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## **Honouring of obligations and commitments by Monaco**

### Report

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

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

### *Summary*

The Principality of Monaco became a member of the Council of Europe on 5 October 2004. This report is the first submitted by the Monitoring Committee to the Assembly assessing whether the Principality has met the commitments it entered into on accession.

The Committee is pleased to note the progress made in particular as regards the ratification of conventions and the adoption of domestic law.

However, the Assembly decides to continue the monitoring procedure until tangible progress is made to honour the remaining commitments.

**A. Draft resolution**

1. The Principality of Monaco became a member of the Council of Europe on 5 October 2004. On acceding, it accepted the statutory obligations which all member states must meet and also made a number of specific commitments, which it undertook to honour within time-limits specified in Opinion No. 250 (2004).
2. The monitoring procedure was due to start six months after accession (paragraph 14 of the Opinion), in other words in April 2005. This report is the first to the Assembly assessing whether the Principality has met the obligations and commitments it entered into on accession.
3. The first two years after accession were marked by events which both deeply affected the people of Monaco and had important implications for the functioning of Monegasque institutions and compliance with the timetable for meeting the commitments entered into in 2004. On taking over from his father, Prince Rainier, who died in April 2005 after a 56-year reign, Prince Albert II set a new course for the country.
4. The Parliamentary Assembly welcomes the signature in Paris on 8 November 2005 of the Convention on adapting and developing administrative co-operation between France and Monaco. The convention replaces the 1930 one and ensures that the principle of non-discrimination is complied with so that Monegasque citizens can be appointed to the senior public and governmental posts in Monaco that are currently reserved for French nationals. The Assembly hopes that France will ratify the convention as soon as possible.
5. It notes that Monaco has now ratified 30 of the 200 Council of Europe Conventions and signed two others – Protocol No. 1 to the European Convention on Human Rights (ECHR) and the Revised European Social Charter.
6. The Assembly welcomes the fact that within the set time-limit of one year after accession Monaco ratified the ECHR and its Protocols Nos. 4, 6, 7 and 13; it did so on 30 November 2005, at the same time as lodging two declarations and several reservations. The Principality ratified Protocol No. 14 to the ECHR on 10 March 2006; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the General Agreement on Privileges and Immunities of the Council of Europe and its protocols were also ratified on 30 November 2005.
7. However, the Assembly regrets that the Principality of Monaco has not yet honoured its commitment to ratify ECHR Protocol No. 1 safeguarding property rights, the right to free elections and the right to education and it expects the Monegasque authorities to take the necessary steps for that purpose as soon as possible. It also notes that Monaco has not signed Protocol No. 12 although required to do so within one year after its entry into force – that is, by 1 April 2006.
8. With regard to the Council of Europe conventions which Monaco undertook to ratify within two years from accession – that is, by 5 October 2006 at the latest – the Assembly is pleased to note that on 19 March 2007 it ratified the Criminal Law Convention on Corruption, the European Convention on Mutual Assistance in Criminal Matters and the European Agreement relating to persons participating in proceedings of the European Court of Human Rights.
9. On the other hand the Revised Social Charter, the European outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and the European Convention on the Suppression of Terrorism have not yet been ratified. The Assembly calls on the Monegasque authorities to ratify those conventions as soon as possible. It hopes that ratification of them will be facilitated by the establishment on 16 February 2007 of the International Affairs Department, one of whose functions is to assess and monitor international conventions to which Monaco is or will be a party.
10. In the matter of domestic law the Principality also undertook, in accordance with Council of Europe standards, to pass a number of laws within one year from accession. The Assembly is pleased to note that:
  - 10.1. amendments to the Civil Code incorporating the principle of equality between women and men, including as parents or spouses, were adopted in 2003 and 2004;
  - 10.2. two laws amending the Nationality Law of 18 December 1992 were passed in 2003 and 2005 respectively;
  - 10.3. the law on media freedom was passed on 15 July 2005;

10.4. the law on stating reasons for administrative acts was passed on 29 June 2006.

11. The Assembly trusts that the law on freedom of association, which should also have been passed within one year after accession, will be adopted without further delay.

12. The Assembly asks the Monegasque authorities to expedite the current reform of the Criminal Code and the Code of Criminal Procedure and to make sure that the planned amendments are in keeping with the European Convention on Human Rights as interpreted by the Court, in particular with regard to Articles 5, 6, 7, 8 and 13 of the ECHR.

13. The Assembly notes with satisfaction that the Government of the Principality has consented to the publication of the report by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) dated 31 May 2007. It hopes that the recommendations in this report will be implemented with all dispatch. The Assembly also hopes that the Monegasque authorities take account of the recommendations in the report of the European Commission against Racism and Intolerance (ECRI) of 24 May 2007.

14. The Assembly is pleased to note that Monaco has made considerable efforts to improve its legal weaponry against money-laundering and particularly welcomes the November 2006 law amending Article 218 of the Criminal Code as regards offences underlying money-laundering.

15. It also welcomes the June 2006 enactment of a law on local self-government which should make it possible to ratify the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities very soon. It encourages the Monegasque authorities to continue the reform process so as to ensure that foreign nationals residing in Monaco are allowed to participate in the management of municipal affairs, in keeping with the relevant Council of Europe's standards.

16. With regard to the powers of the National Council, which it suggested should be extended within 5 years of accession, the Assembly is aware of the delicate situation which is an inherent feature of the functioning of Monaco's institutions. It therefore considers it necessary to draw attention to the recommendations set out in paragraph 11 of Opinion No. 250 (2004) concerning supervision of government action, annual presentation of the governmental programme, the right of legislative initiative, and the budget debate.

17. The Assembly urges the Monegasque authorities to adopt a new law on the functioning and organisation of the National Council as soon as possible so as to reflect the constitutional changes made in 2002. It hopes in this connection that the work by the Government-National Council joint working party will shortly be successful.

18. It also calls on the National Council to review its rules of procedure without delay.

19. In addition it recommends that the Monegasque authorities:

19.1. begin considering the case for a law on political parties, in particular so as to ensure greater transparency in party financing;

19.2. 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 to the National Council beforehand any draft reservations or declarations to a treaty in respect of which the National Council must pass a ratification law.

20. Bearing in mind not only the progress made since Monaco acceded but also the number of commitments it still has to honour, the Assembly decides to continue monitoring the honouring of obligations and commitments by Monaco until progress in that area brings tangible results.

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## **B. Explanatory memorandum by Mr Agramunt and Mr Slutsky, co-rapporteurs**

### **1. INTRODUCTION**

1. In April 2004, in the light of the reforms already implemented and the commitment to introduce new laws, the Parliamentary Assembly expressed the view that the Principality of Monaco, which had been applying for membership of the Council of Europe since 1998, was now ready to become a Council of Europe member. However, in its Opinion No. 250 (2004) of 27 April 2004, the Assembly recommended that the Committee of Ministers invite Monaco to become a member of the Council of Europe only "as soon as the Assembly and the Committee of Ministers have noted in their Joint Committee that the consultations between Monaco and France on the revision of the 1930 convention have opened the possibility for implementing, in the near future, the principle of non-discrimination, by allowing Monegasque citizens to be appointed to the senior Monegasque governmental and public posts that are currently reserved for French nationals".

2. After receiving letters from the Minister of State of Monaco and the Permanent Representative of France to the Council of Europe stating that negotiations for a new convention to replace the 1930 convention had started, the conditional green light given by the Parliamentary Assembly at its April session was made definitive by the Joint Committee, and the Committee of Ministers issued a formal invitation to Monaco to become a member of the Council of Europe.

3. On 5 October 2004, the Principality of Monaco thus became the 46<sup>th</sup> member State of the Council of Europe and the last micro-State in Europe after Liechtenstein, San Marino and Andorra to join the Organisation. The monitoring procedure was due to start within six months of accession (paragraph 14 of the Opinion), ie in April 2005. This report is the first submitted to the Assembly assessing the extent to which the Principality of Monaco has honoured the obligations and commitments which it accepted upon accession.

4. In March 2005, in accordance with its terms of reference as set out in Resolution 1115 (1997), the Monitoring Committee appointed two co-rapporteurs, Mr Pedro Agramunt (Spain, EPP/CD), and Mr Leonid Slutsky (Russia, SOC), to monitor the situation in Monaco. The two co-rapporteurs paid two fact-finding visits to Monaco, the first in December 2005 and the second in June 2006<sup>1</sup>. They received the full co-operation of the Monegasque authorities and wish to express their particular appreciation to the National Council for the invaluable assistance they were given.

5. The co-rapporteurs subsequently drew up a preliminary draft report which was examined by the committee at its meeting on 15 October 2006, then forwarded to the Monegasque authorities for comment within three months, in accordance with Resolution 1115 (1997). On 18 January 2007, each of the parties and blocs represented on the National Council and the Princely Government submitted their comments, which are set out in document AS/Mon (2007) 05.

### **2. POLITICAL EVENTS SINCE ACCESSION**

6. The first two years after accession were marked by events which both deeply affected the people of Monaco and had also important implications for the functioning of Monegasque institutions and compliance for meeting the commitments entered into in 2004.

7. The death of Prince Rainier on 6 April 2005 after a 56-year reign and the ensuing period of mourning, the replacement of key people in the executive and the adaptation of their successors to their new functions complicated the work of institutions in Monaco which had an impact on the Principality's endeavours to honour its commitments. Taking all this into account, we believe that progress achieved by Monaco in fulfilling its commitments was quite significant.

8. Prince Albert II has made it clear since coming to the throne on 12 July 2005 that the country must now follow a new path: Monaco must be both a "model society", particularly as regards ethics and transparency, and a "society model" through its involvement in the international scene, with particular reference to the environment and sustainable development<sup>2</sup>.

<sup>1</sup> See visits programmes, AS/Mon (2005) 45 and AS/Mon (2006) 41.

<sup>2</sup> Monaco ratified the Kyoto Protocol in February 2006 and in June 2006 the Prince established the Prince Albert II Foundation for protection of the environment. In the United Nations, Monaco is supporting the recognition of crimes against children as crimes against humanity.

9. A new Minister of State<sup>3</sup> was appointed in May 2005 to head the Government, which has five Government Counsellors. For the first time the Prince was able to choose the Minister freely subject to the agreement of France, without being compelled to choose from a list of three names submitted by the French Government. On 8 November 2005 three new conventions were signed with France, one of which replaces the 1930 convention on access by nationals to certain public posts. The Prince also changed the formation of his Cabinet in December 2005, and again at the end of 2006.

10. An important government reshuffle took place on 7 July 2006: only two members of the previous team, Denis Ravera, a Monegasque, responsible for social affairs<sup>4</sup>, and Paul Masseron, a Frenchman, appointed in April 2006 to replace Philippe Deslandes as Counsellor for the Interior, retained their jobs. The portfolio of Counsellor for Facilities, the Environment and Urban Planning was transferred from Gilles Tonelli, a Monegasque, who was appointed Counsellor for Finance and the Economy in place of Franck Biancheri, a Monegasque (who keeps the post of chargé de mission to the Minister of State), to Robert Calcagno, a Frenchman, who until then had been a Counsellor in the Prince's Cabinet. The Counsellor<sup>5</sup> for External Relations, Rainier Imperti, the first Monegasque in history to have charge of the Principality's external relations, is replaced by Henri Fissore, also a Monegasque, who was Monaco's ambassador to Italy. On 4 August 2006, the Prince again appointed a French national to the post of Director of Public Safety, which is traditionally reserved for a Frenchman.

11. The Principality of Monaco thus finds itself at the beginning of a new chapter in its long history: a new Prince is gradually making his mark and both the people appointed and the institutions they serve are feeling their way towards a new institutional balance that will meet the wishes of both Prince and citizens in the general interests of all.

### **3. HONOURING COMMITMENTS**

12. Over the past two years, the Principality of Monaco has succeeded in fulfilling most of the commitments which it undertook at the time of accession; some of these commitments have been met late, while others have not yet been honoured. It is clear, however, that accession to the Council of Europe has already caused Monaco to compare its legislation and practice with European standards and norms, a process that raises question marks because of the simultaneous need to make allowance for Monegasque conditions. While Monaco has traditionally been open to the outside world, its accession to the Council of Europe means it is now required to accept external scrutiny of how its institutions operate, which is not always easy.

13. The monitoring procedure of the Parliamentary Assembly is designed to assess whether the relevant commitments and obligations are being complied with, as well as to furnish assistance where needed to enable each member country to be as far as possible in the vanguard of democracy, respect for the principle of the rule of law and protection of human rights. That is the sole object of the recommendations made in this report.

14. In accordance with Opinion No. 250 (2004), Monaco has undertaken to conduct an ongoing examination of the compatibility of all its legislation with the European Convention on Human Rights (ECHR) and its relevant protocols (see §12 i (d) of the Opinion). As a Council of Europe member State, the Principality is entitled to assistance from the Council of Europe, particularly with regard to legislative expertise. However, such expertise must be requested, which unfortunately has not been the case so far. We strongly recommend the Monegasque authorities to carry out, with the help of Council of Europe experts, an examination of the compatibility of their legislation with the ECHR and its protocols, which will make it possible both to modernise its legislation and to forestall any risk of breaches of the ECHR.

#### **3.1. Regarding Council of Europe conventions**

15. As of 15 May 2007 Monaco had ratified 30 Council of Europe conventions out of 200 and had signed two others, namely Protocol No. 1 to the ECHR and the revised Social Charter. Within **a year** of accession, the Principality was required to ratify:

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<sup>3</sup> Jean-Paul Proust, a Frenchman and former prefect.

<sup>4</sup> Mr Ravera died in April 2007 and the post of Counsellor for Social Affairs went to another Monegasque, Mr Campana.

<sup>5</sup> Until November 2005, Foreign Relations was the responsibility of a foreign-relations official and not of a Government Counsellor.

- The ECHR together with its Protocols Nos. 1, 4, 6, 7 and 13: this ratification<sup>6</sup> took place slightly late on 30 November 2005 and was accompanied by the lodging of two declarations and several reservations. However, Monaco has not ratified Protocol No. 1 on the right to property, education and free elections (see § 11.1. below). The Principality has also failed to honour its commitment to sign Protocol No. 12 to the Convention within a year of its entry into force, i.e. 1 April 2006 (see section 11.2 below).
- The European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was ratified on 30 November 2005 and the Committee for the Prevention of Torture paid its first visit to the Principality in March 2006. Its report is not yet available, but we note with satisfaction the Government's undertaking to the effect that, when the time comes, the Principality will agree to its publication in accordance with practice in the majority of European countries.
- The Principality also ratified on 30 November 2005 the General Agreement on Privileges and Immunities of the Council of Europe and its additional protocols.

16. Within **two years** of accession, ie no later than 5 October 2006, Monaco was required to ratify the revised European Social Charter, the European Convention on Mutual Assistance in Criminal Matters, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its additional protocols, the European Convention on the Suppression of Terrorism and the Criminal Law Convention on Corruption. Law 1.326 approving ratification of the Criminal Law Convention on Corruption was adopted by the National Council on 11 December 2006 and endorsed by the Prince on 22 December 2006. The instrument of ratification was deposited with the Secretary General of the Council of Europe on 19 March 2007, the date on which Monaco also ratified 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. On the basis of promises made during our visits, we expect the Monegasque authorities to take the necessary action to fulfil the remainder of their commitments as soon as possible. For the record, mention should also be made of the Convention on Cybercrime, which is to be ratified within five years of accession.

### 3.2. Regarding domestic legislation

17. Monaco had also undertaken to pass, within a period of one year of its accession, the following laws in conformity with Council of Europe standards:

- the law on stating reasons for administrative acts: Law No. 1.312 was passed on 29 June 2006, thus nearly a year late (see section 6.3. below);
- the law on nationality: two laws amending Law No. 1.155 of 18 December 1992 were passed in 2003 and 2005 respectively (Law No. 1.276 of 22 December 2003 and Law No. 1.296 of 12 May 2005);
- the law on the freedom of the media: Law No. 1.299 was passed on 15 July 2005;
- amendments to civil law, incorporating the principle of equality between women and men, including as parents or spouses: amendments<sup>7</sup> to the civil code were adopted in 2003 and 2004;
- the law on associations: this law is being discussed and should be passed during the spring 2007 session of the National Council.

18. As regards the law on associations, the National Council did not find the Government's draft law on associations and federations of associations to be very satisfactory and felt that it was of fundamental importance, for averting certain abuses, to reinforce checks on the use made of public funds paid to subsidised associations and to ensure effective monitoring in this area. The Government, which was opposed to an amendment of this kind in legislation intended to lay sound foundations for freedom of association, opted to make financial checks on individuals and private-law entities receiving public funds the

<sup>6</sup> Following ratification of the ECHR, the Principality now has a judge at the European Court of Human Rights: Ms Isabelle Berro-Lefebvre, a Monegasque judge, was elected in June 2006 by the Parliamentary Assembly and took up her duties in September 2006.

<sup>7</sup> Amendments to civil law incorporating the principle of equality between women and men, including as parents or spouses, were passed in 2003 and 2004, particularly as regards the joint exercise of parental authority (elimination of the concept of paternal authority) and equality as regards inheritance rights between legitimate, natural and adulterine children. A private member's bill on divorce was prepared by the National Council which provides for divorce on grounds of misconduct to be supplemented by divorce by mutual consent and for cessation of cohabitation.

subject of a separate piece of draft legislation. This bill, officially tabled in April 2006, was at once closely scrutinised by the Legislation Commission, which, regretting the absence of substantive revisions, was forced to make numerous changes. The National Council attaches particular importance to examining and voting on the two bills – which are inseparable from each other – together.

#### 4. RELATIONS WITH FRANCE

19. While there has never been any doubt that as regards international relations the Principality of Monaco, a member of the United Nations since 1993, is a sovereign and independent State<sup>8</sup>, the exercise of that sovereignty has been significantly limited by the treaties concluded with France, in particular the 1918 treaty and the 1930 convention. This limitation on sovereignty constituted the greatest barrier to the Principality's accession to the Council of Europe. Indeed, Article 1 of the Monegasque Constitution provides as follows: "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". The article reflects an intrinsic limitation on the sovereignty of Monaco, which sees exercise of its sovereign rights as being very much subject to compliance with the conventions which bind it to France. The recent renegotiation of the Franco-Monegasque agreements and the resultant progress in terms of asserting Monegasque sovereignty vis-à-vis France have not called in question the principle of limited sovereignty, which remains enshrined in Monaco's founding instruments.

20. The signing in Paris on 24 October 2002 of the "Treaty adapting and confirming relations of friendship and co-operation between the French Republic and the Principality of Monaco" represents an essential step forward<sup>9</sup> for Monaco. This treaty, which replaces that of 17 July 1918, is based on modern international law, free consent and mutual respect and should lead in future to the development of privileged and friendly relations with France on durable foundations, first of all by formalising the joint Franco-Monegasque co-operation committee already existing in practice (see Article 7 of the treaty) and secondly by establishing the principle of reciprocity as regards diplomatic representation<sup>10</sup>.

21. Furthermore, the new treaty, with its confirmation of the Principality's sovereignty, which has been recognised by France for five centuries, and of the independence of the Principality within the limits of the conventions signed by it, will assure each of the two States that the other will respect its fundamental interests. The preamble to the treaty stresses the desire to maintain between [France and the Principality] "the close and privileged relations that reflect their traditional friendship as they result from history and form part of their community of destiny". This idea of France and Monaco sharing a "common lot" replaces that of "protective friendship" and makes it possible to establish a principle of mutual consultation in key areas, replacing the previous obligation on Monaco to exercise its sovereignty in absolute conformity with French policy options. The preamble also refers to the sovereign equality of States by making reference to international law and the United Nations Charter.

22. The new treaty of 24 October 2002 also amended Article 3.2 of the 1918 treaty which stipulated that where the succession was in abeyance, for example owing to the absence of a direct or adoptive heir, Monegasque territory would constitute, under French protection, an autonomous State under the name of State of Monaco. Henceforth the settlement of questions concerning succession to the throne is governed by the Monaco Constitution which, as amended by Law No. 1.249 of 2 April 2002, now establishes precise rules avoiding any risk of the succession falling into abeyance<sup>11</sup>.

23. Since its accession in October 2004, the Principality has brought its relations with France up to date by signing in Paris on 8 November 2005 two bilateral agreements and an exchange of letters: the "Convention to adapt and develop administrative co-operation between the French Republic and the Principality" replaces the 1930 convention.

24. Article 3 of the new convention establishes the principle that public posts in the Principality are reserved for Monegasque nationals. As an exception to this principle, they may, however, be occupied in the case of unfilled posts either – first of all – by French nationals (seconded for a maximum period of three

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<sup>8</sup> With an autonomous territory, a stable population and organised public authorities.

<sup>9</sup> It is regrettable that France took over three years to ratify this treaty (see the Law of 13 October 2005 approving the Treaty and Decree No 2006-17 of 5 January 2006 publishing it in the Official Journal).

<sup>10</sup> There are now accredited ambassadors to Monaco: the consuls general of France and Italy were given the status of resident ambassadors in February and April 2006. Accreditation of the Apostolic Nuncio and the Chinese Ambassador took place at the end of September 2006. There are currently 37 requests for accreditation for non-resident ambassadors.

<sup>11</sup> For further details see Article 10 of the amended Constitution.



years renewable once<sup>12</sup>, or under contract) or by nationals of third States in accordance with contracts of limited duration. However, Article 3 states that posts connected with public safety and public policy may be filled only by Monegasque or French nationals and that officers and members of the carabinieri corps of French nationality must have complied with French military service requirements<sup>13</sup>.

25. Article 6 of the new convention allows Monegasque nationals to fill the most senior posts in their country's civil service, even though in order to demonstrate the community of destiny that binds them, the two Parties shall consult each other concerning functions and posts that affect their basic interests. Consultations between the two Parties will ensure that the senior persons concerned enjoy mutual trust. This Article 6 concerns 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. From now on they can be chosen and appointed by the Prince from French or Monegasque<sup>14</sup> nationals. We hope that the "mutual trust" condition will let the Prince appoint Monegasques to these posts, which are obviously of strategic interest to France.

26. This new convention in any case represents a very important step forward which can only be welcomed. However, Monegasque nationals still have no privileges as regards access to the French civil service: there is no reciprocity. Article 4 of the new convention simply states that Monegasque nationals shall have access to the branches, employment conditions and posts of French public services on the same conditions as nationals of European Union Member States, which excludes them in France, under the case law of the European Court of Justice in Luxembourg, from certain public posts involving the exercise of governmental powers<sup>15</sup>.

27. On 8 November 2005 a new convention on mutual assistance in criminal matters was also signed, together with an exchange of letters on safeguards for investors.

28. However, the new Franco-Monegasque agreements have still not been ratified by the French Parliament and it is unlikely that this will happen before the French presidential elections in 2007, which is highly regrettable.

29. Both the new treaty of October 2002 and the November 2005 convention are undeniably drafted in much less peremptory terms than the 1918 treaty and the 1930 convention which they supersede, and we hope, therefore, that the new agreements will be applied in practice in future, in keeping with the spirit in which they were concluded, that is, with a view to reinforcing the Principality's independence and sovereignty and removing all discrimination against Monegasque nationals. However, only the future and the practice will show whether the amendments are purely formal or represent substantial recognition by France of the full and complete sovereignty of the Principality of Monaco.

30. Because of the small number of Monegasque nationals possessing the required qualifications, it is highly probable that the secondment of French civil servants will continue, not only in education (currently 201), security (most policemen, carabinieri and firemen are French), justice (nearly half of all magistrates are seconded by France) and the Government (the Minister of State and two Government Counsellors out of 5 are French) but also in the civil service (nearly half of all civil servants and those with civil service status are French). What has changed, and this can only be welcomed, is the proportion of Monegasques occupying senior posts.

## 5. THE ECONOMIC SITUATION OF MONACO

31. The economy of Monaco, which at the beginning of the 20<sup>th</sup> century was still based on luxury tourism and an embryonic industrial sector, is now much more highly developed and diversified as a result of the impetus given to it by Prince Rainier III. The Principality is today a dynamic economic centre and provides employment for the neighbouring regions, particularly the French regions<sup>16</sup>. Unemployment is more or less

<sup>12</sup> See Article 5 of the Convention of 8 November 2005. French civil servants were formerly seconded for five years, which could be renewed without limitation as to time. In this way, the former President of the Monaco Appeal Court, a Frenchman, spent nearly 29 years in office in the Principality.

<sup>13</sup> This reference is rather surprising since military service was abolished in France in 2000.

<sup>14</sup> The Minister of State is currently a French national, as also are the Counsellor for the Interior, the Director of Public Safety and the Director of Fiscal Services. However, the new Director of Legal Services is a Monegasque.

<sup>15</sup> However, Article 2 of the new convention provides that administrative co-operation between France and Monaco may also include the secondment of officials by one of the parties for the benefit of the other party.

<sup>16</sup> Monegasque contributions account for more than 50% of unemployment insurance contributions paid in the French *département* of Alpes-Maritimes.

non-existent, industry<sup>17</sup> consists of around a hundred enterprises and the economy generates about 43,000 jobs for a resident population of over 32,000.

32. Monaco's economic activity is reflected in a turnover<sup>18</sup> of around €10 billion. Since 1865 Monaco has formed, together with France, a Customs Union (the terms of which were clarified in 1962) and its currency is the euro. The State budget<sup>19</sup> obtains its funds mainly from value added tax<sup>20</sup> (50%) and (gambling<sup>21</sup>) monopolies awarded or operated (17.5%). The Monegasque economy is primarily an economy in which services and tourism<sup>22</sup> play a traditionally important role. However, around a tenth of Monaco's turnover comes from industry, particularly certain sectors with a high added value (pharmacy, cosmetics, plastics); research laboratories, telecommunications and design offices also yield a high return. Shipping is a strongly expanding sector accounting for around 4% of the Principality's total turnover.

33. Regarding banking, which accounts for 15% of turnover and employs 2,400 people, this sector has now revived after marking time in 2002 and 2003 following the flight of Italian capital sparked off by the Berlusconi Government's tax amnesty: in 2006 there were 40 banks and 20 portfolio management companies for €70 billion of managed assets.

34. The agreement on the taxation of savings concluded with Brussels, which came into force in July 2005, does not penalise investment because the taxation of savings income at source will affect only non-resident European Union nationals and safeguards have been obtained on banking confidentiality<sup>23</sup>. Although, as far as OECD is concerned, the Principality still appears on the list of unco-operative tax havens, Monaco has made considerable efforts<sup>24</sup> to improve the transparency and supervision of its banking sector by aligning its practices and legislation on current international standards.

## 6. MONEGASQUE NATIONAL IDENTITY

35. On 23 June 2006 Prince Albert II, addressing the National Council, said that "Monaco remains a State unlike any other. Delicate balance is at the origin of a political and social pact based on distinctive features; this pact should not be jeopardised because of a misunderstanding related to the extension of our international policy".

36. The distinctive feature of the Principality of Monaco, quite apart from the fact that it is a hereditary constitutional monarchy, is its small size<sup>25</sup> – about two square kilometres – and the fact that the

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<sup>17</sup> Industry accounts for around 8% of turnover and employs over 4,000 people, i.e. around 12% of the wage-earning population. The leading sectors are chemistry, plastics processing, pharmacy, the cosmetics industry, electrical and electronic equipment, printing and the textile clothing sector.

<sup>18</sup> Economic activity in Monaco is calculated in turnover and not GDP or GNP per capita. By 2007-2008, however, the Principality should possess recognised economic aggregates, i.e. a GDP (Gross Domestic Product) and a GNI (Gross National Income), assuming that the 4,500 enterprises and the 2,000 self-employed workers supply the authorities with honest and reliable data concerning their gross operating surplus.

<sup>19</sup> The original budget for 2006 forecasts revenue amounting in total to €695,507,600 and provides for expenditure amounting to €829,547,500. The expected deficit is around €134 million. The budget surplus or deficit is invested in, or charged to, as the case may be, a "constitutional reserve" fund, a sort of kitty amounting to around € 4 billion, which is also used for non-budget funding of capital expenditure such as the purchase of embassies or the building of state-owned housing.

<sup>20</sup> The Principality itself does not receive the VAT. This is paid by France into an apportionment account according to rather complex procedures.

<sup>21</sup> The Société des Bains de Mer (SBM), which is 70%-owned by the State, has a gambling monopoly, which now represents only about 4% of the Principality's resources. The bulk of the turnover (€354.4 million) of the SBM, which employs nearly 3,000 people, comes from the hotel trade and catering.

<sup>22</sup> Tourism has long been directed mainly at a high-value individual clientele. However, this sector is now having to redirect its efforts at business, conference, seminar and cruise tourism, which now accounts for a large market share with 30% of hotel nights.

<sup>23</sup> Monaco has no legislation on banking secrecy, but the banks are subject to the general rules relating to professional secrecy.

<sup>24</sup> In February 2006 the Monaco courts sequestered €21 million of dubious source which had been deposited in two Monegasque banks. In June 2006 a company administrator who is currently serving a sentence for drug trafficking in the United States was sentenced to 12 years in prison for money laundering. In July 2006 the Monegasque authorities placed under seal the luxury residence in Monaco of an Italian/Syrian suspected of money laundering following fraudulent arms sales. An investigation into this affair has been taking place since 2003 in co-operation with the Italian authorities.

<sup>25</sup> Situated on the Cote d'Azur and surrounded by the French département of Alpes-Maritimes, the Principality can only expand upwards, by building skyscrapers, or seawards. An initial extension project designed to reclaim 0.40 square kilometres from the sea by constructing a dike and filling in the seabed was carried out nearly 30 years ago in the Fontvieille quarter. The second extension project in the Portier quarter near the Larvotto underwater reserve aims to take

Monegasques are a small minority in their own country and wish to remain so. Apart from the discussions on Monaco's honouring of its commitments, two questions regularly dominated our talks with most of our informants: housing and the acquisition of Monegasque nationality. We shall consider the question of access to housing from the viewpoint of the ratification – which has not yet taken place – of Article 1 of Protocol No. 1 to the ECHR (see §11.1. below).

37. According to the latest data supplied to us<sup>26</sup>, the Principality currently has around 32,500 inhabitants of 120 different nationalities, of whom a third were born there. The number of persons possessing Monegasque nationality is 7,500, which means that Monegasque nationals are in a minority and represent only about 19% of the population<sup>27</sup>. The largest foreign communities numerically are the French (about 8,000) and the Italians (about 6,000).

38. As the local working population is too small, businesses have been compelled to recruit the labour<sup>28</sup> required for the Principality's economic development outside Monegasque territory. Every day workers equivalent in number to that of the resident population, ie about 30,000 people, come to work in Monaco and return in the evening to their homes outside the Principality.

39. Monegasque identity still consists today in the collective feeling of Monegasques that they belong to a highly select group of humanity, a sort of large family sharing with their Prince, to whom they are indestructibly attached, the memory of a long and exceptional history. The profound attachment of the majority of Monegasques to the Catholic religion, the use of a local dialect and a still very lively culture and local traditions are also important factors in their identity.

40. It is therefore not surprising that Monegasques seek to protect their national identity by all the means available to them, including the Constitution, which provides in Article 25 that Monegasques shall have priority in filling public and private posts under the conditions established by the law or international conventions, in Article 26 that Monegasques shall be entitled to State assistance in the event of destitution, unemployment, illness, disability, old age and maternity in the manner laid down by law, in Article 27 that Monegasques shall be entitled to free primary and secondary schooling and in Article 29 that Monegasques shall have the right to assemble peacefully and without arms without prior authorisation". Moreover, under Articles 53 and 54 of the Constitution (regarding elections to the National Council) and 79 (regarding local elections), only Monegasques are entitled to vote and stand for election. Finally, under Article 32 of the Constitution, Foreigners shall enjoy in the Principality all public and private rights which are not formally reserved for nationals.

41. This system of national preference is in no way shocking as such: the Assembly expressly recognised in paragraph 9 of Opinion No. 250 (2004) "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" and considered 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". The Assembly also noted that the social-security system was accessible to all people working in Monaco.

42. However, in the opinion of some of our informants (representatives of trade unions, of the Assembly of French Citizens Abroad, etc), priority in respect of employment has become over the years a system of job<sup>29</sup> reservation, while the various forms of welfare assistance available to Monegasques alone could not all be justified and allegedly encouraged a "person on benefits" mentality. The reported most disliked form of discrimination concerned housing, on the grounds that Monegasques had preferential access to accommodation owned by the State, which let it out at rents 50% below those prevailing on the free market.

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about 250.000 square metres from the sea and is currently being put out to tender following a call for bids by the Prince in July 2006. Work will last more than 10 years.

<sup>26</sup> The last census, in 2000, mentioned a total population of 32,020 inhabitants but the figures given to us by our informants vary greatly. For example, figures are given for the total population ranging from 30,000 to 35,000.

<sup>27</sup> By way of comparison, the Principality of Andorra has 30% of nationals out of a total population of about 30,000.

<sup>28</sup> There are about 43,000 wage earners in Monaco of whom 38,000 work in the private sector. The State and the commune employ about 3,300 persons (about half of whom have Monegasque nationality) and there are 2,000 self-employed workers. Only 16% of private-sector wage earners live in Monaco.

<sup>29</sup> For example, in the civil service, only Monegasques and some detached French civil servants enjoy the advantageous status of civil servants, while other employees only receive fixed-term contracts for 1, 2 or 3 years. After six years and provided no suitable Monegasque can be recruited, a non-Monegasque will continue to be employed but with no contract or guarantee. In the private sector, recruitment of a non-Monegasque is subject to authorisation by the employment department. By law, where Monegasques are made redundant, they must be dismissed last and, where appropriate, re-engaged first.

It should be noted, however, that Monaco has introduced housing aid for foreigners with privileged links to Monaco ("enfants du pays") by setting aside a number of preferential-rent housing units in the so-called "protected sector" and also introducing a special housing grant. Since reform of the Protected Sector Act in 2004 it has no longer been necessary to be related to a Monegasque or to have been born in Monaco in order to qualify for it: this protection is now available to anyone of foreign nationality who has lived continuously in Monaco for over 40 years.

### 6.1. The special situation of "enfants du pays"

43. During our first visit to Monaco in December 2005 we were very surprised to learn that among the persons of 120 nationalities residing permanently in Monaco there was a special category known as "enfants du pays". No legal definition<sup>30</sup> exists of this term, which is commonly employed to denote about 14,000 persons<sup>31</sup> who have lived in Monaco for several generations without ever obtaining Monegasque nationality<sup>32</sup>.

44. The number of French people in Monaco, who constitute most of the "enfants du pays", has fallen 40% in 20 years, from 12,000 to 8000, mainly because of taxation and high rents. Since the tax convention of 18 May 1963, unlike other European residents, including Italians (about 6,000), the French are the only foreign community in Monaco which does not escape tax, all those who took up residence in the Principality after 13 October 1957 being liable to income tax in the same way as if they were domiciled in France. Furthermore, under a 2003 rider to the convention, French people living in Monaco must pay a wealth tax in France (ISF) on property they own in Monaco<sup>33</sup>.

45. Recently, in June 2006, the President of the National Council suggested to his French counterparts that the convention be reviewed so as to exempt French people who have been living in Monaco for over 20 or 25 years from paying income tax or to allow tax relief to offset the high rents paid in the Principality.

46. The French people in Monaco (whom we met the elected representative of the Assembly of French Citizens Abroad) feel themselves to be mainly Monegasque and have the impression that they are second-class citizens. Having lived and worked in Monaco for several generations in many cases, they consider they have contributed to the Principality's development and resent the positive discrimination enjoyed by Monegasques. Because of high rents, many of them have had to "go into exile" in neighbouring French municipalities, which automatically cancels the tax privileges of those who had settled in Monaco prior to 1957. Whether they are pensioners who formerly worked for the Monegasque civil service or representatives of the middle classes, they can no longer afford to live in Monaco without State assistance. Several possible solutions were suggested: passing of a law naturalising the "enfants du pays" as a matter of priority; drawing up of a special statute<sup>34</sup> which would not grant them Monegasque nationality but would recognise them as a special category; granting of certain welfare advantages in relation to other residents, for example in employment and particularly housing, renegotiation with France of tax exemption for French nationals.

47. According to the Government, the Monegasque authorities have no intention whatsoever of establishing a general status for certain foreigners based on criteria of ties to the Principality, which would be difficult to define in legal terms, because they are mainly subjective, and would be likely to give rise to legitimate complaints as to the constitutionality of such provisions on the part of the residents not covered by them. Nevertheless, it would be wrong to say that there are any "second-class citizens" in Monaco; there are only Monegasques and foreign nationals. This classic principle obviously does not rule out the possibility of differential treatment between individuals in some specific fields, such as that of employment, but on the basis of clear, objective criteria: nationality and place of residence in the case in point.

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<sup>30</sup> A legal definition of the "enfants du pays" category is given only in the context of the law governing access to the protected housing sector. Under the terms of the law this category covers: persons born of a Monegasque parent; spouses, widows or widowers of Monegasques; persons divorced from Monegasques and having children born of that union; persons born in Monaco (or born outside the Principality by chance, for medical reasons or for reasons of force majeure) who have been living there since their birth, on condition that one of the parents was likewise living in Monaco at the time of their birth, and persons who have lived continuously in Monaco for at least 40 years.

<sup>31</sup> There are no official statistics about the exact number of "enfants du pays", an expression used officially for the first time by Prince Rainier in 1997 in a speech given during celebrations of the Principality's 700 years of existence.

<sup>32</sup> In 1952 the so-called "three generations" act, which has since been repealed, enabled many "enfants du pays" to acquire Monegasque nationality by declaration when they were able to prove that their family had been in Monaco for three generations and that they themselves resided there. However, under the Franco-Monegasque agreements, a French person who assumes Monegasque nationality loses his or her French nationality.

<sup>33</sup> A number of them have lodged appeals in France disputing this tax.

<sup>34</sup> The example was quoted of the United Kingdom, which has British subjects (nationals), citizens (enfants du pays) and residents.

48. The Italians in Monaco whose elected representatives we also met do not have at all the same problems or the same demands: the Italians in Monaco are either labourers or frontier workers (5,000) or residents (6,000) who have well-paid jobs and no problems in finding housing, even at exorbitant rents. There are scarcely one or two applications for naturalisation each year.

## 6.2. Nationality laws

49. Monegasque nationality is acquired by descent, declaration or naturalisation. The transmission of nationality is based for the main part on the *jus sanguinis* and not the *jus soli* in order to avoid bogus marriages for tax reasons and an uncontrollable increase in the population of Monegasque nationality. In its Opinion No. 250 (2004), the Assembly nonetheless requested that the 1992 nationality law be amended to eliminate inequalities between women and men in the transmission of nationality. This recommendation was partially complied with in Law No. 1.276 of 22 December 2003, which grants Monegasque nationality to the under-age children of mothers who obtained Monegasque nationality through naturalisation, reinstatement or declaration, which was not possible before.

50. Another Law of 12 May 2005 extends the transmission of nationality by the mother to any person born of a woman who, before the birth, acquired Monegasque nationality under Article 3 of the Law of 18 November 1952 – the so-called "three generations" law –, provided proof is given of actual residence in the Principality or of residence over a period of at least 18 years. 33 persons acquired Monegasque nationality by this means in 2005.

51. Regarding the acquisition of nationality by declaration, which is governed by Articles 2 and 3 of the law, this possibility is open to minor children adopted by a Monegasque by simple adoption (Article 2) and to foreign women who marry a Monegasque (Article 3). Indeed, Article 3 of this law states that a foreign woman whose spouse has definitively acquired Monegasque nationality because he was born of a woman who had herself acquired it can become a Monegasque on the basis of a declaration provided that she has been married for at least five years. The previous legislation did not contain any requirement as to the period of marriage.

52. It should be noted that foreign men cannot acquire Monegasque nationality by declaration after marrying a Monegasque national. According to statistics provided by the Government, 21 women acquired Monegasque nationality by marriage in 2004, 18 in 2005 and 28 in 2006 (as of 21 November). There have been no cases of adoption of a minor child by a Monegasque since 2004.

53. As the legislation currently stands, any child born of a Monegasque father is Monegasque with no condition regarding the methods of acquisition of Monegasque nationality by the father. However, for the transmission of nationality by the mother, 4 cases (5 since the 2005 law was passed) are specified. It appears that the amendments to the 1992 law in 2003 and 2005 have not settled all the problems that can arise in connection with the transmission of nationality<sup>35</sup>. A woman who has obtained Monegasque nationality through marriage is unable to transmit it to her children and there thus appear to be a number of stateless children in Monaco.

54. We heard about the case of a woman of Italian origin who became Monegasque by marriage in 1988 and renounced her original nationality in 1990. Having divorced in 1989 and having subsequently given birth to a child not recognised by the father, she is unable to transmit a nationality to her child. This is no doubt an extremely rare occurrence, but it is uncertain whether the 5-years-of-marriage requirement introduced for the first time by the law of 12 May 2005 will resolve this kind of problem.

55. We were also told that the general assembly of the RPM (opposition party) voted in June 2006 almost unanimously in favour of general abolition of nationality transmission by marriage (for both men and women) and replacing it with possible naturalisation, as, for instance, in the USA.

56. The RPM points out that there were 3,250 Monegasques in 1962. The figure rose to 5,500 in 1995 and now stands at around 7,500. This increase is the result of a constant policy of widening eligibility for Monegasque nationality, as well as of social developments such as family instability. Nowadays Monegasque nationality, at least in the case of women, is acquired essentially through marriage and by mere declaration. The stability of marriages used to limit the number of women acquiring Monegasque nationality,

<sup>35</sup> See also in this connection the concluding observations of the United Nations Committee on Economic, Social and Cultural Rights adopted in May 2006, which mentions the problem of equality between women and men for the transmission of nationality as one of its concerns.

but the rate of divorce and remarriage has now greatly increased such nationality acquisitions. Although there is nothing shocking about that in principle, the same cannot be said for the practical consequences. It has to be remembered that Monaco has a population of around 32,000. Because of the proliferation of laws facilitating the acquisition of nationality, projections have indicated that within a few decades accommodating all Monegasques will be virtually a physical impossibility. This is a situation unparalleled in any other country.

### 6.3. Naturalisation

57. Under Article 15 of the Constitution, the Prince alone exercises the right of naturalisation and reinstatement in Monegasque nationality after consultation of the Council of the Crown. To do this, he acts by Sovereign Order. After investigation of the morals and situation of the applicant and the furnishing of proof that naturalisation would cause him to lose his previous nationality and would permanently exempt him from his military service obligations abroad, naturalisation may be granted to anyone over 18 years of age who has resided for at least 10 years in the Principality; however, the Prince has the right to waive this condition.

58. There are about 500 to 600 applications for naturalisation per year (according to the Director of the Prince's Private Office in office at the time, Mr Allavena), of which only 10% are approved after an investigation which can last up to two years. Government statistics show that 62 persons were naturalised by sovereign order in 2004, 47 in 2005 and 61 in 2006 (as of 22 November). To these figures should be added the minor children of naturalised parents, who also become Monegasques (6 in 2004, 10 in 2005 and 8 in 2006).

59. It is the absolute right of the Principality to choose the *jus sanguinis* rather than the *jus soli*. However, the continued presence in Monaco of foreigners, mainly French, who have been living there for several generations is one of the declared concerns of the authorities, who do not wish to see the Principality transformed into a playground for wealthy foreigners who are absent<sup>36</sup> for six months of the year. We therefore found it difficult to understand why there is no more systematic policy of naturalisation for the "enfants du pays", even though, as the UPM points out, many of them are very attached to their original nationality.

60. The answer given to us was that the State and municipal budgets were too small to extend the advantages reserved for Monegasques to the "enfants du pays" but that certain adjustments were being considered, for example in housing, in order to try and find an answer to the problem of the flight by the mainly French middle-class to adjacent French municipalities. As Council of Europe rapporteurs it is not for us to express an opinion on something which is essentially a societal problem to be settled by the Monegasque authorities themselves.

61. However, we regret that contrary to what was advocated in the report by the eminent lawyers at the time of accession the law on the statement of reasons for administrative acts of 29 June 2006 expressly provides in Article 7 that decisions on naturalisation or reinstatement in Monegasque nationality adopted under Article 15 of the Constitution are not administrative decisions, insofar as they fall under the Prince's royal prerogative. They therefore do not require a statement of reasons and consequently cannot be referred to the courts. The Principality also entered a reservation in this connection on Articles 6 (right to a fair trial) and 13 (right to an effective remedy) of the European Convention on Human Rights when the instrument of ratification of the ECHR was deposited on 30 November 2005.

## 7. FUNCTIONING OF THE DEMOCRATIC INSTITUTIONS

### 7.1. Role of the Prince and Government

62. The revision of the Constitution in April 2002 amending the 1962 Constitution on certain points was not intended to, and did not, transform the Monegasque constitutional system into a parliamentary system: the Principality of Monaco remains<sup>37</sup> a hereditary and constitutional monarchy in which the Prince is an active Head of State and possesses extensive powers<sup>38</sup> that have no counterpart in other European monarchies except perhaps Liechtenstein.

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<sup>36</sup> To enjoy tax exemption, most European legislative systems require proof that the claimant lives abroad for 180 days per year.

<sup>37</sup> The Prince reiterated this on 23 June 2006 when he addressed the National Council.

<sup>38</sup> The Prince shares, for example, the power to make the Constitution: total or partial constitutional revision is subject to the joint agreement of the Prince and the National Council. Article 95 of the Constitution stipulates that where the initiative for constitutional revision comes from the National Council it must receive a two-thirds majority of the normal number of members. There is no initiative for a referendum as in Liechtenstein.

### 7.1.1. *Right to initiate legislation and Sovereign Orders*

63. While the law presupposes agreement between the wishes of the Prince and of the National Council (Articles 4 and 66 of the Constitution), the Prince possesses the right to initiate legislation, the right of sanction and the right of promulgation (Article 66 of the Constitution), while the National Council enjoys "only" the power to submit private member's bills. Following the constitutional reform of 2002, the Government has a period of time in which to signify its acceptance or rejection of a private member's bill (six months from the date of receipt) and, in the event of acceptance, another period of time in which to submit a draft law "drawing inspiration" from the private member's bill (one year from the end of the six-month period) (see section 7.2 below).

64. The Prince may also legislate by means of Sovereign Orders which must, however, be previously debated by the Government Council and be submitted to him by the Minister of State for signature, which gives them enforceability (Article 45 of the Constitution). Article 48 of the Constitution provides that, subject to legislative provisions to the contrary, the apportionment of areas between Sovereign Orders and Ministerial Orders (which become enforceable only in the absence of express opposition by the Prince within 10 days) is decided by Sovereign Order.

65. Like the eminent lawyers in their pre-accession report, we note that the Constitution does not clearly define the areas covered by law or by Sovereign Order. Article 46 of the Constitution does define the cases in which the Prince can issue Sovereign Orders on his own authority without having to await the deliberations of the Government Council: such orders are those coming under the Department of Legal Affairs or concerning appointments of members of the diplomatic and consular corps, the Minister of State, Government Counsellors and officials having the status of civil servants and judges<sup>39</sup>.

66. It is also true that Article 68 of the Constitution provides that the Prince issues the Orders necessary for enforcement of the laws and for the implementation of international treaties and agreements, directly where these treaties do not require authorisation of ratification by the National Council, or after the passing of a law authorising ratification in the cases covered by Article 14 of the Constitution. In both cases, the Prince, by issuing orders, makes the necessary arrangements for implementation of international instruments.

67. As regards treaties which it is for the National Council to ratify in the cases provided for in Article 14 of the Constitution, in our view it is desirable that in future the ratification procedure 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. More generally, if another revision of the Constitution were ever contemplated, provision should be made for all international treaties or agreements without exception to be ratified by the National Council, as we consider the exhaustive list in Article 14 to be somewhat artificial.

68. 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 list, which is exhaustive, precise and reasoned. 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 case 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. 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.

69. As regards international treaties which the Prince ratifies without any intervention of the National Council we had asked for further information, in particular about the exact areas in which Sovereign Orders are issued in practice. The relevant constitutional provisions would seem to conflict on this point.<sup>40</sup>

<sup>39</sup> All judges are directly appointed by Sovereign Order, unlike the practice, for example, in Liechtenstein where Parliament is involved in the selection procedure for judges. The Prince also appoints the members of the Board of Auditors, which is not a court, and he appoints the members of the Supreme Court.

<sup>40</sup> It should be noted that the Constitution specifies the cases in which a law is required (see Articles 14, 18, 20, 24 to 26, 28 to 30, 33, 35, 39, 51 and 70). In all other cases, the Prince can therefore legislate by Sovereign Order.

70. 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 that 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.

71. The question that arises is whether 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 law (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).

72. The relevant constitutional provisions would seem to conflict on this point. The Government's current view is that where criminal penalties derive from an international treaty whose ratification does not require the enactment of a law, they may legitimately be laid down by order. The Government does not regard the two constitutional rules as contradictory: Article 20 constitutes the general rule, whereas Article 68 is the exception to the general rule. The justification for the exception lies in the Prince's sole authority to deal with international relations. Article 13 of the Constitution provides that the Prince shall represent the Principality in its relations with foreign powers, and Monegasque ratification of an international treaty may entail an obligation to take implementing measures.

73. We believe that in this area Monaco should come into line with European standards, if need be with the help of expert advice from the Council of Europe. At all events we hope that the planned revision of the criminal code will include incorporating into it all offences and relevant penalties which at present are laid down solely by Sovereign Order.

#### **7.1.2. Executive power**

74. Executive power comes under the high authority of the Prince, whose person is inviolable (Article 3 of the Constitution), which means that no legal proceedings can be taken against him on any grounds<sup>41</sup>. It is for him alone to appoint and dismiss members of the Government, all of whom, the Minister of State included, are directly and exclusively<sup>42</sup> accountable to him. Members of the Government are not answerable to the National Council and are not obliged to carry out the political programme for which the Monaco representatives were elected.

75. For the current majority, this does not mean that apart from carrying out its legislative functions the National Council cannot influence the country's general policy thrust. This is possible when it debates the budget and in the joint consultative committees in which the National Council and the Government discuss matters of national interest. However, unless it refuses to pass the Budget Act, the National Council must rely on its power of persuasion and its negotiating abilities to convince the Government of the need to take account of and implement measures to which members of the National Council majority are committed, *vis-à-vis* their electors.

76. Even with a two-thirds majority of the normal number of its members – the majority required for a National Council initiative to revise the Constitution (Article 95) – such revision can enter into force only with the Prince's consent (Article 94). This rule shows that the domestic sovereignty of the State of Monaco does not lie exclusively with the people but jointly with Prince and people. Under the rules of the Constitution, this concept of dual domestic sovereignty has important consequences.

77. The Government comes under the high authority of the Prince. Thus, the Government:

- is appointed by the Prince without the involvement (either prior or subsequent) of the National Council;
- operates under the authority of the Prince (Articles 3 and 43 of the Constitution);

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<sup>41</sup> The Principality has entered a reservation on this point in Articles 6 and 13 of the ECHR. It should also be noted that the Prince's inviolability under Article 3 of the Constitution stands in the way of Monaco's ratification of the Rome Statute of the International Criminal Court.

<sup>42</sup> The National Council therefore has the power neither to introduce a confidence vote nor to vote to censure the Government. However, the Prince can dissolve the National Council (Article 46 of the Constitution) or can convene it in special session (Article 59).



- is accountable for the administration of the Principality to the Prince and not to the National Council (Article 50 of the Constitution);
- may be dismissed by the Prince at any time, while the National Council does not have this right.

78. A second expression of the concept of dual domestic sovereignty is the Prince's power in foreign relations matters. The Prince:

- represents the Principality in relations with foreign States and international organisations (Article 13 of the Constitution refers to "foreign powers");
- signs and ratifies international treaties (Article 14) after consulting the Crown Council; treaties are "communicated to the National Council" and those affecting "constitutional organisation" may be ratified only by a law (Article 14). However, the idea of "constitutional organisation" is rather restricted. It therefore seems that the Prince can exercise a sort of legislative power through the conclusion of international treaties which are directly applicable in the domestic legal system;
- issues Sovereign Orders "for the implementation of international treaties and agreements" (Article 68).

79. The Prince has at the moment a cabinet composed of a Chef de Cabinet and 4 counsellors and is assisted by a number of advisory bodies provided for in the Constitution of which he chooses the majority of the members.

80. The Crown Council is an advisory body provided for in the Constitution<sup>43</sup> (Articles 75 to 77). It meets several times a year, with the Constitution stipulating a minimum of two. One of its most important functions is to decide, if necessary, that the Prince is no longer fit to exercise his responsibilities and to appoint a regent to replace him pending the application of the rules on succession (See Statutes of the Sovereign Family).

81. Moreover, it has to be consulted on international treaties, the dissolution of the National Council, applications for naturalisation and restoration of Monegasque nationality, pardons and amnesties. It may be consulted by the Prince on any matter affecting the State's higher interests or itself submit suggestions.

82. **The Council of State** is another advisory body, provided for in Article 52 of the Constitution, the organisation and functioning of which are governed by a Sovereign Order of 1964. It is composed of 12 members, who are appointed by the Prince following an opinion by the Minister of State and the Director of Legal Services, who is its *ex officio* President. It is responsible for issuing an opinion on bills and draft orders submitted to it by the Prince for examination.

83. Finally, there is the **Economic and Social Council**, an advisory body established by Sovereign Order of 1945. It is consulted by the Government on bills or draft orders concerning social, financial, tourist, hotel, commercial, industrial or town planning problems relating to the country's economic life. Its meetings and opinions are not public. The Council may also express wishes for the attention of the Government<sup>44</sup>. The 36 members composing it are appointed for 3 years by Sovereign Order: 12 members are chosen by the Government for their competence and 24 members are chosen by the Government from a list of 20 names submitted by the Union of Monegasque Trade Unions and the Employers' Federation. The President, who is appointed by the Prince, must be a Monegasque.

84. The Economic and Social Council is the only institution in the country on which non-nationals are able to sit. 30% of seats can be allocated to foreigners residing outside Monaco provided they have practised a professional activity in Monaco for at least three years. It currently has a Frenchman, an Italian and a Briton.

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<sup>43</sup> It consists of 7 members, who are all Monegasques and appointed for 3 years. The Prince freely appoints the President and three of the members (three new members were appointed by the Prince in April 2006) while the other three are appointed on a proposal from the National Council from outside its membership. The status of member of the National Council, Minister of State and Government Counsellor is incompatible with the functions of member of the Crown Council. It should be noted that in the 2006 revised order of precedence, the elected Assemblies now come before the appointed ones.

<sup>44</sup> The wishes expressed by the Economic and Social Council concerning apprenticeship and/or vocational training were recently adopted by the National Council.

## 7.2. The National Council

85. Strengthening of the powers of the National Council was the subject of intense negotiation during the accession procedure. While there was no question of transforming Monaco into a true parliamentary democracy, which was desired neither by the Prince nor by the National Council itself because of the special nature of the State of Monaco, it was vital for a number of amendments to be made to the Constitution if Monaco was to fulfil the criterion of "pluralist democracy" within the meaning of the Council of Europe's Statute.

86. However, the Monegasque authorities refused to follow the recommendations of the eminent lawyers<sup>45</sup> on a number of important points. The Assembly therefore recommended in paragraph 11 of its Opinion No. 250 (2004) that, within 5 years of accession, the Monegasque authorities should further broaden 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 budgetary debate, in the hope that the institutions would evolve in the course of time.

87. Two years after accession we consider it premature to make concrete recommendations on this point. The National Council is currently testing the new powers conferred on it by the constitutional revision of 2002. It no longer simply rubber-stamps governmental decisions, but neither is it a chamber that practises systematic opposition (in the words of the President of the National Council), and it has constantly to feel its way towards a consensus reconciling the wishes of the Prince and those of the national representatives.

88. This does not mean giving priority to the status quo but finding out in practice over time how to improve the functioning of Parliament and strengthen its powers, for example by modernising its Rules of Procedure, before considering any further changes to the Constitution.

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

90. 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.

91. However, at elected members' insistence a working group on the organisation and functioning of the National Council has 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 can be improved and modernised. This work is currently under way, and the National Council majority supports the view that the relevant legislation should confine itself to institutional and budgetary aspects, leaving other matters to the Assembly's internal rules of procedure, which it should have full power to determine, subject only to validation by the Supreme Court.

92. Regrettably, because of the Government's failure to transform the private member's bill passed unanimously by the National Council in June 2005 into a government bill, the rules governing the functioning of the Assembly – both law and rules of procedure – are still not compatible with the revised Constitution of 2002.

## 7.3. The electoral system

93. Members of the National Council are elected for five years by direct universal suffrage. The old electoral law of 1968 provided for a two-round plurinomial majority election, with voting for candidates from different lists. The result was that the election of representatives of the minority was possible but not guaranteed; for example, all national counsellors elected in 1998 came from the same list. This situation was at odds with the principle of political pluralism by which the Assembly sets great store.

94. On the Assembly's insistence, Monegasque electoral law was amended in April 2002 and a system of one-round plurinomial majority election incorporating an element of proportional representation<sup>46</sup> was

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<sup>45</sup> See paragraphs 167 and 168 of the report by the eminent lawyers [AS/Bur/Monaco (1999)1 Rev 2].

<sup>46</sup> Two thirds of the National Council are now appointed by majority voting, and go to the list (with a minimum of 13 candidates) that has obtained the most votes. The remaining third (i.e. 8 seats) are filled by proportional voting according to the highest-average rule provided that the candidates have obtained at least 5% of the votes. The PFM

introduced. As a result of this reform, the National Council emerging from the elections held on 9 February 2003 comprises 24 members, 21 of whom were elected from the Union for Monaco list (consisting of the UP, UNAM and the PFM), which was in opposition and was not represented on the National Council elected in 1998, with only three members (forming the new opposition) representing the previous majority.

95. The reform of electoral law has also expanded the voter base: the voting age has been lowered from 21 to 18 years and the previous five-year period for naturalised Monegasques to be able to vote has been abolished. The number of seats on the National Council has been raised from 18 to 24 (Article 53 of the amended Constitution), a third of which are filled by proportional voting as provided for in the amended electoral law.

96. Five parties are currently represented on the National Council. The present majority originally had 21 elected representatives divided between the UP (Union for the Principality, 13 representatives), the UNAM (National Union for the Future of Monaco, 5 representatives) and the PFM (Promotion of the Monegasque Family, 3 representatives). These three parties had formed an electoral coalition for the 2003 elections, admittedly one of convenience but nevertheless with a common programme.

97. Until January 2006 the opposition comprised only 3 members, who were all originally members of the RPM (Rassemblement pour Monaco – Rally for Monaco). One of the elected representatives of the RPM has since set up her own party, the PM (Monegasque Party), while the PFM left the majority coalition<sup>47</sup> in January 2006. In September 2006 the Vice-Chair (UNAM) and the Chair of the Finance Committee (UP) also left the majority to found a new party, the PEP (Principauté, Ethique et Progrès – Principality, Ethics and Progress). There are now 8 elected representatives voting more or less with the opposition, which nevertheless leaves a comfortable majority of 16 out of 24 seats to the majority, which is however far from monolithic with the UNAM representatives demanding a difference of approach on certain points.

98. With an eye to the next elections in February 2008, a number of private member's bills for changes in the electoral rules have been presented: the PFM had submitted a private member's bill abolishing the requirement for there to be a minimum of 13 candidates in order to put forward a list for the elections, on the grounds that this number was too high (over 50% of the seats to be filled). As voters are able to vote for candidates from different lists (up to the limit of 24), the requirement to appear on a list of 13 unduly limits voters' choice, especially as it is in any case necessary to have obtained 5% of the votes in order to be elected<sup>48</sup>.

99. This proposal has been rejected by the majority, which considers for its part that there should be no return on this point to the pre-2002 system, which allowed votes to be cast for a list containing only a single name. In the view of the President of the National Council, the era of individual candidatures, with their attendant risks of clientelism, is over. It was now necessary to concentrate on drawing up lists based on clear party programmes and objectives and aim for a stable majority in the National Council, which is the only means of guaranteeing Parliament's credibility in the eyes of the Government.

100. On the other hand, another private member's bill which has not yet been officially deposited but which was mentioned during our last visit, would propose an increase in the number of seats to be filled by proportional representation from 33 to 55%, which would give the current opposition 5 seats instead of 3. A further private member's bill on voting by proxy in both national and local elections was converted into a government bill and became law on 10 October 2006 (Law No. 1.321 of 6 November 2006).

#### **7.4. Role of the opposition**

101. With only 3 elected representatives out of 24 until January 2006, the opposition proper feels it is only there as window-dressing and as a democratic alibi for the Council of Europe. It complains, among other things, that the amendments which it puts forward, when accepted by the appropriate committee, are not mentioned as coming from the opposition, thus making it virtually invisible. During our first visit in December

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(now in the opposition) considers this method of voting to be open to serious criticism (see AS/Mon (2007) 05, pp 12-13). The RPM feels that it was wrongly imposed by the Council of Europe (AS/Mon (2007) 05, p 21).

<sup>47</sup> The PFM left the majority not because of any ideological split but because of a difference of opinion with the UP on methods. The PFM considered that as the majority had been elected on the basis of a programme endorsed by the voters the logical consequence should be the conclusion of a contract on objectives with the Government so that the latter could implement that programme. Otherwise the point of having a Parliament was not clear. The UP did not take this line because, under the Constitution, the law was a result of the joint will of the Prince and the National Council and the Government was accountable not to Parliament but to the Prince alone.

<sup>48</sup> It is fairly easy to obtain 5% of the votes: since there are only about 6,000 voters 300 votes are sufficient to attain this threshold.

2005, the opposition also complained that it did not receive private or government bills in good time and that it did not receive the same administrative support from National Council officials as the majority; the situation seems to have improved since then.

102. The opposition is represented on all the National Council's standing and special committees and on 11 joint study committees out of 21, but does not hold any committee chairmanships.

103. Some of these joint committees are of considerable importance both politically and from a budgetary standpoint. To take just one example, the Fund Investment Committee is responsible for deciding to invest the funds making up the Constitutional Reserve Fund (FRC) but also for decisions concerning certain expenditure not included in the State budget (financing of certain State-owned buildings, purchase of embassies, overdrafts of companies in which the State holds shares, whereas that is not the statutory function of the FRC, which is solely to cover budget deficits and receive surpluses). This committee, on which two parliamentarians from the majority sit, therefore ratifies a proportion of public expenditure without the endorsement of the National Council as a whole, without this being mentioned in the Budget Act, and hence without a parliamentary vote

104. The opposition, which has no seat on this committee, is therefore kept out of a number of decisions and prevented from receiving information through steps to make access particularly difficult. This is not in keeping with the recommended criterion of pluralism and tends to convince it that it simply serves as democratic window-dressing.

105. It was recently decided to ask the Government to increase the number of National Council representatives on these committees so that the opposition can be allocated seats on each in proportion to its strength in the Assembly (which means that it should hold one seat out of every three).

106. We regret that the opposition did not wish to be part of Monaco's Parliamentary Delegation<sup>49</sup> to the Council of Europe, which is contrary to Article 6.2 of the Assembly's Rules of Procedure.

## **7.5. Functioning of the parties**

107. The Monegasque political scene is radically different from that prevailing in most other European countries: Monaco is a constitutional monarchy in which the Prince plays a very active role that is not just one of representation. The primary function of a party in the Principality is not to attain power and thus enter government through elections expressing the will of the people but only to contribute to the management of the State's affairs whilst permanently seeking a compromise between the will of the Prince and the expectations of Monegasques as represented by the National Council. Sovereignty is shared.

108. Monaco has no law on political parties. All existing parties take the form of associations. Traditionally, once the elections were over, the parties became dormant and did virtually nothing. Certain parties have a very loose structure and are more like study circles where the emphasis is on exchanging ideas rather than on the actual number of members<sup>50</sup>. As there is also no law on the public funding of political parties, the parties have very little in the way of resources and are therefore unable, for example, to hire a room for their public meetings or to pay rent for their headquarters. The UNAM, PM and RPM are demanding public funding for the parties, which in their view is the only way of ensuring the continuance of political debate between elections.

109. At present, the political parties are funded from the contributions of their members, from donations or from repayment of the parliamentary allowances of those who have been elected. This is clearly insufficient. The only public subsidy which they receive is a lump-sum reimbursement of €15,000 for campaign<sup>51</sup> expenses, provided 5% of the votes have been obtained. As reimbursement consists of a lump sum, there is also no check on election expenses. Nor is there any law on conflicts of interest even though the current majority has undertaken not to take seats, for example, on the board of directors of a State-controlled enterprise like the Société des Bains de Mer (SBM).

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<sup>49</sup> The Monegasque Delegation currently consists of 3 elected representatives of the UP (including one woman) and a UNAM representative.

<sup>50</sup> This is the case, for example, with the Parti Monégasque, which has one elected representative on the National Council, Mrs Pasquier-Ciulla. The latter claims to have 30 or 50 supporters or sympathisers.

<sup>51</sup> This amount is obviously ridiculously small considering that each of the two lists for the 2003 elections spent between €200,000 and €300,000 on its campaign.

110. In the view of the majority, while it is clearly necessary to increase allowances for election expenses, it would be counter-productive to make the representatives of the national community into professional politicians.

111. We consider it would be useful for the Monegasque authorities to consider drawing up a law on the political parties, if only to ensure minimum representativeness for those who stand for election and increased transparency regarding party financing.

## **7.6. Status of elected representatives on the National Council**

112. The National Council holds two ordinary sessions per year lasting not more than three months and starting on the first working day of April and October. It may also meet in special session either when convened by the Prince or when convened by its President at the request of at least two thirds of Members of Parliament.

113. Elected members of the National Council are not full-time parliamentarians and all practise a profession. Their parliamentary allowance comes to about €2500 a month (under the previous legislature it was €1250). The existing premises<sup>52</sup> are small and are insufficient to provide the 24 elected representatives with an office. The budget has increased from €1.2 million to €2.4 million, which has enabled the number of permanent civil servants to be doubled (from 12 to 24, including 4 attached to the President's Private Office). However, this number is still insufficient to handle the secretarial needs of the 8 committees (instead of 6 previously, including a new committee for culture and another for equality between women and men). All elected representatives complain of a crushing workload and would like to have a parliamentary assistant. The parliamentary allowances, minus any percentage paid by members to finance their political parties, are not sufficient for them to employ a secretary. They do not, as in other countries, receive compensation for restrictions placed on their ability to carry out their normal occupation.

114. Another source of discontent concerns the absence of legal personality for the National Council, which does not possess budgetary independence: it has to request Government authorisation to use the funds allocated to it, as well as authorisation on how it may spend them. It also needs Government agreement for the recruitment and promotion of the civil servants seconded to it, who are covered by the General Staff Regulations for Civil Servants. The Government limits the National Council's scope for action and exercises indirect political control over its activities through the control it exercises over its financial resources. This raises a fundamental problem with regard to the separation of powers, according to the UPM majority.

## **7.7. Consequences of the 2002 reform for the powers of the National Council**

115. In accordance with the Assembly's recommendations, the Monaco authorities adopted amendments to the Constitution in 2002 which strengthened the powers of the National Council with regard to the right to propose private member's bills and the right of amendment (amended Article 67), budgetary power (amended Article 71) and the ratification of certain international treaties and agreements (amended Article 14).

116. The National Council passes laws and adopts the annual State budget. It cannot overturn the Government<sup>53</sup> but, on the other hand, the latter has no power to legislate without a favourable vote in the National Council. However, the Prince has the right to dissolve the National Council and thus to call for new elections.

### **7.7.1. The right of amendment**

117. When a government bill is under discussion, the National Council's amendments are now automatically incorporated with a view to the vote unless the Government withdraws the whole of the text (see Article 67 of the Constitution). Considerable shuttling between Council committees and the Government is sometimes necessary to achieve an amended form of wording on which both parties can agree. These long discussions often mean that considerable time elapses between the tabling of private members' bills in the Assembly and final enactment of the legislation.

<sup>52</sup> A new building is planned for the National Council.

<sup>53</sup> However, while there is no real mechanism for putting questions to the Government, the practice of asking topical questions (only in private session) has been established.

118. Furthermore, according to the UPM, the Government has a tendency to place a strict interpretation on the seventh sub-paragraph of Article 67 of the Constitution, which restricts amendments to ones that have a direct link with the other provisions of the bill to which they relate. It can then argue that certain amendments proposed by the Council, particularly ones that add provisions it considers go beyond the initial scope of the draft legislation, are unconstitutional.

### **7.7.2. The right to submit private members' bills**

119. While it still does not possess a real power of legislative initiative, the National Council has nevertheless seen its role in the legislative process increase since the 2002 constitutional reform: the private member's bills which it draws up must be accepted or rejected within six months, with the Government being required to give reasons in the latter case<sup>54</sup>.

120. Private members' bills approved by the National Council do not automatically become law, but must be resubmitted by the Government in the form of a government bill – whose wording and content may differ significantly from the original version – for further consideration and vote by the Assembly, though the latter naturally has a power of amendment when considering government bills.

121. This particular arrangement is the consequence of the fundamental principle in Article 66 of the Constitution under which the law reflects the joint will of the Prince and National Council, thus denying parliament the right unilaterally to enact legislation, though the Government does not become involved at any stage in the formal process of adopting legislation. Similarly and conversely, the Government cannot pass any legislation without the formal agreement of the National Council, expressed in a vote.

122. However, one result of this particular arrangement is that the future of any private member's bill is in the hands of the Government, which has the power, within a period laid down in the Constitution, to transform it into a government bill or interrupt the legislative procedure, which is what it does in practice when it disagrees with the purpose of any proposed law, in which case no further action is taken on it. Even so, this power cannot be exercised in a purely arbitrary manner, since the Government is required, when it interrupts the legislative process, to explain its decision in a public sitting, after which its statement may be debated.

123. To date, since February 2003, 20 private member's bills have been submitted to the Bureau of the National Council; 15 have already been debated in open session and adopted by the National Council, and one has been rejected. Of the 15 bills adopted by the National Council, 7 have already been converted into government bills and have resulted in the passing of a law which is now in force: the bills related to improvement of the functioning of the medical association, the transmission of nationality by women who had become Monegasque through the "3 generations" law and the introduction of paternity and adoption leave for the benefit of State and commune employees and civil servants. In the last session (October-December 2006), the National Council approved two new government bills transforming private members' bills, concerning proxy voting in national and local elections<sup>55</sup> and the procedure for carrying over budgetary appropriations, and approved a private member's bill on termination of pregnancy for medical reasons or following rape.

124. The Government has announced that it will look favourably on 4 other private member's bills: they concern the modernisation of divorce and judicial separation, apprenticeship, introduction of a right to redeployment for employees declared medically unfit and tougher penalties for crimes against children.

125. The Government has interrupted the legislative process in respect of 5 private member's bills: these concerned reform of the protected sector (although a government bill was subsequently deposited on the subject which, after amendment, became Law No. 1.291), education (this bill was a follow-up to the study of a bill withdrawn by the Government, which, however, was resubmitted on 18 August 2006), the organisation and functioning of the National Council (the Government has said that it is agreeable to working in concert with the Assembly on the drafting of a bill on this subject) and, finally, organisation of the profession of

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<sup>54</sup> More specifically, either the Government accepts the private member's bill and converts it, possibly with amendments, within one year into a government bill or it decides to interrupt the legislative procedure, but in that case it must give reasons for its decision. Where the Government does not adopt a position within six months on any private member's bill submitted to it, this bill is automatically converted into a government bill. The same occurs when the Government has failed to submit a bill within one year after accepting a private member's bill.

<sup>55</sup> The Government has, however, refused to accept a parliamentary proposal to allow international observers access to polling stations at national and local elections, which means that under current legislation such access is still forbidden.

surveyor (which will probably not be followed up). The most recent private member's bill to be rejected by the Government was a bill on 3 April 2007 concerning therapeutic abortion (see below).

### **7.7.3. The right of budgetary amendment**

126. At present, the National Council does not possess a right of budgetary amendment<sup>56</sup> or the right to vote the budget on a heading by heading basis only, without being required to conduct an overall vote on the whole (see Article 86 of the Rules of Procedure), or the right to vote to close the budget (which is reserved for the Prince). The National Council is obliged for the moment to use its "nuclear weapon", i.e. to threaten to reject the budget as a whole whenever it wishes to compel the Government to compromise on a particular budgetary heading or chapter. Each year the National Council must vote a basic budget for the coming year and an amending budget for the previous year. An amending budget is essential because there may be unforeseen expenditure during the year: the corresponding appropriations are then effected by Sovereign Order (see, for example, Order No. 549 of 20 June 2006) and must be put to a vote by the National Council at the time of the next budget act. Monaco has no national debt: a constitutional<sup>57</sup> reserve fund exists of about €3.5 billion which can be drawn on in order to finance a deficit or into which surpluses can be paid, as the case may be.

127. A law introducing a procedure for carrying forward appropriations was adopted by the National Council at the end of 2006 (Law No. 1.324 of 22 December 2006). This will provide a clearer picture of the budget deficit.

128. In our view the private member's bill of December 2005 on the organisation and functioning of the National Council, which sought to adapt Law No. 711 of 25 July 1964 to the constitutional amendments made in 2002 but was rejected by the Government, was of particular importance and we very much hope that the joint working meetings of the National Council and the Government will shortly result in a full government bill. The aim is to produce a "minimum" piece of legislation since the Constitution gives the National Council the right to draw up its own rules of procedure, which likewise date back to 1964 and need more detailed provisions.

### **7.7.4. Ratification of international treaties**

129. 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 (see section 7.2 above).

## **8. LOCAL DEMOCRACY**

130. We note that Monaco has neither signed nor ratified the European Charter of Local Self-Government<sup>58</sup>, probably because the Principality has only one commune, whose boundaries correspond to those of the State<sup>59</sup>. The result is that the State is as close to the population as the commune and that the distribution of responsibilities between the national and communal levels has special characteristics. Numerous services that are traditionally a local responsibility in other States have thus remained the responsibility of the Monegasque State. Likewise the absence of direct taxation means that the commune's own resources are very small<sup>60</sup>: the budget 2007 amounts to about €43 million, of which about €34 million comes from a grant by the State, including one million for the communal financial fund.

131. Despite this de facto situation, the commune is administered differently from the State. The Communal Council, which has 15 members, is elected for four years, on a universal suffrage basis plurinominal majority voting in two rounds. It is a list-based election, but individual candidatures are possible: lists must comprise between 1 and 15 candidates, 15 being a maximum figure, but voting from different lists

<sup>56</sup> The Government point out that no amendment to the Constitution is envisaged for giving it such a right. An innovation of that importance would inevitably cause radical disturbance to the political and constitutional rules.

<sup>57</sup> This fund is managed by the Minister of State assisted by a fund investment committee. The National Council seems to have had some difficulty in ensuring that it receives information on the management of this fund.

<sup>58</sup> To date, of the 46 member States of the Council of Europe, only Andorra, San Marino and Monaco have not signed this Charter.

<sup>59</sup> Given the small size of the Principality's territory, it is reasonable to ask what the point of this commune is. Until 1917 the Principality's territory had 3 communes.

<sup>60</sup> The commune's resources come from taxes levied on billposting, on which it has a monopoly, ticket machines and car parks, markets, pavement cafes and restaurants, the cemetery etc. The commune complains that it has to finance activities which produce a deficit (creches, home help for the elderly etc) without having any resources of its own.

is possible where there is more than one list<sup>61</sup>; through it, the mayor and his deputies are appointed. Only nationals can take part in municipal elections. The mayor and communal councillors are traditionally non-political and are elected solely in their personal capacities and not as belonging to a political party. The latest elections were held on 4 March 2007<sup>62</sup>.

132. In the opinion of the Congress of Local and Regional Authorities of Europe<sup>63</sup> – an opinion shared by the eminent lawyers – the creation of a Monegasque communal structure basically complies with the Council of Europe's local democracy principles. However, they felt that certain reforms were desirable in order, for example, to strengthen the commune's financial resources, enshrine the principle of local self-government in the law and involve foreign residents (three quarters of the Monegasque population) more closely in the management of public life at local level.

133. In the Government's view, however, the fact that the right to vote in all elections, including municipal ones, is vested solely in Monegasque subjects is an essential component of Monegasque identity and the Monegasque social pact. Prince Albert emphasised that in his address to the National Council on 23 June 2006, when he said: "The Monegasques, who are in the minority in their own country, are, as our national anthem rightly says, bound to their Princes by a personal bond. That exceptional relationship is part of the foundations of our identity. The bond is based firstly on rights: exclusive political rights, including the right to vote in all elections, whether national or municipal, economic rights and social rights. Like the Princes who preceded me, I shall do my utmost to guarantee those rights and uphold them whenever necessary. But the bond is likewise based on duties ..."

134. All the same, the mayor and municipal councillors – if only in that the town hall provides public services, such as the registry office, to all residents – are attentive to the whole population.

135. The commune's financial independence was somewhat strengthened by the constitutional revision of 2002 (see Article 87 of the Constitution). However, although participation by foreigners in local public life has been increased through membership of an institution with an advisory role such as the Economic and Social Council, it is not foreseen to allow foreign residents to take part in any way in management of the commune, which does not comply with Council of Europe's standards in the matter<sup>64</sup>.

136. When we raised this question with the Mayor and Communal Council, we were told firstly that French people residing in Monaco paid their taxes in France and therefore had no right to scrutinise the expenses of the commune which they did not finance, and secondly that it was difficult to see how to organise representation for the 120 nationalities present in Monaco without practising discrimination. We urge the Monegasque authorities to study how to involve foreigners, who have sometimes been living for many years in Monaco, in the life of the commune.

137. A new law on local self-government was passed by the National Council on 6 June 2006 and came into force on 29 June. This law will give the commune greater financial and budgetary autonomy as from 2007. Henceforth an annual lump-sum grant linked to State expenditure<sup>65</sup> instead of a balancing grant will be allocated to the commune. The mayor's decisions will now be subject to checks on their lawfulness and no longer on their expediency and the financial controller will cease to carry out *a priori* checks on transfers of appropriations. The law has made official a number of transfers of powers effected in 2002 in the area of home care for elderly Monegasque people and young children. Regarding land use, the commune has obtained the power to issue the permits required for use of the public highway by certain businesses (restaurants and pavement cafes).

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<sup>61</sup> There were 3 lists in 1991, 2 in 1995 and only 1 list in 1999 and 2003.

<sup>62</sup> On 4 March 2007 the turnout for the municipal elections was 53.7%. The list of the outgoing mayor, Georges Marsan, won a comfortable victory.

<sup>63</sup> The last report by the Congress was in 1999 (CG/BUR (5) 98) and was prepared in connection with the application for accession to the Council of Europe. It would be useful if the Congress were to carry out a fresh assessment of the situation as regards local democracy, in the light particularly of the new law on local self-government of 2006. For our part, we are not very clear about the difference between budgetary grant and balancing subsidy, given the necessity to make the commune financially independent, nor why special sessions of the Communal Council have to be authorised by the Minister of State (see Article 4 of the Law of 29 June 2006, which incorporates the wording of Article 82 of the Constitution).

<sup>64</sup> See in particular Convention (ETS 144) on the participation of foreigners in public life at local level and Recommendation 115 (2002) of the Congress on the participation of foreign residents in local public life.

<sup>65</sup> In May 2006, 3 deputies to the mayor resigned (although they remained communal councillors) because there was a difference of view between them and the majority on the question of index-linking the future budgetary grant. The 3 deputies in question wanted index-linking to State revenue (linked to economic activity) and not to the State's expenditure (linked to the way it spent its money). P.F.M shares this opinion.



138. Finally, the commune can now establish links not only with the towns bordering on Monaco but also with neighbouring communes. This should enable Monaco to ratify very soon the outline European convention on transfrontier co-operation between territorial communities or authorities and its additional protocols in accordance with its commitments.

## 9. ROLE OF THE MEDIA IN A DEMOCRATIC SOCIETY

139. In a country as small as Monaco it is clearly very difficult to ensure true pluralism in the area of the media: it is simply not cost-effective. Current events in Monaco are of concern only to its residents and neighbouring communes and it is therefore very difficult to increase the market share for such events in France or Italy. There is no telecommunications law in Monaco, although the National Council has asked the Government on a number of occasions, in public sittings, to enact such legislation. The supervision of licences and telecommunications directorate faces demands from users on a number of issues relating to telecommunications, such as satellite links and the broadcasting of signals to the Principality, and quite often finds it difficult to perform its regulatory role. Nor is there any legislation on the internet.

140. There is only one television station, namely TMC (Télé Monte Carlo), which employs freelance journalists to assemble a daily bulletin of general news based on Eurovision pictures and to broadcast a weekly programme devoted to Monegasque current affairs ("Monacoscope") in partnership with the Press Centre. However, the station actually belongs to a French company even though it is governed by Monegasque law.

141. The first Monegasque cable channel<sup>66</sup> was set up in 1995 under the name of "Monaco à la Une". It changed its name in 2003 and became Monaco Info. "Monaco Info" is a television programme produced by the Press Centre, a government service coming under the Minister of State which has 5 journalists who are also civil servants. This medium is responsible for promotion of, and communication by, the Princely Government and for providing information about events concerning Monaco. Programmes consist in particular of a daily information bulletin issued several times a day<sup>67</sup>.

142. There are only 3 radio stations with local offices: Radio Riviera, which only broadcasts in English and reaches as far as St Tropez in France and San Remo in Italy, Radio Monte Carlo (RMC), which broadcasts in France, and MC One, the only local radio with entirely Monegasque capital. None of them pay their way, except RMC.

143. Monegasque frequencies belong for the most part to the State of Monaco, which arranges for them to be managed by MCR (TDF Group) through a concession agreement. The others belong directly to RMC Info, which is currently based in Paris. MCR has a monopoly on the distribution of radio frequencies from Monaco and equivalent transmitting sites and thus provides broad coverage for the French and Italian Rivas. The Principality of Monaco has entered a reservation on Article 10 of the ECHR whereby the provisions of Article 10 of the Convention apply "without prejudice to the provisions of Article 1 of Law No. 1.122 of 22 December 1988 concerning the distribution of radio and television broadcasts and to Sovereign Order No. 13.996 of 18 May 1999 approving the concession of public telecommunications services which entails the establishment of a monopoly in the field of broadcasting. This monopoly does not concern programmes but only the technical modalities of broadcasting".

144. In Monaco, it is therefore not possible as it is in most European countries to take part in an invitation for tenders by an independent body (eg, in France, the Conseil supérieur de l'Audiovisuel (CSA)): strictly speaking therefore, there is no question of frequency allocation but rather of the renting of a broadcasting service provided by MCR without such use involving any rights. In Monaco there is no CSA as in France; frequencies are therefore allocated without stating reasons and without invitations to tender. Failure to renew a broadcasting contract does not have to be justified at present. No rental tariff is either published or known and the availability of a frequency is not publicised. The chief Monegasque advertisers are logically attracted

<sup>66</sup> The cabling of the entire principality was completed in 1990, when the public service broadcasting licence was awarded to the Société Monégasque de Télédistribution. Since then, the entire activity has been taken over by Monaco Telecom, the Monegasque company that holds the telecommunications public service licence, which is owned by the British company, Cable and Wireless, the state of Monaco and the Compagnie Monégasque de Banque. Since Monaco was cabled the use of aerials has been banned by law, which means that in practice residents are only authorised to receive the programmes broadcast by cable.

<sup>67</sup> Public sessions of the National Council are broadcast live in their entirety over the Internet and in part on Monaco Info, with interviews of National Counsellors, including some from the opposition.

by radio stations that broadcast on a regional basis (and State-controlled budgets are no exception to this rule) and therefore do not wish to allocate funds to any purely local medium.

145. The same remark applies to the press: there are a daily paper (Nice Matin which devotes 4 or 5 pages to Monegasque news), 2 weeklies (Monaco Hebdo and the Observateur de Monaco) and a monthly (the Gazette de Monaco). A large number of titles are also published in Monaco, most of them connected with advertising or self-promotion rather than information. The two most popular weeklies in Monaco are financed – at a loss – by local businessmen and bankers. Monaco Hebdo, which has been in existence for 10 years, has a circulation of 3000 and employs 3 journalists, one of whom is a Monegasque. A competing weekly, the Observateur de Monaco, was launched in November 2005, employs 5 journalists and has a circulation of 2000. At the end of 2006, after a change in the paper's shareholders, the Observateur de Monaco became monthly.

146. According to the journalists' trade union, there are only 15 professional journalists in Monaco altogether, all of them French (apart from one Monegasque female journalist recently recruited by Monaco Hebdo). They hold a French press card because there is no Monegasque counterpart. No press employers' trade union exists in Monaco so that journalists have no one to contact in the event of a dispute. Nor does Monaco have any code of professional ethics for journalists.

147. According to the journalists we met, access to information seems to be a problem as the Government still appears to confuse communication and information. The role of the Press Centre comes in for much criticism: this is a government service which, according to them, requires even private radio stations like MC One to broadcast its information bulletins. Besides, the various government departments would not release information; everything would go through the Press Centre. It would be important to define a new policy to facilitate and clarify access to information<sup>68</sup>. Council of Europe experts could be asked to advise on this matter.

148. One of the Council of Europe's requests concerned amendment of the law on the press, which dated back to 1910. Law No. 1.299 on public expression was passed on 15 July 2005. Overall it appears to satisfy the profession particularly because it safeguards the sacred principle of protecting journalists' sources (see Article 38 of the Law). The journalists we met had in general no negative remarks to make about this law, particularly as they have all admitted that they practise self-censorship regarding the princely family<sup>69</sup>. It should be noticed here that the Principality has entered a reservation on Article 10 of the Convention whereby "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 a guaranteed in Article 3, subparagraph 2, of the Constitution, and on the other hand, of Articles 58 to 60 of the Criminal Code concerning offences<sup>70</sup> against the person of the Prince and his family".

149. We would have preferred that this law be submitted in advance to Council of Europe experts for opinion, thus preventing some problematic consequences with regard to the case law of the European Court of Human Rights on a number of points, for example because of the number of exceptions to *exceptio veritatis* in libel cases (see Article 27 of the Law<sup>71</sup>), or the excessive penalty of up to two years in prison<sup>72</sup>, whereas everywhere else in Europe the trend is to decriminalise libel (or the spreading of false rumours) (Article 20 of the Law). Any holder of public office now has the right to demand a corrective article (whose size may be up to twice that of the original article) in respect of acts committed in the course of his duties that have been incorrectly reported. However, this does not apply to private citizens, which we find quite surprising.

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<sup>68</sup> It should also be noted that Monaco has no legislation granting the public access to administrative documents.

<sup>69</sup> This is particularly understandable because the princely family jealously guards its privacy and does not hesitate to prosecute newspapers for infringements of its private life: see eg the ECHR judgment in the case of Caroline of Hanover versus Germany of 24 June 2004.

<sup>70</sup> An offence against the person of the Prince, if committed publicly, is punished by 6 months to 5 years imprisonment (Article 58 of the Criminal Code, while an offence against the family of the Prince is subject to 6 months to 3 years imprisonment (Article 59 of the Criminal Code).

<sup>71</sup> Under Article 27 of the law the exceptions to admissibility of evidence in libel matters are confined to three cases: "where the accusation concerns the individual's private life", the aim being to protect the privacy of the person libelled; "where the accusation refers to matters more than ten years old", the aim being to prevent long-standing matters' being challenged indefinitely; "where the accusation refers to matters involved in an offence which has been pardoned, is time-barred or gave rise to a conviction cancelled by rehabilitation or a retrial within the meaning of Articles 508 ff of the Code of Criminal Procedure", the aim being to enforce "benevolent" measures and apply the right to a clean slate.

<sup>72</sup> The penalty of imprisonment can be increased to 5 years in the event of incitement to crime (Article 16).

150. It is not normal in our opinion for the libelling of members of the constitutional bodies (courts, public authorities and administrations, the military, public officials etc) to be punishable by 3 months to 2 years imprisonment under Articles 22 and 23 of the Law when libelling of a private person is subject only to imprisonment ranging from 1 month to a year. The same remark applies to insults, which are more severely punished in the case of a civil servant than a private person (see Article 25). In the Government's view, the different penalties for libel depending on whether the victim is a member of the constitutional bodies, a civil servant or a private individual are fully justified because it is legitimate to punish attacks on persons holding public office more severely. It is unlikely that this view would be shared by the European Court of Human Rights, which has always given a very strict interpretation of Article 10 of the ECHR relating to freedom of expression.

151. It also seems that a problem could arise<sup>73</sup> as a result of the wording of Article 31 of the Law whereby the press is banned from reporting libel cases in which proof of the alleged facts (which must be supplied by the accused within 15 days of the summons) is not authorised (however, see Article 34 of the Law, which provides that "an accurate and sincere report of the judicial hearings" may not give rise to prosecution).

## 10. HONOURING THE PRINCIPLE OF THE RULE OF LAW

### 10.1. Functioning of the judicial system

#### 10.1.1 The courts

152. The Constitution of Monaco of 17 December 1962, as amended by Law No. 1.249 of 2 April 2002, states in Article 88 that judicial authority lies with the Prince, who delegates its full exercise to the courts, which dispense justice in his name. This delegation of authority conforms to another basic principle (also enshrined in the Constitution (Article 6)) of any State governed by the rule of law, namely separation of administrative, legislative and judicial powers.

153. Through the combined application of these constitutional provisions, judicial authority is totally independent of the Executive as regards both judicial proceedings and decisions and the administration of justice. The Princely Government consequently contains no Counsellor for Justice. The administration of justice is in the hands of an independent department, the Department of Legal Services.

154. The director who heads that department enjoys in his area of competence powers comparable in their nature and extent to those conferred on the Minister of State for the country's general administration. Like him, he is accountable only to the Prince. His post used traditionally to be filled by France; in January 2006 a Monegasque was appointed to this function by the Prince for the first time. In the opinion of certain elected representatives of the National Council, it is regrettable that the Director of Legal Services cannot attend the budgetary sessions of the National Council to give his views in person about the budget's basic direction, as expenditure on justice is an important item in the budget.

155. The independence of judges is guaranteed by the Constitution (Article 88) and the organisation, competence and functioning of the courts, together with the status of judges, are determined by law. The National Council is currently 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.

156. The bill to this effect, which was tabled by the Government in May 2004, provides in Article 22 for this 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 members appointed respectively by the Council of State (which is not a court), the National Council and the Supreme Court, together with 1 member elected by the judiciary. It would be appropriate to check whether this membership 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.

157. In the Government's view, strict application of the rule that at least half the members of the commission should be judges elected by their peers under arrangements guaranteeing the widest possible

<sup>73</sup> Particularly because of a libel case brought in the summer of 2006 against the manager of an association by the Minister of State and the Attorney-General. On 17 October 2006, the manager was sentenced in the Court of First Instance to twice 45 days of imprisonment for insults against the Attorney-General and the Minister of State.

representation of those peers – a rule which in fact has no legal force – is not possible in Monaco for the following reasons: the judiciary is at present composed of 20 judges and applying the rule would mean having more than ten judges sitting in the judicial service commission, which would amount to having a self-governing judiciary; election of judges, given that the judges are sometimes on secondment, might prove difficult in view of the limited duration of secondments; the judicial service commission's independence might be affected by a risk of pressure as a result of some of its members being elected representatives. The elected judges would inevitably report back to their colleagues, whose position they would know in advance, on whatever matter was before the commission. Certain members would thus be vulnerable and would not be able to take untrammelled decisions. The basic point of the institution would be lost.

158. Nevertheless, in disciplinary matters, the arrangement is that the judicial service commission, which includes *ex officio* the first president of the Review Court, also co-opts a further judge – the first president of the Appeal Court – so that two out of the six members are judges. That quota clearly matches the Principality's specific features and is appropriate to the commission's functions.

159. It was already clear from the report of the eminent lawyers that there was no major problem as regards the functioning of justice in Monaco and that the Monegasque legal system provided proper safeguards for the enjoyment of fundamental rights and liberties. Nor is any problem raised by the fact that a large proportion of the judges in office in Monaco are seconded by France: seconded French judges are certainly appointed and dismissed by the Prince in exactly the same way as Monegasque judges, but once in office they enjoy the same guarantees of independence. Moreover, in a country as small as Monaco where everyone knows one another, there would be myriad objective and subjective grounds for challenging judges if justice were administered by Monegasque judges alone.

160. At present, 9 judges out of a total of 21 assigned to the ordinary courts and to the Appeal Court are Monegasques, including the President of the Appeal Court, a post which was long reserved for a French incumbent. Both the two investigating judges and the Attorney-General are French judges, who are now seconded for a term of three years, renewable once, under the new convention (the former 1930 convention) of 8 November 2005.

161. Contrary to what is often believed, the Monegasque legal system is not modelled exactly on French law: there are substantial differences in both positive law and judicial competences. For example, there is no specialised administrative court in Monaco. Only the Supreme Court has jurisdiction to judge the lawfulness of administrative decisions and can therefore, where appropriate, set them aside; on the other hand, contrary to what happens in France, an individual can contest the constitutionality of laws and sovereign orders before the Supreme Court. He thus has direct access to the Supreme Court for all matters relating to breaches of the fundamental rights accorded under the Constitution.

162. The Principality's legislation appears to need modernising as regards positive law. The French judges in office in Monaco all told us that the Principality's legislation was very behind the times, particularly<sup>74</sup> in criminal matters (a number of definitions of crimes appear to be lacking) and in safeguards regarding criminal procedure. Monegasque judges, however, who wish to avoid French-style legislative inflation, consider that the absence of legal precision in a number of areas has the advantage of facilitating judge-made interpretation.

163. There is a problem when the state is found to be at fault. There is no text making provision for enforcement against the state or a public-law corporation. The public are therefore totally dependent on the good will of the administration to ensure that their rights are upheld. Neither is there any possibility under Monegasque law of obtaining a retrial in the event of a finding by the Court of a violation of the ECHR.

164. 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. There is a district court for small civil and criminal cases and a labour court<sup>75</sup> composed of four judges, two representing the employers and two the employees, under the chairmanship of the district judge.

165. The court of first instance is competent in cases of appeal against decisions by the district judge and the labour court. There is no administrative court in the Principality: the court of first instance is the ordinary court in both civil and criminal or commercial matters and compensation disputes arising from the contractual

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<sup>74</sup> The legislation on public limited companies dates back to the 19<sup>th</sup> century, and there is no legislation on consumer or competition matters.

<sup>75</sup> A private member's bill tabled in June 2006 aims to increase the effectiveness of the labour court by introducing an urgent procedure or penalties for failure to issue pay slips.

or tortious liability of the State or a public-law corporation also come under its jurisdiction. Of the 12 judges working in the court of first instance, 10 handle civil cases accounting for three quarters of judicial activity.

166. We were particularly impressed by the work of the only guardianship judge, who is also an investigating judge for offences committed by children but who can at the same time order educational assistance measures or the placement in homes of minors at risk; in addition to being a guardianship judge he is a family judge (access and custody rights after divorce, maintenance etc – 250 cases are currently being handled). The number of guardianship cases has exploded, with the judge currently having to deal with about 300 cases which is considerable.

167. Appeals against decisions by the court of first instance are passed to an appeal court of three judges which also supervises the activity of the two investigating judges in criminal matters. Only 10% of cases are the subject of appeal, which is far below the European average. Crimes are judged by the criminal court composed of three judges and five jurors. There are virtually no crimes of violence in the Principality (an average of one or two cases of this type every 2-3 years), no street violence, no armed robberies, practically no sexual or drug offences, never any incest and only one case of rape in 4 years. There is barely 1 case per week of a person being taken into police custody. Petty theft and drug abuse account for the majority of offences discovered while being committed.

168. Both the Criminal Code and the Code of Criminal Procedure date back to 1966 and definitely need modernising. The examples quoted to us mainly concern the inability to impose criminal penalties on persons guilty of certain reprehensible acts because the offences in question are not covered by the law. Indecent assault on an adult is not covered<sup>76</sup>: either rape or assault has occurred, and in both cases there must have been violence. Rape is defined only where sexual penetration occurs, which is insufficient and does not comply with international standards in this area. Conjugal violence or harassment (moral or sexual) is not a specific crime as such. The offence of abuse of weakness, designed to protect particularly vulnerable persons (eg the elderly), does not exist either: theft, breach of trust or fraud has to be proved. There is no specific offence of misuse of a company's property for personal advantage or influence peddling. The offence of money laundering is still very difficult to prove as the legislation stands at present.

169. Finally, although under Article 9 of the Constitution the Roman Catholic religion is the State religion, it may seem anachronistic in the 21st century to fine a spouse convicted of adultery (Article 271 of the Criminal Code), to punish abortion so severely (see the text of Article 248<sup>77</sup>) or to deprive a woman who has been convicted of abortion of her parental authority over her children (Article 323 of the Civil Code).

170. A private member's bill legalising abortion at least on therapeutic grounds (where there was a risk of passing on serious congenital illnesses) or the pregnancy resulted from rape or incest was approved by 21 votes in favour to 3 abstentions and the National Council tabled it on 11 October 2006. We very much regret that on 3 April 2007 the Government refused to give effect to it. The bill also has the backing of the United Nations Committee on Economic and Social Rights<sup>78</sup>. The current legislation in Monaco may thus be in contradiction with the Court's case-law<sup>79</sup>.

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<sup>76</sup> According to the Government, indecent assault on an adult is regularly prosecuted under the heading of trespass to the person, as covered by Article 238 of the Criminal Code. Although violence is a necessary ingredient for punishing indecent assault on an adult, trespass to the person does not necessarily require physical violence. The violence may be psychological, as in the case of telephone harassment. Indecent assault can likewise be punished under Article 260 of the Criminal Code, dealing with indecent behaviour in public.

<sup>77</sup> Any person who procures or attempts to procure an abortion even for a consenting woman is liable to between 1 and 5 years' imprisonment. A woman who has an abortion is liable to between 6 months' and 3 years' imprisonment, and health professionals involved to between 5 and 10 years' imprisonment plus a ban on practising their profession for at least 5 years.

<sup>78</sup> See the concluding observations of the United Nations Committee on Economic, Social and Cultural Rights adopted in May 2006 following the submission by Monaco in 2004 of its initial report on the application of the International Covenant on Economic, Social and Cultural Rights.

<sup>79</sup> On this point Monaco has even more restrictive legislation than Ireland and Poland: in Ireland abortion is permitted where the mother's life is in danger (for a complete survey of the applicable legislation in Ireland, see the decision in Application No. 26499/02, *D. v. Ireland* of 27 June 2006); in Poland abortion is permitted up to 12 weeks where the mother's life is in danger, where the foetus is seriously deformed or where the pregnancy results from rape or incest (for a survey of the applicable legislation, see *Tysiac v. Poland* judgment of 20 March 2007, not yet final, which found a violation of Article 8 ECHR). A woman who has an abortion in Poland is not liable to any penalty but the doctors performing it risk up to 3 years prison.

171. The Director of Legal Services is currently working with the help of the code review commission on a overhaul of the Code of Criminal Procedure<sup>80</sup>. The main innovations and additions contained in the proposed code of criminal procedure are designed to bring the law into line with European treaty standards, especially as regards:

- the introduction and regulation of police custody: Under Article 5 of the European Convention on Human Rights it is necessary to specify the cases in which deprivation of freedom is allowed and the various guarantees available to anyone deprived of freedom. The present code offers no clarification, the mere reference to Article 19 of the Constitution being insufficient. In opting to lay down the legal rules on the measure, the draft code of criminal procedure now specifies the relevant requirements;
- specification of the legal rules on telephone tapping and bugging of premises and vehicles: Under Article 8(1) of the European Convention on Human Rights these are interferences with private life and correspondence. Although such interference is possible on various conditions – in particular it has to be legally prescribed, necessary in a democratic society or necessary for the prevention of criminal offences – the prerequisites must still be incorporated into law. The newly introduced provisions now bring us into line with these various requirements;
- a legal framework for preliminary investigations: This phase of judicial and police work is now dealt with expressly as the necessary complement – not so far covered by the Code of Criminal Procedure – of on-the-spot investigation and judicial investigation, with which it is now linked precisely, efficiently and workably;
- reorganisation of in absentia proceedings: In the light of the major principles established by Strasbourg case-law, the in absentia procedure previously in force in Monaco proved not to meet the requirements of Article 6 of the European Convention on Human Rights, in particular in that it did not allow the accused who was not present at the hearing to have his substantive defence presented by a lawyer and because the accused was not allowed an appeal on points of law unless he gave himself up. The legal rules on this special procedure have now been clarified to make good these shortcomings;
- legal provision for witness anonymity: The new approach follows the Strasbourg one which, pragmatically, allows witness anonymity where a witness will not agree to testify other than anonymously because of the risk of reprisals. The draft code lays down legal rules for such testimony, bringing Monegasque law into line with the requirements of Article 6(3)(d) of the European Convention on Human Rights under which everyone charged with a criminal offence has the right to examine or to have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, and secondly making provision for anonymous testimony subject to certain requirements that seek to accommodate the witnesses' legitimate interests;
- restructuring and rationalisation of remand procedure and judicial review: once again the concern was to bring the provisions into line with Article 5 of the European Convention on Human Rights. We very much hope that the Government bill revising the code of criminal procedure will be adopted before the next legislature.

172. It is also planned to amend the Code of Civil Procedure and going on to revise the criminal code. Here again, we strongly recommend the Monegasque authorities to conduct wide-ranging prior consultations with members of the professions concerned and to take advantage of the Council of Europe's expertise.

173. With regard to criminal proceedings, the two investigating judges informed us about their workload: one is currently examining 125 cases, mostly matters relating to offences against property and financial offences and 35 ongoing requests for judicial assistance, 25 of which were made last year. On average, requests for judicial assistance sent to other countries take a year and a half to be executed, while incoming requests (26 received in 2005, 17 in 2006 of which 7 are being executed) are executed on average within 3 months. The other investigating judge, who has been in office since 2002, handles about a hundred cases and has issued a total of 36 requests for judicial assistance.

174. The Review Court is, together with the Supreme Court, at the top of the Monegasque judicial pyramid. It deals only with appeals based on an alleged violation of the law. It is composed of 7 members, all

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<sup>80</sup> The draft new Code of Criminal Procedure was laid before the National Council in September 2006. It provides for safeguards as regards extension of police custody, which had hitherto not existed except on the grounds of the constitutional safeguard in Article 19, and access to a lawyer and doctor.

of them honorary judges of the French Court of Cassation, and sits not in permanent session but only twice a year (October and March). It deals with an average of about 50 applications for retrial per year.

175. In civil matters, when it accepts an appeal, instead of quashing the decision challenged and referring the case to another trial and appeal court as is done by the French Court of Cassation, the Monegasque Review Court transfers the case to itself and itself rules on its merits, which is explained by the fact that there is only one appeal court in Monaco and that it is therefore impossible to refer the case after cassation to another appeal court or even to the same appeal court in another composition. To prevent any allegations of partiality, the Review Court is divided into two separate sections, one of which refers cases to the other.

176. For a number of cases requiring rapid justice for social reasons (divorce, labour law etc), the law has provided for a procedure which is certainly adversarial but based on written evidence, ie without a public hearing. This may raise problems regarding the right to a public hearing guaranteed by Article 6 of the ECHR. However, there is always a public hearing when the Review Court rules on the merits after setting aside a decision.

177. The President of the Review Court in office at the time of our first visit in December 2005, Mr Yves Jouhaud, told us that he regretted that the possibility of transfer open to the Court in civil matters (ie the power to itself rule on the merits after setting aside a decision) was not available to it in criminal matters: for example, if the Review Court set aside a decision in a criminal case (with no public hearing), it had to refer the case for retrial by the court which had given the decision, but sitting in a different composition. This raised problems because of the very small number of judges in Monaco, who might already have had to deal with the case in question.

178. Since December 2005 the Monegasque authorities have been endeavouring to move the situation forward. A bill on criminal review procedure prepared at the instigation of the Legal Services Department and in consultation with the Review Court was forwarded to the National Council on 18 August 2006. The bill was approved on 11 December 2006.

179. The Prince's government has thus had regard to the implications of Strasbourg case-law, bringing the law into line with European standards and complying with the rule that a judge cannot determine an appeal against his own decision. This guarantees both impartiality of the court and effectiveness of the appeal.

180. When it overturns a criminal judgment the Review Court can now assume jurisdiction in the case, for determination of the merits by another Review Court bench.

181. Created in 1911 by Article 14 of the Constitution of 5 January 1911, the Supreme Court of Monaco is the oldest constitutional court in the world. It has five full members and two deputy members appointed by the Prince for a period of four years on proposals from the National Council, the Council of State, the Crown Council, the Appeal Court and the Court of First Instance<sup>81</sup>.

182. The Supreme Court's jurisdiction is both administrative and constitutional and is defined by Article 90 of the Constitution. A matter may be referred to the court, in both the administrative and constitutional area, by any natural or legal person with *locus standi* who can prove an interest. For example, any law may be repealed on the grounds of unconstitutionality on the initiative of a Monegasque or foreign natural or legal person. This feature deserves particular stress because direct access by litigants to the constitutional judge is not very common in States governed by the rule of law. Finally, the Supreme Court is also competent to rule on the constitutionality and/or legality of the National Council's rules of procedure.

183. In the constitutional field, the Supreme Court decides on applications for setting aside, assessment of validity and damages on the grounds of infringements of constitutional rights and liberties resulting mainly from the law, namely the legislation giving expression, in accordance with Article 66 of the Constitution, to the jointly agreed wishes of the Prince and National Council.

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<sup>81</sup> These institutions all propose a full member; only the National Council and the Council of State also propose a deputy. For each seat, whether this is for a full or a deputy member, two names must be submitted. In practice, proposals are addressed to the Director of Legal Services, who forwards them to the Prince. Article 89 of the Constitution allows the Prince to refrain from approving these proposals and to require fresh ones. Article 2 of the Sovereign Order of 16 April 1963 provides that these members must be at least 40 years old and must be "chosen from among particularly competent lawyers". In practice, the persons concerned are either eminent ordinary-law professors or senior French judges of the Council of State or Court of Cassation.

184. The Principality made an interpretative declaration concerning the ECHR at the time of ratification on 30 November 2005 whereby "The Principality of Monaco recognises the principle of hierarchy of norms, essential guarantee of the rule of law. In the Monegasque legal system, the Constitution, freely granted by the Sovereign Prince – who is its source – to His subjects, constitutes the supreme norm of which He is the guardian and arbitrator, as well as the other norms of a constitutional nature constituted by the special conventions with France, the general principles of international law regarding the sovereignty and independence of States, as well as the Statutes of the Sovereign Family. International treaties and agreements regularly signed and ratified by the Prince are superior in authority to laws. Therefore, the Convention for the Protection of Human Rights has an infra-constitutional, yet supra-legislative value".

185. Part III of the Constitution, on fundamental rights and liberties, which lists the fundamental rights enjoyed by Monegasques, does not completely cover the rights guaranteed by the ECHR (particularly as regards the right to a fair trial and the rights guaranteed by Protocol No. 4 to the ECHR). This is liable to pose a problem because the Supreme Court will be obliged to apply the Constitution, and only the Constitution<sup>82</sup>, in hearing a number of applications.

186. In administrative matters, the Supreme Court is required to decide on applications to set aside brought against decisions taken by the various administrative authorities and against Sovereign Orders issued with a view to enforcement of the laws, and on granting of the resulting compensation. In practice, the bulk of the Court's decisions are taken following such applications. The periods of time taken by cases (16 judgments in 2002) – 6 months on average and always less than a year unless there are procedural problems – help to make the Supreme Court a completely satisfactory body as far as litigants are concerned.

187. In accordance with §12 ii of Opinion No. 250 (2004)<sup>83</sup>, Monaco adopted the law on the statement of reasons for negative administrative acts and on judicial review on 29 June 2006. The delay seems to be due to the Government's reluctance to state reasons, on the one hand, for decisions on *refoulement* or expulsion and, on the other hand, for decisions in economic matters, particularly those relating to authorisation to practise a commercial activity (there is no freedom to practise a trade or set up an industry in Monaco; all foreigners and foreign companies wishing to establish themselves there must request authorisation). Monegasques are required only to make a prior declaration.

188. To ensure their validity, a statement of reasons must henceforth be given for administrative decisions of an individual nature which: limit the exercise of public liberties or constitute a police measure; impose a penalty; reject an authorisation or approval; make the grant of an authorisation subject to restrictive conditions or impose constraints; withdraw or repeal a decision that creates rights; impose a condition, time limit or disqualification; refuse a benefit the award of which constitutes a right for persons meeting the legal conditions for obtaining it; or make an exception in accordance with current laws or regulations.

189. However, under Article 5 of the law, a statement of reasons is not required where this would compromise the State's internal or external security. The same consideration applies when a statement of reasons would be likely to prejudice the investigation by the appropriate departments of acts which might be the subject of prosecution on tax or customs grounds or as part of the fight against money laundering and the financing of terrorism and to acts destined to be made public when a statement of reasons would be likely to damage respect for private and family life, medical secrecy, commercial and industrial secrecy and, in general, all secrets protected by law. Moreover, the refusal to allow an individual to establish himself in the territory of the Principality, where this concerns the residence permit and work permit, is not subject to the obligation to state reasons (Article 6) and, under Article 7, "Decisions resulting from exercise of the rights referred to in Article 15 of the Constitution (naturalisation and restoration of Monegasque nationality, see § 6.3. above) are not considered to be administrative decisions".

190. This new legislation represents a definite step forward. It remains to be seen how the courts will assess the validity of the exceptions made to the general obligation to state reasons by Articles 5 and 6 of the law (bearing in mind that as regards Article 7 the Principality has entered a reservation in the ECHR).

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<sup>82</sup> The Government points out in this connection that the Supreme Court, although indeed bound by the framework laid down in Part III of the Constitution, has powers of interpretation inherent in its judicial function which, in the past, have enabled it to deduce certain principles (such as that of "equality of public burdens", decision of 1 February 1994).

<sup>83</sup> Monitoring by the Supreme Court of cases of abuse of power is very difficult where there is no statement of the reasons for the administrative decisions referred to it. For example, regarding decisions on *refoulement*, which did not require the reasons to be stated, the Supreme Court ruled in 2003 (case Battifoglio v. Ministry of State) that the administrative authority should at least provide the judge with the means to check the accuracy and legality of the reasons for the decision.



### **10.1.2. Barristers in the Principality**

191. Monaco has a total of 28 barristers, who are required to be of Monegasque nationality<sup>84</sup>. After law studies and an examination for admission to the Bar, the person concerned is appointed a pupil barrister for three years by Sovereign Order, with the right to plead but not to represent (ie to represent clients and conduct proceedings). At the end of this period, reports are written by the chair of the Bar and the senior judicial officer of each court. If all these reports are favourable, pupil barristers are appointed as barristers by order of the Director of Judicial Services. After 5 years practising as a barrister (ie normally speaking 8 years following the appointment as pupil barrister), further reports are written by the aforementioned individuals and if once again all reports are favourable, the barrister is appointed defence lawyer by Sovereign Order, with the right to plead before all courts. A foreign barrister may be allowed to plead in the Principality with the permission of the court, but for procedural formalities he or she must go through a defence lawyer, at least in civil cases.

192. The Bar Council, which is under the supervision of the Attorney-General, has 3 members, all defence lawyers, one of whom also acts as rapporteur and prosecutor in disciplinary proceedings, which could cause a problem from the viewpoint of the guarantee of an impartial tribunal in Article 6 of the ECHR. However, the Bar Council can impose only two types of penalty: warning and reprimand. The most serious penalties affecting exercise of the profession are imposed by judges of the appeal court sitting in chambers. A legal aid system exists but the lawyer is not appointed by the chairman of the Bar Council but by the legal aid office presided over by the Attorney-General.

193. There is talk of modernising the law on the profession of barrister, among other things in order to increase the size of the Bar Council. The rules of procedure have been revised and the new rules were adopted in 2006 by the members of the Monaco Bar association.

### **10.1.3. The police**

194. The Principality of Monaco is reputed to be one of the safest places in the world. Such security comes at a price, particularly as regards the protection of privacy<sup>85</sup>: around 310 CCTV cameras survey the Principality's territory and there are 517 policemen<sup>86</sup> doing their rounds. Because of strong political determination in security matters, the crime rate is low and the clear-up rate very high (one in two cases solved). We heard no allegations of police brutality.

## **10.2. Action to counter money laundering**

195. According to the Monegasque authorities, the offences underlying money laundering are exclusively offences committed outside the country. Even though the statistics show an exponential rise in suspect transaction declarations, the Monegasque authorities do not regard this as causing an increase in money laundering but rather as representing an improved awareness of the need to control it.

196. The Monegasque anti-money-laundering system has a legislative framework which in general meets international standards. The Principality's current system for combating money laundering is governed by Law No. 890 of 1970 on drugs, amended by Law No. 1.157 of 1992, Law No. 1.161 of 1993 and Law No. 1.162 of 7 July 1993 on the participation of financial bodies in combating money laundering and terrorism, amended by Law No. 1.253 of 12 July 2002. Two Sovereign Orders adopted in 1994 complete the general legislative framework for combating money laundering. The first Order lays down the conditions for implementing Law No. 1.162 and the second one establishes the Information and Monitoring Service for Financial Channels (SICCFIN).

197. In 2002 the financial sector accounted for 17.5% of the Principality's turnover, ie €1.6 billion out of a total of €9 billion. It is composed of credit establishments and non-banking financial institutions (IFNB). The latter institutions consist of insurance companies, portfolio management companies, the Société des Bains de Mer (casino management companies), trusts established through the medium of notaries and Companies

<sup>84</sup> The same applies to doctors, dental surgeons, accountants, architects, shipbrokers and notaries (see the reservation entered at the time of ECHR ratification).

<sup>85</sup> Protection of personal data is governed by a Law of 23 December 1993 and a Sovereign Order of 12 February 1998. Since 2001 there has been a commission for monitoring personal information held by, among others, the video surveillance services. This commission comes under the Minister of State. According to the report by the eminent lawyers (see paragraph 143), this legislation should be reviewed.

<sup>86</sup> In Monaco, according to figures given us by Mr Masseron, the Counsellor for the Interior, there are also 117 carabinieri and 135 firemen, all of them French, with some exceptions. There is also a municipal police force (13 persons) which, however, does not possess general police powers.

Services Providers (companies for the administration and management of foreign structures). Mention should also be made of the activities of accountants and legal advisers<sup>87</sup> inside and outside the financial sector; the real-estate sector is particularly important because of its very high prices.

198. SICCFIN is at the top of the pyramid as regards the system for combating money laundering in the Principality. It has two main functions: first, it receives suspect transaction declarations, analyses and forwards them to the Attorney-General's Department when they "concern facts connected with drug trafficking or organised criminal activities, terrorism, terrorist acts, terrorist organisations or financing of the latter giving rise to legal proceedings"; second, it monitors the implementation of the anti-money-laundering law.

199. The Principality's banking and financial system is linked to that of France. The Franco-Monegasque Convention on Exchange Control of 14 April 1945 established the principle that Monaco would be subject to French banking regulations, and the exchanges of letters of 18 May 1963, 27 November 1987, 6 April 2001 and 8 November 2005 on guarantees for investors defined their scope and practical implementing provisions. The prudential regulations issued by the Committee on Banking and Financial Regulation (CRBF) are applied in Monaco. The Committee on Credit Establishments and Investment Enterprises (CECEI) gives its approval to credit establishments set up in Monaco. The Banking Commission is empowered to carry out on-the-spot checks and checks on the books of Monegasque credit establishments. However, for the control of money laundering and financing of terrorism, the Principality has acquired a separate system.

200. With regard to legislation, although the Monegasque Criminal Code contains an exhaustive list of predicate offences, it seemed highly desirable that the Monegasque authorities should introduce into their legislative system an "all crimes" approach, in line with the general trend followed at international level to avoid all difficulties in the implementation of anti-laundering legislation. Article 218-3 of the Monegasque Criminal Code gives a detailed list of the predicate offences underlying money laundering. During our first visit we were informed of the existence of a working group which was drawing up a bill to amend this article of the Criminal Code and thus to extend the offence concerned to other crimes and offences. We congratulate the Monegasque authorities on the adoption, on 9 November 2006, of Law No. 1.322 amending Article 218-1 to 218-3 of the Monegasque Criminal Code on the offence of laundering. The purpose of that law is to continue bringing the law and procedure on money laundering in Monaco up to the required standard, following on from Law No. 1.161 and Law No. 1.162 of 7 July 1993.

201. There was also a bill to include the financing of terrorism in the list of predicate offences set out in Article 218 of the Criminal Code. Law No. 1.318 of 29 June 2006 on terrorism introduced the criminal responsibility of legal persons and added laundering of the proceeds of an offence (Article 218 to 218-3) to acts of terrorism.

202. The Principality of Monaco ratified the Council of Europe Convention of 8 November 1990 on laundering, search, seizure and confiscation of the proceeds of crime (ETS 141). However, at the time of ratification, the Principality of Monaco entered a reservation on implementation of Article 2 of that convention, stating that this article "shall apply only to the laundering of the proceeds of an offence as provided and punished by the [...] Penal Code of the Principality of Monaco" and in the law on narcotics.

203. A Sovereign Order on international co-operation on seizure and confiscation as part of the fight against money laundering was adopted on 9 August 2002. It provides for the implementation of Article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna on 20 December 1988, including the provisions on confiscation and precautionary measures. Another Sovereign Order No. 605 of 1 August 2006 implements the United Nations Convention against Organised Transnational Crime, its additional Protocol to Prevent, Suppress and Punish trafficking in Persons, especially Women and Children, and its additional Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted in New York on 15 November 2000.

204. Several other Sovereign Orders have recently been adopted to combat money laundering: Sovereign Order No. 631 of 10 August 2006 adopted pursuant to Article 10a of Law No. 1.162 of 7 July 1993 on the participation of financial bodies in combating money laundering and the financing of terrorism; Sovereign Order No. 632 of 10 August 2006 amending Sovereign Order No. 11160 of 24 January 1994 laying down the

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<sup>87</sup> There is no legislation relating to legal advisers, no examination for admission to the profession, no compulsory insurance, and no code of conduct. They are authorised to practise by decision of the Minister of State, and since the enactment of the law on the grounds for administrative acts, a statement of reasons must always be given for such decisions (previously, a statement of reasons had to be given only for a refusal to authorise a Monegasque citizen to exercise this profession).

conditions for implementing Law No. 1.162 of 7 July 1993 as amended by Law No. 1.253 of 12 July 2002 on the participation of financial bodies in combating money laundering and the financing of terrorism, as amended by Sovereign Order No. 16615 of 11 January 2005, and Sovereign Order No 633 of 10 August 2006 amending Sovereign Order No 15321 of 8 April 2002 on procedures for freezing funds as part of efforts to control the financing of terrorism.

205. Under Monegasque legislation, if goods and capital of illicit origin are mixed with lawfully acquired goods, these goods can be confiscated up to the estimated value of the product mixed with them. Confiscation can cover not only goods of illicit origin but also other goods acquired through the use of those funds. Confiscation is ordered by the courts. Similar provisions exist in the law on narcotics. At the time of ratification of Council of Europe Convention No. 141 on 8 August 2002, the Principality of Monaco entered a reservation on the implementation of Article 2 of that convention, declaring that this article "shall apply only to the laundering of the proceeds of an offence as provided in and punished by Articles 218 to 218-3 of the Penal Code" and in the law on narcotics. Consequently, confiscation is confined to the closed list of predicate offences mentioned in Article 218.

206. In the case of money-laundering offences, requests for mutual legal assistance have always been welcomed and met, whether these were made under bilateral agreements or on the basis of reciprocity. There is no obstacle to international judicial co-operation and requests for mutual assistance on money laundering are rapidly and completely executed. A new convention on mutual legal assistance in criminal matters was signed on 8 November 2005 between the French Government and the Principality. The quick ratification of the European Convention on Mutual Assistance in Criminal Matters and of the European Convention on the Suppression of Terrorism would advantageously supplement this legislation.

207. The latest MONEYVAL report on the Principality dates back to 2003. As we are not specialists in this area, we shall await the conclusions of the next visit by MONEYVAL experts, which took place in November 2006, before giving our opinion on whether the Monegasque legal system fully complies with current international standards.

### 10.3. Combating corruption

208. Monaco will soon accede<sup>88</sup> to the partial agreement establishing GRECO. The ratification of the Criminal Law Convention of the Council of Europe Convention, which took place on 19 March 2007, forms part of a series of reforms decided on by Albert II, whose purpose is to give greater transparency to the management of all bodies receiving public funds in the interests of ethics and clarity. Among other things, it is proposed to supplement the rules laying down the conditions in which public servants may or may not conclude contracts, sales or purchases with persons or administrators of companies exercising powers of administration or supervision in those bodies. The announcement of these reforms follows the submission of two "confidential" reports on the assignment<sup>89</sup> in 2000, 2002 and 2004 of four plots of land by the Independent Pension Fund (CAR) of Monaco.

209. A further aim is to ensure wider scrutiny by the Board of Auditors (Commission supérieure des comptes). This board, which is mentioned in Article 42 of the Constitution, carries out *a posteriori* auditing of the financial management of the State, the commune and public institutions. It is not a court of auditors with legal powers like the Court of Auditors in France but an advisory body whose six members are appointed by the Prince. Its report, which is not public, is forwarded each year to the Prince and National Council. It is planned to increase its resources and to give it the job of also auditing all bodies managing public funds, including welfare bodies like the CAR.

## 11. RESPECT FOR HUMAN RIGHTS

210. The European Convention on Human Rights, together with its Protocols Nos. 4, 6, 7 and 13, was ratified on 30 November 2005. Monaco also ratified, on 10 March 2006, Protocol No. 14 amending the system for control of the Convention. Subject to the prior exhaustion of domestic remedies and referral to the Court within 6 months after the definitive domestic decision, any person coming under the jurisdiction of Monaco can now submit an application to the Court on the grounds of a violation of his or her fundamental

<sup>88</sup> Ratification of one of the two Council of Europe conventions on corruption (civil or criminal) automatically results in membership of GRECO.

<sup>89</sup> Two buyers of these plots of land were respectively the former Government Counsellor for Finance, who also acted as President of the CAR Financial Committee, and the Secretary General of the Employers' Federation of Monaco, who was also a member of the Fund Control Committee (Comité de contrôle de la caisse).

rights, provided the application concerns acts, decisions, facts or events subsequent to 30 November 2005 (see the declaration made in this connection in the instrument of ratification).

### 11.1. Non-ratification of Protocol No. 1 to the ECHR

211. Protocol No. 1 on the right to property, education and free elections has not been ratified within the agreed time limit and the Monegasque authorities did not inform us of a foreseeable date for ratification. Monaco had nevertheless formerly undertaken to ratify Protocol No. 1 a year after accession and this undertaking should be honoured. It should be recalled that Protocol No. 1 to the ECHR has been ratified<sup>90</sup> by 43 member States out of 46. We were given several reasons for the delay but none of them really convinced us. The main reason cited was that ratification of Protocol No. 1 resulted *ipso facto* in application of Article 14 of the Convention, which prohibits discrimination in enjoyment of the rights safeguarded by the Convention. This raises a problem for the Principality on two main points: the national preference regarding social assistance and the right to housing.

#### 11.1.1. National preference regarding social assistance

212. Both Monegasques and non-Monegasques are on an equal footing as regards social security and the various allowances provided under the general scheme. However, a certain number of types of social assistance provided by the State or commune are reserved exclusively for Monegasques<sup>91</sup>. There are 24 of them, divided into 5 categories: aid and incentives to the family, measures to help the elderly, measures to help persons with disabilities or in serious difficulty, measures to help students and housing assistance. Of these types of assistance, 8 may also be granted to non-Monegasques, either unconditionally or on a means-tested basis or subject to a minimum period of residence in the Principality<sup>92</sup>

213. It seems that, following accession, the Principality has realised that under the Court's case law (eg *Gaygüsüz v. Austria* judgment of 16 September 1996<sup>93</sup>) the payment of social assistance could be regarded as a "possession" under Article 1 of Protocol No. 1 and, hence, that any unjustified discrimination would be a breach of Article 14.

214. We are unable to say whether the reason advanced for not ratifying Protocol No. 1 is valid or not. On the face of things, we consider that some of these types of social assistance could probably be justified on objective grounds (differences in treatment not necessarily constituting discrimination contrary to Article 14), that other types of assistance could perhaps be abolished or amended with respect to the conditions for granting them and, finally, that the matter could in any case be settled by entering one or more reservations on the article in Protocol No. 1, as was done in the case of Articles 6, 8 and 14 of the Convention in respect of priority of employment for Monegasques, the need for prior administrative authorisation for the exercise of certain activities by foreigners or the order in which dismissals and rehiring should take place.

#### 11.1.2. Right to housing

215. On account of Monaco's small size<sup>94</sup> the housing question is among the key concerns both of Monegasques and other residents, particularly the "enfants du pays". We were handed numerous documents concerning this problem, which is the subject of passionate debate: both Monegasques and "enfants du pays" talk of "a right to housing", while owners talk of confiscatory laws that infringe property rights.

216. There are currently three categories of housing:

– **private-sector housing** (about 10,000 units according to the Government, 20 to 30,000 according to other sources), with uncontrolled rents equivalent to those in the expensive neighbourhoods of Paris. A bed-sitting room costs between €800 and €1500 and a small three-room flat costs around €2500 to €3000;

<sup>90</sup> The only States not to have ratified Protocol No 1 are Switzerland, Andorra and Monaco.

<sup>91</sup> We were told, for example, about a birth benefit and the National Housing Benefit (ANL), which may represent up to 80% of the rent or the national old-age or special retirement allowances.

<sup>92</sup> We thank the Government for having acceded to our request by providing us with a summary of the different types of social assistance provided by the state and the commune (see Appendix 2 to the Government's comments).

<sup>93</sup> This case concerned a refusal to pay to a Turkish worker, despite his having paid contributions, the emergency assistance for unemployed workers no longer eligible for unemployment benefit. The assistance was refused solely on the ground that it was reserved for nationals.

<sup>94</sup> The housing stock represents about 30,000 accommodation units and rents have risen by 25% over the past five years.

– **2,300 State-owned properties**, with very low rents, which are reserved for Monegasques in accordance with a set of criteria such as age, income, number of children etc. One of the election promises made by the present majority in the National Council was to build<sup>95</sup> about 800 new State-owned properties by 2008 so as to provide proper housing for Monegasques<sup>96</sup>, of whom only 3% own their properties. The authorities are also drawing up a law on accession to property by Monegasques: the State would retain ownership of the properties concerned but the tenant could buy (and transmit) the usufruct;

– **the 1,500 properties in the protected sector**, open primarily to Monegasques but also, depending on means, to "protected persons", who are mainly foreign residents who have been residing in the Principality for over 20 years or who have Monegasque ascendants or descendants. This protected sector was created at the end of the war by a 1949 law, which concerned old pre-1947 properties. This law has been amended several times since 1949 but the owners concerned consider that they bear an excessive and disproportionate burden and that the State should stop offloading the responsibility for social housing onto them.

217. The owners of these properties are unable to set rents freely. Rents are controlled by the State. Owners are obliged to bring the properties up to standard, must rent them in accordance with an order of priority established by law and can only take back their property for their personal use on certain conditions. Law No. 1.235 of 28 December 2000, which was passed by the former parliament with the aim of liberalising the protected sector, was amended by the current majority by Law No. 1.291 of 21 December 2004, which reintroduced certain restrictions on the property rights of private owners. This law was the subject of an appeal to the Supreme Court on the grounds of unconstitutionality: by decision of 16 January 2006, the Supreme Court ruled that this law complied with the Constitution and repealed only certain provisions relating to the exercise of the landlord's right to recover his property.

218. The authorities seem reluctant to ratify Protocol No. 1 because of the housing benefits to Monegasques compared with non-Monegasques and because they fear that landlords might appeal to the Court on the grounds of the restrictions imposed on their right to use their property<sup>97</sup> by Law No. 1.291 of 2004 or any subsequent law on the protected sector.

219. We are not convinced by these arguments: contrary to what is maintained by the tenants' association, neither the Monegasque Constitution<sup>98</sup> nor the ECHR guarantees a right to housing either for nationals or for residents: what is protected both by Article 24 of the Constitution and by Protocol No. 1 is the right to property. With regard to the risk that Monaco might be found guilty because of its policy of rent control at the expense of private landlords, the authorities should analyse the Court's case law on the subject (in particular, the *Hutten-Czapska v. Poland* judgment of 19 June 2006) or enter a reservation to the ECHR with a view to resolving the matter.

220. In any case, we urgently request the Monegasque authorities to ratify Protocol No. 1 without further delay and accept the consequences of a commitment freely entered into at the time of accession.

## 11.2. Failure to sign Protocol No. 12

221. Opinion No. 250 (2004) stipulated that Protocol No. 12 was to be signed 1 year after its entry into force and ratified<sup>99</sup> within 5 years. Protocol No. 12 came into force on 1 April 2005 and was therefore due to be signed on 1 April 2006, which has not happened so far. Here too, the authorities have not given any objective reasons that could justify the delay in signing this Protocol. The reasons given seem to be essentially the same as for the failure to ratify Protocol No. 1.

222. It is true that no Monegasque domestic legislation exists that prohibits discrimination (on grounds of race, gender, religion, sexual orientation, disability, ethnicity etc). There is, in fact, no Monegasque

<sup>95</sup> The UPM's election manifesto originally called for the building of 1,100 new state-owned properties and the rapid purchase by the state of 200 flats in the private sector. The house-building programme has fallen somewhat behind schedule, but over 800 new housing units should be delivered by 2008.

<sup>96</sup> As there is not enough accommodation in the State-owned sector to house all Monegasques, the State pays them a National Housing Benefit (ANL) designed to offset the high level of rents, in the uncontrolled sector as well. Non-Monegasques with low incomes receive a Differential Housing Benefit (ADL), which however is paid only for housing in the protected sector.

<sup>97</sup> Article 1 §2 of Protocol No. 1 provides that States have the right to "enforce such laws as they deem necessary to control the use of property in accordance with the general interest".

<sup>98</sup> State housing aid does not appear among the types of aid open to Monegasques in Article 26 of the Constitution.

<sup>99</sup> Protocol No. 12 which establishes a general ban on all discrimination has currently been signed by about 21 countries and ratified by 14.

legislation on discrimination of any nature. However, Monaco signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination adopted in New York on 7 March 1966. This convention was made enforceable in Monaco by Ordinance No. 15203 of 23 January 2002. In this connection, Monaco recognised the competence of the Committee for the Elimination of Racial Discrimination. In March 2005 Monaco also acceded to the United Nations Convention on the Elimination of All Forms of Discrimination against Women. It is therefore difficult to understand the reasons for Monaco's delay in honouring its commitment to sign Protocol No. 12.

### 11.3. Failure to ratify the revised European Social Charter

223. We met trade union representatives during each of our visits. Their main concerns are: the absence of legislation on work contracts and, in particular, the fact that reasons for dismissal do not have to be given at present<sup>100</sup>; the non-application since 1999 of the law on minimum wages, which are theoretically linked to French minimum levels (the USM is demanding a 12% wage increase owing to the non-application in Monaco of the French 35-hour working week legislation); the absence of legislation on temporary work and the lending of labour; shortcomings in work inspection (there are only two labour inspectors in Monaco for some 45,000 employees); the absence of works councils; the fact that under the 1944 law on trade unions trade-union leaders must be of Monegasque nationality, although the latter represent only 2.19% of private-sector wage earners; the obligation to obtain Government authorisation to set up a trade union and the trade unions' inability to appoint members of the Economic and Social Council directly (the Prince appoints 11 members from a list of 20 put forward by the trade unions).

224. It is not certain that solutions can be found to all the trade unions' grievances by reference to the European Social Charter (revised), especially as ratification by the Principality of the Protocol on collective complaints does not appear among the commitments accepted by Monaco upon its accession to the Council of Europe.

225. However, under the terms of Opinion 250 (2004), Monaco was to ratify the European Social Charter by October 2006 at the latest. In accordance with Article 14 of the Constitution, ratification will be by sovereign order and will not be voted on by the National Council because it will not involve the inclusion of a new budget heading. Neither the National Council nor the Union of Trade Unions have been consulted in advance on the choice of articles for ratification, although the National Council has been informed of the articles chosen by the Government. We are somewhat surprised at this procedure as it is likely that Monegasque laws will have to be amended pursuant to the Charter (Article 14.2 of the Constitution).

226. In order to be able to ratify the Charter, at least 16 articles must be chosen, including at least 6 out of the 9 compulsory articles in the Charter. According to the press, it was planned to ratify, at the end of 2006, Articles 1 (with reservations on full employment and the right to work), 5, 6, 7, 12 (with a reservation on the right to social security), 13, 16 and 20, ie 8 articles out of 9. The only article not accepted (Article 19) concerns the right of migrant workers and their families to protection and assistance. Among the optional articles, the Principality proposed to ratify Articles 2, 3, 4, 8, 11, 14, 15, 17, 22, 24, 25, 26, 28 and 29. Article 23 on the right of elderly persons to social protection could also be ratified.

227. At a public sitting on the budget on 15 December 2006, the Government stated that it intended to allow itself more time to reflect on the ratification of the Revised European Social Charter, in view of recent developments in the case-law of the European Court of Human Rights, in particular the recent *Demir and Baykara v. Turkey* judgment of 21 November 2006.

228. According to the Government expert, the European Court of Human Rights in this judgment had taken the innovative step of applying the provisions of the Revised European Social Charter (hitherto the Court had focused solely on violations of the European Convention on Human Rights), by citing against the state concerned an article of the Revised Social Charter that the country had chosen not to ratify.

229. We find it hard to understand the Government's hesitation: the *Demir and Baykara* judgment against Turkey found a violation of Article 11 of the ECHR (ratified by Monaco) on two points: first, as regards the ban in force in Turkey at the time on civil servants forming a trade union (which is not a problem in Monaco), and secondly as regards the right of a trade union to conclude a collective agreement. On the latter point, the Court referred to the relevant ILO conventions ratified by Turkey and added that the case-law of the Committee of Independent Experts of the Social Charter of the Council of Europe and the Court's previous

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<sup>100</sup> As the legislation and case-law currently stand, reasons for dismissal do not have to be given at the time of dismissal, but if the case is brought before the courts, the employer is required to provide the reasons for the decision to dismiss the person concerned.

case-law argued in favour of including the right to conclude collective agreements among the rights included in Article 11 of the ECHR.

230. Therefore, we would like to receive confirmation of the ratification of the European Social Charter as soon as possible and hope that the information seminar on the Social Charter held in Monaco on 15 March 2006 will have dispelled any misunderstandings as to the consequences of ratifying it.

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

*Reference to committee:* Resolution 1115 (1997)

*Draft resolution* adopted by the committee on 7 June 2007 with 1 vote against

*Members of the committee:* Mr Eduard **Lintner** (Chairperson), Mrs Hanne **Severinsen** (1<sup>st</sup> Vice-Chairperson), Mrs Meritxell **Batet Lamaña** (2<sup>nd</sup> Vice-Chairperson), Mr Tigran Torosyan (3<sup>rd</sup> Vice-Chairperson), Mr Aydin Abbasov, Mr Pedro **Agramunt**, Mr Birgir Ármannsson, Mr Jaume Bartumeu Cassany, Mr József Berényi, Mr Aleksandër Biberaj, Mrs Gülsün Bilgehan, Mrs Mimount Bousakla, Mr Luc Van den Brande, Mr Patrick **Breen**, Mr Mevlüt Çavuşoğlu, Mr Sergej Chelemendik, Ms Lise Christoffersen, Mr Boriss Cilevičs, Mr Georges Colombier, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mr John Dupraz, Mrs Josette Durrieu, Mr Mátyás Eörsi, Mr Per-Kristian Foss, Mr György **Frunda**, Mrs Urszula **Gacek**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Stef Goris, Mr Andreas Gross, Mr Michael Hagberg, Ms Gultakin Hajiyeva, Mr Michael Hancock, Mr Andres **Herkel**, Mr Serhiy **Holovaty**, Mrs Iliana Iotava, Mr Kastriot Islami, Mr Miloš Jeftić, Mr Erik **Jurgens**, Mr Ali Rashid Khalil, Mr Konstantin Kosachev, Mr Andros Kyprianou, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Mikhail Margelov, Mr Bernard **Marquet**, Mr Frano Matušić, Mr Miloš Melčák, Mrs Assunta Meloni, Mrs Nadezhda Mikhailova, Mr Neven **Mimica**, Mr Paschal Mooney, Mr João Bosco **Mota Amaral**, Mr Zsolt Németh, Mr İbrahim Özal, Mr Theodoros Pangalos, Mr Leo **Platvoet**, Ms Maria Postoico, Mr Christos Pourgourides, Mr Dario **Rivolta**, Mr Armen Rustamyan, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Samad **Seyidov**, Mr Vitaliy **Shybko**, Mr Leonid **Slutsky**, Mrs Elene **Tevdoradze**, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mr José Vera Jardim, Mrs Biruté Vésaitė, Mr Oldřich Vojtíš, Mr David **Wilshire**, Mr Tadeusz Wita, Mrs Renate Wohlwend, Mr Andrej Zernovski, Mr Emanuelis Zingeris

N.B.: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the committee:* Mrs Ravaud, Mrs Chatzivassiliou, Mrs Odrats, Mr Karpenko