), an advisory body whose members are appointed by Parliament, is to ensure that television and radio broadcasting respects the rights of minorities and is not discriminatory. The Board’s role does not include receiving individual complaints concerning the content of programmes.
31. ECRI further observes that the CAA has never addressed the issue of discrimination, although it can publish non-binding reports on this subject.
32. As observed in ECRI’s fourth report, the only effective independent organisation to which individuals can submit complaints concerning the private media is an

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<sup>12</sup> ECRI GPR No. 15 on combating hate speech.

NGO: the Human Rights Institute. The Institute acts as a “mediator” between the party who believes that he or she is the victim of a discriminatory act and the alleged offender, and passes the information on to the media outlet concerned if it establishes that discrimination has occurred. However, ECRI was unable to obtain any statistics concerning the activity of this institute. As concerns public media, the Raonador is the competent body for addressing complaints.

33. ECRI reiterates its recommendation to set up an independent body with responsibility for receiving complaints against all forms of media and monitoring the media in order to identify any racist or discriminatory hate speech.
34. ECRI also recommended, in its fourth report, that the authorities encourage any initiative aimed at offering journalists training in human rights in general and issues associated with the fight against racism and racial discrimination in particular. It notes that while 15 or so journalists attended a conference on the offences of incitement to hatred and discrimination, no other general efforts to raise awareness of human rights appear to have been specifically organised for journalists.
35. In terms of prevention, ECRI is pleased to note that the Andorran authorities have implemented an advanced inclusive educational programme which attaches considerable importance to human rights and efforts to tackle stereotypes, hate speech and discrimination despite the fact that there are three different education systems.<sup>13</sup> The Andorran authorities have indeed implemented a set of measures which should help to tackle racist hate speech and, more generally, all forms of intolerance. An example is the compulsory “Education for peace and human rights” syllabus in the country’s three education systems,<sup>14</sup> which is a civic education course for pupils through which values, knowledge, practices and behaviours are taught to them with the educational objective of “encouraging effective and constructive participation in social and working life, exercising their freedom while being fully aware of the rights of others, and rejecting violence”. With regard to efforts to tackle racist prejudices and stereotypes, mention must be made of the education syllabus in the Spanish education system (lower secondary school and upper secondary school) on the prevention of gender-based violence, terrorist violence and all other forms of violence, racism or xenophobia, which includes a module about stereotypes.
36. The Andorran authorities have also informed ECRI about the European Workshop entitled “Competences for Democratic Culture”<sup>15</sup> in July 2016 for teaching staff. The aim of this activity is to facilitate the use of the Council of Europe’s theoretical model of competences (values, attitudes, knowledge and understanding) so that children and young people can adopt, in practice, the attitudes and behaviours necessary for democracy so that they can participate as citizens in a democratic society.
37. ECRI recommends that the authorities continue their education programme(s) helping to tackle all forms of intolerance and to promote improved coexistence while ensuring their consistency and uniformity across the three education systems.

### **3. Racist and homo/transphobic violence**

38. The data provided by the Ministry of Justice and the Interior and the police regarding incidents reported to the police show that no racially-motivated violence has been committed. This is also true of homo/transphobic violence.

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<sup>13</sup> See also the Press Release issued by the Commissioner for Human Rights at the end of his visit to Andorra on 10 and 11 May 2016.

<sup>14</sup> These three education systems (Andorran, Spanish and French) have been described in previous ECRI reports.

<sup>15</sup> Pestalozzi Programme.

Nevertheless, one recent case of alleged antisemitic violence, involving severe blows and serious injuries, was brought to the attention of the ECRI delegation by civil society during its contact visit.

39. Despite these figures, it cannot be ruled out that there may be under-reporting by victims or a lack of appropriate classification by the police and courts. In particular, ECRI highlights the fact that where racist motivation is evident (in the form of verbal or other aggression), it is important for the competent authorities (police, prosecutors, judges) to recognise it, record it and regard it as a relevant fact.
40. In its fourth report, ECRI strongly recommended 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 and 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 court judgements, per reference year.
41. It appears that this recommendation has not been implemented and ECRI considers that the data collected are insufficiently precise. It points out that the statistics on non-compliance with the provisions of criminal law that penalise racist offences, broken down by the number of investigations opened, the number of discontinued cases and the number of cases brought before the courts, are a useful tool in assessing the effectiveness and enforcement of these provisions.
42. In addition, ECRI notes that the Andorran authorities, more specifically the Department of Statistics of the Ministry of Finance, had undertaken to conduct a survey on public safety and victimisation. This survey should have taken place in 2013 or 2014, but in fact was never carried out. Nevertheless, the authorities wished to clarify that the Department of Statistics is in the process of preparing a draft Law on the Statistics Plan 2017-2020 which foresees the inclusion of the survey on victimisation. The law should, according to the authorities, establish official statistics on security (offenses and detention), gender-based violence and judicial activities that include information related to racism and intolerance.
43. ECRI once again strongly recommends that the Andorran authorities strengthen data collection as concerns racist and homo/transphobic hate crime. Such data should include aggravating circumstances to make it easier to identify the racial or discriminatory motivation behind an offence.
44. ECRI is pleased to note that Andorra has several “information centres”: Social Welfare and Employment offices, the Andorran Lawyers’ Association (which runs a permanent and free assistance, consultation and advice service) and also the various administrative departments of the Government. The Andorran authorities have also approved the Regulations for the Assistance and Mediation Service of the Judiciary.<sup>16</sup> This local public service is operational and endeavours to provide personalised assistance to the general public and victims, and to inform them of their rights and the various remedies available.

– **Integration policies**

45. The population of Andorra (71 732 people) is made up of almost as many non-Andorrans (49%) as Andorrans (51%): The largest groups of non-Andorrans are Spanish (17 512), Portuguese (9 261), French (2 834), British (700) and Colombians (120).<sup>17</sup> ECRI notes therefore that 49% of the population does not have political rights, such as the right to vote.

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<sup>16</sup> Decree of 17 December 2014.

<sup>17</sup> Governmental data.



46. The Andorra's integration policies are based on two key actions: the recent creation of a new Ministerial department on equality policies and the organisation of courses for learning the Catalan language.
47. The Ministerial department on equality policies was created in September 2015<sup>18</sup> and became operational in early January 2016. It is responsible for developing and promoting actions and transversal programmes for non-Andorrans. In particular, this department is tasked with establishing programmes that ensure acquisition of knowledge, promotion and protection of rights of all persons residing in Andorra regardless of their nationality or religion, and combating discrimination against non-Andorrans.
48. ECRI notes with satisfaction the creation of this new ministerial department specifically responsible for integration policies. However, it is too early at this stage for ECRI to comment on the efficiency of this body.
49. With regard to Catalan language learning, non-Andorrans can attend free courses outside their workplace and in their working time, a system which seems to work well. The Ministry of Culture, Youth and Sports has proposed to organise courses in businesses and during employees' working time, but little interest has been shown on the part of employers. Moreover, there are five self-language learning centers where access and use of educational materials are free of charge. Finally, the Ministry of Culture, Youth and Sports has set up a programme whereby people whose first language is Catalan help non-Catalan speakers to learn the Catalan language.
50. ECRI welcomes the efforts made by the Andorran authorities to facilitate Catalan language learning, which is a contributing factor to social inclusion and integration.
51. ECRI considers that, while access to citizenship is not strictly speaking an absolute prerequisite for integration, it is often regarded as the last step in a successful integration process and should be possible under reasonable conditions. In its fourth report, ECRI recommended that the Andorran authorities amend the Nationality Law by reducing the residence period required to obtain Andorran nationality to 15 years, with a view to lowering it to ten years in the near future. The Andorran authorities, while considering that the regulation of access to citizenship tends towards the gradual reduction of the minimum residence period for naturalisation, are of the view that a reduction from 20 to 10 years would constitute a step too far. The Government would prefer a more moderate reduction which would put in place a 15-year residence period. Moreover, the authorities support the idea of allowing the accumulation of years of residence in intermittent periods, under certain conditions. ECRI notes with satisfaction that it is now possible to obtain citizenship after 10 years of school education for minors or three years of marriage to an Andorran citizen.
52. The authorities nevertheless made it clear that the debate could not focus solely on strictly quantitative criteria, such as the number of years of residence necessary to acquire citizenship through naturalisation, and that a qualitative analysis focusing on assimilation or socio-cultural criteria (language, knowledge of the country, etc.) should be carried out. In the Government's view, the regulation of citizenship requires a comprehensive reform with the aim of updating the majority of the provisions of the legislation in force.
53. ECRI encourages the authorities to reopen the debate and reiterates its recommendation that the Nationality Law should be amended to reduce the

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<sup>18</sup> Decree on the reorganisation of the Ministry of Health, Social Affairs and Employment published in the Official of Andorra on 30 September 2015.

period of residence required to obtain Andorran citizenship to 10 years as defined by article 6 of the European Convention on Nationality.<sup>19</sup>

54. ECRI also recommended in its fourth report that the Andorran authorities consider ways of making provision in national law for the possibility of holding dual nationality. As the law stands, a foreigner must relinquish his original nationality to obtain Andorran nationality.
55. Believing that the acceptance of dual nationality (which would also necessitate a constitutional reform) would create two different communities of Andorran citizens – those who possess only one nationality and those who hold more than one, which would, the authorities believe, have undeniable repercussions on identity and sovereignty – the Andorran authorities have been very reserved about taking positive action in this regard.
56. ECRI once again recommends that the Andorran authorities consider ways of making provision in national law for the possibility of holding dual nationality.
57. In its two previous reports, ECRI recommended that the Andorran authorities run awareness-raising campaigns and initiate public dialogue about the possibility of acquiring citizenship.
58. ECRI observes that a significant number of foreign residents of Andorra (a little over 14 000) meet the legal requirements to apply for Andorran citizenship but have not taken any steps towards doing so.
59. ECRI welcomes the initiative undertaken by the authorities of sending a personalised letter to all eligible foreign nationals to inform them that they may acquire Andorran citizenship,
60. In addition, several new laws have removed a number of restrictions which affected vulnerable groups. A law allowing access, under certain conditions, to some social benefits, such as occasional financial aid, to irregular residents entered into force in May 2014. This law also provides that positive measures can be introduced in order to achieve effective equality and social integration. The law on study grants guaranteeing access to education for all children living in the Principality entered into force in September 2014.
61. In addition to these legislative measures, the provision of training courses on language and culture of Andorra has been expanded, in particular with the organisation of decentralised training throughout the country in order to facilitate the integration of new arrivals. This provision is being supplemented with basic courses on history and geography.
62. Lastly, the Ministry of Culture provides financial support to cultural associations representing 15 different nationalities. Over 50 cultural events representing cultures other than that of Andorra are organised each year.
63. ECRI welcomes these measures, which it regards as tangible progress.

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<sup>19</sup> Council of Europe; ETS 166 – Convention on Nationality, 6.XI.1997.

## **II. Topics specific to Andorra**

### **1. Interim follow-up recommendations of the fourth cycle**

#### **- Sharing of the burden of proof**

64. In its first interim follow-up recommendation, ECRI recommended that the Andorran authorities introduce and apply the principle of sharing the burden of proof when discrimination complaints on grounds of race, colour, ethnic origin, nationality, religion or language are brought before the civil or administrative courts. In its conclusions adopted on 19 March 2015, ECRI found that its recommendation had not been implemented.
65. ECRI points out that its recommendation relates to principles which are widely recognised as being legal standards. These principles have been enshrined in various European Union directives<sup>20</sup> and they also form part of ECRI's GPR No. 7. As the Explanatory Memorandum to this GPR states, it is often difficult to gather evidence for discrimination cases, which is why paragraph 11 of the GPR recommends that the burden of proof be shared. Since Andorra is not a member state of the European Union, ECRI considers that this makes it all the more important to ensure that it aligns its legislation with ECRI's GPR.
66. As noted above, there is still no comprehensive anti-discrimination law in Andorra, although a bill is being prepared to this effect. ECRI also notes that the Andorran authorities have stated that although there are currently no legal provisions on the sharing of the burden of proof, case-law indicates that this rule is applied in practice. This includes Decision 178/13 of the Supreme Court of Justice of 27 May 2014.<sup>21</sup> While ECRI welcomes this case-law, it still considers that the principle of the sharing of the burden of proof should be clearly set out in law and would serve to confirm positive judicial practice.<sup>22</sup>
67. ECRI strongly recommends that the Andorran authorities introduce into the law the principle of sharing the burden of proof where discrimination complaints on grounds of race, colour, ethnic origin, nationality, religion, language, gender identity and sexual orientation are brought before the civil or administrative courts.

#### **- Training for judges, prosecutors and lawyers**

68. In its second interim follow-up recommendation, ECRI recommended 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. In its conclusions of 19 March 2015, ECRI found that its recommendation had not been implemented.
69. Since then, as noted above, training for judges and prosecutors and among legal professionals has been provided, which should contribute to better knowledge of and familiarity with the provisions in force to combat racism and discrimination.

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<sup>20</sup> Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>21</sup> There is also decision No. 000005/2016 of the Single-Judge (Battle) Court, delivered on 14 January 2016.

<sup>22</sup> The Andorran authorities have indicated that the Government and the General Council (Parliament) are in the process of developing a White Paper on Equality, which will be presented in March 2017. On the basis of this White Paper, the Government will begin drafting the Equality and Non-Discrimination Act in the spring of 2017. In the context of this work, reflection on the introduction of the principle of sharing the burden of proof in the sense of ECRI's recommendation could be envisaged.

- **Work of the National Equality Commission**

70. In its third interim follow-up recommendation, ECRI strongly recommended 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. In its conclusions of 19 March 2015, ECRI found that its recommendation had not been implemented.
71. ECRI was informed that the National Equality Commission had been absorbed by the Advisory Council on Health and Well-being, but that the “National Equality Plan” that it had drawn up was still in force and that its recommendations were taken into account in the decisions of the Council of Ministers.
72. ECRI notes that the measures taken when changes were made in relation to the payment of economic welfare benefits in 2011 have been strengthened in order to further expand the eligibility of various social security benefits to persons who are members of vulnerable groups. The budget for economic welfare benefits increased in 2012, as did the number of persons receiving them and the average amount of these benefits.

**2. Effectiveness of independent authorities entrusted with the fight against racism and racial discrimination**

73. ECRI has addressed the issue of the failure of the authorities to create a new dedicated body or to expand the Ombudsman’s remit to include racism and racial discrimination in § 18 ff..
74. With regard to the Ombudsman’s human and financial resources, the “Raonador” Office has informed ECRI that it is satisfied with the available resources, both human and financial. These needs should be reassessed if this institution’s remit is expanded.
75. Finally, during its discussions with civil society, ECRI noted that the “Raonador” Office was still little known among Andorran society.
76. ECRI encourages the “Raonador” Office to continue its communication efforts in newspapers, other publications or through the mediation service of the Ministry of Justice and the Interior in order to raise its profile among the general public and potential victims.

**3. Policies to combat discrimination and intolerance vis-à-vis LGBT<sup>23</sup>**

- **Data**

77. ECRI notes that the authorities were unable to provide any figures on the number of LGBT persons in Andorra. The NGOs that the ECRI delegation met believe that the size of the gay and lesbian community is “about a hundred or so people”, but this figure is very approximate and cannot be regarded as reliable.
78. ECRI points out that Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity states that personal data relating to a person’s sexual orientation or gender identity can be collected if this is necessary for specific, lawful and legitimate purposes. It is clear that without this information, it is impossible to lay the groundwork for the creation and implementation of policies to combat intolerance and discrimination affecting LGBT persons.

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<sup>23</sup> For terminology, see the definitions set out in Council of Europe Commissioner for Human Rights 2011.

- **Policies and legislation**

79. Hate speech based on grounds of sexual orientation or gender identity are punished under Article 338 of the Criminal Code taken together with Article 30.6 on aggravating circumstances. Article 30.6 now also means that any violent offences based on sexual orientation or gender identity can also be punished more severely.
80. A number of other laws have been introduced with the aim of improving recognition of sexual diversity and equality. These include Law 34/2014 of 27 November 2014 on civil unions and the reform of the Matrimony Act of 30 June 1995. The latter amends the Matrimony Act and the laws on adoption and the civil register, and creates the same legal effects as heterosexual marriages; it enables homosexual couples to adopt children on an equal footing.<sup>24</sup>
81. ECRI notes with satisfaction that the Andorran authorities have implemented, particularly in schools, measures designed to promote understanding of, and respect for LGBT persons.
82. It observes that there is information (such as circulars) available to all pupils and students, as well as protection and support, to enable them to live in accordance with their sexual orientation or gender identity.
83. ECRI notes that a course on “how to approach homosexuality and/or homo/transphobia” is planned for teachers in all three education systems.
84. ECRI recommends that the authorities collect data on LGBT persons in Andorra and conduct surveys into any possible discrimination and intolerance that they may suffer.

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<sup>24</sup> See Law 34/2014 of 27 November 2014 on civil unions.



## **INTERIM FOLLOW-UP RECOMMENDATIONS**

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

- ECRI strongly reiterates its recommendation to ensure the existence of a body with specialised capacity to combat racism, racial discrimination, xenophobia, antisemitism and intolerance at national level in the public and private sectors in line with its GPR Nos. 2 and 7 on specialised bodies and on national legislation to combat racism and racial discrimination.
- ECRI strongly recommends that the authorities introduce into the law the principle of sharing the burden of proof where discrimination complaints on grounds of “race”, colour, ethnic origin, nationality, religion, language, gender identity and sexual orientation are brought before the civil or administrative courts

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





## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 17) ECRI strongly recommends that the Andorran authorities finalise the bill providing for specific and comprehensive civil and administrative legislation against direct and indirect discrimination, taking account of its GPR No. 7 on national legislation to combat racism and racial discrimination, and adopt the law as soon as possible.
2. (§ 22) ECRI strongly reiterates its recommendation to ensure the existence of a body with specialised capacity to combat racism, racial discrimination, xenophobia, antisemitism and intolerance at national level in the public and private sectors in line with its General Policy Recommendation Nos. 2 and 7 on specialised bodies and on national legislation to combat racism and racial discrimination.
3. (§ 33) ECRI reiterates its recommendation to set up an independent body with responsibility for receiving complaints against all forms of media and monitoring the media in order to identify any racist or discriminatory hate speech.
4. (§ 37) ECRI recommends that the authorities continue their education programme(s) helping to tackle all forms of intolerance and to promote improved coexistence while ensuring their consistency and uniformity across the three education systems.
5. (§ 43) ECRI once again strongly recommends that the Andorran authorities strengthen data collection as concerns racist and homo/transphobic hate crime. Such data should include aggravating circumstances to make it easier to identify the racial or discriminatory motivation behind an offence.
6. (§ 53) ECRI encourages the authorities to reopen the debate in the light of these factors and reiterates its recommendation that the Nationality Law should be amended to reduce significantly the period of residence required to obtain Andorran citizenship to 10 years as defined by article 6 of the European Convention on Nationality.
7. (§ 56) ECRI once again recommends that the Andorran authorities consider ways of making provision in national law for the possibility of holding dual nationality.
8. (§ 67) ECRI strongly recommends that the Andorran authorities introduce into the law the principle of sharing the burden of proof where discrimination complaints on grounds of race, colour, ethnic origin, nationality, religion, language, gender identity and sexual orientation are brought before the civil or administrative courts.
9. (§ 84) ECRI recommends that the authorities collect data on LGBT persons in Andorra and conduct surveys into any possible discrimination and intolerance that they may suffer.



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