



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention**

**Initial reports of States parties due in 2007**

**Andorra\***

[14 November 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been formally edited.

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## I. General information

### A. Introduction

#### 1. General political structure and legal framework for the protection of human rights in Andorra

1. On 14 March 1993, the Andorran people adopted the Andorran Constitution, the highest law in the domestic legal system, in a referendum with universal suffrage.
2. As set out in article 1 of the Constitution, Andorra is an independent, democratic and social State governed by the rule of law. The official name of the State is Principality of Andorra.
3. The Principality of Andorra is a parliamentary co-principality, a unique political system under which two dignitaries, the Co-Princes, have shared joint and equal territorial sovereignty over the territory of Andorra since the Middle Ages.
4. This institution, established in the ancient texts of the *Pariatges* and evolving over the centuries, is now vested in the President of the French Republic and the Bishop of Urgell.
5. In accordance with the institutional tradition of Andorra, the two Co-Princes jointly and indivisibly constitute the Head of State, and its highest authority. They are the symbols and guarantors of the permanence and continuity of Andorra as well as of its independence and the enduring tradition of parity and stability in relations with its neighbour States. The Co-Princes also give the agreement of the State in international undertakings and oversee and moderate the operations of the Government and institutions. They are kept regularly informed of State affairs but are not responsible for measures adopted by the Andorran Government.
6. The Andorran people are represented by the Parliament (*Consell General*), which ensures diverse and equal representation of the national population and of the seven administrative divisions or parishes. This body, which is elected by free, equal, direct and secret universal suffrage for a term of four years, exercises legislative authority, approves the State budget and initiates and oversees government action.
7. The Government (*Govern*), which is composed of the Head of the Government (*Cap de Govern*) and a set number of ministers, as established by law, directs the national and international policy of Andorra. It also directs the administration of the State and exercises regulatory authority. The Head of the Government is elected by the Parliament, then appointed by the Co-Princes, in accordance with the provisions of the Constitution. Barring a few special situations, the mandate of the Head of the Government ends with that of the Parliament, and he or she cannot serve more than two consecutive full terms.
8. The parish councils (*Comuns*), represent and administer the parishes (*Parròquies*). They are public authorities with the legal status and authority to issue local regulations, subject to the law. The parish councils exercise their authority in accordance with the Constitution, the law and tradition, and they function according to the principle of self-government, recognized and guaranteed by the Constitution. They represent the interests of the parishes, approve and implement the parish budgets, determine and implement local policies in their spheres of competence, and manage and administer all parish property, whether public, private or part of the national heritage. Their governing bodies are elected democratically.

9. Certain parishes are also subdivided into *Quarts* and *Veïnats*, whose competence vis-à-vis the councils derives from traditions and customs.

10. Both Parliament and the Government have the authority to initiate legislation. In addition, three parish councils jointly or one tenth of the national electorate can submit bills.

11. Justice is administered in the name of the Andorran people solely by judges who are independent and have security of tenure, and who perform their duties subject only to the Constitution and the law.

12. Thus the form of governance established in the Andorran Constitution provides for clear separation of the executive, legislative and judicial powers, which is the fundamental legal framework that makes it possible to guarantee and maintain democracy and the enjoyment of fundamental freedoms, two principles rooted in the history and traditions of the Principality.

## **2. Information on the process of preparing the report**

13. This report was drafted in accordance with the guidelines on the form and content of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention. The consultants who worked on the report relied on the relevant legislation, reports provided by various bodies working for the promotion and protection of human rights, information from the relevant ministries and government services, information from the courts, as well as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report to the Andorran Government on its visit to Andorra.

## **B. General legal framework for the protection of human rights**

### **1. Constitutional, criminal and administrative provisions on the prohibition of torture or other inhuman or degrading punishment or treatment**

#### **The Constitution**

14. The Andorran Constitution, the highest law in the domestic legal system, is binding on all public authorities and citizens (art. 3). It contains provisions on the prohibition of acts of torture or other inhuman or degrading treatment, and provisions allowing for the incorporation of principles of international law related to those prohibitions (art. 8).

15. In its actions, the Andorran State respects and promotes the principles of liberty, equality, justice, tolerance, defence of human rights, and human dignity (art. 1.2). The Andorran Constitution recognizes universally accepted principles of international public law (art. 3.3). In addition to the Universal Declaration of Human Rights (art. 5), Andorra also incorporates into its legal order all international treaties and agreements it adopts as soon as they are published in the *Official Gazette* of the Principality of Andorra (art. 3.4).

16. The Constitution establishes the inviolability of human dignity and consequently guarantees inviolable and inalienable human rights, which form the basis of political organization, social peace and justice (art. 4). The right to life is recognized under the Constitution and is fully protected at all stages (art. 8.1). Everyone has the right to physical and moral integrity, and no one may be subjected to torture or cruel, inhuman or degrading punishment or treatment (art. 8.2). The death penalty is prohibited (art. 8.3).

17. Everyone has the right to freedom and security and may be deprived of them only on the grounds and in accordance with the procedures set out in the Constitution and the law. The duration of police custody may not exceed the time necessary for the investigation, and

in no circumstances may it exceed 48 hours, by which time the detainee must be brought before the court. The law establishes procedures allowing all detainees to ask a court to rule on the lawfulness of their detention, and to restore the fundamental rights of anyone deprived of their liberty (art. 9).

18. Article 39 of the Constitution gives direct effect to the rights and freedoms mentioned, which are immediately enforceable by the public authorities. The scope of these rights and freedoms cannot be limited by law and they are protected by the courts. These rights and freedoms apply not only to nationals of the Principality, but also to all foreigners legally resident in Andorra.

19. Rules on the exercise of rights and freedoms may only be established by law; in particular, the rights recognized in chapters II and IV are governed by qualified Acts (art. 40).

20. Article 41 of the Constitution states that the law will provide for the protection of the rights and freedoms recognized under chapters III and IV of the Constitution, in particular the rights related to the protection of physical integrity and the prohibition of torture, by the ordinary courts through urgent proceedings, allowing in all cases for a second hearing. The law also establishes a special appeal procedure in the Constitutional Court against acts by the authorities that violate those rights.

21. Criminal provisions. Legislative Decree No. 16/2008 of 17 December publishing the revised text of Qualified Act No. 9/2005 of 21 February on the Criminal Code, Qualified Act No. 91/2010 of 16 December amending articles 113, 114, 476 and 478 of Qualified Act No. 9/2005 of 21 February on the Criminal Code, and the amended text of 17 December 2008 of the Qualified Act of 10 December 1998 on the Code of Criminal Procedure are the two main legislative instruments of criminal law on the prohibition and punishment of torture and other cruel, inhuman or degrading treatment or punishment.

22. Chapter I, "Torture and offences against moral integrity involving abuse of power", of title III, "Offences against human integrity", of the Criminal Code governs the prohibition of torture and establishes penalties for acts of torture and offences against moral integrity involving abuse of power. Article 110 defines the offence of torture and establishes penalties, article 111 defines the offence of failing to prevent or report an act of torture and establishes penalties, and articles 112 and 113 define degrading treatment and establish penalties.

23. Articles 115 and 116 of the Criminal Code provide for more severe penalties for certain forms of ill-treatment and bodily injury.

24. Under articles 459 to 467 of chapter III of the Criminal Code, "Crimes against humanity", of title XXIV, "Crimes against the international community", torture is considered a crime against humanity, and the penalties established apply to both the perpetrators of the offences and any authorities that may have been involved or failed to prevent the offences.

25. There are other articles of the Criminal Code that, while they do not deal directly with torture or cruel, inhuman or degrading treatment or punishment, do refer to violations or situations that may also include those offences, namely articles 133 to 143 bis of title VI, "Crimes against freedom"; article 344, "Unlawful deprivation of liberty or imprisonment"; and article 345, "Unlawful incommunication".

26. The perpetrators of acts of torture face penalties of 1 to 6 years' imprisonment and 1 to 9 years' suspension of civic and civil rights, regardless of who they are.

27. Attempted torture and conspiracy and incitement to commit torture are also offences (Criminal Code, art. 110).

28. Penalties are increased if the offence is committed using methods that are particularly cruel, in terms of the degree of suffering, or if they endanger life. In such cases, the judge may increase the penalty by half the maximum possible penalty (Criminal Code, art. 110).

29. Disciplinary and criminal provisions for acts of torture are also in place for police, security and prison officers.

30. Police officers must question detainees in accordance with the provisions of the Code of Criminal Procedure or, in the case of the arrest of a minor (between 12 and 18 years old), with the Juvenile Justice Act of 22 April 1999.

31. Detainees must be questioned in rooms equipped for that purpose, located in the secure areas of the main police station. In the case of minors, questioning takes place in the police Minors Unit offices, which are less forbidding and more suitable for minors.

32. In general, questioning should not last more than four hours at a stretch, and there must be a break of at least one hour between sessions. In addition, detainees have the right to at least eight hours' uninterrupted rest in every 24-hour period.

33. Any suspect who makes a statement to the police is immediately informed of the charges against them and, if they are detained, of the reasons why, as well as of their rights (article 24 of the Code of Criminal Procedure).

34. Under article 108 of the Code of Criminal Procedure, police custody or temporary supervision measures authorized in cases of torture, for example, may be extended by reasoned decision only.

35. Article 92 of the Code of Criminal Procedure provides that, in general, when carrying out an autopsy, forensic doctors must, among other things, check whether the victim presents signs of torture or rape.

#### **Administrative provisions**

36. Under articles 97 and 98 of Qualified Act No. 8/2004 of 27 May on the Police, it is possible to prosecute police officers who have committed acts of torture.

37. Article 48.1 of Qualified Act No. 4/2007 of 22 March on Prisons establishes the disciplinary regime applicable to prisons. The objective of the Act is to maintain internal security and community life among prisoners as well as between prisoners and prison staff or other persons with access to the prison by law.

38. In addition, the Prison Regulations further develop certain provisions of the Act and set forth the disciplinary regime.

39. The penalties applicable to prison officers or officials who violate a fundamental right set out in chapters III and IV of title II of the Constitution are established in articles 343 and 347 of the Criminal Code.

40. The Qualified Act on Extradition of 28 November 1996, based on the provisions of the European Convention on Extradition, provides guarantees for persons subject to extradition.

41. The Public Prosecutor's Office Act of 12 December 1996 regulates the functions to be carried out by that Office, notably to receive complaints and, once standard checks have been completed, order a preliminary investigation, if appropriate, before forwarding the case to the courts.

## 2. Relevant international instruments

**Table 1**

<i>Organization</i>	<i>Instrument</i>	<i>Deposit of instrument</i>	<i>Signature</i>	<i>Ratification (R) Accession (A)</i>	<i>Entry into force</i>
Council of Europe	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (26/11/1987)	06/01/1997	10/09/1996	R	01/05/1997
	Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (04/11/1993)	13/07/2000	04/11/1999	R	01/03/2002
	European Convention on Extradition 13/12/1957 ratified 22/01/2000			R	
	European Convention on Mutual Assistance in Criminal Matters signed in Strasbourg on 20/04/1959 and ratified by Andorra on 21/02/2005			R	
	Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (04/11/1993)	13/07/2000	04/11/1999	R	01/03/2002
United Nations	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10/12/1984)	22/09/2006	05/08/2002	R	22/10/2006
International Criminal Court	Rome Statute of the International Criminal Court (17/07/1998)	30/04/2001	18/07/1998	R	01/07/2002

## 3. Status of the Convention in the domestic legal order with respect to the Constitution and ordinary legislation

42. As set out in article 3.4 of the Constitution, all international treaties form an integral part of the domestic legal order as of the date of their entry into force in the Principality of Andorra.

43. Article 3.4 also stipulates that such international treaties and agreements may not be amended or abrogated by law.

44. Furthermore, article 23 of the Qualified Act of 19 December 1996 on Action by the State in respect of Treaties stipulates that the provisions of international treaties or



agreements can be derogated from, amended or suspended only in such form as provided for in the treaties themselves or in accordance with the general rules of international law.

45. Thus the Principality of Andorra has adopted a system that gives treaties precedence over ordinary legislation and provides for their direct application in domestic law, without any unnecessary requirement of reciprocity.

46. In addition, since article 3.1 of the Constitution stipulates that the Constitution is the highest law in the Andorran domestic legal system and article 19 of the Qualified Act of 19 December 1996 on Action by the State activity in respect of Treaties establishes a procedure to verify the constitutionality of treaties before accession, it can be construed that, in the hierarchy of laws, the Andorran Constitution ranks above, or at least on the same level as, international treaties and agreements, given that no treaty or agreement that violates the Constitution can be approved.

#### **4. How domestic laws ensure the non-derogability of the prohibition of any cruel, inhuman or degrading treatment or punishment**

47. Andorra's body of legislation as a whole guarantees the non-derogability of this prohibition:

- Under article 8 of the Constitution, it is guaranteed that “no one may be subjected to torture or cruel, inhuman or degrading punishment or treatment”;
- The new revised text of the Criminal Code contains an entire title on offences against the physical and moral integrity of persons, including offences of causing bodily harm as well as the offences of torture, degrading treatment and other offences committed by officials in abuse of their authority.

48. Article 8.8 of title 1, chapter I, of the preliminary provisions of the Code of Criminal Procedure, “Geographical application of criminal law” provides that “Andorran criminal law is applicable to offences and attempted offences committed outside the territory of the Principality of Andorra and that under Andorran law, are liable to a maximum sentence of 6 years' imprisonment and may be characterized as genocide, torture, terrorism, drug trafficking, arms trafficking, counterfeiting, laundering of money and assets, piracy, hijacking of aircraft, slavery, trafficking in children, sexual offences against minors and other offences as provided in any international treaty in force in the Principality, as long as the perpetrator has not been acquitted, pardoned or convicted in respect of that offence, or, where convicted, has not served their sentence. The penalty shall be reduced in proportion to the period of imprisonment already served.”

49. Furthermore, as previously mentioned, article 3.4 of the Constitution provides for the incorporation of international treaties and agreements into domestic law as of their publication.

50. Article 23.1 of chapter XI, “Compliance with treaties”, of the Qualified Act of 19 December 1996 on Action by the State in respect of Treaties also provides that the provisions of the Act may be derogated from, amended or suspended only in accordance with the provisions of the convention in question or the general rules of international law.

51. In accordance with article 24.1 of the Act, the conventions and treaties ratified by the State are directly applicable by all the judicial and administrative bodies of the State and give rise to rights and obligations for individuals.

52. Consequently, there can be no derogation from the prohibition of all cruel, inhuman or degrading treatment or punishment.

**5. Whether the provisions of the Convention can be invoked before and are directly enforced by the courts**

53. Article 24 of the Qualified Act of 19 December 1996 on Action by the State in respect of Treaties provides that “treaties in force shall be directly applicable by all the judicial and administrative bodies of the State and shall give rise to rights and obligations for individuals, unless it is indicated in the text of the treaty or the authorization to conclude the treaty that its application is conditional on the enactment of laws or the approval of regulatory provisions”. In paragraph 2 of that article, it is specified that if the execution of a treaty requires legislation, the Government will present a bill to Parliament as soon as possible. The bill will be submitted to Parliament at the same time as the request for approval of the treaty if the treaty has already entered into force for other States or if the treaty provides that member States must have the necessary legislation in place when the treaty enters into force.

54. Parliament may delegate to the Government the exercise of legislative powers within the limits and under the conditions set out in article 59 of the Constitution.

**6. Judicial, administrative and other competent authorities with a mandate covering matters dealt with in the Convention**

55. Article 85 of the Andorran Constitution establishes the principle that justice is administered in the name of the Andorran people exclusively by independent judges with security of tenure, who perform their duties subject only to the Constitution and the law. There is only one judiciary, and its structure, composition and functioning, and the legal status of its members, are established by the qualified Act. Special tribunals are prohibited.

56. According to article 2 of the Code of Criminal Procedure, “the administration of criminal justice, the passing of judgement and the enforcement of judgements passed is the exclusive jurisdiction of the High Court of Justice of Andorra, the criminal court (*Tribunal de Corts*) and its president, the trial court (*Batllia*) and the trial judges themselves, without prejudice to the competence of the corresponding international treaty bodies, established in accordance with article 65 of the Constitution”.

57. Furthermore, for all Convention-related matters having to do with criminal law, article 93 of the Constitution also applies. This states that: “the Public Prosecutor’s Office is responsible for ensuring legality and the application of the law, as well as the independence of the courts, the safeguarding of the rights of citizens and protecting the public interest (...). The Public Prosecutor’s Office, headed by the State Public Prosecutor, shall act in accordance with the principles of legality, unity and internal hierarchy.”

58. Final judgements are considered *res judicata* and can be altered or overturned only as provided for by law or, exceptionally, when the Constitutional Court decides in individual *empara* proceedings that the judgement was passed in violation of a fundamental right (Constitution, art. 88).

59. Under article 65 of the Constitution, legislative, executive or judicial powers may be ceded, but only to international organizations by means of a treaty approved by a two-thirds majority of the members of Parliament.

60. With respect to torture, the Andorran Constitution guarantees that any person subjected to torture has the option of initiating one of two types of proceedings: ordinary proceedings, which allows for two hearings (proceedings for this type of offence are first brought before the criminal court (*Tribunal de Corts*), and then before the High Court of Justice) or special *empara* (*amparo*) proceedings before the Constitutional Court.

61. In addition, the Prisons Act provides for administrative proceedings: prisoners have the right to make requests and lodge complaints concerning the conditions of detention, in accordance with the provisions of the Act and the regulations implementing it.

## **7. General overview of the implementation of the Convention in Andorra**

62. The Principality of Andorra does not have a military, and the only security forces are the police, prison officers, traffic police and forestry officials (roughly, game wardens who, among other things, enforce the law only in respect of hunting in the forests and mountains).

63. The only persons authorized to possess and use firearms are police and prison officers.

64. The Council of Europe (of which Andorra is a member State) conducts regular visits and issues reports on respect for human rights and effective measures to be adopted by the Principality on the basis of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987.

65. These reports, which are available on the Council of Europe website at <http://www.cpt.coe.int>, give an overview of the measures effectively adopted by the Principality over the years to guarantee respect for human rights.

66. According to the last report by the delegation of the Council of Europe's European Committee for the Prevention of Torture (CPT), there were no allegations of torture from persons detained by the police in Andorra or of ill-treatment of prisoners by prison staff, and there was no other evidence of such treatment. Furthermore, the delegation heard very few allegations of other forms of ill-treatment, and the information collected from other sources confirmed the delegation's generally positive impression.

67. With regard to data on persons who have submitted complaints or taken legal action in respect of torture or other cruel, inhuman or degrading treatment or punishment, the Andorran Ministry of Justice and the Public Prosecutor's Office report that there were no complaints concerning acts of torture in Andorra between 2007 and 2011.

68. The Andorran Human Rights Institute, the human rights association that was consulted, is not aware of any persons having been subjected to torture or other inhuman or degrading treatment or punishment. However, it points out that some prisoners have allegedly complained unofficially of maltreatment.

69. The Andorran Government, particularly the Ministry of Health, Welfare and Employment, whose main objectives are prevention, early detection and the provision of social assistance to persons who have been subjected to ill-treatment of any kind, has received specific training in this area. The Ministry deals with persons who have been subjected to ill-treatment and is therefore familiar with this type of situation.

70. When faced with situations of ill-treatment, the Ministry's main tasks are to review the events that gave rise to the ill-treatment and report them to the Public Prosecutor's Office and the court.

71. To date, all the cases reported to the Ministry have involved ill-treatment by the victim's family or social circle.

72. The relevant officials in the Ministry are not aware of cases of ill-treatment in the workplace or in schools or social or health facilities.

73. Against this background, the Ministry has never considered it a priority to undertake further specific action with a view to combating torture or other inhuman or degrading treatment in Andorra.

74. Furthermore, the police receive both initial and in-service training.
75. Initial training includes specific training on the human rights and fundamental freedoms recognized in international treaties, and makes it clear that the police must respect the free exercise of those rights and freedoms as well as the security of all citizens.
76. Furthermore, at the level of the territorial subdivisions, the parish councils organize activities and conferences to generally promote respect for human rights. Socio-educational activities for children and parents to prevent risk situations help combat social exclusion.
77. Some parish councils also provide social services to meet the needs of the local population or provide financial support to certain non-governmental organizations (NGOs).

## **II. Information concerning each substantive article of the Convention**

### **Article 1 Information on the definition of torture**

78. Article 1 of the Convention, which defines acts of torture, does not require further elaboration in Andorran domestic law to be applicable.
79. In accordance with the constitutional principle mentioned earlier, which provides for the automatic incorporation of the provisions of international treaties in force for Andorra into domestic law, the definition of torture contained in article 1 may be directly invoked before the court.
80. Similarly, articles 110, 111 and 112 of the Criminal Code, penalizing the use of methods of torture, the offence of torture, failure to prevent torture and failure to report acts of torture and degrading treatment, may also be invoked and applied.
81. Article 110 of the Criminal Code defines torture as follows: “Any authority or public official who, by abuse of power, either directly or through a third party, inflicts on another person situations or practices causing severe physical or mental suffering for the purpose of obtaining a confession or information, intimidating or inflicting punishment, commits an act of torture. The sentence incurred by the perpetrator of an act of torture shall be from 1 to 6 years’ imprisonment and disqualification from the exercise of civic rights for up to nine years. A similar penalty shall be imposed on the authorities or officials of penal institutions or juvenile centres who commit acts of torture against a detainee or inmate. Attempted torture, conspiracy to commit torture and incitement to commit torture are also punishable. If the method of torture, in terms of degree of suffering, is particularly cruel, or endangers the victim’s life, the sentence may be increased by up to half the maximum penalty.”
82. Although the definition of torture contained in the Criminal Code is consistent with that in the Convention, their content differs:
- According to the Convention, pain or suffering arising only from, inherent in or incidental to lawful sanctions shall not be considered torture; this notion is not directly restated in the Andorran Criminal Code;
  - The Convention also stipulates that acts of torture must be committed intentionally, while according to the Andorran Criminal Code acts of torture involve the abuse of power.

83. Officials and authorities are defined in article 32 of the Criminal Code as follows: “An authority is any person vested with public authority, who may or may not be a public official, in a senior position or exercising their own jurisdiction, at the group or the individual level. Members of Parliament, a parish council, the High Council of Justice, the Court of Auditors, the Office of the Public Prosecutor, the Office of the Raonador del Ciutadà (Ombudsman) and any other person with statutory powers to exercise institutional functions are included in this category. A public official is any person who, by delegation or otherwise, is charged with public service duties by law, election or appointment by the competent authority.”

- Furthermore, the Criminal Code does not expressly state the motives that might lead someone to commit an act of torture, such as discrimination, although discrimination also constitutes a criminal offence under Andorran law.

84. It should be stressed that Andorran domestic law has to be adapted to international legal norms, which prevail over domestic law in the legal order of the Principality of Andorra. No national legislation may contain provisions that are more restrictive in scope than those of international instruments.

85. At the time of its accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Andorra was already a State party to:

- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, which entered into force for the Principality on 1 May 1997;
- Protocols Nos. 1 and 2 of 4 November 1993, entry into force 1 March 2002;
- The Rome Statute of the International Criminal Court dated 30 March 2001, which entered into force for Andorra on 1 July 2002.

86. The definition of torture contained in these conventions and international treaties adopted by Andorra is an integral part of the domestic legal order.

## Article 2

### Article 2, paragraph 1

#### Effective measures taken to prevent acts of torture

87. In the light of the repeated rulings by the European Court of Human Rights to the effect that the conviction of a person on the basis of confessions obtained by the police in the absence of a lawyer constitute a violation of article 6, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, articles 24 and 25 of the Code of Criminal Procedure were amended by Qualified Act No. 87/2010 of 18 November.

88. More specifically, Qualified Act No. 87/2010 of 18 November amended various texts on criminal procedure dealing with legal assistance.

89. Since the entry into force of the Act — though in practice since the Constitutional Court ruled on 7 September 2010 that articles 24 and 25.1 of the Code of Criminal Procedure, which allowed detainees to be questioned without a lawyer for 24 hours, were unconstitutional and therefore null and void — detainees have the right to legal counsel from the moment of arrest.

90. Thus, article 24 of the Code of Criminal Procedure as amended by Qualified Act No. 87/2010 states that:

“Any suspect who makes a statement to the police shall be immediately informed, in a manner that is comprehensible to them, of the charges against them and, if they are detained, of the reasons why, as well as of their rights, in particular the following:

- (a) The right not to make a statement;
- (b) The right not to testify against oneself and not to admit guilt;
- (c) The right to appoint a lawyer and request their presence from the time of arrest in order to assist in making statements and intervene at any point in any identity checks that might take place subsequently. If the detainee does not designate a lawyer, the duty lawyer shall ex officio act on their behalf except where expressly waived;
- (d) The right to inform the family or any other person designated by the detainee, of the arrest and the place of detention;
- (e) The right to be assisted free of charge by an interpreter if the detainee is a foreigner who does not understand or speak the national language or one of the languages of the neighbouring States;
- (f) The right to be examined by a forensic physician or, if this is not possible, by a doctor of their choice.

Statements made to the police should indicate start and end time. Interviews shall not last more than four hours at a stretch, and there must be a one-hour break between sessions.”

- 91. The detainee is entitled to at least 8 hours rest in every 24-hour period of detention.
- 92. If a breathalyser test is necessary, the detainee must be notified of their right to ask for a blood test if they do not agree with the results obtained using other methods.
- 93. Article 25 of the amended Code of Criminal Procedure states that:

“1. In order to guarantee the right to legal counsel under paragraph (d) of the preceding article, the police must inform the detainee at the time of arrest of their right to appoint a lawyer or ask for one to be officially appointed to provide immediate legal counsel. Officials supervising the detainee should refrain from recommending a lawyer. As soon as counsel is appointed, the police shall notify the lawyer, informing them of the nature of the offence being investigated by the police. From the moment of arrest, counsel may review the various steps in the proceedings, speak with the detainee in private for 30 minutes and be present at all interviews; they may also ask the police officer to question the detainee on matters of interest to counsel and to include all comments in the statement. If after being called, the lawyer fails to appear within 45 minutes, the interview may begin without them.

However, in urgent circumstances, interviews may begin sooner and without a lawyer if prior authorization is obtained from the court on duly reasoned grounds.

2. In matters related to terrorism, the competent judge may issue, on police request, a reasoned decision to the effect that the lawyer appointed by the detainee could prejudice the investigations. In that case, the President of the Andorran Bar should be asked to immediately designate another lawyer to provide legal assistance.

3. Statements made in contravention of the provisions of the preceding paragraphs shall be null and void.”

- 94. In addition, in communication for any detainee, accused or convicted person, when practised, permitted or prolonged by an official in violation of time limits or other

constitutional or legal guarantees, may be punished under article 345 of the Criminal Code by suspension of the right to exercise public office for a period of up to eight years.

**Information concerning legislation on states of emergency or against terrorism that may affect detainees' rights**

95. Concerning states of emergency, article 42 of the Constitution states that:

“1. The state of alert and the state of emergency shall be regulated by a Qualified Act. A state of alert may be declared by the Government in the event of natural disaster, for a period of 15 days, and shall be notified to Parliament. A state of emergency may be declared by the Government for a period of 30 days in the event of disruption to the normal functioning of democratic life, following approval by Parliament. Any extension shall require the approval of Parliament.

2. During a state of alert, the exercise of the rights recognized in articles 21 and 27 may be restricted. During a state of emergency, the rights referred to in articles 9.2, 12, 15, 16, 19 and 21 may be suspended. However, the rights contained in articles 9.2 and 15 may be suspended only under judicial supervision, without prejudice to the protection procedure set down in article 9.3.”

96. Paragraph 2 of article 42 of the Constitution, which refers to article 9.2 of the Constitution, on the maximum period of police custody of 48 hours, could restrict the rights of detainees. However, it should be noted that this restriction must always be exercised under judicial supervision with due respect for detainees' rights.

97. To date, no such state of exception has ever been proclaimed in Andorra.

98. Article 42 of the Constitution therefore appears to have very narrow scope and under no circumstances can it justify derogation of the right not to be subjected to torture.

99. In matters relating to terrorism, article 108 of the Code of Criminal Procedure provides that the period of preventive detention or custody may be extended for a third, and possibly a fourth, period of four months at the request of the public prosecutor.

100. However, such measures are exceptional and subject to supervision by the public prosecutor and under no circumstances can they justify derogation of the right not to be subjected to torture.

**Assessment by the reporting State of the effectiveness of the measures taken to prevent torture, including measures to ensure that those responsible are brought to justice**

101. The Andorran police has installed video surveillance cameras in interview rooms. This measure, designed to prevent acts of torture or abuse of any kind, not only plays a preventive role, but also serves to monitor police custody.

102. It should also be noted that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which has been to Andorra several times to visit detainees, has never recorded any case of torture in Andorran territory or of anyone appearing in court on charges of torture or other cruel, inhuman or degrading treatment.

**Article 2, paragraph 2****Effective measures to ensure that no exceptional circumstances are invoked as a justification for torture**

103. There is no provision in Andorran law for any derogation of the right not to be subjected to torture in times of war or threat of war, internal political instability or any other public emergency.

104. As stated above, article 42 of the Constitution only provides for an extension of the maximum period of police custody, and then only under judicial supervision.

105. In fact, regardless of the nature of the state of emergency declared, there can be no derogation from article 8 of the Constitution, which guarantees the right to physical and moral integrity and prohibits torture or cruel or inhuman punishment or treatment.

106. All legal provisions to that effect cited in the present report would also continue to protect the right not to be subjected to torture, regardless of the state of emergency declared.

107. Even during a state of emergency, then, the period of custody may be extended only under judicial supervision in accordance with the law, thereby safeguarding the right not to be subjected to torture.

**Article 2, paragraph 3****Legislation and jurisprudence on the prohibition on invoking superior orders as a justification for torture**

108. Article 5, paragraph 2 (c), of the Qualified Act on the Police states: “(c) The principles of hierarchy and subordination in the course of duty should always be respected; however, in no event shall due obedience be used to justify orders that involve the performance of acts that constitute offences or are contrary to the Constitution or the law.” Article 7, paragraph 2 (c), of the Prisons Act includes an identical provision for officials of penal establishments.

109. Thus, the legislation applicable to police and prison officials prohibit the obeying of orders when such orders constitute an offence against the Constitution or the law, as is the case with torture.

110. Furthermore, although article 5.2 (c) of the Qualified Act on the Police as well as article 7 (c) of the Prisons Act stipulate that officers must respect the principles of hierarchy and subordination in the course of their duties, they also specify that under no circumstances shall due obedience be used to justify or defend orders that involve the performance of acts that constitute offences or violate the Constitution or the law.

111. Article 4 of the Qualified Act on the Police, on the treatment of detainees, states that members of the police force: “(a) must identify themselves as such at the time of arrest; (b) must ensure that the life and physical integrity of persons who are detained or under their supervision, as well as their rights, honour and dignity, are respected.

112. Therefore, an order to inflict torture clearly constitutes a circumstance when a subordinate may lawfully refuse to obey a superior.

113. Furthermore there is no provision in Andorran law in respect of public authorities and the concept of due obedience that might have an impact on the effective implementation of this prohibition in the area of criminal justice.



114. Therefore, a superior order may not be invoked under Andorran law to justify an act constituting a crime or an offence.

115. Neither the Andorran police nor the Prosecutor's Office is aware of any case law in this regard.

### **Article 3**

#### **Legislation concerning the prohibition on expulsion or extradition of a person to a State where they might be tortured**

116. Andorra may not, under applicable law, expel or extradite a person to another State where there is reason to believe that they could be tortured.

117. This is specifically guaranteed by the laws and conventions ratified by Parliament, in particular:

- The Qualified Act on Extradition of 28 November 1996;
- The European Convention on Extradition of 13 December 1957, ratified on 11 May 2000, entry into force 11 January 2001;
- The additional Protocol to the European Convention on Extradition of 15 October 1975, ratified on 11 May 2000, entry into force 11 January 2001;
- The agreement between the Principality of Andorra and the Kingdom of Morocco on assistance to detainees and the transfer of sentenced persons of 29 June 1999, ratified on 22 July 2009, entry into force 1 August 2001 (judicial cooperation agreement);
- And of course the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

118. The provisions of these conventions on the expulsion, return or extradition of a person to another State where they might be tortured are directly applicable by Andorran courts according to the constitutional principle of the incorporation of international treaties and agreements into the Andorran domestic legal order upon publication in the Official Gazette when these concern expulsion, return or extradition of a person to another State where they might be tortured.

119. Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which contains this prohibition, is therefore an integral part of domestic Andorran law.

120. Furthermore, Article 7 (d) of the Qualified Act on Extradition also stipulates that the State of Andorra must seek an undertaking from the receiving State to respect the rules of judicial proceedings, sentencing and detention of the extradited person in line with the reservations and conditions contained in article 3 of the Act, if the legislation or the domestic law of the receiving State does not expressly require compliance with these rules.

121. Section 14 of the Act also provides that extradition shall not be granted when the legislation or domestic law of the requesting State does not expressly stipulate that the judicial proceedings, sentencing and detention shall be conducted in accordance with the reservations and conditions provided in article 3, or when the person sought would be tried in the requesting State by a court that does not guarantee due process of law or by a court specially constituted for the case in question or when extradition is requested for the enforcement of a penalty or security measure imposed by such a court.

122. Once the prosecution is heard, the Government shall decide whether or not to refer the file to the public prosecutor on the basis of the provisions of article 8 of the Act on Extradition. If the case is referred, the courts shall have sole jurisdiction to grant or refuse extradition. In addition, article 11 of the Act also provides that, once the steps laid down in article 8 have been completed, the public prosecutor shall refer the case to the criminal court with arguments, and following a hearing the court shall render judgement.

**Legislation and practices adopted concerning terrorism, states of emergency, national security or other matters likely to have an impact on the effective implementation of this prohibition**

123. There is no specific domestic legal provision on terrorism or states of emergency that might have or has had an impact on the effective implementation of the prohibition against the expulsion, return or extradition of a person to a state where they risk being tortured.

124. As regards terrorism, on the other hand, domestic legislation provides that, in accordance with article 25 of the Act on International Cooperation in Criminal Matters, Prevention of the Laundering of Money or Securities Constituting the Proceeds of International Crime and Prevention of the Financing of Terrorism, of 29 December 2000, as amended by Act No. 28/2008 of 11 December 2008, the Andorran judicial authorities may bring before Andorran criminal courts the perpetrators of such offences if the offence is committed in the territory of Andorra and if the extradition of the person is not possible or if the person is already in detention in Andorra for more serious offences.

125. To date, no practice of the State of Andorra has ever had an impact on the implementation of this prohibition.

**Authorities that may order extradition, expulsion, return or refoulement**

**Authorities that may order extradition**

126. Concerning extradition, article 4 of the Qualified Act on Extradition of 28 November 1996 provides that extradition may be ordered only by the court with jurisdiction to try the case, or by a judge expressly assigned to the case either at the request of the prosecution service or ex officio or at the request of the party instituting legal proceedings, and following a report by the Public Prosecutor's Office in the latter two cases. The prosecution or the party initiating legal proceedings may appeal a decision refusing extradition before the High Court of Justice of Andorra (second instance) within five days from the date of notification of the decision. Authorization for extradition is immediately transmitted to the Government, which must send it through diplomatic channels to the competent foreign authority with all required documents.

127. Article 2 of the Qualified Act on Extradition also states that "extradition may be granted only in respect of (a) acts punishable under the laws of the requesting State and the requested State by a custodial sentence or a security measure for which the maximum tariff equals or exceeds 1 year's deprivation of liberty; (b) a sentence or security measure of at least 4 months imposed in the requesting State".

128. Article 14 of the Act provides that extradition shall not be granted:

1. When the person whose extradition is requested is an Andorran national;
2. When the grounds for the request are political in nature or when the facts show that extradition is being requested for political reasons;
3. When the requesting State lacks territorial or personal jurisdiction to try the person whose extradition is requested;

4. When there are good reasons for believing that an extradition request prompted by a crime at ordinary law has been submitted with a view to prosecuting or punishing an individual on the grounds of race, religion, nationality or political opinions, or the person's situation might be aggravated for any of these reasons;

5. When extradition has been requested for military offences that are not crimes at ordinary law;

6. When, in the view of the court, the underlying facts that prompted the request are not punishable under Andorran criminal law, or when the provisions of article 2 of this Act have not been satisfied;

7. When the offence that prompted the request was committed in the conditions outlined in articles 2 to 4 of the Criminal Code, and if the Andorran judicial authorities decide to institute judicial proceedings;

8. When the person requested is already subject to prosecution or has been tried and sentenced in Andorra for the act or acts prompting the request for extradition, or if the Andorran judicial authorities have decided to drop the judicial proceedings in connection with the same act or acts, provided that the decision of the Andorran courts is not motivated by lack of territorial jurisdiction;

9. When, prior to the request for extradition, the act or the penalty has been time-barred under Andorran legislation or that of the requesting State;

10. When the act for which extradition is requested is a capital offence under the law of the requesting State, unless the State gives an assurance judged sufficient by the Andorran courts competent to grant extradition that the death penalty will not be applied;

11. When the legislation or domestic law of the requesting State does not expressly stipulate that the judicial proceedings, sentencing or detention in respect of the extradited person shall be in accordance with the reservations and conditions provided in article 3;

12. When the requested person's guilt or the basis of the charges against the person are implausible;

13. When the conviction is obviously the result of an error;

14. When extradition could have exceptionally grave consequences for the person requested, especially by reason of age or state of health;

15. When the person requested would be tried in the requesting State by a court that is unable to guarantee due process of law or in a court specially constituted for the case in question, or when extradition is requested for the enforcement of a penalty or security measure imposed by such a court.

129. Finally, article 15 provides that "extradition shall be granted as specified in this Act when there are no impediments as outlined in the previous article and when, in general, the legal proceedings or the sentence invoked is not contrary to Andorran or international public order".

#### **Authority that may order return or expulsion**

130. With regard to expulsion, Andorran criminal courts may, under article 38 of the Criminal Code, hand down a sentence of temporary or permanent removal of a convicted person of foreign nationality as an additional penalty for serious offences.

131. The Qualified Act on Immigration also provides for an administrative penalty, in the form of administrative expulsion as a preventive measure for reasons of public order, that

may be imposed when there is concrete evidence to suggest that a person represents a risk to the security of the State, other persons or property. This measure must be substantiated in all cases and shall not exceed a period of 10 years (see article 107 of the Legislative Decree of 25 June 2008 which reproduces the consolidated text of the Qualified Act of 14 May 2002 on Immigration and subsequent amendments).

132. Article 108 of this Act also provides for administrative expulsion as an enforcement measure when a foreigner in an irregular situation fails to leave the territory within the required time. Administrative expulsion may not exceed two years.

#### **Decisions subject to review**

133. Any extradition, expulsion or refoulement order issued against a person at risk of being tortured in the requesting country may first be appealed before a higher court, then, if it is upheld, in the Constitutional Court for violation of fundamental rights and freedoms, and finally in the European Court of Human Rights.

134. Article 103 of the Constitution provides that the Constitutional Court may, as a precaution, suspend execution of the contested decision.

135. Article 74 of the Qualified Act of 3 September 1993 on the Constitutional Court provides that a stay shall be granted if the effects of the decision are likely to cause harm that is impossible or difficult to remedy.

#### **Decisions taken regarding cases under article 3**

136. As far as the officials of the department dealing with extradition and refoulement are aware, no one subject to article 3 proceedings has ever invoked the risk of torture.

137. After verifying existing data, the Public Prosecutor's office also confirmed that, between 2007 and 2011, no expelled or extradited person invoked an act of torture or the risk of torture before or during expulsion or extradition.

138. Thus, to date, no decisions referring to the prohibition of expulsion or extradition have come to light.

#### **Training of officials dealing with the expulsion, return or extradition of foreigners**

139. Expulsions in the State of Andorra are dealt with by the police, who simply make the arrest and then treat the person to be extradited as they would any other prisoner in accordance with the provisions of the Police Act, the Criminal Code, prison regulations and the Prisons Act.

140. Officers dealing with expulsion or extradition are given legal and practical training on legal provisions and case law trends in this field.

### **Article 4**

#### **Obligations under article 4 of the Convention**

141. As already stated above (see comments on article 1), torture is defined as an offence in itself in the Andorran Criminal Code. The definition appears to be compatible with the definition in article 1 of the Convention.

### **Provisions of the Criminal Code and the Military Justice Code on torture offences and the corresponding penalties**

142. Andorra has no military forces and thus no military justice. In this regard, article 3 of the Treaty of Good Neighbourliness, Friendship and Cooperation signed between France, Spain and Andorra in November 1993 states that the French Republic and the Kingdom of Spain will respect the sovereignty and independence of the Principality of Andorra and its territorial integrity. Should the sovereignty, independence or territorial integrity of the Principality be threatened or violated, the French Republic and the Kingdom of Spain undertake to consult with one another and the Andorran Government as necessary, to discuss any measures that might be needed to maintain that respect.

143. Thus, the Criminal Code alone defines and penalizes these offences.

144. Chapter I, "Torture and offences against moral integrity involving abuse of power", of title III, "Offences against human integrity", governs the prohibition of torture and establishes penalties for acts of torture and offences against moral integrity involving abuse of power.

145. Article 110, which contains the definition of torture, provides that:

"Any authority or public official who, by abuse of power, either directly or through a third party, and for the purpose of obtaining a confession or information, intimidating or inflicting punishment, subjects a person to situations or practices causing severe physical or mental suffering, commits an act of torture. The perpetrator of an act of torture shall be liable to between 1 and 6 years' imprisonment and disqualification from the exercise of civic rights for up to 9 years.

146. A similar penalty shall be imposed on the authorities or officials of penal institutions or juvenile centres who commit acts of torture against a detainee or inmate.

147. Attempted torture, conspiracy to commit torture and incitement to commit torture are also punishable.

148. If the method of torture, in terms of degree of suffering, is particularly cruel or endangers the victim's life, the sentence may be increased by up to half the maximum penalty."

149. Article 111 of the Criminal Code governs the failure to prevent or report torture.

150. This article provides that:

"Any authority or official who fails to use all means at their disposal to prevent a subordinate from committing acts of torture shall be liable to the same penalties as for acts of torture. Any authority or official who, in cases other than those covered by the preceding paragraph, fails to prevent or report acts of torture of which they have direct knowledge shall be liable to the penalties specified for the perpetrators of torture, with the reductions set forth in article 53."

151. Article 112 of the Criminal Code, which penalizes degrading treatment, provides that:

"Any authority or official who, by abuse of power and except in cases constituting acts of torture, subjects a person to degrading treatment, shall be liable to between 3 months' and 3 years' imprisonment."

152. Articles 115 and 116 of the Criminal Code provide for more severe penalties for some forms of ill-treatment and bodily injury.

153. Under articles 459 to 467 of chapter III of the Criminal Code, "Crimes against humanity", of title XXIV, "Crimes against the international community", torture is

considered a crime against humanity and the penalties established apply to both the perpetrators of the offences and any authorities that may have been involved or failed to prevent the offences.

154. There are other articles of the Criminal Code that, while they do not deal directly with torture or cruel, inhuman or degrading treatment or punishment, do refer to violations or situations that may also include those offences, namely articles 133 to 143 bis under title VI, “Crimes against freedom”; article 344, entitled “Unlawful deprivation of liberty or imprisonment”; and article 345, “Unlawful incommunication”.

155. Attempted torture and conspiracy or incitement to commit torture are also offences (Criminal Code, art. 110).

156. There are also disciplinary and criminal provisions against acts of torture applying specifically to police and prison officers.

157. Article 5.2 (c) of Qualified Act No. 8/2004 of 25 May 2004 on the Police and article 7 (c) of Qualified Act No. 4/2007 on Prisons state that in the course of their duty, officers must respect the principles of hierarchy and subordination, and that under no circumstances may due obedience be used to justify or defend orders involving the performance of acts that constitute offences or violate the Constitution or the law.

#### **Statute of limitations for these offences**

158. According to article 81 of the Criminal Code, the prosecution of offences under articles 110 and 112 of the Code is time-barred after 10 years and, according to article 84 of the Criminal Code, the punishment of those offences is time-barred after 15 years.

#### **Number and nature of cases in which these legal provisions were applied and the outcome of proceedings**

159. The Andorran Government provided the following additional information regarding complaints under these legal provisions to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in response to that Committee’s report on its visit to Andorra from 3 to 6 February 2004.

160. “The number of complaints of detainee abuse investigated in the period 2002–2004 includes one from 2002, involving three public officials, and three from 2003, involving seven police officers. The files were forwarded to the judicial authority. The criminal court handed down a judgement on 19 March 2004 on the 2002 complaint, acquitting the three police officers of the serious charge of inflicting grievous bodily harm with the use of a weapon. However, two officers were found criminally liable as the perpetrators of the offence of wounding and sentenced to a public reprimand and a fine of €900. Preliminary investigations were opened into the three cases reported in 2003. One case, arising from a complaint against a law enforcement officer for unlawful arrest and brutality without wounding, was closed. As to the other two complaints, one is under investigation and the other is awaiting a hearing date to be set by the court. In 2004, only one complaint of abuse was brought before the courts. It resulted in the opening of a pretrial investigation by the trial court (batllia). The investigating judge eventually closed the file. During the same period, other pretrial investigations were opened by the trial court into an alleged offence of threats and coercion on police premises by an officer. Again, the investigating judge closed the file. Further to the information submitted by the Government of the Principality of Andorra in its last response, the three cases from 2003 were closed by the trial court.”

161. The Public Prosecutor’s office and the Ministry of Justice note that no complaint of detainee abuse has been recorded since 2007.

162. There has been no ruling of relevance to the implementation of article 4, i.e. criminal acts of torture.

**Existing legislation on disciplinary measures to be taken against law enforcement officers responsible for acts of torture**

163. Articles 101 to 111 of Qualified Act No. 8/2004 of 27 May 2004 on the Police set forth all the disciplinary measures and penalties generally applicable to police officers guilty of wrongdoing, in addition to any criminal proceedings that may be initiated.

164. Act No. 3/2007 of 22 March 2007 on the Prison Service contains similar provisions in articles 58 to 67.

165. Law enforcement officers may be liable to one of the following penalties for very serious offences:

- Dismissal;
- Suspension from duty for up to two years and loss of certain pay entitlements;
- In addition to either of these penalties, the officer may also be required to pay for lost or damaged equipment.

166. In the case of serious offences, one or more of the following penalties may be imposed:

- Suspension from duty for up to six months and the loss of certain pay entitlements;
- Transfer to another post, in a new location, which may involve a reduction in pay if the offence had to do with the post;
- Requirement to pay for lost or damaged equipment;
- In the case of minor offences, one of the following penalties may be imposed:
  - Suspension from duty for up to 14 days, and loss of certain pay entitlements;
  - A written warning;
  - A proportion of earnings deducted for punctuality and attendance offences;
  - Requirement to pay for lost or damaged equipment.

167. Penalties such as a cut in leave or any other reduction in the officials' entitlement to rest periods may not be imposed.

168. In no circumstances may the penalty involve a violation of a person's right to dignity.

169. In determining the penalty to apply, the following should be taken into account, over and above the acts or omissions in question, and with due regard to the principle of proportionality:

- (a) Previous offences;
- (b) Level of intent;
- (c) Disruption to services;
- (d) Harm caused to authorities, citizens, or residents;
- (e) Repeat offences;
- (f) Degree of involvement in the act or omission;
- (g) Impact of the offences on public safety.

170. When a disciplinary complaint of a serious or very serious offence is under investigation, the competent body may, at the outset or while investigations are under way, adopt interim measures such as temporary suspension or transfer to another post, possibly including the temporary loss of uniform, weapon and badge.

171. When deciding whether to maintain or lift preventive measures, an assessment must be made of the seriousness of the offences committed, the particular circumstances of each case and the performance record of the officer concerned. The decision to impose or maintain preventive measures must be substantiated.

172. The total duration of suspension may not exceed the penalty applicable to the alleged offence.

173. The period of temporary suspension or pretrial suspension already served will count towards any suspension from duty ultimately ordered in the case.

#### *Effects of suspension from duty*

174. Suspension from duty, as a preventive measure, comprises temporary withdrawal from duties, confiscation of official weapon and pass, prohibition on wearing the uniform, where appropriate, and a prohibition on entering service premises without authorization.

175. When applied as a punishment, suspension from duty also includes the loss of certain pay entitlements.

#### *Effects of penalties*

176. Disciplinary liability ceases if the punishment has been served, after death, on pardon or amnesty, or where the offence or penalty is time-barred.

177. Penalties imposed for very serious offences are time-barred after four years, for serious offences after two years and for minor offences after two months.

178. The limitation period for offences begins to run from when the offence was committed and is interrupted in all cases after the opening of a disciplinary file. The limitation period for penalties begins to run from the day after the date on which the decision to impose the penalty becomes final.

179. Compliance with the statute of limitations includes the withdrawal of comments placed in the official's personal performance record.

180. Disciplinary sanctions imposed on members of the police force or prison service must be recorded in the relevant service register, with a note of the offences giving rise to them.

181. Records of the penalties should automatically be removed and, in any event, may not be taken into consideration in establishing a repeat offence, once the following periods have elapsed, counting from the date of the decision imposing them:

- (a) One year in the case of minor offences;
- (b) Two years in the case of serious offences;
- (c) Four years in the case of very serious offences not leading to dismissal.

182. The fact that criminal proceedings have been initiated against a member of the force does not preclude disciplinary proceedings for the same offences, if necessary. A final decision on the case, however, can only be made once the ruling in the criminal proceedings has become final, since the administration is bound to use only the proven facts. Any interim measures taken in such cases may remain in effect until a final decision has been handed down in the judicial proceedings.



## **Article 5**

### **State jurisdiction over the offences referred to in article 4 in cases of torture**

183. The introductory title of the Criminal Code contains provisions on the temporal and territorial application of criminal law, and with respect to territory introduces the concept of passive personality, which confers jurisdiction on the courts for offences committed abroad if the victim is an Andorran national. Andorra has also opted to include the principle of international community of interests for certain offences committed abroad.

184. The territorial application of criminal legislation is established and regulated in article 8, “Geographical application of criminal law”, in the amended version of Act No. 9/2005 on the Criminal Code. The criminal jurisdiction of Andorran courts has been extended to cover not only offences committed in the Principality’s territory (art. 8.1), but also those committed outside its territory when they involve crimes such as torture (art. 8.8).

185. Andorran criminal law is nevertheless also applied to offences or attempted offences committed outside Andorran territory when an international treaty confers jurisdiction on Andorran courts; this applies to proceedings of all kinds (Criminal Code, art. 8.6).

#### **Article 5, paragraph 1 (a)**

186. Andorra establishes its jurisdiction over offences and attempted offences of torture and cruel treatment.

187. Article 8.1 of the Criminal Code stipulates that Andorran criminal legislation is applicable to offences and attempted offences committed in the Principality’s territory, on board national vessels or aircraft, or on any aircraft in Andorran air space or landing on Andorran soil and any connected or inseparable offences or attempted offences outside Andorran territory.

188. With regard to torture, however, article 8.8 states that Andorran criminal legislation is also applicable to offences and attempted offences committed outside the territory of the Principality of Andorra and which under Andorran law incur a maximum sentence of 6 years’ imprisonment and may be characterized as genocide, torture, terrorism, drug trafficking, arms trafficking, counterfeiting, laundering of money and assets, piracy, hijacking of aircraft, slavery, child trafficking, sexual offences against minors and other offences as provided in any international treaty in force in the Principality, as long as the perpetrator has not been acquitted, pardoned or convicted in respect of that offence, or, where convicted, has not served their sentence. The penalty shall be reduced in proportion to the period of imprisonment already served.

189. The Andorran Public Prosecutor’s Office is not aware of any measures adopted by Andorra to establish its jurisdiction over torture crimes referred to in article 5, paragraph 1 (a), namely offences committed in Andorran territory or on board aircraft or vessels registered in the State.

#### **Article 5, paragraph 1 (b)**

190. Should the alleged perpetrator be an Andorran national, the Principality may, pursuant to the provisions of articles 8.2 and 8.3 of the Criminal Code, apply Andorran criminal legislation to all offences or attempted offences committed outside the territory.

191. Nevertheless, in the cases described in articles 8.2 and 8.3 of the Criminal Code, the offence may only be prosecuted when it is classified as an offence in the State where it took place, when it is not time-barred, and when the perpetrator has not already been acquitted,

exonerated or convicted of the offence. In the latter case, the sentence served may not exceed the maximum period specified for the same offence in the Andorran Criminal Code, taking into account the length of sentence already served abroad (Criminal Code, art. 8.4).

192. The Andorran Public Prosecutor's Office is not aware of any measures adopted by Andorra to establish its jurisdiction over torture crimes referred to in article 5, paragraph 1 (b), namely offences committed by an Andorran national outside the territory.

#### **Article 5, paragraph 1 (c)**

193. When the victim of an offence or attempted offence is an Andorran national, Andorran criminal legislation may also apply to this national (Criminal Code, art 8.3).

194. Just as when the perpetrator of the offence is an Andorran national, the offence may only be prosecuted when it is classified as an offence in the State where it was committed, when it is not time-barred, and when the perpetrator has not already been acquitted, exonerated or convicted of the offence (Criminal Code, art. 8.4).

195. Andorran criminal legislation is applicable to any offence or attempted offence outside Andorran territory where an international treaty confers jurisdiction on the Andorran courts (Criminal Code, art. 8.6).

196. The Andorran Public Prosecutor's Office is not aware of any measures adopted by Andorra to establish its jurisdiction over torture crimes referred to in article 5, paragraph 1 (c), namely when the victim is a national of Andorra and the State deems it to be appropriate.

#### **Article 5, paragraph 2**

197. Andorran criminal law is applicable to offences or attempted offences committed in the Principality's territory (Criminal Code, art 8.1). Thus, except in the event of an extradition request, it is the Andorran criminal court that tries offences of torture and cruel, inhuman or degrading treatment or punishment, even when the perpetrator is not an Andorran national.

198. Andorra has ratified the European Convention on Extradition and its Additional Protocol. It has also signed an agreement with Morocco on the transfer of sentenced persons, prisoners and detainees.

199. The Public Prosecutor's Office, on the basis of data for the period between 2007 and 2011, is not aware of any extradition requests, either accepted or rejected, involving anyone claiming to be a victim of torture or at risk of torture.

### **Article 6**

200. Exercise of jurisdiction by States parties, particularly in the investigation of a person who is alleged to have committed any offence referred to in article 4.

#### **Domestic legal provisions on the custody of persons who have committed an offence referred to in article 4 or other measures to ensure their presence**

201. Persons suspected of committing an offence of torture or degrading treatment enjoy the same guarantees while under arrest as those who have committed any other offence, in accordance with articles 24 and 25 of the Code of Criminal Procedure (see the comments on article 2 for the content of these articles). Similarly, if evidence emerges during a witness interview that the witness was involved in the offence, the Code of Criminal

Procedure stipulates that the interview must be suspended immediately and article 24 of the Code applied.

202. In the decision to indict, or any subsequent decision, bearing in mind these guarantees and in accordance with article 103 of the Code of Criminal Procedure, the judge may order the person to be remanded in custody or placed under provisional arrest under supervision, setting forth the grounds for such an exceptional measure and for the indictment.

203. Under article 103 of the Code of Criminal Procedure, the judge may remand the person in custody when:

1. Releasing the accused may pose a threat to public safety or be socially disruptive;
2. There are grounds to believe that, given the circumstances, the seriousness of the offence and the penalty attached, the offender will attempt to evade justice;
3. The offence has caused harm to a third party and no bail or adequate security has been provided;
4. Custody is necessary for the protection of the accused or to prevent re-offending;
5. The accused fails to comply with the summons issued by the court or the judge;
6. Release may prejudice the proper conduct of the investigation.

204. In addition, where the accused is under supervised house arrest, the judge may at any time ask the police to check that the accused is present in the designated place.

205. Supervision measures using electronic surveillance systems cannot be adopted without the prior consent of the individual concerned.

206. The right of the individual concerned to consular assistance is guaranteed in Andorra through the implementation of the Vienna Convention on Consular Relations of 24 April 1963, adopted by the Principality on 30 May 1996.

#### **Obligation to notify other States eligible to exercise jurisdiction that a person has been taken into custody**

207. Since, under article 6 of the Convention, any person in custody pursuant to paragraph 1 may communicate immediately with the nearest appropriate representative of the State of which they are a national, or, if they are a stateless person, with the representative of the State where they usually reside, and there is no need for further development of this provision to make it directly applicable in domestic legislation, it follows that the Andorran authorities responsible for the pretrial detention of persons charged with an offence referred to in article 4 must comply with this obligation.

#### **Authorities responsible for implementing the various aspects of article 6**

208. When a punishable act is reported to police officers, they shall inform senior officers and the Public Prosecutor's Office and immediately open an investigation, going through all the required steps (Code of Criminal Procedure, art. 22).

209. The investigation is conducted by the Criminal Police Department, whose staff has special training in law.

210. When the complaint involves a member of the police, a parallel internal administrative investigation is opened pursuant to the Police Act.

211. Under article 103 of the Code of Criminal Procedure, only judges can make decisions on whether a person should be remanded in custody. Article 104 stipulates that the judge's decision ordering or denying imprisonment, arrest or release on bail may be appealed in accordance with article 194 of the Code of Criminal Procedure. Furthermore, the judge must inform the accused of their right under that article. The appeal must be lodged with the presiding judge of the criminal court and, after hearing the prosecution and the parties, the court must issue a ruling within 10 days.

212. The complaint may also be lodged directly with the Public Prosecutor's Office or the duty judge.

213. At the time of arrest, detainees are informed of their full rights by the lawyer appointed to assist them, and particularly of their right to ask the police to observe all necessary procedures. Detainees may therefore ask police officers directly, or through their lawyer, to notify the representatives of their State of residence that they have been charged and arrested for acts of torture.

#### **Cases in which the above domestic provisions have been applied**

214. The police are not aware of any cases involving acts of torture in which these domestic provisions have been applied.

#### **Article 7**

**State party's obligation to initiate proceedings relating to torture; measures to ensure that the alleged offender enjoys the right to legal counsel, the right to the presumption of innocence until proven guilty, the right to equal treatment in court, etc.**

215. Article 10 of the Andorran Constitution guarantees every person the right to apply to a court of law and to obtain from the court a decision grounded in law, and the right to a fair trial before an impartial court previously established by law. It also guarantees everyone the right to defence and the assistance of legal counsel, the right to a trial within a reasonable time and the presumption of innocence, the right to be informed of the charge, not to be compelled to plead guilty, not to testify against oneself and, in criminal proceedings, the right of appeal. This article of the Constitution also states that the law shall make provision for cases where the administration of justice must be free of charge in order to guarantee the principle of equality.

216. Article 9.3 of the Constitution ensures that everyone who believes that they have been unlawfully detained has the right to ask the court to rule on the legality of their detention and that everyone deprived of liberty can have their fundamental rights restored.

217. Detainees are informed of their rights during police custody.

218. Articles 24 and 25 of the Code of Criminal Procedure, referred to above, set out the provisions guaranteeing these rights (paras. 87 ff above).

219. Article 87 of the Code of Criminal Procedure provides that the investigating judge, even when they have obtained a confession from the accused, must endeavour to gather any evidence needed to establish the accused's involvement in the offence, if necessary, and must determine guilt or innocence. To that end, depending on the circumstances, they should organize confrontations or question witnesses, the victim and the accused.

220. Since article 6 of the Andorran Constitution provides that, “All persons are equal before the law. No one may be discriminated against, including on grounds of birth, race, sex, origin, religion, opinion or any other personal or social condition”, measures to ensure that the standards of evidence required for prosecution and conviction also apply in cases where the alleged offender is a foreigner who committed acts of torture abroad.

221. As the various institutions approached were unaware of any prosecutions brought by the Andorran State for acts of torture, no examples of the implementation of the above measures can be provided.

## **Article 8**

### **Extradition**

222. Andorra considers torture and related crimes as extraditable offences insofar as article 2 of the Qualified Act of 28 November 1996 on Extradition provides that “extradition may be granted in respect of (a) acts punishable under the laws of the requesting State and the requested State by a custodial sentence or a security measure for which the maximum tariff equals or exceeds one year’s deprivation of liberty”.

223. In addition, the provision of article 8, paragraph 1, of the Convention specifying that States parties undertake to include torture offences in every extradition treaty to be concluded between them is directly applicable in Andorra. It complements the Qualified Act of 28 November 1996 on Extradition and the Decree of 9 September 2009 publishing the revised text of the Act on International Cooperation in Criminal Matters, Prevention of the Laundering of Money or Securities Constituting the Proceeds of International Crime and Prevention of the Financing of Terrorism of 29 December 2000, as amended by Act No. 28/2008 of 11 December, and the extradition treaties signed by the Principality. It is binding, even if an extradition treaty concluded in the future between States parties to the Convention against Torture were not to include torture as grounds for extradition.

224. Moreover, Andorra does not make extradition conditional on the existence of a treaty. Indeed, the Qualified Act of 28 November 1996 on Extradition defines the conditions, procedure and effects of extradition in the absence of a treaty.

225. The Convention against Torture serves as a legal basis for extradition for Andorra in respect of torture offences.

226. Extradition for this type of offence could equally well be based on the Qualified Act on Extradition and the 1957 European Convention on Extradition as on the Convention against Torture.

227. Andorra has not signed any extradition treaties with other States parties to the Convention, relating to torture or not.

228. According to the institutions approached, namely the police force and the Ministry of Foreign Affairs, Andorra has not extradited any alleged perpetrators of any of the aforementioned offences. In fact, Andorra has never received an extradition request or requested the extradition of a person for such acts.

## **Article 9**

### **Judicial cooperation/assistance between States parties**

229. With regard to judicial cooperation, the Principality of Andorra has adopted the European Convention on Mutual Assistance in Criminal Matters signed in Strasbourg on 20 April 1959, which it ratified on 21 February 2005.

230. Under article 3.4 of the Andorran Constitution, the provisions of the European Convention do not require any further development in law and are directly incorporated into domestic legislation. The provisions of the European Convention are applicable to torture offences and the related offences of attempted torture and complicity and participation in torture.

231. To date, Andorra has not sent or received any request for mutual judicial assistance or applied for mutual judicial assistance in this area.

## **Article 10**

### **Education and training on matters related to the prohibition of torture and cruel, inhuman or degrading treatment or punishment**

232. Police training in Andorra comprises initial and in-service training.

233. Initial police training includes training on the human rights and fundamental freedoms recognized in the international conventions and declarations guaranteeing the rights to dignity, freedom and equality of the person. The course emphasizes the police's role in safeguarding the free exercise of these rights and freedoms as a means of ensuring the security of all citizens.

234. Police officers' initial training is theory-based. This theoretical training mainly focuses on professional ethics, the concept of public service, organization, discipline and conduct, and the material resources of the police force.

235. The initial theoretical training for the Environment Police deals with mountainous and border regions.

236. The initial training for the Public Safety and Community Police focuses on security, relations between the police and the general public, self-defence and physical fitness, shooting, intervention techniques, and maintaining public order.

237. The initial training for the Information Technology Police covers text-processing, basic IT concepts, police computer software applications and data entry.

238. The Administrative Police receive training on administrative rules and their application in the police force.

239. The Traffic Police are trained in the rules of the roads, action in the event of traffic accidents and emergency first aid.

#### **Practical training**

240. Police officers receive practical, on-the-job training to help them learn about the workplace under the supervision of a mentor. The French gendarmerie also offers training sessions on maintaining public order.

241. Police officers recruited through external competition train for one year at the Guardia Civil Officer Training School in Aranjuez, Spain.

242. Police superintendents recruited through external competition train for two years at the French National Police Academy in Saint-Cyr-au-Mont-d'Or near Lyon.

243. Police superintendents' training comprises theoretical training on special criminal law, administrative policing, criminal policing and criminology, public security, management, administration, IT, sports, etc. Superintendents must now study for a higher diploma in applied studies (DESS), which includes training and practical modules.

### **In-service training**

244. Each year, an in-service training programme is prepared for all personnel. This course is adapted to the workplace.

245. With regard to training for doctors dealing with detainees in prison or police custody in detection of the physical and psychological marks of torture, and the course content and frequency, changes are planned from early 2012 to the medical services for persons detained in police stations or prison. The Andorran Health Service will be responsible for carrying out this task.

246. These changes were prompted by the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), to the effect that prison health-care services should be part of each country's national health system.

247. Specific training on the prevention and early detection of ill-treatment will be provided in preparation for the launch of this new system.

248. The parish councils, the administrative authorities responsible for the management and administration of the territorial subdivisions called parishes, regularly organize conferences or training sessions to ensure women, minors and ethnic and other groups are treated respectfully.

249. There are also NGOs such as the Andorran Human Rights Institute, the Andorran Women Emigrant Association, the Andorran Gay, Lesbian, Bisexual and Transsexual Association, the Andorran Women's Association and the Parents and School Children of Moroccan Origin Association, that work to protect the rights of these persons.

250. Although some of these associations have looked into cases of ill-treatment or humiliation, none of those have involved torture or inhuman treatment of vulnerable groups within the meaning of the Convention.

## **Article 11**

### **Laws, regulations and instructions concerning the treatment of persons deprived of their liberty**

251. As previously mentioned, under the Andorran Constitution everyone has the right to freedom and security and that right may only be withdrawn for the reasons, and in accordance with the procedures, provided for in the Constitution and the law. The duration of police custody may not exceed the time required for investigation, and under no circumstances may it exceed 48 hours, by which time the detainee must be brought before the court. The law establishes procedures to ensure that every prisoner can ask the court to rule on the legality of their detention, and that everyone deprived of liberty can have their fundamental rights restored.

252. Furthermore, Qualified Act No. 8/2004 on the Police of 27 May and the Prison Service Act (No. 3/2007) of 22 March refer to the Standard Minimum Rules for the Treatment of Prisoners.

#### **1. Qualified Act No. 8/2004 of 27 May 2004 on the Police**

253. According to article 5, paragraph 4, of this Act, "as to the treatment of persons in detention, police officers must:

- (a) Identify themselves clearly at the time of arrest;

(b) Protect the life and physical integrity of prisoners or others under their supervision and respect their rights, honour and dignity;

(c) Exercise due diligence in applying the procedures, time limits and provisions established by law when making an arrest.”

**2. Furthermore, Qualified Act No. 4/2007 of 22 March and notably article 29, on Prisons, guarantees the rights of prisoners**

254. Article 29 provides that “prisoner’s inherent rights are:

(a) Those rights recognized by this Act and by the prison regulations;

(b) The right to decent and respectful treatment by prison staff, without prejudice to any disciplinary measures and punishments that may be administered as provided for in the prison regulations;

(c) The right to assistance and other services in accordance with title IV, chapter I;

(d) The right to work in accordance with title IV, chapter II;

(e) The right to use recreational facilities as stipulated by the prison regulations;

(f) The right to personal items as authorized pursuant to the prison regulations, as well as the right to acquire authorized items.”

255. In addition, article 6 of the Qualified Act on Prisons sets out the principles of interpersonal relations with detainees in a prison setting. “1. Prisoners may not be subjected to torture, ill-treatment or physical or verbal harassment. 2. They may not be subjected to degrading treatment, or to an over-rigorous or disproportionate application of the prison regulations. 3. Prisoners must treat prison officials and authorities, and other prison staff, with respect and consideration. They must also conduct themselves properly with other prisoners. 4. Failure to meet these obligations on treatment of others shall be subject to disciplinary action, in accordance with the provisions of the law.”

256. Article 7 on dignity states that “1. Prisoners have the right to be called by their own name. 2. Prisoners have the right to decent prison conditions, particularly in terms of their basic needs. 3. They also have the right to: (a) use their own clothing in accordance with the regulations or clothing provided by the prison, and (b) dispose of their property as the law and the regulations allow. 4. They have the right to privacy, particularly in communications and during visits from friends and family, within the limits set for internal prison order and security.”

257. Article 8 on information to prisoners states that “prisoners must be informed of the prison regimes, their rights and responsibilities, the rules of discipline and the procedures for submitting petitions, complaints and appeals”.

258. Article 9 provides that prisoners shall have access to services: “1. Prisoners have the right to health care and access to educational, cultural and recreational activities. 2. These rights shall be exercised in accordance with the provisions of this Act and its implementing regulations governing it.”

**3. Prison Service Act (No. 3/2007) of 22 March 2007**

259. Article 7, paragraph 3, of the Act provides that, “in relations between prisoners and prison staff:

(a) The life and physical integrity of prisoners shall be protected and their rights, honour and dignity respected;



(b) Discriminatory, arbitrary and abusive professional practices that constitute moral or physical violence against prisoners must be prevented;

(c) Prisoners must be treated respectfully and appropriately at all times and should receive as much information as possible on the handling and execution of their custodial sentence;

(d) Action in the course of duty should be taken with the required firmness — and promptly where a serious, imminent and irreversible problem is to be avoided — and with due regard for the principles of consistency, appropriateness and proportionality in the use of the means available;

(e) Coercion may only be used to fulfil a legitimate function and with due regard for the principles of proportionality, necessity and the security of those in the prison, and in order to prevent escapes or prisoner violence and to avoid prisoners inflicting harm on themselves or others.”

#### 4. Code of Criminal Procedure

260. The Code of Criminal Procedure, too, regulates measures relating to the treatment of persons deprived of their liberty, that may be taken to prevent torture or ill-treatment in the context of, for example, the duration of police custody and incommunicado detention. As mentioned above, the rules regarding the rights of a person in police custody to contact a lawyer, be examined by a doctor and contact a relative, for example, are contained in articles 24 and 25 of the Code of Criminal Procedure.

##### **Measures requiring prompt notification of and access to lawyers, doctors, family members and, in the case of foreign nationals, consular notification**

261. The Code of Criminal Procedure regulates measures relating to the treatment of persons deprived of their liberty, that may be taken to prevent torture or ill-treatment in the context of, for example, the duration of police custody and incommunicado detention. The rules regarding the rights of a person in police custody to contact a lawyer, be examined by a doctor and contact a relative, for example, are contained in articles 24 and 25 of the Code of Criminal Procedure referred to above.

262. When a person is questioned by the police and suspected of an offence, they should be informed of their rights at the start of the interview: the right to remain silent, the right not to testify against oneself and the right not to admit guilt. If during the course of the interview it transpires that there is reason to believe the detainee is implicated in the offence, the police officer will end the interview and read the person their rights.

263. Article 24 of the Code of Criminal Procedure, as amended by Qualified Act No. 87/2010, states that:

“Any suspect who makes a statement to the police shall be immediately informed, in a manner that is comprehensible to them, of the charges against them and, if they are detained, of the reasons why, as well as of their rights, in particular the following:

- (a) The right not to make a statement;
- (b) The right not to testify against oneself and the right not to admit guilt;
- (c) The right to appoint a lawyer and request their presence from the time of arrest in order to assist in making statements and intervene at any point in any identity checks that might take place subsequently. If the detainee does not designate a lawyer, the duty lawyer shall ex officio act on their behalf, except where expressly waived;

(d) The right to inform the family or any other person designated by the detainee, of the arrest and the place of detention;

(e) The right to be assisted: free of charge by an interpreter if the detainee is a foreigner who does not understand or speak the national language or one of the languages of the neighbouring States.

(f) The right to be examined by a forensic physician, or if this is not possible, by a doctor of their choice.

Statements made to police should indicate start and end time. Interviews shall not last more than four hours at a stretch, and there must be a one-hour break between sessions.

The detainee is entitled to at least eight hours' rest in every 24-hour period of detention.

If a breathalyser test is necessary, the detainee must be notified of their right to request a blood test if they do not agree with the results obtained using other methods."

264. Article 25 of the amended Code of Criminal Procedure states that:

1. In order to guarantee the right to legal counsel under paragraph (d) of the preceding article, the police must inform the detainee at the time of arrest of their right to appoint a lawyer or ask for one to be officially appointed to provide immediate legal counsel. Officials supervising the detainee should refrain from recommending a lawyer. As soon as counsel is appointed, the police shall notify the lawyer, informing them of the nature of the offence being investigated by the police. From the moment of arrest, counsel may review the various steps in the proceedings, speak with the detainee in private for 30 minutes and be present at all interviews; they may also ask the police officer to question the detainee on matters of interest to counsel and to include all comments in the statement. If after being called, the lawyer fails to appear within 45 minutes, the interview may begin without them.

However, in urgent circumstances interviews may begin sooner and without a lawyer if prior authorization is obtained from the court on duly reasoned grounds.

2. In matters related to terrorism, the competent judge may issue, on police request, a reasoned decision to the effect that the lawyer appointed by the detainee could prejudice the investigations. In that case, the President of the Andorran Bar should be asked to immediately designate another lawyer to provide legal assistance.

3. Statements made in contravention of the provisions of the preceding paragraphs shall be null and void."

265. As to medical ethics, health-care staff working in Andorra receive standard training on medical ethics with a focus on patient well-being, as part of their academic studies. Professional associations ensure observance of these principles and advise their members as appropriate.

266. Foreigners may notify the appropriate consular authorities in accordance with the provisions of article 24 of the Code of Criminal Procedure.

**Any independent bodies or mechanisms established to inspect prisons and other places of detention and to monitor all forms of violence against men and women, including all forms of sexual violence against both men and women and all forms of inter-prisoner violence, including authorization for international monitoring or NGO inspections**

267. Article 16 of Qualified Act No. 4/2007 of 22 March 2007 on Prisons, which establishes the prison regime having regard to sex, age and other personal circumstances, provides that: 1. Prisoners must be held in cells according to the following criteria: “(a) men and women must be held separately; (b) adults and juveniles must be held separately; (c) remand prisoners must be held separately from convicted prisoners provided this does not disrupt prison security or harmonious relations in the prison or between prisoners; (d) prisoners considered dangerous or who might be a bad influence on others must be separated from the other inmates. 2. Prisons should adopt special measures as regards detention conditions and interaction with others, for prisoners suffering from physical or psychological illnesses, or who have been sentenced for non-malicious offences. 3. The presumption of innocence must prevail when defining prison regimes for remand prisoners.”

268. In recent years, significant progress has been made in improving prisons, in particular after the visit of CPT on 3 February 2004 and the visit of the European Commission against Racism and Intolerance (ECRI) on 29 June 2007. Following this Committee’s recommendations, the Government closed two prisons which failed to meet international standards for the detention of persons deprived of their liberty.

269. A new prison was opened in 2005, designed to overcome the shortcomings noted. It is a modern establishment which meets international standards.

270. The Andorran Parliament also adopted, on 27 March 2004, Qualified Act No. 4/2007 of 22 March on Prisons to safeguard the rights of persons deprived of their liberty. The articles of this Act are now applied in the Andorran prison system and amply cater for prisoners’ rights and needs.

271. Prisoners may not be discriminated against on racial, political, religious or social grounds, or on grounds of nationality or any other personal or social condition. The Act establishes the obligation of non-discrimination and contains administrative and criminal penalties for acts of discrimination. According to the same provisions, prisoners may not be subjected to torture, ill-treatment, harassment or forced labour. According to legal provisions, prisoners cannot be subjected to degrading treatment or treatment of disproportionate or unnecessary severity having regard to prison regulations. Prisoners have the right to privacy, particularly in communications and during family visits.

272. Prisons are under the supervision of the Public Prosecutor’s Office, judges, magistrates and the Ministry of the Interior, who regularly inspect Prisons Department establishments. The Code of Criminal Procedure establishes that judicial institutions must inspect and monitor places of detention every three months.

**Measures to ensure that all such places are officially recognized and that no incommunicado detention is permitted**

273. Anyone who is deprived of their liberty by arrest or detention shall be entitled to appeal to a court to rule without delay on the lawfulness of their detention and to order their release if the detention is found to be unlawful.

274. Article 9.3 of the Andorran Constitution states that “the law shall establish procedures to permit a prisoner to apply to a court to rule on the lawfulness of their

detention and for any person deprived of liberty to obtain the restoration of their fundamental rights”.

275. Similarly, under article 41 of the Constitution, “the law shall provide for the protection of the rights and freedoms recognized under chapters III and IV by the ordinary courts through urgent proceedings, allowing in all cases for a second hearing”. The law establishes a special appeal procedure in the Constitutional Court (remedy of *empara*) against acts by the authorities that violate the rights mentioned in the preceding paragraph, except as provided in article 22.

276. Furthermore, article 104 of the Code of Criminal Procedure states that “a trial judge’s decision ordering or denying imprisonment, arrest under court supervision or release on bail, or any other procedure to enforce civil liability, may be appealed according to the procedure contained in article 194 of this Code”.

277. Article 194 of the Code of Criminal Procedure provides that an appeal must be lodged, within five days of notification of the decision, with the presiding judge of the criminal court and, after hearing the parties and the prosecution, the court must rule on the case within 10 days.

278. Consequently, a person deprived of liberty may not only appeal the decision of the investigating judge in the higher court under the provisions of these articles of the Code of Criminal Procedure, but may also directly seek the protection of the Constitutional Court by commencing proceedings against any decision that violates their fundamental rights.

279. Furthermore, anyone who is subjected to unlawful arrest or detention has the right to reparation.

280. Unlawful detention is considered an offence in the Andorran Criminal Code and is punishable in accordance with the provisions of article 133 of the Code and may give rise to a claim for civil damages as provided and regulated by article 90 of the Code.

281. Furthermore, article 10 of the Qualified Act on Justice of 3 September 1993 provides that, over and above any personal liability incurred by those causing harm, the State must compensate any harm caused by judicial error or miscarriages of justice.

**Mechanisms of review of the conduct of law enforcement personnel in charge of the interrogation and custody of persons held in detention and imprisonment, and results of such reviews, along with any qualification procedures**

282. The Andorran police have taken specific measures to safeguard the rights of persons detained in police facilities and premises. Interview rooms are equipped with video surveillance cameras to film questioning sessions. Once recorded, the material will be used only in the event of a detainee making a complaint against the interviewing officer, in order to verify the allegations.

283. Initial and in-service training for law enforcement personnel, which includes special courses on the human rights and fundamental freedoms recognized in international treaties and emphasizes the police role in safeguarding the free exercise of these rights and freedoms and the security of all citizens, is also a means of preventing inappropriate behaviour.

284. Furthermore, supervision by the Public Prosecutor’s Office, judges, magistrates and the Ministry of the Interior, who carry out regular inspection of Prisons Department establishments, makes it possible to monitor and prevent any inappropriate police behaviour.

285. Lastly, regular visits to detainees by CPT also act as an effective monitoring tool.

### **Safeguards for the protection of individuals especially at risk**

286. A separate procedure is in place for the arrest and detention of minors.

287. This special procedure is governed by the Qualified Act of 22 April 1999 on Juvenile Justice. Only 12 to 18-year-olds may be detained. Under this Act, when a police officer questions a child offender, they must use clear and simple language, appropriate to the offender's age and circumstances, and always in the presence of their legal representatives and lawyer. When a minor under the age of 12 is to be questioned, a psychologist must also be present.

288. If the detainee is a minor and neither they nor their legal representatives appoint a lawyer, the police should automatically notify the duty counsel.

289. The lawyer must be contacted immediately when a minor is arrested. The lawyer must appear at the police station within three hours of being notified of the facts.

## **Article 12**

### **Impartial investigation when there is reason to believe that an act of torture or cruel, inhuman or degrading treatment or punishment has been committed in the State's jurisdiction**

#### **Competent authorities in Andorra initiate and carry out an investigation, whether criminal or disciplinary**

290. In Andorra, criminal proceedings against a police officer are quite compatible with disciplinary proceedings for the same acts.

291. A final decision in the disciplinary proceedings may only be made once the ruling in the criminal proceedings has become final, since the administration is bound to use only the proven facts. Any interim measures taken as part of disciplinary proceedings may nevertheless remain in effect until a final decision is reached in the criminal proceedings (Qualified Act on the Police, art. 111).

292. Investigations into offences of all kinds, including torture, are the responsibility of the trial judge, whether on the basis of a criminal complaint to the court or of a complaint to the police.

293. When police officials become aware of such offences, they must inform the public prosecutor and order an immediate investigation, taking all the necessary steps (Code of Criminal Procedure, art. 22).

294. When the public prosecutor has been informed of facts that may constitute an offence, they initiate criminal proceedings, without prejudice to the judge's capacity to act *ex officio* (Code of Criminal Procedure, art. 5).

295. In addition, in order to open disciplinary proceedings, article 104 of the Qualified Act on the Police states that, for acts of this kind, which are considered very serious offences, the procedure must be notified in writing by the Chief of Police to the minister in charge at the Ministry of the Interior so that the minister can initiate disciplinary proceedings.

296. Responsibility for taking a decision in disciplinary proceedings for very serious offences rests with the Government.

**Applicable procedures, including whether there is access to immediate medical examinations and forensic expertise**

297. Any person suspected of an offence has the right, when making a statement to the police, to be examined by a forensic physician, or if this is not possible, by a doctor of their choice (Code of Criminal Procedure, art. 24).

**Interim measures including suspension of the alleged perpetrator from their functions while the investigation is being conducted, and/or barring them from further contact with the alleged victim**

298. Article 107 of Qualified Act No. 8/2004 of 27 May on the Police provides for interim measures, and states in particular that at the beginning of, or during, disciplinary procedures for misconduct, the competent body may require the officer under investigation to be temporarily relieved of their duties or moved to another post. These measures may also involve the temporary loss of uniform, weapon and badge.

299. The decision to adopt or maintain such measures rests on the seriousness of the allegations, the specific circumstances of each case and the personnel file of the officer subject to the disciplinary procedure.

300. Article 108 of the Act also contains the option of suspending certain of the officer's pay entitlements. Depending on the decision taken, during the temporary suspension from duty, the officer may no longer receive the bonuses or allowances associated with their post. Moreover, suspension is a break in service and may thus also affect the officer's right to request retirement while on suspension.

301. According to article 109 of the Act, temporary suspension from duty may also entail withdrawal of the officer's weapon and badge and a prohibition on the use of police uniform or entry to police buildings without authorization.

302. Articles 72 and 73 of the Criminal Code also provide for security measures that a judge may take to protect victims, including restraining orders in favour of alleged victims.

303. Outcomes of prosecutions and sentences handed down.

304. As no complaints of torture or other inhuman or degrading punishment have been recorded since 2007, there is no recorded data on the outcome of proceedings or the sentences handed down for such offences.

**Article 13**

305. Guarantee of the right of any individual who alleges that they have been subjected to torture or cruel, inhuman or degrading treatment or punishment to complain and to have their case promptly and impartially investigated, as well as protection of the complainant and witnesses against ill-treatment or intimidation.

306. Remedies available to individuals who claim to have been victims of acts of torture or other cruel, inhuman or degrading treatment or punishment.

307. Article 8.2 in chapter III of the Constitution, "Fundamental rights of the individual and public liberties", provides that "Everyone has the right to physical and moral integrity. No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment."

308. Article 10.1, in the same chapter of the Constitution, guarantees to everyone the right to seek a remedy before a court and to obtain a legally substantiated decision from the

court, as well as the right to a fair trial before an impartial tribunal already legally established.

309. Article 41 in chapter VII of the Constitution, “Guarantees of rights and freedoms”, states that: “1. The law shall provide for the protection of the rights and freedoms recognized under chapters III and IV by the ordinary courts through urgent proceedings, allowing in all cases for a second hearing. 2. The law shall establish a special appeal procedure in the Constitutional Court (remedy of *empara*) against acts by the authorities that violate the rights mentioned in the preceding paragraph.”

310. The Andorran Constitution thus guarantees any person who may have been subjected to torture the possibility of instituting two types of legal proceedings: ordinary proceedings (before a criminal court), which must take the form of an ordinary urgent proceeding with provision for two hearings; and special proceedings before the Constitutional Court, known as *empara* proceedings.

311. Article 11 of the Prisons Act, meanwhile, states that prisoners have the right to file petitions, complaints and appeals in relation to the prison regime as set forth in the Act and its implementing regulations.

312. Article 5.3 of the Act states that prison authorities have the obligation to examine and resolve, as promptly as possible, any petitions or complaints made by prisoners regarding their personal security and to take any necessary preventive measures.

313. Article 8 of the same Act provides that prisoners have the right to receive the information they need about the prison regime, their rights and their duties, as well as to be informed about the rules of discipline and the procedures for filing petitions, complaints or appeals.

314. Article 70 sets out the procedure for filing petitions or complaints regarding the prison regime or the treatment of prisoners. Petitions and complaints can be addressed to the prison director, the competent administrative authorities or the courts. If the petition or complaint is addressed to an authority other than the prison director, the prison must forward it accordingly. In such cases, prisoners may submit their complaint in a sealed envelope. Acknowledgement of receipt must be given to prisoners who file a complaint.

#### **Remedies available to the complainant if the competent authorities refuse to investigate their case**

315. Under article 71 of the Prisons Act, prisoners may appeal against decisions taken by the prison authorities that infringe on their rights and interests, by availing themselves of the procedures established in the Administrative Code of 29 March 1989. It should be noted that article 111 of the Criminal Code provides that authorities or officials who do not use every means at their disposal to prevent a subordinate from committing acts of torture incur the same penalties as for the offence of torture.

316. Also, authorities or officials who, in cases other than those covered by the preceding paragraph, do not prevent or report acts of torture of which they have direct knowledge incur the penalties established for those who commit acts of torture, with the reductions set forth in article 53 of the Criminal Code.

#### **Mechanisms for the protection of complainants and witnesses against any kind of intimidation or ill-treatment**

317. In accordance with the obligation set forth in article 13 of the Convention, which provides that steps shall be taken to ensure that complainants and witnesses are protected against all ill-treatment or intimidation as a consequence of the complaint or any statement made, Andorran courts seized of such matters must take such steps.

318. Article 144 of the Code of Criminal Procedure provides that, if witnesses are members of the police force or the prison service, they must be identified only by their badge numbers. The personal identification data of witnesses may be revealed only where there is a legitimate interest or just cause. The same precautions must be taken regarding the victims referred to in article 114 of the Criminal Code, i.e. victims of domestic violence.

319. The restraining measures provided for in articles 72 and 73 of the Criminal Code are also intended to protect complainants and witnesses against all forms of intimidation or ill-treatment.

**Statistical data on the number of complaints of torture and cruel, inhuman or degrading treatment or punishment submitted to the domestic authorities and the results of the investigations**

320. Since no complaints of torture or other cruel, inhuman or degrading punishment have been registered since 2007, there are no data on the outcome of proceedings or sentences handed down for offences of this kind.

**Access of any complainant to independent and impartial judicial remedy**

321. Article 6 of the Andorran Constitution provides that all persons are equal before the law. No one may be discriminated against on grounds of birth, race, origin, opinion or any other personal or social condition. In Andorra, victims of discrimination under the law may, according to the Administrative Code, claim a violation of the principle of non-discrimination before the administrative court inasmuch as it has the status of a constitutional right.

322. Victims of discrimination may also file charges and institute legal proceedings for the offence of discrimination before the Principality's criminal courts.

**Practices preventing harassment or retraumatization of victims**

323. There are no specific measures to prevent the harassment or retraumatization of victims. Reference is made to the legislation in force, which establishes the usual protection measures for victims and persons who file complaints.

**Services or offices for handling cases of alleged torture or cruel, inhuman and degrading treatment or violence against women and ethnic, religious or other minorities**

324. The services responsible for prosecuting or handling alleged acts of torture or cruel, inhuman and degrading treatment or violence against women and ethnic, religious or other minorities are the same as those that deal with criminal cases (the police, the prosecution service, the trial and appeal courts and the Constitutional Court).

**Article 14**

**Procedures in place for obtaining compensation for victims of torture and their families**

325. Victims of torture, like victims of other criminal offences, may claim damages.

326. Article 90 of the Criminal Code, on civil liability arising from criminal offences, states that damages arising from an act constituting an offence or a crime must be compensated as provided for in the Criminal Code and, subsidiarily, as provided for in civil law.



327. Article 91 of the Criminal Code states:

“Content.

The civil liability established in the preceding article comprises:

1. Restitution or, if this is not possible, appropriate reparation or compensation.
2. Reparation of the damage.
3. Compensation for moral and material damage.”

328. Article 92 of the Criminal Code states:

“Interest.

A sentence of monetary payment entails the payment of legal interest as from the date set by the court or, failing that, as from 30 days after the date when either the judgement, or any order issued during enforcement of the sentence to establish the amount of payment, becomes final.”

329. Article 94 of the Criminal Code states:

“Civil liability.

Any person criminally responsible for a criminal offence is also civilly liable if the offence gives rise to damages. If several persons are responsible, the courts must indicate the share for which each one is liable in proportion to that person’s involvement and guilt, without prejudice to their joint liability towards the injured third parties.

Perpetrators and accomplices, each in their own category, are jointly and severally liable for their shares and, subsidiarily, for the shares of the other liable parties.

Subsidiary liability must be imputed first to the assets of the perpetrators and then to those of the accomplices.

Both in the case of joint liability and in the case of subsidiary liability, whoever pays has the right of recourse against the others for the shares owed by each.”

#### **The State’s responsibility for the offender’s conduct and for compensating the victim**

330. Article 98 of the Criminal Code states:

“The following are subsidiarily liable:

Public or private corporations or government agencies, for damages arising from criminal offences committed by authorities, officials or employees in the performance of their duties, obligations or services.”

Government bodies may thus be obliged to compensate victims.

#### **Statistical data or examples of decisions by the competent authorities ordering compensation**

331. Since no complaints of torture or other cruel, inhuman or degrading punishment have been registered since 2007, there are no data on compensation measures or on the effective enforcement of rulings on the subject.

**Rehabilitation programmes for victims of torture**

332. Since the Principality of Andorra is a democratic country that does not practise torture and, on the contrary, condemns it, there is no special programme as such to rehabilitate victims of torture.

333. However, if such a violation were to occur, it would be possible, under the general victim compensation scheme, for the victim to receive psychological care at the expense of the State since acts of torture are classified in the Code of Criminal Procedure as ill-treatment inflicted by public officials.

**Any measures other than compensation to restore respect for the dignity of the victim, their right to security and the protection of their health, to prevent repetitions and to assist in the victim's rehabilitation and reintegration into the community**

334. Social workers and Ministry of Health teams working with children and adolescents, women and the elderly prioritize the at-risk cases among those who seek their support, particularly in relation to any court cases they are involved in, and provide expert opinions and assistance to the courts as required. They also arrange social assistance for persons at risk and their families, including through measures that promote the rehabilitation of victims and their reintegration into the community and their work and by providing the psychosocial support they may require.

**Article 15****Domestic legal provisions to prohibit the use of a statement obtained under torture as evidence**

335. The preliminary provisions set forth in chapter 1, article 1, of the Code of Criminal Procedure state that the principle of good faith must be upheld in all court proceedings and that evidence obtained either directly or indirectly as a result of the violation of fundamental rights and freedoms shall be deemed invalid (article 1.2 of the Code of Criminal Procedure).

336. Article 9.3 of the Qualified Act on Justice similarly provides that “evidence obtained either directly or indirectly as a result of violations of a person's fundamental rights and freedoms shall be inadmissible and invalid”.

**Cases in which such provisions were applied**

337. No complaints of evidence being obtained under torture have been reported.

**Admissibility of derivative evidence**

338. Article 1.2 of the Code of Criminal Procedure leaves no room for doubt on the subject. Evidence obtained either directly or indirectly in a manner that violates fundamental rights and freedoms shall be deemed invalid.

**Article 16****Acts of cruel, inhuman or degrading treatment or punishment that have been outlawed**

339. Domestic law addresses and defines these acts in several instruments, mainly the Constitution, the Criminal Code, the Code of Criminal Procedure, Qualified Act No. 4/2007

of 22 March 2007 on Prisons, Qualified Act No. 8/2004 of 27 May 2004 on the Police and the Prison Service Regulations of 30 September 1993.

340. Article 8 of the Constitution outlaws both torture and acts of inhuman or degrading treatment.

341. Chapter I of title III of the Criminal Code, "Offences against physical and moral integrity", prohibits acts of torture and offences against moral integrity by involving abuse of power.

342. Article 112 of the Criminal Code prohibits and penalizes degrading treatment specifically. With regard to acts other than torture, any authority or official who abuses their authority and subjects a person to degrading treatment is liable to 3 month's to 3 years' imprisonment.

343. Article 456 similarly provides that the implementation of a premeditated plan to totally or partially destroy a national, ethnic or religious group, or a group defined by any other arbitrary criterion, incurs a penalty of 8 to 12 years' imprisonment where inhuman or degrading treatment is involved or if the group is totally or partially reduced to slavery.

344. Article 467 of the Criminal Code states that any person who, during an armed conflict, seriously endangers the life, health or integrity of protected persons, subjects them to torture or inhuman or degrading treatment, including biological experiments, causes them grave suffering, or exposes them to medical intervention that is harmful to their health or violates the generally accepted medical practices that the person would apply in similar circumstances to others of their own nationality who were not deprived of their liberty, is liable to 5 to 10 years' imprisonment, without prejudice to any penalties applicable for bodily injury.

345. The same penalty shall apply to any person who deports, forcibly displaces, takes hostage, unlawfully detains or confines protected persons of any kind or uses them to shield military forces, zones or points from enemy attack, as well as any person who imposes or supports the racial segregation of protected persons of any kind or other inhuman or degrading practices based on other negative distinctions that violate the dignity of the person.

#### **Measures taken by the State party to prevent such acts**

346. One of the measures recently adopted to prevent such acts is the provision of legal assistance from the moment of detention.

347. At the moment of their arrest, the detainee is informed of all their rights, in particular the right to ask the police to observe all necessary procedures.

348. Video recording systems are installed in all interview rooms, as well as in the cells used for holding detainees.

349. The detainee also has the right to be examined by a physician, another practice that protects them against ill-treatment and torture.

#### **Living conditions in police detention centres and prisons**

350. All detainees have the right to medical care, education and social security whether they work or not, as well as access to cultural and recreational activities. Detainees have access to work within the prison system, as available, for as long as they are in prison. The prison administration arranges for paid work to be available under conditions that guarantee the prisoners' dignity and their social protection.

351. The prison facilities guarantee the supplies, space, light and heating required to ensure dignified living conditions.

352. Various criteria are applied under the internal regulations to separate detainees by sex, age and other personal circumstances: men and women are separated; adults and children are also separated.

353. Detainees are also separated according to whether they are awaiting trial or have been convicted. The prison applies special measures if detainees have physical and/or mental illnesses or if they have been convicted of non-malicious offences.

354. The prison is obliged to provide basic personal hygiene items to detainees, as well as clothing if the detainee does not have any or does not wish to use their own clothes.

355. Clothing provided by the institution must not make it possible to identify the wearer as an inmate when outside the prison.

356. Places of detention must be clean and hygienic, and the institution must take the necessary measures to ensure that the cells, as well as the clothing, towels and bed linen of the prisoners, are regularly cleaned.

357. The Department offers detoxification programmes to all detainees who wish to participate.

358. More recently, the prison has begun to incorporate the European Prison Rules into its internal rules of procedure. Many of these rules were already implemented. In October 2010, the prison opened a new wing to expand the facilities with a new area reserved for minors and another for convicted prisoners in a semi-open regime.

359. As far as health and the right to health in prisons is concerned, attention should be drawn to the World Health Organization (WHO) report of 2009, which highlighted the quality of the services provided in Andorran prisons to persons deprived of their liberty.

360. Andorra has still not been affected by the worldwide problem of prison overcrowding, probably because of the high level of security in the Principality and the small size of its population.

361. The prisoners are either Andorran nationals serving more or less long sentences or convicted prisoners of foreign nationality who have chosen not to be transferred to detention centres in their countries of origin, where, as part of judicial cooperation arrangements, those countries are States parties to the Council of Europe's Convention on the Transfer of Sentenced Persons.

362. The most recent inspection by the Council of Europe's European Committee for the Prevention of Torture (CPT) was carried out in 2011.

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