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

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Committee against Torture

Seventh periodic report submitted by Monaco under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2020*

[Date received: 9 December 2020]

* The present document is being issued without formal editing.

Reply to the questions raised in paragraph 2 of the list of issues (CAT/C/MCO/QPR/7)

1. Firstly, Monaco would like to draw attention to the constitutional status of the ban on cruel, inhuman and degrading treatment, which is established in article 20 of the Constitution.

2. Aside from the fact that, as stated in the previous report, the Convention has been incorporated into the domestic legal order, the Code of Criminal Procedure (art. 8 (2)) and the Criminal Code, the Government is considering amending the Criminal Code to include a definition of torture that is in line with the Convention.

Reply to the questions raised in paragraph 3 of the list of issues

3. Since 2017, there have been no reports of any criminal investigation officers, for the purposes of the investigation, making an exception to the rule on the right of persons taken into police custody to contact a third party or a relative of their choice.

4. Thus, given that, on the face of it, there is no impediment to giving reasons for refusing to grant a request of persons taken into police custody to contact a member of their family or employer straight away, the Government intends to consider the possibility of amending article 60-7 of the Code of Criminal Procedure.

Reply to the questions raised in paragraph 4 of the list of issues

5. Sovereign Ordinance No. 4.524 of 30 October 2013 established the Office of the High Commissioner for the Protection of Rights and Freedoms and for Mediation.

6. The Office is responsible for handling appeals and disputes between citizens or service users and the authorities or public services, which include the executive departments under the direct authority of the Minister of State and the departments attached to the judiciary, the National Council (parliament), the Commune and public institutions.

7. The office of High Commissioner entails a number of guarantees, such as neutrality, impartiality and operational and financial independence. The guarantees enshrined in the aforementioned Ordinance also apply to the procedures for referring cases to the High Commissioner and to his or her powers to investigate and make recommendations to the administrative authorities.

8. The Government has carried out an impact study on the possible consequences of ratifying the Optional Protocol to the Convention. The various options for setting up a national preventive mechanism have been examined. The Government cannot, however, make any commitment to ratifying the Optional Protocol or, by extension, to any details of implementation that might be decided on.

Reply to the questions raised in paragraph 5 of the list of issues

9. In response to the recommendations made by the Group of States against Corruption of the Council of Europe in its Fourth Evaluation Round concerning corruption prevention in respect of members of parliament, judges and prosecutors, several measures were taken in 2020 to improve existing mechanisms with a view to strengthening the independence of the judiciary, which is guaranteed by article 88 of the Constitution.

10. Firstly, the operational role of the High Council of the Judiciary, as the guarantor of the judiciary's independence, was strengthened by the adoption of Act No. 1.495 of 8 July 2020 establishing the regulations governing the judiciary.

11. The regulations governing the judiciary have undergone a number of amendments, two of which are particularly noteworthy. Firstly, the second sentence of article 1 of the regulations has been amended to expressly state that the Director of Judicial Services and the High Council of the Judiciary "shall ensure, in the exercise of the powers legally conferred on them, respect for the principle of the independence of judges guaranteed by article 88 of the Constitution" (Act No. 1.364 of 16 November 2009 establishing the regulations governing the judiciary, amended by Act No. 1.495 of 8 July 2020, art. 1).

12. Furthermore, the High Council of the Judiciary now has the power to hear disciplinary cases on its own initiative, which further strengthens its key role in guaranteeing the

independence of judges (cf. Act No. 1.364 of 16 November 2009 establishing the regulations governing the judiciary, amended by Act No. 1.495 of 8 July 2020, arts. 47 and 49).

13. Secondly, the Director of Judicial Services, who presides over the High Council of the Judiciary, has been given the additional title of Secretary of Justice. This is a major step forward in raising the profile of the duties exercised by the Director of Judicial Services both inside and outside national institutions. It also clearly expresses the independence enjoyed by the Secretary of Justice in the exercise of his or her duties. In this connection, it might be useful to draw attention to the reasoning set out in Sovereign Order No. 8.155 of 14 July 2020 relating to the aforementioned title:

> Whereas the Principality, at our behest, is increasingly becoming part of an international framework; whereas, in this respect, it seemed appropriate to increase the profile of the executive authorities and the judiciary who work in Monaco, and at the international level, in order to promote the success and influence of the Principality;
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> Whereas, within this framework, the members of my Government, in 2016, were granted the title of Minister, Government Counsellor, and were subsequently given their responsibilities;
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> Whereas the need for an enhanced profile within the institutions of the Principality and outside it, particularly in relation to international organizations, arises in the same way as regards the duties of the Director of Judicial Services, President of the Council of State; whereas, moreover, the specific role and status of the Director of Judicial Services, a body that is independent of my Government and that, together with the High Council of the Judiciary, is responsible, in the performance of the missions legally entrusted to it, for ensuring respect for the principle of the independence of judges guaranteed by article 88 of the Constitution, and for guaranteeing the impartiality of the conduct of criminal proceedings, justify that it be given a different name from that of a central government director.

14. Thirdly, the Monegasque authorities wish to point out that the appointment of judges and prosecutors on the basis of transparent and objective criteria is governed by articles 27–32 of Act No. 1.364 of 16 November 2009 establishing the regulations governing the judiciary. Since the adoption of this Act, Monegasque judges and prosecutors have been recruited exclusively through an open competition, as provided for in title IV of Act No. 1.364 establishing the regulations governing the judiciary. Successful candidates are appointed as reporting judges and granted permanent positions at the corresponding grade by sovereign ordinance in accordance with a report issued by the Director of Judicial Services on the basis of the results of the competition or, if an exemption is made, on the advice of the High Council of the Judiciary. After two years of service, with the approval of the High Council of the Judiciary, reporting judges are appointed as judges or deputy public prosecutors. The same recruitment and appointment procedure is used for judges and prosecutors.

15. French judges and prosecutors are seconded to Monaco under the Convention of 8 November 2005 aimed at Adapting and Improving Administrative Cooperation between the French Republic and the Principality of Monaco; more generally, French nationals are seconded to take up public sector employment in Monaco under this convention. In this connection, when it is necessary for a judge or a prosecutor to be seconded, the procedure takes place with the full agreement of the French Ministry of Justice.

16. In practice, the Directorate of Judicial Services of Monaco uses diplomatic channels to send a very detailed professional profile for open positions to the French Ministry of Justice, which then calls for applications from the French judiciary on the basis of objective recruitment criteria formulated by Monaco. The public nature of this internal procedure, which is accessible to all French judges and prosecutors, clearly guarantees its transparency. At the end of the procedure, the French authorities send a document containing details of all the applications accepted, and a shortlist of applicants drawn up by the French authorities, to the Secretary of Justice. Then, all the candidates who have been recommended by the French Directorate of Judicial Services are heard by the High Council of the Judiciary in the presence of the relevant court administrator. Once the High Council of the Judiciary has made its

recommendations, the Secretary of Justice submits a proposal to the Sovereign Prince. His decision is then transmitted to Paris, also through diplomatic channels.

17. French or Monegasque judges and prosecutors based in Monaco are free to apply for vacant positions that have been advertised in France (as happened recently for the position of deputy public prosecutor). It may happen that no call for applications is sent out in France and, following the issuance of a circular by the Secretary of Justice, a Monegasque judge or prosecutor applies for the position and is qualified to fill it (as happened recently for a position of judge of the Court of Appeal). In this situation too, the appointment is made by sovereign order, after the candidate has been heard by the High Council of the Judiciary, on the proposal of the Secretary of Justice.

18. A further point concerning the independence of the judiciary and judges is that article 26 of Act No. 1.398 of 24 June 2013 on judicial administration and organization provides that "the Director of Judicial Services oversees criminal proceedings without being able to initiate them himself or herself or to stop or suspend their course".

19. This means that the Director of Judicial Services may instruct the Public Prosecution Department only to initiate proceedings but may never instruct it to stop proceedings that are under way.

20. In addition, Act No. 1.496 of 8 July 2020 provides that instructions to bring a prosecution issued by the Director of Judicial Services must be set out in writing, reasoned and added to the case file. Public prosecutors retain the "freedom of speech reserved for rights of conscience" in hearings (Act No. 1.398 of 24 June 2013, art. 27).

21. Lastly, with regard to the constitutional principle of delegated justice, the Monegasque authorities wish to stress that in the constitutional hereditary monarchy of Monaco, the Prince is the sole constitutional basis of the three powers (executive, legislative and judicial). Thus, as an internationally recognized State that is governed by the rule of law and committed to respecting fundamental rights and freedoms, the Principality constitutes an effective democracy.

22. With regard to justice, article 88 of the Constitution vests judicial power in the Prince, who "delegates its full exercise" to the courts, which render justice on his behalf. This provision provides the basis for the Monegasque model of administrative organization, which features the independence of the Directorate of Judicial Services, the body constituting the Monegasque Ministry of Justice, from the Government, and whose duties are exercised under the Prince's high authority. The independence of judges is guaranteed by the second paragraph of article 88 of the Constitution. The third paragraph of this article establishes that the organization, jurisdiction and operation of the courts, and the regulations governing judges, are laid down by law.

23. Therefore, the possibility of departing from the principle of delegated justice is not being considered and does not appear to be feasible. According to this principle, in the area of justice, the monarch refrains from intervening, either directly or indirectly, by any means whatsoever, in any case before the courts.

Reply to the questions raised in paragraph 6 of the list of issues

24. An average of 88 refoulement measures are issued per year. It should be noted that these are individual administrative acts, emanating from the general police powers held by the Minister of State, and that they are subject to discretionary, hierarchical or contentious remedies and restrict freedom of movement only in relation to the territory of the Principality.

25. Since the examination of the sixth periodic report, the Monegasque judicial authorities have received 37 extradition requests.

26. Nine of these requests resulted in the extradition of the persons concerned, to Czechia, Austria, Croatia, Spain, Hungary, Germany and Switzerland.

27. With regard to the measures taken by the Monegasque authorities to ensure that such returns are compatible with the principle of non-refoulement, two extraditions to the Russian Federation, one extradition to Albania and one extradition to the Islamic Republic of Iran

were refused on the grounds that the individuals requested by these States had political refugee status.

28. Another extradition to the Islamic Republic of Iran was refused because the Court of Appeal sitting in chambers had ruled that it could not be guaranteed that the person concerned would receive a fair trial, be detained in conditions that were neither inhuman nor degrading, or avoid facing the death penalty.

29. Lastly, the extradition to Hungary was granted only after that country had guaranteed that the person in question would have access to any medical care that might prove necessary while in detention.

Reply to the questions raised in paragraph 7 of the list of issues

30. The Monegasque authorities themselves ensure administrative and legal protection for refugees living in the country.

31. The French Office for the Protection of Refugees and Stateless Persons examines cases and advises on requests made to the Principality of Monaco.

32. At the appeal stage, the Office plays no part in the procedure and there is no mechanism for following up on the cases of asylum-seekers dealt with by the Office.

33. With regard to refugees settled in Monaco, a total of 22 refugees, including five minors under the age of 16 years, were residing in Monaco as at 31 December 2019. They included one Armenian, one Congolese, one Eritrean, three Iraqis, one Iranian, one Moroccan, one Palestinian, five Syrians, one Russian and seven Vietnamese.

34. There were no successful asylum applications in 2020.

35. With regard to applications processed since 2017, the following three were rejected:

- An application from a Tunisian national born in 1977 (no file transmitted)
- An application from a Syrian national born in 1968
- An application from an Ethiopian national born in 2000

36. No appeals to overturn a decision by the Minister of State rejecting an asylum application have been filed with the Supreme Court.

Reply to the questions raised in paragraph 8 of the list of issues

37. To date, no cases involving acts constituting torture have come before the Monegasque courts.

Reply to the questions raised in paragraph 9 of the list of issues

38. The Monegasque judicial authorities have never received an international letter of request from the Prosecutor of the International Criminal Court in relation to a person being prosecuted for crimes against humanity and war crimes.

Reply to the questions raised in paragraph 10 of the list of issues

39. The Principality of Monaco has not concluded any new extradition treaties with third States since its sixth periodic report. In that time, the Monegasque judicial authorities have not received any requests for extradition or mutual assistance concerning any criminal proceedings relating to cases of torture. The Monegasque judicial authorities have not issued any requests for mutual assistance for such purposes.

Reply to the questions raised in paragraph 11 of the list of issues

40. No extradition request has been submitted to the Monegasque judicial authorities for the purpose of prosecuting acts of torture.

Reply to the questions raised in paragraph 12 of the list of issues

41. No allegations of acts of torture have been made in the Principality of Monaco.

42. The training given to police staff ordinarily includes training and awareness-raising modules on human rights and respect for fundamental rights, including in relation to detention conditions. Internal memos are used to remind staff of these matters.

43. The Princess Charlene Home for Children, which is the only children's home in the Principality, is not a place of deprivation of liberty. Children are placed there by court order as part of the efforts made to protect them but they retain their freedom of movement. The specialist educators working at the home hold State diplomas, enabling them to provide the best possible care to these vulnerable children.

Reply to the questions raised in paragraph 13 of the list of issues

44. See above.

Reply to the questions raised in paragraph 14 of the list of issues

45. There are no plans to transfer detainees to new facilities. However, in line with a project to restructure the Remand Prison of Monaco (Maison d'arrêt), the staff accommodation allocated to its Director and Deputy Director will be converted to create three additional activity rooms and an exercise yard, as well as two new, brighter wings, providing greater flexibility in access to activities and in the reception of different categories of prisoner.

46. The work will also improve ventilation in the youth wing and create a healthier recreation room for the guards.

47. The prison doctor or an external doctor on call carries out a routine medical examination of every inmate within 24 hours of his or her incarceration. The medical service has also been expanded to ensure that a nurse is on duty during the day.

48. A sports teacher, a yoga instructor and a body-building instructor are on hand every week to provide inmates with access to educational and sporting activities.

49. Three French and drama teachers, as well as a number of visiting teachers, are also on hand every week.

50. With regard to work activities, six inmates are currently employed and are paid by the prison to assist with cleaning, laundry, painting and tiling work.

Reply to the questions raised in paragraph 15 of the list of issues

51. Monegasque prisoners are transferred to French prisons in accordance with article 14 of the Franco-Monegasque Convention on Good-Neighbourliness of 18 May 1963, which states that "persons sentenced to imprisonment for felonies or misdemeanours under ordinary law shall be held in prisons in France; they shall be subject to the system applied in these institutions, in accordance with the provisions of the (French) Code of Criminal Procedure".

52. As Monegasque prisoners are subject to the French sentence enforcement system following their transfer, the principle of visits by enforcement judges to prisoners transferred to France has not yet been implemented, although there is nothing to prevent this from happening. Such visits seem difficult to organize in practical terms given that the prisoners in question are spread across different French prisons that are some distance from Monaco.

53. With regard to the need for prisoners to consent to their transfer, this consent is routinely obtained as, in practice, such transfers take place only at the request of the prisoners themselves.

Reply to the questions raised in paragraph 16 of the list of issues

54. Given that the Police Department is in an urban setting, situated between two buildings in a country with a surface area of 2 km^2, it does not have a courtyard or any exercise space and there is no access to fresh air for persons in police custody. Police stations on the outskirts of the Principality are akin to secondary (neighbourhood) stations and can accommodate detainees only for very brief periods.

55. Under article 60-9 ter of the Code of Criminal Procedure, police custody may be extended to 48 hours only after the Public Prosecutor or the investigating judge has submitted

a request to approve the extension to the liberties and detention judge, stating the reasons for the request and enclosing all relevant documents.

56. Police custody may be extended to 96 hours only with the approval of the liberties and detention judge, subject to the same conditions and for a limited list of particularly serious misdemeanours or felonies, such as laundering the proceeds of an offence, a drug-related offence, an offence against State security or acts of terrorism.

57. Police custody may be extended to 96 hours only under the supervision of a judge (the liberties and detention judge) and only for particularly serious misdemeanours or felonies.

Reply to the questions raised in paragraph 17 of the list of issues

58. With regard to visiting arrangements, all prisoners are entitled to receive two visits per day, each lasting 45 minutes.

59. By Order No. 2020-20 of 9 September 2020 of the Director of Judicial Services, prisoners held in solitary confinement may now receive visits from the outside, up to a maximum of one visit per week.

60. Throughout the pandemic, prisoners were given 15 minutes of telephone access per day instead of 5 minutes. This arrangement was made permanent by Order No. 2020-20 of 9 September 2020 of the Director of Judicial Services, which provides that prisoners may have 15 minutes of telephone access per day, at their own expense.

61. Indigent prisoners receive 15 minutes of free telephone access per week.

Reply to the questions raised in paragraph 18 of the list of issues

62. Bill No. 984 was passed by the National Council and became Act No. 1.479 of 12 November 2019, amending certain provisions on sentencing. This law strengthened the penalties for inflicting injuries or violence on other persons, making it possible to punish corporal punishment under articles 236 and 238 of the Criminal Code, under which any injury or blow inflicted on an individual, and any other form of violence or assault, are punishable.[1]

63. Where the offence results in total incapacity to work for more than eight days, the perpetrator will be liable to a prison sentence of between 1 and 5 years. Where these actions cause mutilation, amputation or deprivation of the use of a limb, blindness, loss of an eye, or any other serious permanent disability, the perpetrator will be liable to a prison sentence of between 5 and 10 years. If the actions unintentionally cause death, the sentence will be increased to between 10 and 20 years' imprisonment.

64. Where the acts of violence have not caused illness or total incapacity to work for more than eight days, the perpetrator may be sentenced to between 6 months and 3 years' imprisonment. If there is prior intent or premeditation, the penalty is between 1 and 5 years' imprisonment.

65. The offences punishable under articles 236–238 of the Criminal Code concern the perpetrator's spouse or any other person who lives with him or her in the same household, or who has lived there on a long-term basis. Article 239 of the Criminal Code establishes that the penalty is increased to:

- The maximum term of imprisonment, if the article provides for a term of between 10 and 20 years
- Between 10 and 20 years' imprisonment, if the article provides for a term of between 5 and 10 years

[1] Article 238 of the Criminal Code states: "When the injuries or other violence or assaults of the kind mentioned in article 236 have resulted in illness or total incapacity to work for less than or equal to eight days, the perpetrator shall be liable to a term of imprisonment of between 6 months and 3 years and the fine identified as figure 3 in article 26.

If there is prior intent or premeditation, the term of imprisonment shall be from 1 to 5 years and the fine will be that identified as figure 4 in article 26."

- 10 years' imprisonment, if the article provides for imprisonment

66. These increases also apply when the offender has committed an offence to punish or correct supposedly honour-related misconduct. The same provision applies when the acts were committed against a person whose vulnerability or state of dependence was apparent and known to the perpetrator.

67. With regard to corporal punishment within the family, article 238-1 provides that violence that has not resulted in illness or total incapacity to work, including against any person living in the same household as the perpetrator or a person who has lived there on a long-term basis, is punishable by a prison sentence of between 6 months and 1 year. The same penalty is handed down to any person who commits such violence against any person whose state of vulnerability or dependence is known to the perpetrator.[2]

68. Act No. 1.478 of 13 November 2019 includes within its scope persons who have entered into a cohabitation agreement for non-matrimonial unions (*contrat de vie commune*) or a cohabitation agreement for two family members living together under the same roof (*contrat de cohabitation*).

Reply to the questions raised in paragraph 19 of the list of issues

69. It is inaccurate to speak of the detention of minors under the age of 13 years, as Act No. 740 of 25 March 1963 on Juvenile Delinquents prohibits the detention of minors in prisons (see the reply to the questions raised in paragraph 20).

70. Minors under the age of 13 years may be held in police custody, and their legal representatives are immediately informed, or an ad hoc administrator is appointed when their interests are not fully protected by their legal representatives.

71. No hearing may take place without a lawyer being present and, for minors under the age of 13 years, hearings are conducted by a criminal investigation officer trained in the protection of minors.

72. The initial duration of police custody for minors under the age of 13 years may not exceed 12 hours, except in criminal cases, where it may be extended to 24 hours.

73. In all cases, police custody may be extended only on the decision of the liberties and detention judge, who informs the guardianship judge and the minor's legal representatives or the ad hoc administrator appointed to protect the minor's interests.

[2] Article 238-1 of the Criminal Code states that: "Violence not resulting in illness or total incapacity to work will be punishable by 6 months' to 1 year's imprisonment and the fine identified as figure 2 in article 26, if committed:

1. Against the perpetrator's spouse, partner in a cohabitation agreement for non-matrimonial unions (*contrat de vie commune*) or cohabitant in a cohabitation agreement for two family members living together under the same roof (*contrat de cohabitation*), or any other person who lives with the perpetrator under the same roof or has lived there on a long-term basis;

2. Against a minor or any person whose vulnerability or state of dependence was apparent or known to the perpetrator;

3. Against a juror, a lawyer or any other person entrusted with a public duty, in the exercise of, or arising from, his or her duties, where the victim's status was apparent or known to the perpetrator;

4. Because of the victim's sex, disability, origins, sexual orientation, real or supposed affiliation or non-affiliation with a particular ethnic group, nation or race, or real or supposed adherence or non-adherence to a particular religion;

5. By an officer of the State or a person vested with a public service mission in the exercise of his or her duties or mission;

6. With premeditation;

7. With the use or threat of use of a weapon;

8. By a person acting under the influence of alcohol or drugs;

9. By a relative in the direct line of ascent or descent."

Reply to the questions raised in paragraph 20 of the list of issues

74. It should be pointed out that the Princess Charlene Home for Children does not have a secure, isolated unit for detained minors. In certain circumstances, however, it can take in minors who have been released from prison, where their removal from the family environment is deemed to be necessary or where no legal representative is available to take charge of them.

75. Since the renovation of the Home in 2012, nine minors, or an average of one per year, have been incarcerated in the Remand Prison.

76. In cases where placement in the Home is ineffective, a six-month humanitarian stay outside the Home can be organized in consultation with the judge to enable the young person concerned to distance himself or herself from his or her environment. To date, two such stays have been organized for young people from the Home.

77. It should be noted that depriving minors of their liberty by detaining them in a prison is not in any way a penalty favoured by Monegasque laws and courts. Alternative penalties are therefore preferred.

78. For evidence of this, it should be noted that the Remand Prison was used to detain only three minors in 2016, six minors in 2017, nine minors in 2018, two minors in 2019 and none in 2020.

79. Article 3 of Act No. 740 of 25 March 1963 on Juvenile Delinquents provides that even when an offence is legally established, the public prosecutor may decide, if the minor's interests so demand and the injured party has waived his or her right to sue for damages, to drop the proceedings or to simply issue a reprimand (official warning).

80. Under article 7 of the Act, even if the investigation has established that an offence has been committed, the guardianship judge may, at the request of the Public Prosecutor, and if the minor's interests so demand and the injured party declares that he or she will not sue for damages, dismiss the proceedings against the accused minor and, where appropriate, implement one of the measures provided for in article 9 (2), namely: "The minor may be returned to his or her parents or to the person who had custody of him or her or to a person specified in the decision, either without conditions or subject to supervision until the minor reaches the age of majority, or for a shorter period."

81. Under article 9 of the same Act, if the minor is found to have committed the offence, the court hearing the case may take one of the following decisions:

(a) The president of the court may issue the minor with a simple reprimand;

(b) The minor may be returned to his or her parents or to the person who had custody of him or her or to a person specified in the decision, either without conditions or subject to supervision until the minor reaches the age of majority, or for a shorter period;

(c) The minor may, subject to the same time frame, be ordered to be placed in a Monegasque or French establishment that is authorized to hold young offenders;

(d) If the minor is at least 13 years of age, the penalty provided for under the criminal law establishing the offence may be applied to him or her, bearing in mind both the need for punishment and the possibilities for the offender's moral reform and rehabilitation.

Reply to the questions raised in paragraph 21 of the list of issues

82. No mention has been made in the Principality of any supposed or alleged acts of torture, barbarism or the like.

83. No sentences for acts of torture or ill-treatment have been handed down by the Monegasque courts.

Reply to the questions raised in paragraph 22 of the list of issues

84. As mentioned in the previous review, there is no specific compensation system for victims of torture in Monegasque law. Ordinary law is therefore applicable to them.

85. As part of the Romano-Germanic tradition, the legal system in Monaco upholds the principle of full reparation and consequently the principle of assessing the most appropriate and fairest compensation possible for the harm suffered. The damages awarded do not in any way constitute a type of civil punishment or civil fine in addition to the criminal sentence already handed down.

86. Once the damages have been determined, the judge proceeds to consider whether harm was inflicted and whether it was direct. The judge also confirms that a causal link exists between the harm suffered and the damages to be paid.

87. The judge, who remains independent when examining the damages, may be guided by case law or the regularly published lists of assessments of harm, particularly those concerning bodily injury, thereby basing his or her assessment on a national statistical frame of reference.

88. The judge takes a decision on that basis regarding the amount of damages claimed by the victim. However, the sometimes significant differences that may arise between one court and another or one judge and another cannot be ignored.

89. In order to try to eliminate these differences, a higher court may intervene on appeal to increase or decrease the damages awarded by the first judge and thus go some way to standardizing the compensation awards among different courts and judges, ensuring greater equality before the law.

90. In this regard, it should be noted in conclusion that this action to enforce a right in personam, which is available only to the victim, may restrict the scope of the judge's assessment. Under the rules of civil procedure, the judge may never exceed the requested amount, even if the amount is a symbolic one of only 1 euro, as is sometimes the case.

91. There is no damages commission or guarantee fund.

92. The right of a victim of an offence, regardless of the nature of that offence (whether it is a petty offence, a misdemeanour or a felony), to appeal for compensation derives from the first paragraph of article 2 of the Code of Criminal Procedure, which states that "anyone who has personally suffered harm directly caused by an act constituting an offence may bring an action for compensation".

93. An action for compensation, admissible, "without distinction, for all categories of damage, both material and physical or mental", may be heard by the court at the same time and before the same judges as the criminal proceedings (Code of Criminal Procedure, art. 3). This illustrates the two facets of the criminal proceedings mentioned above.

94. Article 73 of the Code of Criminal Procedure makes a key clarification by stating that "any person harmed by a felony, a misdemeanour or a petty offence, or permitted under article 68 to lodge a complaint on behalf of someone else, may enter a claim for damages before the competent court, in any case until the hearing is terminated". This is an interesting option when compared with practice in other States, where the victim must formally enter such a claim before any substantive proceedings have begun. This noteworthy provision is very advantageous for the victim, but it raises questions about possible threats to the delicate balance between the victim's right to compensation and the defence rights of the accused, including the adversarial principle and the right to a fair trial. The judge must always protect those rights, by ordering an extension of the proceedings if necessary.

95. Another noteworthy provision that is favourable to the victim concerns private prosecution; that is, when the victim brings the action on his or her own initiative. The second paragraph of article 75 of the Code of Criminal Procedure provides that, in cases of misdemeanours or petty offences, "the prosecuting party shall be deemed to be a civil party by the mere fact of bringing the case" against the offender before the competent court. When a case is brought to court in this way, the victim is not required to formally state that he or she wishes to enter a claim for damages.

96. In addition to the submission of a claim for damages in due form – which generally involves an expression of intent – two other conditions must be met for the plaintiff to receive compensation:

- The perpetrator of the offence must be convicted by the criminal court.
- Real and direct harm must have been caused.

97. Regarding the requirement that the perpetrator must be convicted, a noteworthy exception to this requirement is provided for by article 392 of the Code of Criminal Procedure, which states that: "In the case of a dismissal (i.e. acquittal), the party claiming damages may, in relation to the same acts, request compensation for harm on the basis of a fault committed by the accused other than the fault cited in the charge, or on the basis of a provision of civil law." This action is brought before the same judge who heard the criminal proceedings. This is an essential guarantee for the victim. While it is an exception to the system unifying criminal and civil offences, it helps to avoid certain injustices.

98. Article 16-2, of Act No. 1.355 of 23 December 2008 on associations and federations provides that an accredited association "may bring legal proceedings to defend common interests related to its activities without having to give proof of direct and personal harm".

99. Act No. 1.382 on specific forms of violence authorizes some associations, such as those combating discrimination, sexual violence, child abuse and sexual violence against children, to exercise, with the agreement of the victim, their right to sue for damages (Act establishing article 2-1 of the Code of Criminal Procedure, art. 20).

Reply to the questions raised in paragraph 23 of the list of issues

100. Article 60-4 of the Code of Criminal Procedure guarantees the protection of the individual's dignity during police custody; the use of torture and ill-treatment is therefore prohibited.[3]

101. Hearings of persons held in police custody at the premises of the Police Department must be recorded on an audiovisual device or be considered null and void, in accordance with article 60-10 of the Code of Criminal Procedure. The recording may be consulted during the investigation or trial only if the written record of the hearing is contested, by order of the investigating judge or trial court judge, either of their own motion or at the request of the Public Prosecution Department or one of the parties. In this connection, evidence obtained through torture or ill-treatment would be inadmissible.[4]

102. The Monegasque courts have not been required to make decisions concerning evidence or testimony obtained through torture or ill-treatment.

[3] Article 60-4 of the Code of Criminal Procedure provides: "Police custody must be carried out in conditions that respect the dignity of the person.

Criminal investigation officers must ensure the safety of persons in custody, in particular by making sure that they are not in possession of anything that may endanger themselves or others.

When it is essential to carry out a full-body search of a person in police custody, as a security measure or for the purposes of the investigation, the decision must be taken by a criminal investigation officer and carried out by a criminal investigation officer of the same sex or, if this is not possible, by a police detective of the same sex as the person being searched.

When it is essential to carry out an intimate body search of a person in police custody, as a security measure or for the purposes of the investigation, the decision may be taken only by the public prosecutor or the investigating judge, who will appoint a doctor for the purpose (only one doctor is authorized to be asked to do so). This measure must be proportionate to the objective pursued. No evidence that is gathered improperly may be used as the sole basis for a conviction.

The person held in custody is also required to undergo all necessary identification and identity verification formalities."

[4] Article 60-10 of the Code of Criminal Procedure provides: "The hearing of a person held in police custody on the premises of the Directorate of Public Security shall be recorded on an audiovisual device, failing which it shall be considered null and void.

The recording may be consulted during the investigation or trial only if the written record of the hearing is contested, by order of the investigating judge or trial court judge, either of their own motion or at the request of the Public Prosecution Department or one of the parties.

After a period of five years from the date on which the public prosecution ceases, the recording is destroyed within one month."

Reply to the questions raised in paragraph 24 of the list of issues

103. Between 2015 and 2019 inclusive, 102 procedures were initiated by the police (in connection with complaints, reports submitted to the prosecutor's office and requests for judicial assistance) and classified under the heading of domestic violence, in line with the criteria set out in the Act of 20 July 2001 relating to specific forms of violence, which correspond to violence relating to an existing or former household. Only one investigation into marital rape was carried out in 2017.

Statistics of the Directorate of Judicial Services

104. In 2019, 33 cases of violence against women were recorded, as follows:

- In 60 per cent of cases, the violence was physical.
- In 25 per cent of cases, the violence was sexual, but in no case was it between spouses.
- The other cases involved psychological violence or harassment.
- A total of 58 per cent of the cases involved violence committed by a spouse or former spouse.
- With regard to the legal action taken, four sentences were handed down for offences committed during the year (one 6-month prison sentence, two 4-month suspended prison sentences with probation, and one fine), and 10 cases were dismissed.

105. Between January 2020 and the time of writing, 22 cases dating from 2019 were still open, including:

- Six judicial investigations
- Two that were the subject of an official report submitted to France (where the offences were committed)

106. The following legal action was taken in relation to these 22 cases:

- Seven sentences, including: one 6-month prison sentence, two 3-month suspended prison sentences, two 5-month suspended prison sentences with 2 years' probation, and two fines
- One official warning
- Five dismissals (because of insufficient grounds, including one where no complaint was lodged)

107. A total of 24 proceedings were initiated between 1 January 2020 and 30 November 2020, of which:

- 75 per cent involved physical violence
- 21 per cent involved psychological or sexual harassment
- 4 per cent involved sexual violence

108. The acts of violence were committed:

- By the spouse or former spouse in 75 per cent of cases
- By a superior, an acquaintance or an unknown perpetrator in other cases

109. The following legal action was taken:

- Three official reports were submitted to France (where the offences were committed).
- Ten cases are still under investigation, including one in which a removal order was issued by the court of first instance.
- Nine cases were dismissed (one because the facts were not proved, one because the complaint was withdrawn, one because the perpetrator was unidentified – the acts were committed on social media – and six because the offence had not been sufficiently defined).

- One public prosecution was discontinued after the perpetrator was admitted to a psychiatric ward.
- One 8-month suspended prison sentence with 2 years' probation and a ban on making contact was handed down.

110. The following legal action has been taken in 2020:

- One case of domestic violence with rape was registered and dismissed because the offence had not been sufficiently defined.
- One 5-year prison sentence, with an arrest warrant, was handed down in October 2020 for acts of indecent assault without violence committed against a minor under the age of 16 years by an ascendant, for acts committed in 2016 and reported in 2017.

Reply to the questions raised in paragraph 25 of the list of issues

111. Trafficking in persons is punishable under article 8 of Sovereign Ordinance No. 605 of 1 August 2006 implementing the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000. This article applies specifically to exploitation in the form of prostitution and any other form of sexual exploitation.[5]

112. The article also provides that when the victim is under the age of 18 years, he or she is considered to be a child and the offence is constituted with regard to him or her by the mere fact of his or her having been recruited, transported, transferred, harboured or received, even if one of the means set out in the first paragraph is not used. It further provides that the offence of trafficking is persons is constituted even if the victim has given his or her consent.

113. Other relevant anti-trafficking laws have been adopted, such as Act No. 1.344 of 26 December 2007 on the strengthening of penalties for felonies and misdemeanours against children and Act No. 1.382 of 20 July 2011 on the prevention and punishment of particular forms of violence.

114. A committee for the promotion and protection of women's rights was established pursuant to Sovereign Ordinance No. 7.178 of 25 October 2018. Under article 2 of this Ordinance, the purpose of the committee is to monitor and evaluate national policies and measures taken to promote equality between women and men and to prevent and combat all forms of violence and discrimination against women, including those covered by the Council of Europe Convention on Action against Trafficking in Human Beings concluded in Warsaw on 16 May 2005. One of the committee's tasks is to coordinate the collection and analysis of relevant data and the dissemination of the results obtained.

115. The Association for the Support of Victims of Crime was established under Act No. 1.382 of 20 July 2011 on the prevention and punishment of specific forms of violence. A 24-hour hotline was launched in 2017.

[5] Article 8 of Sovereign Order No. 605 of 1 August 2006 states: "The offence of trafficking in persons is constituted by the recruitment, transport, transfer, harbouring or receipt of a person:

By means of the threat or use of force or other forms of coercion, such as kidnapping, fraud, deception, abuse of authority or abuse of a situation of vulnerability

Or by means of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, including prostitution or any other form of sexual exploitation, slavery or practices similar to slavery, forced labour or service, servitude or the removal of organs

The offence of trafficking in persons is constituted even if the victim has given his or her consent.

When the victim is under the age of 18 years, he or she is considered to be a child and the offence is constituted with regard to him or her by the mere fact of his or her having been recruited, transported, transferred, harboured or received, even if it does not involve any of the means set out in the first paragraph."

116. The Association provides legal support to victims of violence and works closely with the Bar Association to ensure that cases are dealt with more quickly. Victims received by the Association are referred to the Maison des avocats (Lawyers Centre) for legal assistance while those who go to the Maison des avocats or the Palais de Justice (courthouse) are informed about the Association and the services that it provides by means of flyers and other materials. The Association can also help victims with administrative and legal procedures.

117. No cases of trafficking in persons have come before the Monegasque courts.

118. As a party to existing international legal instruments on trafficking at both the United Nations and the Council of Europe levels, Monaco has set up a working group to bring together relevant government departments with a view to drafting a coordination plan to support victims of trafficking, thereby ensuring optimum treatment for alleged victims of the offence. The purpose of the draft plan is to facilitate the identification of acts of trafficking and to provide all the relevant information to ensure that victims receive the protection and help that they need. The work carried out by this working group is ongoing.

Reply to the questions raised in paragraph 26 of the list of issues

119. See the reply to the questions raised in paragraph 18.

General information on other measures and developments relating to the implementation of the Convention in the State party

Reply to the questions raised in paragraph 27 of the list of issues

120. A study of the impact of this Convention has been carried out by government departments and the Government is currently considering the follow-up action to be taken.

Reply to the questions raised in paragraph 28 of the list of issues

121. The Government made the declaration concerning the competence of the Committee to consider collective complaints under article 22 of the Convention when it deposited the instrument of accession to the Convention on 6 December 1991.

Reply to the questions raised in paragraph 29 of the list of issues

122. Since 2015, the Government has adopted Act No. 1.478 of 12 December 2019 on the amendment of certain provisions relating to penalties.

123. This law introduced alternative penalties to imprisonment (day fines, community service), developed existing types of reduced sentencing (suspended sentences, probation and sentences in instalments) and established new types (new measures for enforcing sentences in instalments, semi-detention and work release) to better take into account the family, social and medical circumstances and, more broadly, the personality of convicted offenders.