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REPORT
BY MR ALVARO GIL-ROBLES,
COMMISSIONER FOR HUMAN RIGHTS,
ON HIS VISIT TO ANDORRA
10 - 12 January 2001

for the Committee of Ministers and the Parliamentary Assembly

INTRODUCTION

1. At the invitation of the Andorran government, I visited the principality from 10 to 12 January 2001. The main aim of the visit was to conduct an initial appraisal of the human rights situation both in terms of legislation and the application of the legislation in practice.

2. I wish to thank the Andorran authorities for their warm welcome and their assistance during this trip. Thanks to their efforts, I was able to meet everyone I wished to see, including representatives both of government and parliament and of NGOs. I was also able to visit Andorra's two prisons.

I would like to express my heartfelt gratitude to Ambassador Imma Tor Faus for her close co-operation while accompanying me throughout the visit and thank Mr Mika Boedeker for his assistance.

I. Background

1. Andorra effected a major political transition in 1993 when it adopted the first constitution of its history, shifting the country away from a system of government based on tradition to a modern democratic system. Although the constitution introduced a robust system of human rights protection, Andorra has not yet ratified some Council of Europe conventions or passed relevant implementing decrees.

2. The constitution strengthened Andorra's status as a "democratic and social independent State". The political system of Andorra is a parliamentary Coprincipat. In accordance with institutional tradition, the Coprinces are jointly and indivisibly the heads of state. They are, in their personal and exclusive right, the Bishop of Urgell, currently Monsignor Joan MARTI ALANIS, and the President of the French Republic, currently Mr Jacques CHIRAC.

Andorra joined the Council of Europe on 10 November 1994, and, on the same day, signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (referred to hereinafter as the ECHR), which it subsequently ratified on 22 January 1996.

II. General questions

1. On joining the Council of Europe, Andorra not only signed and ratified the ECHR and all its protocols (with the exception of numbers 4 and 7) but also a number of international treaties. However, it has not yet ratified some of the Council of Europe's major instruments such as the European Code of Social Security, the European Convention on the Legal Status of Migrant Workers, the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.
2. We were told that the parliament has informed the government that it is quite willing to ratify Protocols 4 and 7 of the ECHR. The government has not yet taken up the parliament's offer but it would be constructive for the ratification of the two protocols to be planned as soon as possible.

III. Specific questions

A. The situation and rights of foreigners in Andorra

1. The population of Andorra is a case apart in that native Andorrans are actually in a minority. In 1999 the total population was 65,971 - 22,743 of these were Andorrans and 43,228 foreigners.
2. The legislation on nationality is somewhat strict. It consists of a nationality act and implementing decrees. The law requires that, to acquire Andorran nationality, a person must have lived in Andorra for an uninterrupted period of 25 years and must be sufficiently integrated into Andorran society. The constitution states that persons acquiring or retaining another nationality lose Andorran nationality under conditions and within time-limits set by the law. Furthermore, anyone requesting naturalisation must sit an examination set by a committee on nationality. The examination focuses in particular on knowledge and understanding of the Catalan language and the applicant's integration and participation in Andorran society.

Under circumstances set out in Section 6 of the 1995 Nationality Act, a child born in Andorra of non-Andorran parents living in Andorra may, nonetheless, acquire Andorran nationality from birth though this is on a provisional basis if the parents have not lived in Andorra for 18 years.

3. The extremely long residence requirement for naturalisation seems to have an adverse effect on the desire of foreigners to seek naturalisation. Only a third of foreigners who meet the requirements actually apply for naturalisation. Moreover, applications for naturalisation entail relinquishing one's original nationality.
4. Even when they have been living in Andorra for 25 years and could therefore apply for naturalisation, foreigners are not entitled to vote in municipal or parliamentary elections. As far as parliamentary elections are concerned, the situation is similar in other European states, but there are less restrictions elsewhere on the participation of foreigners in municipal elections, particularly in the member States of the European Union.

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5. So-called economic rights (in other words the right to set up a private company) for long-term residents are still limited, considering that such rights are acquired only after a period of 20 years' uninterrupted residence. However, this period is due to be reduced to ten years for French and Spanish nationals under an agreement on the free movement of persons signed in Brussels on 4 December 2000, which is in the process of being ratified.

6. The problem of foreigners living in Andorra unofficially, without a residence or work permit, who are commonly described as pink-receipt holders (pink receipts are issued to people who have applied for a work permit), seems a fairly major one as it concerns some 4,000 people. This worrying situation can be put down to the fact that the demand for foreign labour in Andorra is considerably higher than the official quota of work permits.

However, by all accounts people with a pink receipt enjoy more or less the same rights as legal residents. I was assured that their situation would be regularised as soon as the new law on immigration, adopted last December by the parliament but not yet ratified by the Coprinces, came into force.

7. Even if the problem of the 4000 unofficial residents were finally settled in an appropriate fashion, it has to be said that it would be a good idea for the lengths of residence required to apply for naturalisation and acquire full economic rights to be reduced as much as possible.

B. Criminal procedure and the prison system

1. In the course of preparations and during my actual visit, I took account of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which had sent a delegation to Andorra from 27 to 29 May 1998. In its report (CPT/Inf (2000) 11), the CPT had drawn attention to the situation in the country's prisons and certain provisions of the draft Code of Criminal Procedure.

2. The aim of the changes that the CPT proposed to the draft Code of Criminal Procedure was to guarantee that persons detained by the police had the right to consult a lawyer from the very beginning of their period in police custody. Since the relevant provisions had not been changed, I raised this question once again during my visit, discussing it, among other people, with representatives of the Judicial Service Commission who confirmed that the country's judges supported the CPT's proposal. However, it goes without saying that the most important question here is whether the police allow detainees to contact lawyers as soon as they are taken into custody – and this is still not provided for by the law.

3. Once the constitution had come into force, the prison system was changed, meaning that convicts must now serve their sentences in Andorra (and not in Spanish or French prisons). From what I was told I concluded that Andorra is currently seeking solutions for certain specific categories of convicts for whom it cannot provide sufficient guarantees of future reintegration into society because of its underdeveloped infrastructure (minors, persons requiring psychiatric treatment, etc.).

Nationals of Spain, France or any other party to the Convention on the Transfer of Sentenced Persons ratified by Andorra on 13 April 2000 may ask to be transferred to their country of origin.

4. During my visit, Casa de la Vall and Comella prisons were fully operational. 24 people were being held in Comella prison and 10 in Casa de la Vall. There were 35 prison warders, supervised by a director and a deputy director. Some of the alterations recommended by the CPT had been carried out but it has to be said that the premises are still inadequate. The land for the extension of La Comella prison was acquired on 27 December 2000 and the winning bid for the work of extending the prison facilities was announced on 27 December 2000. Work had not yet begun when I was there.

In the light of what I was able to see, it seemed as obvious to me as to the CPT that Casa de la Vall prison should be closed as quickly as possible and, bearing in this mind, that work on La Comella should be speeded up, as appeared already to be happening.

5. During my visit I was told about a specific incident in Casa de la Vall prison. One of the prisoners was having trouble with his television but no-one had come to repair it. When he complained about this the prison warders are reported to have assaulted him. Four warders have been suspended from duties pending the results of an inquiry. The head of government, Mr Marc FORNE, has expressed alarm at the incident and called for a detailed inquiry.

C. Social security

1. The social security system covers three categories of people: (i) salaried workers, in other words people who work for an employer and must be affiliated to the Andorran Social Security Fund (CASS); (ii) unsalaried workers and voluntary contributors, that is self-employed persons (farmers, craft workers, shopkeepers, independent professional people), or persons with no paid occupation who do not have to affiliate but may do so on a voluntary basis; and finally (iii) retired persons, in other words people drawing a pension, for whom affiliation is compulsory.

2. One problem raised during meetings with representatives of the CASS and NGOs was that 25 days after losing or leaving their jobs, people are no longer covered by the social security system. This concerns both to former contributors and their dependants (spouse and children). It entails the loss of social and family benefits as well as medical insurance but does not affect children's right to education.

3. It may be that this situation rarely arises in practice because there is currently no unemployment in Andorra and people who lose their job find another fairly quickly or leave the country. However, it does seem to me that the situation could be improved, especially where the social protection system is concerned and in particular in order to maintain the rights of disadvantaged groups to medical protection, most specifically when they are unemployed.

D. Questions relating to labour law

1. Article 17 of the constitution provides for the right of association and so it can be said that the right to set up and run professional associations, trade unions and employers' organisations is recognised in Andorra.
2. However, at the time of my visit, the legislation on trade unions had not yet come into force. The Associations Act, which was adopted by parliament in December, was not due to enter into force until May. When questioned on the subject, government representatives said that the law on the functioning of associations also covered trade unions. The NGOs reported difficulties they had faced when setting up a particular trade union and therefore called for more legal protection of trade union activities.
3. According to the information I was provided with, the following trade unions currently exist: the religious education union, the national education union, the public radio and television broadcasting services union and the Andorran Workers' Union (SAT), which was added to the register of associations at the Cabinet meeting of Wednesday 28 February 2001. There are also numerous professional associations.
4. The provisions of Article 19 of the constitution concerning the right to strike are still unclear because they have not been completed by a law or an implementing decree. According to the article, workers and employers have the right to defend their own economic and social interests. However, the article also makes reference to a law which should regulate the conditions to exercise this right and this law has not yet been adopted. This creates problems when it comes to protecting the rights of trade unions because people involved in union activities are not clearly protected in the event of dismissal.
5. At any rate, Andorra has already signed the European Social Charter (on 4 November 2000) and it can be expected that it will soon ratify it, which will make it possible to solve many of the problems encountered.

E. The judicial system

1. Under the Constitution, justice is administered, in the name of the Andorran people, solely by independent judges who cannot be removed from office and are bound only by the Constitution and the laws when performing their judicial functions. Special courts are prohibited. All judges of all rank are appointed for a renewable term of six years from among persons with a degree in law and the requisite skills to perform the duties of a judge.
2. According to the Andorran Judicial Service Commission, the training of judges must be regarded as one of the key elements in the functioning of the justice system. One of the current problems with the judicial system is the lack of judges. Judges are trained either in France (most often in Bordeaux) or in Spain (mostly in Barcelona). Currently there are two judges in Andorra who were sent on a training

course in Strasbourg. Judges are recruited by means of a competitive examination which is open to all law graduates and consists of written tests and oral examinations by a panel of judges.

3. A structural reform is being devised to provide judges with access to teams of advisers helping them to prepare more efficiently for the hearings over which they are due to preside.

4. In its report, the CPT proposed that a system be set up for the regular inspection of police cells and prisons by an independent body. The Judicial Service Commission informed me that, as a result, a judge now visited the country's prisons every three months and public prosecutors visited them even more frequently.

F. Other questions raised

One of the problems raised by NGO representatives was the lack of any support for women who are victims of domestic violence. The president of the Association of Immigrant Women in Andorra called for a care centre for mistreated women to be opened in view of the alarming number of cases reported to it. Even though the Association's statistics dated from 1996, they still indicated the scale of the problem. That year there had been 154 cases of assault, 131 of which had been verbal and 24 of which had involved physical violence as a result of which the police had been called. The Association has collected 4000 signatures in favour of opening a centre of this type. A number of members of parliament told me that it was generally accepted that such a centre should be set up but that an agreement had not yet been reached as to the practical arrangements.

CONCLUSIONS

My visit revealed that there are no insurmountable problems in Andorra as far as the overall enjoyment of human rights is concerned, either from the point of view of improvements to legislation to bring it into line with the relevant European standards or in terms of the application and observance of such legislation. However, as already mentioned, there is an urgent need to close Casa de la Vall prison and complete the renovation work on Comella prison. It would also be encouraging if Andorra would make an effort to ratify the aforementioned international instruments and improve national legislation in the areas referred to in this report.

APPENDIX

Programme of the official visit to the Principality of Andorra
by Mr. Alvaro Gil-Robles, Commissioner for Human Rights
at the Council of Europe
(10th – 12th January 2001)

Wednesday 10th January

14.40 Arrival at Toulouse Airport. Transfer to Andorra.

19.30 Arrival at hotel Andorra Park.

Thursday 11th January

9.0 Meeting with various representatives of the Council for the Administration of Social Security.

10.00 Meeting with the “raonador del ciutada”, Ombudsman, Mr. Ricard FITER.

11.00 Meeting with members of humanitarian NGOs.

12.0 Meeting with members of NGO's for women : Women's Association of Andorra and The Association of Migrant Women in Andorra.

13.00 Working hosted by Mr. Estanislau SANGRA, Minister of the Interior.

15.30 Meeting with Mr. Alber PINTAT, Minister of Foreign Affairs

16.15 Meeting with Mr. Enric CASADAVALL, Minister of the Presidency, the Economy, Health and Social Welfare.

17.00 Meeting with Mr. Marc FORNE, Head of Government.

18.00 Meeting Mr. Marc VILA, President of the Superior Council of Justice.

19.00 Presentation of the Catalan Version of a selection of Council of Europe treaties.

21.00 Dinner hosted by the Minister of Foreign Affairs.

Friday 12th January

- 8.30 Visit to the detention centres of the Andorra de la Vela Police.
- 9.00 Visit to the Comella and Casa de la Vall prisons.
- 10.00 Meeting with the President of the Parliament, “Consell General” and “Sindic”, Mr. ARENY CASAL and the Vice-President, “Sub-Sindic”, Mr. Miquel MARFANY.
- 10.30 Meeting with the leaders of the Parliamentary Groups.
- 12.30 Press Conference.
- 13.30 Departure.