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SECOND REPORT ON ANDORRA

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Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

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.

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Andorra is dated 16 October 1998 (published in May 1999). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to Andorra took place on 14-16 May 2002. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the national authorities of Andorra for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the national liaison officer for Andorra whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 28 June 2002 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

Recently, Andorra has taken several steps towards combating racism and intolerance, including steps aimed at promoting human rights and tolerance in education, the organisation of free teaching for adults, including immigrants, on Catalan and Andorran culture and the regularisation of the situation of immigrant workers through the adoption of a law on immigration.

However, a number of problems still exist. Andorra has not yet become party to most of the international legal instruments relevant to combating racism and intolerance. ECRI also notes the absence of certain criminal, civil and administrative legal provisions in the field of combating racism and intolerance in the statutory legislation of Andorra. Certain prejudices and stereotypes manifest themselves between the different communities. A large number of immigrants are in a precarious situation and the period required for naturalisation of long-term resident is excessively long. This situation prevents immigrants from fully integrating into the Andorran society. There is also a lack of knowledge and data concerning the possible extent of discrimination and racism in most areas of life.

In the present report, ECRI recommends that the authorities of Andorra take action in a number of fields. These recommendations cover, inter alia, further progress in becoming party to those international legal instruments relevant to combating racism and intolerance; the need to complement the legislation in the areas covered by ECRI's remit; the need to monitor closely the implementation of the 2002 Law on immigration; the need to address certain concerns as regards the situation of non-citizens and their possibilities for becoming fully-participating members of Andorran society.

SECTION I: OVERVIEW OF THE SITUATION

A. International legal instruments

1. Andorra is party to the European Convention on Human Rights but has not yet signed nor ratified Protocol N° 4, and has not yet become party to Protocols N° 7 and 12 of the Convention. ECRI has been informed that the Andorran authorities intend to sign and ratify Protocol N° 12 of the Convention very soon, which widens in a general fashion the scope of application of Article 14 of the Convention. ECRI urges the Andorran authorities to speed up the process of becoming party to this Protocol and to Protocols N° 4 and 7. ECRI welcomes the signature by Andorra of the Revised Social Charter in 2000 and encourages the Andorran authorities to ratify this instrument as soon as possible. ECRI has been informed that the International Covenant on Civil and Political Rights and its two Protocols were signed by Andorra on 5 August 2002 and that their ratification is currently under consideration. ECRI urges the Andorran authorities to speed up their process of ratification. ECRI has also been informed that the International Convention on the Elimination of all Forms of Racial Discrimination was signed on 5 August 2002 and that the Andorran authorities are currently considering its ratification and the possibility of making a declaration under Article 14, which gives the individual the right to bring petitions before the Committee on the Elimination of Racial Discrimination. ECRI encourages the Andorran authorities to finalize as soon as possible this process to prepare the—ratification of this Convention and to make the declaration under Article 14.
2. ECRI is concerned that Andorra has not yet expressed its consent to be bound by the most relevant international instruments in the field of combating racism and intolerance. Therefore, it reiterates its encouragement to Andorra to become party to the Convention 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, the Framework Convention for the Protection of National Minorities and the 1951 Convention relating to the Status of Refugees. It also recommends that Andorra becomes party to the European Convention on the Legal Status of Migrant Workers, the European Charter on Local Self-Government, the European Convention for the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality¹.
3. In accordance with Article 3-4 of the Constitution, the treaties and international agreements take effect in the legal system from the moment of their publication and cannot be amended or repealed by law. Article 5 of the Constitution provides that the Universal Declaration of Human Rights is binding law in Andorra. ECRI has been informed that the Universal Declaration has been published in the Catalan language in the Official Bulletin of the Principality of Andorra². ECRI suggests to the Andorran authorities the development of further initiatives to disseminate the principles and purposes of the Universal Declaration among the general public.

¹ Concerning these two last Conventions, see below, *Issues of particular concerns*.

² *Butlletí Oficial del Principat d'Andorra*, 07/17/2002, n° 55

B. Constitutional provisions and other basic provisions

4. According to Article 3-1 of the Constitution, the Constitution binds not only the public institutions but also individuals. Article 1-2 recognises, *inter alia*, the principle of equality. Article 6-1 of the 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. In accordance with Article 6-2, public authorities shall create the conditions such that equality and the liberty of the individuals may be real and effective. The Constitutional Court has not yet rendered any judgements concerning racial discrimination. However, concerning the list of grounds provided for in the Constitution, the notion of origin has been understood by an Andorran court, although in another context (see below: criminal law), as including the citizenship of the person. ECRI is pleased to note that Article 6 does not limit the right to equality to Andorran citizens, as it mentions that "all persons" have this right. This is of particular relevance for Andorra, which is experiencing an unique situation in Europe, as the population of non-citizens on the territory is much higher than the one of Andorrans, which constitutes only 35 % of the whole population³. The rest of the Andorran population is mainly represented by citizens from Spain (40 % of the population), Portugal (10 %) and France (6 %).

C. Criminal law provisions

5. Article 122 of the Penal Code punishes with imprisonment of up to four years those who commit acts of profanation or destruction of religious sites. According to Article 313 of the Penal Code, any act of discrimination constituting harassment or infringing the dignity of a person on the basis of origin, religion, race or sex shall be considered an offence punished with imprisonment of up to one year. Article 120 of the Penal Code punishes with imprisonment of up to three years those who disturb or hinder other persons in the enjoyment of their civil and political rights and liberties. Article 301 of the Penal Code punishes with imprisonment of up to six months those who publicly offend the religious sentiments of any person, or cause disturbances during religious ceremonies or acts. Concerning these criminal law provisions, the General Prosecution has the power to act *ex officio*, on the basis of information from any source, and irrespective of whether the victim has brought a complaint or not.
6. Concerning more specifically Article 313, only two prosecutions relating to racial discrimination have been instituted by the General Prosecutor. In one of the two cases, the charges have been dropped because there was no proof of the racist motive of the offence. The other case concerns a criminal prosecution both under Article 313 and the infliction of bodily injuries on the victim. The author of the aggression has been punished in the first instance for both offences but the case is currently under appeal and, therefore, the final decision has not been taken yet. Nevertheless, ECRI notes with satisfaction that the first instance court has interpreted the ground of "origin" mentioned in Article 313 as including the citizenship of the victim. The Court has also considered that the racial motivation was a factor to be taken into account for imposing a heavier sanction under Article 53 of the Criminal Code. This article stipulates that in determining

³ *The whole population of Andorra is of around 66000 people*

the sentence, the court shall take into account, among other things, the seriousness and the degree of danger to society of the offensive act as well as the aggravating circumstances surrounding the case. ECRI notes with interest that, if the case decided in the first instance is to be confirmed, it will mean that Article 53 can be interpreted to include the racial motive of an offence as a factor aggravating the sentence. However, as ECRI is aware that the current Criminal Code is under review before the Parliament, it encourages the Andorran authorities to consider mentioning expressly racial motivation as an aggravating circumstance in the Criminal Code, because this would be a symbol of the commitments of Andorra to combating racism and intolerance.

7. Article 200 of the Penal Code punishes with imprisonment of up to two years and one month the authors of public defamatory or injurious statements, whether oral or written, while Article 312 punishes with imprisonment of up to one year the author of defamatory or injurious oral statements, which are not made in public, or written statements, which are not published. The General Prosecutor is entitled to institute prosecution under such provisions only if the victims have lodged a complaint before the police or the Batllia (Tribunal). ECRI notes that no such complaint has been brought to the knowledge of the General Prosecutor as regards racist insults or other offences of a racist nature.
8. ECRI notes that prosecutions, concerning mainly workers who are non-citizens, have been instituted by the General Prosecutor under Article 129 of the Criminal Code, concerning unscrupulous conditions of employment, which take advantage of the worker's state of necessity. However, the cases were not brought before the court, owing to the fact that the alleged victims did not substantiate the allegations against the employers concerned. ECRI encourages the Andorran authorities to monitor closely the implementation of such provisions and to consider whether there are any discriminatory aspects in the case of unscrupulous employment contracts.
9. ECRI notes that there is currently no criminal provisions intended to prohibit racial organisation or incitement to hatred. ECRI stresses the need to adopt such provisions in order to give a clear symbolic sign to the general public that such behaviour will not be allowed in the country. It suggests therefore the Andorran authorities consider adding such provisions to the Criminal Code currently under review before the Parliament. Although ECRI is aware of the relative low rate of racist incidents in Andorra, it notes that there is a lack of statistics on cases of such incidents and encourages the police and prosecuting authorities to set up a system of monitoring, classification and recording of racist incidents which are brought to their attention and of the follow-up and outcome accorded to such incidents.

D. Civil and administrative law provisions

10. Article 21 of the Administrative Code states that everyone is equal before the public authorities and that no one shall be discriminated against on grounds of birth, race, sex, religion, opinions or any other personal or social status. The Article also obliges the Administration to treat all nationals with equality, objectivity, neutrality and impartiality. Article 59-3 of the Administrative Code states that any violation of the principle of equality before the law on the part of any public service by refusing one person the advantages given to others in the same situation, or by imposing, without justification, obligations not imposed on others, shall render the Public Administration legally responsible. This article is

complemented by Article 70 of the Administrative Code according to which State employees may incur civil, penal and disciplinary responsibility for damage caused in the course of exercising their functions. However, there does not appear to be any case-law relating to the above-mentioned administrative provisions in the field of racial discrimination. ECRI considers that their application and implementation should be closely examined and monitored, to ensure that cases of discrimination by public authorities do not go unpunished.

11. As regards relationships between individuals, for example in employment, access to housing or access to public places, ECRI notes that there is no specific civil law provision prohibiting discrimination. Although an individual could invoke Article 6-1 of the Constitution, which prohibits discrimination⁴, against another individual before the civil courts, relying on the fact that the constitutional human rights are directly enforceable by courts, ECRI nevertheless believes that such a general provision should be complemented by more precise and comprehensive civil law provisions in order to ensure that the general public is aware of the extension of the prohibition of discrimination to relationships between individuals. Therefore, ECRI strongly recommends to the authorities of Andorra to introduce a comprehensive body of civil and administrative law prohibiting discrimination in all aspects of life⁵.

E. Specialised bodies and other institutions

12. In 1998, the Andorran Parliament adopted a Law on the creation and functioning of the post of Raonador del Ciutadà (Ombudsman) as an extrajudicial guarantee, intended as a counselling and mediation service and as a complement to the judicial review of administrative acts. The first Ombudsman was appointed in 1999. The Constitution does not mention the Ombudsman and its status is only regulated by a law. The role of the Ombudsman is to defend and ensure respect for and implementation of the rights and freedoms proclaimed in the Constitution. He or she acts as an agent of the Parliament. The Ombudsman ensures that actions by the public authorities respect the general principles of the defence and protection of the rights and freedoms established by the Constitution and objectively serves the general interest. The Ombudsman receives and investigates complaints from individuals regarding the workings of the authorities and can also act on his or her own initiative. It appears that the Ombudsman has not received any complaint to date as regards racial discrimination or racist acts on the part of public authorities.
13. ECRI draws the attention of the Andorran authorities to its general policy recommendation N° 2 on specialised bodies to combat racism and intolerance at national level, which sets out a series of guidelines and principles to be borne in mind when setting up such a body. ECRI believes that the Andorran authorities should consider either creating such an organ or endowing the Ombudsman with a specialised function in this area.

⁴ See *Constitutional and other basic provisions, above*

⁵ See also *Issue of particular concern, below*

F. Education and training/awareness-raising

14. In accordance with Article 20 of the Constitution, "the education shall be oriented towards the dignity and full development of the human personality, thus strengthening the respect for freedom and fundamental rights". The qualified law on education specifies that education must train children and young people to respect diversity, rights and freedoms, and to practice tolerance. The teachers in the various education systems have received training in cultural diversity, inter alia, through summer training courses. Children in school do not follow specific courses on human rights and tolerance but such subjects are being taught on a transversal basis in different courses. ECRI encourages the Andorran authorities to continue and intensify their initiatives aimed at promoting human rights and tolerance in schools. It also suggests developing school curricula in such a way as to enhance the appreciation of cultural diversity stemming from the coexistence of many different national groups in Andorra.
15. Police officers and members of the prison staff of Andorra carry out their general training in Andorra. However, as regards more specific preparation, they are trained either in Spain or in France, therefore following the same training in human rights and non-discrimination as their Spanish and French colleagues. ECRI encourages the Andorran authorities to organise initial and on-going training in the field of human rights and non-discrimination for those who have direct contact with the public.

G. Reception and status of non-citizens

- Refugees and Asylum seekers

16. Although Andorra was a host country for refugees during the Second World War, nowadays, the country does not receive any application from asylum seekers, mainly because of its geographical situation. No legislation on this matter exists and there is currently no draft legislation on this question under examination before the Parliament. However, in case of a person asking for asylum in Andorra, Article 14 of the Universal Declaration of Human Rights, which states that everyone has the right to seek and to enjoy in other countries asylum from persecution, would apply as this Declaration is directly applicable under Andorran law⁶.

- Persons of immigrant origin

17. ECRI deals with this issue below, in the section on Issues of particular concern.

H. Access to public services

- Access to social services such as health care, welfare and housing

18. All non-citizens legally resident in Andorra are entitled to social services on an equal footing with Andorran citizens. ECRI understands that new regulations are being drafted regarding social benefits and social aid. ECRI encourages the Andorran authorities to pay particular attention during this process to the

⁶ see *International Legal Instruments*, above.

principle of non-discrimination and to consider adopting any initiative in this field which could contribute to a policy of integration of immigrants in the Andorran society. Although it appears that no complaint has been raised relating to discrimination in housing in the public sphere, ECRI is concerned by reports that non-citizens face difficulties in accessing housing to rent in the private sphere, even though no official complaint as such has been brought in this field. ECRI urges the Andorran authorities to closely monitor this situation and to work on awareness-raising of the general public to avoid stereotypes and prejudices which may lead to such difficulties.

- **Access to education**

19. In accordance with Article 20 of the Constitution, all persons have the right to education. Parents have the right to decide the type of education for their children. They also have the right to moral or religious instruction for their children in accordance with their convictions.
20. The education system up to secondary level in Andorra is divided into three systems: Andorran, Spanish and French. The French and Spanish education systems are governed by the legislation in force in the respective States and by the agreements signed with the Andorran Government. According to these agreements, Catalan and Andorran geography, history and institutions are taught in the Spanish and French schools in Andorra.
21. The Andorran education system is multilingual. Catalan, Spanish and French are used as teaching languages, to ensure, by the end of compulsory education, that pupils have gained a proper command of these three languages. Given the increasing number of Portuguese children in Andorran schools, measures have been taken to give these children the possibility to follow Portuguese lessons outside school time in the three education systems. ECRI welcomes this initiative and encourages the Government to continue its efforts to promote a multilingual teaching in schools. On the one hand, ECRI believes that the Andorran authorities should generalise the teaching of children's mother tongues other than Catalan. On the other hand, ECRI stresses the utmost importance of mastering Catalan for non-citizen pupils, as it is the official language of the State and represents a decisive tool for the integration of children of immigrant origin into the Andorran society. Therefore ECRI urges the Andorran authorities to make all possible efforts to ensure that all children, whatever the school system concerned, have a sufficient mastery of the Catalan language to prevent them from encountering any discriminatory situation in the future, for example in the field of employment.
22. Instruction on the Catholic faith is available in public schools on an optional basis outside of regular school hours. In primary schools, 25 % of the pupils attend this class, while in the secondary school, only 1 % of the pupils do.

I. Employment

23. Very little information is available as regards discrimination in the field of employment. ECRI considers that it would be very valuable to initiate an investigation into the possible existence, extent and manifestations of discrimination and of racism in employment in Andorra.

J. Vulnerable groups

This section covers certain minority groups which may be particularly vulnerable to problems of racism, discrimination and intolerance in the country in question. It is not intended to provide an exhaustive overview of the situation of all minority groups in the country, nor to imply that groups not mentioned face no problems of racism and discrimination.

- **Small religious groups**

24. Catholics represent more than 90 % of the whole population in Andorra. Other small religious groups exist such as Muslims (around 500 persons), Jews (around 100 persons) or Hindus. The size of these groups is increasing slowly. ECRI is aware of the efforts made by the Andorran authorities to respond to certain needs of these small religious groups. However, there are some issues of concern as regards, for example, adequate places of worship. The Muslim community does not have a mosque and the premises currently used for religious events and activities are not very appropriate for such purposes. This situation has led to some complaints from the neighbourhood because of the noise occasioned by the religious events occurring on the premises. ECRI hopes that the authorities will take steps to ensure that suitable premises are found and allocated to any small religious groups which, given their small size, cannot raise sufficient fund among themselves for building their own places of worship and cultural or educational institutions. ECRI feels that this would help to promote understanding and tolerance towards and between the different religious groups.

K. Climate of opinion

25. The widely-accepted view within Andorra is that problems of racism and discrimination are not really prevalent in the country, and that Andorran society is particularly tolerant. This tolerance is viewed as a result of the geographical position of Andorra at the crossroads of Spain and France, of its history and its status as a country of immigration and tourism. However, some sources have commented that although racism in Andorra is not generally of the ideological or violent sort, there does exist latent and, in some cases, overt prejudices and stereotypes towards certain groups of immigrants. ECRI is aware of the particular structure of Andorran society, where the Andorran community is numerically smaller than the immigration population, itself composed of different communities. Therefore, negative assumptions and perceptions are also held by members of immigrants communities. For example, it has been reported that, in some cases, members of the Portuguese community have suffered prejudice from members of the Spanish community while, in other cases, immigrants of Arab origin have encountered hostility from members of the two previous communities. ECRI urges the authorities to closely monitor such manifestation of intolerance and draws the authorities' attention in this respect to its general policy recommendation N° 4 where it recommends governments of member states take steps to ensure that national surveys on the experience and perception of racism and discrimination from the point of view of potential victims are carried out.

26. While ECRI recognises that intolerance and racism are not generally regarded as constituting major problems in Andorra, it is of the opinion that the Andorran authorities should continue to reinforce their efforts to meet the challenge posed by the important immigration flow on the level of tolerance and peaceful coexistence of different communities in the country. ECRI draws attention to the fact that numerous sources have mentioned an increase in the manifestations of intolerance and of related violence in Andorra. This problem should be tackled urgently to avoid its propagation, which could occur particularly if economic conditions in the country become less favourable in the future. Therefore, ECRI strongly urges the Andorran authorities to 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. This would help to reinforce and preserve the social cohesion of the people living in the country in the future.
27. There are some reports that intolerance and prejudice towards members of the Muslim community, including verbal insult in the street, have increased since the events of 11 September 2001. ECRI urges the Andorran authorities to implement awareness-raising measures aimed at the general public in order to combat such phenomenon and encourages the authorities to keep the situation under close examination. ECRI draws attention to its general policy recommendation N° 5 on combating discrimination and intolerance against Muslims, and encourages the active participation of the Muslim community in any initiatives undertaken in this field.

L. Monitoring the situation in the country

28. There seems to be a lack of data on the situation of non-citizens in fields such as employment, housing and education. Moreover, there is at present no systematic or specific collection of data concerning racist acts, reports to the police on such incidents and the follow-up and outcome given to such reports. ECRI encourages the Andorran authorities to develop systems for monitoring the situation of non-citizens in fields such as employment, housing and education, paying due respect to the principles of confidentiality and the voluntary self-identification of persons as belonging to a particular group. A system for monitoring the incidence of racist and discriminatory acts, including reports made to the authorities and the follow-up and outcome given to such reports, should also be set up.

M. Media

29. Article 2 of the Law on Broadcasting and Public Television and on the Establishment of the Public Company "Ràdio I Televisió d'Andorra, S.A." states that the public services of broadcasting and television with regard to their programming are bound by the general principles set forth in the Constitution, such as the respect for the principle of equality and non-discrimination on grounds of birth, race, sex, and other any personal or social circumstance. ECRI notes that different sources have indicated that the media generally report in a responsible manner on issues related to immigration and members of immigrants communities. However, ECRI is concerned by the fact that, on certain occasions, the media tends to report crimes as being committed by persons of a certain nationality, including in cases where the background of the alleged perpetrator is not relevant to the report. However, the situation has reportedly improved in this respect in recent years. Nevertheless, ECRI notes

that such reporting may create or exacerbate prejudices and stereotypes in the public opinion. In this respect, ECRI strongly supports the adoption and implementation by the media profession of codes of self-conduct which would favour a more responsible type of reporting. ECRI also invites the authorities to support initiatives undertaken by the media profession in the field of interest to ECRI.

SECTION II: ISSUES OF PARTICULAR CONCERN

In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Andorra, ECRI would like to draw attention to the issue of integration of persons of immigrant origin and to the problem of acquisition of Andorran citizenship.

N. Integration of persons of immigrant origin

30. As stated previously, 65 % of the population living in Andorra is composed of non-citizens, many of whom have come to Andorra to work. Since the Second World War, Andorra has become a country of immigration, facing a twelve-fold increase in the number of immigrants in forty years. This immigration is due to the need to meet the demands of the labour market, as Andorra is currently enjoying a situation of full employment and a sound economy, based mainly on tourism and trade. Before the adoption of the first law on immigration in May 2002 (which is discussed below), immigration was regulated by decrees and subject to statutes adopted by the Parliament on a yearly basis in order to fix the quotas of immigrants allowed to enter the country for work purposes. However, since 1998, the Parliament has ceased to adopt such laws and statutes. The situation has become complicated because, while there is still a great need for workers coming from abroad in Andorra, there is no possibility yet of obtaining a traditional work permit from the Andorran authorities.
31. Therefore, as a temporary solution, the government decided to grant to those non-citizens only holding a receipt for the application form for an official work permit the same economic and social rights as those granted to residents with a traditional work and residence permit. The pink receipt (so called because of the colour of the application form) lasts for six months and can be renewed as many times as necessary: it is only given if the person concerned can prove that he or she still fulfil the same conditions as when applying for the first official work permit (i.e. prove that they have a work contract and permanent residence in the country). These people are entitled to work and reside in the country and they benefit from the same economic and social rights as residents with a traditional work and residence permit. The main difference is that a pink receipt does not enable its holder to register in one of the seven parishes (municipalities) of the State. This means that the worker's children are not entitled to participate in the extra-curricular activities nor to benefit from the free day nursery or free school transport organised by the municipalities. A certain number of migrant workers with a temporary work permit (up to six months), also called "seasonal workers" (as they are usually hired for the ski season), remain in the country after their work permit has expired. These persons are of South American origin, mostly coming from Argentina. Very recently, their number has increased due to the economic crises currently affecting Argentina. They usually work for another six months in the tourism sector until they obtain a new six months work permit. Since these persons are actually living in the

country, some of them have brought their family with them. This situation has become problematic, since seasonal workers do not have the right to family reunification and are therefore not officially allowed to register their children in school. However, ECRI has been informed that, unlike the Andorran schools, the schools from the two other systems in Andorra, the Spanish and the French schools, have accepted to register those children. ECRI urges the Andorran authorities to pay immediate attention to the problem of access to schools for children in this position, and to make all necessary efforts to find an appropriate solution, given that these immigrant workers reside and work *de facto* throughout the whole year in the country.

32. In 2002, the number of persons in possession of a pink receipt has risen to approximately 7000. When the Andorran authorities tried to set up a new legal framework on the issue of immigration through the adoption of a law, the first issue they tackled was the regularisation of those who held a pink receipt. However, this law was deemed unconstitutional in February 2001. A new law was subsequently adopted in May 2002, which, among other things, will regularise the situation of the approximately 7000 pink-receipt holders.
33. The law on immigration will enter into force only in September 2002 in order to give the Government time to adopt the appropriate implementation regulations. In this respect, the Ministry of Interior is working on a strategic plan to regularise the situation of the holders of pink receipt without any problems. According to the third temporary provision of this law, each of the approximately 7000 pink-receipt holders will be given a work and residence permit lasting for one year, on condition that he or she can provide proof of employment, (i.e. a contract) and permanent residence in the country. According to the Andorran authorities, the duration of the new permit is determined on a case-by-case basis, taking into account the date of the first registration before the Immigration Service. This date is considered as the date of reference from which the new work and residence authorisation starts. This permit will be renewed according to the duration of the new authorisation. The law has a retroactive effect in that the date taken into account for calculating the period of legal residence of a non-citizen in the country, for example to apply for naturalisation (see below: the problem of acquisition of citizenship), is the date of the first pink receipt. According to several sources, this law will solve in an unproblematic fashion the situation of the approximately 7000 persons waiting for regularisation. ECRI is pleased to learn that the precarious situation of the holders of such pink receipts should soon be resolved. However, it encourages the Andorran authorities to monitor closely the implementation of this law and to disseminate widely all the relevant information to the persons concerned in order to ensure that there will be no difficulties during the regularisation process. Furthermore, ECRI is concerned to learn that the law does not give the right to family reunification to seasonal workers, even though it extends the length of the seasonal work permit from six months to one year. ECRI strongly encourages the Andorran authorities to reconsider this question and to make family reunification possible in order to respect the right to family life of the persons concerned and to facilitate their full integration into the Andorran society.
34. The law on immigration also provides for the creation, under the authority of the Ministry of Justice and Interior, of an employment service, which, among others, will be in charge of collecting and disseminating data and information on the work market in Andorra. One of the main tasks of this service will be to provide information resulting from the consultation of the different sectors of economic

activity in Andorra to the Government, which is competent to decide on the quotas of immigrants allowed to come to work in the country each year. The Government has mentioned its political will to give priority, in setting such quotas, first to the citizens of neighbouring countries, then to European Union citizens, then to citizens from countries which have signed international agreements with Andorra and, finally, to citizens from all other countries. This law has been criticised for giving a preference to citizens from the European Union, leaving very few possibilities for workers coming from other countries to get a work permit in Andorra. ECRI also notes that Andorra has negotiated, together with Spain and France, a more favourable treatment for nationals of both countries, especially with regard to residence and work permits, even in the public sector. This trilateral agreement has not yet entered into force. ECRI hopes that such systems of preference will not give scope to discriminatory practices as regards immigrants wishing to enter Andorra from countries less favoured in this matter.

35. As the main reason for immigrants to enter Andorra is for work purposes, ECRI feels that particular attention should be paid to racism and discrimination in the workplace. Currently, no data exist to ascertain whether foreign workers or certain groups of foreign workers work in discriminatory conditions. ECRI suggests therefore that the new employment service undertakes studies on the question of racial discrimination in the field of employment, for example, by compiling statistics on earnings, broken down by nationalities. The service could also organise, *inter alia*, a survey to collect foreign workers' impressions of racism and discrimination in the work place. If these studies reveal any intolerance or direct or indirect discrimination, the Andorran authorities should then take all the appropriate measures to fight against such phenomenon. On this point, ECRI suggests considering the solution of allowing, in the field of civil and administrative law, for a shared burden of proof in the case of discrimination in employment, in order to facilitate the lodging of a complaint before the courts. Under such a system, the victim of discrimination should establish facts allowing for the presumption of racial discrimination, whereupon the onus shifts to the respondent to prove that such discrimination did not take place.
36. ECRI is concerned that to date, no comprehensive and targeted integration strategy has existed in Andorra. ECRI feels that more attention needs to be paid to non-citizen workers as members of Andorran society rather than just as economic entities, and that measures should be taken which reflect this approach, such as, for example, awareness-raising measures within society in general, concerning the contribution made by non-citizen workers to the Andorran economy and society. A frequently-cited problem is that many non-citizen residents do not possess an adequate mastery of the Catalan language. ECRI notes with satisfaction that free Catalan lessons are provided for adults and that they can also freely access the open learning centres in the Catalan language and other subjects, which exist in several parishes in Andorra. ECRI strongly encourages the Andorran authorities to continue to strengthen their efforts in helping the non-citizen residents to integrate into Andorran society.
37. ECRI also recommends that the Andorran authorities extend the right to vote in local elections to non-citizens who are long term residents. This would allow them to participate more actively in the political life of Andorra while also encouraging a commitment on the part of political parties to take full account of the concern and interests of non citizens' interests. ECRI considers that such a

measure would contribute to the integration and participation in society of non-citizens who are long-term residents. Such a practice has been adopted in some other European countries for third-country nationals and ECRI recalls that certain instruments established within the Council of Europe provide for the granting of voting rights in local elections to non-citizens who are long-term residents, such as the European Convention for the Participation of Foreigners in Public Life at Local Level.

38. ECRI notes that although relations between non-citizens and Andorrans are at present not particularly tense, it is possible that the situation might worsen if economic and social conditions become less favourable for the population as a whole. Under such conditions, the relative lack of integration of minority groups of non-citizens as fully-participating members of society might leave them especially vulnerable if manifestations of xenophobia, discrimination and intolerance become more acute.

O. Citizenship legislation

39. According to Article 7-2 of the Constitution, the acquisition or retention of a nationality other than Andorran shall entail the loss of the latter, subject to the terms and periods established by law. The current qualified law on nationality, which has been in force since 1995, confers Andorran nationality, *inter alia*, on children born in Andorra provided that at least one of the parents is Andorran or that at least one of the parents was born in Andorra and has his or her principle and permanent residence in Andorra at the time of birth of the child. A child born in Andorra is also granted Andorran citizenship if at least one of the parents has, and has had for the 18 years prior to the birth of the child, his or her principle and permanent residence in Andorra. If, at the time of birth, this period has not been completed, citizenship is granted provisionally and must be confirmed once the period of residence has been completed by one of the parents. This confirmation confers citizenship definitively.
40. As regards naturalisation, there are two main ways to gain citizenship. The first is through marriage to an Andorran citizen. The second requires permanent residence in Andorra for twenty-five years and involves a test by the Citizenship Committee on the sufficient integration of the candidate as regards knowledge of the Catalan language and the institutions of Andorra. These tests are made on a non-discriminatory basis and aim at evaluating the candidates' integration and participation into the Andorran society. In all cases, the person in question has to renounce his or her previous citizenship in order to take up citizenship of Andorra. Even though a high number of non-nationals could apply for naturalisation, ECRI has been informed that not many do so. In this context, the need to relinquish one's previous citizenship in order to gain Andorran citizenship is likely to deter many non-nationals who fulfil the other conditions to apply for naturalisation. Other explanatory factors for the low rate of applications for naturalisation include the need to pass a Catalan proficiency examination, and the fact that in Andorra, long-term residents benefit from the same economic and social rights as nationals. The only difference between these two categories is related to the political rights as non-nationals do not have the right to take part in any of the Andorran elections.

41. Given the specific situation of Andorra as a country where non-citizens are more numerous than citizens, ECRI feels that the conditions for granting Andorran nationality are too restrictive. In particular, the requirement of twenty-five years of permanent residence in the country is excessively long and, therefore, ECRI is of the opinion that this period should be reduced to conform more closely with the European standards, taking into account in particular the European Convention on Nationality which provides on this point for a period of residence not exceeding ten years before the lodging of an application. ECRI draws attention to the fact that there is a general trend amongst European States to move towards a more flexible approach as regards the issue of dual citizenship and that this approach is in accord with the European Convention on Nationality. Therefore, ECRI strongly encourages the Andorran authorities to consider making the requirement for obtaining dual citizenship more flexible. Moreover, in order to favour the full integration of immigrants into Andorran society, ECRI considers that the Andorran authorities should encourage the persons concerned to apply for citizenship by disseminating as widely as possible information about the possibility of naturalisation.

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The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Andorra

APPENDIX

ECRI wishes to point out that the analysis contained in its second report on Andorra, is dated 28 June 2002, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Andorra to engage in a process of confidential dialogue with ECRI on its draft text on Andorra and a number of his comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Andorran governmental authorities expressly requested that the following observations on their part be reproduced as an appendix to ECRI's report.

OBSERVATIONS PROVIDED BY THE AUTHORITIES OF ANDORRA CONCERNING ECRI'S REPORT ON ANDORRA

"1. ECRI is concerned that Andorra has not yet expressed its consent to be bound by the most relevant international instruments in the field of combating racism and intolerance." The Andorran Government wishes to stress that it is taking steps to adopt the most appropriate international instruments, but it must also be borne in mind that this is a long and laborious process.

2. Regarding access to public services (section H of the ECRI report), the Andorran Ministry of Health and Welfare states that there have been no complaints to the relevant authorities, from either Andorrans or non-nationals, concerning discrimination in access to housing. Requests for housing assistance to the Ministry of Health and Welfare are related with problems with accommodation costs, which constitute a barrier for a number of families and individuals, national and non-national, in difficult financial circumstances. The Ministry responds to these requests via the social benefits system. Social workers attached to the Ministry consider each case individually. The availability of these benefits and the frequency with which they are awarded therefore enables the Ministry to quantify and assess the housing situation in the Principality and to draw up appropriate preventive measures.

3. Section L of the ECRI report considers the monitoring of the situation in the country. Although the Andorran Government acknowledges that there is probably insufficient data on the subject this is a general problem that affects nationals as well as non-nationals. Turning more specifically to the systematic collection of data on racist acts, the Andorran Police Force maintains a register of complaints lodged and the absence of complaints concerning racist acts suggests that cases of discrimination and intolerance are very rare.

4. Section O of the report - integration of persons of immigrant origin - looks at the activities of the Employment Department. The Andorran Government wishes to outline the Department's role in more detail since its objectives are consistent with and help to promote the concept of immigrant integration. The Immigration Act established an Employment Department under the Ministry of Justice and the Interior to supply the Government, which lays down annual quotas of immigrants authorised to work in the country, with adequate information on the supply of and demand for labour. It also provides this information to users and offers them guidance services, encourages and organises employment mediation, recommends necessary measures to encourage information, guidance and vocational development and training, and co-ordinates public and private sector initiatives.

5. Still in the employment field, the Andorran Government has just submitted draft regulatory legislation to the Consell General (Parliament) establishing the principle of non-discrimination on grounds of religion, origin, race or sex. The aim is to place the situation of workers on a firmer footing and avoid problems of discrimination. The Andorran Government also wishes to stress that, in the absence of evidence to the contrary, the *in dubio pro operari* principle will apply (in case of doubt, find in favour of the worker).

6. The Andorran Government is well aware that the country's economy could not survive without the contribution of foreign workers and that the latter must be protected. The Ministry of Justice and the Interior has therefore made a political undertaking to introduce various pieces of legislation to protect employees, such as the law regulating employment contracts referred to above. The Ministry also intends to promote legislation to offer more safeguards for trade union activities and new occupational health and safety legislation is currently being drafted.

7. Finally, regarding the question of applications for naturalisation considered in paragraph 40 of the ECRI report, the Andorran Government wishes to state that it receives nearly 1400 such applications each year and that, in comparison with the country's population, this can be considered to be very high.”

