



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination Ninety-eighth session

### Summary record of the 2713th meeting

Held at the Palais des Nations, Geneva, on Wednesday, 24 April 2019, at 3 p.m.

*Chair:* Mr. Amir

## Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

*Combined initial and second to sixth periodic reports of Andorra*

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*The meeting was called to order at 3.05 p.m.*

**Consideration of reports, comments and information submitted by States parties under article 9 of the Convention**

*Combined initial and second to sixth periodic reports of Andorra (CERD/C/AND/1-6 and CERD/C/AND/Q/1-6)*

1. *At the invitation of the Chair, the delegation of Andorra took places at the Committee table.*

2. **Mr. Forner** (Andorra), introducing his country's combined initial and second to sixth periodic reports (CERD/C/AND/1-6), said that he wished to apologize for the late submission of the report. While his Government fully appreciated the importance of the treaty body system, it lacked the human resources required to meet all reporting requirements in a timely manner. However, the lack of reporting was not indicative of a lack of progress in the elimination of racial discrimination. Significant headway had been made, particularly with regard to prevention and education, and the legislative and policy instruments needed to criminalize and to deter racial discrimination had been developed. Furthermore, since 1999, his Government had been progressively implementing the recommendations of the European Commission against Racism and Intolerance. For example, the Government had introduced into legislation the principle of sharing the burden of proof where discrimination complaints were brought before the courts. That change was indicative of his Government's willingness to follow all recommendations that would further human rights.

3. Education was a key element for the prevention and elimination of racial discrimination. The Andorran education system was in full conformity with the Convention against Discrimination in Education, which had entered into force in 2018. Efforts were made to provide high quality education that imparted the values of democratic citizenship, human rights, diversity and multiculturalism. Andorra had chosen the theme of democratic citizenship as a priority for its Chairmanship of the Committee of Ministers of the Council of Europe. As a result, a significant amount of work had been undertaken in order to develop education that promoted equality in a democratic and socially diverse society.

4. Hate speech was not present in Andorran public discourse and, while racial discrimination might occur in private settings, the Ombudsman had never received a complaint to that effect. The absence of racial discrimination could be attributed in part to the extremely high level of immigration to the country in the second half of the twentieth century, which had helped to foster multiculturalism.

5. The education system had also contributed to multiculturalism and helped to build social cohesion in a country with residents of more than 100 different nationalities. In fact, the system comprised three education systems: an Andorran system, a French system and a Spanish system. Parents were able to enrol their children in the system of their choice and, consequently, each system welcomed pupils from a wide range of nationalities and different social strata. While the Government did keep statistics on national origin, it did not collect data on ethnicity for fear that such information might lead to discrimination and damage social cohesion.

6. Although the Andorran Constitution did not set out a definition of the term "racial discrimination", it established the principles of equal treatment and non-discrimination. The Equality and Non-discrimination Act, which had entered into force in March 2019, further developed those principles and established the right of individuals not to suffer discrimination on the basis, inter alia, of national, racial or ethnic origin.

7. With regard to the consistency of articles 359 and 360 of the Criminal Code with article 4 (b) of the Convention – an issue raised in the list of themes (CERD/C/AND/Q/1-6) – those articles of the Criminal Code formed part of the legal framework that criminalized racist organizations and groups. The Criminal Code had been revised in 2014 and now covered the behaviours included within the scope of article 4 (b) of the Convention. Article 338 of the Criminal Code criminalized all forms of discrimination. Hate speech was prohibited under article 339, and the denial of genocide and crimes against humanity was

prohibited under articles 457, 458 and 465. Furthermore, the concept of “discriminatory motive” as an aggravating circumstance had been introduced into several articles of the Criminal Code.

8. In response to the recommendations of the European Commission against Racism and Intolerance, the mandate of the Ombudsman had been expanded in 2017 to include combating racism and intolerance. The Ombudsman provided information and assistance to victims, handling and following up on complaints regarding relations between citizens and public or private entities.

9. The Department for Equality Policies had been established to replace the Equality Commission, which had not achieved the expected results. The Department’s mission was to promote equality and combat all forms of discrimination, especially among vulnerable groups. With regard to free legal aid for the purpose of filing a complaint of racial discrimination, lawyers from the Department of Justice and Internal Affairs provided around six hours of legal assistance per week.

10. Andorra had always welcomed large numbers of immigrants, initially only from neighbouring countries, but more recently from further afield. While Andorra had not ratified the Convention relating to the Status of Refugees, the parliament had adopted a specific law to allow Syrian refugees in Lebanon to settle in Andorra. As a result, there were now two Syrian families living in the country and two more families were expected to arrive in 2019. Although there had been no cases of human trafficking, a law had been adopted on measures to combat that scourge and protect victims.

11. **Mr. Diaby** (Country Rapporteur), noting that the State party’s initial report had been due in 2007, said that the Committee welcomed the Government’s declaration under article 14 of the Convention. According to the report, awareness-raising had been undertaken on the subject of several international human rights instruments. He wondered whether any awareness-raising campaigns had been carried out in relation to the Convention. If so, he would welcome information on the objectives and scope of those activities. He would also appreciate information on any obstacles to the implementation of the Convention in Andorra and the measures envisaged to overcome them.

12. In 2015, during the second cycle of the universal periodic review, the Government had committed to establishing a national human rights institution in line with the Paris Principles. He wished to know what measures had been taken in that regard and would like details on the functions with which the institution would be entrusted. It had also been recommended during the universal periodic review that the State party should bring its legislation closer to the requirements of the European Convention on Nationality, which stipulated that to obtain the nationality, the period of residency should not be more than 10 years. He would appreciate information regarding the action taken in that regard.

13. It would be helpful to have further information regarding civil society in Andorra, including information on the legal framework governing the establishment and operation of non-governmental organizations. An indication of the non-governmental organizations working on the issue of racial discrimination would be particularly welcome. He would also like to know whether civil society organizations had been involved in the preparation of the report and, if so, how they had been consulted.

14. The report stated that the provisions of the Convention were incorporated into Andorran legislation. He would like to see information regarding cases in which the rights protected under the Convention had been invoked in the courts. The word “minority” was not used in the report, which referred instead to “vulnerable groups”. He would be grateful if the delegation could explain which groups were considered vulnerable and what measures had been taken to protect such groups from racial discrimination. He would also like further information regarding how equal and diverse representation, referred to in paragraph 18 of the report, was ensured in the parliament.

15. The Committee would like to receive statistics, disaggregated by level of the justice system, regarding cases of racial discrimination, including the number of cases in which rulings had been handed down and the number of pending cases. He wondered whether the low number of cases brought before the courts might be an indication of a lack of

confidence in the justice system. The Committee would like to hear the results of any perception surveys on that issue.

16. The Committee would be interested to know whether any special initiatives or measures had been taken to implement the Convention against Discrimination in Education, which had been ratified by Andorra in 2017. It would also be interested in learning whether the Andorran, Spanish and French education systems included private schools.

17. He would appreciate detailed information on the legal assistance available to migrants and asylum seekers. He also wished to receive information on stateless persons or persons at risk of statelessness in Andorra. Did the State party plan to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness? In light of the recent influx of migrants, he wondered whether the Government intended to pass new laws or adopt new policies to address their needs.

18. The Committee would appreciate information on the trafficking of migrants, including for the purpose of sexual exploitation. It would also welcome detailed information regarding the measures taken to improve the conditions of migrant workers, including domestic workers; the sectors in which such workers were employed; and whether employers respected the relevant legislation. In addition, the Committee would appreciate information on access to health-care services for non-citizens and on the conditions governing access to the social security system for migrants and asylum seekers. It would also be useful to have updated and disaggregated statistics on the situation of non-citizens in the prison system. Information on access to justice for migrants, especially migrant detainees, would also be appreciated.

19. Noting that there was a code of ethics for journalists employed by the public radio and television company, he said that the Committee would welcome information on the number of violations of the code that had involved discrimination and the measures taken against those responsible. It would also like to know whether there was a regulatory authority tasked with ensuring that broadcasts complied with certain general principles, including equality and non-discrimination, and what measures were taken to prevent and suppress hate speech in online and social media

20. **Mr. Kut** (Follow-up Coordinator) said that the Committee's concluding observations would include a section on follow-up that would underscore recommendations on which the State party was requested to report within one year. The Committee would be grateful if the State party would submit its follow-up report in a timely fashion.

21. **Mr. Avtonomov** said that the Committee wished to learn more about the recently enacted Equality and Non-discrimination Act, in particular the provisions aimed at countering racial discrimination. The Committee attached great importance to the situation of migrants in the State party, especially that of migrant children who were born in the country and wished to acquire citizenship, who might encounter impediments and be compelled to maintain their status as foreign residents throughout their lives. More detailed information regarding procedures for the acquisition of citizenship would therefore be welcome.

22. The Committee would also appreciate additional information on labour legislation and labour market conditions in order to assess whether discrimination existed. The State party report provided no information on the Romani people who were, in general, particularly vulnerable. Were there any Roma communities in Andorra? Lastly, he wished to know whether the State party had conducted any investigations into human trafficking and what action was being taken to counter the phenomenon.

23. **Mr. Calí Tzay** said that the Committee would welcome information on the procedures whereby foreigners could become permanent residents in the State party and acquire citizenship. The Committee would also like to hear whether foreigners who were permanent residents could be represented on the parish councils (*comuns*), which served as the State party's local authorities.

24. According to the table in paragraph 6 of the State party's report, the percentage of persons belonging to certain key religions had declined between 2013 and 2014 and risen again in 2015. He wondered whether the delegation could provide an explanation for the

fluctuations. Paragraph 27 of the report seemed to indicate that, pursuant to the Constitution and domestic legislation, persons could be deprived, not only of their right to liberty but also of their right to security. He would be interested in hearing what grounds could be invoked to deprive persons of their security.

25. Commending the State party's recognition of the Committee's competence under article 14 (1) of the Convention, he asked which institution was responsible for receiving complaints of racial discrimination at the national level. He would also be interested in hearing whether any complaints of racial discrimination had led to legal proceedings. In his view, a large number of complaints might actually indicate that a country's authorities and justice system enjoyed the population's confidence.

26. **Ms. Dah** said that the State party's comments on steps taken to harmonize the definition of racial discrimination in national legislation would be more convincing if they were backed up by examples of judgments handed down by the courts in discrimination cases or of complaints handled by the Ombudsman. The fact that the Ombudsman, whose remit had been broadened to include complaints of racial discrimination in both the public and private spheres, had not received any such complaints during the past 21 years could not be viewed as evidence that no discrimination existed. It could simply indicate that the public was not familiar with the work of the Ombudsman. It was essential to raise public awareness of the existence of such channels for filing complaints.

27. The Committee would welcome additional information on the provisions of the Equality and Non-discrimination Act and on the State party's expectations with regard to the short-term and long-term effects of the Act. She commended the Government's decision to include a provision in the Act on reversal of the burden of proof in discrimination cases.

28. The State party's tripartite public education system, overseen by the Andorran, Spanish and French Ministries of Education, was quite unique. She would be interested in hearing more about how the system worked. For instance, how were the frequent changes in the French education system reflected? The Committee would also be interested in hearing whether the private education system comprised schools for minorities and religious schools. If so, how did the State supervise those schools?

29. **Mr. Murillo Martínez** said that the Committee would be grateful for more detailed information concerning the State party's policy of education for democratic citizenship and related domestic and regional initiatives. How was the State party contributing to regional debates on the subject? Many global challenges were reflected in the Sustainable Development Goals, such as climate change, migration and extremism. He would be interested in hearing what the State party was doing in relation to such challenges, including through its international cooperation and development aid. An international declaration was currently being drafted on the rights of Afro-descendant peoples in the context of the International Decade for People of African Descent. He wished to know whether the State party was contributing to the deliberations on the declaration or pursuing any relevant policies. Lastly, the Committee would appreciate updated information on the composition of the State party's prison population in terms of ethnic and social groups.

30. **Ms. Shepherd** said that she had been pleased to learn that Haitian children were being adopted in Andorra, particularly at a time when many other countries were reluctant to welcome Haitians. She was also pleased to note the State party's efforts to develop strategies and legislation to combat racial discrimination, especially as racial discrimination and the inequalities to which it led could be a barrier to achieving the Sustainable Development Goals. Welcoming the steps taken to teach children about non-discrimination and respect for diversity, she asked whether that teaching was general in nature or dealt with the history and culture of specific ethnic groups, such as persons of African descent. She would also like to know whether the three education systems held common examinations and whether students were able to move seamlessly from one level of education to another. Noting the broad range of ethnic groups in Andorra and the country's reliance on the service and tourism industries, she asked whether jobs at the lower levels of those industries were occupied by members of particular ethnic groups and whether mastery of Catalan or of all three official languages helped workers to obtain higher-level positions.

31. **Mr. Yeung Sik Yuen** said that he would like to know more about the powers and composition of the High Council of Justice. The fact that judges were appointed for a term of six years, renewable once, seemed to be inconsistent with the principle of security of tenure, which was enshrined in the Constitution; he would welcome clarification on that point. He wondered whether any cases of racial discrimination had been brought before the civil or criminal courts and, if so, what the nature and outcome of those cases had been. Lastly, he would like to know how many judges and courts there were in Andorra.

32. **Ms. Mohamed**, noting the information in paragraphs 169 and 170 of the State party's report concerning legislation on the Andorran Red Cross and volunteer work, enquired whether there was any legislation on civil society in general. She also asked whether the delegation could provide statistics on the representation of minorities in the Government and the parliament, and whether minorities had the right to form associations and trade unions.

33. **Mr. Bossuyt** said that the delay in the submission of the State party's report was understandable, since, as a very small country, Andorra faced particular challenges when it came to reporting. Given that the Universal Declaration of Human Rights was a non-binding text, he was surprised by the wording of paragraph 41 of the report, which stated that the Declaration was "*en vigueur*" (in force) in Andorra. He also wondered what exactly was meant by the term "*mobile discriminatoire*" (discriminatory motive) in paragraph 110 of the report.

34. Although the number of years of residence required for an ordinary application for naturalization had been lowered from 25 to 20, it remained substantially higher than in many other countries. He would like to know how often naturalization was granted, where the applicants generally came from and whether naturalization had contributed to the country's significant population growth. Lastly, the State party should consider adopting a law on asylum, although in doing so, it should avoid introducing any complicated procedures.

*The meeting was suspended at 4.50 p.m. and resumed at 5.05 p.m.*

35. **Mr. Forner** (Andorra) said that, although he did not wish to make excuses for his Government's late submission of its report, it was worth noting that, in the face of great international pressure, Andorra had signed more than 140 treaties over the previous 25 years and had shouldered a significant reporting workload as a result. The Government struggled to cope with the burden of reporting to both the European Commission against Racism and Intolerance and the Committee, although it had come to realize that the two mechanisms – one regional, one global – were complementary to one another. It hoped to comply with its reporting deadlines in future and had appointed a coordinator of human rights reports to that end.

36. Initially, he had not viewed the Convention as a priority for ratification, as there had been no cases of racial discrimination in Andorra. Nevertheless, he was aware of the benefits of ratifying treaties and receiving recommendations from international human rights bodies. For example, a proper prison, with a section for juveniles, had been built in response to a recommendation from the Council of Europe Commissioner for Human Rights. He also recognized that the fact that no cases were reported did not mean that no racial discrimination took place. Although the Government had made many changes with a view to implementing the Convention, it still had much work to do and would welcome recommendations from the Committee on how to proceed.

37. He was pleased to be appearing before the Committee and to be leading his country's delegation. He had made sure that the delegation included a member of the judiciary, as the Andorran judiciary was completely independent and could identify shortcomings in government policy. Civil society, too, could help to identify problems and push the Government to make needed changes. Although it had proved difficult to mobilize civil society in Andorra, the situation was improving gradually and civil society organizations had been consulted on the report prior to its submission.

38. **Ms. Mingnorce** (Andorra) said that the High Council of Justice was the body responsible for administering the justice system. It was a completely independent institution

that did not come under any government ministry. Two of its five members were appointed by the Co-Princes, one by the president of the parliament and one by the head of Government; the fifth member was elected by the country's judges and magistrates. Members served for terms of six years and could be reappointed once. The aim in limiting members to two terms of office was to ensure turnover in the membership and avoid any politicization of the Council.

39. Judges were appointed by the High Council on the basis of recommendations made by a technical committee that assessed candidates' qualifications. Candidates were identified through a competitive process and were required to pass an examination. Judges were appointed for six-year terms and could be reappointed an unlimited number of times. A review was conducted every six years to determine whether a judge should be reappointed, but reappointment was automatic unless the judge resigned voluntarily or was found to have engaged in serious professional misconduct.

40. A recent survey of perceptions regarding corruption in the judiciary had found that the level of public confidence in the justice system in Andorra was higher than the average for European countries. As to access to justice, both citizens and non-citizens could receive free legal advice from a consultation service staffed by lawyers. Persons seeking such advice were not required to make a prior appointment or give their names. If they decided to file a complaint, they could do so directly with the police, a public prosecutor or a judge. Complaints could be made verbally or in writing. Complainants wishing to be represented by counsel could choose their own lawyer or utilize the services of a court-appointed attorney. The State covered the fee for persons who could not afford to pay a lawyer.

41. Detainees, regardless of their nationality or immigration status, had access to a lawyer from the moment they were detained. They could select their own lawyer or one would be appointed by a court. The same lawyer would continue to represent them throughout the legal proceeding in which they were involved, although they were free to change lawyers at any time if they so wished.

42. All complaints of discrimination were referred to the criminal justice system, even if they arose in connection with a civil or administrative matter. There had been two discrimination complaints in 2016, one in 2017 and three in 2018. Three of those complaints had been dismissed, two of them because the alleged perpetrator could not be found. Two were pending trial. One case, which had involved a waiter who had made disparaging remarks about persons of Portuguese origin, had been tried in November 2018 and had led to a conviction. The perpetrator had been fined and given a suspended prison sentence of 2.5 months. The two pending cases also involved racist remarks.

43. Discrimination could be both an offence in its own right and an aggravating circumstance in another offence if that offence – an assault, for example – was motivated by discrimination. Similarly, persons could be convicted of both the offence of discrimination and another offence committed with discriminatory motive, which would increase the severity of the penalty imposed.

44. **Mr. Murillo Martínez** said that he would appreciate data on the prison population.

45. **Ms. Mignorance** (Andorra) said that she believed there were currently around 80 inmates in the country's only prison, which had a capacity of slightly over 200. Approximately half were Andorran, roughly 30 per cent were Spanish or Portuguese and the remainder were of various national origins.

46. **Ms. Pagès** (Andorra) said that the education system had been fostering social cohesion and inclusiveness and promoting respect for diversity for many years. The French and Spanish education systems had been established in the early 1900s. The Andorran education system had been introduced in 1982 with a view to furthering the development of a national identity. French was the main language of instruction in the French system, although Catalan was also taught in the French schools. Both Spanish and Catalan were used in the Spanish system, and all three languages were used in the Andorran system. Because of the country's geographic location and small size, it was important for children to learn to speak several languages, and language instruction was therefore a priority in Andorran schools.

47. The main law governing the education system was the Education Act of 1993, article 3 of which stipulated that public education should promote respect for diversity, tolerance and democratic principles, including pluralism and peaceful coexistence. Bilateral treaties and agreements with the French, Spanish and Portuguese Governments were also part of the legal framework underpinning the education system. The curriculum was determined by the Government responsible for the system: the French Government for the French system, the Spanish Government for the Spanish system and the Andorran Government for the Andorran system. Andorran history was taught in all schools.

48. Families, including newly arrived immigrant families, were free to enrol their children in any of the three systems. Language instruction was provided to enable immigrant children to gain fluency in Catalan and also in French and Spanish. Children were normally expected to remain in the chosen system until the end of the academic year, after which they could move to a different system. The vast majority of schoolchildren attended public schools, a situation that helped to strengthen social cohesion and harmony, as children from varied backgrounds attended classes together. Only 2.5 per cent of schoolchildren attended private schools. Schooling was compulsory until the age of 16.

49. With regard to higher education, Andorran students could choose to attend university in France or Spain or in another European Union country. There was one small university in Andorra, which offered degrees in nursing, education, law and various other fields. Students at the university could also pursue studies under collaborative arrangements with universities in other countries, completing part of their studies in Andorra and part abroad. Students who left school at 16 or who chose not to attend university after completing secondary school could enrol in vocational training programmes.

50. **Ms. Porrás** (Andorra) said that the equality policies area had been created within the Ministry of Social Affairs, Justice and the Interior in 2015. It had two main functions: to develop and promote cross-cutting programmes and activities aimed at preventing gender-based violence, domestic violence and other forms of violence, and to address inequalities and fight discrimination against the most vulnerable groups. The Equality Policies Service provided assistance to persons suffering any type of inequality or discrimination. It also carried out awareness-raising activities designed to discourage discrimination and promote social cohesion and inclusiveness.

51. The Service had drawn up a white paper on equality, which had served as the basis for the development of the new Equality and Non-discrimination Act. In order to prepare the white paper, the Service had conducted an extensive year-long study on inequality, collaborating for that purpose with numerous civil society organizations that worked with vulnerable groups. Questionnaires had also been distributed online and in print in order to obtain public input on inequality in Andorra. Ten priorities had been established as a result of the study. Those priorities, which were addressed under the Equality and Non-discrimination Act, included the creation of an equality observatory to collect data, conduct studies and identify needed improvements.

52. **Ms. Izsák-Ndiaye** said that it would be helpful if the delegation would provide more information on the public's responses to the questionnaires and on the data collected in the course of the inequality study. That information would give the Committee greater insight into the identity and the needs and concerns of the vulnerable groups in Andorra.

*The meeting rose at 6 p.m.*