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Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

Monaco*

The present report is a summary of 2 stakeholders' submissions¹ to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

* The present document was not edited before being sent to United Nations translations services.

Information provided by other stakeholders

A. Background and framework

1. Scope of international obligations

1. In 2011, the Council of Europe Commission against Racism and Intolerance (CoE-ECRI) was pleased to note that the authorities were in the process of examining the UNESCO Convention against Discrimination in Education with a view to ratifying it and that this examination was expected to be accompanied by an information campaign to raise awareness of the Convention.² Therefore, it encouraged Monaco to complete the process of ratifying this Convention.³

2. While aware that ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), raised a number of sensitive issues for Monaco, CoE-ECRI reiterated its recommendation that Monaco sign and ratify it.⁴

2. Constitutional and legislative framework

3. CoE-ECRI stated that additional action was needed such as the consolidation of the legislative framework in the field of protection against discrimination.⁵

4. CoE-ECRI noted that no amendments had been made to the Constitution to include a provision establishing the principle of equal treatment and non-discrimination on grounds such as “race”, colour, language, religion, nationality or ethnic origin.⁶

5. CoE-ECRI reiterated its recommendation that Monaco include a provision in the Constitution establishing the principle of the prohibition of discrimination, including on the ground of nationality, and accommodate, as an exception to this principle, the cases of preferential treatment for Monegasques envisaged by law.⁷

6. Welcoming the progress made, at sub-constitutional level, guarantying the freedom of association without differentiating between citizens and non-citizens, CoE-ECRI stated that this absence of differentiation should also be incorporated in the Constitution with regards to the right of assembly.⁸

3. Institutional and human rights infrastructure and policy measures

7. CoE-ECRI mentioned that the Commission for monitoring personal information (Commission de contrôle des informations nominatives), established in 1998, had been functioning since 2009 as an independent administrative authority; it provided guarantees for the collection of ethnic data. However, CoE-ECRI stated that the Commission was still confronted in practice with problems regarding its independence.⁹

8. CoE-ECRI noted that Monaco had an ombudsman’s office within the state administration. This “institutional Médiateur” was tasked with proposing and negotiating solutions in disputes between the authorities and citizens, in application of the relevant laws. CoE-ECRI highlighted that the Médiateur was under the direct authority of the Minister of State, who could take discretionary decisions to resolve the problems identified. It mentioned that the Médiateur dealt with 180 to 200 cases a year, covering all aspects of administrative life.¹⁰

9. Even though CoE-ECRI welcomed the work accomplished by the Médiateur, it believed that independence from the executive was essential for the institution of Ombudsman.

10. CoE-ECRI recommended that Monaco enshrine the independence of the institution of Médiateur in legislation and prepare a draft law to this end in the short term. This draft law should also assign him or her as many as possible of the responsibilities provided for in ECRI Recommendation No. 2 on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level.¹¹

11. The Commissioner for Human Rights of the Council of Europe (CoE-Commissioner) called on Monaco to set up an independent human-rights structure to receive human rights complaints from individuals. In order to ensure full compliance with international standards, the holder of the office should be appointed by the National Council, his or her functions should be laid down in a law or even in the Constitution, and his or her functional, financial and material independence must be safeguarded.¹²

B. Implementation of international human rights obligations

1. Equality and non-discrimination

12. CoE-ECRI noticed that no changes had been made to amend the criminal legislation to allow the racist motivation of a criminal offence to be considered as an aggravating circumstance. However, it was informed by Monaco that amendments to the Criminal Code and the Code of Criminal Procedure were still under consideration and that the ECRI recommendation would be examined in this context.¹³

13. CoE-ECRI strongly recommended that Monaco make specific provision in criminal law for racist motivations for ordinary offences to constitute an aggravating circumstance.¹⁴

14. CoE-ECRI noted with approval that legislative efforts were under way to strengthen the criminal law concerning certain offences. Mentioning that Monaco was planning to enact a law on sport that was expected to include a specific provision outlawing racist or xenophobic attitudes and the display of racist symbols or signs reflecting a racist ideology,¹⁵ it encouraged Monaco to pass this law.¹⁶

15. CoE-ECRI stated that under the terms of a bill on offences relating to computer systems, a provision was to be inserted in the criminal code to punish threats made via a computer system against persons or groups of persons on the grounds of their national, ethnic or religious background.¹⁷ It encouraged Monaco to pass this bill.¹⁸

16. CoE-ECRI reminded Monaco that it should be guided by the principle of non-discrimination between its nationals, whether they were Monegasques by birth or acquired Monegasque nationality by naturalisation. It considered that there was no objective and reasonable justification for requiring naturalised Monegasques to have been citizens for five years before being eligible for elections. It further considered that this distinction between native Monegasques and naturalised Monegasques introduced a form of indirect discrimination when it came to exercising the rights associated with citizenship.¹⁹

17. CoE-ECRI strongly recommended that the authorities abolish the requirement for naturalised Monegasques to have been citizens for five years before being eligible for elections (Articles 54 and 79 of the Constitution) in order to do away with any inappropriate differentiation between its citizens.²⁰

18. CoE-Commissioner noted that it was necessary to study some specific situations in which different treatment of certain categories of foreigners was apparent. He stated that Monegasque legislation had led to the creation of various groups of foreigners with different rights and protection according to their nationality or connections with the

country. While many were legitimate and dictated by circumstances, other types of differential treatment might call for further thought as to the objectives pursued.²¹

19. CoE-Commissioner recommended that Monaco adopt stronger anti-discrimination legislation and analyse the different types of preferential treatment affecting foreigners, especially regarding employment and taxation.²²

20. Even though banishment had never been applied in practice, CoE-ECRI reiterated its recommendation that Monaco remove this provision from its legislation.²³

2. Right to life, liberty and security of the person

21. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that Monaco had repeatedly asserted that the criminal law on assault and battery, strengthened by amendments in 2007, adequately protected children from corporal punishment in all settings. However, according to GIEACPC, there was no explicit prohibition of corporal punishment in the Penal Code or in its amending laws, Law No. 1.344 of 26 December 2007 increasing the punishment for crimes and offences against children and Law No. 1382 of 20 July 2011 on the prevention and repression of specific violence.²⁴

22. GIEACPC stated that it had found no evidence that the law was interpreted as prohibiting all corporal punishment and that the legislation itself did not send a clear message that all forms of corporal punishment, including by parents, were prohibited.²⁵

23. Concerning corporal punishment at school, GIEACPC mentioned that while it was not among the permitted disciplinary measures listed in the Education Law 2007, it was not explicitly prohibited.²⁶

24. With regards to the penal system, GIEACPC underlined that corporal punishment was considered unlawful as a disciplinary measure in penal institutions; however there was no explicit prohibition in legislation.²⁷ It added that it was the same situation in alternative care settings.²⁸

25. GIEACPC recommended that Monaco enact a legislation to explicitly prohibit corporal punishment of children in all settings, including in the home, as a matter of priority.²⁹

3. Administration of justice

26. CoE-ECRI declared that human rights training of the judiciary and law enforcement officials did not include a module on combating racism and racial discrimination and that no such training had been provided to the employee and employer members of the Labour Courts.³⁰

27. CoE-ECRI recommended that Monaco continue its efforts as regards human rights training for judicial staff and police officers and to this end, ask them to ensure that their in-service training includes a specific module concerning racial discrimination and racism. In addition, the authorities should make sure that employee and employer of the Labour Court are included in this training.³¹

28. CoE-ECRI declared that the General Inspectorate of Police lacked the necessary independence to investigate complaints of human rights violations by the police, including racial discrimination as it worked under the instructions of the Direction of Public Security. It reported that a number of civil society actors had expressed the view that identity checks affected visible minorities in a disproportionate manner.³²

29. CoE-ECRI reiterated its call for the establishment of a fully independent body with powers to investigate complaints of human rights violations on the part of law enforcement

officials, including racial discrimination.³³ It also recommended that Monaco carry out research on any practice concerning racial profiling and ensures independent monitoring of policing in order to identify cases where identity checks disproportionately affect persons belonging to certain visible minorities.³⁴

4. Right to privacy, marriage and family life

30. The Council of Europe (CoE) mentioned that the Commissioner noted that the widespread use of closed-circuit television (CCTV) should be counter-balanced by an increased protection of individuals' privacy, in particular by adopting a law clearly regulating CCTV use, data retention time and persons authorized to view the footage.³⁵

5. Right to work and to just and favourable conditions of work

31. CoE-ECRI recommended that Monaco bridge the existing legislative gaps in the field of protection against discrimination and to this end, introduces the necessary legal safeguards in the bills on the civil service and employment contracts to protect non-Monegasque workers from any discrimination based on one of the grounds covered by ECRI's mandate.³⁶

6. Right to social security and to an adequate standard of living

32. While recognising the complex nature of the housing situation in Monaco and understanding that a system of protection had been introduced in favour of Monegasques, CoE-ECRI considered that similar attention should be given to those categories of persons, who although they had been working in Monaco for many years, were unable to find housing in Monaco. It noted that the authorities had emphasised that they intended to tackle this problem.³⁷

33. CoE-ECRI encouraged Monaco in its efforts to find housing solutions for non-Monegasques who had been working in Monaco for many years. Furthermore, it encouraged Monaco to reconsider its position and take steps to reduce the five-year residence requirement governing non-Monegasques' eligibility for housing benefit.³⁸

7. Right to health

34. While noting with satisfaction that, according to the authorities, derogations were frequently granted to take account of difficult social circumstances, CoE-ECRI underlined that foreigners were required to have lived in the Principality for five years before being entitled to certain social and medical assistance measures.³⁹

35. CoE-ECRI recommended that Monaco consider the possibility of reducing the residence requirement for social and medical assistance measures and in the meantime, encouraged the authorities to examine on a case-by-case basis any applications made, in order to take account of individual circumstances.⁴⁰

8. Right to education

36. CoE-ECRI noted with approval that human rights education was an integral part of curricula in primary schools and lower and upper secondary schools and that more specific training measures had been pursued, such as the awareness-raising initiatives to mark children's rights day and Holocaust Remembrance Day.⁴¹ However, CoE-ECRI regretted that no additional training for teaching staff, other than those for head teachers and history teachers, had been put in place.⁴² Therefore, it reiterated its recommendation concerning the introduction of specific training to teaching staff, focusing on human rights, diversity and fight against racism. CoE-ECRI also urged Monaco to give due prominence to this subject in school curricula.⁴³

9. Persons with disabilities

37. CoE noted that the Commissioner had recommended that Monaco improve the living conditions of persons with disabilities, enhance the protection of social rights and establish an independent human-rights structure able to deal effectively with complaints from individuals.⁴⁴

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

Civil society

GIEACPC Global Initiative to End All Corporal Punishment of Children;

Regional intergovernmental organizations

COE Council of Europe

Attachments:

CoE-ECRI – European Commission against Racism and Intolerance – ECRI Report on Monaco (fourth monitoring cycle), adopted on 8 December 2010, published on 8 February 2011 (Ref. CRI(2011)3);

CoE-Commissioner - Report of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, following his visit to Monaco on 20-21 October 2008, Strasbourg, 11 March 2009 (Ref.: CommDH(2009)10).

² CoE-ECRI, para. 18, p. 13.

³ CoE-ECRI, para. 19, p. 13.

⁴ CoE-ECRI, para. 20, p. 13.

⁵ CoE-ECRI, p. 8.

⁶ CoE-ECRI, para. 22, p. 13.

⁷ CoE-ECRI, para. 26, p. 14.

⁸ CoE-ECRI, para. 23, p. 14.

⁹ CoE-ECRI, p. 1.

¹⁰ CoE-ECRI, para 47, p. 17. See also CoE-Commissioner, paras. 13-16, p. 4.

¹¹ CoE-ECRI, para. 51, p. 18.

¹² CoE, p. 3 and CoE-Commissioner, para. 16, p. 4.

¹³ CoE-ECRI, paras. 40 and 41, p. 16.

¹⁴ CoE-ECRI, para. 44, p. 17.

¹⁵ CoE-ECRI, para. 43, p. 16.

¹⁶ CoE-ECRI, para. 45, p. 17.

¹⁷ CoE-ECRI, para. 43, p. 17.

¹⁸ CoE-ECRI, para. 45, p. 17.

¹⁹ CoE-ECRI, para. 25, p. 14.

²⁰ CoE-ECRI, para. 27, p. 14.

²¹ CoE-Commissioner, paras. 44 and 47, p. 8.

²² CoE-Commissioner, p. 13.

²³ CoE-ECRI, para. 94, p. 25 and para. 97, p. 26.

²⁴ GIEACPC, para. 2.2, p.2.

²⁵ GIEACPC, para. 2.3, p. 2.

²⁶ GIEACPC, para. 2.4, p. 2.

²⁷ GIEACPC, para. 2.5, p. 2.

²⁸ GIEACPC, para. 2.6, p. 3.

²⁹ GIEACPC, p. 1.

³⁰ CoE-ECRI, p. 7

³¹ CoE-ECRI, para. 56, p. 19.

³² CoE-ECRI, pp. 7-8 and paras 121-124, p. 30.

³³ CoE-ECRI, para. 125, p. 30.

³⁴ CoE-ECRI, para. 126, p. 30.

³⁵ CoE, p.3.

- ³⁶ CoE-ECRI, para. 65, p. 21.
³⁷ CoE-ECRI, para. 76, p. 23.
³⁸ CoE-ECRI, paras 78-79, p. 23.
³⁹ CoE-ECRI, paras 81-82, p. 24.
⁴⁰ CoE-ECRI, para. 83, p. 24.
⁴¹ CoE-ECRI, para. 115, p. 29.
⁴² CoE-ECRI, para. 116, p. 29.
⁴³ CoE-ECRI, paras. 118 and 119, p. 29.
⁴⁴ CoE, p. 3.
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