



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Reports submitted by States parties under article 9 of the Convention

Addendum

Information received from the Government of Monaco on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/MCO/CO/6)*

[25 March 2011]

I. Concerning the maintenance of reservations to article 2, paragraph 1, and article 4 of the Convention (para. 7)

A. Article 2, paragraph 1

1. When the Princely Government acceded to the Convention on the Elimination of All Forms of Racial Discrimination on 27 September 1995, it entered a reservation to article 2, paragraph 1, specifying that “Monaco reserves the right to apply its own legal provisions concerning the admission of foreigners to the labour market of the Principality.”
2. The Committee on the Elimination of Racial Discrimination recommended that Monaco should consider withdrawing its reservations to article 2, paragraph 1, given the developments in its legislation since its ratification of the Convention (art. 1).
3. The Government of Monaco is not considering withdrawing this reservation pursuant to article 20, paragraph 3 of the Convention.
4. It is important to bear in mind Monaco’s particular situation, which is that of only a very small number of countries and derives from the fact that the national population is far smaller than the total number of residents, all of whom live in a relatively small territory. As a result, public sector jobs are not limited to Monegasques only. In fact, only 30 per cent

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

of public sector workers have Monegasque nationality. This state of affairs, and the consequences thereof, are unlikely to change.

5. In general, employment rights are exercised equally; the only possible distinctions have to do with nationality or place of residence. No distinction, exclusion, restriction or preference is applied on the basis of race, colour, sex, religion, political opinion or social origin.

B. Article 4 of the Convention

6. Monaco has also entered a reservation to article 4, according to which it “interprets the reference in that article to the principles of the Universal Declaration of Human Rights, and to the rights enumerated in article 5 of the Convention as releasing States parties from the obligation to promulgate repressive laws which are incompatible with freedom of opinion and expression and freedom of peaceful assembly and association, which are guaranteed by those instruments”. The Committee recommended that Monaco should withdraw its reservations to article 4 of the Convention.

7. Monaco’s legislation contains provisions that make it possible, particularly in the light of the provisions of article 4, subparagraph (b), of the Convention, to bring the law to bear on organizations and organized propaganda or any similar activity that incites or encourages racial discrimination, as well as on participation in such organizations or activities. These provisions are set out in Act No. 1.355 of 23 December 2008 on associations and federations.

8. For example, article 6 of the Act stipulates that “Any association whose purpose is unlawful or which undermines the independence or institutions of the Principality, infringes the fundamental rights and freedoms recognized therein, presents a threat to public order or morals, or is of a sectarian nature shall be deemed null and void.”

9. The penalty imposed on “any association whose statutes violate the provisions of this act” (art. 22.1) or “any association rendered null and void, in particular in the cases stipulated in article 6” (art. 22.2) is dissolution.

10. By law, dissolution entails the immediate cessation of all the association’s activities and the liquidation of all its assets. The association is dissolved by order of the court of first instance at the request of the public prosecution service or any interested party. The court may appoint one or several judicial liquidators and may also order, subject to appeal, the closure of the premises and ban members of the association from meeting.

11. Furthermore, remaining a member of or continuing to operate such an association is punishable by law. Under article 33 of the aforementioned Act “[a]ny person who operates or continues to operate an association or federation that remains in existence or has been reconstituted after having been declared dissolved shall be liable to 1 to 5 years’ imprisonment and a fine of €9,000 to €18,000, pursuant to article 26, paragraph 3, of the Criminal Code”.

12. Similarly, “[a]nyone who, although not involved in the operation of the association, remains a member of or participates in an association or federation that has been dissolved shall be liable to 6 months’ to 3 years’ imprisonment and a fine of €2,250 to €9,000, pursuant to article 26, paragraph 2, of the Criminal Code”.

13. These provisions thus help to punish such organizations and/or participation in such organizations indirectly by means of general criminal penalties for the undermining of public order or morals.

14. Consequently, the Government of Monaco does not wish to withdraw its reservations in accordance with article 20, paragraph 3, of the Convention.

II. Concerning the inclusion of the specific offence of racial discrimination in the Criminal Code (para. 10)

15. The Committee also drew Monaco's attention to its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993), according to which the provisions of article 4 are mandatory, and emphasized the preventive nature of legislation expressly prohibiting incitement of racial discrimination and racist propaganda. The Committee recommended that Monaco should "adopt the bill intended to supplement the Criminal Code by including a specific offence based on article 1 of the Convention, as well as an aggravating circumstance related to the racist, anti-Semitic or xenophobic nature of offences, so as to give full effect to the provisions of article 4" (art. 4).

- **Concerning incitement to racist propaganda:** attention is drawn to article 16 of Act No. 1.299 of 15 July 2005, concerning freedom of public expression, which provides that "[a]ny person who incites hatred or violence towards an individual or group on account of their origin, membership or non-membership of a particular ethnic group, nation, race or religion, or on account of their real or supposed sexual orientation, shall be liable to 5 years' imprisonment and/or the fine stipulated in article 26, paragraph 4, of the Criminal Code (i.e., a fine of €18,000 to €90,000)".

16. Such incitement is deemed to have been committed irrespective of whether it be "through words, shouts or threats uttered in a public place or public meeting or through written material, printed matter, drawings, engravings, paintings, emblems, images or any other written, spoken or visual aid sold or distributed, offered for sale or displayed in a public place or public meeting, or through posters or notices displayed for public view or through any audio-visual medium" (Act No. 1.299, art. 15).

- **Concerning racial discrimination, incitement to racial discrimination and the aggravating circumstance constituted by the racist, anti-Semitic or xenophobic nature of the offence, the Government wishes to note that it is currently working on an amendment to the Criminal Code to this end.**

III. Concerning the abolishment of the penalty of banishment (para. 11)

17. Lastly, the Committee recommended that the State party should adopt the bill abolishing the penalty of banishment within the framework of its ongoing reform of the Criminal Code (art. 5).

18. It should be noted in this connection that the bill to amend the Criminal Code with regard to banishment is in its final stages and will be submitted to the National Council (Parliament) at its spring 2011 session.