



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

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Forty-sixth session

Summary record of the first part (public)* of the 1003rd meeting

Held at the Palais Wilson, Geneva, on Monday, 23 May 2011, at 3 p.m.

Chairperson: Ms. Gaer (Vice-Chairperson)

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1003/Add.1.

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The meeting was called to order at 3 p.m.

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

Fourth and fifth periodic reports of Monaco (continued) (CAT/C/MCO/4-5)

1. *At the invitation of the Chairperson, the members of the delegation of Monaco resumed places at the Committee table.*

2. **Mr. Fillon** (Monaco), replying to questions the Committee had asked at the previous meeting, said that the delegation would transmit to the competent authorities the wish expressed by the Committee that the State party include a definition of torture in its legislation, which, in principle should pose no problem. Acts of torture were currently covered by such categories of offence as aggravated assault, violence, assault and battery and other offences. Acts of cruel, inhuman and degrading treatment were expressly prohibited under article 20 of the Constitution and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been given the force of law in the State party. Under article 228 of the Criminal Code, the use of torture or acts of cruelty constituted aggravating circumstances in cases of murder and incurred a heavier penalty. Article 8 of the Code of Criminal Procedure was fully in line with the provisions of the Convention.

3. A subordinate not only had the right not to obey an order by a superior or public authority to commit a reprehensible act, but also had the duty to report such incidents to a higher authority. Moreover, under article 61 of the Code of Criminal Procedure, public servants and officers who, in the exercise of their functions, became aware of a crime or offence were duty-bound to report the matter to the principal public prosecutor and to make known any information or documents that could be of assistance in subsequent investigations. Articles 127 to 130 of the Criminal Code on the abuse of authority were fully compliant with articles 12 and 13 of the Convention and provided for severe penalties, ranging from 1 to 10 years' imprisonment, for persons in positions of public authority who issued illegal orders.

4. New instructions on the use of handcuffs issued on the basis of recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment were being respected. Moreover, there had been no reports of torture or ill-treatment in the State party.

5. The bill designed to deal with specific forms of violence, which should be passed before the end of the current year, provided for special training of all relevant personnel, including judicial officers, the police, medical professionals and social workers. Article 42 of the bill stipulated that victims of violence had the right to be fully informed of their entitlement to claim compensation for harm suffered and to receive assistance from the relevant State services. Victims had the right to free and anonymous access in all medical establishments to brochures setting forth their rights. Victims with disabilities were equally entitled to full access to that information in the manner best adapted to their disability. The State party's health services had established support centres for victims of violence. They could help with housing issues, financial assistance, professional support and family mediation. Other support units for victims of violence had been established in the Directorate of Public Security.

6. The Minors and Social Welfare Section, also run by the Directorate of Public Security, conducted all criminal procedures involving child victims, as well as having broad judicial and administrative responsibilities for minors and vulnerable adults. It worked with social services in the area of domestic violence and constituted a key point of contact with all stakeholders working with young people, including schools. It also worked on

prevention and awareness-raising with the Directorate of National Education, Youth and Sports, and the Directorate of Health and Social Affairs. Various NGOs, including the Monegasque Red Cross, Association Action Innocence Monaco, Association l'Enfant d'abord and the Union des Femmes Monégasques, also worked with victims of violence.

7. Persons sentenced to imprisonment in Monaco and whose terms still had at least six months to run at the time of final sentencing were, under article 14 of the Convention on Good-Neighbourliness between the State party and France, usually transferred to French prisons. Thirty-five prisoners had been transferred over the previous five years. With a view to monitoring the fate of those prisoners more closely, the State party intended to appoint a judge to make regular inspections of French prisons that housed convicts sentenced by Monegasque courts. Reports of those visits would be sent to the relevant French authorities. Monaco retained responsibility for pardons, the reduction of sentences and release on parole, but complaints by prisoners with regard to the conditions of detention fell within the jurisdiction of the French authorities.

8. The State party's short-stay prison (*maison d'arrêt*) was used to hold persons in pretrial detention and convicts serving short sentences. Detainees facing charges that could lead to a sentence warranting transfer to a French prison were informed of that fact in a language they could understand upon their arrival at the short-stay prison.

9. Convicts serving long sentences had access to facilities in French prisons that were lacking in the short-stay prison, such as the possibility of carrying on a trade that could help them resettle in society upon their release. The case of a British national transferred from the State party to a French prison, raised by the Committee at the previous meeting, was a good example of the advantages of the transfer system.

10. The State party could, if the Committee thought it necessary, consider acceding to the Council of Europe Convention on the Transfer of Sentenced Persons. Given the low number of prisoners concerned, however, and the fact that, by so doing, the State party would relinquish its discretionary powers with respect to pardons, reduction of sentences and release on parole, it had seemed thus far that the current system was appropriate and in the best interests of the transferred prisoners.

11. The conditions of detention in the short-stay prison were good but the State party had taken measures to improve them in response to recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to the State party. Changes included: the establishment of open interview rooms and a cell specifically for women with children; the option offered to new arrivals to choose a single or shared cell; improved possibilities of communication with the outside, including by telephone under certain circumstances, and more frequent visits by doctors, including a psychologist.

12. When a person was taken into police custody, the judicial police reported that fact to the principal public prosecutor's office. Video recordings were made of places of police custody and were available to the courts should questions about the conditions of police custody arise. The right of detainees held in police custody to be visited by a doctor, whether assigned from a duty rota or of their own choice, was assured.

13. Under the Code of Criminal Procedure, as amended by Act No. 1.343 on justice and liberty, the maximum period of pretrial detention in criminal cases was one year, although the investigating judge could renew it for up to six months at a time, to a total period not exceeding four years. For ordinary offences, the initial period was limited to 4 months, which could be extended by periods of up to 4 months to a total of not more than 30 months. Judges could limit communication by detainees with third parties, except their lawyers and family members. The number of people held in pretrial detention and the period of their detention had fallen steadily since Act No. 1.343 had entered into force.

14. With regard to a ruling by the European Court of Human Rights against Monaco on a complaint of excessively long pretrial detention, he noted that it was the only adverse ruling made by the Court against the State party out of more than 40 similar complaints filed. The complaint had arisen from an especially complex fraud case involving millions of euros, which had required considerable time and resources to resolve. While the Court had estimated damages for the aggrieved party at €6,000, the State party had offered compensation of €15,000.

15. Turning to requests for the extradition of persons present in the territory of the State party, he drew the attention of the Committee to articles 2 and 4 of Act No. 1.222 (CAT/C/MON/4-5, para. 20) and noted that the authorities responsible for extradition made extensive enquiries into the human rights situation in the requesting State as well as paying close attention to the relevant case law of the European Court of Human Rights. Ultimately, however, it was up to the person whose extradition had been requested to establish that he or she ran a direct and personal risk of being subjected to ill-treatment or torture if extradited to the requesting State.

16. The State party relied on the help of the French Office for the Protection of Refugees and Stateless Persons (OFPRA) when dealing with the rare applications for asylum lodged on its territory. An appeal to the Supreme Court against a deportation order had suspensive effect if combined with a successful motion to stay execution. That such suspensive effect was not automatic did not deprive persons of effective protection, because they had the right to have proceedings suspended until a decision had been made on the details of their case. It was not necessary to be resident in the State party in order to lodge appeals before the courts. The only requirement for non-residents was the selection of a domicile at the address of a lawyer resident in Monaco. Lawyers aged at least 30 with a minimum of five years' experience at the Bar were eligible to become defence lawyers, who were able to defend clients before courts of all jurisdictions. Ordinary lawyers could defend clients only before criminal courts, district courts and the Labour Court.

17. According to article 2, paragraph 3, of the Code of Criminal Procedure, anyone who had personally suffered harm directly caused by an act constituting an offence was entitled to lodge a claim for compensation. Under articles 73 to 75, such persons included the heirs of deceased victims. Article 1229 of the Civil Code clearly established the perpetrator's responsibility to compensate victims, meaning that all those with a legitimate claim, including the victim's heirs, could demand compensation for moral prejudice suffered.

18. The State party had signed the Convention on the Rights of Persons with Disabilities in 2009 and was working towards its ratification. It had also signed the Rome Statute of the International Criminal Court in 1998. Subsequent studies had revealed, however, that the Constitution, Criminal Code and Code of Criminal Procedure would need to undergo reform on an unprecedented scale to make them fully compliant with the Statute. The State party did not envisage undertaking such a process.

19. Given that the State party had one short-stay prison in which an average of 30 detainees serving short sentences were held each year, that minors held in detention did not come into contact with adult detainees and received education while in detention, and that no claims of ill-treatment or poor detention conditions had been lodged in decades, accession to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been considered unnecessary. The establishment under the Optional Protocol of a body for the purposes of monitoring prisons would be out of proportion to the needs of the State party.

20. The Labour Inspectorate made regular workplace inspections in order to ensure that labour legislation was respected, to combat illegal employment and to prevent the exploitation of foreign workers who enjoyed full access to health care and education.

Moreover, specific measures were aimed at helping more vulnerable foreigners to access housing. Indeed, the measures offered foreign workers in the State party more protection than the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was ill-suited to the needs of the State party.

21. Turning to the issue of corporal punishment, he said that Monegasque law provided for the protection of children and the prevention of violence against them. Punishment for violence against children, including corporal punishment, was set out in the Criminal Code, and supplemented by Act No. 1.344 on strengthening the prevention of crimes and offences against children. Schools, hospitals, sports associations and youth associations were competent in identifying violence against children. Any violence identified was reported to the Government Councillor for Internal Affairs, or in urgent cases to the Public Prosecutor, who could order placement in a local shelter if the child's safety or health were at risk.

22. A draft law on the prevention of violence was currently under consideration, which would significantly increase penalties for domestic violence. The draft provided for victim protection through injunctions that prevented the perpetrator of violence from coming into contact with his or her victim. The draft also provided for the development of professional training for those working with victims of violence, and for the establishment of a public awareness-raising programme on violence against children.

23. There were many foreign workers in Monaco, since around 36,000 people who lived in nearby regions of France and Italy crossed the border daily to go to work. Public administration positions were also open to non-Monegasque citizens.

24. Internment in a psychiatric institution could be ordered by an administrative or judicial decision, or could be requested by psychiatric patients themselves. In all cases, the judicial authorities, on the basis of the medical information provided, had to issue a decision on the duration of internment. No complaints had been registered since the visit of the European Committee for the Prevention of Torture.

25. With regard to discrimination on grounds of race or sexual orientation, punishment for discrimination and crimes of incitement to hatred was set out in the Criminal Code. A recent conviction for discrimination on grounds of sexual orientation had resulted in a sentence of five days' deprivation of liberty and a payment of €5,000 in damages. Work was currently under way on an amendment to the Criminal Code to criminalize incitement to racial discrimination and to cite racism, anti-Semitism and xenophobia as aggravating circumstances.

26. Given Monaco's size and the number and nature of petitions filed with the Mediator, it did not seem immediately necessary to create a national human rights institution.

27. **Ms. Belmir** (First Country Rapporteur) asked whether the fact that the explicit consent of a detainee was required prior to transfer to a French detention facility had been set down in law. She wished to know whether Monaco intended to sign and ratify the European Convention on the Transfer of Sentenced Persons. She expressed concern that refugee status was granted by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), not by a Monegasque authority, and asked what the legal implications of that system were in the event of differences between French and Monegasque legislation.

28. Turning to the crime of torture, she asked what legal measures were in place to address crimes committed by Monegasque citizens outside the territory of Monaco, given that the means of addressing criminal activity within the territory of Monaco was insufficient. She asked how the administration of justice was managed for minors in conflict with the law.

29. **Mr. Gaye** (Second Country Rapporteur) asked what the status of the Mediator attached to the Minister of State was, what his or her responsibilities were and how his or her functions were performed. He requested clarification on whether Monegasque criminal law included a specific definition of terrorism, since that would serve to better protect human rights and fundamental freedoms.

30. **Mr. Mariño Menéndez** said that since refugee status in Monaco was granted by OFPRA, he wondered if that Office was also responsible for withdrawing refugee status under the Geneva Convention and whether it did so in line with French or Monegasque legislation. He wondered whether refugees in Monaco were granted the right to reside and work in France, in Monaco, or in both countries. He wished to know what consular protection was provided for prisoners who had been transferred to French prisons.

31. **Ms. Kleopas** said, with regard to the transfer of detainees to French territory, that it was difficult for the Committee to monitor a State party's fulfilment of its obligations towards detainees when they were transferred to another State party. She asked what progress had been made towards ensuring that corporal punishment in any setting was prohibited by law.

32. **Mr. Bruni** asked what the competence of the courts was with regard to cases of torture occurring on Monegasque territory, and whether the Monegasque authorities had considered implementing the recommendation of the European Committee on the Prevention of Torture to specify penalties for the crime of torture under criminal law.

33. **Mr. Fillon** (Monaco) said that the granting of refugee status by OFPRA was the result of an agreement concluded between France and Monaco. The Office intervened at the request of the Monegasque authorities. The consideration of applications for refugee status required competences that the Monegasque authorities did not have. That process was separate from deportation or extradition processes, which were undertaken in the name of State security. The agreement with France was intended to guarantee the maximum availability of recourse to asylum-seekers. The question of transfer of detainees to French detention facilities was a separate issue. It would not be in the best interests of detainees to remain in detention in Monaco, since the available facilities were not appropriate for long-term detention. The granting of refugee status, deportation and the transfer of detainees were three separate legal issues.

34. With regard to minors in conflict with the law, a whole range of personalized, targeted measures were in place to protect minors. The implementation of those measures was monitored by judges and social workers, and the main aims of those measures were to protect public security and to guarantee the best interests of the minor.

35. **Mr. Ravera** (Monaco) explained that the Mediator was responsible for dealing with all kinds of legal cases before they became contentious. Any person in Monaco could approach the Mediator, with a view to reaching an amicable out-of-court settlement. Recent petitions to the Mediator had included cases of deportation, revocation of residence permits, professional cases including unfair dismissal, personal cases, and social cases such as housing disputes. Many cases could be resolved amicably, through effective administration and goodwill on the part of the State and the complainants. There were often favourable outcomes for the petitioners, and the mediation process enabled judicial errors to be recognized.

36. The Human Rights Unit was responsible for liaising with the European Court of Human Rights and monitoring the implementation of its jurisdiction in Monaco. The Head of the Unit was consulted with regard to all draft legislation pertaining to human rights, in order to ensure that it was as closely in line as possible with the international and European human rights law to which Monaco was party. The Unit was responsible for providing human rights training for judges and lawyers, with the participation of officials from the

Council of Europe and the European Court of Human Rights, who could answer specific questions about European human rights law. The Unit also provided human rights training for police officers, to ensure they were aware of and respected human rights principles when dealing with the public. It had also launched a Human Rights Day to raise awareness among secondary school students, which included seminars to teach them about their rights.

37. He said that he was responsible for defending Monaco before the European Court of Human Rights. Monaco had been subject to a partial and technical condemnation under article 3 of the European Convention on Human Rights on a very complex issue relating to the duration of a pretrial detention. The issue needed attention but there were other priorities.

38. **Mr. Fillon** (Monaco) said that the law on terrorism dated back to 2006, but that Monaco had done its best to adapt its definition of terrorism to current circumstances. People detained on terrorist charges benefited from the same rights and guarantees as those accused of ordinary offences.

39. According to an agreement with France, requests for refugee status made in Monaco were referred to OFPRA and Monaco abided by OFPRA's decision to grant or withdraw that status; that applied to the right to reside and to work. He could answer only about the working of the agreement in Monaco, not in France.

40. Both remand and convicted prisoners were entitled to consular protection from their countries of origin. A Monegasque citizen incarcerated in France would receive help from the Monegasque Consul. In the event of the transfer of prisoners, if a Monegasque citizen was transferred to France, custody passed to the French prison authorities; however, pardon, reduction of sentence and bail remained the prerogative of the Monegasque authorities, who were entitled to be informed of the status and location of the prisoner.

41. Monaco protected children from all forms of violence, in accordance with the Criminal Code and the 2007 Act No. 1344. A system of social and medical care had also been developed to protect children from the risk of violence in families and schools.

42. If a person was arrested in Monaco for torture committed outside the country, the Monegasque authorities could deal with the matter. By definition the Monegasque Criminal Code applied to Monaco, so it went without saying that crimes of torture committed within the country were punishable by the national authorities.

43. **Ms. Belmir** (First Country Rapporteur) sought further clarification about the distinction between cases of detainee transfer, requests for refugee status and refoulement. The transfer of detainees involved direct obligations between the two States concerned, but a juridical problem arose if — as could happen in the case of transfers between Monaco and France — the detainee was not a national of either of the two States. Likewise, the fact that the determination of refugee status was delegated to France and that the applicant could appeal only to the French courts raised another problem. Moreover, refoulement took place towards France irrespective of the nationality of the person concerned, so that those involved found themselves having to deal with a juridical system that was neither their own nor that of the country in which they had been arrested. Those questions needed to be addressed.

44. **Ms. Sveaass** asked whether the Human Rights Unit worked in coordination with the Mediator.

45. **Mr. Bruni** asked for further clarification regarding measures to combat acts of torture committed within Monaco. The report referred only to acts committed abroad by a person detained on Monegasque soil. He said that others shared his perplexity: the European Committee for the Prevention of Torture (CPT) had also noted that Monegasque legislation contained no explicit provision criminalizing acts of torture committed within

the national territory, and that the notion of torture was not specifically defined in the revised Constitution of 2002.

46. **Mr. Fillon** (Monaco) said that a distinction needed to be drawn between refugee status and refoulement. The former was a legal status whereas refoulement was a practical measure to protect public safety. The fact that refoulement took place only towards France was due exclusively to Monaco's geographical location. The number of people placed in psychiatric hospitals without their consent was very limited. A law existed to protect their rights.

47. **Mr. Ravera** (Monaco) said that his own job was purely juridical but that he did sometimes have occasion to contact the Mediator, or to meet with people whom he referred to the Mediator. In any case, the Government of Monaco operated on a very small scale and he was never far away from the Mediator.

48. **Mr. Fillon** (Monaco) said, in answer to the question raised by Mr. Bruni, that articles 218, 236 and 245 of the Criminal Code all had consequences for acts of torture. Nonetheless, the delegation had noted the request for clarification and would inform the authorities.

49. He expressed his thanks for the productive dialogue and said that his delegation would promptly submit a written document in answer to the questions raised.

The public part of the meeting rose at 4.55 p.m.