



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/2006/SR.3
10 May 2006

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-sixth session

SUMMARY RECORD OF THE 2nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 May 2006, at 10 a.m.

Chairperson: Ms. BONOAN-DANDAN

CONTENTS

CONSIDERATION OF REPORTS

- (a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH
ARTICLES 16 AND 17 OF THE COVENANT

Initial report of Monaco

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.06-41794 (E) 050506 100506

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Initial report of Monaco (E/1990/5/Add.64; E/C.12/Q/MCO/1; HR/CESCR/NONE/2005/1; HRI/CORE/1/Add.118)

1. At the invitation of the Chairperson, Mr. Bertani, Mr. Bianchi, Mr. Gamerdinger, Mr. Gastaud, Mr. Jahlan, Ms. Lanteri and Ms. Pastor (Monaco) took places at the Committee table.
2. The CHAIRPERSON drew the Committee's attention to the additional information that the State party had submitted regarding its initial report. Since the information had been received the previous day in French only, the delegation had agreed to summarize its contents at relevant points in its dialogue with the Committee.
3. Mr. BLANCHI (Monaco), introducing the initial report of Monaco (E/1990/5/Add.64), said that it was sometimes difficult for the State to fulfil its obligations under the Covenant, such as guaranteeing the right to housing, since its territory consisted of only 2 square kilometres. Monegasque nationals were the second largest community; the large foreign population comprised 120 nationalities. Everyday, some 32,000 people crossed the border to work in Monaco's industrial and service sectors. The 30 per cent of children in Monegasque schools who did not live in the Principality enjoyed the same right to education as those who resided there. Monaco's excellent health-care system was also available to everyone.
4. Monaco had become a State Member of the United Nations in 1993, and had joined the Council of Europe in 2004. With regard to the rights protected under the Covenant, Monaco had ratified several other United Nations instruments, and had acceded to international conventions concerning trafficking in persons, slavery and intercountry adoption. It had recently acceded to the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention on the Rights of the Child, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, and Protocols Nos. 6, 7, 11 and 13 thereto. It would become a party to the Revised European Social Charter in October 2006. Monaco had been a member of the United Nations Educational, Scientific and Cultural Organization (UNESCO) since 1949, and of the World Health Organization (WHO) since 1948. It had signed the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage in 1979 and the European Convention on the Protection of the Archaeological Heritage in 2001. Monaco had signed the Kyoto Protocol to the United Nations Framework Convention on Climate Change in 1998 and was currently in the process of ratifying that instrument.
5. Developments in domestic legislation had included the adoption, in 2005, of an act on the freedom of expression that applied to all forms of public expression and to the press and broadcast media. The act prohibited limitations on the expression of political or religious opinions and criminalized expressions of abuse on the grounds of race, ethnicity, religion or

sexual orientation. Amendments to the Civil Code gave mothers and fathers equal authority over their children, ensured that women had an equal say in where the family lived, and expanded the right of women to transfer Monegasque nationality to their children. The Government was currently considering a number of bills dealing with reforms of the right to association, statutory deposit, and parental leave for adoptive parents.

6. Mr. RIEDEL said that he did not understand why the Government had made interpretative declarations to some articles of the Covenant.

7. Mr. PILLAY said that it would be useful to learn whether the Covenant had been directly invoked before the Labour Tribunal in the case between Mr. L. and S.A.M. Société des Bains de Mer et du Cercle des étrangers and, if so, which articles had been cited. The reporting State should clarify whether the Covenant could be directly invoked before domestic courts, and whether it prevailed in cases of conflict between the Covenant and domestic legislation. Further details should be provided on the penalties handed down to those found guilty of discrimination on the grounds listed in article 2, paragraph 2, of the Covenant. He wished to know whether women who acquired Monegasque nationality through marriage could transmit that nationality to their children.

8. Mr. MALINVERNI asked why the State party was not a member of the International Labour Organization (ILO). He requested additional information on how the Covenant and the Revised European Social Charter could be used to extend implementation of the rights not included in the Constitution. The reporting State should indicate whether it intended to withdraw the interpretative declarations it had made to the Covenant in the near future, since such declarations should be made only as a temporary measure in order to allow domestic legislation to be brought into line with international instruments.

9. Mr. ATANGANA asked whether legislation on the appointment of judges had been brought into line with other constitutional reforms. The delegation should explain why male heirs were given priority over females in succession to the throne.

10. Ms. BRAS GOMES asked which social benefits depended on residence in Monaco. She would be interested in knowing whether the State party had not ratified any ILO conventions as a matter of principle. The delegation should clarify how long a foreign man had to wait after marrying a Monegasque woman before applying for Monegasque nationality.

11. Ms. BARAHONA RIERA asked whether the Government planned to bring all domestic legislation into line with the amended Civil Code in the area of gender equality. It would be useful to know whether any institution had been established to monitor implementation of provisions on gender equality. She asked whether there was specific legislation on gender equality. Additional information should be provided on any provisions of the Civil Code that differentiated between legitimate and illegitimate children, even if only by definition.

12. Mr. SADI asked to what extent policymakers in Monaco were familiar with the Covenant and took it into consideration. The delegation should provide examples of cases in which the Covenant had been invoked by private persons.

13. He enquired whether Monaco had any plans to withdraw its reservations to the Covenant.
14. He wondered whether Monaco had taken any measures to disseminate information about the Covenant among the general public, for example through school and university courses.
15. Mr. TIRADO MEJÍA asked how much money Monaco earmarked for international cooperation.
16. Mr. GASTAUD (Monaco) said that, while Monaco's reservations might be seen as a derogation from the provisions of the Covenant, the purpose of Monaco's interpretative declarations was to ensure that the provisions of an international treaty or convention were implemented in a set way. Monaco's reservations to article 2, paragraph 2, of the Covenant were justified. While Monaco was committed to ensuring that the rights contained in the Covenant were applied to foreigners residing in Monaco, who also had rights under Monegasque law, its authorities had deemed it necessary to take measures to protect the rights of Monegasque nationals, who continued to constitute a demographic minority.
17. Under Monegasque law, the Covenant could be invoked by persons subject to trial and enforced by the courts. In Monaco, the hierarchy of laws was: the Constitution; international treaties; legislative texts; and regulatory texts. Under Monegasque law, a distinction was made between provisions of treaties and conventions that were "self-executing" and those that required enabling legislation before they could be enforced.
18. In general, Monegasque courts that applied the provisions of international treaties and conventions could - to the extent permitted by Monegasque law - apply sanctions under such treaties and conventions.
19. Mr. GAMERDINGER (Monaco) said that, under current Monegasque law, a foreign woman who married a Monegasque man could request Monegasque nationality after five years, while foreign men who married Monegasque women could submit a naturalization request at any time; such requests would usually be considered only after a period of five to seven years. The Government and National Assembly was currently reviewing its legislative procedures for obtaining Monegasque nationality through marriage since the current system favoured men.
20. Monaco had recently enacted a law that gave naturalized women the possibility of automatically passing on Monegasque nationality to their children under the age of 18. However, if a woman who had become Monegasque by marriage subsequently divorced, she could not transmit her nationality to her children.
21. Ms. PASTOR (Monaco) said that the Monegasque authorities had been considering the question of whether or not Monaco should join the International Labour Organization (ILO). However, a number of obstacles remained. The 1998 ILO Declaration on Fundamental Principles and Rights at Work contained principles from several conventions, some of which - particularly the principle concerning discrimination in respect of employment - posed difficulties for Monaco. Nevertheless, it seemed likely that Monaco would become a member of ILO in the near future.

22. Mr. GASTAUD (Monaco) said that article 3 of the Constitution of 17 December 1962 contained a list of fundamental rights; any person who believed that a law was at variance with article 3 could appeal to a court. For matters not covered by the Constitution, the provisions of international treaties and conventions - such as article 16 of the Covenant - could be invoked and it would then be up to the courts to decide whether or not such provisions could be enforced.
23. Judges were appointed by the Prince after he received proposals from the Director of Judicial Services. The courts and all lawyers and court officials were under the authority of the Director of Judicial Services, who answered directly to the Prince and was not a member of the Government. The Prince was not involved in the sanctioning of judges, except for signing the order relating to a given sanction.
24. Mr. BLANCHI (Monaco) said that it was possible both under the old and new Constitution, for a woman to accede to the throne. If Prince Albert II had no legitimate heir, power would pass to his sister, Princess Caroline, and her children (including a daughter) would be next in the line of succession.
25. With regard to international cooperation, Monaco engaged in two categories of assistance: multilateral assistance which took the form of voluntary contributions to such bodies as WHO or the Joint United Nations Programme on HIV/AIDS (UNAIDS), and bilateral assistance. Specific figures on Monaco's international cooperation would be provided at a later date.
26. Mr. GAMERDINGER (Monaco) said that under Monegasque law, prison sentences and fines could be imposed on media that incited racial hatred.
27. Ms. PASTOR (Monaco) said that, while there were no residence requirements for eligibility for social benefits in labour-related matters, foreigners had to be resident in Monaco for at least five years before they could receive social protection benefits. The same time requirement applied to eligibility for free medical care.
28. Mr. GAMERDINGER (Monaco), with reference to the question concerning dissemination of information about the Covenant, said that Monegasque schools offered civics courses that covered such subjects as human rights, guarantees of fundamental freedoms, gender equality and the place and role of children in society. New police recruits were offered special training modules in ethics.
29. Mr. GASTAUD (Monaco) said that the National Council was aware of the Covenant, which had been published in the Principality's Bulletin officiel. Monaco's policymakers were well acquainted with the Covenant, since they were all involved in the application of its provisions in their administrative tasks. In Monaco, the provisions of the Covenant could be invoked like any other legal norms.
30. Although there was no special institution to monitor gender equality, individuals could bring cases involving violations of gender equality before the courts and, in some cases, could request compensation.

31. Mr. BLANCHI (Monaco) said that Monaco's small size facilitated the dissemination of information about the Covenant to the general public.
32. Mr. GASTAUD (Monaco) said that Monaco had been involved in cooperation assistance, particularly with a number of African countries, for several years and had allocated a significant amount of resources to the areas of health, agriculture and education.
33. Mr. SADI welcomed Monaco's efforts to ensure gender equality. The delegation should provide information on the situation of asylum-seekers in Monaco.
34. Mr. PILLAY wished to know why Monaco's Constitution prevailed over the Covenant since, in accordance with the Vienna Convention on the Law of Treaties, international instruments took precedence over domestic law. The delegation should provide specific examples of cases in which the courts could invoke the provisions of the Covenant when certain economic, social and cultural rights were not covered in the Constitution.
35. He enquired whether Monaco had a mechanism to punish discrimination on the grounds of race.
36. Ms. BARAHOMA RIERA said that it was not enough that Monaco's Civil Code provided for compensation when the right to gender equality had been violated. Gender equality was a broad issue that required harmonized laws. She asked whether the Government intended to adopt legislation on gender equality or implement specific programmes or measures to ensure the effective achievement of gender equality and equal opportunities.
37. She wished to know whether there was any discrimination against children born out of wedlock in Monaco. She stressed that even the use of the term "born out of wedlock" constituted discrimination.
38. Mr. GAMERDINGER (Monaco) said that, under an agreement with France, all asylum applications submitted to Monaco were dealt with by the French Office for the Protection of Refugees and Stateless Persons. The Government of Monaco respected the conclusions of the Office, which sometimes required Monaco to issue travel documents to an applicant, in accordance with the Covenant.
39. Mr. GASTAUD (Monaco) said that, under Monaco's hierarchy of laws, the Constitution took precedent over international conventions. Monaco was not a party to the Vienna Convention on the Law of Treaties.
40. With regard to the invocation of the Covenant in the courts, the Association of Tenants of Monaco had recently referred Act No. 1235 of 28 December 2000, on rental conditions of certain residential premises, to the Supreme Court on the grounds that it was contrary to the Covenant. Although the Supreme Court had ruled that certain provisions of the Act were invalid, it had done so on the grounds that the provisions in question were unconstitutional rather than incompatible with the Covenant.
41. Ms. PASTOR (Monaco), referring to gender equality, said that Monaco implemented a policy of positive discrimination in order to protect women in certain circumstances. The

principle of gender equality was upheld in national legislation, particularly in the area of remuneration. The Labour Inspector could require employers to provide documentary proof that there was equality of remuneration.

42. With regard to children born out of wedlock, he said that the Civil Code had been amended to allow natural children to benefit from parental authority exercised jointly by the father and the mother, provided that both parents acknowledged the child.

43. Mr. MALINVERNI asked whether, in its decision on housing legislation, the Supreme Court had not accepted the tenants' invocation of the Covenant because the Covenant was not relevant to the case or because the Supreme Court did not consider the Covenant to be part of its legislation. He wondered whether there was any mechanism to monitor the conformity of domestic legislation with international treaties.

44. Mr. GASTAUD (Monaco) said that, in the housing dispute, the Supreme Court had considered the invocation of the Covenant to be inappropriate. Only the constitutionality of domestic law, not its conformity with international treaties, was monitored. It was therefore the responsibility of each court to apply legal norms that were compatible with international instruments.

45. Mr. SHEN Yongxiang asked whether the Covenant could be applied directly or whether it must first be incorporated into domestic law. He requested further information on how the principle of gender equality was implemented and how economic, social and cultural rights were guaranteed.

46. Mr. GASTAUD (Monaco) said that, in order to implement the general provisions of the Covenant, it was necessary to enact legislation establishing the competent administrative services to monitor the application of the Covenant and sanction violations of that instrument.

47. Ms. BRAS GOMES expressed concern that Monaco had not provided any information on social security for part-time workers. According to the written replies to the list of issues, although part-time work was recognized, it was not regulated by Monegasque labour law. The delegation should provide detailed information on measures to protect part-time workers.

48. The payment of certain benefits was made on the assumption that the head of household was a male, thus discriminating against female heads of household, and she would welcome additional information on that situation. She understood that, in order to be eligible for social security, self-employed workers must join a mandatory scheme that provided coverage for illness, accident and maternity; she wondered whether those workers were covered by family benefits. She wished to know whether the Government had considered the possibility of moving towards a social security system in which the child was the holder of rights with respect to family benefits.

49. She expressed concern that the information provided by the delegation contained several references to legitimate children in the area of social security. For example, in the event of the death of the right-holder as a result of an accident in the workplace, survival benefits were paid only to legitimate children. It appeared that, although amendments had been made to the Civil Code, they had not been translated into practice.

50. The condition that free medical care would be provided only to persons who had been resident in the Principality for at least five years seemed to be discriminatory. Monaco had recently signed the Revised European Social Charter, which stipulated that States parties must provide emergency social and medical assistance to nationals of other States parties on the same basis as they would provide such assistance to their own nationals. She requested further information on that situation.

51. Mr. TEXIER said that, given the considerable number of foreign workers in Monaco, it did not seem necessary to maintain the interpretative declaration to article 6 since there did not appear to be any incompatibility between Monaco's domestic legislation and the provisions of that article.

52. He asked whether employment contracts were usually open-ended or drawn up for fixed periods. Since Monaco was not a member of ILO, he would be interested in hearing the delegation's views regarding the recent decision by an industrial tribunal in France that the controversial contrat nouvelles embauches was incompatible with ILO Convention No. 158 concerning Termination of Employment at the Initiative of the Employer because it provided for an excessively long probation period of two years and made it possible to dismiss employees without grounds.

53. He asked how often the minimum wage was reviewed in order to take account of the cost-of-living increases. He wondered whether such reviews were the result of legislative measures or of negotiations between unions and employers' and employees' organizations.

54. Although Monaco's domestic legislation on gender equality was in conformity with the Covenant, he would welcome any information on the gender pay gap in practice.

55. Since the content of the interpretative declaration in respect of article 8 corresponded exactly to the provisions of that article, the Government should consider withdrawing that declaration. He wished to know which professions did not have the right to strike, and what measures were taken to provide minimum services in the event of a strike.

56. Mr. RZEPLIŃSKI asked whether guest workers had the right to join or form trade unions and whether there were any restrictions in that regard. He wished to know where the large number of guest workers lived.

57. Ms. PASTOR (Monaco) said that the Government had examined the residence requirements for eligibility for emergency medical assistance and had decided that the mandatory period of residence should be reduced.

58. The minimum wage was reviewed approximately once a year, and was usually increased by 3 to 4 per cent. In July 2005, the gross minimum wage was set at €8.03 an hour or €1,357 a month on the basis of 169 working hours.

59. Part-time workers were covered by social security, and their situation was increasingly regulated. For example, legislation had recently been enacted on part-time employment in the civil service and in hospitals.

60. Mr. GAMERDINGER (Monaco) said that there were no restrictions on the exercise of trade union rights for services attached to the Department of the Interior, and there were trade unions representing teachers and public security forces. There were no legal provisions restricting the right to strike, although in recent years there had been no strikes by those professions. In the event of a strike, it would be necessary to provide minimum services to cover vital needs in such areas as public security and health.
61. Ms. PASTOR (Monaco) said that employment contracts were usually open-ended; although a labour law reform was currently under discussion, that principle would not be affected. There were no restrictions on foreign workers joining trade unions.
62. Mr. BLANCHI (Monaco) said that, owing to Monaco's small size and the shortage of housing space, most foreign workers lived in France and Italy. In an attempt to remedy the housing situation, in the past five years the territory of Monaco had been increased by approximately one sixth as a result of land reclamation from the sea.
63. Mr. RZEPLIŃSKI wished to know who was responsible for providing health services and social security to families of foreign workers. He wondered whether there were any social security agreements with Italy and France.
64. Mr. BLANCHI (Monaco) said that Monaco had concluded bilateral agreements on social security with the Governments of France and Italy. The agreements enabled French and Italian nationals employed in Monaco to participate in the Monegasque social security system, which provided health, employment accident, maternity, retirement and family benefits.
65. Ms. PASTOR (Monaco) said that entitlement to social security benefits in Monaco was not linked to a worker's place of residence or nationality but rather to his or her employment.
66. Mr. GASTAUD (Monaco) said that bilateral social security agreements had been concluded with only Italy and France because nationals from those countries accounted for most of the foreign workers employed or residing in Monaco.
67. Mr. KERDOUN wished to know what criteria had been used to select the five recipients of Monaco's bilateral food aid. He asked whether any conditions were attached to the provision of such aid and wondered why there were so few aid recipients. Some of the selected countries did not appear to require food aid. He wondered what criteria had been used to select recipients for Monaco's multilateral food security programme, which was carried out jointly with the Food and Agriculture Organization of the United Nations (FAO). He wished to know what proportion of the FAO budget was supplied by the Government of Monaco.
68. Mr. RIEDEL requested information on efforts to reduce sexually transmitted diseases and on the results of measures to prevent HIV/AIDS. He asked whether decisions to place children with mental disorders in special schools could be contested by parents and, if so, what type of review procedures were used. He enquired whether legal remedies existed for parents who disagreed with the outcome of a review procedure. He suggested that the Government's innovative "transition classes", which were part of its policy to assist children with learning difficulties, should serve as a model for other countries. He requested information on the education bill that would address the needs of pupils with learning difficulties.

69. Mr. TIRADO MEJÍA requested additional information on measures that the Government was taking to address the drug problem, from both a national and international perspective.

70. Mr. SADI said that future dialogue between the Committee and the Government of Monaco would be greatly enhanced if the Committee's general comments concerning many of the rights protected by the Covenant were more rigorously implemented in Monaco.

71. Ms. BARAHONA RIERA said that the delegation should clarify the distinction made in Monaco's domestic legislation between legally constituted and de facto marriages. She asked whether the Government planned to modify its legislation and to grant equal rights to the persons in both types of marriage and to their children. The delegation should indicate whether domestic violence and violence against women were criminalized in Monaco, and whether measures were being taken to address the root causes of those problems. She wished to know the incidence of trafficking in persons, particularly trafficking in women for the purpose of sexual exploitation. The delegation should provide information, including statistics, on measures it had taken to prevent such trafficking.

72. Mr. GAMERDINGER (Monaco) said that, despite the Government's efforts to prevent sexually transmitted diseases, the incidence of such diseases among young people had increased. Monaco provided confidential, cost-free and voluntary screening and treatment for such diseases. He noted that public health statistics for HIV/AIDS and other sexually transmitted diseases included many patients from outside the country.

73. Through the use of remedial programmes, the Government was endeavouring to keep disabled children and children with learning difficulties in mainstream schools as long as possible. When a child was unable to remain in a mainstream school, a panel consisting of physicians, teachers and social workers was set up to determine the best solution for the child's education. Some children were required to attend special schools in nearby France, if there were no schools in Monaco to deal with their disability. Parents usually supported the panel's decisions; when they did not, parents could appeal decisions before an administrative council, or before the courts.

74. Illicit drug use was a punishable offence in Monaco. Programmes had been set up in associations and schools to warn young people about the legal and health risks of drug use. Violence against women was an offence under the Criminal Code. A specially trained team of police officers had been set up to deal with women who had been victims of domestic violence. Trafficking in persons was a criminal offence, and perpetrators could be prosecuted and convicted.

75. Mr. BLANCHI (Monaco) said that Monaco's official development assistance had increased in the past 10 years; in 2004, it had stood at some €2.5 million. The criteria used to determine which countries received food aid were proximity, traditional ties with Monaco and assessment of need. No conditions were attached to Monaco's bilateral assistance, which was geared to meeting specific objectives.

76. Mr. GASTAUD (Monaco) said that specific targets were established in both bilateral and multilateral agreements. In order to ensure that those targets were met, government officials had to travel to the countries concerned and provide follow-up, which often placed a strain on

Monaco's limited human resources; that was the main reason for the relatively low number of aid recipients. In addition to food aid, development assistance was provided in such areas as agriculture, technical cooperation and health.

77. Mr. BLANCHI (Monaco) said that Monaco also provided resources to help victims of natural disasters in various parts of the world.

78. Mr. KERDOUN asked whether Monaco regularly allocated 0.7 per cent of its gross domestic product - the objective set by the United Nations - to official development assistance.

79. Mr. BLANCHI said that Monaco had not yet reached that objective.

The meeting rose at 12.50 p.m.