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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**

**Comments sent by the Monegasque government and by the political parties represented within the Monegasque National Council on the preliminary draft report [AS/Mon(2009)01]<sup>1</sup>**

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

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<sup>1</sup> These comments have been made public by decision of the Monitoring Committee dated 5 June 2009.

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## I. Comments by the Monegasque government

The Monegasque Government has taken note of the preliminary draft report which Mr Leonid SLUTSKY and Mr Pedro AGRAMUNT, rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, propose to submit to the Assembly.

It has carefully examined the draft, bearing in mind the legal system and specific economic and social characteristics of the Principality of Monaco, on the one hand, and the provisions of the Council of Europe Conventions to which the Principality of Monaco is a Party, on the other.

The Monegasque Government therefore intends, in these comments, to provide clarification to the rapporteurs and all the members of the Parliamentary Assembly of the Council of Europe, because of that body's institutional role, about the observations made in the draft report.

### 1. The commitments entered into on accession to the Council of Europe (§ 13 to 26)

As at the date of writing these comments in response to the draft report, the Principality of Monaco is a Party to 39 Council of Europe Conventions, and this less than four years after accession. These include those decided prior to accession, on the one hand, and – the greater number – those specific Conventions added subsequent to accession, on the other.

The Principality has not, at present, become a Party to the European Social Charter (Revised). As previously, the Monegasque Government notes the particular details of the arrangements for state commitment and of the scope of the provisions of the revised Charter. The Government has taken note of the new *Demir and Baykara* case-law, which has put an end to the doubts raised by the first judgment delivered in this case as to the scope of the European Court's powers of interpretation. However, the Principality's decision on whether or not to accede to the European Social Charter did not depend solely on the *Demir and Baykara* case-law, but on a broader and more complex consideration encompassing parameters of domestic law, a process not yet concluded. The Monegasque Government intends to conduct a close examination prior to any commitment, with a view to as accurate as possible an assessment of the effects of the decisions to be made in the light of the specific demographic, sociological and economic characteristics of the Principality of Monaco.

Furthermore, additional evidence of the inherent difficulty of implementation of this instrument comes from certain states' current decision to refrain from becoming a Party to it. One example is Switzerland, which has not even signed the revised Charter. Other states – Germany, Greece, Russia and Spain – have not ratified it.

Similar thoughts to the above can be expressed in respect of Protocols 1 and 12 to the European Convention on Human Rights, since unconditional implementation would have the effect of severely disrupting social balances, something that the Monegasque Government cannot allow.

Furthermore, the formulation of reservations would not have the desired effect, since it would not exempt the Principality of Monaco from applying the rules which were the subjects of its reservations, as undeniably proven by the Strasbourg Court's case-law. The Judges do not, in practice, consider themselves to be bound by states' reservations other than, it appears, where these are precise and of limited scope, requirements thwarted by all of Monaco's specific characteristics, particularly in the matter of social rights.

Nevertheless, the Monegasque Government is continuing its consideration of the foundation for the diverse criteria: the safeguarding of the national interest and the taking into account of the international context.

### 2. The powers of HSH the Sovereign Prince and the Government (§ 28 to 40)

The Monegasque Government wishes to point out that, in pursuance of Article 13 of the Constitution, "The Prince shall represent the Principality in its relations with foreign powers". Consequently, submission to the National Council of reservations and declarations relating to international treaties would, on the one hand, have the effect of frustrating the commitments of the Principality of Monaco if political differences of opinion arose, and, on the other, implicitly culminate in a transfer of power.

The power that the Constitution confers on the Prince to issue sovereign orders imposing criminal penalties is not devoid of serious justifying reasons.

Firstly, the Prince's power is limited to the application of international treaties. This power is thus correlated to his power in the field of international relations. It constitutes, for Contracting States, a guarantee that the Principality of Monaco will abide by its international commitments.

Secondly, these criminal penalties are in conformity with the general principles of the criminal law enshrined in the Criminal Code. They do not differ therefrom in nature, quantity or method of imposition.

Thirdly, Article 7 of the European Convention on Human Rights provides that: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

This text thus refers to "national law", and not to a national law in the sense of an instrument adopted by an elected legislative assembly. As a result, the source of the rule is not the subject of any particular prescription. The Strasbourg Court even allows a non-textual source, in this case a praetorian one, provided that it satisfies the requirements in respect of foreseeability and accessibility. Legal writers interpret this case-law as doing so.

### **3. The bill on domestic violence (§ 47)**

At present, the Monegasque Government's legislative services are preparing draft legislation against domestic violence committed by persons living, or who have for a long time lived, under the same roof, without any specification as to the nature of the relationship between the offender and the victim(s).

This bill should be tabled in the National Council by the end of 2009.

The bill as it stands includes provisions making specific forms of violence against a person living under the same roof an offence to be prosecuted and penalised. Administrative measures and technical instructions relating to psychological monitoring, prevention, education and information would also be enacted, with the aim of achieving true synergy between the Public Safety Department, the Department of Legal Services and the relevant specialised medical and social teams.

### **4. The powers of the National Council (§ 56 to 66)**

First of all, the Monegasque Government points out that, in pursuance of Article 66 of the Constitution, a Monegasque law "implies an agreement between the Prince and the National Council".

This provision of the Constitution confers on the – freely elected – National Council a real and effective role and decision-making power, which it freely exercises when examining draft legislation.

The Government intangibly respects the remit of the National Council, which was appreciably extended when the Constitution was revised by Law No. 1249 of 2 April 2002.

Furthermore, the National Council and Government are continuing their consultations with a view to amendment of Law No. 771 of 25 July 1964 on the organisation and functioning of the National Council.

Practical arrangements (duration of sessions, drawing up of agendas, power to hear members of the Government) are such as to guarantee the effectiveness of the exercise of legislative power.

And the National Council, can, by refusing to vote for draft budget estimates and amendments, demonstrate its hostility to government policy with a view to having its demands for draft legislation to be drawn up on specific subjects taken into consideration.

Furthermore, it is important to emphasise that the National Council has, since 2003, obtained from the Government most of its desired reforms and achievements, notwithstanding the consequences of every kind, and particularly in the budgetary sphere (unprecedented speeding up of the state housing construction programme, special arrangements for access to home ownership for Monegasques, very substantial increase in study grants, renovation of old dwellings to the sole benefit of tenants, tabling of a bill on abortion).

The National Council's staffing and material and financial resources have been substantially increased to cope with its members' heavier national and international workload, and a new building is about to be constructed, on the basis of an original architectural design commissioned by the Council itself.

The Monegasque political system is thus based on co-operation, consultation and negotiation between the holders of power, according to a logic of consensus which underlies the Principality's institutions. It is nonetheless the case that accession to the Council of Europe was preceded, in 2002, by constitutional reform with a view to a substantial increase in the powers of the National Council, but without upsetting the foundations of a system which operates to general satisfaction. Any further increase would nevertheless adversely affect the fundamental principles of the division of powers, or the nature of relations between the constituted powers. Such a prospect was explicitly excluded by HSH the Sovereign Prince, in a speech of 23 June 2006, with the legitimate aim of preserving Monaco's political stability and social compact.

## **5. The Monegasque judicial system (§ 74 to 88)**

The Monegasque judicial authorities emphasise that the criminal law is regularly amended, either in order to bring it into conformity with the requirements of international conventions to which the Principality of Monaco has become a Party, those of the Council of Europe or those of the United Nations, or in order to be made more appropriate as practices and ideas change in the Principality of Monaco's multi-community society.

One example is the substantial amendment made by Law No. 1.353 of 26 December 2008 to the Code of Criminal Procedure in order to establish legal rules protective of individual freedoms.

Law No. 1.322 of 9 November 2006 amended the Criminal Code, extending the definition of proceeds of a criminal offence to include the proceeds of all offences punishable by more than three years' imprisonment.

Law No. 1.344 of 26 December 2007 on strengthening the repression of crimes and offences against children adapted the Criminal Code to new forms of crime against children.

Law No. 1.349 of 25 June 2008 amending Book One of the Criminal Code introduced criminal responsibility of legal entities.

However, use of the supplementing technique is justified only in cases where a true legal loophole exists, preventing a court decision from being issued because of the lack of a legal basis.

The Monegasque courts have, on the basis of existing criminal-law provisions, imposed penalties by analogy for reprehensible conduct (misuse of company property or credit, penalised as misappropriation; violence against certain categories of victims, penalised as deliberate assault).

### **a. The judicial service commission**

Firstly, the judicial authorities point out that the concept of a body of which at least half the members are elected judges could not be considered in Monaco, all the more so for the fact that the European Charter on the Statute for Judges, of 1998, like the recommendations and conclusions in Opinion No. 10 (2007) of the Consultative Committee of European Judges, and like "European standards", are of indicative value. Furthermore, the explanatory memorandum to the Charter states that its provisions are "not actually mandatory", while the conclusions of the Lisbon conference (8 – 10 April 1999) on the theme of the Charter "in a common judicial space of the Council of Europe" noted participants' approval of "the flexible and open nature of the modalities laid down in the Charter which allow its objectives to be attained in ways which remain compatible with the traditions of each country".

In accordance with the recommendations in the aforementioned explanatory memorandum to the Charter (paragraph 1.3), the opinion of an independent body, namely the judicial service commission (*Haut Conseil de la Magistrature*), is required by the bill when a member of the judiciary is to be appointed (Article 30) and when promotions and career progress occur (Articles 36 to 42). Drawing on the main ideas set out in the explanatory memorandum to the Charter (paragraph 3.3), the bill specifically provides for judges serving their probationary period (*magistrats référendaires*) to be permanently appointed judges or deputy public prosecutors after two years' service in the judiciary, subject to the favourable opinion of the judicial service commission (Article 37). In other words, this opinion is an assent by which, exceptionally, the appointing authority is bound.

When the length of service to qualify for automatic promotion is reduced to take account of a judge's merits, the opinion of the judicial service commission is also required. Its opinion must also be sought on

appointments, irrespective of the grade in which judges are placed. Thus appointments to senior posts (heads of courts) may be made only after the judicial service commission has given its opinion (Article 42). Thus the bill subjects all judges to the same system.

These opinions cannot fail to have the effect of encouraging, or even obliging, the appointing authority, although they are not legally binding on that authority.

#### **b. The independence of judges**

The Monegasque judicial authorities refute the allegations about the lack of independence of the judges from the ranks of the French judiciary, on the grounds that their temporary secondment to the Principality of Monaco is renewable.

They note that these allegations are simply, and falsely, derived from the appointments system, but lack any support and are not based on specific cases or proven facts.

The amendment of the rules governing the status of judges which will result from implementation of the relevant law currently being examined by the National Council will bring some improvements, but will again establish the guarantees of independence afforded by the principle of security of tenure and the arrangements for disciplinary proceedings.

In this respect, the aforementioned bill will limit the disciplinary power of the Director of Legal Services. His only role will be to bring proceedings in respect of disciplinary matters, and he will have no part in the imposition of penalties, which will be a matter for the judicial service commission alone.

Furthermore, it is important to point out that Article 88 of the Constitution guarantees the principle of the independence of judges and law officers.

Finally, where persons held in prison are concerned, the Monegasque Government wishes to state that consultations have been started with investigating judges and law officers about telephone conversations with the outside world. Work is about to start on drafting far more flexible regulations, particularly for remand prisoners.

#### **6. Social assistance**

Where the question of national preference in respect of social assistance is concerned, the Monegasque Government points out that this is not a discriminatory element, in so far as the assistance granted to Monegasques supplements an extremely generous social protection system for all workers and retired persons, irrespective of their nationality.

Furthermore, the housing assistance granted to nationals fulfils the particular responsibility incumbent on the state to make it possible for them effectively to reside in their own country, in view of the levels of rent charged for housing. These high levels are, moreover, directly attributable to the small size of Monegasque territory.

While employment priority enables the possibility of employment to be preserved for Monegasques in their own country, implementation of this rule has no impact on the employment possibilities of other persons of other nationalities. In practice, Monegasque nationality was held by 936 of the 43,164 persons employed in the private sector in 2008. Almost 130 other nationalities were represented.

The only condition applied to these nationals is one of residence, no account being taken of national or ethnic origin.

The number and diversity of Council of Europe Conventions to which the Principality of Monaco has become a Party are more than enough to attest to the Monegasque Government's will to adopt the standards generally accepted in member states and to adapt Monegasque rules accordingly. However, this commitment cannot be directed towards, or have the effect of, causing upheavals of any kind in the state's legal organisation, which the Conventions themselves neither provide for nor prescribe.

## II. Comments by the Union for Monaco (UPM)

The UPM majority in the National Council, which includes Mr Bernard MARQUET, Ms Catherine FAUTRIER and Mr Jean-Charles GARDETTO, members of the Monegasque delegation to the PACE, has studied the preliminary draft report prepared by Mr Pedro AGRAMUNT (Spain, EPP/CD) and Mr Leonid SLUTSKY (Russia, SOC) for the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) on the honouring of obligations and commitments by Monaco, dated 23 January 2009.

Mr Jean-Charles GARDETTO, Chair of the Monegasque delegation to the Parliamentary Assembly of the Council of Europe (PACE), sent copies of the report to Ms Anne POYARD-VATRICAN, leader of the Union for the Principality (UP), Mr Eric GUAZZONNE, leader of the National Union for the Future of Monaco (UNAM), Mr Laurent NOUVION, leader of Rally and Issues (RE), and Mr Jean-Paul PROUST, Minister of State of Monaco.

The Government will send any comments directly to the committee, thereby ensuring that the delegation cannot be accused of failing to express certain views or expressing them incorrectly.

The minority group in the National Council (RE) has already sent its comments to the committee directly.

**The point of view set out below is that of the UPM majority group** (Union for Monaco, comprising the Union for the Principality (UP) and the National Union for the Future of Monaco (UNAM)) in the National Council, which accounts for **21 members out of the total of 24**.

### Paragraphs 1 to 12

No comments.

### Paragraphs 13 to 21

On Thursday 2 April 2009, the Government Counsellor for External Relations and International Economic and Financial Affairs, accompanied by some of his staff, addressed the External Relations Committee of the National Council on various issues concerning the Principality of Monaco's international relations.

On that occasion, the head of the Human Rights Unit acknowledged that the *Demir and Baykara* judgment by the Grand Chamber of the European Court of Human Rights had, in his view, removed the obstacle to ratification which he had initially highlighted.

During the hearing, the members of the External Relations Committee were nevertheless informed that the government believed that, in spite of this long awaited judgment, ratification of the Social Charter required more extensive analysis, in particular of the measures needed to transpose it into domestic law and the question of the direct applicability of the Social Charter in Monegasque law. These various issues had been submitted to the State Council for consideration. Accordingly, the Government has still not taken a decision on the ratification of the Charter.

The National Council believes that, if the Prince consents to the ratification of the Social Charter and if ratification entails legislative transposition measures, the Government should apply Article 14, para 2(2), of the Constitution, which grants the Monegasque Parliament the power to pass laws ratifying certain international treaties and agreements.

### Paragraphs 21 to 26

The UPM majority is strongly committed to priority of employment for nationals, residents and inhabitants of neighbouring municipalities with equivalent skills and qualifications and to Monegasques having access to state-owned low-cost housing. Given that nationals are in the minority in their own country and in view of the very small size of Monaco's territory (only 2 km<sup>2</sup>), these two measures are vital to the preservation of a community of nationals within Monegasque territory and hence also to the very survival of our country. When the Principality of Monaco's application for membership of the Council of Europe was being considered, these constraints, which are obstacles to Monaco becoming a party to Protocols Nos 1 and 12, were mentioned in paragraph 9 of Opinion 250 of the Parliamentary Assembly of the Council of Europe as follows:

"The Assembly acknowledges the particular situation of a country such as Monaco where the indigenous population is numerically smaller than the total number of people working and/or living there. It considers that, in interpreting the commitments which Monaco is to honour, the Council of Europe should take account

of this situation which has led the authorities to introduce preferential schemes, chiefly benefiting Monegasque nationals, in respect of work and employment, housing and social welfare. It notes, in this connection, that the social security system is accessible to all people working in Monaco.”

**Paragraph 27**

To date, Monaco has neither signed nor ratified the Convention on Cybercrime (CETS No 185).

**Paragraphs 28 to 35**

No comments.

**Paragraph 36**

If the penalty stems from an international agreement whose ratification does not require an approving law, the question arises as to whether the Prince may introduce, by Sovereign Order, criminal penalties on the basis of Article 68 of the Constitution, which grants him the power to take the necessary measures to apply international treaties or agreements by order, or whether legislation has to be passed so as to comply with Article 20 of the Constitution, which provides that no penalty may be established or applied except by law.

There is a difference in interpretation here between the National Council and the Government.

Until recently, when criminal penalties stemmed from a treaty whose ratification did not require the passage of a law, the executive followed the practice of establishing the relevant penalties by means of Sovereign Orders issued pursuant to Article 68 of the Constitution.

The National Council told the Government several times that it believed that practice to be contrary to the fundamental principle of the lawfulness of penalties set out in Article 20 of the Constitution and enshrined in the provisions of Article 7 of the European Convention of Human Rights.

During the last visit by the Monitoring Committee's co-rapporteurs, the Government undertook to end the practice, while retaining the relevant provisions of the Constitution, and to table bills in the National Council when an international instrument provided for criminal penalties.

It should be pointed out that no criminal provisions have been introduced by means of regulatory orders for two years now.

See the comment concerning Article 14 of the Constitution under paragraphs 13 to 21.

**Paragraph 37**

No comments.

**Paragraph 38**

To date, no draft legislation on reforming the Criminal Code has been tabled in the National Council.

Naturally, the National Council remains receptive to any significant attempt to incorporate in law those offences which at present are established solely by Sovereign Order.

**Paragraph 39**

No comments.

**Paragraph 40**

The Legislation Committee of the National Council has stopped the review of proposals aimed at reform of the Code of Criminal Procedure at the request of the relevant government departments, which wish to await the outcome of the reform in progress in France concerning the pre-trial investigation process (*instruction*). If the reform aimed at making French criminal procedure more adversarial were to go ahead, the Monegasque Government might wish to amend Monegasque legislation accordingly and make changes to the proposals tabled in the National Council.



## **Paragraphs 41 to 42**

No comments.

## **Paragraphs 43 to 46**

The Legislation Committee was not satisfied with the Government's draft law (No 728) on associations and federations of associations tabled at the public sitting on 28 March 2002. In particular, in the course of the scrutiny process, the committee proposed an amendment designed to avert certain abuses by reinforcing 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 this amendment in legislation intended to lay sound foundations for freedom of association, then opted to make financial checks on individuals and private-law entities receiving public funds the subject of a separate piece of draft legislation.

In this connection, draft law No 812 on the financial supervision of individuals and private-law entities receiving public funds was officially tabled in the National Council at the public sitting on 19 April 2006.

Following careful scrutiny of draft law No 812 and many exchanges of views with the Government, the bill was placed on the agenda for the public sitting on 3 December 2007. On that occasion, the committee's amendment aimed at extending the suppliers' tendering requirement to public bodies and societies and associations receiving subsidies for major contracts (over €15 000) was rejected by the Government, which wished to be able itself to lay down – or not lay down – in administrative agreements (in principle, private-law contracts) the tendering rules to be applied to each body. Following lengthy discussions (see Appendix to the Monaco Official Gazette of 18 July 2008), it was acknowledged that no agreement could be reached and the Government decided to withdraw the bill.

Against this background, the Government adopted new implementing regulations for Law No 885 of 29 May 1970 on financial supervision of private-law entities receiving state funds by Sovereign Order No 1 706 of 2 July 2008 and Ministerial Decree No 2008-337 of the same date (both published in the Monaco Official Gazette on 11 July 2008), which were partially in line with the discussions held with the National Council and introduced changes in the rules on the supervision of these bodies.

Although a law would obviously have been preferable, all the provisions in the two texts are based on the points covered in the discussions between the Government and the National Council during the examination of draft law No 812, the aim being more effective supervision of the use of public funds by those whose activity the Government chooses to support. While the new regulations are consistent with a desire to improve the rules in this area, they do nevertheless leave it up to the Government to set out the tendering rules applicable to each body in administrative agreements if it deems that appropriate.

Given the above and although it was still not entirely satisfied, the Legislation Committee agreed, in a spirit of consensus, to resume consideration of draft law No 728, which had been long awaited by the Council of Europe and by many Monegasque associations that would benefit from a modern law confirming the principle of freedom of association, which was finally passed at the public sitting on 23 December 2008.

## **Paragraph 47**

At the public sitting on 28 April 2008, during which bill No 190 on combating domestic violence was debated, the Minister of State made comments about which readers may come to their own conclusions by consulting the verbatim report of the National Council's public sittings on the Government website (684th sitting of 28 April 2008, appended to the Monaco Official Gazette of 12 December 2008 (No 7 890), in particular, pages 4296 and 4298).

## **Paragraphs 48 to 49**

To date, no draft legislation on political parties has been tabled in the National Council.

The UPM majority would like to see a substantial increase in the reimbursement of expenses incurred during election campaigns, which is currently limited to €25 000 (€27 500 with hire of premises), given that the expenses declared by the political parties which took part in the 2008 election campaign were €325 000 for

the UPM, €350 000 for RE and €107 740 for Monaco Ensemble<sup>2</sup>. The aim is to have the state fund a substantial proportion of the expenses needed for the expression of democratic will in Monaco.

However, the UPM does not believe that it is necessary for the state to provide funding for political parties outside election campaigns, the purpose of which would be to pay staff and fund party offices in a country with only 6 316 voters. Providing such funding for political parties in addition to the reimbursement of campaign expenses would only lead to the permanent division of the Monegasques and hence also to the weakening of the Principality of Monaco, a small state which has a greater need than any other for national unity.

#### **Paragraph 50**

The acronym of the opposition group which won three seats at the last national elections is RE, not REPM. It stands for Rally and Issues (*Rassemblement et Enjeux*).

Law No 1 250 of 9 April 2002 amending Law No 839 of 23 February 1968 on national and municipal elections was passed by the former RPM majority (during the 1998-2002 term), to which RE is the successor, for the purpose of complying with Council of Europe standards. There are two benefits to the legislation:

- it ensures that the party or coalition which wins the elections has a large majority. A large majority of this kind for the winner is essential in a non-parliamentary system so as to enable Parliament fully to exercise its role in relation to a Government which is not the product of the elections and is not accountable to the National Council;
- it also ensures that there is always an opposition in the National Council.

#### **Paragraphs 51 to 53**

No comments.

#### **Paragraph 54**

The UPM majority supports the idea that the official election campaign should start several weeks before the elections and not just eight days beforehand as at present. Of course, as is the case with parliamentary elections in most European countries, air time in the government media should reflect the relative strength of each political group within the National Council.

More generally, as regards the way information about the National Council is covered on Monaco Info television, the UPM majority would draw attention to systematically partisan selection of information. Some points in interviews or statements from Parliament are not broadcast if they are not in line with the Government's positions.

By way of example, a question about the sensitive issue of foreigners with privileged links to Monaco (*"enfants du pays"*) disappeared from the coverage concerning the European Conference of Presidents of Parliament (22-23 May 2008). More recently, when Ms Sophie THEVENOUX, Government Counsellor for Finance and the Economy, visited the National Council on 20 March 2009 on taking up office, one of the passages from the National Council's communiqué which were not aired concerned the request which the Government has turned down to date for the establishment of objective criteria and a joint committee on the allocation of state premises for professional uses. Moreover, when the Sub-Committee on Human Rights of the Parliamentary Assembly of the Council of Europe met in Monaco on 10 March 2009, the interview with Mr Jean-Charles GARDETTO, Chair of the External Relations Committee, who highlighted the absence of members of judges and law officers from Monaco from the meeting, was censored outright.

Another telling example concerns the coverage of the visit by the President of the National Council to Liechtenstein from 27 to 29 November 2008, during the 3rd Conference of the Presidents of Parliaments of the Small States of Europe. Although a team accompanied the President and a full report was therefore produced, only a few dozen seconds of a report on a consensual issue concerning tourism were initially broadcast. Only after strong protests by the National Council was the full report including a joint statement by the parliamentary presidents concerning the financial crisis actually aired.

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<sup>2</sup> Source: Monaco-Matin of Sunday 3 February 2008, page 9.

It should be pointed out that the interviews with National Council members are produced by the press centre, which comes under the direct responsibility of the Government, a situation that is inconsistent with the independence of parliament from the executive, in breach of the fundamental principle of the separation of powers. The coverage of National Council news on state television should not be placed under the control of the Monegasque Government.

#### **Paragraph 55**

See comments concerning paragraphs 48 and 49.

#### **Paragraphs 56 to 66**

Although the National Council submitted its conclusions on the matter to the Government in a letter dated 13 January 2009, the working group on the legislation intended to modernise the operation of the National Council has not met again. Unlike the UPM majority, the Government does not seem to regard the matter as a priority. In a speech during the sitting on 1 April 2009, the President of the National Council once again made a point of publicly reiterating the importance of the legislation for the assembly.

#### **Paragraphs 67 to 73**

No comments.

#### **Paragraph 74**

The charges brought against the President of the National Council by the Monegasque judicial authorities in 2007 only a few months before the parliamentary elections and during a parliamentary session, which the country's highest court (the Review Court) ultimately dismissed as unlawful, show that there is a need for clearer definition of the rules on immunity, which is vital for the effective separation of powers and the proper exercise of parliamentary mandates.

#### **Paragraphs 75 to 78**

No comments.

#### **Paragraphs 79 to 81**

See comments concerning paragraph 38.

The fact that there is no legislation providing for enforcement of court rulings against the state remains a key issue which needs to be resolved by the introduction of such legislation.

#### **Paragraph 82**

It would appear that the draft legislation currently being studied by government officials concerns retrials in criminal but not civil cases. The National Council is in favour of retrials being possible in all cases (both civil and criminal) when the Court finds breaches of the European Convention on Human Rights.

#### **Paragraphs 83 to 86**

Draft Law No 779 on the status of judges and law officers is currently being scrutinised by the Legislation Committee. It concerns not only the reorganisation of their careers and disciplinary matters but also the recruitment, appointment and promotion of judges and law officers, as well as their independence. It was recently the subject of a fresh meeting between a delegation from the Legislation Committee and Monegasque judges and law officers, who were able freely to express their views on the bill and on the Government's reactions to the National Council's first comments. Bringing all judges and law officers under the judicial service commission from the time of recruitment and appointment, ensuring that the commission's opinions are binding and providing for more balanced membership of the commission, in particular with more members appointed by their peers, are important points for the UPM majority in the National Council insofar as they are the only means of guaranteeing genuine independence of the justice system.

A fresh debate and likely amendments are expected shortly and the Legislation Committee is due to draw up a report incorporating the outcomes of the hearings held, the best international standards and specific institutional features of the Monegasque system.

However, as indicated with reference to paragraph 40, if the Government were to fall into line with the French reforms concerning the pre-trial investigation process and move to a more adversarial procedure, that might delay the consideration of the draft legislation on judges and law officers in that the procedural changes which the Government might propose could have an impact on their status, in particular in the case of prosecutors.

#### **Paragraph 87**

A distinction must be made between draft Law No 778 on the administration and organisation of justice and draft Law No 779 on the status of judges and law officers. The Legislation Committee will begin scrutinising the former once it has adopted its final report on the latter.

#### **Paragraph 88**

No comments.

#### **Introductory note concerning paragraph 89**

Attention should be drawn to draft Law No 862 on combating money laundering, the financing of terrorism and corruption, which was submitted to the National Council on 18 March 2009.

It was officially tabled during the public sitting on 1 April 2009 and referred to the Finance and National Economy Committee for scrutiny the same day.

#### **Paragraphs 89 and 90**

No comments.

#### **Paragraph 91**

The National Council wishes to reiterate its desire to continue developing business law and boosting Monaco's economic fabric by modernising business law and adapting it to economic challenges and realities, while bearing in mind the objective of introducing relevant legislative provisions concerning economic crime.

#### **Paragraphs 92 to 100**

No comments.

#### **Paragraph 101**

In June 2000, the Principality of Monaco was kept on the OECD "list of unco-operative tax havens", alongside Andorra and the Principality of Liechtenstein.

In the light of its banking, fiscal and financial practices, the Principality of Monaco has always regarded its continued inclusion on this list as unjustified and has been lobbying the European Union and the OECD for over a year with a view to being removed from it. The ongoing discussions reached an important new stage with the signing of a letter of intent from the Minister of State, Mr Jean-Paul PROUST, to Mr Angel GURRIA, Secretary General of the OECD, involving an official undertaking by Monaco to conclude an anti-fraud agreement with the European Union by the end of 2009, as well as bilateral agreements of the same kind with non-EU countries. The relevant treaties would likely concern the exchange of fiscal data in accordance with OECD criteria on the basis of documentary evidence from the requesting states and would probably involve implementing measures in terms of domestic law. The Government has not submitted a copy of the letter to the National Council.

Following the G20 meeting in London on 2 April 2009, the letter would, however, appear to have enabled Monaco to be included on a list of "jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented", which itself is divided into two sub-categories.

### **Paragraphs 102 to 107**

No comments.

### **Paragraph 108**

In 2008, 526 Monegasques worked in the private sector, excluding the *Société des Bains de Mer* (SBM), which employed 420 Monegasques.

It should also be noted that Monegasque nationality is not always an advantage when it comes to seeking employment in the private sector: Monegasques very often deliberately fail to indicate their nationality on their CVs so as to improve their chances of being called for interviews, as some employers are very reluctant to hire Monegasques, even though the legislation on dismissals applies equally to all employees of all nationalities. In addition, young Monegasques and students experience real difficulties in obtaining employment or placements in EU countries.

### **Paragraphs 109 and 110**

No comments.

### **Paragraph 111**

It should be noted that the term of the member of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in respect of Monaco, Mr Roland MARQUET, will end on 19 December 2009.

The National Council therefore issued a call for candidatures in the Monaco Official Gazette and the local daily newspaper (Monaco Matin).

The Monegasque delegation to the PACE is currently examining the various candidatures received and intends submitting a list of three candidates to the Council of Europe by 1 May 2009 with a view to filling Monaco's seat on the CPT.

### **Paragraphs 112 to 116**

No comments.

### **Paragraphs 117 to 122**

See comments concerning paragraphs 79 to 81.

**III. Comments by the Rally and Issues (RE) minority group in the National Council**

**NATIONAL COUNCIL  
PRINCIPALITY OF MONACO**

[NATIONAL COUNCIL  
Received 23 APR 2009]

Laurent Nouvion  
Member of the National Council  
Chair of Rally and Issues (RE)

Monaco, 22 April 2009

Subject: Monitoring Committee of the Parliamentary Assembly of the Council of Europe

Dear Madam,

Please find enclosed a copy of the comments which I am sending today, on behalf of RE, to the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe concerning its preliminary draft report.

Of course, you have my permission to pass on copies to the UP and the UNAM, whose possible comments I would also like to receive.

Once we have received their comments, we are willing to hold a meeting to draw up a joint text, although no date has yet been set.

Yours sincerely,

(signed)

Laurent Nouvion

Ms Valérie Viora-Puyo  
General Secretary of the National Council  
12 rue Bellando de Castro  
98000 Monaco

**RASSEMBLEMENT  
& ENJEUX**

Mr Serhiy Holovaty  
Chair of the Monitoring Committee  
of the Parliamentary Assembly  
of the Council of Europe  
67075 Strasbourg

Monaco, 22 April 2009

Dear Sir,

Thank you for your letter at the end of January which our movement has discussed at several meetings. The discussions have enabled us to draw up a number of comments and observations regarding the preliminary draft report on the Principality of Monaco by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe.

Our movement notes that the Council of Europe wishes to see a substantial increase in the National Council's powers, which we do not believe to be consistent with the spirit of our institutions. Wishing to increase the National Council's powers in the manner called for by the committee would ultimately lead to the Government being jointly accountable to Parliament, which is not compatible with a hereditary constitutional monarchy by which our movement sets great store.

**Comments:**

Our analysis covers certain points in the preliminary draft report in the order in which they are set out.

**Paragraph 24:**

Our movement is strongly committed to the preservation of the Monegasque economic and social model incorporating the concept of national preference in a country where the population of Monegasque nationality is very much in the minority. The maintenance of the relevant measures must be an unwavering requirement which proves that the Council of Europe takes on board the principle of accepting our country's specific social and geographical features, as the report actually implies in paragraph 26.

We believe it is important to underline that, in terms of social assistance provided by the state, the measures are the same for all residents of Monaco.

**Paragraph 32:**

Here it should be noted that the National Council is in any case required to vote on legislative amendments necessitated by certain treaties. In this connection, we would naturally draw attention to Articles 13 and 14 of the Monegasque Constitution, which are entirely clear on the matter.

**Paragraph 40:**

It is indeed vital that the range of penalties be extended. In our view, the courts do not have a wide enough range of penalties to enable them to apply different sentences according to the seriousness of offences.

**Paragraph 48:**

Monegasque legislation does not include a law on political parties designed "in particular so as to ensure greater transparency in party financing". Please note that our group is currently working on a bill on political parties in the Principality of Monaco.

**Paragraph 49:**

We wish politics in Monaco to be governed by a law on political parties and by a new electoral law covering the organisation of elections (with changes to the voting system so as to respect the balance of the various

views). RE won 40.8% of the votes and has three representatives in the 24-member National Council, ie 13% of the seats, while the third list won +9% of the votes and has no seats at all.

Here, too, our movement is working on a bill to amend the electoral law and set out the main principles for organising official election campaigns (fair distribution of airtime, public debates and access to the media, official documents from the National Council, etc). We would draw attention to the initial position of the majority elected during the 2002/2003 election campaign, which undertook to increase the proportional element in the system and review the electoral legislation.

**Paragraph 51:**

We would ask for clarification of what the rapporteurs actually mean by “largely in line with” and would be interested in receiving written details of the standards mentioned.

**Paragraph 52:**

RE is surprised by the content of this point; we do not have a parliamentary model or system in Monaco. Paragraph 52 should be taken together with paragraph 62. The Monegasques did not vote for the government programme but for the programmes presented by three competing lists. There is only a single programme in Monaco under the existing institutions, namely the government action programme which is not put to the vote of the Monegasques.

Our movement is also surprised here by the value judgment expressed in the comment “the results of the elections were indicative of massive support by the Monegasques for the reforms conducted by the State” concerning a list which won 50.5% of the votes.

**Paragraph 57:**

Our movement is strongly committed to defending pluralism in all its forms, provided, however, that our system does not slide into a kind of parliamentarianism that is not provided for in our constitutional texts. As a political party, we would also be grateful to receive a copy of the Council of Europe Statute.

**Paragraph 59:**

Once again, we reiterate our strong commitment to the revised Constitution of 2002, which is very clear about the institutional powers of all the component elements of the Monegasque state.

**Paragraphs 60 and 61**

We confirm that there is a real problem concerning the transmission of information and hence of transparency as regards the timing and content of the information.

RE is surprised by the term “counter-force” and would stick to strict compliance with the constitutional provisions.

Moreover, the term “pressure” in paragraph 61 would seem to be more of a value judgment than an apolitical analysis by the committee, as the discussion in public and closed sittings of the draft budget is, of course, the highlight of the year in terms of the exchange of information between the National Council and the Government.

**Paragraph 63:**

Here we would note the problem of the status of elected representatives in general, which is not specifically regulated, and of the rights of the opposition in particular, while also highlighting the particular meaning in Monaco of “parliamentary opposition”, which is not at all an opposition to the Government of the Prince (minority / opposition / pluralist representation). In this connection, it should be noted that the outgoing and re-elected majority has chosen not to make this matter a priority over the last six years, in spite of the election promises it made during the 2002/2003 campaign. This is a matter for parliamentary initiative by nature. The law on the organisation of the National Council should therefore be accompanied by revision of Parliament’s rules of procedure, to which it repeatedly refers.

In our view, these two major texts should be revised simultaneously, as they are closely inter-related.

**Paragraph 64:**

RE points out that a meeting about the law on the organisation of the National Council took place on 5 January 2009 and that our movement is counting on the majority group and the President of the National



Council to speed up the process and raise the Government's awareness of this issue which is a priority for the proper internal functioning of the National Council.

We thank you for consulting us about the preliminary draft report and would, of course, be glad to provide any further information or take part in further discussion of all these points.

Yours faithfully,

(signed)

Rassemblement & Enjeux  
Laurent Nouvion  
Chair