



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

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Committee against Torture

Concluding observations on the sixth periodic report of Monaco*

1. The Committee against Torture considered the sixth periodic report of Monaco (CAT/C/MCO/6) at its 1468th and 1471st meetings (CAT/C/SR.1468 and SR.1471), held on 11 and 14 November 2016, and adopted the present concluding observations at its 1494th meeting on 30 November 2016.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Monaco and notes with appreciation that the report was submitted on time and in accordance with the new simplified reporting procedure, under which a State party replies to a list of issues sent to it by the Committee (CAT/C/MCO/QPR/6).

3. The Committee appreciates the dialogue held with the delegation of the State party, and thanks it for the clear, specific and detailed answers it provided during the dialogue.

B. Positive aspects

4. The Committee welcomes the State party's accession to or ratification of the following international human rights instruments during the reporting period:

- (a) Protocol relating to the Status of Refugees, in 2010;
- (b) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in 2014;
- (c) Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in 2014;
- (d) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2014;
- (e) Council of Europe Convention on Action against Trafficking in Human Beings, in 2015;

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).



(f) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2016.

5. The Committee also notes with satisfaction:

(a) The entry into force of Act No. 1.382 of 20 July 2011 on the prevention and punishment of specific forms of violence, Act No. 1.387 of 19 December 2011 amending Act No. 1.155 of 18 December 1992 on nationality, Act No. 1.399 of 25 June 2013 amending the Code of Criminal Procedure with regard to police custody, and Act No. 1.410 of 2 December 2014 on the protection, autonomy and promotion of the rights and freedoms of persons with disabilities;

(b) The adoption of Act No. 1.409 of 22 October 2014 amending the Act of 23 February 1968 on national and municipal elections and Act No. 1.430 of 13 July 2016 on various measures relating to the preservation of national security;

(c) Sovereign Order No. 3.782 of 16 May 2012 on the organization of the prison and detention system.

6. The Committee takes note with satisfaction of the organization of various training and awareness-raising activities on human rights, including for judges and law enforcement officers. In this regard, the Committee welcomes the training provided in 2012 to professionals who, because of their occupation, come into contact with victims of violence. It also notes with satisfaction the appointment, in 2006, of a delegate for persons with disabilities within the Government, and the inauguration in 2012 of the new Princess Charlene Home for Children (the former Sainte-Dévote Home) and of a centre for older persons in 2013. The Committee welcomes Sovereign Order No. 4.524 of 30 October 2013 on the establishment of the Office of the High Commissioner for the Protection of Rights and Freedoms and Mediation.

C. Principal areas of concern and recommendations

Pending follow-up issues from the previous reporting cycle

7. While taking note of the information provided by the State party on 6 June 2012 concerning implementation of the recommendations contained in paragraphs 9 (non-refoulement), 10 (detention conditions) and 11 (domestic violence) of the previous concluding observations (CAT/C/MCO/CO/4-5), the Committee regrets that adequate measures were not taken to address the concerns raised in paragraph 9 and that insufficient measures were taken to address those raised in paragraph 10.

Definition and penalization of torture

8. While noting that: (a) article 20 of the Constitution expressly prohibits cruel, inhuman and degrading treatment and that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been enforceable in Monaco since 1992; (b) the Monegasque courts employ a broad interpretation of the term “torture and cruel, inhuman or degrading treatment or punishment”; and (c) the Criminal Code provides for a harsher penalty in such cases, the Committee regrets the absence, in the Criminal Code, of a definition of torture in full conformity with article 1 of the Convention, and the lack of a specific provision establishing torture as a separate offence. It also remains concerned that Monegasque legislation does not recognize the crime of torture as not being subject to any statute of limitations or the principle of the invalidity of statements obtained by torture (arts. 1, 4 and 15).

9. **The Committee reiterates its previous recommendations (CAT/C/MCO/CO/4-5, para. 7), adopted in June 2011, and requests the State party to incorporate in its criminal law a definition of torture that covers all the elements contained in article 1 of the Convention. In the light of its general comment No. 2 (2007) on the implementation of article 2 by States parties, the Committee considers that, by adopting a definition of the offence of torture in accordance with the definition in the Convention, States parties will directly advance the Convention's overarching aim of preventing torture. The Committee also requests the State party to amend its legislation in order to establish acts of torture by civilians and by law enforcement officials as separate offences, to recognize the crime of torture as not being subject to any statute of limitations and to incorporate the principle of the invalidity of statements obtained by torture.**

Absolute prohibition of torture

10. While noting that a law allowing the invocation of exceptional circumstances to justify torture would be found unconstitutional, the Committee remains concerned that the Criminal Code does not include provisions expressly prohibiting the invocation of exceptional circumstances or an order from a superior officer as a justification of torture. Furthermore, while noting the legislative, administrative and judicial measures taken in cases where an act of torture was committed by an official, and the possibility for a subordinate not to execute an illegal order (the theory of "rational obedience") and subsequently notifying his or her superior officials, the Committee remains concerned at the lack of clear mechanisms to protect subordinates (art. 2).

11. **The Committee reiterates its previous recommendations (CAT/C/MCO/CO/4-5, para. 8) and invites the State party to amend its Criminal Code in such a way that it states explicitly that exceptional circumstances or an order from a superior officer may not be invoked as a justification of torture. The Committee draws the attention of the State party to section VII of its general comment No. 2. The State party should also take legislative, administrative, judicial and other measures to prevent acts of torture to strengthen safeguards for any officer who refuses to carry out an illegal order given by a superior officer.**

Non-refoulement

12. While noting that the Monegasque authorities provide for the administrative and legal protection of refugees residing in the Principality of Monaco and that the French Office for the Protection of Refugees and Stateless Persons (OFPRA) examines cases and issues advisory opinions, the Committee remains concerned about the lack of clarity regarding the legal grounds for the procedures that are applicable to asylum seekers, the conduct of such procedures, and the safeguards provided. The Committee also remains concerned at the uncertainty surrounding the procedure for cooperation between the State party and OFPRA, which consists merely of an exchange of letters between the authorities of France and of Monaco. The Committee recalls that, in the event that OFPRA practices did not comply with the requirements of the Convention, the State party would incur responsibility. The Committee further reiterates its concern regarding the lack of a mechanism for following up on the cases of asylum seekers dealt with by OFPRA (art. 3).

13. **For the purpose of ensuring legal certainty, the State party should ensure that the procedures applicable to asylum seekers and the procedure for cooperation with OFPRA are made clearer and accessible to all. In addition, the Committee would like to receive data on the number of applications submitted to and examined by OFPRA and the number of cases in which the Monegasque authorities have accepted or rejected the opinions of OFPRA and the reasons for doing so. The Committee would**

also like to know how many expulsion orders have been appealed since 2011 and whether these appeals have had a suspensive effect during the deliberations of the Supreme Court. The Committee reiterates its previous recommendations (CAT/C/MCO/CO/4-5, para. 9) and urges the State party to establish a mechanism for following up on the cases of asylum seekers dealt with by OFPRA.

Custody of minors

14. The Committee welcomes the efforts made by the State party to comply fully with its custody-related commitments since its last dialogue with the Committee. It notes in particular the adoption of Act No. 1.399 of 25 June 2013 on the reform of the Code of Criminal Procedure relating to police custody. Nevertheless, like the Committee on the Rights of the Child (CRC/C/MCO/CO/2-3, para. 47), the Committee remains concerned about the issue of custody of minors under 13 years of age (art. 11).

15. The Committee recommends that the State party repeal the amendment to the Code of Criminal Procedure that allows for the placement of children under 13 years of age in police custody for the purposes of an investigation.

Detention conditions in prison

16. The Committee notes that the prison (*Maison d'Arrêt*) of Monaco is equipped to hold a small number of detainees for short periods of time and that it is not a detention centre in the strict sense of the term. While the Committee appreciates: (a) the conditions provided for detainees, including medical care, leisure and work opportunities; (b) the renovations and alterations carried out by the State party to improve conditions of detention; (c) the collaboration of the State party with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Committee remains concerned, after having read the report adopted by the European Committee for the Prevention of Torture in 2013 (CPT/inf (2013) 39), about the structural incompatibility of the prison and its facilities with its current use. The Committee also expresses its concern at the fact that a routine medical examination is not given to every individual upon arrival at the prison (art. 11).

17. While it is aware of the State party's land-use constraints, the Committee invites the Monegasque authorities to consider ways of adapting some of the infrastructure within the prison or even a potential move to new facilities. The Committee would also welcome statistics on the proportion of non-nationals being held at the prison and their origins and information on whether specific measures, including language-related ones, are planned. The Committee invites the State party to provide for a routine medical examination of any person upon arrival at the prison.

Monitoring of the conditions of transferred detainees

18. The Committee notes that the judge responsible for sentence enforcement is also responsible for monitoring the situation of prisoners in France but that no visit was possible during the summer of 2015. Furthermore, the Committee notes that requests for transfer to France are admitted only in the case of prisoners serving long sentences and that, most of the time, it is the detainees themselves who seek to expedite their transfer to France in order to be closer to their families. Lastly, the Committee notes that, notwithstanding the very small number of detainees concerned, discussions between the Monegasque courts and the French authorities held with a view to reaching an agreement on more effective monitoring of detention conditions led to the principle of an exchange of administrative letters between the French Ministry of Justice and the Director of Judicial Services to enable such monitoring. However, the Committee remains concerned that the requirement of obtaining the express consent of a person convicted in Monaco to his or her transfer to France is still

not formally enshrined in law. The Committee is also concerned about the fact that conditions of detention in France, in particular with regard to the prison in Nice, where there is significant overcrowding, as reported by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/inf (2013) 39), could cause harm to individuals convicted in Monaco and transferred to France (art. 11).

19. **The State party should take urgent measures to:**

(a) **Ensure that Monegasque enforcement judges may conduct follow-up visits of prisoners serving their sentences in France and submit the reports on these visits to the Committee;**

(b) **Formally establish by law the need to obtain the explicit consent of a person convicted in Monaco to his or her transfer to France, in accordance with the Committee's previous recommendations (CAT/C/MCO/CO/4-5, para. 10);**

(c) **Implement the procedure for the exchange of administrative letters between the French Ministry of Justice and the Monegasque Director of Judicial Services.**

Redress for victims of torture

20. The Committee notes that Act No. 1.382 of 20 July 2011 on the prevention and punishment of specific forms of violence does not include specific provisions on redress and compensation for victims of torture or ill-treatment, including in the event of the death of the victim as a result of an act of torture, but that it does allow certain associations to bring criminal indemnification proceedings on behalf of victims. Despite the fact that the common redress scheme applies to victims of torture, the Committee remains concerned about the fact that victims do not have access to a specific mechanism of redress, including such forms of reparation as rehabilitation, satisfaction and non-repetition (art. 14).

21. **The Committee reiterates its previous recommendations (CAT/C/MCO/CO/4-5, para. 12) and requests the State party to adopt specific provisions on redress and compensation for victims of torture or ill-treatment. The Committee draws the attention of the State party to its general comment No. 3 (2012) on implementation of article 14 by States parties, which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.**

Training

22. While noting with satisfaction that human rights officers have held conferences for officials and judicial personnel of Monaco, the Committee regrets that no direct reference was made to the Convention or to the prohibition of torture in the training courses given to judges, law enforcement officials and other professionals (art. 10).

23. **The State party should continue to develop training programmes and strengthen existing ones to ensure that all officials, including judges, law enforcement officials and other professionals, are familiar with the Convention. The Committee reiterates its previous recommendations (CAT/C/MCO/CO/4-5, para. 13) and requests the State party to provide specific training to those persons, including health-care professionals, who are in contact with prisoners and asylum seekers, on how to identify signs of torture and ill-treatment. This should include an introduction to the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).**

Follow-up procedure

24. **The Committee requests the State party to provide, by 7 December 2017, information on follow-up to the Committee's recommendations set out in paragraphs 13 and 19. In the same context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

25. The Committee invites the State party to consider ratifying the core human rights treaties to which it is not yet party.

26. The State party is encouraged to disseminate widely the report it submitted to the Committee and the Committee's concluding observations and recommendations, through official websites, the media and non-governmental organizations.

27. The State party is invited to submit its next report, which will be the seventh periodic report, by 7 December 2020. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its seventh periodic report under article 19 of the Convention.
