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

Post-monitoring dialogue with Monaco

Information note by the rapporteur on her fact-finding visit to Monaco (21-22 February 2011)¹

Rapporteur: Mrs Anne BRASSEUR, Luxembourg, ALDE

¹ This information note has been made public by decision of the Monitoring Committee dated 12 April 2011.

I. Background: Monaco's specific features

1. On 21 and 22 February 2011 I made a fact-finding visit to Monaco concerning the post-monitoring dialogue. The draft programme is appended. I wish to thank the Monegasque delegation to the Parliamentary Assembly and the National Council for their warm welcome and the faultless organisation of the programme of meetings.

2. The Principality of Monaco has been a member of the Council of Europe since 5 October 2004. The Parliamentary Assembly opened a monitoring procedure following the adoption of its Opinion 250 (2004) on the Principality of Monaco's application for membership of the Council of Europe. In its Resolution 1690 (2009) on honouring of obligations and commitments by Monaco the Assembly decided to close the monitoring procedure and to carry on a dialogue with the Monegasque authorities on the questions raised in this resolution, particularly in paragraph 18 thereof, and any other question that might arise out of Monaco's obligations as a Council of Europe member state.

3. In brief, it should be recalled that Monaco is a constitutional monarchy, a situation whereby Monegasque citizens set great store, with legislative power vested in the Sovereign Prince and the National Council. The Principality, which has about 36,000 residents, covers a small area of 2.2 km².

4. As Monegasque citizens are in a minority in their own country (21.5% of the population), the Constitution provides for a "national preference" to be applied in their favour, guaranteeing them preferential treatment, particularly in employment and housing matters.

5. There is a clearly stated will to maintain the number of "enfants du pays",² which is tending to decrease as a result of ageing of this population, real estate pressure and naturalisations. Monaco also wishes to develop a real economy (it currently has some 5,000 undertakings) with a pool of jobs in Monaco itself.

6. The Principality has historical links with France (in particular under the special Franco-Monegasque treaty, which was revised in 2008).

7. The monitoring procedure was closed with the adoption of Resolution 1690 (2009) on honouring of obligations and commitments by Monaco, in which the Assembly listed the commitments that remained to be fulfilled (Article 18), including:

- ratification of Protocols Nos. 1 and 12 to the European Convention on Human Rights;
- ratification of the revised European Social Charter;
- ratification of the Convention on Cybercrime;
- expeditious enactment of a new law on the functioning and organisation of the National Council, to take account of the constitutional amendments of 2002;
- reform of the Code of Criminal Procedure and finalisation of the reform of the Criminal Code;
- review of the issue of the international conventions and treaties for which the National Council must adopt a law of ratification.

II. Progress noted and positive points

8. Significant progress has been made in the field of justice and the fight against money laundering with the adoption of Law No. 136 of 23 July 2009, which reinforced the anti-money laundering system and the resources allocated to the Monegasque Financial Information Unit, SICCFIN (Service d'Information et de Contrôle sur les Circuits Financiers).

9. A draft law concerning the statute of judges is in progress, and the consultations that have taken place in this connection with members of the judiciary and the Director of Judicial Services are to be welcomed. Also worthy of mention is the setting up of a judges' trade union, whose articles of association were approved by ministerial decree on 28 March 2011.

10. A law regulating the funding of election campaigns is being drafted. It should set a limit on campaign spending and provide for a larger share of expenses to be reimbursed out of the state budget

² This group of residents is composed of non-Monegasque citizens whose families have lived in Monaco for several generations and who have close links with the country. They are estimated at about 6,000 individuals, mainly citizens of France and Italy.

11. The Minister of State, Mr Roger, announced Monaco's intention to ratify the Council of Europe Convention on Cybercrime in the near future, which is a cause for satisfaction.

12. I noted that parliamentary business is conducted on a basis of consensus and negotiation, which means that the National Council must be able to persuade the government if the parliamentarians wish to amend a draft law, failing which the government may simply withdraw the proposed legislation. All the parliamentarians with whom I spoke underlined the advances made in parliamentary practice. For instance, in connection with the budget discussions "private preparatory meetings" are held, enabling members of the National Council to negotiate with the government concerning amendments to the draft budget. Parliamentary debates are now broadcast on television.

13. I also welcome the tabling of a private member's bill No. 198 on protection against discrimination and harassment and promotion of gender equality by Mr Gardetto and others. However, this anti-discrimination bill apparently does not cover the nationality criterion, so as to safeguard the national preference in favour of Monegasque citizens. The debate will be a difficult one, but it is to be hoped that the legislative process will be carried through to fruition.

III. The continuing need for reforms in many fields

14. Unfortunately, it must be said that none of the requests formulated by the Assembly in 2009 has as yet been met:

14.1. A law on the functioning of the National Council and parliamentary rules of procedure in accordance with the provisions of the Constitution of 2002 have not yet been adopted. A draft law has been tabled by the government. The National Council has sought the expert advice of a renowned French specialist in constitutional law, Professor Carcassonne, and it is to be hoped that this legislation will be passed in the near future. Expectations are high concerning an improvement of interaction with the government (questions to the government, reinforcement of the resources available to members of the National Council (parliamentary attachés), formation of political groups within the National Council, and so on)).

14.2. As the President of the Parliamentary Assembly said during his official visit to Monaco (17-19 March 2011), the Principality must be encouraged to continue ensuring that the National Council can perform its constitutional roles of exercising checks on government action, initiating legislation and reviewing the executive's policies and budget.

14.3. The ratification of Protocols 1 and 12 to the European Convention on Human Rights is not on the agenda, nor is the ratification of the revised Social Charter, signed on 5 October 2004, according to the Minister of State, Mr Roger, who cited the too numerous legislative amendments that ratification would entail, basing this on an opinion issued by the Conseil d'Etat (a consultative body) to which the matter was referred by the government in 2010. I note that this opinion was not brought before the National Council for debate, with a view to examining the possible ratification of the revised Social Charter. I therefore welcome the initiative taken on 4 April 2011 by Mr. Robillon, Speaker of the National Council, Mr Gardetto, Chair of the Monegasque delegation, and Mr. Marquet, Vice-Chair of the PACE Social, Health and Family Affairs Committee, to ask the Minister of State to relaunch the ratification process on the occasion of the 15th anniversary of the revised European Social Charter. I hope that the government will rapidly accede to this request and thereby fulfil a commitment which Monaco entered into upon accession to the Council of Europe.

14.4. The draft law on reform of the Criminal Code submitted to parliament was in the end withdrawn by the government, which wanted to improve the wording of the draft law as a whole. A reform of police custody (introduced only in 2007) to bring it into line with the case law of the European Court of Human Rights is planned. Monaco is observing the legislative developments taking place in France in this field.

14.5. The National Council is not involved in the ratification of international conventions and treaties in accordance with Article 14 of the Constitution, which provides that it shall give its agreement to ratification only in the case of treaties that i) affect constitutional organisation, ii) entail changes in existing legislative provisions, iii) involve the participation of the National Council in an international organisation or iv) create a budgetary expense of a new kind or for a new purpose. This procedure is not applied in practice. However, I feel it is important for the National Council – in the cases provided for by the Constitution – to be able to debate and express its opinion concerning authorisation of the ratification of international treaties – which in most cases are the subject of national consensus –

without this in anyway interfering with the prerogatives of the Prince who “signs and ratifies international treaties and agreements” (Article 14 of the Constitution).

15. The Minister of State moreover informed me that there was no need for a law on political parties, since Monaco is a constitutional, and not a parliamentary, monarchy. Political parties have the status of associations and as such are not subject to financial supervision, which raises the issue of the transparency of party funding. I would point out that political parties have an essential role to play in the good functioning of the democratic process. The most recent developments concerning the Principality's political parties in March/April 2011 (division of the Union for the Principality (UP), creation of the Union of Monegasques (UM) merger of the Union for the Principality (UP) and the National Union for the Future of Monaco (UNAM) and the subsequent re-creation of the Union for Monaco (UPM)) show their dynamism and the need for the Principality to recognise and regulate their role with a view to ensuring transparency.

16. Our contacts with trade unions and the employers' association, as well as with tenants' associations, brought to light tensions linked to the lack of any reform of labour law for a number of years now, according to the trade unions, and to the very tense real estate market, with a risk of fragilising the most vulnerable population groups. My attention was drawn in particular to the situation of non-EU nationals who have been evicted from their dwellings in Monaco without being re-housed. For lack of a residence permit, these persons are unable to settle legally in French territory and find themselves obliged to return to their countries of origin.

17. During this visit I perceived a degree of apprehension among the government representatives with whom I spoke vis-à-vis European institutions, the Council of Europe and its monitoring mechanisms and the Court's interpretation of the European Convention on Human Rights. I wish to reiterate that the Council of Europe is available to provide expertise and propose exchanges of good practice that can contribute to identifying legal solutions appropriate to the Principality's context.

III. Conclusions

18. This fact-finding visit leads me to conclude that many reforms remain to be devised and implemented so as to meet the requests formulated by the Assembly in 2009. I wish to thank the government for having provided a summary table showing the state of play regarding compliance with the convention-related commitments entered into upon accession to the Council of Europe and the other conventions ratified by the Principality. It seems to me that this information is a strong indication of Monaco's willingness to comply with the commitments and obligations resulting from its accession to the Council of Europe.

19. As a Luxembourg parliamentarian, I can understand that, as a result of its limited administrative and human resources, the Principality may encounter certain difficulties in rapidly implementing reforms affecting key fields such as justice, democratic institutions or dialogue between the social partners. I accordingly deem it essential that the government and the National Council demonstrate a strong political will and considerable openness to draw on the experience of other European countries so as to overcome these difficulties and honour the commitments and obligations arising from Monaco's accession to the Council of Europe.

20. I am convinced that the adoption of a law on the functioning of the National Council and of its rules of procedure will constitute a first step towards reinforcing parliament's capacity to propose legislation and supervise the work of the executive, thereby contributing to the good functioning of the democratic process in Monaco.

21. I would again underline that the Council of Europe is fully aware of the specificities of the Principality of Monaco. At the same time, it can be a useful partner and offer expert knowledge and support with a view to identifying suitable solutions that both take account of the specificities of the Principality and permit compliance with its commitments and obligations - as a member of the Council of Europe since 2004 - in the context of a constitutional monarchy.

APPENDIX

Programme of the fact-finding visit to Monaco (21-22 February 2011)

Mrs Anne BRASSEUR, member of Parliament

Mrs Sylvie AFFHOLDER, Secretary of the Monitoring Committee of the Parliamentary Assembly

Monday 21 February 2011

- 09:00 – 09:45 Meeting with Ms Anne POYARD-VATRICAN, President of the Union for the Principality
- 09:45 – 10:30 Meeting with Mr Eric GUAZZONNE, President of the Union for the Future of Monaco (UNAM), Mrs Michele DITTLLOT and Mr Claude CELLARIO, UNAM national counsellors
- 10:30 – 11:15 Meeting with representatives of Rally and Issues:
Mr Christophe STEINER, National Counsellor
Mr Thierry POYET, member of the Executive Office
- 11:15 – 11:45 Meeting with H.E. Mr Philippe NARMINO, Director of the Judicial Services, President of the State Council
- 11:45 – 12:15 Meeting with Mr Robert CORDAS, First President of the Court of Appeal
- 12:15 – 12:45 Meeting with Mr Pierre KUENTZ, Investigating Judge
- 13:00 – 14:00 Lunch with the Monegasque delegation of the Parliamentary Assembly of the Council of Europe in the presence of Mr Jean-Charles GARDETTO and Mr Bernard MARQUET
- 14:00 – 14:45 Meeting with Mr Georges MARSAN, Mayor of Monaco, and the members of the Municipal Council
- 15:00 – 16:45 Meeting with the Government of the Principality:
H.E. Mr Michel ROGER, Minister of State
Mr José BADIA, Government Counsellor for External Relations
Mr Paul MASSERON, Government Counsellor for the Interior
Mr Stéphane VALERI, Government Counsellor for Social Affairs and Health
- 17:00 – 17:30 Meeting with Mr André GARINO, President of the Economic and Social Council, Mr André THIBAUT and Mr Jacques WOLZOK, Vice-Presidents
- 17:30 Meeting with Mr Jean-François ROBILLON, President of the National Council, in the presence of Mr Jean-Sébastien FIORUCCI, Head of Cabinet
- 20:30 Dinner hosted by Mr Jean-François ROBILLON, President of the National Council

Tuesday 22 February 2011

- 09:00 – 09:30 Meeting with Mrs Brigitte GRINDA-GAMBARINI, President of the Court of First Instance
- 09:30 – 10:00 Meeting with Mr Jacques RAYBAUD, General Prosecutor
- 10:00 – 10:30 Meeting with Mr Pierre BARON, Investigating Judge
- 10:30 – 11:15 Meeting with Mr Michel DOTTA, President of the Chamber of Economic Development
- 11:15 – 11:45 Meeting with representatives of the Monaco Trade Unions
Mrs Betty TAMBUSCIO, President
Mrs Monique FERRETE, Deputy Secretary General
Mr André THIBAUT, Secretary
Mr Henri TADDONE, Secretary, President of the Monaco Union of Pensioners
Mr Jean-Paul HAMET, Member of the Bureau

- 11:45 – 12:45 Meeting with Mr Philippe ORTELLI, President of the Monaco Patronal Federation
- 12:45 – 13:45 Lunch
- 13:45 – 14:15 Meeting with Mr Jérôme FOUGERAS LAVERGNOLLE, Investigating Judge and Guardianship Judge
- 14:15 – 14:45 Meeting with Ms Ariane PICCO-MARCOSSIAN, Director of the Department of Information and Control of Financial Circles (S.I.C.C.F.I.N)
- 14:45 – 15:30 Meeting with Ms Claudine BATTAGLIA, President, and Ms Jannine MARTINEZ, Honorary President of the Monaco Tenants Association
- 15:30 – 16:30 Meeting with Ms Simone COMMANDEUR, President, Ms Gisèle HUGHES, Secretary General, and Mr FERRARI, Monaco Association of Property Owners
- 16:30 – 17:00 Meeting with representatives of the Monaco Association of Financial Activities (A.M.A.F.)
Mr Etienne FRANZI, President
Mr Xavier O'JEANSON, Vice-President, in charge of banking
Mr Anthony STENT-TORRIANI, Vice-President, in charge of management
Mr Jean DASTAKIAN, Secretary General
- 17:30 Meeting with H.S.H. Prince Albert II