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

Honouring of obligations and commitments by Monaco

Preliminary draft report¹

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I. Introduction

1. This preliminary draft report considers the Principality of Monaco's honouring of its obligations and commitments since it joined the Council of Europe four years ago.

2. In March 2005, in accordance with Resolution 1115 (1997) setting up the Monitoring Committee and Opinion 250(2004) on Monaco's application for membership of the Council of Europe, the Committee appointed two co-rapporteurs, Mr Pedro Agramunt (Spain, EPP/CD) and Mr Leonid Slutsky (Russia, SOC), to monitor the situation in the Principality. They undertook two fact-finding visits to the country – in December 2005 and June 2006 - and presented a report to the Assembly's June 2007 session on behalf of the Monitoring Committee, which led to the adoption of Resolution 1566 (2007) on the honouring of obligations and commitments by Monaco.

3. As co-rapporteurs, we visited Monaco on 7 and 8 October 2008 to assess progress in implementing Resolution 1566 (2007) and update the previous report for the next Assembly debate. The Monegasque authorities gave us their full co-operation, which enabled us to gather a great deal of information for this report. We would like to thank the Monegasque delegation for their excellent organisation of this visit and Ms Karine Marquet, Secretary of the parliamentary delegation in the Monaco National Council, for her invaluable assistance and co-operation.

4. This preliminary draft report on Monaco's honouring of its obligations and commitments will be sent to the Monegasque authorities for their comments within a maximum period of three months. We will then prepare a full report, taking account of the authorities' comments, for an Assembly debate, possibly in the June 2009 part-session.

II. Franco-Monegasque treaties and Council of Europe conventions

i. Co-operation treaties with France

5. The Convention signed in November 2005 "to adapt and develop administrative co-operation between the French Republic and the Principality"², which replaced the 1930 convention, was finally ratified by the French parliament in June 2008. The new agreement, which was applied by the two countries even before ratification, enables Monegasque nationals to fill all posts in their country's civil service, including the most senior ones, in particular the offices of Minister of State, Government Counsellor for the Interior, Director of Legal Services, Director of Public Safety and Director of Fiscal Services, which under the 1930 convention were traditionally reserved for French nationals.

6. Even though the 2005 Convention represents major progress in modernising the Principality's relations with France, Article 6 nevertheless stipulates that in the case of functions and posts that affect both countries' "basic interests", particularly the aforementioned five posts, "consultations between the two parties will ensure that the senior persons concerned enjoy mutual trust". In our last report, we expressed the hope that the "mutual trust" condition would enable the Prince to appoint Monegasques to these senior posts. Currently, only the Director of Legal Service is a Monegasque, with the other four posts still occupied by French nationals.

7. We welcome the French parliament's recent ratification of the 2005 Convention as confirmation of the Principality's sovereignty *vis-à-vis* France. However, practice alone will tell whether the new Franco-Monegasque agreements signify substantial recognition by France of the Principality's full sovereignty and not just purely formal modifications. We will therefore follow developments in the application of the 2005 Convention in practice with interest and hope that a growing number of senior functions and posts will be filled by Monegasque nationals in the near future.

ii. Council of Europe Conventions

8. By 24 December 2008, Monaco had ratified 36 Council of Europe conventions out of 203 and had signed 3 others, namely Protocol No 1 to the European Convention on Human Rights, the Revised Social

² We would recall that Monaco's exercise of its sovereign rights is limited by the conventions that link it to France, in accordance with Article 1 of its Constitution, which states that: "The Principality of Monaco is a sovereign and independent state within the framework of the general principles of international law and special conventions with France". For an analysis of the 2005 Convention and of the 2002 treaty that replaced the 1918 one, see our previous report, doc. 11299.

Charter and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

9. The Principality ratified the European Convention on Human Rights and its protocols 4, 6, 7 and 13 on 30 November 2005, accompanied by two declarations and a number of reservations. On 10 March 2006 Monaco also ratified Protocol No.14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194).

10. Three months after the adoption of Resolution 1566, on 18 September 2007, Monaco ratified the European Convention on the Suppression of Terrorism (ETS No. 090).

11. The Criminal Law Convention on Corruption, the Convention on Mutual Assistance in Criminal Matters and the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights were ratified on 19 March 2007.

12. Very recently, on 24 December 2008, Monaco ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its additional protocol, regarding supervisory authorities and transborder data flows (ETS No. 181).

a. *The European Social Charter (revised)*

13. Monaco was also required to ratify the European Social Charter (ETS No. 035) within two years of accession, that is by 5 October 2006. The Charter was signed on 5 October 2004 but has still not been ratified.

14. The Government told us that, under Article 14 of the Constitution, ratification would be by sovereign order and would not be voted on by the National Council as it did not involve the inclusion of a new budget heading. The Prince would inform the National Council, via the Minister of State, prior to ratification. However, we believe that ratification of the Charter should be accompanied by amendments to existing legislation and we invite the Minister of State to consult the National Council³ in advance about the Charter and any reservations, in the interests of respect for the law and of the transparency of the democratic process brought about by Council of Europe accession.

15. 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.

16. 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.

17. During our October 2008 visit, the authorities 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* case⁴ had been reviewed by the Grand Chamber. The Grand Chamber judgment on the case was handed down on 12 November 2008⁵. In its judgment the Court concluded:

"85. The Court, in defining the meaning of terms and notions in the text of the Convention, can and must take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values. The consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases.

86. In this context, it is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned. It will be sufficient for the Court that the relevant international instruments denote a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of member

³ Since 2002, the National Council has been required to approve the ratification of treaties where they affect constitutional organisation, entail changes in existing legislation, involve participation by the National Council in an international organisation or create a budgetary cost of a new kind or with a new purpose – see the section on the ratification procedure and the role of the National Council, paragraphes 28-40.

⁴ Application No. 34503/97, judgment of 21 November 2006

⁵ Application No. 34503/97, case of *Demir & Baykara v. Turkey*, judgment of 12 November 2008

States of the Council of Europe and show, in a precise area, that there is common ground in modern societies (see, mutatis mutandis, Marckx, cited above, § 41)."

18. The Grand Chamber thereby confirmed that the Court could refer to articles of the revised Social Charter and the case-law of the European Committee of Social Rights when interpreting Article 11 of the Convention, on freedom of association, even if the state concerned – in this case Monaco – had not ratified this treaty, but only as one among a number of factors to take into account when interpreting the provisions of the European Convention on Human Rights, which alone were directly applicable.

19. Monaco's ratification of the Social Charter in itself would not therefore in any way change this state of affairs. It has nothing to fear from ratifying the European Social Charter. Whether or not it does so it could still be faced with a Strasbourg Court interpretation of Article 11 of the Convention based on the Charter.

20. While it was already difficult to understand the Monegasque Government's reluctance to ratify the Charter, following this judgment, which was so much awaited in Monaco, there is no longer any impediment to ratification. Failure to ratify the Charter, which was an obligation freely entered into by Monaco when it became a Council of Europe member state, is therefore unacceptable. We invite the Monegasque authorities to take the necessary steps to complete ratification without delay.

21. We also encourage the authorities to consider study visits by officials from the government of the Principality to the Social Charter secretariat so that they can become more familiar with the Charter once it has been ratified.

b. Protocols Nos. 1 and 12 to the European Convention on Human Rights

22. Within a year of accession, Monaco was meant to ratify Protocol No. 1 safeguarding property rights, the right to education and the right to free elections, and Protocol No. 12 on the collective enforcement of a general prohibition of discrimination should have been signed within one year of its coming into force, that is by 1 April 2006. These undertakings have not so far been met.

23. Protocol No. 1 safeguarding property rights, the right to education and the right to free elections (ETS No. 009) has still not been ratified and the Monegasque authorities consider that there is a major obstacle to this ratification.

24. Protocol No. 1 to the ECHR has been ratified by 45 out of 47 member states⁶. 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.

25. 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 ratified⁷ 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.

26. 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.

c. The Convention on Cybercrime

27. The Convention on Cybercrime (ETS No. 185) 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 since it does not raise any particular problems. The authorities assured us that they would be considering ratification at the earliest opportunity, as they wished to show their

⁶ The only countries not to have ratified Protocol No. 1 are Switzerland and Monaco.

⁷ Protocol No. 12, which establishes a general prohibition of all discrimination, has at present been signed by 20 countries and ratified by 17.

willingness to co-operate, even though this was not exactly a priority for the Government. We invite them to call on the assistance and expertise of the Council of Europe in this area to take the necessary steps for ratification.

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

28. 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.

29. 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."

30. 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. 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.

31. 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.

32. 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, we can only support this stand.

33. 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.

34. 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.

35. 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.

36. 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 law⁸. Any conviction in the absence of a corresponding law specifying the criminal offence established in

⁸ 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.

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.

37. 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. However, it is true that Monegasque ratification of an international treaty may indeed entail an obligation to take implementing measures.

38. 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.

39. 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.

40. 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.

III. Domestic law

41. Key laws were passed in 2006 and 2008 amending certain provisions of the Code of Criminal Procedure and the Criminal Code on pre-trial detention, police custody, telephone monitoring, crimes and offences against minors and the liability of legal persons.

42. The enactment of the law on associations in December 2008 means that Monaco has fulfilled all its undertakings regarding domestic law set out in Opinion 250 (2004).

i. The law on associations

43. At the time of our visit in October 2008, Monaco had not yet passed the law on associations. It was already being debated and should have been passed during the National Council's spring 2007 session.

44. The National Council did not find the Government's draft law (No. 728) on associations and federations of associations very satisfactory and felt that to avert certain abuses it was of fundamental importance 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 Committee, which expressed regret at the absence of substantive revisions and felt forced to make numerous changes. The National Council attached particular importance to examining and voting on the two bills – which were inseparable from each other – together.

45. The Government however withdrew the draft law, No. 812, on the financial supervision of subsidised associations. In the interests of consensus, the National Council accepted the Government's proposal, even though the legislation on the financial supervision of subsidised organisations was no longer on the agenda.

46. After more than five years of debate, Law No. 1 355 on associations and federations of associations was finally approved by the National Council on 18 December 2008.

ii. The law to combat domestic violence

47. Draft legislation tabled by a group of members of parliament from the majority was approved by the National Council on 28 April 2008 and included measures to offer protection from and establish penalties for domestic violence between couples, whether or not married or of different sexes. The bill would insert a part V entitled "unmarried cohabitation" and a new Article 196-1 into Book 1 of the Monegasque Civil Code, worded as follows: "Unmarried cohabitation consists in a *de facto* union, characterised by a shared life of a stable and continuing nature between two persons of different sex living as a couple." After examining this proposed wording, the committee on the rights of women and the family considered it necessary to delete the words "of different sex" to avoid any discrimination based on sexual orientation⁹. After a stormy debate the proposal, as amended, was approved by the National Council, against the advice of the Minister of State. We were shocked to discover that in the course of this debate in the National Council, homophobic views were held by senior public authorities.

iii. The law on political parties

48. In its Resolution 1566 (2007) on the honouring of obligations and commitments by Monaco, the Assembly recommended that the Monegasque authorities begin considering the case for a law on political parties, in particular so as to ensure greater transparency in party financing. The recommendation was repeated in Resolution 1619 (2008).

49. We would like to ask the Monegasque authorities whether they have started to consider the case for such legislation and what stage this has reached.

IV. Functioning of democratic institutions

i. The Parliamentary elections of 3 February 2008

50. 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.

51. In its report on the observation of these elections held on 3 February 2008, 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.

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

53. 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.

54. 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.

55. 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

56. 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.

⁹ See also hereafter chapter VI, section *i*, on combating discrimination and racism, with reference to ECRI's recommendations.

57. 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.

58. 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.

59. 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 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.

60. During our visit, the members of the National Council, irrespective of their political affiliation, complained of the lack of a genuine working relationship between the Government and the National Council. Both the majority and the opposition state that the powers of the National Council as stipulated in the 2002 revised Constitution would be enough to guarantee the independence of the legislature *vis-à-vis* the executive and the balance between the institutions. However the Constitution is not yet being fully applied, because the relevant provisions have not yet been transposed into implementing legislation. They also criticise the attitude of the Government, which does not currently accept the need for transparency (particularly with regard to the vote on the budget or legislative initiatives). The National Council is therefore unable to act as a genuine counter-force.

61. In the debates in the National Council on the 2009 budget, which the Government presented in December, the national councillors publicly questioned the Government's working methods and criticised the lack of dialogue and the fact that it treated the National Council as nothing more than a rubber stamp. Notwithstanding a finance committee report calling on members not to approve the budget, it was finally adopted after more than seventy hours' stormy private and public debate by 14 votes to 5, with 4 abstentions. These debates showed that national councillors are gaining in experience of institutional relations and are increasingly exploiting their powers under the 2002 revised Constitution. The Minister of State, who under pressure from the National Council and again in accordance with the current Constitution presented the Government's annual programme, has himself acknowledged that the Government's working method was perhaps not ideal and that consideration had to be given to the timetable of government activities next year, so that the debate with the National Council could be better organised.

62. 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. As a result, certain members of the National Council said that they were unable to implement the programme on which they had been elected.

63. By way of example, 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. This would again be fully compatible with the 2002 revised Constitution.

64. 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. At elected members' insistence a working group on the organisation and functioning of the National Council has since been 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. We were told that the working group would be meeting in late October 2008 and 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.

65. We regret that three years on, the legislation and rules of procedure governing the National Council's operations are still not compatible with the 2002 Constitution¹⁰. We believe that this should be a priority for the Government.

66. Improving the workings of parliament and strengthening its powers, particularly by adopting the legislation on the National Council's functioning and modernising its rules of procedure, are essential for the balance of powers between Monegasque institutions, and thus for the country's future. We fully support the efforts made on both sides – National Council and Government – and wish to point out that the Council of Europe, and particularly the Parliamentary Assembly, could offer their experience to assist in the process.

iii. Local Democracy

67. 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.

68. 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.

69. 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.

70. 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.

iv. The role of the media

71. We described the media landscape in our last monitoring report on the Principality¹¹.

72. According to the journalists we met there is still a problem of access to information because the Government continues to confuse communication and information. The press centre remains a government department which, they claim, insists that they disseminate its information bulletins. Even though the media landscape remains varied there is no investigative journalism and journalists appear to rely on information supplied by the Government via the press centre, since the various government departments apparently do not pass on information but refer inquiries directly to the centre, which thus acts as an information filter. We still consider it essential to develop a more open and transparent policy on access to information¹². The Council of Europe's expertise on this subject might be sought.

73. The journalists we met also told us that they practise self-censorship with regard to the Prince and his family¹³. Incompatibility should also be noted that Monaco has entered a reservation concerning Article 10 of the Human Rights Convention, according to which: "The provisions of Article 10 of the Convention apply without prejudice to the provisions, on the one hand of Article 22 of the Constitution establishing the principle of the right to respect for private and family life, especially concerning the person of the Prince whose inviolability is guaranteed in Article 3, sub-paragraph 2, of the Constitution and, on the other hand, of Articles 58 to 60 of the Criminal Code concerning the offence¹⁴ against the person of the Prince and His family."

¹⁰ The National Council majority supports the view that the relevant legislation should confine itself to institutional and budgetary aspects, leaving other matters to the Council's internal rules of procedure, which it should have full power to determine, subject only to validation by the Supreme Court.

¹¹ See Doc. 11299, section 9, on the role of the media in a democratic society, paragraphs 139 to 151.

¹² Nor, it should be recalled, is there legislation in Monaco authorising public access to administrative documents.

¹³ This is very understandable as the family guard their privacy jealously and do not hesitate to sue newspapers for breach of privacy: see, for example, the ECHR judgment of 24 June 2004 in *Caroline von Hannover v. Germany*.

¹⁴ If committed publicly, offence against the person of the Prince is punishable by 6 months' to 5 years' imprisonment (Article 58 of the Criminal Code) and offence against the Prince's family by 6 months' to 3 years' imprisonment (Article 59 of the Criminal Code).

V. Rule of law

i. The functioning of justice

74. We examined the Monegasque judicial system in our last report¹⁵. It was clear then from the report by the eminent lawyers that there were no major problems with judicial functioning in Monaco and that the country's legal system offered appropriate protection to fundamental rights and freedoms.

75. The Principality possesses a complete and effective judicial system, particularly as regards procedural time limits, which rarely exceed 6 months or 1 year in all courts.

76. Various reforms have been undertaken or are under way to modernise the system and bring it into line with Monaco's international obligations.

77. The justice and freedom law, No.1343, was approved under the urgent procedure on 26 December 2006. It amended the Code of Criminal Procedure so as to:

- protect the rights of persons in police custody;
- regulate telephone intercepts;
- limit the duration of detention on remand, according to the offence committed;
- establish compensation arrangements for arbitrary detention.

78. The National Council is currently considering a general reform of the Code of Criminal Procedure, but according to the Director of Legal Services it does not have the necessary resources to undertake a detailed analysis. We would emphasise that the Council of Europe has solid expertise in this field and is ready to provide assistance to the Monegasque authorities.

79. We had already underlined that the Criminal Code and the Code of Criminal Procedure dated back to 1966 and definitely needed modernising. The main examples we have been given concern the impossibility of laying charges in the case of certain serious offences that do not actually appear on the statute book. The problem was confirmed by Monaco's investigating judges, who were sometimes forced to terminate proceedings because there was no such offence in the legislation.

80. The Director of Legal Services, Mr Philippe Narmino, told us that there were no plans at present for a comprehensive reform of the Code of Criminal Procedure but the Monegasque authorities would fill any gaps as and when they appeared. For example, in December 2007, the crimes and offences against children law, No. 1344, filled an existing legal vacuum by introducing the notion of abuse of weakness into the Criminal Code.

81. In our last report we also identified a problem when the state itself was found to be at fault, since there was no legislation providing for enforcement against the state or a public-law corporation. However, Mr Philippe Narmino has informed us that the state of Monaco has never refused to accept judgments of the European Court of Human Rights. He does not consider legislation necessary since practice shows that the system does function *de facto* without the state failing in its obligations. Although it is not acceptable for citizens to rely on the good will of the authorities to ensure that their rights are respected, we recognise that given the size of Monaco and of its government, an excessive output of laws and regulations is undesirable.

82. We also noted in the last report that there was no possibility under Monegasque law of obtaining a retrial in the event of a finding by the Court of a violation of the European Convention on Human Rights. Mr Narmino has informed us that his officials are currently working on draft legislation, which is being considered by a multidisciplinary committee. Once it has been finalised and approved by the Director of Legal Services it will be presented to the National Council, although he was unable to give us a date. We wish to encourage this initiative and invite the authorities to continue this work as rapidly as possible.

83. A considerable reform of the judiciary itself is currently awaited. Since 2004, the National Council has been examining a bill on the administration of justice and a new statute for judges to replace that laid down in the laws of 1918 and 1965 on the administration of justice, with the aim, *inter alia*, of setting up a judicial service commission for breaches of discipline and reorganising judges' career structure. On our visit in

¹⁵ See Doc. 11299, section 10, on the rule of law, paragraphs 152 to 190

October 2008, Mr Narmino and Mrs Brigitte Grinda-Gambarini, President of the court of first instance, confirmed that this reform was still planned.

84. In particular, section 22 of Bill No. 779, tabled by the Government in May 2004, provides for the future judicial service commission to have 6 members, 2 of whom will be *ex officio* (the Director of Legal Services, who will be its chairman, and the First President of the Review Court) and 3 will be appointed respectively by the Council of State (which is not a court), the National Council and the Supreme Court (but not from its own members). The National Council has proposed the addition of one member elected by the judiciary.

85. Although the Government appears to have accepted this last proposal, it would be appropriate to check whether the envisaged membership of the judicial service commission is in line with European standards, and particularly with the 1998 European Charter on the Status of Judges, bearing in mind that appointed members may not be civil servants, judges or lawyers and that judges will therefore be in a minority on this body. It will also be necessary to state clearly whether the commission's opinions on appointments are consultative or binding, as well as which posts are concerned. In fact the draft legislation presented by the Government appears to exclude judges and prosecutors of higher courts from the judicial service commission's jurisdiction.

86. In its evaluation report on Monaco adopted in October 2008¹⁶, the Council of Europe's Group of States against Corruption (GRECO) states that the Director of Judicial Services currently has considerable discretion over the selection, appointment and careers of judges and prosecutors, which leaves a number of question marks about the independence of the institutions charged with investigating, prosecuting and trying corruption offences. GRECO considers the bill on the administration of justice and a new statute for judges, including the proposed creation of a judicial service commission, to be a very welcome initiative, which might also be an opportunity to discuss and review, together with the French authorities, the arrangements for selecting seconded judges from France, since the Monegasque authorities were unable to describe with any precision the criteria used by France to choose the three candidates it had to propose for each vacant post. Finally, the current rules governing French secondments (renegotiated in 2005 and brought into effect in 2008) – a three year period, renewable once, as with all other seconded French personnel – pose practical problems because of the excessively rapid turnover that results. GRECO also considers that this could affect the independence of judges and prosecutors faced with the pressure of renewal as the end of their first term approaches. The renewal of their secondments is not an automatic entitlement for judges and the decision depends on the respective intentions of the French and Monegasque authorities. According to GRECO, while the former period of twenty years was too long the current one is too short, and a reasonable balance has to be struck. The executive, in the form of the Director of Judicial Services, also has a predominant and largely discretionary role in the exercise of disciplinary authority over prosecutors, and to a lesser extent judges. GRECO recommends that the authorities, in consultation with the French authorities where this is necessary, a. complete the proposed reorganisation of the judiciary and establish a judicial body that would be responsible for the recruitment, appointment, promotion and training of Monegasque and seconded French judges, together with disciplinary and other aspects of their careers; and b. review the arrangements for the secondment of French judges to offer more safeguards for their independence, particularly at the time of possible renewal of secondment.

87. At the time of drafting this preliminary draft report, the National Council, and in particular its legislative committee, was considering the Government's responses to the Council's proposed amendments to the government bill on the administration of justice and a new statute for judges. We would like to be informed of the reasons for the time taken to pass this legislation and progress on the adoption procedure.

88. Turning to the legal profession in Monaco, there is still talk of modernising the law on the profession of barrister, among other things in order to increase the size of the Bar Council. At our meeting with the recently appointed Attorney-General, Mr Jacques Raybaud, we learnt that he had just received proposals from the relevant professional organisations, to which he would give close attention. Since the profession comprises some 28 barristers for the whole country we believe that disciplinary questions must be tackled with great thoroughness and we encourage the Attorney-General's department to draft such legislation with the utmost care, and as rapidly as possible.

¹⁶ See joint first and second evaluation rounds, evaluation report on Monaco, adopted by GRECO at its 39th Plenary Meeting, Strasbourg, 6-10 October 2008, Doc. Greco Eval I/II Rep (2008)1E

ii. *Combating corruption and money laundering*

a. *Combating corruption*

89. Monaco signed and ratified the Council of Europe Criminal Law Convention (ETS 173) on 13 March 2007, and it came into force on 1 July 2007, which entailed its automatic accession to GRECO.

90. Monaco does not appear on Transparency International's annual index of perception of corruption. Judicial statistics on corruption have only recently been established. The replies to the GRECO questionnaire indicate that there is little corruption in Monaco. Two complaints of corruption were lodged between 2002 and 8 November 2006 and both were discontinued with no action taken. During the period from 8 November 2006 to the end of December 2007, two new cases were opened and were the subject of judicial investigations at the time of the visit, pending the implementation of requests for international judicial assistance lodged by the Monegasque judicial authorities. In the other direction, between 2002 and late December 2007, the prosecutor's office received 39 requests for international assistance in cases concerning corruption.¹⁷

91. The recent ratification of the Criminal Law Convention on Corruption (ETS 173) was a first step for the Principality of Monaco in respect of the introduction of anti-corruption measures, and it was indicated that GRECO's report would serve as a basis for further discussions and new initiatives in this area. Corruption is thought to be fairly uncommon in Monaco, but the country attaches great importance to the preservation of its image, which may potentially result in cases not reaching the justice system. Monaco has no record of any convictions or court decisions in this area, despite the presence of sectors sometimes considered to be at risk, and significant gaps in anti-corruption measures and internal/external controls over administrative work and public officials, who often ignore the few preventive measures that do already exist. GRECO has identified further deficiencies that could explain the few cases uncovered to date¹⁸. Finally, it has also found room for improvement in the status of prosecutors and judges, including the protection of prosecutorial work in criminal matters¹⁹.

92. From a constitutional standpoint, GRECO has concluded that "there is little in the way of political counterbalance in Monaco", given the particular nature of the Constitution, which grants the Prince a leading role whereas Parliament – the National Council – has limited powers and the media have very restricted access to information held by the authorities²⁰.

93. Based on its assessment of relevant Monegasque law and practice, GRECO has addressed no fewer than 28 recommendations to Monaco and has invited the Monegasque authorities to report on their implementation by 30 April 2010 at the latest²¹.

94. For our part, we urge the Monegasque authorities to implement the GRECO recommendations, where appropriate making use of Council of Europe assistance to draw up the various programmes and items of draft legislation.

b. *Combating money laundering*

95. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) adopted its most recent report on Monaco in December 2007, following a visit to the country in November 2006²².

96. According to MONEYVAL, since its previous report in 2003 the Monegasque authorities have made several changes to the legislation and regulations to supplement the anti-money laundering arrangements. In particular, they have amended the provision of the Criminal Code criminalizing money laundering, introduced additional customer identification measures, adopted legislation regulating electronic transfers, relations with

¹⁷ See Doc. Greco Eval I/II Rep (2008) 1, paragraph 7

¹⁸ For example, according to GRECO, the most advanced arrangements in the area of detection, seizure and confiscation of proceeds from crime which have been introduced in recent years in the anti-money laundering context, do not fully apply to the fight against corruption and are still confined to organised crime and drug trafficking, despite the fact that the Principality itself has to face a non-negligible level of economic and financial crime. Another shortcoming is the failure to make bribery-related expenditure clearly non-tax deductible, and in parallel, the fact that the tax authorities do not consider themselves to be involved in the detection and reporting of possible criminal offences including corruption.

¹⁹ See Doc. Greco Eval I/II Rep (2008) 1, paragraph 145

²⁰ See Doc. Greco Eval I/II Rep (2008) 1, paragraph 14

²¹ See Doc. Greco Eval I/II Rep (2008) 1, paragraphs 146 and 147

²² For a summary of the report, see doc. MONEYVAL (2007) 28 SUMM

politically exposed persons and the activities of correspondent banks, and ratified a number of international conventions.

97. The volume of suspicious transaction reports has increased in recent years, in particular ones originating from casinos and accountants. According to MONEYVAL, supervision of the financial institutions, in particular on-site supervision, needs to be significantly strengthened, as does the number of staff assigned for this purpose.

98. In recent years, the Monegasque financial system has become increasingly more concentrated as a result of a series of mergers and acquisitions starting in 2003 and the arrival of well-known names in the world of finance and wealth management. The financial sector is dominated by private banking and fund management. In late 2005, the total value of assets managed by Monegasque banking establishments was € 70 billion euros. By the end of 2006, credit establishments and portfolio management had a turnover of € 2.1 billion and represented 15.6% of total turnover of the private sector in Monaco. Most of the banks' activities were concerned with non-resident customers (Italy, Germany, Belgium, northern Europe), who in 2006 accounted for 66% of customer deposits.

99. According to the Monegasque authorities, laundering in Monaco nearly always relates to predicate offences committed abroad, evidence for which requires investigations abroad. Proceedings tend to be lengthy because investigations depend on the co-operation of foreign authorities. The main types of predicate offences are difficult to identify. MONEYVAL believes that, like any major financial centre, Monaco has to deal with very sophisticated forms of money laundering that are mainly concerned with the second and third stages of the process: conversion and integration.

100. Co-operation and co-ordination mechanisms have been set up between the competent authorities responsible for implementing anti-laundering arrangements, which appear to work and ensure that information is being circulated. However, the effectiveness of co-operation between supervisory authorities could be improved.

101. Since 2000 Monaco has been listed by the OECD's Committee on Fiscal Affairs as an un-cooperative tax haven, as it has not given any undertakings regarding the transparency or the effective exchange of information for taxation purposes. MONEYVAL notes though that Monaco does provide mutual assistance in matters regarding organised tax fraud and related crime subject to compliance with the specialty rule²³.

102. MONEYVAL considers that Monaco has a satisfactory legal framework to combat money laundering and terrorist financing, though the evaluators regretted the fact that, in general, the legal provisions are not very detailed or otherwise supplemented by detailed secondary legislation and instructions. They recommend ways in which certain aspects of the system could be strengthened.

103. We invite the Monegasque authorities to continue their efforts, in accordance with the MONEYVAL recommendations.

VI. Human rights

i. Combating discrimination

104. Our last report considered in some detail the specific issues of Monegasque national identity, the particular situation of foreigners with privileged links to Monaco ("*enfants du pays*"), nationality laws, naturalisation and national preference regarding social assistance and the right to housing.²⁴ Since we do not wish to repeat ourselves, we refer readers to the detailed information in the last report and will confine ourselves here to what has happened since.

²³ At a meeting in Monaco in late November 2008, the Chair of MONEYVAL, Mr Vasil Kirov, made it clear that they must not confuse the notion of tax haven with the issue of money laundering and terrorism financing. Not all tax havens comply with the relevant rules, but this is not the case with Monaco. In the Principality, it is possible to establish the origin of funds, identify the real owners and exchange information as part of criminal investigations. Limiting these exchanges in the case of tax transactions is acceptable. What counts for MONEYVAL, and for the Financial Action Task Force (FATF), is that the country should co-operate in criminal, rather than fiscal, investigations. See *l'Observateur de Monaco*, no 73, January 2009, pages 18-19.

²⁴ See Doc. 11299 adopted in June 2007, sections 6 and 11

105. In May 2007, the European Commission against Racism and Intolerance (ECRI), the Council of Europe's independent human rights monitoring body specialising in problems of racism and intolerance, published a report on Monaco²⁵.

106. ECRI notes that since joining the Council of Europe, Monaco has taken a number of measures to combat racism and intolerance, including the ratification of a large number of international legal instruments, including the European Convention on Human Rights.

107. Monaco has also made a declaration recognising the competence of the Committee for the Elimination of Racial Discrimination to examine complaints alleging violations of the rights set out in the International Convention on the Elimination of All Forms of Racial Discrimination. The Monegasque authorities have also honoured a number of commitments made when the Principality joined the Council of Europe, such as enacting a law on the statement of grounds for administrative decisions. They have further enacted a law on freedom of public expression, which punishes incitement to racial hatred. The Monegasque authorities have set up a commission to assist victims of despoilment in the Principality during the Second World War and have adopted a code of conduct for police officers which includes the principle of non-discrimination.

108. However, according to ECRI some steps still remain to be taken. Protocol No. 12 to the European Convention on Human Rights which contains a general non-discrimination clause has not yet been ratified. Monegasque nationality is still granted by the Sovereign Prince alone and applicants are not informed of the reasons for a refusal. The Principality still needs to adopt anti-discrimination provisions in civil and administrative law and criminal law provisions which punish racist acts. The racist motivation of a crime is not regarded as an aggravating circumstance at the time of sentencing. Procedural safeguards are needed with regard to persons subject to a turning back or deportation order. Safeguards are also required with regard to the preferential rules applying to Monegasques, among others, in the employment sector. This will serve to protect workers who do not benefit from such rules against any discrimination in the application of this system²⁶.

109. The ECRI therefore recommends that Monaco ratify Protocol No.12 to the European Convention on Human Rights; ensure that the Constitution contains provisions granting equal status to everyone within the Principality's jurisdiction; include anti-discrimination provisions in civil and administrative law; amend criminal legislation to include provisions against racist acts, such as allowing the racist motivation of a crime to be considered as an aggravating circumstance; and ensure that the preference granted to Monegasques, among others, in employment matters is coupled with legal protection against racial discrimination. Finally, ECRI considers it necessary to set up a specialised body for the protection of human rights, whose tasks would include, among others, combating racism and racial discrimination²⁷.

110. We encourage the Monegasque authorities to implement the ECRI recommendations and inform us of the relevant measures taken.

ii. Prevention of torture and inhuman or degrading punishment or treatment

111. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Monaco from 28 to 31 March 2006 the Government of the Principality of Monaco authorised publication of the first report in May 2007²⁸.

112. The CPT heard no allegations of torture or serious ill-treatment from persons who had been detained by the police and received no evidence of such conduct. This positive impression was confirmed by information gathered by the CPT from other sources, in particular judges, lawyers and members of the medical profession.

113. It should be recalled that under the Neighbourhood Agreement between France and Monaco of 18 May 1963, persons convicted in Monegasque courts serve their sentences in French prisons. In practice,

²⁵ Report on Monaco adopted on 15 December 2006 and published on 24 May 2007 and appended comments and observations of the Monegasque authorities on the draft report of the European Commission against Racism and Intolerance (ECRI), reference CRI(2007)25

²⁶ *op. cit*

²⁷ *op. cit*

²⁸ Report to the Government of the Principality of Monaco relating to the visit to Monaco carried out by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) from 28 to 31 March 2006 (CPT/Inf (2007) 20) and the Government of Monaco's response to the report of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) concerning the visit to Monaco carried out from 28 to 31 March 2006 (CPT/Inf (2007) 21), both reports published on 31 May 2007.

persons who are finally sentenced to imprisonment are transferred to Nice short-stay prison, and then to other places of detention in accordance with the French prison system. In principle Monaco short-term prison is not intended for persons serving sentences of imprisonment and should only be used for detention on remand or for persons serving the final part of their sentence.

114. The Monegasque authorities have made serious efforts to comply with certain CPT recommendations, particularly the reform of the Criminal Code regarding conditions governing police custody²⁹. In addition, the doors of the short-term prison remain open longer. However, the educational facilities, particularly for young persons, and sporting activities are limited. Finally, the Monegasque authorities carried out work on the visiting rooms in December 2007 to comply with the CPT recommendations. In addition to these improvements, the frequency of visits has been reviewed and these are now authorised for 45 minutes twice a day, five days a week.

115. Access to the telephone is still limited. Everyone who is admitted is entitled to make a call to inform their family. Thereafter, only convicted persons can make a call, once a month. The European Prison Rules recommend that prisoners be allowed to communicate with the outside world as frequently as possible, particularly by telephone. Untried prisoners must be granted greater access to means of communication with the outside world, unless this is specifically and individually prohibited by the judicial authorities³⁰.

116. We welcome the steps taken by the Monegasque authorities and invite them to make further efforts to implement the remaining CPT recommendations.

VII. Conclusions

117. Monaco has now been a member of the Council of Europe for four years. In the monitoring procedure that followed immediately after its accession, the two co-rapporteurs fully supported the efforts of the Monegasque authorities and encouraged them, where necessary, to honour their obligations and commitments to the Organisation. Our objective has been, and remains, to ensure that the monitoring procedure can be terminated as rapidly as possible.

118. The first part of our report shows that serious work has been carried out with regard to conventions and legislation. The authorities are asked to confirm in their comments the assurances we have been given about the issues still outstanding and how long it will take to settle them so that it can be decided whether they should be followed up as part of the post-monitoring dialogue procedure.

119. We have consistently defended the Assembly position of urging the authorities to continue the reform process aimed at further strengthening the role of the National Council and improving the system of checks and balances.

120. We would like to stress that irrespective of political affiliation, the members of the National Council believe that the powers of the National Council, as stipulated in the 2002 revised Constitution, would be enough to guarantee the independence of the legislature *vis-à-vis* the executive and the balance between the institutions. Everything must therefore be done to unblock the situation. It is now time to reactivate the process.

121. The Government should commit itself seriously to enacting a new law on the National Council. The statements made by the Minister of State in the 2009 budget debate and the fact that he has taken the initiative of detailing the Government's annual programme represent progress towards good democratic practice in relations between parliament and government, which are a *sine qua non* of the proper functioning of democratic institutions.

122. We hope that in their comments the Monegasque authorities will offer formal assurances on this point and set out a precise timetable for carrying out this reform.

²⁹ See section III, on domestic legislation

³⁰ See Recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules, 11 January 2006, § 24.1 and 99