



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/SR.2572  
30 October 2008

Original: ENGLISH

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HUMAN RIGHTS COMMITTEE

Ninety-fourth session

SUMMARY RECORD OF THE 2572nd MEETING

Held at the Palais Wilson, Geneva,  
on Tuesday, 14 October 2008, at 3 p.m.

Chairperson: Mr. RIVAS POSADA

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Monaco (CCPR/C/MCO/2; CCPR/C/MCO/Q/2 and Add.1)

1. At the invitation of the Chairperson, the delegation of Monaco took places at the Committee table.
2. Mr. FILLON (Monaco) provided an extensive overview of his country's history since the eleventh century from a historical and legal perspective. The Grimaldi family, present as rulers since 1297, had replaced Spanish with French protection in 1641 by signing the Treaty of Peronne, which had assured his country the protection of its powerful neighbours from external threats while maintaining the primacy of the Prince with respect to internal affairs.
3. The Principality had been an ally of the kings of France until the French Revolution and had been annexed to France in 1793. Following the Congress of Vienna Monaco had become a quasi-protectorate of the Kingdom of Piedmont-Sardinia. In 1861, the kings of Sardinia had ceded Nice to France; the Franco-Monegasque treaty of 1861 enshrined Monaco's sovereignty and established a customs union with France. Subsequent treaties had been concluded in 1918 and 2002, the latter clearly affirming Monaco's sovereignty.
4. A constitutional ordinance dating from 1911 set out the organization of public authorities and the relations between them. The Constitution, adopted in 1962, had been modified in 2002 to extend the powers of Parliament, entitling it to give its opinion on ratifications of international conventions.
5. Monaco's desire to participate in international organizations had been evident since 1919, when it had taken part in the preparatory conferences on the establishment of the League of Nations. The appointment of the Crown Prince as head of Monaco's delegation to the General Assembly when the country joined the United Nations in 1993 had reflected the desire of the authorities to be involved at the highest level in all forms of dialogue and political cooperation between States at the global level. Since that time, Monaco had actively contributed to United Nations activities, in particular to cooperation activities.
6. As a third State in its relations with the European Union, Monaco was integrated in the European customs territory and had introduced the euro as its currency. The country was part of the Schengen area and was virtually integrated into France, enabling the free circulation of people. Monaco had joined the Council of Europe in 2004, and a Monegasque judge currently sat on the European Court of Human Rights. Moreover, Monaco had been a founding member of the International Organization of la Francophonie and remained an active participant, thereby affirming on the international stage the values of cultural diversity, equitable development and human rights that structured the work of that organization.

7. His country attached great importance to the review process of the Covenant and considered it an opportunity to reflect upon the extent to which its law was in line with the major principles of international law as expressed in the Covenant. His country welcomed the dialogue as a learning process that would improve its legal corpus and practices.
8. The CHAIRPERSON invited the delegation to address the questions on the list of issues.
9. Mr. GASTAUD (Monaco), referring to questions 1 to 5 on the list of issues, said that Monaco had made only a very limited number of interpretative declarations and reservations at the time of its signature and ratification of the Covenant in 1977, which might explain why they remained relevant. Nevertheless, a change of position at some point in the future remained possible.
10. Persons brought before Monaco's courts did invoke the provisions of the Covenant, and the Committee had been informed of decisions in that regard. The provisions of the Covenant had been incorporated into the domestic legal order and constituted legal norms that were applied by judges where necessary.
11. The establishment of an independent institution for the protection of human rights was not under consideration at present because it was already easy to take advantage of administrative remedies in Monaco owing to the proximity of the administrative authorities to residents. Legal or natural persons domiciled in Monaco had unrestricted access to judicial remedies which offered objective guarantees for both plaintiffs and defendants.
12. Since the stipulations contained in the Optional Protocol were not normative but attributed competence to the Human Rights Committee, Monaco was reviewing the competence of the State administrative authorities with a view to, inter alia, verifying compatibility with the Optional Protocol.
13. As indicated in the written replies, the human rights unit under the Department of External Relations was competent to receive communications under the European Convention for the Protection of Human Rights and Fundamental Freedoms. Given the similarity of the provisions of that Convention to those of the Covenant, an appeal that might have been lodged under the Covenant could in fact be initiated under the Convention to the same effect.
14. Mr. GAMERDINGER, referring to question 6 on the list of issues, reminded the Committee that his country had acceded to 13 international conventions on counter-terrorism, all of which had been incorporated into domestic legislation and regulatory texts. Terrorism was defined in Monaco's Criminal Code as any deliberate act committed by an individual or group against the Principality of Monaco or any other State or international organization, which by intimidation or terror sought to threaten, attack or destroy their political, economic or social structure or seriously to disrupt public order. That definition included attacks against State security, murders, deliberate damage or destruction and arson.
15. Sanctions were imposed under ordinary law for certain acts linked to terrorism, in particular trafficking in weapons, acts of torture or barbaric acts, and the provision of shelter,

financial aid or protection to a member of a terrorist group. Deliberate damage to the environment was also defined and punishable as a terrorist act. Criminal procedure in terrorism cases was governed by ordinary law and was non-derogable; thus persons prosecuted for terrorism enjoyed the same rights and guarantees as the perpetrators of other criminal offences.

16. Persons involved in terrorist proceedings could be held in custody for an initial period of 24 hours and must be informed from the outset of the charges against them. They were entitled to contact a family member, to legal counsel and to a visit from a physician and could request an interpreter, as appropriate. If they were disabled, assistance could be provided to guarantee effective communication with the police officers conducting the preliminary investigation. The initial custody period could be extended for 24 hours and for a further 48 hours thereafter, with specific authorization from a magistrate in each case. Part of any funds or assets frozen in connection with possible terrorist acts or the financing thereof could be made available for legal or other necessary costs, including medical expenses.

17. Ms. PASTOR, referring to questions 7 to 9 on the list of issues, said that in 2001, women occupied 42 per cent of private-sector positions and 37 per cent of public administration positions and were far more numerous than men in category A civil service positions. There had been a marginal increase in the number of women in the private sector in 2008, to 42.13 per cent. Within government, women occupied a number of elected positions of ministerial rank. Measures to ensure equal access for women had included the introduction of the possibility of part-time work in 2003. The Government was studying the possibility of passing specific legislation on sexual harassment.

18. Domestic violence was not specifically criminalized, although some provisions of the Criminal Code relating to homicide could be applicable to cases of domestic violence. The National Council had adopted a bill on domestic violence, which was currently under consideration by the Government. Moreover, a national campaign had been launched to promote awareness of the issue. Although domestic violence was rare in Monaco and while there was no specific legislative framework to combat the phenomenon, considerable support was available to victims, who had access through the social and health services to a range of professional support systems.

19. In 2003, the Civil Code had been amended by Act No. 1,278, which gave men and women equality in the home and stipulated that choice of place of residence was subject to the agreement of both spouses.

20. Mr. GAMERDINGER (Monaco), referring to question 10, said that, pursuant to Act No. 1,276 of 22 December 2003, women who were naturalized Monegasque citizens could transmit their nationality to their minor children.

21. Ms. PASTOR (Monaco), referring to question 11, said that therapeutic abortion was punishable under article 248 of the Criminal Code, while under article 323 of the Civil Code a conviction for illegal abortion was cause for the withdrawal of parental authority. However, those provisions were deemed to be obsolete and were not applied in practice. Draft legislation currently under consideration by the Government had three objectives: to create a prenatal coordination and family support centre, to decriminalize therapeutic abortion in prescribed situations and to amend article 323 of the Civil Code to abolish the provision she had just cited.

22. Ms. SAMPO (Monaco), referring to question 12, said that under Act of No. 1,343 of 26 December 2007, a new Part IV had been introduced in the Criminal Code, which specified the cases in which deprivation of liberty could be authorized and enumerated the safeguards offered to individuals taken in police custody. An individual could not be detained by the police for more than 24 hours; however, that duration could be extended by 24 hours by the juge de liberté at the request of the public prosecutor or the examining magistrate. An extension of 48 hours could also be ordered in cases involving alleged money-laundering, drug trafficking or threats to State security.

23. With regard to question 13 she said that, given its small territory and the fact that between 1990 and 2006 only 16 juvenile offenders had been remanded in custody, Monaco was not currently considering the establishment of a juvenile detention centre. It should be noted, however, that minors who were deprived of their liberty were held in separate facilities, and alternatives to imprisonment for minors, such as probationary detention, were sometimes used.

24. Turning to question 14, she said that provisions concerning banishment had fallen into disuse; the legislation in question was currently under review with a view to its repeal.

25. Ms. MOTOC said that she would appreciate more information on the status of the interpretative declarations made by Monaco that were not affected by Salic law, in particular the declaration concerning the stay of foreigners in the Principality. She asked whether the Government planned to establish a national anti-discrimination institution, as several other European countries had done. She requested more details concerning the practice of abortion and the Government's current reasoning regarding that complex issue. She wished to know to what extent observations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had had an impact on police custody procedures. Lastly, she sought additional information on the rules governing the treatment of imprisoned juvenile offenders.

26. Mr. JOHNSON invited the delegation to comment on the status of the Covenant in relation to Monaco's domestic law. He urged the Government to empower the human rights and fundamental freedoms unit to monitor the implementation of the Committee's recommendations and to receive individual complaints. The Government should also consider setting up an independent national institution for the protection of human rights in accordance with the Paris Principles. He also suggested that Monaco should be reviewing its domestic legislation to ensure its compliance with the Optional Protocol, and not the other way around.

27. Mr. GLÈLÈ-AHANHANZO said that it would be useful to know how human rights and the provisions of the Covenant were generally perceived in Monaco. He was concerned that the definition of terrorism provided by the State party in its reply to question 6 was too broad and ambiguous. He would appreciate clarification of that definition and examples of Monegasque case law relating to it. He also wished to know what the functions of the juge de liberté were.

28. It would be interesting to know the reasons for the apparent underrepresentation of women in public life in Monaco, and he asked whether a woman might ever have an opportunity to

29. become head of the Monegasque Government. He requested more detailed information on appeals relating to cases of domestic violence, as well as general information on penalties, sentencing, sentence enforcement and prison facilities for persons who violated the law in Monaco.

30. Ms. WEDGWOOD asked whether there were any particular obstacles to repealing the archaic practice of banishment, given that the Government had expressed its intention to do so to the Committee as far back as 2001. She noted the many interpretative declarations made by Monaco in respect of the Covenant and reminded the delegation of the Committee's policy of discouraging States parties from making more reservations or interpretative declarations than it deemed absolutely necessary.

31. With regard to the issue of the Salic law applied in Monaco, she said that if an aristocratic position involved the exercise of real political power, as did that of the Prince of Monaco, limiting accession to the throne on grounds of gender was a highly questionable practice. She wished to know what aspect of the exercise of power by the police courts the Government found to be in conflict with the guarantees of article 14, paragraph 5, of the Covenant. As for Monaco's declaration concerning articles 21 and 22 of the Covenant, which concerned the right of peaceful assembly and the right to freedom of association, the limitation clauses listed by the State party seemed redundant in view of those already contained in the Covenant itself, with the exception of the clause relating to non-disclosure of confidential information. The delegation should explain why it considered that declaration to be necessary.

32. Mr. IWASAWA noted with satisfaction the many positive developments that had taken place in the Principality of Monaco since the Committee's consideration of the State party's initial report in 2001, in particular the amendments made to its legislation with a view to ensuring that it was in conformity with the Covenant.

33. Mr. AMOR said that he was unconvinced by the delegation's assertion that the existence of effective court remedies obviated the need for a national human rights body. The Government no doubt misunderstood the functions and roles of such bodies, which had been set up in many States, including those with effective judiciary systems, and which played an important role in ensuring respect for human rights. He asked whether there was a legal or logical impediment to the extension of the mandate of the human rights unit of the Department of External Relations that would allow it to cover not only the European Convention on Human Rights but also the Covenant. Perhaps it would be possible to establish a similar unit to deal with Monaco's obligations under United Nations treaties and other United Nations mechanisms. He expressed concern at the very broad interpretation of terrorism in Monegasque legislation and asked whether any cases of terrorism-related money-laundering had been prosecuted, and with what outcome.

34. Mr. LALLAH asked the delegation how many people had been detained, arrested or tried under counter-terrorism legislation in the past four years. As Monaco had no prisons and reportedly sent sentenced prisoners to facilities in France, the delegation should explain what arrangements the Government had made to ensure that it met its obligations under article 10, paragraph 3, of the Covenant, in respect of those who were serving their sentences. Were such inmates subject to French law?

35. Ms. CHANET expressed concern about Monaco's reservation concerning article 14, paragraph 5, of the Covenant and said that the Government should establish an effective procedure for substantive appeals in criminal cases. Noting that the national legislation contained provisions against an offence known as "environmental terrorism", she said that the extremely broad use of the term "terrorism" to refer to acts that, albeit reprehensible, were not comparable to terrorist acts would undermine the meaning of the term in the law. Lastly, the delegation should inform the Committee of the number of cases prosecuted or sentenced for violation of the country's anti-abortion law.

36. Ms. MAJODINA said that national human rights bodies played an important promotional role and were thus required not only in countries with a history of human rights violations but in all countries. It was important to establish a body in Monaco to promote United Nations instruments as well as European conventions. The human rights unit referred to in the report lacked independence, a fundamental element required for such national human rights bodies. Monaco should set up such a body, in accordance with the Paris Principles.

The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.

37. Mr. FILLON (Monaco) said that Salic law, which excluded females from succession to the throne, had never been applicable in Monaco. While priority was given to males in accession to the throne, on two occasions in the past 300 years women had either become the sovereign or had transmitted the right to the throne.

38. In cases of alleged domestic violence, the criminal investigation department was authorized to summon a suspect and apprise him or her of the law; that procedure, known as rappel à la loi, was intended not as a penalty but as a minor measure to prevent the commission of offences in the future.

39. Ms. PASTOR (Monaco) said that the domestic violence awareness campaign was designed primarily to inform women of their rights and of the measures available for their protection. It addressed both physical and psychological violence, and target groups included schoolchildren, women, health professionals, members of the police and the judiciary, social workers and psychotherapists.

40. Mr. FILLON (Monaco) said that the penalty of banishment was obsolete and was no longer used. The Prince was not able to abolish that penalty on his own, as such a step would require the acquiescence of the National Council. The penalty would probably be eliminated in the near future as part of the next extensive revision of the law.

41. While Committee members had referred to a number of reservations to the Covenant, Monaco had in fact issued just one. The rest were interpretative declarations, which were meant to clarify the way in which the State party intended to implement the provisions of the instrument. While it was understandable that an international body would call for the limitation and eventual lifting of any reservations to one of its conventions, from the standpoint of the State party it was important to specify the way in which the Covenant would be applied. National legislation would no doubt evolve in such a way that it would eventually be possible to lift the reservation and interpretative declarations.

42. Mr. GASTAUD (Monaco) said that the relationship between the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Covenant must be construed within the framework of the normative hierarchy in Monaco. Constitutional provisions took precedence over treaty-based provisions, which in turn took precedence over legislative and, further down, regulatory provisions. There was no hierarchy between treaties themselves. Treaty-based provisions were incorporated into Monegasque law via sovereign ordinance. Treaties that had immediate effect automatically became part of Monegasque law. If they were not self-executing, however, they required a legislative or regulatory provision before they could enter into force.

43. The human rights and fundamental freedoms unit was responsible for monitoring implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms but not implementation of the Covenant, owing mainly to a lack of resources. A similar institution to monitor implementation of the Covenant would be established only if doing so was deemed essential to meet specific requirements of the Principality.

44. Judicial remedies offered sufficient guarantees in Monaco, since the Principality's courts were not overburdened, and its procedural codes were well known.

45. Mr. GAMERDINGER (Monaco) said that the definition of terrorism in Monegasque law was extremely precise. Although it had never experienced any terrorist activity, Monaco had proved its commitment to combating terrorism by adhering to and ratifying relevant international agreements in the same way as its neighbouring States. While marine pollution was punishable under Monegasque law, it was not considered to be a terrorist offence unless there was a deliberate intention to terrorize the population. There had been no proceedings or judicial decisions relating to terrorism or any proceedings concerning money-laundering in the context of terrorism in Monaco for the simple reason that the country had experienced no terrorist activity.

46. Mr. FILLON (Monaco), replying to comments made concerning the establishment of an independent human rights commission, said that one of the reasons that courts had competence to consider human rights questions was that Monaco's courts were much more accessible than were courts in other countries, owing to the country's small size, and were able to hand down rulings much more quickly.

47. Ms. SAMPO (Monaco) said that bilateral agreements on detention existed between Monaco and France, establishing the responsibilities of each State in the areas of prisoner monitoring and prison regimes. Foreign nationals who had been sentenced were transferred to the neighbouring State, while Monegasque nationals served their entire sentence in Monaco's prison. Rehabilitation of prisoners was covered by bilateral agreements between France and Monaco. Juveniles could be held for short periods in Monaco's prison under a specific regime for minors. There had been no cases of minors being held for very long periods or being transferred to France.

48. The juge des libertés, as established by Act No. 1,343 of 27 December 2007, was a judge appointed by the President of the Court of First Instance on a rotating basis. The juge des libertés



handed down decisions in the form of a reasoned order, which was immediately enforceable, and was responsible for all decisions to extend remand in custody. Given the strong tendency to reduce felonies to misdemeanours, very few appeals were brought before the criminal courts; there had been a total of three since 2007.

49. Mr. GAMERDINGER (Monaco), addressing the question of abortion, said that when a doctor considered that a pregnancy might jeopardize the health of the mother or child, he or she authorized an abortion on the grounds that a state of necessity existed. Discussions were under way between the Government, Parliament, doctors and religious leaders with a view to the adoption of legislation in the matter; under the draft legislation currently under consideration, abortion would be possible in cases where a doctor considered that pregnancy jeopardized the mother's health or that there was a serious malformation of the foetus, or where the pregnancy was the result of rape or incest. It was expected that the bill would be submitted to Parliament in late 2008 or early 2009.

50. Mr. LALLAH asked for clarification as to when prisoners were incarcerated in Monaco and when they were transferred to France. He also wished to have more information on the responsibilities of each State for the monitoring of prisoners and prison regimes, as established in bilateral agreements. He asked what law applied in cases where a prisoner was transferred to France where such matters as sentence length and reduction and disciplinary measures were concerned. In addition, he would like to know how the requirements under article 10, paragraph 3, of the Covenant were met.

51. Ms. CHANET said that her question concerning the right to appeal against criminal convictions had not been answered, nor had she received an answer to her question as to whether anyone had been, or was being, prosecuted in connection with an abortion.

52. Ms. MOTOC asked how a state of necessity justifying an abortion was determined: did the doctor take that decision alone, or was he or she part of a panel or committee? She wondered how frequently such decisions were taken in practice, given that women had the possibility of travelling to neighbouring States to have abortions.

53. Ms. WEDGWOOD noted that while Salic law did not apply to accession to the throne, there was still a preference for a male succession, a fact that would affect people's thinking about the issue. Drawing attention to the dangers of incarcerating minors in the same prisons as adults, she asked whether minors were given the option of detention in a juvenile facility in France.

54. Mr. FILLON said that Monaco's prison was essentially for people serving short prison sentences. Monegasque nationals could serve their sentence there. The French prison system ensured the enforcement of sentences as decided by Monegasque courts.

55. Ms. SAMPO said that under the bilateral agreement with France, prisoners convicted in Monaco and transferred to France served their sentence under the prison regime established in accordance with the French Code of Criminal Procedure. Minors whose rehabilitation had been

ordered in Monaco had the possibility of attending rehabilitation centres in France, although that had not yet happened in practice. Matters of pardon and sentence reduction for prisoners convicted in Monaco but serving their sentence in France were decided by the Prince and notified to the French Government, which was then responsible for implementing those decisions.

56. Mr. FILLON said that while criminal convictions could not be appealed, decisions handed down by criminal courts could be reviewed by the Cour de Révision, which could in turn issue a new decision.

57. Mr. GAMERDINGER (Monaco) explained that after diagnosing that a pregnancy would jeopardize the health of the mother or child and having that diagnosis confirmed by a fellow doctor, it was the doctor himself who decided to carry out the abortion, under his own responsibility. Under those circumstances, no criminal proceedings were initiated because none of the actors involved would have reason to report the offence. In the event that the offence was reported, however, it would fall to the courts to decide whether a state of necessity had justified the doctor's acts. While it was true that women living in Monaco could travel to neighbouring States for an abortion, it was important to establish legislation in that area as a matter of principle.

The meeting rose at 5.55 p.m.