

## **FOLLOW-UP REPORT TO THE RECOMMENDATIONS OF THE COMMISSIONER FOR HUMAN RIGHTS FOLLOWING HIS VISIT TO THE PRINCIPALITY OF ANDORRA FROM 10-12 JANUARY 2001**

The Commissioner for Human Rights visited Principality of Andorra from 10-12 January 2001 on the invitation of the Andorran Government. In his report of this visit, published on 21 March 2001<sup>27</sup> the Commissioner identified a number of specific concerns regarding law and practise in Andorra with respect to human rights. It is the purpose of this report to assess the developments following to the Commissioner's findings and comments. The Commissioner would like to express his gratitude once again for the full cooperation of the Andorran authorities at the time of his initial visit and again during the preparation of this report, which is based on the submissions of Andorran Ministry of Foreign Affairs, in cooperation with the Ministries of Justice, Interior and Health, and information provided by Andorran civil society.

### **1. THE RIGHTS OF FOREIGNERS**

Andorra continues to be a country in which approximately two thirds of its total population (of c. 70,000) are foreigners.

#### **a. Electoral Rights**

Voting rights are conditional on the possession of Andorran nationality, which can be obtained by foreigners following an uninterrupted period of residence in Andorra of 25 years and by passing an examination set by a committee on nationality. Andorran nationality is otherwise acquired through birth in the Principality or through marriage to an Andorran national. Whilst registered foreign residents are entitled to vote in municipal elections in many European countries this is still not case the case in Andorra.

#### **b. Economic Rights**

The tight restrictions on the commercial activity of foreigners in Andorra continue to remain in place. The establishment of a private enterprise is conditional on its capital being two-thirds Andorran, by which is meant belonging to legal or physical persons of Andorran nationality or foreign persons having lived in Andorra for a minimum of 20 years. Representative functions, such as the President, or senior directors of enterprises, must also be held by persons of Andorran nationality or of 20 years residence in Andorra. In virtue of a tri-partite Convention signed by Andorra, France and Spain on 4 December, the qualification period for such rights by Spanish and French nationals is due to be reduced to 10 years on the Conventions entry into force on 1<sup>st</sup> July 2003. There are, however, no indications that these lengthy qualification periods will be reduced more generally for all foreigners.

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<sup>27</sup> CommDH(2001)1

**c. The situation of irregular immigrants awaiting the attribution of a work permit**

The situation in respect of this issue was of particular concern to the Commissioner during his initial visit. At the time of the Commissioner's visit, the demand for foreign labour in Andorra exceeded the official quotas for foreign work permits, resulting in some 4000 foreigners holding what are commonly referred to as "pink notes", which are given to foreigners who have applied for, but not yet obtained a work permit. The situation of these foreigners was due to be regularised by a new law on immigration adopted by Parliament in December 2000. This law finally came into force in September 2002 and the Andorran authorities have, in the previous 6 months, regularised the situation of all pink note holders.

**2. ACCESS TO A LAWYER FROM THE OUTSET OF POLICE CUSTODY**

During his visit the Commissioner raised concerns previously expressed by the CPT<sup>28</sup> regarding the immediate access of persons in police to custody to a lawyer. The relevant provisions of the Code of Criminal Procedure, which provide for the access to a lawyer after a preliminary period of 24 hours, remain in force.

**3. Prison Conditions**

There are currently two prisons in Andorra: Casa de la Vall and Comella. The Commissioner had been particularly concerned by the conditions in the former and had requested that it be closed as quickly as possible. At the time of the Commissioner's visit plans had already been formulated, and land purchased, to expand the Comella prison, so as to allow for the closure of Casa de la Vall.

The commencement of the necessary construction work on Comella prison was, however, delayed by the revision of the original plans by the new Minister of Justice following the general elections in 2001. It was decided to expand the original project (from a surface area of 3310 m<sup>2</sup> to 4598 m<sup>2</sup>), which necessitated the purchasing of additional neighbouring land. The negotiations for the necessary purchases took the best part of two years, but are now complete and construction work finally begun in February of this year. It is foreseen that the construction work will take one year and that, consequently, Casa de la Vall will finally be closed around the beginning of 2004.

**4. The Restructuring of the Judiciary**

There were some concerns at the time of the Commissioner's visit, that the low number of judges, or "batlles" (only 9), reduced the efficiency and quality of judicial proceedings, as the specialisation of judges was barely possible given the number of cases so small a number were obliged to deal with. Nor was there any particular specialisation, or direct attribution to individual judges, of administrative or legal staff.

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<sup>28</sup> (CPT/Inf(2000) 11), following a visit from 27 to 29 May 1998.

Since the Commissioner's visit, the Andorran authorities have sought to address this problem. Structural reforms to the "Batllia", begun in January 2002, have resulted in the increase in the number of Batlles to ten and the specialisation of each, with his own support staff, in specific legal domains. Whilst it is still too early to assess the impact of the changes definitively, initial indications are that the quality and speed of judicial proceedings have improved as a result.

## **5. The Social Security System**

The Commissioner had expressed some concern in his initial report over the loss of the medical insurance provided by the Andorran social security service (Caixa Andorrana Seguretat Social, CASS), by both the contributor and his or her dependants following 25 days unemployment. Whilst unemployment continues to be almost non-existent in Andorra, this extremely strict requirement must inevitably give rise to individual cases of hardship. Whilst this system remains unchanged since the Commissioner's visit, a new law on the social security system is currently being prepared in which alterations to the acquisition and termination of welfare rights are being considered. The speedy implementation of a more flexible system catering for the needs of the most vulnerable is certainly to be encouraged.

## **6. Labour Law**

The Commissioner raised a number of concerns in his initial report regarding the right to form trade unions and to the right to strike. Both these rights are provided for in the Constitution, the former in article 18, and the latter in article 19 which grants the right to both workers and employers to defend their economic and social interests. Concerns were expressed at the time of the Commissioner's visit relating to the difficulties in establishing and running trade unions in the absence of specific legislation on this matter. Indeed, legislation expanding on the rights guaranteed by article 18 of the constitution was already in the pipeline at the time of the Commissioner's visit and no progress been made on this issue since then. In the meantime, however, laws on Associations and on the Register of Associations, as required by article 17 of the Constitution (guaranteeing the right to association), have been adopted on the 24<sup>th</sup> July and 1<sup>st</sup> August 2001 respectively. The Law on Associations contains a provision extending its application to professional and trade union associations until such time as a specific law regulating their establishment and functioning is adopted. Whilst this development has removed some of the ambiguity surrounding the legal personality of trade union or professional associations, this interim solution ought not to be allowed to continuing delaying the passing of more specific legislation.

The absence of specific legislation elaborating on the right to strike ostensibly guaranteed by article 19 of the Constitution, and which is required by that article, has not been remedied since the Commissioner's visit. It would appear to be the position of the Andorran authorities that the as the provision of the Constitution is directly applicable as a fundamental right, there is no pressing need for further detailed

legislation. However, it is clear that the absence of specific legislation creates considerable uncertainty with respect to the extent of, and conditions on the exercise of the right to strike and consequently discourages its use in practise. The Andorran authorities are, as a result, to be encouraged to adopt the legislation foreseen in the Constitution.

## **7. DOMESTIC VIOLENCE**

The Commissioner had, finally, expressed his concerns over the phenomenon of domestic violence in Andorra, which was at the time of his visit, and continues to this day, to be a subject of some preoccupation in the Andorran media and public opinion. The Andorran authorities have taken several measures in an attempt to address this phenomenon focusing on the adoption in June 2001 of an Action Plan for cases of Domestic Violence (APDV), which was adopted by Ministry of Health and Welfare in cooperation with the Ministries of Justice and Interior. The Plan of Action is heavily based on the relevant recommendations of the Council of Europe.

The plan seeks to address the phenomenon of domestic violence through the coordination of state services in four main areas: health care, psychological assistance, the police and the judiciary. In each area working groups have been created that present their conclusions and recommendations to a Follow Up Commission presided by the newly created Secretary of State for Family Affairs and composed of one member of each working group. A fifth working group composed of NGOs working on women's affairs is to be established during 2003. The APDV places considerable emphasis on the training of all those from the various different services called upon to deal with the problem of domestic violence. The attempts of the Andorran authorities to combat the phenomenon have also included numerous publicity campaigns. A 24-hour hotline with professional receptions linked to the services grouped under the Action Plan has also been established

At the time of the Commissioner's visit, there were numerous calls for the creation of a special centre or shelter for victims of domestic violence. The Andorran authorities have not responded to these appeals. They maintain that the measures currently in place, namely a system of host families and agreements with a number of hostels, provide sufficient temporary shelter. There are also plans to establish links with shelters abroad for those wishing to leave their immediate social surroundings. It remains the case, however, that a specialised shelter would provide a centre in which victims of domestic violence might have easier and greater access to the various support and protection services.

Whilst it is too early to assess the full impact of the Action Plan, NGOs testify to the increased sensitivity of the Andorran authorities to the problem of domestic violence and their comments regarding the necessary measures. The number of reported cases of domestic violence has also decreased, with the Association of Andorran Women receiving 30 complaints of domestic violence in 2001 compared to twice that number in 2000.