



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

Distr.
GENERAL

CAT/C/MCO/CO/4/Add.1
11 April 2006

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

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

**Comments by the Government of the Principality of Monaco* to the
conclusions and recommendations of the Committee against Torture**

[30 March 2006]

* In accordance with the information transmitted to the States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Introduction

1. The Committee against Torture considered the second periodic report of the Principality of Monaco (CAT/C/38/Add.2) on 5 and 6 May 2004.
2. The Committee published its conclusions and recommendations on 14 May 2004. After welcoming the fact 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”, it found that the Principality was broadly complying with the obligations of the Convention.
3. The Committee noted with satisfaction:
 - (a) The absence of any allegations that the Principality had violated the Convention;
 - (b) The fact that Monaco was in the process of 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 by Monaco to the United Nations Voluntary Fund for Victims of Torture.
4. In order to improve existing arrangements in the Principality for the implementation of the Convention, the Committee issued a number of recommendations in paragraph 5, namely, that the State party should:
 - (a) Establish in its domestic criminal law a definition of torture that was 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) Ensure that individuals were expelled or returned only to France and that no one would 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 were 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.

5. In paragraph 7 of its recommendations, the Committee requested the Principality of Monaco to provide, within one year, information on the action that it had taken on the recommendations contained in paragraphs 5 (c), (d) and (f).

6. The purpose of the present document is to notify the members of the Committee of the decisions and steps adopted by the Monegasque authorities in the light of the above-mentioned recommendations.

Additional information

Recommendation (c)

7. This recommendation is worded: “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.”

8. Article 3 of the convention in question, namely the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, states:

“1. No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

“2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

9. The Monegasque authorities are aware of this provision of the Convention. On the one hand, expulsions and returns are always effected from the territory of the Principality to the territory of the French Republic, since Monaco is geographically surrounded by French territory. France has been a party to the Convention since 1986. As it is bound by the same obligations as the Principality, persons expelled or returned to French territory are unlikely to be expelled or returned to a State where the risk of torture exists. Moreover, to date the Monegasque authorities have no knowledge of any persons being expelled or returned to a State where they would have been exposed to a risk of this nature.

10. In addition, bilateral agreements on extradition which have recently been signed by the Principality of Monaco with foreign States incorporate a provision authorizing the Monegasque authorities to turn down any request for extradition when there are substantiated reports or serious suppositions pointing to the existence of a risk that the person whose extradition is requested might be subjected to torture or cruel, inhuman or degrading treatment or punishment.

11. Thus, article 7.5 of the extradition treaty concluded between the Government of His Serene Highness the Prince of Monaco and the French Republic on 11 May 1992 stipulates that extradition may be refused “if, for humanitarian reasons, the handing over of the requested person might have exceptionally serious consequences for that person because of their age or state of health”.

12. Similarly, article 4.2 of the extradition treaty concluded between the Government of His Serene Highness the Prince of Monaco and the Government of Australia on 19 October 1988, lays down that extradition shall not be granted, “(b) when there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality or political opinion, or that that person’s position may be prejudiced for any of those reasons”.

13. Save where otherwise provided by a treaty, the applicable norm is article 6, paragraph 2, of Law No. 1.222 relating to extradition of 28 December 1999, which specifies that “Extradition may also be refused if the offence for which it is requested is subject to the death penalty under the law of the requesting State, unless this State gives assurances deemed adequate by the Principality that the person being prosecuted will not be sentenced to death or, if such a sentence has been passed, that it will not be executed or that the person being prosecuted will not be subjected to treatment that harms his or her physical integrity”.

14. Given the current norms of international and domestic law, expulsion and return measures decided by the Monegasque authorities are not, therefore, likely to expose the persons concerned to the kind of treatment prohibited by the Convention.

Recommendation (d)

15. This was to “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”.

16. Since the Monegasque authorities are aware that the provisions of the Code of Criminal Procedure are not consonant with the requirements of international standards, notably the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 10 December 1984, they have embarked on the procedure for amending incompatible provisions of the Code. The law reform process is, however, taking longer than initially anticipated.

17. The present version of the bill amending the Code of Criminal Procedure lays down that:

(a) Persons in police custody must be immediately informed of the acts under investigation, about which they are being questioned;

(b) Persons in police custody have the right to be examined by a doctor, who must express an opinion on whether they are fit enough to remain in custody;

(c) Persons in police custody may immediately have their close relatives or employer informed by telephone that they have been detained;

(d) Persons in police custody may, as soon as they are detained, ask to see a lawyer of their choosing or an officially appointed lawyer, who must be informed of the nature and presumed date of the offence and who, upon conclusion of the interview, the confidentiality of which is guaranteed, submits observations which are attached to the file;

(e) The record of the statement made by any persons held in police custody must state the date and time when custody commenced and, if appropriate, was extended, the date and time at which the persons in custody were informed of their rights and the date and time at which they availed themselves of their rights, the length of each period of questioning and the times at which they were able to eat and the date and time at which they were released or brought before the Attorney General. These entries must be initialled by the person held in custody and must be recorded in a special register.

18. Furthermore, Sovereign Ordinance No. 69 of 23 May 2005 (enclosed), regulating the prison of the Principality of Monaco, thoroughly revised the legal provisions governing the organization and functioning of the Principality's prison and, consequently, the legal rules covering persons detained in this prison, to bring them into line with international standards in this sphere.

Recommendation (f)

19. It is worded "Monitor physical prison conditions and how prisoners are treated in French penitentiary establishments".

20. Under article 14 of the Convention on good-neighbourliness between France and Monaco of 18 May 1963, persons who have been sentenced by Monegasque courts may be transferred to penal institutions in French territory to serve part of their custodial sentence there.

21. Such transfers concern only a few people. They may be justified either by the length of detention, or in order to bring the prisoner closer to the place of residence of his or her family or close relatives.

22. Under the above-mentioned article, prisoners are subject "to the system applied in these institutions, in accordance with the provisions of the Code of Penal Procedure". This provision is itself consistent with the general principle of the territoriality of national law, in this case, French law.

23. At the same time, persons imprisoned in France are not completely and irrevocably excluded from the effects of the Monegasque authorities' decisions, since article 14 also provides that "Pardons or reductions of sentence granted by His Serene Highness the Prince of Monaco shall be communicated through the diplomatic channel to the French Government, which shall make the necessary arrangements to see that those measures are carried out". Conversely, the same article states that "the French authorities shall indicate to the Government of Monaco, as appropriate, which prisoners, in its view, are deserving of pardon or parole and which minors can, based on their behaviour in the reform centres, be granted a provisional release or any other favourable treatment". In this case, the decision rests with the Monegasque authorities.

24. Nevertheless, motivated by its concern at “The absence of any mechanism to monitor the treatment and physical conditions of detention of foreign prisoners who have been sentenced by Monegasque courts to long terms of imprisonment in French penitentiary establishments”,* the Committee advocates that physical prison conditions and treatment should be monitored.

25. First, this recommendation entails the need to determine the precise elements of monitoring the treatment and physical conditions of detention from the point of view of the above-mentioned provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

26. Second, this recommendation means that any arrangements for monitoring treatment and physical conditions of detention must be compatible with respect for each State’s law and the exercise of its authority.

27. Given these two requirements, the Monegasque authorities have embarked on consultations aimed at reconciling both States’ sovereignty with the action recommended by the Committee, since the recommendation must of necessity be implemented by means of an inter-State agreement and not through measures unilaterally adopted by the authorities of one State. Owing to the complexity of the process of setting up this mechanism, the period of time needed to complete it will be lengthy and, at the outset, impossible to predict.

Conclusion

28. As the Committee noted in the conclusions that it drew from its consideration of the State party’s report and as the decisions and measures adopted by the Monegasque authorities show, the latter are committed to honouring the international undertakings which the Principality of Monaco has given. To this end, they are adapting domestic law rules to international legal norms, which take precedence in the legal order of the Principality of Monaco.

* Translator’s note: Part of the translation of this subparagraph appears to be missing in the English version of CAT/C/CR/32/1.