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Report of the Working Group on the Universal Periodic Review*

Monaco

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document is being issued without formal editing.

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Introduction

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1, held its forty-fifth session from 22 January to 2 February 2024. The review of Monaco was held at the 11th meeting, on 29 January 2024.

2. The Principality of Monaco takes note of the recommendations made during its fourth review.

3. In accordance with paragraphs 27 and 32 of the annex to resolution 5/1 and paragraph 16 of the annex to General Assembly resolution 65/281, this addendum contains information provided by Monaco regarding its position on the recommendations received.

4. During the preparation of the report of the Working Group on the Universal Periodic Review, adopted on 9 February 2024, the Principality of Monaco stated that it supported 92 of the 147 recommendations made.

5. Furthermore, the Principality of Monaco also indicated that it noted 55 recommendations.

Comments by the Principality of Monaco regarding the recommendations which enjoyed its support during the preparation of the report of the Working Group (A/HRC/56/13, para. 97)

6. Monaco would like to make some comments on recommendations it accepted, in particular those which are already being implemented.

Recommendations 97.1 to 97.4 concerning the role of the Office of the High Commissioner for the Protection of Rights and Freedoms and for Mediation in Monaco and the strengthening of its investigative powers

7. The Office's investigative powers have three facets: consulting and interviewing the relevant departments, examining cases and interviewing claimants.

8. In the public sector, the Office is able to request that the relevant administrative departments provide any document, information or assistance necessary for it to carry out its duties. It may also verbally request supplementary items from citizens and from the aforementioned departments so as to clarify any discrepancies. It ensures respect for the adversarial principle by, if necessary and unless impossible, listening to the explanations of citizens or their representatives, as well as those of the administrative authority concerned.

9. In the private sector, the Office hears the claimants and can request them to provide any additional items to clarify the facts and the situation that gave rise to a grievance. After examining the case, the Office can refer it to the authorities or to the relevant parties. In application of the adversarial principle, it may also invite the accused party to comment on the acts of discrimination that are the subject of the complaint.

10. The Office receives functional protection, which means that the State protects it against threats, abuse, insults, defamation or attacks of all kinds that it might face in the exercise of its duties.

11. A review of Sovereign Ordinance No. 4.524 of 30 October 2013 is under way.

Recommendations 97.14, 97.88 and 97.89 on combating all forms of discrimination or violence against or abuse of persons based on their sexual orientation or gender identity

12. Monaco wishes to point out that rights in the field of employment are exercised without distinction, with the exception of rights relating to nationality or place of residence,

which are based not on discrimination but on priorities specifically relating to the number of citizens of Monaco, who constitute a minority in their country.

13. With regard to remuneration, article 2-1 of Act No. 739 of 16 March 1963 on salaries establishes the principle of equal pay for equal work, prohibiting any distinction based on sexual orientation.[1]

14. Article 2 of Act No. 1.457 of 12 December 2017 on harassment and violence in the workplace prohibits psychological or sexual harassment, which covers situations where these acts are motivated by the victim's sexual orientation or gender identity. Such acts are punishable by law.[2]

15. With regard to the legal standards developed to legally protect the rights of the LGBTQI+ community, while the principle of equality is recognized by the Constitution of Monaco, national law also provides for tougher penalties for acts violating the rights of LGBTQI+ persons.

16. Monegasque law specifically punishes incitement to hatred or violence,[3] public[4] and non-public[5] defamation, public[6] and non-public[7] insults, and threats[8] on the grounds of sexual orientation.

17. Act No. 1.478 of 12 November 2019 increased the penalties for violence committed on the grounds of the victim's sexual orientation.[9,10]

18. Monaco would also like to highlight the contribution of Act No. 1.481 of 17 December 2019 on civil solidarity contracts, which introduced the cohabitation agreement for non-matrimonial unions (*contrat de vie commune*) and, specifically, permits "two people living in a de facto union" to enter into a contract of this kind, as provided for by article 1262 of the Civil Code.[11]

Recommendations 97.18 and 97.19 on freedom of religion

19. Monaco would like to point out that, while Catholicism is the official State religion, article 23 of the Constitution guarantees freedom of worship.[12]

20. Followers of religions other than the Catholic religion may practise their religion freely and in public, in accordance with a tradition of liberalism and tolerance.

21. As far as education is concerned, no student is obliged to attend classes in Catholic teaching.

22. Furthermore, religion is taught in history and geography and in philosophy classes, but not as a specific subject.

Recommendations 97.22 to 97.33 on combating trafficking in persons

23. Monaco would like to provide further information on compensation for victims of trafficking, which is facilitated in two ways.

24. Firstly, under article 621-1 of the Code of Criminal Procedure, a victim of trafficking who has sued for damages in criminal proceedings and received a final decision awarding him or her damages may request the Seized or Confiscated Assets Management Service to pay the sum in question out of the funds or liquidation value of the debtor's assets.

25. Secondly, Act No. 1.555 of 14 December 2023 on compensation for victims of sexual offences, serious offences and ordinary offences against children, domestic violence, and other offences against the person, provides that victims of trafficking are entitled to compensation if the following cumulative conditions are met:

(a) The person has benefited from an enforceable decision awarding damages or the payment of an advance in compensation for harm suffered;

(b) The person has failed to secure payment of the full amount of the damages or advance awarded, following the unsuccessful issuance of a formal demand to the convicted person.

Recommendations 97.33 to 97.37 on the situation of migrant workers

26. Foreign workers legally authorized to work in Monaco benefit from the provisions of Monegasque labour law, which governs employment contracts, working hours, wages, and equal pay for equal work, among other things. The working conditions resulting from the application of these provisions are the same for all persons, irrespective of their nationality. In order to ensure compliance with these laws, the Labour Inspectorate carries out inspections. Therefore, combating all forms of exploitation and abuse is one of the Government's priorities. Wage earners can meet inspectors attached to the Labour Inspectorate without an appointment and be informed of their rights.

27. Monaco ensures that the rights of all wage earners are respected. In that connection, numerous inspections are carried out by the Labour Inspectorate. Where domestic staff are concerned, however, the Constitution of Monaco states that "the home is inviolable".[13]

28. Nevertheless, a number of measures are taken to regulate and protect these professions.

29. Where employers are concerned, the recruitment of a domestic worker, facilitated by online services, is subject to a prior check of the relevant working conditions, carried out jointly by the Employment Office and the Labour Inspectorate, on the basis of information contained in the recruitment notice. The Department of Employment has noted that there has been a high rate of declarations giving rise to such checks.[14]

30. Where wage earners are concerned, domestic workers, like all other wage earners, are protected by national legislation. Therefore, they can go to the Labour Inspectorate to file a complaint about their working conditions or obtain information on their rights[15] and they can bring proceedings before the Labour Court to assert their rights.

Recommendations 97.45 to 97.53 on the right to education

31. Access to education, which is available to all without discrimination, is guaranteed by the State.[16]

32. As a result, the school enrolment rate is very close to 100 per cent, accounting for all except a few students undertaking home education or remote learning (subject to the issuance of a declaration and checks of its effectiveness). Enrolment rates for boys and girls in educational establishments in Monaco[17] are more or less equal, reflecting an egalitarian vision that is genuinely effective in Monegasque society.[18]

Recommendation 97.54 on the fight against harassment in schools

33. The fight against harassment in schools, which is provided for by Act No. 1513 of 3 December 2021, remains an effective priority, with the Act providing a legal framework for a procedure and the (albeit few) measures relating to this issue that were already being implemented and monitored.

Recommendations 97.68 to 97.75 on combating violence against women, sexual offences, and family and domestic violence

34. Monaco would like to point out that its laws have incorporated a definition of domestic violence that is in strict compliance with the definition set out in article 3 (b) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention),[19] targeting acts committed between spouses as well as

between people living together in the same household or who have lived together on a long-term basis.[20]

35. First and foremost, the family-related or domestic aspect of an act committed against a victim is considered as a material element constituting a separate offence.[21] Thus, violence that has not resulted in illness or total incapacity to work will constitute an offence if committed "against the perpetrator's spouse, partner in a cohabitation agreement for non-matrimonial unions or cohabitant in a cohabitation agreement for two family members living together under the same roof, or any other person who lives with the perpetrator under the same roof or has lived there on a long-term basis".

36. Furthermore, the aggravating circumstances mechanism has been used to introduce harsher punishments for certain offences if they have a family-related or domestic aspect, including the making of threats – by issuing an order or imposing a condition – of murder, poisoning or assassination, the making of threats of assault or violence,[22] and psychological harassment,[23] incitement to suicide,[24] intentional assault and battery,[25] sexual harassment and blackmail,[26] rape[27] and sexual assault.[28]

Recommendations 97.76 to 97.81 on the prohibition of corporal punishment of children

37. While corporal punishment is already expressly prohibited in Monegasque law, Monaco would like to highlight the recent broadening of the range of situations in which the punishment of corporal punishment has been further strengthened. The aforementioned Act No. 1.513 of 3 December 2021 increased the penalties for the corporal punishment of children with the aim of affording them ever greater protection, particularly for pupils in public or private educational establishments, where the acts are committed within the establishment, within its vicinity or on school transport.[29]

Comments by the Principality of Monaco on the recommendations formulated during the interactive dialogue, examined and noted by Monaco (A/HRC/56/13, para. 98)

Recommendation 98.26 on improving conditions inside prisons, including access to daylight and increasing space for activities, including those outdoors

38. There are currently no plans to build a new prison because, given the small size of the territory of Monaco, the advisability of such a construction would need to be determined within the scope of a comprehensive policy on major development works. However, the Monegasque authorities wish to affirm that, since the last universal periodic review, numerous measures have been taken within the prison with the ongoing aim of improving detention conditions, bearing in mind the low prison occupancy rate.[30]

39. With regard to the activities that inmates may undertake,[31] the Director of the prison no longer requires them to take part in morning walks and has granted them free use of the television provided that it does not disturb other inmates. New activities were introduced in 2022,[32] supplementing a broad range of workshops,[33] and the duration of the psychologist's weekly shift was increased by two hours.[34] Inmates have the option of telephoning their lawyer and the Office of the High Commissioner for the Protection of Rights and Freedoms and for Mediation for 15 minutes per day, at their own expense, with indigent prisoners being allowed 15 minutes per week.[35] Since January 2024, women prisoners in solitary confinement have been able to take part in group activities, specifically with male prisoners, subject to authorization from the competent judicial authority. Lastly, in 2021, work to extend the prison resulted in the establishment of two new posts involving day-to-day tasks, the construction of an activity room in the women's wing,[36] a second exercise yard,[37] and two additional corridors, one of which is for inmates subject to reduced sentencing[38] (part-time

release and split sentences), comprising three individual cells equipped with kitchenettes and showers.

40. The easing of security measures also helps to improve prison conditions. In this connection, full strip searches have been replaced with partial strip searches.[39] Following the acquisition of a millimetre wave scanner in 2023, partial strip searches of inmates are now conducted only in three situations: when they are incarcerated, when they return from an outside visit undertaken for medical or judicial reasons and when they are placed in a disciplinary cell. In addition, telephone conversations are now monitored on a random basis[40], as the appropriateness of such conversations depends on the circumstances, the inmate's personality, his or her conduct in detention and any prior criminal record.

41. The improvement of prison conditions is reflected in the ongoing efforts of the Monegasque authorities to ensure high-quality in-service training for prison staff.[41]

Recommendations 98.35 and 98.36 concerning the amendment of article 6 of Act No. 729 of 1963 to prevent the arbitrary dismissal of foreign workers following maternity leave

42. Act No. 870 of 17 July 1969 establishes that, other than in exceptional circumstances strictly defined in the Act, workers may not be dismissed or notified of their dismissal during maternity leave, whether or not they opt to take such leave, or during the four weeks following the leave. These provisions apply to all employees, irrespective of their nationality. Although article 6 of Act No. 729 of 16 March 1963 establishes that an employment contract can always be terminated at the discretion of one of the parties, it does not establish an absolute discretionary right for the employer.[42]

Notes

[1] Pour mémoire, c'est d'ailleurs en ce sens que la Cour de Révision a statué, par un arrêt du 9 juin 2005, considérant que « les textes invoqués [dont notamment la loi n°739] » avaient pour but de « protéger les salariés contre toute inégalité de rémunération fondée sur les différences de sexe, d'origine ou toute discrimination » (cf. Cour de révision, 9 juin 2005, P. c/ Sté des Bains de Mer et du Cercle des Etrangers). Sept décisions du Tribunal du travail, rendues le 12 mai 2023, relèvent de même qu'« En application du principe « à travail égal, salaire égal », l'employeur est tenu d'assurer une égalité de rémunération entre tous les salariés de son entreprise qui, placés dans des conditions identiques, accomplissent un même travail ou un travail de valeur égale. » Tribunal du travail, 12 mai 2023, Monsieur f. A. c/ La société anonyme monégasque dénommée B. ; Monsieur o. A. c/ la société anonyme monégasque dénommée B. ; Monsieur g. A. c/ La B. ; Monsieur r. A. c/ La société anonyme monégasque dénommée B. ; Monsieur c. A. c/ La société anonyme monégasque dénommée B. ; Monsieur j. dA. c/ La société anonyme monégasque dénommée B. ; Monsieur d. A. c/ La société anonyme monégasque dénommée B.

[2] Conformément aux articles 238-1, 239, 236-1-1-1 et 260-3 du Code pénal.

[3] Article 16 de la loi n° 1.299 du 15 juillet 2005, modifiée, susvisée.

[4] Article 24 de la loi n° 1.299 du 15 juillet 2005, modifiée, susvisée.

[5] Article 421 du Code pénal.

[6] Article 25 de la loi n° 1.299 du 15 juillet 2005, modifiée, susvisée.

[7] Article 421 du Code pénal.

[8] Article 234-2 du Code pénal.

[9] Cf. articles 238-1 et 239 du Code pénal.

[10] En outre, le motif de l'orientation sexuelle constitue également une circonstance aggravante de l'infraction de harcèlement en milieu scolaire, nouvellement créée par la loi n° 1.513 du 3 décembre 2021 (article 236-1-1 du Code pénal).

[11] Comme cela est précisé dans l'exposé des motifs du projet de loi, ce contrat offre « un cadre juridique emportant des conséquences légales quant à l'organisation patrimoniale de la vie commune s'agissant de ses aspects essentiels, à savoir les actes de la vie courante concernant les dépenses ménagères, la gestion des biens des signataires, le logement – y compris son sort en cas de résiliation du contrat – comme les meubles qui le garnissent ou le sort des biens acquis en cours d'exécution du contrat » (Cf. Articles 1273 et s. du Code civil). Le CVC accorde des droits en matière : de continuation du bail (Article 1582 du Code civil) et de cotitularité (Article 1596-1 du Code civil) ; une priorité à l'emploi (Article 5 de la loi n° 629 du 17 juillet 1957 tendant à réglementer les conditions d'embauchage et de

licenciement en Principauté, modifiée) ; du droit de demander la mise sous tutelle de son partenaire (Article 410-10° du Code civil) ; de reconnaissance de la possibilité de gérer le patrimoine de son partenaire majeur incapable (Article 410-18° du Code civil).

[12] *« La liberté des cultes, celle de leur exercice public, ainsi que la liberté de manifester ses opinions en toutes matières sont garanties, sauf la répression des délits commis à l'occasion de l'usage de ces libertés. Nul ne peut être contraint de concourir aux actes et aux cérémonies d'un culte ni d'en observer les jours de repos* ».

[13] La Constitution du 17 décembre 1962, en son article 21, affirme que « [l]e domicile est inviolable » et « [qu'a]ucune visite domiciliaire ne peut avoir lieu que dans les cas prévus par la loi et dans les conditions qu'elle prescrit ». Dès lors, les services de l'Inspection du Travail ne peuvent se rendre au domicile des employeurs « maîtres de maison ».

[14] En 2022, par exemple, Monaco recensait 2 446 employeurs « maîtres de maison ».

[15] En 2022, par exemple, 3 347 personnes ont été reçues.

[16] Ainsi qu'énoncé par la loi du 12 juillet 2007 sur l'éducation.

[17] 50,5% de garçons et 49,5% de filles selon un chiffrage arrêté au 31 décembre 2022.

[18] Les apprentissages premiers et fondamentaux de ce que l'on appelait la maternelle et le pré-primaire sont également perçus comme primordiaux en ce qu'ils préparent les enfants dont la personnalité est en germes et l'apprentissage en marche, et ont vocation à façonner de jeunes gens qui seront porteurs de valeurs, respectueux de tous et notamment des différences pour favoriser l'acceptation de tous dans une société démocratique et ouverte (plus de 140 nationalités présentes dans la Principauté).

[19] Convention qui précise que « le terme « violence domestique » désigne tous les actes de violence physique, sexuelle, psychologique ou économique qui surviennent au sein de la famille ou du foyer ou entre des anciens ou actuels conjoints ou partenaires, indépendamment du fait que l'auteur de l'infraction partage ou a partagé le même domicile que la victime ».

[20] Relèvent par conséquent de cette violence domestique « *toute forme de violence ou de menaces de violence, physique, psychologique, sexuelle ou économique exercée par des personnes partageant ou ayant partagé une communauté de toit avec la victime* », comme le précise expressément l'article préliminaire de la loi n° 1.382 du 20 juillet 2011 relative à la prévention et à la répression des violences particulières.

[21] Article 238-1 du Code pénal.

[22] Article 236-1-4, alinéa 2 du Code pénal.

[23] Article 234-1 du Code pénal.

[24] Article 236-1, dernier alinéa du Code pénal.

[25] Article 239, alinéa 1er du Code pénal.

[26] Article 260-3, chiffre 9 du Code pénal.

[27] Article 262-1, chiffre 3 du Code pénal.

[28] Article 264, chiffre 3 du Code pénal.

[29] Article 238-1 et 239 du Code pénal.

[30] 19 détenus en moyenne par an entre 2019 et 2023 pour une capacité de 87 détenus.

[31] Par une note de service du 06 avril 2022.

[32] Sophrologie et art thérapie par exemple.

[33] Cours de français, d'anglais, d'italien, d'échec, de dessin, de sport, de musculation, accès quotidien à la salle de musculation (du lundi au vendredi), seul ou en binôme, depuis l'été 2023.

[34] Passant ainsi, au 1er janvier 2023, à cinq heures.

[35] Par note de service du 20 janvier 2022.

[36] D'une superficie de 30 mètres carrés.

[37] D'une superficie de 80 mètres carrés.

[38] D'une superficie de 110 mètres carrés.

[39] Par une note de service du 4 février 2022 prise par le Directeur de la Maison d'arrêt.

[40] Depuis une note de service en date du 5 juillet 2023.

[41] A cet égard, il est à relever la signature en 2021 par le Secrétaire d'Etat à la Justice d'un protocole avec l'administration pénitentiaire française offrant un cadre permettant à des surveillants pénitentiaires de procéder à des stages dans des maisons d'arrêt françaises ainsi qu'à l'Ecole nationale de l'administration pénitentiaire française, ou encore au personnel de direction de suivre des formations en France, ce qui favorise un partage de connaissances, d'expériences et de bonnes pratiques.

[42] C'est ce qui ressort d'ailleurs d'une jurisprudence constante du Tribunal du Travail, qui peut être saisi par tout salarié considérant avoir fait l'objet d'un licenciement abusif et souhaitant faire valoir ses droits.