



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

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

MONACO

1. The Committee considered the second periodic report of Monaco (CAT/C/38/Add.2) at its 596th, 599th and 609th meetings (CAT/C/SR.596, 599 and 609), held on 5, 6 and 13 May 2004, and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes with satisfaction the second periodic report of Monaco, which is broadly consistent with the Committee's general guidelines. It notes, however, that the report was submitted five years late and contains little specific information on how the Convention is being implemented. It is pleased that the State party sent a high-level delegation which provided clear answers to the questions put to it and evinced a spirit of frank cooperation.

B. Positive aspects

3. The Committee notes with satisfaction:

- (a) The absence of any allegations that the State party has violated the Convention;
- (b) The fact that the State party is currently becoming a member of the Council of Europe;

(c) The reform of the Criminal Code and the Code of Criminal Procedure to bring them into line with European human rights standards;

(d) The contributions made every year since 1994 to the United Nations Voluntary Fund for Victims of Torture.

C. Subjects of concern

4. The Committee expresses concern about:

(a) The lack of a definition of torture in criminal law that covers all the constituent elements contained in article 1 of the Convention;

(b) The lack of any provision expressly prohibiting the invocation of exceptional circumstances or orders from a superior officer or a public authority as a justification for torture;

(c) The weakness of the safeguards associated with the expulsion and return (refoulement) of foreigners, inasmuch as there appears to be no clause on non-refoulement in Monaco's domestic law that meets the requirements of article 3 of the Convention and appeal to the Supreme Court does not automatically have suspensive effect;

(d) The narrow scope of articles 228 and 278 of the Criminal Code, which do not fully meet the requirements of article 4 of the Convention, since they relate only to murder committed by means of acts of torture or accompanied by acts of cruelty and to torture committed in the course of unlawful arrest or abduction;

(e) The fact that persons in custody are not entitled to the assistance of counsel, there being no provision for such assistance until they first appear before the investigating magistrate, and can inform their next of kin that they have been detained only with the magistrate's authorization;

(f) The lack of explicit provisions requiring a register of individuals held in police premises, even if such registers are actually kept;

(g) The absence of any mechanism to monitor physical prison conditions and how prisoners are treated in French penitentiary establishments.

D. Recommendations

5. The Committee recommends that the State party:

(a) Establish in its domestic criminal law a definition of torture that is fully consistent with article 1 of the Convention;

(b) Enact in its domestic law a prohibition on the invocation of exceptional circumstances or orders received from a superior officer or public authority as a justification of torture;

(c) Respect the principle laid down in article 3 of the Convention, including in cases involving the expulsion and return (refoulement) of foreigners, and establish that appeals against deportation orders which mention the risk of torture in the country of destination automatically have suspensive effect. The Committee, noting that individuals are expelled or returned only to France, reminds the State party that it must satisfy itself that no one will be returned to a third country where there might be a risk of torture;

(d) Guarantee the right of individuals in detention to have access to a lawyer of their choosing and inform their next of kin within the first few hours of being detained;

(e) Adopt regulations requiring the use of registers in police premises in conformity with the relevant international agreements, particularly the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(f) Monitor physical prison conditions and how prisoners are treated in French penitentiary establishments;

(g) Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whose prevention objectives are very important.

6. The Committee recommends that the present conclusions and recommendations, and the summary records of the meetings at which the State party's second periodic report was considered, should be widely disseminated in the country.

7. The Committee requests the State party to provide within one year information on the action it has taken on its recommendations contained in paragraph 5 (c), (d) and (f) above.

8. The Committee, considering that the second periodic report of Monaco also covers the third report due on 4 January 2001, requests the State party to submit its fourth and fifth reports in a single document on 4 January 2009.
