

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

ANDORRA, Situation as of 1 October 2006

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY:	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law
ANDORRA				
Norms concerning discrimination in general	Yes.	Yes. (Ombudsman)	Yes.	Yes.
Norms concerning racism	Yes.	No.	Yes.	Yes.

EXPLANATORY NOTE

ANDORRA / GENERAL OVERVIEW

On 14 March 1993, the first written Andorran Constitution was approved by popular referendum. The Co-Principality of Andorra is an independent, democratic and social State governed by the rule of law. The governmental structure of Andorra is defined as a parliamentary Co-Principality ("*Coprincipado parlamentario*"). Sovereignty resides in the people and is exercised through various institutions established by the constitution.

The joint Heads of State are the Co-Princes (the Bishop of Urgel and the President of France). Legislative powers are exercised by the General Council and executive powers by the government.

The legal system is based more upon Roman law, in the form of the Code of Justinian, than upon the French or Spanish civil codes. Customary law plays an important role, although, since the coming into force of the 1994 Constitution, intensive codification is taking place and new legislation is being introduced.

The judiciary is composed of the *Tribunal de Batlles*, the *Tribunal de Corts*, and the *Tribunal Superior de Justicia*. The Constitutional Court is the supreme interpreter of the Constitution. Finally, the *Consell Superior de Justicia* ensures the independence and effectiveness of the judicial system and is in charge, *inter alia*, with appointing Andorran judges. Since 1998, the Andorran system has had an Ombudsman, whose task it is to safeguard the rights and freedoms guaranteed by the Constitution. He hears complaints from private individuals about alleged infringements of fundamental rights by the administrative authorities. He may issue recommendations, remind the bodies concerned of their duties and obligations, and propose remedial measures.

Andorra ratified the European Convention on Human Rights on 22 January 1996, the Convention for the Prevention of Torture on 26 September 1996, the Convention on the Elimination of All Forms of Discrimination against Women on 15 January 1997 and the Optional Protocol to this Convention on 14 October 2002. On 12 November 2004, it ratified the revised European Social Charter.

On 5 August 2002 Andorra signed (but has not yet ratified) the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights and its two Optional Protocols.

Some statistical data:

Population: 71 201 (2006)

Population growth rate: 0.89% (2006)

Net immigration rate: 23.65 immigrants/1,000 population (1994 estimate)

Ethnic groups: Spanish 50%, Andorran 28.5%, French 7.5%, Portuguese 7%, others 7%.

Religions: Roman Catholic (predominant, about 90%)

Languages: Catalan (official), French, Castilian.

Constitutional law: Andorra

Preliminary Note: this table is accompanied by an explanatory note

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Art. 1 Respect for human dignity	Proclaims that the Andorran State is inspired by respect for human dignity and human rights.		
Art. 4 Human rights and dignity	States that the Constitution recognises human dignity as inalienable and guarantees human rights.	No	

Art. 5 Universal Declaration of Human Rights	Adopts the Universal Declaration of Human Rights as binding law in Andorra.	No	The Law on Human Rights (1989) transposed the Universal Declaration of Human Rights into Andorran law.
Art. 6 Equality before the law	Lays down the principle of equality before the law.	Constitutional Court: Causa 2000-1-DP Causa 2000-2-RE	
Art. 10 Right of access to justice	States that all persons shall have the right to a fair trial and that the principle of equality shall be guaranteed by allowing persons access to the courts without cost, when necessary.		
Art. 11 Freedom of thought, religion and worship	States that the Constitution guarantees freedom of thought, religion and worship.	No	
Art. 14 Right to privacy	Guarantees the right to privacy, honour and reputation.	No	
Art. 20 Right to education	States that all persons have a right to education.	No	
Art. 23 Right of petition	Guarantees the right to petition public authorities.		

EXPLANATORY NOTE

ANDORRA / CONSTITUTIONAL LAW

General Remarks

The Andorran Constitution consecrates the right to equality and forbids discrimination on the basis of race, religion, origin, opinion or other personal or social condition.

The Constitutional Court has not as yet rendered any judgments concerning racial, ethnic or religious discrimination.

Comments upon the Table

Art. 1 Constitution

Proclaims that the actions of the Andorran State are to be inspired by the principles of respect for and promotion of liberty, equality, justice, tolerance, defence of human rights and dignity of the person.

Art. 4 Constitution

States that the Constitution recognises human dignity as being inalienable and therefore guarantees the inviolable and imprescriptible rights of the individual, which constitute the foundation of political order, social peace and justice.

Art. 5 Constitution

Transposes into Andorran law the dispositions of the Universal Declaration of Human Rights, in the spirit of the Law on Human Rights (10.4.1989)¹ which states, in Art.1, that the fundamental human rights, as they are defined in the Universal Declaration of Human Rights, are incorporated into the juridical order of Andorra. Art. 2 of this Law states that Andorran institutions shall specify, within the ambit of their respective competencies, the conditions under which the rights mentioned in Art. 1 of the Law may be exercised, taking into account the specific circumstances of Andorra.

Art. 6 Constitution

States 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.

It imposes upon public authorities the duty of creating the conditions necessary for achieving real and effective equality and liberty of individuals.

Art. 10 Constitution

States that all persons shall have the right of access to justice, to a determination of their claims founded on the law as well as to a fair trial before an impartial tribunal established by law. It also establishes the right of all persons to counsel and assistance by a lawyer and, in general terms, other procedural rights, prescribing that the law must specify the cases in which justice shall be free of cost, in order to guarantee respect for the principle of equality.

Art. 11 Constitution

States that the Constitution guarantees freedom of thought, religion and worship and that no one is bound to state or disclose his or her ideology, religion or beliefs. The provision stipulates that the freedom to exercise one's religion or beliefs shall be subject only to such limitations prescribed by law as are necessary to preserve public safety, order, health or morals and the fundamental rights and freedoms of others.

Art. 14 Constitution

Guarantees the right to privacy, honour and reputation.

Art. 20 Constitution

States that all persons have the right to education, which shall be oriented towards the dignity and full development of the human personality, thus strengthening respect for freedom and fundamental rights.

Art. 23 Constitution

States that everyone has the right, in respect of matters in which they have a direct interest, to petition the public authorities in the form and with the effects provided by law.

Relevant case-law

The Constitutional Court has ruled on the interpretation of Article 6 of the Constitution. Here are summaries of two key decisions on this subject:

Decision 2000-1-DP of 9 February 2001

In 2000, the Andorran parliament adopted a draft law on immigration. The draft law granted the government authority to impose certain conditions concerning immigration. The Constitutional Court declared this provision unconstitutional as it violated the principle of equality (Article 6 of the Constitution). If the law does not make distinctions, those who interpret it may not do so either.

Furthermore, under Articles 26, 27, 28 and 30 of the draft law, different rules were to be applied to residents with temporary residence permits and those with permanent residence permits. The Court declared these rules unconstitutional as they violated Articles 6 and 22, and stated that Article 22 of the Constitution, which guarantees residence rights to all persons residing legally in Andorra, makes no distinction according to length of residence.

Decision 2002-2-RE of 10 June 2002

In 2002, the General Council adopted a resolution on the establishment of a young persons' general council, in which it authorised the legislative committee on education, research, culture and sport to prepare a programme for the first meeting of such a council. Under the resolution, only pupils from state schools would have been allowed to take part in the election of the council's 28 members. This meant that private school pupils would have been excluded from voting and standing for the council. A private school lodged a complaint against the measure, which the Constitutional Court allowed, declaring the measure incompatible with Article 6 of the Constitution.

Criminal Law: Andorra

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Discrimination	Article	Discriminatory	Imprisonment		

	338 Criminal Code	acts carried out for a discriminatory reason, including those of public servants.	of up to one year; temporary disqualification from professional or social activities (of up to three years)		
Offensive or aggressive statements concerning specific groups	Article 339 Criminal Code	Offensive or aggressive public statements that are racially or religiously motivated	Semi-custodial measures and house arrest		
Injury to feelings with regard to deceased persons	Article 340 Criminal Code	Desecration of graves or remains of the dead	Imprisonment of up to one year		
Infringement of the right to assemble and demonstrate	Article 341 Criminal Code	Prohibition or termination of meetings and demonstrations	Imprisonment of up to three years. Where appropriate, temporary disqualification from public professional activities (of up to six years). Fine of up to €30 000.		
Infringement of freedom of expression and information	Article 342 Criminal Code	Measures taken by the public authorities to prohibit the publication or distribution of material by the media Temporary disqualification from public professional activities (of up to six years) and a fine of up	Temporary disqualification from public professional activities (of up to six years) and a fine of up to €30 000.		

		to €30 000.	
Obstructing the exercise of fundamental rights	Article 343 Criminal Code	Measures taken by the public authorities which obstruct the exercise of fundamental constitutional rights.	Temporary disqualification from public professional activities (of up to three years).

EXPLANATORY NOTE

ANDORRA / CRIMINAL LAW

General Remarks

The 1st Criminal Code was introduced on 1 November 1990. Following the adoption of the 1993 Constitution, which establishes a large number of fundamental freedoms, the Criminal Code was reformed with the aim of protecting these freedoms. The Criminal Code was amended by Law No. 9/2005 of 21 February 2005. In the new Section of the Code on infringements of the Constitution, chapter 5 prohibits discrimination (Articles 338 to 340) while chapter 6 deals with offences constituting interference with the exercise of fundamental freedoms (Articles 341 to 343).

Comments on the Table

Article 338 Criminal Code

Paragraph 1 of Article 338 makes it an offence to refuse to enter into a contract or accept the offer of a service or to make such a contract or service subject to special conditions for discriminatory reasons. Corporate entities may also be the victims of such discrimination if it is aimed at their managers or members. This article also applies to employers who practise discrimination. Offences of this kind carry a prison sentence combined with temporary disqualification from professional or social activities and the obligation to resit professional entrance examinations. Public servants who refuse to perform a duty they are required to perform or withdraw a service for discriminatory reasons are liable to one year's imprisonment and temporary disqualification from professional activities together with the obligation to resit professional entrance examinations.

Article 339 Criminal Code

Article 339 punishes those who make offensive or aggressive public statements regarding members of a religious, national, ethnic, trade union or political group or regarding persons who have such a belief or ideology.

Article 340 Criminal Code

This Article guarantees respect for the deceased and makes it an offence to desecrate graves or mortal remains (corpses, ashes or urns) punishable by up to one year's imprisonment.

Article 341 Criminal Code

Paragraph 1 of Article 341 provides for a sentence of three months' to three years' imprisonment for any violent or threatening act aimed at preventing or disturbing the organisation of meetings or demonstrations, preventing persons from attending such events or forcing them to do so against their will. Where there are aggravating circumstances, offenders are liable to further semi-custodial measures or house arrest. Offenders who are public servants acting in the performance of their duties will also be temporarily disqualified from public professional activities (for up to six years) and obliged to resit professional entrance examinations.

Paragraph 2 covers public authorities and servants and, except in cases prescribed by law, makes it an offence to prohibit or dissolve meetings or demonstrations punishable by temporary disqualification from public professional activities (for up to 6 years) and a fine of up to €30 000. Attempted prohibition or dissolution is also punishable (under paragraph 3).

Article 342 Criminal Code

Except in cases prescribed by law, Article 342 makes it an offence for public authorities or public servants to prohibit or suspend the publication or distribution of printed materials or the broadcasting of any programme via communication systems or the media, punishable by temporary disqualification of up to six years from public professional activities with the obligation to resit professional entrance examinations and a fine of up to €30 000.

Article 343 Criminal Code

In addition to the other cases provided for by the Criminal Code and described above, Article 343 imposes a penalty of disqualification from public professional activities of up to three years without the obligation to resit professional entrance examinations for any act by public authorities or servants intended to prevent persons from exercising the rights and freedoms set out in chapters III and IV of part II of the Constitution. Attempts to do so are also an offence.

Civil and Administrative Law: Andorra

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Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Art. 1 Administrative Code	Principle of the rule of law.			
Art. 2 Administrative Code	Principle of equality of access to public employment.			
Art. 21 Administrative Code	Principle of equality before and non-			

	discrimination by the Public Administration.
Art. 59 Administrative Code	Responsibility of the Administration for failure to respect the principle of equality.

EXPLANATORY NOTE

ANDORRA / CIVIL AND ADMINISTRATIVE LAW

Comments upon the table

*Art. 1 Administrative Code*²

States that the legal order of Andorra is governed by the principles of legality, subsidiarity of legal norms, non-retroactivity of dispositions placing limitations on human rights or imposing a sanction, juridical security (*sécurité juridique*), responsibility of public authorities and the prohibition of all arbitrary acts.

Art. 2 Administrative Code

States that Andorrans have the right of access to public employment under equal conditions. A similar provision appears in Art. 25 of this Law.

Art. 21 Administrative Code

States that everyone is equal before the Public Administration and that no one shall be discriminated against on grounds of birth, race, sex, religion, opinions or any other personal or social condition. The article also imposes on the Administration the duty to treat all nationals with equality, objectivity, neutrality and impartiality.

Art. 59 al. 3 Administrative Code

States that any violation of the principle of equality before the law by any public service in refusing one person the advantages given to others in the same situation, or in imposing, without justification, obligations not imposed upon others, shall render the Public Administration legally responsible. This article is complemented by Articles. 70 and 71 of the Law, according to which State employees may incur civil, penal and disciplinary responsibility for damage caused in the course of exercising their functions.

The Administrative Code also contains a procedural guarantee in respect of allegations of failure to respect its substantive provisions:

Art. 124 Administrative Code

States that everyone has the right to file a complaint against the Public Administration for decisions or acts which cause him or her prejudice.

Note

¹6, 10.4.1989.

Note

²6 of 10.4.1989.