



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

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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Sixth periodic reports of States parties due in 2015

Monaco*,**

[Date received: 24 July 2015]

1. For the purposes of drafting this document, the Department (Ministry) of Foreign Affairs and Cooperation of the Principality of Monaco centralized the information submitted by the Department of Social Affairs and Health, the Department of the Interior, the Directorate of Legal Affairs and the Directorate of Judicial Services. The legislative texts mentioned in the document may be consulted at www.legimonaco.mc.

Article 1

Reply to the issues raised in paragraph 1 of the list of issues prior to submission of the sixth periodic report of the State party (CAT/C/MCO/QPR/6)

2. Firstly, it should be noted that Monegasque domestic law already addresses the concept of torture at various levels of its legal order.

- Article 20¹ of the Constitution expressly sets forth the prohibition of cruel, inhuman or degrading treatment;
- Furthermore, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was brought into force for Monaco by

* The combined fourth and fifth periodic reports of the Principality of Monaco are contained in document CAT/C/MCO/4-5; they were considered by the Committee at its 1000th and 1003rd meetings held on 20 and 23 May 2011 (CAT/C/SR.1000 and 1003). For their consideration, see the Committee's conclusions and recommendations (CAT/C/MCO/CO/4-5).

** The present document is being issued without formal editing.

¹ "No penalty may be introduced or applied except by law. Criminal legislation must ensure respect for human personality and dignity. No one may be subjected to cruel, inhuman or degrading treatment. The death penalty is abolished. Criminal laws may not have retroactive effect."



Sovereign Order No. 10542 of 14 May 1992 and is therefore fully part of the body of Monegasque legal instruments which Monegasque judges may invoke;

- Article 8, paragraph 2, of the Code of Criminal Procedure, which establishes that the courts have jurisdiction over cases of torture committed abroad, makes reference to the definition contained in article 1 of the Convention. It states: “In addition to cases in which the jurisdiction of the Monegasque courts arises from the sovereign orders adopted to give effect to international conventions, the following may also be prosecuted and tried in the Principality: [...] 2. Anyone who commits, outside the territory of the Principality, acts classified as crimes or offences that constitute torture under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, if he or she is present in the Principality”;
- Additionally, the Monegasque Criminal Code provides that certain crimes and offences may be classified or punished more severely if acts of torture have been committed.

3. Article 228 of the Criminal Code on voluntary homicide thus provides that “anyone who uses methods of torture or commits acts of cruelty in the commission of a crime shall receive the same punishment as a person found guilty of murder”.

4. Article 278 of the Criminal Code on detention and abduction provides that “Those found guilty shall be punished with the maximum fixed-term prison sentence in each of the following three cases: ... 3. If [the victim] is subjected to torture. The penalty shall be life imprisonment if, as a result of torture, the person suffers mutilation, amputation or loss of the use of a limb, blindness, loss of an eye or some other serious and permanent disability.”

5. Furthermore, articles 236² and 245³ of the Criminal Code provide for a harsher penalty for violence and intentional assault not classified as homicide and other intentional crimes and offences if they have been followed by “mutilation, amputation or deprivation of the use of a limb, blindness, loss of an eye or some other serious and permanent disability”.

6. Additionally, article 247⁴ of the Criminal Code provides for the maximum fixed-term prison sentence for the crime of castration and attacks on the genital integrity of females.

² “Any individual who intentionally inflicts injury or commits any kind of assault that causes illness or incapacity for work lasting more than eight days shall be sentenced to 1 to 5 years’ imprisonment and [a fine of €18,000 to €90,000].

If the aforementioned acts of violence result in mutilation, amputation or the loss of function of a limb, blindness, the loss of an eye or any other serious permanent disability, the perpetrator shall be sentenced to a term of 5 to 10 years’ imprisonment.

If intentionally inflicted injuries cause death, but there was no intent to kill, the perpetrator shall be sentenced to a term of 10 to 20 years of imprisonment.”

³ “The sentence shall be 10 to 20 years’ imprisonment if the acts covered by article 243 (intentional assault or injury not classified as homicide and other intentional crimes and offences) were followed by mutilation, amputation, the loss of function of a limb, blindness, the loss of an eye or another serious permanent disability, or if they cause death, but there was no intention to kill [...]”.

⁴ “Any individual guilty of the crime of castration shall be sentenced to the maximum fixed-term prison sentence. If such an act leads to death, the perpetrator shall be sentenced to life imprisonment.

The same sentences shall be applicable to any individual who attacks the genital integrity of a female by total or partial removal, including excision, infibulation or any other mutilation.

The provisions of this article are not applicable to genital operations carried out in accordance with the law, professional regulations and the ethical principles governing pharmaceutical, medical and surgical activities.”

7. Secondly, it should be noted that courts employ a liberal interpretation of the term “torture and cruel, inhuman or degrading treatment” so as to ensure that the application of Monegasque legislation incorporates the definitions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of the International Covenant on Civil and Political Rights.

8. It should also be noted that the definition contained in the Convention is part of the domestic legal order and that the case law of the highest courts (the Supreme Court, the Court of Review and the Court of Appeal) demonstrates that they do not hesitate to refer directly to covenants and conventions.

9. Lastly, in practice, no complaint or report of acts of torture or other cruel, inhuman or degrading treatment or punishment has been recorded in recent years.

10. Only one sentence, of 15 years’ imprisonment, was handed down in 2008 in a case of murder involving torture or acts of cruelty.

Article 2

Reply to the issues raised in paragraph 2 of the list of issues

11. No provision of law can justify the use of torture. Furthermore, were it possible, under a law, to invoke an exceptional circumstance to justify acts of torture, that law would be adjudged contrary to article 20 of the Constitution — which prohibits cruel, inhuman or degrading treatment and abolishes the death penalty — and, accordingly, repealed by the Supreme Court.

12. If an act of torture is committed by a judicial police officer, who is an auxiliary of the principal public prosecutor, the procedure whereby the Court of Appeal sitting in chambers exercises supervision may be instigated by the president of the Court of Appeal or by the principal public prosecutor (arts. 48 et seq. of the Code of Criminal Procedure).

13. The person concerned may be prohibited temporarily or permanently from carrying out their police duties, without prejudice to any administrative penalties that their superiors may impose upon them.

14. Criminal penalties are also provided for by article 126⁵ of the Criminal Code, which deals with abuse of authority by a police commander or deputy-commander who in the exercise of their functions has, for no legitimate reason, used or ordered the use of violence against individuals.

15. Criminal penalties for the unlawful arrest or illegal confinement of persons are also provided for by articles 275 et seq. of the Code of Criminal Procedure. Thus, any person who arrests, detains or confines an individual without being ordered to do so by the proper authorities, other than in cases in which the law orders the arrest of the suspect, is liable to 10 to 20 years’ imprisonment. Article 278 of the Criminal Code provides that the maximum term will apply if the person who has been illegally arrested and held has been tortured.

16. As regards Monaco’s short-stay prison (*maison d’arrêt*), the provisions of Order No. 3.782 of 16 May 2012 on the organization of the prison and detention system and Sovereign Order No. 69 of 23 May 2005 regulating the short-stay prison should be noted.

⁵ Articles 127 to 130 of the Criminal Code address the abuse of authority.

17. Under article 78 of Sovereign Order No. 69 of 23 May 2005 regulating the short-stay prison, staff are strictly prohibited from “engaging in acts of physical or mental violence against inmates” or “addressing them in a familiar or uncouth manner”.

18. Article 79 of the Order adds that: “Any breach of the obligations set out in this Order shall give rise to disciplinary penalties, without prejudice, where appropriate, to the penalties laid down by law”.

19. Subordinates are able to refuse to carry out any orders that they receive (the “intelligent bayonets” theory) and to report any irregularities to their superiors. This doctrinal and jurisprudential concept, a general principle on the matter, shall be applied by the Monegasque courts.

20. Furthermore, under article 61 of the Code of Criminal Procedure, any authority, civil servant or public official who, in the course of their duties, learns of a crime or an offence is required to notify the public prosecutor immediately and to forward to that official any information, documents and certificates that might be of use in punishing it.

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

The law on the prevention and punishment of specific forms of violence

21. Act No. 1.382 of 20 July 2011 on the prevention and punishment of specific forms of violence was enacted with a view to strengthening the protection of women, children and persons with disabilities.

22. The purpose of this piece of legislation is to prevent and punish acts of violence that necessitate or merit specific forms of punishment, reparation or aggravated or adapted penalties because of the particular vulnerability of the victims of such violence or the situations in which it is committed.

23. With regard to punishment in the strict sense of the term, the Act has added to the body of domestic legislation, specifically addressing all forms of violence or threats of violence — physical, psychological, sexual or financial — against women in particular. In order to ensure that this actually translates into greater protection for women, specific preventive, protective and punitive measures have been introduced into Monegasque legislation for acts such as honour crimes, female genital mutilation, forced marriage, marital rape and harassment.

24. In all cases of violence between spouses, or persons currently living together or who have lived together in the past on a long-term basis, Act No. 1.382 of 20 July 2011 provides for substantially harsher penalties, either double the penalty provided for the ordinary offence or the maximum of that penalty.

25. In addition, a failure to make reparations as ordered counts as an aggravating circumstance with respect to the penalty to be imposed; it may lead, *inter alia*, to revocation of the suspension of a sentence or of probation. This provision also applies to perpetrators of female genital mutilation, honour crimes and rape of a spouse or a domestic worker. The provisions also cover domestic slavery and harassment.

26. With regard to assistance and protection for victims, the Government has decided to allow the judicial authority to hand down decisions specifically to protect victims. As a result, the Act gives the court the option of imposing on perpetrators, a penalty of 1 to 6 months’ imprisonment and a fine of between €9,000 and €18,000:

- A fixed-term ban on entering into contact with the victims, by any means whatsoever, including electronic communication;

- A fixed-term ban on appearing in certain places.

27. Under that provision, the judge has complete discretion to take a decision in line with the needs and the situation of the victims. For example, the perpetrator could be banned from appearing in the vicinity of schools, gymnasiums and other places of work, leisure or residence, including, of course, their home, frequented by the person or persons they assaulted. This prohibition takes on a number of forms over the course of the various procedural stages that are likely to follow acts of violence:

- An emergency measure taken by the prosecutor during the preliminary investigation;
- A measure taken by the investigating judge with a view to protecting the victims for the duration of the investigation;
- A supplementary punishment to a main sentence.

28. In the more specific context of criminal procedure, it should be noted that the legislation endeavours to provide support for the victim from the investigation phase onwards by enabling either the Public Prosecutor or the investigating judge to order a medical and psychological examination to determine the nature of the damage suffered and whether there is a need for an appropriate programme of care.

29. Following the lead of international standards in this area, the aforementioned Act No. 1.382 of 20 July 2011 provides, *inter alia*, for mandatory initial and in-service training for all professionals who deal with cases of violence, whether they are staff of the justice system, the police force, medical professionals or social workers. The Government has attached great importance to enabling victims to access qualified persons and to ensuring that professionals working in the area receive the most appropriate training so that they may provide the best assistance to victims, adapted to their situation and which bears in mind in particular their psychological distress.

30. The training provided for by article 46 of Act No. 1.382 of 20 July 2011 for persons whose occupations bring them into contact with victims of violence, including judges, health professionals, and officers and officials of the criminal investigation service, took place during 2012.

Care for victims

31. The Health and Social Affairs Department is one of the main providers of care for women who have been victims of domestic violence in the Principality of Monaco.

32. Its Social Unit brings together a team of social sector professionals from various disciplines, including social workers, specialist educators and a psychologist, who are on duty during working hours and can respond to this type of situation.

33. On arrival at the Social Unit, women are met by a multi-skilled social worker.

34. The aim of the initial meeting is to:

- Help the woman talk about her experience;
- Inform her of her rights;
- Evaluate the situation in order to propose appropriate support measures, for example accommodation, financial assistance, professional support and family mediation.

35. It is important to stress that the Social Unit is able to implement the majority of these measures itself, thus guaranteeing a good level of responsiveness in dealing with this type of situation, particularly in emergency situations.

36. The Unit provides:

- Accommodation: the Unit has housing reserved for social emergencies; if none is available, another solution is offered;
- Financial assistance: State welfare assistance is granted by the Unit;
- Professional support: a social worker and a special needs assistant are available to help individuals seek employment, in partnership with the Employment Office;
- Family mediation: individuals may be referred to this service.

37. With respect to the protection of children, it is now recognized that witnessing violence has the same effect on children as if they were the victims of the violence.

38. Protection measures may also be necessary depending on the seriousness of the situation; these can include introduction of an educational support measure. This kind of measure, which is ordered by the court (acting on a report), is imposed on parents and consists of the educational monitoring of the child in the family. This type of child protection is also provided by the Social Unit.

39. The Social Unit also works as part of a network with:

- Hospital services and outpatient facilities, including a mobile psychiatry unit and a medical and psychological centre for children and adolescents, which, like the Social Unit, report to the Health and Social Affairs Department;
- All of the various agencies involved in social welfare, for example justice, police, municipal services and social insurance funds, and civil society; the involvement of the Union of Monegasque Women is an example in this area.

40. Thus, cases of domestic violence are dealt with using the resources at the units' disposal and working in a network, which is facilitated by the proximity of all those involved.

41. Furthermore, the number of locations allows for individualized care that is as accessible as possible for victims.

42. With regard to the Directorate of Public Security, it should be noted that the Minors and Social Protection Section of the Administrative Police Division, staffed by five investigators and two police social workers, manages disputes relating to child victims and to all matters concerning the family unit, such as domestic violence, neglect and failure to hand over a child to the person entitled to custody.

43. One of the police social workers acts as a contact point for domestic violence matters within the Directorate of Public Security.

44. This legal and social coordination ensures support, guidance and care for victims.

45. The police are often seen as a main point of contact. Persons in distress or suffering will very often enter a police station in the hope of finding solutions there.

46. The Minors and Social Protection Section responds to victims, identifies their needs and, if necessary, refers them to the competent department, whether social partners or others, given that the appropriate response is not always of a legal nature.

47. As part of its remit, the Minors and Social Protection Section monitors victims and informs them of any compensation to which they may be entitled for the harm suffered.

48. Under the new legislation, the Section puts victims of specific forms of violence in touch with the Aid Association for Victims of Crime, established in the Principality of Monaco in 2014.

49. The Association aims to support, listen to, inform, guide and assist victims of violence, understood in the broadest sense of the word and including, for example, physical, sexual and emotional violence.

The statistics

Statistics from the Directorate of Public Security

50. As of 27 August 2013, the Directorate of Public Security had dealt with 15 cases of violence as set forth in article 238-1 of the Criminal Code:

- Eight cases that did not involve a temporary incapacity for work (four were closed without further action by the public prosecutor's office of Monaco, one was closed without further action after the complaint was withdrawn, one was referred to the public prosecution officer of the court of summary jurisdiction for reasons relating to competence, one is under investigation and one was referred to a foreign public prosecutor);
- Six cases involving a temporary incapacity for work not exceeding eight days (three were closed without further action by the public prosecutor's office of Monaco, one was closed without further action after the complaint was withdrawn, one is being considered by the Court of Appeal in Monaco, one resulted in the sentencing of the perpetrator to a suspended sentence of 15 days' imprisonment and a fine of €1,000 on 26 February 2013 by the Criminal Court of Monaco);
- One case of reciprocal violence between spouses that was closed after the complaint was withdrawn;
- One case of violence against a child involving a family dispute between a brother and his younger half-sister.

Statistics from Monegasque courts

2009 — two cases:

- One referred to the public prosecution officer of the court of summary jurisdiction for reasons relating to competence;
- One closed without further action because of insufficient grounds.

2011— two cases referred to the Criminal Court:

- One suspended sentence of 3 months' imprisonment, handed down on 22 May 2012;
- One sentence of a fine of €1,000, handed down on 31 January 2012.

2012 — two cases referred to the Criminal Court:

- One suspended sentence of 10 days' imprisonment, handed down on 29 May 2013;
- One sentence of 8 days' imprisonment with a ban on returning to the marital home, handed down on 17 December 2012;
- One case referred to the public prosecutor officer for reasons relating to competence;

- One case closed without further action because of insufficient grounds.

2013:

- Two cases closed without further action because of insufficient grounds;
- Three cases closed without further action because the complaints were withdrawn;
- One case still ongoing;
- Five cases prosecuted before the Criminal Court.⁶

2014:

- One case closed without further action because the complaint was withdrawn;
- One case closed without further action because of insufficient grounds;
- One case prosecuted before the Criminal Court.⁷

2015:

- One case closed without further action because of insufficient grounds;
- One case still ongoing;
- Four cases prosecuted before the Criminal Court.⁸

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

51. In Monegasque law, terrorism is dealt with under articles 391-1 to 391-12 of the Criminal Code on the application of Act No. 1.318 of 26 June 2006 on terrorism, as well as Act No. 1.362 of 3 August 2009 on combating money-laundering, the funding of terrorism and corruption, and Act No. 1.299 of 15 July 2005 on freedom of public expression (art. 16).

52. Acts of terrorism are defined by article 391-1 of the Criminal Code, established by Act No. 1.318 of 29 June 2006:

“Acts of terrorism include offences which are committed intentionally in connection with an individual or collective enterprise directed against the Principality of Monaco or any other State or against an international organization and are intended, through intimidation or terror:

- Either to threaten, damage or destroy their political, economic or social structures;
 - Or to seriously disturb public order:
- (1) Attacks on the internal security of the State (arts. 56, 57 and 61);

⁶ Criminal Court, 16 April 2013 — fine of €3,000.

Criminal Court, 19 February 2013 — acquittal.

Criminal Court, 26 February 2013 — 15 days’ suspended prison sentence.

Criminal Court, 5 March 2013 — 8 days’ suspended prison sentence.

Criminal Court, 21 May 2013 — fine of €5,000.

⁷ Criminal Court, 24 March 2015.

⁸ Criminal Court, 24 February 2015 — 6 months’ suspended sentence and 3 years’ probation.

Two cases scheduled for hearings on 24 March 2015.

Criminal Court, 24 March 2015 — 1 year’s suspended sentence and 3 years’ probation.

Criminal Court, 14 April 2015 — 3 months’ suspended sentence.

Criminal Court, 25 May 2015 — 3 months’ imprisonment.

- (2) Crimes liable to disturb the State (arts. 65, 66, 68 and 69);
- (3) Crimes and misdemeanours against the public order relating to:
- Crowds and rebellions (arts. 145, 146, 152 to 155, and 161);
 - Violence against public authorities and law enforcement agents (arts. 166 and 167);
 - Attacks on the security of railway traffic (arts. 191 to 193);
 - Destruction or damage to telephone and telegraph lines and telecommunication installations (arts. 198 to 200) and attacks on the persons specified in article 201;
 - Criminal organizations (arts. 209 to 211);
 - Laundering of a gain derived from an offence (arts. 218 to 218-3);
 - Offences relating to the stock market (article 26-1 of Act No. 1.194 of 9 July 1997 on portfolio management and stock market or similar activity).
- (4) Crimes and misdemeanours against persons and property relating to:
- Intentional homicide (arts. 220 to 223 and 226 to 228);
 - Threats (arts. 230 to 232);
 - Intentional assault (arts. 236 to 238 and 240 to 249);
 - Sexual offences (arts. 261 to 263, 265 and 266);
 - Illegal arrest and confinement (arts. 275 to 278);
- (5) Crimes and misdemeanours against property concerning:
- Theft (arts. 309 to 316 and 325);
 - Extortion and blackmail (art. 323);
 - Handling stolen goods (arts. 339 and 340);
 - Fire, destruction, degradation and damage (arts. 369 to 377, 380 to 382, 385, 386 and 389)."

53. With regard in particular to the suppression of ecological terrorism under article 391-4 of the Criminal Code:

"When it fulfils the conditions set out in article 391-1, the fact of knowingly introducing or releasing into the atmosphere, the soil, the subsoil or the water, including territorial waters, any substance or product that may endanger human or animal health or the safety of the natural environment shall constitute a terrorist act."

54. A deliberately broad interpretation is given to the notion of an ecological attack, the principle concern of lawmakers being to prevent any such occurrence. This broad interpretation has been achieved by selecting a very open formulation that describes anything that may contribute to harming the environment and its balance. The acts covered pose a danger to human health or the natural environment through the use of substances that may cause such an effect.

55. Firstly, terrorist acts are characterized by the voluntary introduction of a dangerous substance into natural elements: the atmosphere, soil, subsoil or water, including territorial waters. The concept includes anything capable of permeating these different elements, without prejudice as to the means used, whether the

substance is inserted, dumped, emitted, or introduced by any other similar method. However, it would appear that the removal of one or several of these natural elements, thus causing serious environmental imbalances, seems not to be covered by the definition of the offence given the absence of “introduction” in the exact sense of the word, which is to make one thing enter another. However broad the scope of article 391-4 of the Criminal Code may be, it does not, therefore, go so far as to authorize its unchecked application.

56. The substance being introduced is also very broadly defined. The definition relates less to its composition than to its impact on the environment; it must have the potential to cause damage to health and the natural environment. A description of its physical or chemical properties is therefore less important, provided that it has that potential. This concept applies to all substances, whether liquid, solid or gas, vegetable, animal or mineral, and without distinction as to their structure or composition, whether raw or enriched.

57. Above all, it is the ecological impact of the use of the substance that acts as the criterion; it must endanger the health of persons or animals or the natural environment.

58. It is also important to note that acts of terrorism are criminalized only on the basis of their potential risk of real contamination, an actual impact on the health of persons or animals, or a marked degradation of the natural environment, without regard to the outcome of such acts. These acts are an offence irrespective of their results, and the intention is to punish the behaviour, rather than its effects. However, this does not prevent the effects from justifying a harsher penalty when an act has caused the death of one or more persons.

59. The risk must concern the health of persons or animals or the natural environment. “Health” refers to anything liable to alter an organism physically or biologically, without a direct or immediate threat to life. Given that the entire food chain and related natural balances are affected by ecological terrorism, it was important that not only health should be concerned by the threats, but also the natural environment. Consequently environmental values are included not so much to protect them in principle but to highlight the particularly odious nature of certain forms of crime.

60. Lastly, it should be noted that under article 391-5 of the Criminal Code:

“When it fulfils the conditions defined in article 391-1, subjecting a person to torture or barbarous acts shall constitute a terrorist act. This act is punishable by life imprisonment and the fine provided for in figure 4 of article 26, whose maximum amount may be multiplied by five.”

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

61. Sovereign Order No. 4.524 of 30 October 2013 instituted the position of High Commissioner for the Protection of Rights, Liberties and for Mediation to perform functions that include those previously entrusted to the Minister for Appeals and Mediation.

62. In accordance with his or her statutory and procedural guarantees, the High Commissioner is the focal point for the protection mechanism accessible to all rights holders. In consequence:

- With respect to the protection of citizens’ rights and freedoms in their dealings with public authorities, any natural or legal person who deems his or her rights or freedoms to have been infringed by the Minister of State, the President of the National Council, the Director of Judicial Services or the Mayor, or by public

bodies or the actions of an administrative department reporting to one of those authorities or to a public body, may refer the matter to the High Commissioner (article 15 of the aforementioned Sovereign Order No. 4.524 of 30 October 2013);

- The High Commissioner may receive complaints from natural or legal persons who consider themselves to have been a victim of unjustified discrimination in the Principality (art. 28 of the Sovereign Order);
- The High Commissioner may receive requests for rulings or studies on any matter relating to the protection of citizens' rights and freedoms in their dealings with public authorities, as well as to unjustified discrimination (art. 33 of the Sovereign Order).

63. The High Commissioner carries out the duties assigned to him or her in a neutral, impartial and independent manner. This guiding principle is enshrined in article 6, paragraph 1, of the aforementioned Sovereign Order. Furthermore, when carrying out his or her duties, the High Commissioner may not receive any order, instruction or directive of any nature, including from the Minister of State, the President of the National Council, the Director of Judicial Services or the Mayor (art. 6, para. 2, of the Sovereign Order).

64. The High Commissioner first and foremost is financially independent. Article 13 of the aforementioned Order provides that the State shall provide to the High Commissioner the material means to conduct his or her duties. Moreover, the funds necessary for the remuneration of the High Commissioner and the staff placed at his or her disposal, as well as, more generally, for the resources required to perform his or her duties constitute a specific item in the State budget (art. 46 of the Sovereign Order).

65. The High Commissioner's independence also stems from the fact that his or her functions are incompatible with those of a national or communal councillor, a member of the Economic and Social Council, or with any political office, in Monaco or abroad (art. 10, para. 1). Furthermore, they are also incompatible with the exercise of any other public function or any gainful, professional or paid activity, in Monaco or abroad (art. 10, para. 2, of the Sovereign Order).

66. Moreover, the principle that the High Commissioner may not, either in person or through an intermediary, have interests of any type or form that compromise his or her independence is clearly established (art. 11, para. 1, of the Sovereign Order). Furthermore, he or she must refrain from any action, activity or event that is incompatible with the discretion and reserve inherent to his or her duties, whether on his or her behalf or that of any other natural or legal person (art. 11, para. 2, of the Sovereign Order).

67. The independence and autonomy of the High Commissioner also lie in the different guarantees to which citizens are entitled throughout the examination of their request. These include an investigative phase that respects the adversarial principle and ensures that the citizen is kept informed (arts. 19 and 20 of the Sovereign Order). To foster a direct relationship, the High Commissioner informs the citizen of the likely consequences of the referral, and may also provide all the relevant information on the outcome of mediation, particularly, if applicable, about appeal deadlines (art. 19 of the Sovereign Order).

68. The High Commissioner's functional independence stems from the investigatory power which allows him or her to consult with and inspect the departments concerned, examine files and interview the applicants.

69. The High Commissioner is thus able to require the relevant administrative departments to provide any document, information or assistance necessary to fulfil his or her duties. The High Commissioner may also verbally request supplementary items from the citizen and the aforementioned departments so as to clarify any discrepancies. He or she ensures respect for the adversarial principle by, if necessary and unless impossible, listening to the explanations of the citizen or his or her representative, as well as those of the administrative body concerned (art. 20 of the Sovereign Order).

70. Furthermore, as part of his or her prerogatives, the High Commissioner benefits from functional protection, under which the State, in accordance with instructions issued by sovereign decision, provides protection against threats, abuse, insults, defamation or attacks of all kinds that he or she may face in the exercise of his or her duties (art. 12, para. 1). To that effect, the administration is moreover liable for ensuring the rights of the victim to any damages due from the perpetrators of the offences in reparation.

71. When providing this functional protection for the High Commissioner, the public authorities may claim damages before the criminal court (art. 14 of Act No. 975 of 12 July 1975 on the status of civil servants).

72. Lastly, as with his or her foreign counterparts, both independent and institutional, under articles 23 and 30 of the aforementioned Sovereign Order No. 4.524 of 30 October 2013 the High Commissioner has the authority to make recommendations, or proposals, to the Ministry of State, the President of the National Council, the Director of Judicial Services and the Mayor, based on analysis of the facts, law and equity. If necessary, the High Commissioner follows up the application of the decision or agreement made on the basis of his or her recommendation.

73. It is apparent that the independence of the High Commissioner is demonstrated in various ways, whether by the channels through which matters may be referred to him or her, the procedural guarantees applicable during the examination of requests, the powers of investigation and recommendation at his or her disposal and, in particular, the follow-up given to his or her recommendations.

Article 3

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

74. It should be noted that this issue concerns two different subjects:

- Granting of refugee status;
- Expulsion or return (refoulement) orders (general regulations applied by the Immigration Police).

Requests for asylum

75. Requests for asylum in the Principality of Monaco are extremely rare.

76. The Monegasque authorities themselves ensure the administrative and legal protection of refugees residing in the Principality.

77. However, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) examines the cases and advises on requests made to the Principality of Monaco.

78. Some thirty refugees are currently living in the Principality of Monaco.

Refoulement measures

79. A refoulement measure is a justifiable, individual administrative decision against any foreigner, whether resident or not.

80. It is provided for by article 22 of Sovereign Order No. 3.153 of 19 March 1964 on requirements for entry and stay:

“The Minister of State may, by issuing a control measure or an expulsion order, enjoin any foreigner to leave Monegasque territory immediately or ban that person from entering Monegasque territory.”

Article 4

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

81. See the reply to the question on article 1 of the Convention.

Articles 5, 7 and 8

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

82. No extradition request in relation to acts of torture has been received to date.

Article 10

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

83. The initial training of judiciary staff and police officers includes matters relating to human rights. For example, courses on ethics and police ethics are given to students at the Police and Public Security College.

84. Furthermore, the Monegasque authorities are undertaking many specific human rights education initiatives as part of the in-service training of all public officials and law enforcement officials, including judges, the Directorate of Public Security and legal practitioners.

85. Mr. Jean-François Renucci, Professor at the Faculty of Law and Political Science of the Sophia-Antipolis University of Nice and a renowned human rights expert has given lectures in the Principality of Monaco for Monegasque public officials and judicial staff:

- On 23 November 2012, a lecture entitled “Deprivation of liberty and the European Convention on Human Rights”;
- On 15 March 2013, a lecture entitled “Fair trials and the European Convention on Human Rights”;
- On 5 December 2014 on the theme of “Prohibition of discrimination under the European Convention on Human Rights”.

86. Additionally, in 2013 the Government organized a training workshop on racial discrimination and racism for employee and employer members of the Labour Court, judicial staff and the police. The workshop was led by Mr. Niels Muiznieks, Council of Europe Commissioner for Human Rights and Mr. Jean-Paul Costa, President of the

International Institute of Human Rights and former President of the European Court of Human Rights.

Article 11

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

87. The sentence enforcement judge is responsible for the monitoring of Monegasque detainees in France.

88. To date, no visit has been possible because, of the three detainees in France currently serving a sentence handed down in Monaco, two have very recently been transferred to the short-stay prison in Nice and the detention centre in Tarascon, and the sentence of the third detainee, imprisoned in Nice, is nearing an end. Furthermore, no incident of torture or ill-treatment has been brought to our attention by any detainee or his or her counsel.

89. With regard to consent, it should be noted that only detainees serving long sentences may be transferred to France to serve their sentence. This is because the short-stay prison, the only penitentiary facility in the Principality, is unable to provide for long-term detention in the same conditions as French facilities, which are more suitable for that type of sentence.

90. In most cases, it is the detainees themselves who request that their transfer to France be expedited so as to facilitate contact with their family or to benefit from the activities offered by the French prison system, such as work or study.

91. Over the last two years, several detainees have also made requests to remain in the short-stay prison in Monaco. Provided that there are no security or behavioural problems, those requests have been granted.

Articles 12 and 13

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

92. No incident of this nature was reported in 2014 or 2015.

93. There have been no criminal prosecutions or convictions for torture or ill-treatment committed by law enforcement officials.

Article 14

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

94. In Monegasque law, there is no specific compensation system for victims. Ordinary law is therefore applicable to them.

95. As part of the Roman-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.

96. Once the damages have been determined, the judge proceeds to consider whether harm was inflicted and whether it was direct. The judge also verifies the casual relationship between the harm suffered and the damages to be paid.

97. 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.

98. The judge takes a decision on that basis regarding the amount of damages claimed by the victim. One cannot ignore, however, the sometimes significant differences that may arise between one court and another or one judge and another.

99. 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.

100. In conclusion, in this regard, it should be remembered that this action in person, which is available only to the victim, may limit the judge's assessment. Under the rules of civil procedure, the judge may never exceed the requested amount, even if that amount is a symbolic one of only 1 euro, as is sometimes the case.

101. There is no damages commission or guarantee fund.

102. The right of a victim of an offence, regardless of the nature of that offence (be it an infraction, a misdemeanour or a serious offence), to appeal for compensation derives from article 2, paragraph 1, 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".

103. 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 (art. 3 of the Code of Criminal Procedure). This illustrates the two facets of the criminal proceedings mentioned above.

104. Article 73 of the Code of Criminal Procedure makes a key clarification by stating that "any person harmed by a crime, an offence or an infraction, 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 event 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.

105. Another noteworthy provision that is favourable to the victim concerns private prosecution; that is, when the victim brings the action on their own initiative. Article 75, paragraph 2, of the Code of Criminal Procedure stipulates that, in cases of offences and infractions, "the plaintiff is deemed to have entered a claim for damages by the sole fact of summoning" the perpetrator to appear before the competent court. When a case is brought to court in this way, the victim is not required to formally state that they wish to enter a claim for damages.

106. 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.

107. Regarding the requirement that the perpetrator must be convicted, there is a noteworthy exception to this in 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 and 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.

108. Article 16-2, of Act No. 1.355 of 23 December 2008 on associations and federations stipulates 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”.

109. 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 (article 20 of the act instituting article 2-1 of the Code of Criminal Procedure).

Other issues

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

110. Firstly, it should be noted that the conventions to which the Principality of Monaco has become party include:

- The International Convention for the Suppression of the Financing of Terrorism, in 2001;
- The European Convention on the Suppression of Terrorism (ETS No. 90), in 2007.

111. The procedural regulations applicable to terrorism are those applicable to ordinary offences.

112. There are no exceptions based solely on the nature of the offence.

113. The sole distinction in terrorism cases is that the duration of custody may be extended to 96 hours under the supervision of an independent and impartial judge, a provision that also applies to money-laundering (arts. 218 and 219 of the Criminal Code) and threats to State security (arts. 50 to 71 of the Criminal Code). Custody is limited to 48 hours for ordinary offences.

114. To date, no criminal proceedings relating to terrorism have been launched in the Principality.

115. Additionally, police officers are familiarized with terrorism during their initial training at the police academy.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

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

Legislative developments

116. Since 2011 and the most recent dialogue with the Committee against Torture, the Principality of Monaco has continued its efforts to adapt its domestic legislation and ensure full respect for its international commitments.

117. To that end, several laws relating to the protection of human rights have been adopted in recent years, in particular:

- Act No. 1.344 of 26 December 2007 on stiffer penalties for crimes and offences against children;
- Act No. 1.359 of 20 April 2009 on the establishment of an antenatal and family support coordination centre, amending article 248 of the Criminal Code and article 323 of the Civil Code;
- Act No. 1.382 of 20 July 2011 on the prevention and punishment of specific forms of violence;
- Act No. 1.387 of 19 December 2011 amending Act No. 1.155 of 18 December 1992 on nationality;
- Act No. 1.399 of 25 June 2013 on the reform of the Code of Criminal Procedure in the area of pretrial detention;
- Act No. 1.410 of 2 December 2014 on the protection, autonomy and promotion of the rights and freedoms of persons with disabilities.

118. Attention should also be drawn to Sovereign Order No. 3.782 of 16 May 2012 on the organization of the prison and detention system,⁹ which provides that “The prison service guarantees respect for the human dignity and fundamental rights of all detainees to the extent set out in the decisions of the judicial authority”.

119. Furthermore, with regard to the exercise of civic rights, Act No. 1.409 of 22 October 2014 amending Act No. 839 of 23 February 1968 on national and communal elections includes provisions for detainees’ exercise of their right to vote by proxy.

120. Lastly, Bill No. 908 on workplace harassment and violence has been submitted to the National Council (Parliament).

International commitments

121. The international instruments signed by the Principality of Monaco since 2011 include:

- The United Nations Convention on the Rights of Persons with Disabilities on 23 September 2009;
- The Council of Europe Convention on Cybercrime on 2 May 2013.

122. Other international instruments ratified include:

- The United Nations Protocol relating to the Status of Refugees in June 2010;
- The United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education in August 2012;
- The Optional Protocol to the Convention on the Rights of the Child on a communications procedure in September 2014;

⁹ The Directorate of Judicial Services Order No. 2012-8 of 4 June 2012 sets out the conditions for implementing Sovereign Order No. 3.782.

- The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in October 2014;
- The Council of Europe Convention on preventing and combating violence against women and domestic violence in October 2014.

New institutions

123. A member of the Government was appointed delegate with responsibility for persons with disabilities in 2006.

124. In the area of protection of women and children, the new Princess Charlene Children's Home (formerly the Sainte Dévote home) was inaugurated in 2012. This home, which comes under the authority of the Department of Health and Social Affairs, is intended to house children placed there by court order.

125. The home, which meets the updated standards, provides accommodation for 24 children between the ages of 6 and 18. In addition, there are three mother/child apartments on the top floor to provide a safe environment for women who are minors and their children and women who have been the victims of violence or who need educational help in bringing up their children.

126. For older persons, the Rainier III Clinic Gerontology Centre was opened on 12 February 2013. The Centre provides specialized and graduated health and preventive care to meet the needs of elderly patients. The Rainier III Centre is at the heart of the geriatric system, and works closely with the Gerontological Coordination Centre of Monaco, the Spéranza-Albert II Centre and public retirement homes in the Principality. The Centre aims not only to respond to the challenge of the growing number of older persons in the Principality, but also to meet their specific needs and address problems such as multiple pathologies, social isolation, frailty and loss of autonomy.

127. With regard to human rights generally, the International Law, Human Rights and Fundamental Freedoms Unit was set up under the Department of Legal Affairs in 2012.

128. Lastly, as already mentioned, the Principality of Monaco established a High Commissioner for the protection of rights and freedoms and mediation in 2013 and a Government-approved victims' aid association in 2014.
