

AS/Mon(2008)29 rev.
20 November 2008
amondoc29r_2008

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Monaco¹

Information note by the co-rapporteurs on their fact-finding visit to Monaco (7-8 October 2008)

Co-rapporteurs: Mr Leonid SLUTSKY, Russian Federation, Socialist Group, and Mr Pedro AGRAMUNT, Spain, Group of the European People's Party

¹ This information note has been made public by decision of the Monitoring Committee dated 19 November 2008.

I. Introduction

1. As co-rapporteurs for the monitoring procedure in respect of Monaco, we visited the Principality on 7 and 8 October 2008 in order to assess the progress made in implementing Resolution 1566 (2007) on the honouring of obligations and commitments by Monaco as a member state, adopted in June 2007.
2. We met authorities at the highest level (HSH the Sovereign Prince, the Minister of State, the President of the National Council, various Government Counsellors, the Director of Legal Services, the Attorney-General, the Mayor of Monaco) and representatives of the media, parliamentary groups, the trade union federation and the Assembly of French citizens living abroad.
3. We would like to thank the Monegasque delegation for their excellent organisation of this visit and Ms Karine Carlin-Marquet, Secretary of the parliamentary delegation in the Monaco National Council, for her invaluable assistance and co-operation.
4. We were able to note the progress made by the country in honouring its obligations and commitments vis-à-vis the Council of Europe in the four years since its accession to the Organisation. Key laws were passed in 2007 and 2008 amending certain provisions in the Code of Criminal Procedure and the Criminal Code on, amongst others, pre-trial detention, police custody, telephone monitoring, the punishment of crimes against minors and the liability of legal persons.
5. During our visit we concentrated on some issues linked to the obligations and commitments not yet honoured which are of particular interest to the Assembly, namely:
 - ratification of the revised European Social Charter;
 - ratification of Protocol No. 1 to the ECHR safeguarding property rights, the right to education and the right to free elections;
 - signature of Protocol No. 12 to the European Convention on Human Rights;
 - ratification of the Convention on Cybercrime;
 - adoption of the law on associations;
 - adoption of the law on the functioning of the National Council;
 - reform of the Criminal Code and the Code of Criminal Procedure.
6. This information note presents the main points raised during our October 2008 visit. A preliminary draft report on the monitoring of Monaco's obligations and commitments will be presented to the Committee at a later date.

II. Council of Europe Treaties

7. As at 27 October 2008, Monaco had ratified 34 Council of Europe conventions out of 203 and had signed 5 others, namely Protocol No 1 to the European Convention on Human Rights, the Revised Social Charter and, very recently on 1 October 2008, the Convention for the protection of individuals with regard to automatic processing of personal data (CETS No. 108) and its additional protocol, regarding supervisory authorities and transborder data flows (CETS No. 181) and, on 22 October 2008, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).
8. It should be pointed out that on 18 September 2007, three months after the adoption of Resolution 1566, Monaco ratified the European Convention on the Suppression of Terrorism (CETS No. 090).
 - i. *The European Social Charter (revised)*
9. The revised European Social Charter was signed on 5 October 2004 but has still not been ratified, despite the fact that this obligation was to be fulfilled within two years of accession. The Government told us that, under Article 14 of the Constitution, ratification will be by sovereign order and will not be voted on by the National Council as it does not involve the inclusion of a new budget heading. The Prince will inform the National Council, via the Minister of State, prior to ratification.
10. Ratification was already on the agenda in 2006, but the Government decided to allow itself more time to reflect on ratification in view of recent developments in the case-law of the European Court of Human Rights, in particular the *Demir and Baykara v. Turkey* judgment of 21 November 2006.
11. We repeated our view that this Turkish case was not relevant and once again expressed our incomprehension at the Government's position based on the opinion of a single expert.

12. The authorities have told us that they could envisage ratification of the Revised Social Charter by the end of the year, once the *Demir and Baykara v. Turkey*² case has been reviewed by the Grand Chamber. The latter's judgment is expected by the end of the year.

13. We also encouraged the authorities to consider study visits by civil servants from the government administration of the Principality to the Social Charter secretariat so that they could become more familiar with the Charter once it has been ratified.

ii. Protocol No. 1 to the European Convention on Human Rights and Protocol No. 12

14. Protocol No. 1 safeguarding property rights, the right to education and the right to free elections has still not been ratified and the Monegasque authorities consider that there is a major obstacle to this ratification.

15. Protocol No. 1 to the ECHR has been ratified by 45 out of 47 member states³. The main argument put to us is that ratification of Protocol No. 1 would result, *ipso facto*, in application of Article 14 of the Convention, which prohibits discrimination in enjoyment of the rights safeguarded by the Convention. The issue is a delicate and complex one in view of the geographical and demographic situation of the Principality, and especially the fact that the Monegasque population is in the minority. The advantages enjoyed by Monegasque citizens in terms of social assistance and the right to housing raise some problems insofar as the authorities fear a number of applications to the European Court of Human Rights following ratification.

16. Opinion No 250 (2004) provided that Protocol No. 12 on the collective enforcement of a general prohibition of discrimination should be signed within one year of its coming into force and ratified⁴ within five years thereafter. Protocol No. 12 came into force on 1 April 2005 and should, therefore, have been signed by 1 April 2006; this has not yet been done. The reasons put forward by the authorities are by and large the same as for the non-ratification of Protocol No. 1.

17. We nevertheless pointed out that Monaco freely and formally undertook to ratify Protocol No. 1 and to sign Protocol No. 12 within one year of accession. Ratification of the one and signature of the other could be carried out with the formulation of appropriate reservations taking into account the features specific to Monaco. The authorities have said that they are willing to pursue dialogue on this issue.

iii. The Convention on Cybercrime

18. The Convention on Cybercrime should be ratified by October 2009 in order to comply with the commitment to ratify it within 5 years of accession. We encouraged the authorities to go ahead with this ratification as soon as possible given that it does not raise any particular problems. The authorities assured us that they would be considering ratification at the earliest opportunity, wishing to show their willingness to co-operate, even though this was not exactly a priority for the Government.

III. The ratification procedure for international treaties and the role of the National Council

19. Since 2002 the National Council has been required to give its agreement to the ratification of treaties where they affect constitutional organisation, entail changes in existing legislative provisions, involve participation by the National Council in an international organisation or create a budgetary cost of a new kind or with a new purpose. In our view, this is not enough.

20. The Assembly, in its Resolution 1566 (2007), recommended that the Monegasque authorities "redraw the list of international conventions and treaties in respect of which the National Council must pass a ratification law in accordance with Article 14 of the Constitution and meanwhile submit initially to the National Council any draft reservations or declarations to a treaty in respect of which the National Council must pass a ratification law."

21. As regards treaties which it is for the National Council to ratify in the cases provided for in Article 14 of the Constitution, the ratification procedure does not always include prior consideration by the National Council of any reservations and declarations which it is planned to make when a particular treaty is ratified.

² Application No. 34503/97, judgment of 21 November 2006

³ The only countries not to have ratified Protocol No. 1 are Switzerland and Monaco.

⁴ Protocol No. 12, which establishes a general prohibition of all discrimination, has, as at 10 October 2008, been signed by 20 countries and ratified by 17.

We feel it is highly abnormal, for example, that the National Council, despite being called upon to approve ratification of the ECHR, was not informed beforehand of the reservations and declarations which the Principality was intending to make. The members of the National Council whom we met expressed their regret that this situation persists and that the Government is reluctant to engage in transparency.

22. According to the Government, Article 14 of the Constitution specifies the cases in which ratification requires an approving law and there is nothing "artificial" about the exhaustive list, which has been drawn up in accordance with precise and reasoned considerations. In addition, prior examination by the National Council of reservations and declarations to a ratification would implicitly but necessarily involve restricting the Prince's authority in the field of international relations. While, in those cases laid down in the Constitution, rejection of a bill approving ratification bars ratification of the international treaty, adoption of the bill does not compel the Prince to ratify the international treaty concerned. The making of reservations and declarations is inherent in the discretionary powers which the Prince enjoys in exercising his authority. The Government states that no constitutional revision is envisaged in this field.

23. Elected members of the National Council stressed the fact that they had no wish to restrict the powers of the Prince. Nonetheless they felt that voting on ratification of a treaty without being aware the reservations and declarations was tantamount to asking them to sign without full knowledge of the facts.

24. We reiterated that Monaco should fall into step with European standards in this field and ensure that the national parliament was totally involved in the treaty ratification process, with all due regard, however, for the powers of the Prince.

25. Furthermore, in connection with the international treaties ratified by the Prince without the intervention of the National Council, the Constitution specifies the cases in which a law is required. In all other cases, the Prince can therefore legislate by Sovereign Order.

26. The Government states that an implementing Sovereign Order is issued both in the case of treaties or agreements ratified solely by the Prince or in the case of treaties whose ratification requires a law because certain provisions call for implementing measures. Whether ratification is subject or not to enactment of a law has no legal bearing on the need for a Sovereign Order. A law is a measure preceding ratification whereas an implementing Sovereign Order is subsequent to ratification.

27. The fact is that new offences and criminal penalties can be created by Sovereign Order whereas Article 20 of the Constitution provides that no penalty may be imposed or applied except in accordance with the law⁵. Any conviction in the absence of a corresponding law specifying the criminal offence established in a Sovereign Order could result in violations of Article 7 of the European Convention on Human Rights, which enshrines the same rule requiring compliance with statute.

28. Both the Prince and the Government told us that these Orders had been adopted as a matter of urgency, in particular in order to respond to the recommendations of international organisations in the fields of the fight against international crime, money-laundering and drug trafficking. Monegasque ratification of an international treaty may indeed entail an obligation to take implementing measures.

29. We therefore asked for these implementing measures, particularly in criminal-law matters, to be transposed into the corresponding legislative texts and for the reform of the Criminal Code to be carried out as soon as possible in order to incorporate all the offences and related penalties which at present are set out solely in Sovereign Orders.

30. According to the Government, this has already been done in respect of the law on the criminal liability of legal persons passed last June, almost two years after the promulgation of Sovereign Order No. 605 of 1 August 2006 implementing the United Nations Convention against Transnational Organised Crime of 15 November 2000. The authorities stated that in view of the schedule of the National Council and the Government and the corresponding workload of the administration, the legislative process cannot take place any faster.

⁵ See, for example, Sovereign Order No. 605 of 1 August 2006 implementing the United Nations Convention against Transnational Organised Crime and its protocols on trafficking in human beings and the smuggling of migrants or Sovereign Order No. 653 of 25 August 2006 on the taxing of profits and on VAT, which prescribes fines and prison sentences for tax evasion.

31. We appreciate that the reform of the Criminal Code and of the Code of Criminal Procedure is a huge task and that given the size of the Monegasque administration it requires considerable resources and time. Which is why we call on the Monegasque authorities to turn to the expertise of the Council of Europe in order to optimise resources and speed up the process of the necessary modernisation of the Monegasque legal system.

IV. Domestic law

32. In the matter of domestic law, Monaco has fulfilled four of the five commitments entered into in Opinion 250 (2004). At the time of our visit in October 2008, Monaco had not yet passed the law on associations.

The law on associations

33. The law on associations was already being debated and should have been passed during the National Council's spring 2007 session.

34. The National Council did not find the Government's draft law on associations and federations of associations to be very satisfactory and felt that it was of fundamental importance, for averting certain abuses, to reinforce checks on the use made of public funds paid to subsidised associations and to ensure effective monitoring in this area. The Government, which was opposed to an amendment of this kind in legislation intended to lay sound foundations for freedom of association, opted to make financial checks on individuals and private-law entities receiving public funds the subject of a separate piece of draft legislation. This bill, officially tabled in April 2006, was at once closely scrutinised by the Legislation Commission, which, regretting the absence of substantive revisions, was forced to make numerous changes. The National Council attached particular importance to examining and voting on the two bills – which are inseparable from each other – together.

35. The National Council told us that it had decided to accept the Government's draft so that the bill could at last be tabled for passing, in a spirit of constructive consensus, even though the adoption of the law regarding financial checks on subsidised organisations is no longer on the agenda, since the Government withdrew its bill and took some measures by the means of regulations.

V. Functioning of democratic institutions

i. The Parliamentary elections of 3 February 2008

36. We recall that Monaco held parliamentary elections on 3 February 2008. The results of the ballot produced a parliament composed of members of two of the three lists that ran in the elections, with UPM (Union for the Principality) obtaining 21 out of the 24 seats and REPM (Rally and issues for Monaco) getting 3 seats.

37. In its report on the observation of these elections, the Ad hoc Committee of the Bureau of the Assembly concluded that given the particular situation of Monaco, the election had taken place largely in line with Council of Europe electoral standards. The Electoral commission had conducted its work in an impartial and professional manner, displaying considerable transparency and efficiency.

38. It considered that the results of the elections were indicative of massive support by the Monegasques for the reforms conducted by the State.

39. The Ad Hoc Committee was confident that these elections marked an important milestone along the road of Monaco's further integration into the Council of Europe, and it concluded with a number of recommendations.

40. While no problems had been reported concerning media behaviour, the Monegasque authorities should consider introducing new media legislation that would, amongst other things, specifically address media behaviour during the electoral campaign.

41. The Ad Hoc Committee reiterated the Assembly's recommendation that the Monegasque authorities reflect on the need to adopt a law on political parties, not least with a view to ensuring the transparency of party funding.

ii. *The National Council*

42. Strengthening of the powers of the National Council was the subject of intense negotiation and is still at the heart of the Parliamentary Assembly's concerns.

43. The 2002 constitutional revision conferred new powers on the National Council which it is currently testing. The Council of Europe had asked for these changes to the Constitution so that Monaco could become a genuine "pluralist democracy" within the meaning of the Council of Europe statute.

44. In its Opinion No. 250 (2004), the Assembly recommended that the Monegasque authorities further broaden, within five years of its accession, the powers of the National Council, particularly as regards supervision of government action, the annual presentation of the governmental programme, the right of legislative initiative, and the budgetary debate, in the hope that the institutions would evolve in the course of time.

45. When drafting our last report in June 2007 it was too early to make recommendations just two years after accession. During our last visit, we nevertheless had the impression that even four years after accession there had been few developments in this area. In its Resolution 1619 (2008) on the functioning of democratic institutions in Europe, the Parliamentary Assembly recommended that the Monegasque authorities continue the reform process in order to strengthen further the role of the National Council and to improve the system of checks and balances.

46. The members of the National Council, irrespective of their political affiliation, suffer from the lack of a genuine working relationship between the Government and the National Council.

47. In budgetary matters for example, the National Council approves the budget as a whole and, sometimes, the lack of transparency in this exercise limits its capability of constituting an efficient partner and, if need be, effectively exercising its countervailing power. The same is true regarding legislative initiative. The people with whom we spoke felt that the Government often availed itself of the possibility of withdrawing a private member's bill if it disagreed on the merits of the most important issues, thereby negating de facto the National Council's power of legislative initiative.

48. As a result, certain members of the National Council have found it regrettable that they are unable to implement the programme on which they were elected.

49. By way of example, it should be noted that, in June 2005, the National Council unanimously adopted a private member's bill to amend Law No. 771 of 25 July 1964 on the organisation and functioning of the National Council, aimed at modernising its activities and, in particular, improving the rights of the opposition.

50. For reasons that were strongly criticised at the time by members of the National Council, the Government, while not disagreeing with the merits of this bill, decided to interrupt the legislative process and take no further action. However, at elected members' insistence a working group on the organisation and functioning of the National Council was set up by the Council and the Government to enable the two institutions to determine jointly how the rules governing the Assembly's activities could be improved and modernised.

51. Regrettably, three years later, because of the Government's failure to transform the private member's bill passed unanimously by the National Council in June 2005 into a government bill, the rules governing the functioning of the Assembly (both law and rules of procedure) are still not compatible with the revised Constitution of 2002⁶.

52. The working group has, as yet, not come up with any tangible results and no bill has been drafted. In our view, the matter has to be dealt with as a priority issue by the Government.

53. We were told that the working group would be meeting in late October and the Government told us that it hoped that the modernisation of the National Council's rules of procedure would be undertaken in 2009, after the adoption of the law on the functioning of the National Council.

⁶ The National Council majority supports the view that the relevant legislation should confine itself to institutional and budgetary aspects, leaving other matters to the Assembly's internal rules of procedure, which it should have full power to determine, subject only to validation by the Supreme Court.

54. Improving the functioning of parliament and strengthening its powers, particularly by modernising its rules of procedure, are essential for the balance of powers between Monegasque institutions.

55. For its part, the Government sees no need to alter the institutional balance as introduced by the revision of the Constitution in 2002. For their part, both the majority and the opposition in the National Council state that the powers of the National Council as stipulated in the revised Constitution would be enough to guarantee the independence of the legislative vis-à-vis the executive and the balance between the institutions, but that at present the Government is not being transparent (especially with regard to voting on the budget and legislative initiative) and that accordingly, the National Council is unable to act as a genuine counter-force.

VI. Local Democracy

56. Monaco has neither signed nor ratified the European Charter of Local Self-Government, no doubt because the Principality historically comprises a single municipality whose borders correspond to those of the state.

57. The view of the Congress of Local and Regional Authorities, shared by eminent lawyers, is that the creation of a Monegasque municipal structure is basically in compliance with the Council of Europe's principles of local democracy.

58. The municipality's financial independence was somewhat strengthened by the constitutional revision of 2002 (see Article 87 of the Constitution). A new law on local self-government was passed by the National Council on 6 June 2006 and came into force on 29 June. In our discussions with the mayor and municipal council, we were given confirmation that as a result of this law, since 2007, the municipality had acquired more financial and budgetary independence, making it much easier for the municipal authorities to do their work.

59. With regard to ways of involving foreign residents (three quarters of the Monegasque population) more closely in the management of public life at local level, a town hall website has been set up, designed to inform all users about the life of the municipality. However, the question of foreigners' participation in local elections is not currently on the agenda, in particular because no solution has yet been found on how to organise the representation of the 120 nationalities present in Monaco without discrimination.

VII. Next steps

60. We welcome the co-operation between the Council of Europe and the Principality of Monaco and the progress achieved in the four years since accession in implementing its obligations and commitments vis-à-vis the Council of Europe.

61. Monaco is pursuing its large-scale programme to modernise the Principality's democratic institutions embarked upon since its accession to the Council.

62. During our visit, we called on the Principality to honour its commitments without further delay regarding ratification of the revised Social Charter and Protocol No. 1 to the European Convention on Human Rights and signature of Protocol No. 12.

63. We also stressed that Monaco must modernise its institutions to ensure the proper functioning of the Principality's democratic institutions in accordance with European standards. The law on the functioning of the National Council and the reform of the Criminal Code and Code of Criminal Procedure are key components of this modernisation.

64. Depending on progress with these reforms, we hope to be able to present to the Assembly a report on monitoring of Monaco's obligations and commitments in June 2009.

APPENDIX

Programme of the fact-finding visit to Monaco (7-8 October 2008)

Mr Leonid SLUTSKY, Member of the State Duma
Mr Pedro AGRAMUNT, Senator
Ms Marine TREVISAN, Co-secretary of the Monitoring Committee

Tuesday, 7 October 2008

- 09.00-09.45 Meeting with the representatives of the "Trade Union Association" of Monaco
(Mrs Angèle BRAQUETTI, Betty TAMBUSCIO, Monique FERRET and Mr Henri TADDONE)
- 09.45-10.30 Meeting with Mrs MERLINO, representative of the Assembly of the French nationals living
abroad
- 11.00-13.00 Meeting with H.E. the Minister of State, in presence of the Government members:
- H.E. Mr Jean-Paul PROUST, Minister of State
- Mr Gilles TONELLI, Government Counsellor for Finance and the Economy
- Mr Paul MASSERON, Government Counsellor for the Interior
- Mr Franck BIANCHERI, Government Counsellor for External Relations
- Mr Jean-Jacques CAMPANA, Government Counsellor for Health and Social Affairs
- Mr Robert CALCAGNO, Government Counsellor for Facilities, the Environment and Town
Planning
- 13.00-15.00 Lunch hosted by H.E. the Minister of State, at his residence
(in presence of the Government members and of the President of the National Council)
- 15.00-15.45 Meeting with the representatives of "Rally and issues"
(Mr Laurent NOUVION, Mr Marc BURINI and Mr Christophe STEINER)
- 15.45-16.30 Meeting with the representatives of the "Union for the Future of Monaco"
(Mrs Michèle DITTLOT, Mr Eric GUAZZONNE, Mr Roland MARQUET
and Mrs Fabienne GUIEN)
- 16.30-17.15 Meeting with the representatives of the "Union for the Principality"
(Mr Gérard BERTRAND, Mrs Anne-POYARD-VATRICAN, Mr Franck JULIEN
and Mr Joseph DERI)
- 17.15-18.00 Meeting with Mrs Brigitte GRINDA-GAMBARINI, President of the Court of First Instance
- 18.00-19.00 Meeting with Mr Georges MARSAN, Mayor of Monaco, and the city counsellors
- 20.30 Dinner hosted by Mr Stéphane VALERI, President of the National Council

Wednesday, 8 October 2008

- 09.00-09.45 Meeting with Mr Philippe NARMINO, Director of Judicial Services
- 09.45-10.30 Meeting with Mr Jacques RAYBAUD, Prosecutor general
- 10.30-11.15 Meeting with Mr Bruno NEDELEC, Mr Pierre BARON and Mr Jérôme FOUGERAS-
LAVERGNOLLE, instruction judges
- 11.15-12.00 Meeting with Mr Stéphane VALERI, President of the National Council
- 12.30-14.30 Free lunch

- 14.30-15.15 Meeting with the representatives of the written press:
- Mr Georges-Olivier KALIFA, Editor-in-chief of "l'Observateur de Monaco"
- Mr Martin de KERIMEL, Editor-in-chief of "l'Observateur de Monaco"
- Mrs Joëlle de VIRAS, Journalist at "Monaco Matin"
- Mrs Milena RADOMAN, Editor-in-chief of "Monaco Hebdo"
- Mr Roberto VOLPONI, Director of "La Principauté"
- 15.15-16.00 Meeting with the representatives of the audiovisual press:
- Mr François CHANTRAIT, Director Press Centre, Principality of Monaco
- Mr Jérôme ESSER, Secretary general of "TMC Monte Carlo"
- Mr Peter NUGENT, Presenter at "Riviera Radio"
- Mr Pierre-Yves REICHENECKER, Director of "Radio Monaco"
- 16.00 Press point
- 16.30 Meeting with Mr Georges LISIMACHIO, Head of Cabinet
- 17.00 Meeting with His Serene Highness The Sovereign Prince