PARLIAMENTARY ASSEMBLY
OF THE COUNCIL OF EUROPE

Opinion[1]
Doc. 10138 – 14 April 2004

The Principality of Monaco's application for membership of the Council of Europe

(Rapporteur: Mr MANZELLA, Italy, Socialist Group)

I. Committee's conclusions

The Committee on Legal Affairs and Human Rights is in favour of the Principality of Monaco's accession to the Council of Europe provided that it honours the obligations and commitments set out in the draft opinion by the Political Affairs Committee, amended as follows:

Amendment A*

In the last sentence of paragraph 6, replace the word "notes" with the words: "welcomes the fact".

Amendment B*

Reword the third sentence of paragraph 7 as follows:

"The Assembly notes that on 19 June 2003 the two states began discussions on revising the 1930 convention and sincerely hopes that this will be an opportunity to secure full enjoyment by the citizens of Monaco of the political and civic rights enshrined in the European Convention on Human Rights."

Amendment C**

Reword the last sentence of paragraph 7 as follows:

"The Assembly considers that the final decision on the application for membership by Monaco should not be taken until the Joint Committee has noted that ~~the current consultations between France and Monaco for the revision of the 1930 Convention have resulted in upholding the principle of non-discrimination, by allowing Monégasque citizens to be appointed to the senior Monégasque governmental and public posts that are currently reserved for French nationals~~", **this opportunity has been used for this purpose."**

Amendment D*

Add the following new paragraph after paragraph 9:

"The Assembly expects the Monégasque authorities to accept the commitments required by the Organisation for Economic Co-operation and Development (OECD) under its policy against harmful tax practices, as defined in the 2000 progress report and modified in the 2001 progress report, in order for a state to be taken off the OECD's list of unco-operative tax havens."

Amendment E**

Add the following new paragraph, to replace paragraph 10.iii., after paragraph 9:

"The Assembly recommends the Monégasque authorities to further broaden, within five years of its accession, the powers of the National Council, particularly as regards supervision of government action, **the annual presentation of the governmental programme, the right of legislative initiative, and the budgetary debate."**

Amendment F*

Add, at the end of paragraph 12, the following text:

"with a view to assessing Monaco's progress in fulfilling

– the commitments listed in paragraph 12 above; and

– the recommendations in paragraphs 10 and 11 above."

Amendment G

Replace paragraph 13.i with the following subparagraph:

"invite Monaco to become a member of the Council of Europe as soon as the Assembly and the Committee of Ministers have noted in the Joint Committee that the consultations between Monaco and France for the revision of the 1930 convention have come to an acceptable conclusion in accordance with the principles of the Council of Europe, granting the citizens of Monaco the right of access to all appointments in the Monégasque Government and civil service;".

Amendment H**

Add, after paragraph 13, a new paragraph worded as follows:

"In the meantime, the Assembly asks the Bureau to grant Special Guest status to the National Council of Monaco, allocating them two seats, **if the National Council asks for this status."**

1. See Doc. 10128 tabled by the Political Affairs Committee.

* Amendment accepted by the Political Affairs Committee.

** Amendment modified and accepted by the Political Affairs Committee (changes in bold), modification accepted by the Committee on Legal Affairs and Human Rights at its meeting on 15 December 2003.

II. Explanatory memorandum, by Mr Manzella

A. Introduction

1. On 26 November 2001 the Committee on Legal Affairs and Human Rights appointed me rapporteur for the application by the Principality of Monaco for membership of the Council of Europe, succeeding Lord Kirkhill (United Kingdom).

2. This opinion should be read in parallel to the report by the Political Affairs Committee,[1] which deals with the geopolitical situation and various politico-legal aspects of Monaco's application for membership, and outlines the historical background to the accession procedure that was set in motion by the submission of the application on 15 October 1998. The Political Affairs Committee adopted its draft opinion prepared by Mr Slutsky (Russian Federation) at its meeting in Paris on 4 November 2003.

3. I shall be concentrating on the legal and human rights aspects, in accordance with my terms of reference. These aspects were examined in depth by the eminent lawyers and judges of the European Court of Human Rights, Mr Antonio Pastor Ridruejo (Spain) and Mr Georg Ress (Germany), whose report of 21 June 1999 (AS/Bur/Monaco (1999) 1 rev. 2) is an extremely important reference document. In addition to the wealth of information obtained from my predecessor, Lord Kirkhill, to whom I would like to pay tribute, I learnt a great deal from my visits to Monaco on 10 and 11 May 2002 and 2 and 3 June 2003. These visits were extremely well organised by the secretariat of the Monégasque National Council, and I was able to talk to the Minister for State, a number of other ministers and also some members of the National Council elected at the 9 February 2003 parliamentary elections, the first held under the new electoral law based on the recommendations of the Council of Europe experts.

4. In connection with the legal and human rights aspects, the eminent lawyers' conclusions pointed to three main areas that gave rise to specific recommendations: the criteria for qualifying as a European sovereign state, the criteria for qualifying as a parliamentary democracy and, lastly, general issues linked to the rule of law and respect for fundamental and citizens' rights.

B. Monaco as a sovereign European state

5. The first field comprises an important link with the third. Where sovereignty is concerned, I agree with the eminent lawyers (paragraph 161) that in terms of international relations the Principality of Monaco is irrefutably an independent sovereign European state being recognised as such by the entire organised international community, as proven by its membership of the United Nations since 28 May 1993.

6. Nevertheless, the exercise of this sovereignty was formerly limited by the old 1918 treaty with France (which has now been renegotiated) and is still limited by the 1930 convention.

1. See Doc. 10128.

The renegotiated 1918 treaty

7. Article 3 of the old 1918 treaty provided that in the event of the throne being vacant, "the territory of Monaco shall form, under the Protectorate of France, an autonomous state under the name of the State of Monaco". The new Article 3 acknowledges that, in the event of the death or abdication of the reigning Prince, "his succession shall be ensured under the terms of the relevant provisions of the Constitution of the Principality of Monaco (...)". Furthermore, events leading to a change in the order of succession established by the constitution are now only brought to the attention of the French Republic. Therefore, the protectorate clause which the eminent lawyers considered "contrary to current international law", particularly "the right of peoples to self-determination", has now been completely revoked.

8. Article 1 of the 1918 treaty provided that France would guarantee the integrity of Monégasque territory "as if that territory were part of France". The new wording of the guarantee on Monaco's territorial integrity, "under the same conditions as its own", removes the ambiguity in the sense that it is now clear that it is the methods of defence that are similar rather than the territory itself.

9. As is standard practice in international relations governed by the principle of the sovereign equality of states, the mutual undertakings are now conceived on a truly reciprocal basis: in return for the pledged assistance of France, the Principality of Monaco now undertakes to ensure that "the actions which it conducts in the exercise of its sovereignty comply with the fundamental interests of the French Republic in the political, economic, security and defence fields" (Article 1, paragraph 2, of the treaty of 24 October 2002). This phrase replaces the unilateral undertaking by the Prince of Monaco which had appeared at the same point in the 1918 treaty "to exercise [his] rights of sovereignty in complete conformity with the political, military, naval and economic interests of France".

10. Similarly, the unilateral wording of Article 2, paragraph 1, of the 1918 treaty ("Measures concerning the international relations of the principality shall always be the subject of prior consultations between the Government of the Principality and the French Government") has been replaced by the following reciprocal wording of Article 2 of the treaty of 24 October 2002: "The Principality of Monaco will ensure, through appropriate and regular consultation, that its international relations are conducted on essential matters in harmony with those of the French Republic. The French Republic will consult with the Principality of Monaco with a view to taking account of the latter's fundamental interests."

11. Article 4 on the entry and stopover of French military forces in Monégasque territory is also worded more restrictively, particularly in connection with the sending of troops without the Prince's request or approval, such sending now being confined to situations where "the independence, sovereignty or integrity of the territory of the Principality of Monaco are

seriously and immediately threatened and the normal functioning of the public authorities has been interrupted".

12. Lastly, the new version of Article 5 stipulates that "relations between the Principality of Monaco and the French Republic shall be established at the diplomatic level" and "the French Republic shall facilitate, at the request of the Principality of Monaco, the latter's accession to the international organisations and institutions of which it is a member". In my view, this latter clause ought to help France to take the necessary steps to pave the way for Monaco's accession by modernising the second treaty, namely that of 1930.

13. In view of the undeniable progress made in the treaty of 24 October 2002, I think that we should go further than the sentiments expressed at the end of paragraph 6 of the preliminary draft opinion of the Political Affairs Committee and voice the Assembly's satisfaction at this progress (see Amendment A).

The 1930 convention – Consultation in progress

14. The Franco-Monégasque Convention of 1930 provides – and this is now established practice – that the posts of Minister for State (and therefore head of government), two other members of the government and the senior state officials, as well as most of the seats in all Monégasque courts are reserved for French citizens. The eminent lawyers pointed out that "even though the appointees discharge their functions with complete loyalty and independence, there is dependence on nominations by France in choosing suitable persons to fill the highest state appointments. This raises serious doubts as to independence in the conduct of affairs of state and the administration of justice, and may ultimately reflect on national sovereignty itself" (paragraph 164).

15. I share these doubts, and agree with the eminent lawyers' conclusion that it would be highly desirable also to amend the 1930 convention, not only from the angle of Monaco's sovereignty but also, and above all, from that of the prohibition of discrimination (Article 14 of the European Convention on Human Rights (ECHR)) against Monégasque citizens in connection with the full exercise of their civil rights, which normally include access by all qualified citizens on an equal footing to the highest public appointments. In this connection it is interesting to compare this situation with Article 16 of the Convention, which allows contracting parties to impose restrictions on the political activity of aliens. The 1930 convention, on the contrary, reserves certain key positions in Monégasque political life for specified aliens, to the exclusion of nationals. This anachronism must be re-examined.

16. This is why I welcome the determination expressed by the Political Affairs Committee in its preliminary draft opinion, recommending that the Committee of Ministers should not invite Monaco to become a member of the Council of Europe until the consultations between the principality and France have come to an acceptable conclusion in accordance with the principles of the Council of Europe.

17. I would join with the Political Affairs Committee in also welcoming the launch of Franco-Monégasque consultations on this matter on 19 June 2003. I am expecting these consultations to produce tangible results in the near future, at least of the sort which I mentioned at the meeting of the Committee on Legal Affairs and Human Rights in Strasbourg on 23 June and ratified by the committee on that occasion, namely declarations from both parties affirming their intention to update the 1930 convention in such a way as to take account of the legitimate right of Monégasque citizens to accede to the highest appointments in their country.

18. Amendments B, C and E, which are explained in further detail below, are aimed at further reinforcing this message and spelling out the fact that it is the joint responsibility of the Committee of Ministers and the Assembly to ensure that the matter of taking account of Monégasque citizens' legitimate right of access to the highest public positions in their country is settled before the final decision on Monaco's accession to the Council of Europe.

C. Monaco as a parliamentary democracy

19. In connection with the aforementioned three fields, namely, the criteria for Monaco's status as a "parliamentary democracy", I would like first of all to recall that the Statute of the Council of Europe does not attempt to decide on the relative merits of the "parliamentary" and "presidential" concepts of democracy. The member states of the Council of Europe provide excellent examples of both constitutional approaches. The Council is not opposed to the concept of hereditary monarchy, as witness the United Kingdom, Sweden, Norway and many others. The stress must be on the concept of democracy. Monarchy must be "constitutional", on the understanding that the constitution in question must be democratic in the above-mentioned sense.

20. The eminent lawyers concluded that if the Principality of Monaco were to qualify as a parliamentary democracy a number of questions should first be settled and that it would also be desirable, with a view to consolidating parliamentary democracy in the Principality of Monaco, to settle a number of other questions.

21. The constitutional reform which came into effect on 2 April 2002 (Law No. 1.249) already implemented a number of these recommendations. These included establishing the right of the National Council to amend bills (Article 67, paragraph 7) and also its right to propose laws (Article 67, paragraph 2). These amendments to Article 67 of the Monégasque Constitution constituted a major step forward. Amendment D is aimed at pressing even further forward, particularly as regards supervision of government action and the field of international treaties.

22. The Monégasque Government has made it abundantly clear that it is prepared to facilitate change provided that such change does not affect the fundamental balance underpinning the country's political stability.

1. Address by the Minister for State to the National Council on 25 June 2001, p. 4.

D. Rule of law and human rights

23. It is in this third field of the rule of law and human rights that the most palpable progress has been, and is being made.

24. Where civil rights are concerned, the lowering of the age of majority to 18 is in line with general developments throughout Europe. This also applies to the lower voting age and the abolition of the five-year waiting period after naturalisation for the granting of civil rights.

25. Furthermore, the President of the National Council, who belongs to the new majority emerging from the 9 February 2003 elections, the first held under the reformed electoral law, formally undertook, in a letter of 4 July 2003 to the Chairperson of the Political Affairs Committee, to ensure that the National Council would adopt, as soon as possible and in any case before the end of 2003, a series of further reforms of domestic law to comply with the eminent lawyers' recommendations, including: a bill on the obligation to state grounds for unfavourable administrative decisions; texts concerning freedom of association, equality between women and men on the conjugal and parental fronts; and freedom of the media. These "standardising" moves have been aimed at ensuring the compatibility of the Monégasque legal system with the Convention, which the country has undertaken to ratify after its accession.

26. In the absence of detailed information on the content of the laws under preparation, it is impossible at this stage to assess whether these reforms are sufficient on their own to ensure the compatibility of Monaco's domestic legal system with the European Convention on Human Rights (ECHR). However, we may assume that the commitment mentioned in paragraph 10.i.*c* of the Political Affairs Committee's draft opinion (to examine on an ongoing basis the compatibility of all legislation with the ECHR and its relevant protocols) and the action of the European Court of Human Rights, which will possibly have to deal with Monégasque cases, will be sufficient to solve the remaining problems within a reasonable time. These problems include the introduction of a legal remedy against extradition, refusal of entry and expulsion, and in the event of rejection of an application for naturalisation or restoration of nationality as proposed by the eminent experts (paragraph 174). In his "programmatic" statement to the National Council, on 25 June 2001, the Minister for State was still refusing to include naturalisations even in the field of those administrative acts for which grounds should henceforth be stated, arguing that such acts were "discretionary by definition" in the same way as decisions to award honorary distinctions. We shall have to wait for subsequent developments, possibly helped along by the Court, to highlight the need to apply Articles 6 and 13 of the ECHR.

27. I would like to leave a further, final, point in the hands of future developments, namely Article 9 of the Monégasque Constitution. Although this clause declares Roman Catholicism to be the "state religion", Article 23 clearly guarantees freedom of religion and of its public practice, as well as the freedom to express one's opinion on all matters, subject to the punishment of offences committed in the exercise of these freedoms. Some Council of Europe member countries grant special status to specific religions in recognition of their historic and cultural importance for the national identity. Such recognition does not necessarily involve discrimination by the state against other religious communities, which discrimination would be manifestly contrary to Article 9 of the ECHR safeguarding the freedom of opinion, conscience and religion. Since there have never been any complaints about this matter in Monaco, I do not consider that this is a problem requiring a solution prior to accession.

E. Explanation of the amendments

Amendment A

28. Since the renegotiation of the 1918 treaty removes a major obstacle to accession, it is appropriate for the Assembly to welcome the conclusion of the treaty of 24 October 2002 and the fact that its ratification procedure is in progress.

Amendment B

29. This amendment is aimed at reinforcing the point already made in the draft report by explicitly stating that the rights of Monégasque citizens referred to by the draft – namely their access to all public posts of responsibility – are indeed fundamental rights secured by the European Convention on Human Rights.

Amendment C

30. This amendment is aimed at harmonising paragraph 7 of the preliminary draft opinion with paragraph 13.i.

31. The current wording of this provision transfers ultimate responsibility to the Committee of Ministers, which would thus itself be induced to pronounce on what is actually expected of France, given that the wishes of the Monégasque authorities are well known and are in fact explicitly stated in paragraph 7. The evaluation of the conclusion of the bilateral consultations between France and Monaco, like the consultations themselves, which are being held at governmental level, is more germane to the intergovernmental work of the Committee of Ministers than to the field of interparliamentary relations.

Amendment D

32. This amendment is aimed at clarifying what is expected of Monaco in the field of reinforcement of democracy within five years following its accession to the Council of Europe, thus facilitating the monitoring process by providing for more specific commitments as the basis for the process.

33. At the same time, this amendment takes account of the limits of what is possible in the light of the intensive contacts which I have had on this matter with the representatives of the National Council.

Amendment E

34. This change of wording is aimed at resolving the apparent contradiction between paragraph 7 (even as it was worded before the amendment proposed above) and the thrust of paragraph 13.i. The wording proposed will enable the Assembly to play a full part, in the framework of the Joint Committee with the Committee of Ministers, in evaluating the expected outcome of the current Franco-Monégasque negotiations. The Joint Committee, set up under Statutory Resolution (51) 30, is the body co-ordinating the Assembly and the Committee of Ministers, and is therefore the appropriate context for examining problems common to both organs.

F. Conclusion

35. Given the progress already secured in the 2002 constitutional reform and the further advances currently being made, notably in the series of legislative measures that should be adopted by the end of the year, I consider it reasonable to give the go-ahead to Monaco's accession to the Council of Europe, under the conditions and with the commitments set out in the preliminary draft recommendation, with the above-mentioned proposed amendments.

36. Some members of the Committee on Legal Affairs and Human Rights have mooted the possibility of granting Monaco Observer status pending settlement of all the outstanding questions. I consider that for procedural reasons the Assembly should not pronounce on a matter for which it has not been seized, given that Monaco has never submitted a request to this effect. This also applies to possible Special Guest status with the Assembly (Article 59 of the Statute of the Assembly) or Council of Europe associate member status (Article 5 of the Statute of the Council of Europe). The Assembly has been requested to give an opinion on an application for full membership of the Council of Europe, and unless Monaco submits an explicit request for one of the aforementioned facilities, this is the mandate which it must address.

37. I feel that as an intergovernmental organ the Committee of Ministers cannot disregard the outcome of the bilateral negotiations in progress between France and Monaco on the updating of the 1930 convention, which relate to a fundamental principle of the Council of Europe. I would therefore propose that both statutory organs of the Council of Europe should consult on this important matter within the Joint Committee, which is the optimum body for holding such discussions.

38. In connection with those issues that have not yet been resolved in Monaco, I feel that we can trust the Monégasque authorities to make the desired improvements in specific fields very shortly after their accession. In any case, the European Court of Human Rights would, if necessary, play its role of last instance for any citizens whose fundamental rights under the ECHR had not been fully respected. In this connection, it should be remembered that Monaco's accession is a prerequisite for its democratic evolution to be confirmed by the various mechanisms provided by the Council of Europe for its member countries.

Reporting committee: Political Affairs Committee.

Committee for opinion: Committee on Legal Affairs and Human Rights.

Reference to committee: Doc. 8265 and Reference No. 2347 of 25 January 1999.

Opinion approved by the committee on 3 November 2003.

See Opinion No. 250 (10th Sitting, 27 April 2004).