

Council of Europe contribution for the 22nd UPR session regarding Andorra

Council of Europe Commissioner for Human Rights

On 17 February 2012, at the end of his two-day visit to Andorra, the Commissioner for Human Rights, Thomas Hammarberg, issued a Press Release¹. "The Andorran authorities intend to respect their obligations to ensure human rights protection in the country. However, further efforts are needed, for example to prevent domestic violence, protect against discrimination, and promote national independent monitoring of human rights standards", he said.

The Commissioner recommended that the authorities continue to give priority to extending assistance to victims of domestic violence and to allow longer stays in the shelter. "As in other places, in Andorra victims of domestic violence tend to suffer in silence. Measures to better protect such persons, who are predominantly women, should be adopted, including a wider use of restraining orders to oblige offenders to leave the house, the adoption of a specific law addressing gender-based violence, awareness-raising to dismantle cultural stereotypes and measures to address the reluctance of those subject to violence to report the problem." Commissioner Hammarberg also called for an explicit prohibition of corporal punishment of children.

In relation to discrimination issues, the Commissioner called upon the Andorran government to ease the requirements to apply for Andorran citizenship. "As the Andorran authorities themselves have recognised, the 20-year residence requirement is far too long. In this connection the Commissioner recommended the ratification by Andorra of the European Convention on Nationality."

Discrimination against persons with disabilities in employment, education, access to health care, or in the provision of other state services is prohibited. However, non-governmental organisations have pointed out that there is a gap in what is written in the law and the situation in reality. "This gap must be bridged" added the Commissioner, "there is the need to increase the awareness about the rights of persons with disabilities and the removal of all barriers, physical and cultural, which impede persons with disabilities from living in dignity.

Some of the officials met by the Commissioner stressed the need to conduct evaluation to ensure the proper implementation and effectiveness of social assistance programme. This is all the more important in period of economic crisis. As concerns monitoring of human rights standards by independent national bodies, the Commissioner considered it necessary to reinforce the national system in order to ensure that the country has a national mechanism for the prevention of torture.



PR Andorra.pdf

Prevention of torture

2011 periodic visit

On 15 November 2012, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Andorra from 28 November to 1 December 2011, together with the response of the Andorran Government (both documents are attached below).

¹ Attached below.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.²



Andorra report.pdf



Andorra
response.pdf

Preventing and combating violence against women and domestic violence

On 22 April 2011 Andorra ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. The country will thus be covered by the monitoring procedure to be put in place following the entry into force of the Convention on 1 August 2014.

Action against trafficking in human beings

On 18 September 2014, the Group of Experts on Action against Trafficking in Human Beings (GRETA) published its first evaluation report on Andorra³, together with a letter from the Andorran authorities sent in response to GRETA's report. Both documents are contained in the attachment below.

GRETA notes that Andorra is about to adopt legislation criminalising trafficking in human beings and considers it crucial that it is done without delay.

In its concluding remarks⁴ GRETA underlines the need for the Andorran authorities to raise awareness of human trafficking among the general public and professionals likely to come into contact with victims of trafficking. Groups vulnerable to trafficking, such as children, women in situations of vulnerability and migrant workers, should in particular be sensitised to the risks of human trafficking.

In addition, GRETA urges the Andorran authorities to adopt measures making it possible to proactively identify victims of trafficking and refer them to assistance. GRETA notes the existence of assistance for women victims of violence and stresses the need for legislative or other measures to provide assistance to all victims of human trafficking, regardless of the form of exploitation, and help them with their physical, psychological and social recovery.

Moreover, GRETA calls on the Andorran authorities to provide in law for a recovery and reflection period for victims of trafficking and the possibility of issuing them with renewable residence permits.

In its report, GRETA provides a complete list of proposals to the Andorran authorities.⁵



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Fight against racism and intolerance

On 22 May 2012, the European Commission against Racism and Intolerance (ECRI) published its fourth report on Andorra.⁶ ECRI's Chair, Mr Jenö Kaltenbach, said that, despite positive developments, there were issues of concern, such as incidents of direct and indirect

² pp. 31-36.

³ A summary of the report can be found on p. 6.

⁴ paras. 113 - 117.

⁵ Appendix I.

⁶ A summary of the report can be found on pp. 7-8.

discrimination in employment based on citizenship and the Government's reluctance to enact comprehensive legislation against racism and racial discrimination.

The Ombudsman's office has taken measures in order to make this institution better known to the public. Special reception classes continue to be organised in order to assist newly arrived pupils who do not master Catalan, as well as Spanish and French. The residence requirement for obtaining certain housing subsidies has been softened. Some measures have been taken to shorten the period provided by law for a permanent residence permit.

However, the criminal legislation in place relating to racism and intolerance is not exhaustive. Specific training on racism and racial discrimination should be provided to judges, prosecutors and lawyers. The possibility for seeking redress for forms of discrimination based on citizenship are limited and a fully fledged integration policy is not yet in place.

The report contains findings and recommendations regarding the following issues:

- Existence and implementation of legal provisions⁷
- Discrimination in various fields including employment, education, housing and health⁸
- Climate of opinion and public discourse⁹
- Vulnerable/target groups including minority religious groups, asylum seekers and other non-citizens¹⁰
- Conduct of law enforcement officials¹¹
- Monitoring racism and racial discrimination¹²
- Education and awareness-raising¹³

The following three recommendations were selected for priority implementation to be revisited two years later:

- Apply the principle of the sharing of the burden of proof when discrimination complaints are brought before civil/administrative courts.
- Train judges, prosecutors and lawyers on racism and racial discrimination, including on relevant criminal legislation.
- Rely on the work of the National Equality Commission to devise and coordinate an integration policy.

ECRI's report on Andorra, which includes Government observations, is attached below.



AND-CBC-IV-2012-0
24-ENG.pdf

Protection of minorities

Andorra has not yet signed or ratified the Framework Convention for the Protection of National Minorities. For this reason, it not yet concerned by the monitoring procedure undertaken by the Council of Europe Advisory Committee on this Convention.

Andorra has not yet signed or ratified the European Charter for Regional or Minority Languages. Thus, the country is not yet covered by the monitoring carried out by the Committee of Independent Experts under the Charter.

⁷ paras. 1-65.

⁸ paras. 66-87.

⁹ paras. 88-93.

¹⁰ paras. 94-119.

¹¹ paras. 120-124.

¹² paras. 125-128.

¹³ paras. 129-137.

Social and economic rights

Andorra ratified the Revised European Social Charter on 12/11/2004, accepting 79 paragraphs.

It has not agreed to be bound by the Additional Protocol providing for a system of collective complaints.

Cases of non-compliance

Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§4 – Right to work - Vocational guidance, training and rehabilitation

It has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

(Conclusions 2012, p. 10)

► Article 15§1 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Vocational training for persons with disabilities

It has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

(Conclusions 2012, p. 19)

► Article 15§2 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities

It has not been established that there are effective anti-discrimination legislation and remedies; It has not been established that the legal obligation to provide reasonable accommodation is respected;

Persons with disabilities are not guaranteed an effective access to the open labour market.

(Conclusions 2012, p.22)

► Article 15§3 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Integration and participation of persons with disabilities in the life of the community

It has not been established that housing, transport and telecommunications are covered by the anti-discrimination legislation;

It has not been established that there are effective remedies available to disabled people alleging discriminatory treatment;

It has not been established that disabled people have effective access to technical aids;

It has not been established that disabled people have effective access to housing.

(Conclusions 2012, p. 25)

Thematic Group 2 “Health, social security and social protection”

► Article 3§2 - Right to safe and healthy working conditions – Safety and health regulations

Self-employed workers do not enjoy adequate protection.

(Conclusions 2013, p. 13)

► Article 11§3 - Right to protection of health – Prevention of diseases and accidents

It has not been established that:

- appropriate measures have been taken to prevent smoking,

- appropriate measures have been taken to prevent accidents.

(Conclusions 2013, p. 22)

► Article 13§4 – Right to social and medical assistance – Specific emergency assistance for non-residents
It has not been established that all foreigners can receive emergency and social assistance for as long as they might require it
(Conclusions 2013, p. 34)

Thematic Group 3 “Labour rights”

No situations of non-conformity.

Thematic Group 4 “Children, families, migrants”

► Article 17§1 - Right of children and young persons to social, legal and economic protection - Assistance, education and training
Corporal punishment is not explicitly prohibited in the home, in schools and in institutions.
(Conclusions 2011, p.18)

Please find attached below the Conclusions regarding Andorra from 2011, 2012 and 2013, as well as the country fact sheet.



Andorra2011_en.pdf Andorra2012_en.pdf Andorra2013_en.pdf Andorra_en.pdf

Fighting corruption

On 22 November 2013, the Group of States against Corruption (GRECO) published its Third Round Compliance Report on Andorra. In its report GRECO concluded that Andorra has implemented satisfactorily only three of the twenty recommendations contained in the Third Round Evaluation Report.

With regard to incriminations, Andorra introduced a number of improvements recommended in the May 2011 Evaluation Report by means of legislative amendments which came into force in November 2012. As a result, undue advantage is no longer necessarily financial and may now take any form, the concepts of third party beneficiary and indirect bribery have been introduced, and bribery of members of foreign assemblies is now established as an offence. Partial improvements are also noted with regard to bribery of jurors and arbitrators – it remains for Andorra to ratify the Protocol to the Criminal Law Convention, which should be a formality. Andorra continues, however, to avail itself of its right of reserve regarding bribery offences in the private sector and trading in influence. The country will also need to review a number of questions, such as those relating to extra-territorial jurisdiction of its judicial authorities or the conditions under which liability may be extinguished based on the “effective regret” provision.

With regard to transparency of political party funding, GRECO noted that there is a will for reform in line with the expectations of the Evaluation Report and that work is in progress on a preliminary draft “Political Parties Bill” designed to regulate, for the first time, the existence and activities of political parties, including their funding, and therefore to supplement the embryonic provisions contained in the Election Financing Act (which applies only to this very specific field). Despite being at a very early stage in its drafting, the initial text submitted by Andorra hints at a series of improvements which clearly warrant support: these include rules on the various sources of funding used by parties and monitoring of their annual accounts, with an increased role for the Court of Auditors in this regard. Clearly, however, a good many questions have not yet been sufficiently discussed: these include the question of whether political parties would actually be governed by the future rules, and the harmonisation and interlinking of the above-mentioned two texts. Other aspects require further clarification, for example as regards the annual publication of parties’ accounts. GRECO strongly encouraged Andorra to carry through the planned reforms, but also to give further thought to the points in abeyance and those which seem to pose

problems, such as future publication of the names of major donors, which is an important aspect in terms of the general transparency of political funding.

In the light of the details given in the preceding paragraphs, GRECO noted that, despite a poor result on the whole, Andorra had been able to show that substantial reforms are in progress, offering the potential to achieve an adequate level of compliance with the outstanding recommendations in the next 18 months. GRECO therefore concluded that the current low level of compliance with the recommendations was not “globally unsatisfactory”.

The conclusions of the Compliance Report from 2013¹⁴, which is attached below, should be read in conjunction with GRECO’s two evaluation reports from 2011. Thus, they have also been attached below.



GrecoRC3(2013)12_ Andorra_EN.pdf GrecoEval3(2010)11 _Andorra_One_EN.px GrecoEval3(2010)11 Andorra_Two_EN.px

Execution of judgments and decisions of the European Court of Human Rights

At 31 December 2013, there was only case against Andorra pending before the Committee of Ministers for supervision of their execution. It is a “leading case”, i.e. raising a new structural/general problem and requiring the adoption of general measures.

The document attached presents the status of the execution of the respondent state.



Status execution judgments Andorra.p

¹⁴ Section III of the report, paras. 98-102.