



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## **REPORT**

### **OF THE COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS, THOMAS HAMMARBERG**

**following his visit to Monaco  
on 20-21 October 2008**

for the attention of the Committee of Ministers  
and the Parliamentary Assembly

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## EXECUTIVE SUMMARY

Commissioner Thomas Hammarberg visited Monaco on 20 and 21 October 2008 to make a general assessment of the human rights situation. The Commissioner was received by HSH Prince Albert II of Monaco. He also held discussions with the Minister of State and most members of his Government as well as the Director of Judicial Services. He met distinguished representatives of the legislature, the judiciary and civil society, and he visited the prison.

The Commissioner was able to establish that Monaco had made considerable progress in strengthening human rights protection and that its authorities were determined to continue along this path.

The judicial process, although particularly efficient, could be further improved by instituting new procedures, especially to give victims better protection, and reviewing criminal laws that are obsolete or inadequate. Other laws providing greater protection for children and victims of domestic violence should also be adopted. CCTV should be more closely controlled.

Monaco has no independent ombudsman-type institution able to receive complaints from individuals and promote human rights. Similarly, arrangements allowing the foreign community to be represented and consulted would make it easier to take into account the views of a large part of the population.

Given the specific characteristics of the Principality of Monaco and the existence within it of groups of individuals with special rights, it would be advisable to adopt legislation prohibiting unjustified discrimination in order to avoid any degree of arbitrariness.

The report concludes with a set of practical recommendations on how the Monegasque Government can strengthen human rights protection.

## Introduction

1. The Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, made an official visit to Monaco on 20 and 21 October 2008.<sup>1</sup> This was one of the Commissioner's regular visits to all member states of the Council of Europe to assess effective implementation of human rights.<sup>2</sup>
2. During this visit the Commissioner met HSH Prince Albert II of Monaco. He also held discussions with the following: Minister of State, Mr Jean-Paul Proust; Director of Judicial Services, Mr Philippe Narmino; Government Counsellor for the Interior, Mr Paul Masseron; Government Counsellor for Finance and the Economy, Mr Gilles Tonelli; Government Counsellor for Social Affairs and Health, Mr Jean-Jacques Campana; and Government Counsellor for External Relations and International Economic and Financial Affairs, Mr Franck Biancheri. He also met the President and two members of the National Council, representatives of the judiciary (such as the President of the Supreme Court and the Principal State Prosecutor), the Chairman of the Bar Association, and representatives of civil society and the French and Italian communities. Lastly, the Commissioner visited Monaco's prison and police headquarters.
3. The Commissioner is grateful to the Monegasque authorities for their cooperation and for having facilitated this visit and would particularly like to thank the Department for External Relations for its valuable assistance. He would also like to thank all the people whom he met for their open-mindedness and constructive approach.

<sup>1</sup> The Commissioner was accompanied by Mr Lauri Sivonen and Mr Julien Attuil-Kayser (advisers) on this visit.

<sup>2</sup> See Article 3(e) of the Commissioner's terms of reference: Resolution (99) 50 on the Council of Europe Commissioner for Human Rights.

4. Regarding human rights protection, Monaco proved its progressive tendencies very early on in certain fields. For example, it abolished the death penalty in 1962, and every individual has had the right to constitutional remedy since 1911. The Principality of Monaco joined the United Nations in 1993 and has gradually ratified most of the United Nations human rights treaties, with the exception, however, of the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Since 2004, Monaco has also been a member of the Council of Europe.
5. This report aims to identify ways of improving human rights protection and promotion in Monaco. It is based on information acquired during the visit (including from civil society) and on memos, reports and statistics provided by the Monegasque authorities. It naturally makes reference to relevant reports by the human rights monitoring bodies of the Council of Europe and other international organisations. This first evaluation report by the Commissioner on one of the newest members of the Council of Europe is not intended to provide an exhaustive analysis of the human rights situation in Monaco but is confined to what the Commissioner considers to be the priorities for better human rights protection. The Commissioner means to pave the way for dialogue and cooperation with the Monegasque authorities and civil society with regard to implementation of the recommendations made in this report in order to improve human rights protection in Monaco still further.

## **I. System of human rights protection**

### **1. Membership of Council of Europe and ratifications**

6. Although it applied for membership in 1998, Monaco did not become a member of the Council of Europe until 5 October 2004. This interval was necessary to allow Monaco to introduce changes in its domestic legal system and its relations with France. Substantial reforms have occurred, particularly following the signature in 2002 of a new treaty clarifying relations between the two states.<sup>3</sup>
7. Since accession, Monaco has ratified 39 Council of Europe Conventions, including the European Convention on Human Rights ('ECHR') and its Protocol Nos 4, 6, 7 and 13, the European Convention on the Suppression of Terrorism and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. A number of Council of Europe monitoring bodies have visited Monaco: for example, the European Commission against Racism and Intolerance ('ECRI') and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT') in 2006, and an evaluation team from the Group of States against Corruption ('GRECO') in 2008. Monaco is also being monitored by the Parliamentary Assembly of the Council of Europe ('Parliamentary Assembly') with regard to the commitments entered into on accession. While the various monitoring mechanisms have reported some persistent human rights problems, it should nevertheless be emphasised that Monaco has made and is still making a considerable effort, in terms of practical action and law-making, to comply with European standards.

#### **a. Ratification of the Revised European Social Charter**

8. Monaco did begin the process of ratifying the Revised European Social Charter in order to meet the commitments that it had entered into upon acceding to the Council of Europe. However, this process was interrupted with the publication of a judgment by the European Court of Human Rights ('European Court'): the Monegasque authorities considered that the *Demir and Baykara v. Turkey* judgment of 21 November 2006 used a provision of the Revised European Social Charter that Turkey had not accepted in order

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<sup>3</sup> Treaty adapting and promoting friendly and cooperative relations between the French Republic and the Principality of Monaco, 24 October 2002.

to prove a violation of the ECHR. The authorities consequently feared that this judgment would open the way to the incorporation in litigation before the European Court of social rights secured by other treaties, including provisions not ratified by the respondent state.

9. The Commissioner had a chance to discuss these points with, among other people, the Minister of State and the Government Counsellor for External Relations. As the Commissioner pointed out, the European Court has always drawn on other European and international instruments to interpret the rights secured by the ECHR. Such instruments may be international treaties, as in this particular case, but also provisions that are not so legally binding, such as Recommendations of the Committee of Ministers or reports of monitoring bodies. Such reference allows the Court to interpret the ECHR 'in the light of present-day conditions' and apply it in a manner which renders its rights practical and effective, not theoretical and illusory. The recent Grand Chamber judgment in the same *Demir and Baykara* case provides a very clear and detailed analysis of how the European Court takes into account international instruments and provisions other than the ECHR.<sup>4</sup> In the light of this new decision, the Commissioner calls the Monegasque authorities to continue with the ratification of those articles of the Revised European Social Charter that they had already selected and to consider ratifying the Additional Protocol to the Charter Providing for a System of Collective Complaints.

b. *Ratification of Protocol Nos 1 and 12 to the ECHR*

10. During the visit the Monegasque authorities mentioned the problems that they were having in ratifying Protocol Nos 1 and 12 to the ECHR on account of the preferential treatment granted to Monegasque nationals, particularly with regard to housing. As far as Protocol No. 1 is concerned, Monaco fears that the Court will hold such treatment to be in breach of Article 1 of that Protocol read in conjunction with Article 14 of the ECHR. The same applies to Protocol No. 12, which prohibits discrimination in general.
11. As the Commissioner was informed, the Monegasque authorities wish to comply fully with their international commitments before signing or ratifying these protocols. The Commissioner welcomes this determination to bring domestic law and practice into line with international treaties before the latter come into force. This attitude demonstrates the importance that the authorities attach to these commitments. However, he hopes that the Monegasque authorities are still determined to ratify these treaties swiftly and thus help to strengthen human rights protection in Europe.
12. As the Parliamentary Assembly noted, Monaco has ratified the UN International Convention on the Elimination of All Forms of Racial Discrimination, which contains provisions similar to those of Protocol Nos 1 and 12. Recognising the importance of these Protocols and the Monegasque authorities' determination to comply fully with their commitments, the Commissioner invites the Monegasque authorities to make use of the Council of Europe's expertise, in particular through a compatibility study analysing points that may create problems and thus removing any uncertainty.

**2. National human-rights structure and non-judicial protection of individual rights**

13. Monaco has a body responsible for handling citizens' complaints – *Médiateur* – and another body which advises the Government and the authorities on human rights. The *Médiateur's* role is to suggest ways of settling disputes between citizens and the authorities. Tribute was paid to the quality of the *Médiateur's* work during the Commissioner's visit. This task of settling problems of maladministration is a traditional function of ombudsmen in Europe. However, unlike other ombudsmen, the Monegasque *Médiateur* enjoys neither structural nor material independence.

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<sup>4</sup> See in particular §§ 85-86 of the Grand Chamber judgment of 12 November 2008 in *Demir and Baykara v. Turkey*.

14. During the visit, the Monegasque authorities explained to the Commissioner that, since acceding to the Council of Europe, the Principality had also set up a Human Rights Unit. The Commissioner had an opportunity to meet its director. The unit has the task of assessing whether Monegasque law is compatible with European standards and proposing reforms, studying the conventions of the Council of Europe and delivering training, and providing assistance to the Monegasque authorities.<sup>5</sup> It supplies the Government and the authorities with information on developments in human rights law. In the opinion of the Monegasque authorities, the existence of this unit, together with the absence of human rights complaints by individuals, suggests that it would not be expedient to set up a national human-rights structure.<sup>6</sup>
15. The *Médiateur* and the Human Rights Unit both do necessary work. However, they cannot be considered fully independent within the meaning of international and European standards in this field.<sup>7</sup> The Human Rights Unit reports directly to the Department for External Relations. Its director is also responsible for representing the Monegasque Government before the European Court. Therefore this institution cannot be considered independent of the executive. The same applies to the *Médiateur*, who is under the direct control of the Minister of State and is a party to non-contentious proceedings concerning administrative decisions. The importance of independence lies not only in the institution's freedom to decide whether or not to take on a case but also in the image of independence that it conveys to the general public and potential complainants.
16. The Commissioner therefore calls the Monegasque authorities to set up an independent human-rights structure to receive human rights complaints from individuals. In order to ensure full compliance with international standards, the holder of the office should be appointed by the National Council, his or her functions should be laid down in a law or even in the Constitution, and his or her functional, financial and material independence must be safeguarded.

## II. Operation of the Monegasque judicial system

### 1. Organisation of the Monegasque courts

17. Monaco has a judicial system that is considered efficient. Justice is administered by a department independent of the Government: the Directorate of Judicial Services, which comes under the direct authority of the Prince. The Monegasque courts have all the human, financial and material resources needed to deliver high-quality justice. According to the latest report by the European Commission for the Efficiency of Justice (CEPEJ), in Europe Monaco is the country which spends the most per inhabitant on its courts, with a budget that rose by 42% between 2004 and 2006.<sup>8</sup> The Commissioner would like to pay tribute to the Monegasque authorities for their determination to provide their judicial system with all the resources necessary to guarantee prompt, efficient and high-quality justice.
18. As the Parliamentary Assembly has already pointed out,<sup>9</sup> there is no procedure for reopening proceedings in cases already tried under domestic law but found to be in violation of the ECHR by the European Court. Furthermore, enforcement of both civil and criminal judgments is extremely difficult, especially when the convicted person is not, or no longer, resident in the Principality. Victims often find it hard to obtain compensation. The Commissioner urges the Monegasque authorities to consider introducing the

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<sup>5</sup> Second periodic report submitted by Monaco to the UN Human Rights Committee, CCPR/C/MCO/2, 19 September 2007.

<sup>6</sup> See comments and observations of the Monegasque authorities on the ECRI report on Monaco, 15 December 2006, CRI(2007)25, p.30 (in French only).

<sup>7</sup> See in particular the Paris Principles reiterated in Resolution A/RES/48/134 of the United Nations General Assembly of 20 December 1993, and Recommendation 1615(2003) of the Parliamentary Assembly of the Council of Europe on the institution of ombudsman.

<sup>8</sup> CEPEJ report, European judicial systems: Efficiency and quality of justice, 2008 edition.

<sup>9</sup> Parliamentary Assembly report, *Honouring of obligations and commitments by Monaco*, 7 June 2007, Doc. 11299, §163.

relevant procedures as well as enforcement mechanisms that would strengthen protection for victims and might also prevent a certain number of cases being taken to the European Court.

19. The Director of Judicial Services told the Commissioner that efforts were currently being made to improve information on developments in case-law. As far as European law is concerned, the Human Rights Unit has begun, for cases of particular interest, to notify judges of important decisions delivered by the European Court. Domestic judges play a vital part in transferring the principles defined by the European Court into national law. This regular information process should be furthered.
20. As regards the case-law of the domestic courts, improvements might be made to ensure that it is more easily available to both citizens and practitioners, since it seems that the decisions delivered by the various courts are difficult to find, making it hard for both judges and lawyers (particularly French lawyers) to keep up with the case-law. Introducing arrangements enabling practitioners to consult judgments could make it easier to protect the rights of those before the courts.

## **2. Judges: recruitment and independence**

21. As in other government departments in Monaco, the judges are either Monegasque or French judges seconded by their authority. At the time of the visit, eight of the 21 judges were Monegasque. The number of judges who are Monegasque nationals is on the increase, and some posts previously allotted to French judges are now held by Monegasques. The secondment of French judges is now limited in time and cannot exceed two three-year periods. This procedure is a marked improvement on the previous lack of clear rules. Problems remain, as pointed out by GRECO,<sup>10</sup> concerning the transparency of the proposals of candidates made by France and the effect that renewable secondments may have on judges' independence. Once in post, seconded judges enjoy the same protection as their Monegasque counterparts.
22. An Administration of Justice Bill and a new statute for judges and prosecutors have been tabled before the National Council by the Government. The Bill, which is due to be debated in early 2009, defines the status of judges more clearly and recognises their statutory independence. It also provides for the creation of a Judicial Service Commission responsible for recruitment, career structures and disciplinary action relating to judges. Under the current Bill, the Judicial Service Commission would have six members. Chaired by the Director of Judicial Services, who would be an ex officio member, the Commission would comprise the President of the Court of Cassation, three members appointed by the Council of State, the National Council and the Supreme Court, and a judge elected by his or her peers. According to the Parliamentary Assembly, the fact that judges will be in a minority in this body raises questions as to whether such a composition is in line with European standards.<sup>11</sup> If this Bill is passed as it stands, checks will need to be made that the Judicial Service Commission does in practice safeguard and strengthen the independence of judges and protect them from any interference by the executive. The relationship between this Judicial Service Commission, its French equivalent, and the judges seconded by France must also be examined in depth in order to ensure that the status and careers of these judges are fully protected in both countries.
23. As the Director of Judicial Services pointed out, Monegasque judges are currently recruited by his department on the basis of their applications. Once selected by the Monegasque authority, an applicant judge does a year and a half of training at the French Legal Service Training College before being appointed to a post in Monaco. While the Director believes this process of recruiting without examinations to be

<sup>10</sup> GRECO, *Joint First and Second Evaluation Rounds: Evaluation Report on Monaco*, 10 October 2008, Greco Eval I/II Rep (2008) 1E, §45.

<sup>11</sup> Parliamentary Assembly report, *Honouring of obligations and commitments by Monaco*, 7 June 2007, Doc. 11299, §156.

appropriate, he is also looking forward to the impending establishment of the Judicial Service Commission, which would play a role in this recruitment. The Commissioner believes that, to ensure that judges are fully independent, recruitment, transfer and disciplinary action in this field must be the responsibility of the Legal Service Commission or, at the very least, that it must give its reasoned opinion regarding all decisions taken.

### **3. Improving criminal provisions**

24. The need to modernise Monegasque criminal law was discussed frequently during the visit. Some of the people to whom the Commissioner spoke stated that they thought it unnecessary, or even inadvisable, to adopt new criminal legislation. The determination not to duplicate the proliferation of laws experienced by some European countries was also mentioned. Furthermore, representatives of the State Prosecutor's Office considered that there were no particular problems in bringing prosecutions whilst nevertheless acknowledging that Monegasque law was much less focused and specific than French law. Other people to whom the Commissioner spoke wanted the Criminal Code and the Code of Criminal Procedure, the greater part of which dates from 1966, to be updated.
25. A reform of the Code of Criminal Procedure was carried out in December 2007 to bring it into line with certain ECHR provisions. The new legislation controls and regulates police custody, pre-trial detention and telephone tapping and reorganises in absentia proceedings. These new provisions, which were rapidly adopted, prove that considerable progress could quickly be achieved in the law-making field if the need were felt.
26. The determination not to make positive law too complex by adding more and more criminal provisions must be emphasised. However, this should not prejudice protection of individuals and their rights, for it does seem that some criminal provisions are inadequate or obsolete and could be broadened or clarified. Thus, under the Monegasque Criminal Code, adultery is still an offence and banishment is still possible in criminal cases.
27. Defining certain types of behaviour as an offence is sometimes difficult in the absence of specific provisions, and the courts have to resort to related offences in order to prosecute. The Commissioner urges the Monegasque authorities to review the definition of some of the offences in the Criminal Code in order to offer better protection to citizens and adequately punish offences committed on Monegasque territory.
28. In criminal proceedings, Monegasque law makes no provision for procedures suited to the vulnerability of the victims. The CEPEJ report shows that Monaco is the state with the fewest special judicial arrangements for vulnerable persons and victims. The law should offer greater recognition and specific protection for victims of domestic violence and racist acts as well as vulnerable persons such as older persons or people with disabilities. In general, protection for victims ought to be improved.
29. Lastly, the question of sovereign orders issued following Monaco's accession to international instruments was raised during the visit. It seems that some substantive provisions establishing certain transnational criminality offences were introduced by means of these orders. The principle of legality as defined by article 7 of the ECHR requires that a "law" should define penal offence. The concept of "law" is interpreted broadly by the European Court and includes statute law but also enactments of lower rank and unwritten law.<sup>12</sup> These norms should however be accessible and foreseeable. The Commissioner notes that sovereign orders allow to swiftly ensure conformity with international commitments. Nevertheless, in line with the observation of the Parliamentary Assembly<sup>13</sup>, the Commissioner considers that it would be useful to

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<sup>12</sup> European Court of Human Rights, Grand Chamber, judgment *Kafkaris v. Cyprus*, 7 February 2008, §§139-140.

<sup>13</sup> Parliamentary Assembly report, *Honouring of obligations and commitments by Monaco*, 7 June 2007, Doc. 11599, §73.



subsequently have these norms ratified by the National Council. They would hence acquire a similar legal status as other offences provided for by the Criminal Code. The Commissioner invites the authorities to consider the possibility of involving the legislature in the adoption of all criminal law provisions.

### III. Rights of nationals and foreigners resident in Monaco

30. During the visit a number of the Commissioner's interlocutors stressed the singularity of Monaco – not just on account of its history and political organisation but also because its national territory is extremely small (approximately 2 km<sup>2</sup>) and Monegasques are a minority in their own country.
31. Monaco has approximately 33,000 inhabitants. The number of residents with Monegasque nationality is 7,546;<sup>14</sup> nationals therefore constitute just over 22% of the population. It should be noted that this figure is steadily rising: Monegasques accounted for only 16.56% of the population in 1982. Residents in Monaco belong to over 120 different nationalities; the largest communities are the French (approximately 8,000 in 2007) and Italian (approximately 6,000). Many of these residents have 'child of the country' - '*enfant du pays*' - status, which is available to foreigners whose families have lived in Monaco for several generations and gives them special rights. In addition, some 30,000 people enter Monaco to work every day but do not live there.
32. Because of its economic, geographical and fiscal attractiveness, the country might see the number of its citizens decline if they were not granted special rights and specific measures. In order to retain its nationals, Monaco has introduced a number of special arrangements for Monegasques.

#### 1. *Special protection for Monegasques and 'children of the country'*

33. Because they are a minority in their own country (having chosen to be so in some people's opinion), native Monegasques enjoy a certain number of rights that are reserved to them. According to the Minister of State, differing rights are granted to native Monegasques, foreign residents, inhabitants of border communes<sup>15</sup> and non-resident foreigners.
34. To give an example, the Monegasque authorities award business start-up grants and benefits for unemployed mothers only to nationals. However, all workers and pensioners, together with their families, qualify for social security and its benefits, although non-Monegasques must have lived in Monaco for five years to qualify for certain types of social and medical assistance as well as housing benefit. The fact that housing benefit is conditional on a five-year period of residence seems inappropriate. Following the example of other international bodies,<sup>16</sup> the Commissioner calls Monaco to analyse the eligibility criteria for these benefits in order to make them fairer.

#### a. *Housing*

35. With its two square kilometres, Monaco is the second smallest independent state in the world and the most densely populated. The question of housing is particularly complicated here. Because of exponential inflation in house prices, the Monegasque authorities have taken steps to ensure the continued presence of Monegasque nationals in Monaco.
36. The Principality has three sectors of rented accommodation. First, there is the private sector, where the price of properties – whether for sale or to let – is determined by supply and demand. Tax privileges, combined with the Principality's amenities, have attracted a

<sup>14</sup> Département des finances et de l'économie (Monegasque Department of Finance and the Economy), *Monaco en chiffres*, 2007 edition.

<sup>15</sup> Beausoleil, Cap-d'Ail, La Turbie and Roquebrune-Cap-Martin.

<sup>16</sup> See in particular the 2006 ECRI report, §42.

large number of people with substantial means. As a response to the lack of low-price accommodation, the state has created a state-property sector, where it owns the housing. This housing is let to nationals only and the rent is approximately one third that of the free market. Monegasque tenants are also eligible for housing benefit. In 2007, this benefit was awarded to 946 households, and the average monthly amount was €715.18.

37. By these means and through an ambitious building programme, the state has gradually resolved Monegasques' housing problems over the past two decades. The National Council, which has been extremely active in this field, has also suggested that people living in state-owned properties should gradually be able to acquire tenancy rights of their accommodation.
38. Lastly, there is the 'protected' sector of privately-owned properties built prior to 1947, for which the state sets the rent. Originally intended for Monegasque nationals and other special categories of tenant, including 'children of the country',<sup>17</sup> this sector is now occupied almost exclusively by foreigners who have been living in Monaco for several decades, since most native Monegasques now live in state-owned properties.
39. As acknowledged by the Government Counsellor for Finance and the Economy, who has responsibility for housing issues, the number of properties available in the protected sector is in rapid decline, since their owners are subject to numerous constraints. They are unable to set their rents freely, cannot choose their tenants and cannot dispose of their properties as they wish. Furthermore, since these properties date from before 1947, they tend to be demolished to make way for larger buildings.
40. The associations that the Commissioner met reported problems concerning foreigners' access to housing. They recognised that it was natural for the authorities to institute arrangements to protect Monegasque nationals and that the introduction of differential housing benefit had benefited 300 foreign households. However, they regretted that arrangements similar to those for Monegasques had not been instituted for people who had contributed to the country's economic development and prosperity and who, in many cases, were forced to leave the country through lack of money, especially upon retirement. While not questioning the merits of these special measures, the Commissioner urges the Monegasque authorities to consider introducing similar measures making it easier for long-time residents to remain in the country.

b. *Employment*

41. In 2008, Monaco had 43,164 private-sector employees, of whom 936 were Monegasque, and 4,001 civil servants and state employees, of whom 1,204 were Monegasque. The number of employees in both sectors has risen every year.
42. A preference system operates in the employment sector, giving priority first to nationals and then to their spouses. Article 25 of the Constitution gives employment priority to Monegasques. Next come non-nationals resident in Monaco, then people living in the border communes, and lastly other persons. For persons with the same skills, these nationality and residence criteria apply not just to recruitment but also to redundancies. Monegasque employees thus have priority as regards recruitment and must be the last to be made redundant.<sup>18</sup> As in the case of housing, these provisions are intended to ensure the continued presence of Monegasques in the country, since the appeal of Monaco is such that the authorities fear that its nationals could be excluded from the job market as a result of competition from foreign workers.

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<sup>17</sup> Under Law No. 1.291 of 21 December 2004: children, present or former spouses and widows or widowers of a Monegasque national; parents of a child born of a union with a Monegasque national; 'children of the country'.

<sup>18</sup> Sections 5 and 7 of Law No. 629 of 17 July 1957 regulating conditions of employment in the Principality.

43. 'Children of the country' are also given a certain degree of priority where recruitment is concerned. Although not laid down in law, when seeking employment 'children of the country' receive different treatment owing to their place of residence: if no Monegasque national is available for a particular post, an employer must then recruit firstly from among Monaco residents and secondly from the border communes. However, the implementation of this right should not lead to different treatment that is unfair. The Commissioner was informed that some public authorities had interpreted this right very broadly, considering this priority to apply to promotion as well. Similarly, representatives of civil society believe that preferential recruitment has been twisted into a means of reserving jobs for Monegasque nationals, since for some posts, especially in the civil service, short-term contracts are offered to foreigners when it is not possible to recruit a Monegasque. Thus, when the contract comes to an end, a new recruitment procedure is started, providing another chance for a Monegasque national to obtain the post on a permanent basis. The Commissioner urges the Monegasque authorities to eliminate unnecessary distinctions and ensure that this system does not lead to discrimination in practice.

## **2. Special treatment for some foreigners**

44. As the Commissioner was able to establish during his visit, the Monegasque authorities have provided both residents and workers in Monaco with increased protection, especially in the field of social rights. It is, however, necessary to study some specific situations in which different treatment of certain categories of foreigners is apparent.
45. For historical reasons and because of the Principality's close relationship with France, a number of civil-service and public-sector jobs are allocated to French nationals. Sovereign state functions such as justice, public order and education are provided solely by Monegasque nationals or French citizens. Agreements between France and Monaco, and above all customary practice, mean that members of the Government are either Monegasque or French. In the field of justice, Monegasque judges work with French judges seconded from the French system. Posts as officials in the police and prison services are also held by seconded French civil servants (for senior positions) or persons who have passed a competitive examination for the Monegasque civil service. However, French or Monegasque nationality is a condition of recruitment in such competitions. Thus, as the representative of the Italian community observed, no Italian, including those with 'child of the country' status, can become a police official. The same applies to other foreigners. It must be pointed out that the preferential treatment accorded to French citizens for public-sector jobs does not similarly apply to Monegasques wishing to join the French civil service.
46. Monaco has an attractive tax policy for individuals, since persons residing on Monegasque territory for longer than six months are subject to the Monegasque tax system. This system is distinguished by the fact that it does not tax residents' income, although there is one exception to this rule. The tax convention of 18 May 1963 between Monaco and France makes French residents in Monaco liable to income tax in France. Nor are they exempted from other French direct taxes, since 2003 French citizens living in Monaco also have to pay wealth tax to France on all the assets that they possess, including those in Monaco. The same applies to US citizens, who are also taxed in their own country.
47. In conclusion, it should be noted that Monegasque legislation has led to the creation of various groups of foreigners with different rights and protection according to their nationality or connections with the country. While many are legitimate and dictated by circumstances, other types of differential treatment might call for further thought as to the objectives pursued. The Commissioner urges the authorities to analyse these specific situations and to adopt legislation against discrimination. Similarly, the establishment of an independent institution able to receive human rights complaints from individuals should strengthen protection of the rights of foreigners living in Monaco.

48. When giving thought to this, the Monegasque authorities might also consider including foreign residents in the life of the community through participation in local elections as well as ratifying the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level. At the very least, setting up a council of foreigners duly elected by the resident foreign population would enable foreigners to contribute to public debate on local issues. It would also provide local and national authorities with a representative and democratically appointed interlocutor for consultation on all appropriate issues. Advisory councils of foreigners exist in various European countries, regions and municipalities without calling into question the system of checks and balances. The Commissioner is convinced that such a structure would not in any way weaken the authority of the City of Monaco municipal council, let alone that of the National Council, which would remain, at local and national levels, the fully representative sovereign authorities of Monegasque citizens.

### **3. Acquiring nationality and naturalisation**

49. Under Article 18 of the Constitution, Monegasque nationality can be acquired by descent, declaration or naturalisation. Transmission of nationality is based mainly on *jus sanguinis*. Acquisition of nationality depends on the Prince, who has sovereign authority in the matter.
50. The Monegasque authorities have chosen to limit access to nationality in order to maintain a high degree of protection for Monegasque nationals. Naturalisation can be granted to anyone over the age of 18 who has been living in the Principality for at least ten years, although the Prince may waive this condition. Some 500 to 600 applications for naturalisation are made every year, of which only 10% are approved, following an investigation into the applicant's situation and character that can take up to two years. Thus 61 people were naturalised in 2006. No grounds are given for naturalisation decisions.<sup>19</sup> Moreover, the Principality has entered reservations concerning ECHR Articles 6 and 13 in this respect. The Commissioner notes that this failure to state grounds has been called into question by both ECRI and the Parliamentary Assembly.
51. Section 1 of the Nationality Act provides for acquisition of Monegasque nationality by birth. This provision draws a distinction between Monegasque men and Monegasque women. Monegasque men can pass on their nationality to their children whatever the circumstances, whereas women can only do so subject to certain conditions. Legislative changes in 2003 and 2005 have extended the options for women to pass on their nationality to their children but do not cover all eventualities.
52. The Nationality Act limits the possibility of acquiring nationality by marriage solely to wives of Monegasque citizens. After five years they may thus acquire nationality by a declaration. Husbands of Monegasque citizens, on the other hand, come under the normal rules for acquiring nationality by naturalisation. They therefore have to prove that they have been resident in Monaco for ten years in order to obtain the same nationality. The Commissioner notes that the persons affected by this law are accorded different treatment solely on the basis of gender.
53. As noted in the report by the Parliamentary Assembly, this law has also led to problems relating to transmission of nationality. Section 4 of the Nationality Act requires wives who have become Monegasque by marriage to relinquish their previous nationality. The combination of this provision with the fact that these women are unable to pass on their new – Monegasque – nationality may, in a small number of cases, result in wretched situations. Thus a child born out of wedlock to a mother who has acquired nationality by declaration – and then renounced her previous nationality – and to a father who is unknown or has not recognised the child will be stateless.

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<sup>19</sup> According to the Monegasque authorities, such decisions are not administrative and therefore do not come under the Administrative Decisions (Statement of Grounds) Act.

54. From both the legal and human points of view, this legislative shortcoming which results in some children becoming stateless seems an outright anachronism and not in the best interests of the child. The limited number of these cases in particular should persuade the Monegasque authorities to take action as quickly as possible in order to find a worthy solution for these children with no citizenship and to avoid the occurrence of further such cases. Like the United Nations Committee on Economic, Social and Cultural Rights,<sup>20</sup> the Commissioner advises the authorities to lose no time in reviewing eligibility conditions for nationality in order to avoid any gender-based discrimination and recommends that they put an immediate end to the legal vacuum leading to cases of statelessness.

#### **IV. Persons needing special protection**

##### **1. Protection against domestic violence**

55. The authorities stated that they had recorded 15 cases of domestic violence since 2005, including four in 2007/2008. However, it is very likely that the number of cases is actually higher, given that victims are reluctant to report such offences, especially in the absence of proper protection arrangements. Conjugal violence is prosecuted and punished under ordinary law on intentional assault and battery. While violence towards parents and other ascendants constitutes aggravating circumstances, the same does not apply to violence within a couple, which is not defined as a specific offence. However, the authorities have introduced a rolling campaign to raise public awareness.
56. A reception unit was set up in 2006 within the Monegasque police force. This unit refers victims of violence to police officers with special training in this field. A flat may be made available to the victim – and her children – if she does not wish to return to the family home. Victims may also receive psychological support and social assistance. According to the authorities, since the unit has been set up, complaints made and offences reported by victims of assault are not so frequently dismissed and are now more regularly investigated by the State Prosecutor's Office. However, there is no legislation making such violence a specific offence or providing for special protection arrangements.
57. In the absence of such legislation, a private-member's Bill was passed by the National Council in order to provide protection against domestic violence for married or cohabiting partners, whether or not of the same gender. During its adoption in April 2008, the Government made reserves to the Bill owing mainly to the protection it gives to homosexual couples. On 22 October 2008, the Government indicated its willingness to transform this draft Parliament Bill into a Government Bill. In the Commissioner's opinion, such legislation cannot exclude any category of individuals, including homosexual couples, from protection against violence. In addition, arrangements should be made to protect the victim better by not forcing him or her to leave the home but rather obliging the perpetrator of the violence to stay away. The Commissioner urges the Monegasque authorities to improve protection facilities for victims, adopt legislation providing genuine protection against domestic violence within every couple, and continue and strengthen the public awareness campaign on this subject.

##### **2. Juvenile justice and protection**

58. Monaco has recently made considerable progress in recognising and protecting children's rights. Thus the age of majority was reduced from 21 to 18 in 2002. In December 2007, Monaco also passed a law on indictable offences concerning children. This law, which created specific offences, allowed Monaco to ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
59. However, improvements are still needed in order fully to incorporate the principles of children's rights in Monegasque law. Thus the concept of the child's best interests does not exist in national law. Moreover, the juvenile judges, which are responsible for child

<sup>20</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights on Monaco, 13 June 2006, E/C.12/MCO/CO/1.

protection, regretted this omission, since they are consequently obliged to make reference to the International Convention on the Rights of the Child. The same applies to participation of children in cases concerning them. The position adopted by the Court of Cassation – *Cour de révision* – is that a ‘child who is capable of forming his or her own views must be able to express those views freely in all matters affecting that child and for this purpose be heard in any judicial or administrative proceedings, although these views are not binding on the court concerned, which must consider only the best interests of the child’.<sup>21</sup> The Commissioner nevertheless notes that there are no rules governing the procedures, criteria or requirements for examining minors, whether they be victims, witnesses, offenders or simply affected by a case. Consequently, he calls the authorities to incorporate in national law the concepts of participation and the child’s best interests as key elements in recognition and protection of children by the courts. Thought should also be given to how the Monegasque judicial system may be made more child-friendly.

60. As regards corporal punishment, the Monegasque Criminal Code prohibits even minor violence against children. However, the law contains no formal prohibition of corporal punishment within the family, schools or childcare facilities. In view of the social acceptability of corporal punishment, the Commissioner believes that a more explicit law would send a clear message to children, parents and society. The Minister of State recognised the need for this step and indicated his determination to take model measures in the field both in terms of law-making and through awareness-raising and positive-parenting campaigns. Through its ‘Building a Europe for and with Children’ programme, the Council of Europe has developed tools for such campaigns. The Commissioner therefore welcomes this determination and hopes that Monaco will soon join the growing group of states that have formally prohibited corporal punishment.
61. As regards juvenile justice, there is no set age of criminal responsibility. This age will depend on the minor’s capacity for understanding. The juvenile courts responsible for supervising children have the power to issue warnings and order referral to the courts, fostering or other supervisory measures. They can order children to be placed in a French or Monegasque institution for young offenders. Lastly, minors can be held in custody from the age of 13. It should be noted that there are no specific provisions for minors concerning remand in custody. It is therefore conceivable that a minor under the age of 13 might be remanded in custody. However, this omission in the law does not seem to have led to any abuses in practice.
62. Once over the age of 13, a child can be tried by the specialised courts. Hearings are held in camera and the juvenile judge reports about the child’s character. The juvenile judge participate to the hearing without the right to vote but can report to the Court. Sentences are halved for lesser indictable offences and limited to 20 years in prison for serious indictable offences. It should be noted that in criminal cases, judgments delivered by the Criminal Court are not open to challenge on the merits, being subject solely to appeal to the Court of Cassation on points of law. Lastly, evidence in criminal cases is taken in the same way as for adults when the minor is aged over 15. Being under-age therefore provides little protection for minors, and considerable discretion is left to the juvenile judge in deciding whether or not to treat them and try them as adults. Although practice shows that children’s judges take full account of the fact that they are judging minors, the Commissioner believes that there is an absence of legal provision regarding protection of minors in the courts. There seems to be an urgent need for reform to recognise and safeguard the special status of children and their need for protection, including in criminal cases. Such a reform might also raise the age of criminal responsibility to bring it closer to the age of majority.

### **3. Protection for persons with disabilities**

63. According to the information acquired during the visit, due consideration is accorded to persons with disabilities by the authorities. Thus since February 2006 there has been a government representative for people with disabilities, who liaises between civil society

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<sup>21</sup> Court of Cassation judgment of 29 November 2007.

and the executive. Since September 2008 a free shuttle service has enabled the mobility-impaired to travel within Monaco, as access to public transport is limited. However, the Government Counsellor for Social Affairs and Health stated that half of the public buses should be accessible by the end of 2009. State-owned apartments have been specially adapted and made available to persons with disabilities. All these efforts deserve to be noted, since it is very clear that the Monegasque authorities are continually endeavouring to improve the situation of people with disabilities.

64. Further improvements might be envisaged, especially in the legislative field. Disability is not defined in labour law. Nor are there any provisions in the Employment Code facilitating access to the labour market for people with disabilities. However, the Government Counsellor stated that some 20 people with disabilities had work. He also acknowledged that access to many buildings, including public ones, was still difficult. Lastly, the Commissioner was informed that the Monegasque authorities were currently working to bring national legislation into line with the Convention on the Rights of Persons with Disabilities, with a view to ratifying it. While welcoming the efforts already made, the Commissioner invites the authorities to continue improving the standard of living of persons with disabilities and to ratify the United Nations Convention.

## **V. Freedom of assembly and respect for private life**

### **1. Freedom of assembly and association**

65. Associations are regulated by a law dating from 1910, whereby the establishment of any association or an alteration to its rules is subject to prior authorisation from the Monegasque authorities. The same applies to trade unions.
66. Adopting new legislation on associations was one of the commitments entered into by the Monegasque authorities when acceding to the Council of Europe, since the restrictions engendered by prior authorisation of establishment of associations or alteration of their rules, together with the requirement that certain positions be held by nationals, seem incompatible with the principles emerging from the case-law of the European Court. An Associations Bill was tabled before the National Council by the Government in April 2006. However, a difference of opinion between the National Council and the Government as to the content of this Bill has resulted in postponement of its adoption. During his visit, the Commissioner was told that a solution had been found between the Government and the National Council. The Commissioner was informed that the Bill had finally been passed by the National Council on 18 November 2008 and hopes that it will allow full freedom of association and assembly for all inhabitants of Monaco in practice.

### **2. CCTV**

67. As the Commissioner was able to establish during his visit, use of CCTV is extremely widespread in Monaco. There are over 300 police surveillance cameras positioned all over the territory. CCTV seems to be accepted by the general public and is considered an effective way of ensuring protection for everybody and dealing promptly with offences committed on the streets. The Commissioner was informed, moreover, that the authorities were planning to increase the number of cameras. Monaco's prison has its own network of cameras installed on the outer walls and the prison forecourt, which is an extremely busy public space.
68. As far as police cameras are concerned, use, management of their recordings and permission to examine the footage are governed simply by an internal memo. Footage is currently kept for eight days by the Criminal Investigation Department before being automatically wiped. The prison cameras are not subject to any rules, and their footage is kept for 40 days. An inspection of the installations showed that the cameras were filming public spaces but could easily be used to film private areas and accommodation.

Consequently, the Commissioner calls on the Monegasque authorities to control the use of CCTV more strictly for the purpose of respecting and protecting individual privacy and to pass a law clearly regulating CCTV use, data retention time and persons authorised to view the footage.

## **VI. Custodial institutions**

### **1. Police establishments**

69. During his visit the Commissioner was unable to visit the five police custody cells at Monaco Police Headquarters, since they were all being refurbished to bring them into line with European standards and particularly those of the CPT.<sup>22</sup> The Commissioner was able to see the plans, and he was told that the specifications were the same as for the police custody cells at the police Prefecture in Paris. He hopes that the people who are being held in the outlying police stations during this work have suitable accommodation.

### **2. Monaco Remand Prison**

70. Monaco Remand Prison is situated in the centre of the city within the precincts of a former gunpowder factory. Fully renovated in 1989, the prison, which has a total capacity of 88 inmates, contains accommodation for male, female and juvenile offenders. Its occupancy rate has never exceeded 50%. The Commissioner noted the efforts made by the Monegasque authorities to comply with certain CPT recommendations in particular. Some problems nevertheless remain.

#### *a. Detention of adults*

71. It should first be emphasised that all the prisoners to whom the Commissioner spoke considered their general conditions of detention to be adequate and their relations with prison staff to be humane and pacific. Each cell is equipped with a kettle, an intercom, radio and television, and adjustable air conditioning.

72. The France/Monaco Convention on Neighbourly Relations of 18 May 1963 states that persons convicted by Monegasque courts shall serve their sentences in French prisons. In practice, when offenders are definitively sentenced to prison, they are transferred to Nice Remand Prison and then to other places of detention as provided for in the French prison system. As the Director of Judicial Services pointed out, the remand prison is not normally intended for the serving of prison sentences and should be used only for remand in custody or possibly for completing the remainder of sentences.

73. The fact that the prison is intended for short sentences, together with its low occupancy rate (it takes between 160 and 180 prisoners in the course of a year), may explain why there are so few activities available to inmates. An effort has been made following the recommendation by the CPT in this field. For example, cells are kept open for longer. However, educational provision is poor, and sport is limited to access to a gymnasium for two hours a day. Such activities also depend on the presence of supervisory staff (teacher, sports instructor) who are not always regularly available. Similarly, some prisoners told the Commissioner that even regular visits by the priest had recently been interrupted. Inmates are allowed two hours in a recreation yard that is very cramped and provides little daylight owing to its situation and the presence of a large metal grill.

74. Daylight is another problem. As the CPT pointed out, the prison walls are particularly thick, and the windows let in very little light. Although additional light has been provided since the CPT's visit in 2006, the light level in the cells remains low, and artificial light has to be used throughout the day.

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<sup>22</sup> Report to Government of Monaco on the visit carried out from 26 to 31 March 2006, published on 31 May 2007, CPT/Inf (2007) 20, §12 (in French).



75. Lastly, the Monegasque authorities carried out work on the visiting rooms in December 2007 in order to meet the CPT recommendations. Prisoners are now allowed physical contact with their visitors. A glass partition has been retained in one visiting room in the event that a prisoner refuses to undergo the search subsequent to visits. In addition to these improvements, the frequency of visits must be welcomed, which can take place for 45 minutes twice a day, five days a week. However, telephone access is much more limited. Any person entering the prison is entitled to make a call to inform his or her family. Subsequently, convicted prisoners alone are able to use the telephone once a month. The European Prison Rules recommend that prisoners be allowed to communicate as often as possible with the outside world, including by telephone. Untried prisoners, for their part, must have greater access to communication with the outside world unless there is a specific prohibition by a judicial authority in an individual case.<sup>23</sup> Consequently, the Commissioner urges the authorities to comply with the European Prison Rules and increase the number of telephone calls allowed to both untried and convicted prisoners. Special attention should be paid to foreign prisoners who cannot receive visits because their families are too far away.

b. *Detention of minors*

76. During the Commissioner's visit, the juvenile quarters were being used for solitary confinement; because there were no juvenile prisoners, the prison authority had taken the decision to use this accommodation for recently charged remand prisoners considered to be particularly dangerous. The number of minors remanded in custody each year is relatively small, and the length of detention is short.<sup>24</sup> Since 2000, the maximum length of detention for a minor has been 183 days.

77. According to the information collected, minors are treated slightly better than adults. Juvenile prisoners under the age of 16 have to attend classes. They are supplied, either during family visits or by a social worker, with homework assignments and some additional courses provided by the French or Monegasque schools that they attended before their imprisonment. Juvenile prisoners aged 16 and over may either opt for the same arrangements or follow correspondence courses. Minors in detention are also allowed a twice longer period of exercise in the recreation yard than adults. However, the range of activities available to them is still narrow and inadequate. Furthermore, like the adults, they suffer from the lack of daylight. The Commissioner therefore urges the authorities to offer minors a wider spectrum of activities and facilitate their access to daylight.

<sup>23</sup> See Recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules, 11 January 2006, §§ 24.1 and 99.

<sup>24</sup> Between 2000 and 2007, the number of minors remanded in custody each year varied between four (in 2001) and thirteen (in 2004) for an average of less than 40 days.

## **VII. Recommendations**

The Commissioner, in accordance with Article 3, paragraphs (b), (c) and (e), and Article 8 of Resolution (99) 50 of the Committee of Ministers, recommends that the Monegasque authorities:

### **System of human rights protection**

1. Make it a priority to ratify the Revised European Social Charter, Protocol Nos 1 and 12 of the European Convention on Human Rights, and the United Nations Convention on the Rights of Persons with Disabilities and consider ratifying the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.
2. Establish an independent human-rights structure able to deal with complaints from individuals.

### **Operation and efficiency of the judicial system**

3. Improve the publication and dissemination of court decisions.
4. Adopt legislation defining the status of judges.
5. Swiftly establish a body responsible for safeguarding full independence for judges with regard to recruitment, transfers and disciplinary action.
6. Ensure full enforcement of court decisions and allow re-opening of cases further to a decision by the European Court of Human Rights.
7. Give thought to modernising the Criminal Code and the Code of Criminal Procedure.

### **Domestic violence and persons needing special protection**

8. Introduce police and judicial arrangements to protect victims.
9. Adopt measures, particularly through legislation, to protect all victims of domestic violence and step up campaigns in this field.

### **Juvenile justice and child protection**

10. Adopt legislation providing full protection for children who are victims and children who are in conflict with the law.
11. Incorporate in national law the concepts of participation and the child's best interests.
12. Formally prohibit corporal punishment, including within the family, and undertake awareness-raising campaigns.

### **Protection of persons with disabilities**

13. Facilitate access to the labour market for persons with disabilities.

### **Equal treatment and representation of foreigners**

14. Adopt stronger anti-discrimination legislation and analyse the different types of preferential treatment affecting foreigners, especially regarding employment and taxation.
15. Consider introducing arrangements allowing representation and consultation of the foreign community.

**Nationality and statelessness**

16. Make the law on acquiring and transmitting nationality non-discriminatory.
17. Review as a matter of priority the legislation that results in cases of statelessness and find an appropriate solution for children in this situation.

**CCTV and respect for private life**

18. Strengthen protection of privacy by regulating the use of CCTV.

**Conditions of detention**

19. Improve conditions of detention in the remand prison, in particular by providing more activities and improving access to daylight.
20. Allow both untried and convicted prisoners to make more use of the telephone.
21. Guarantee access to a wider range of activities for minors.

**Appendix**

**COMMENTS BY THE MONEGASQUE AUTHORITIES**

*[in French only]*

Les Autorités monégasques, ayant pris connaissance du rapport de Monsieur le Commissaire aux Droits de l'Homme du Conseil de l'Europe, souhaitent, préalablement à la présentation de leurs commentaires et observations, rappeler solennellement les termes de la Constitution monégasque du 17 décembre 1962 selon lesquels la Principauté est un Etat de droit attaché au respect des libertés et droits fondamentaux (article 2).

Elles ajoutent que la Principauté a, de longue date et concrètement, assuré le respect des règles fondamentales, en vigueur dans les Etats de droit, aux fins de protéger et de promouvoir la liberté, la sécurité et la dignité de la personne et qu'ainsi, ne saurait être admise, à Monaco, l'idée de « difficultés persistantes en matière de droit de l'homme » .

Elles tiennent, en outre, à souligner que le traitement différencié favorable aux Monégasques, voire à certains étrangers en fonction de leurs liens avec la Principauté, y compris pour ce qui est d'avantages économiques et sociaux, est une composante essentielle et structurante de l'organisation des rapports sociaux à Monaco dont le fondement réside dans la Constitution elle-même.

Les Autorités monégasques remercient le Commissaire pour son rapport et ses recommandations dont elles ont pris connaissance et qu'elles ont examinés dans un esprit positif et plus particulièrement dans le but de perfectionner le dispositif monégasque au regard de l'objet des règles précitées, tout en tenant compte des légitimes spécificités et des caractéristiques propres à la Principauté.

Elles ont souhaité, néanmoins, apporter des compléments d'information permettant d'éclairer certaines remarques formulées par le Commissaire afin de mieux présenter les orientations politiques suivies par la Principauté de Monaco.

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Dans un premier temps, les Autorités monégasques souhaitent souligner, à titre purement informatif, que la loi sur les associations a été promulguée le 28 décembre 2008. Elle abroge la loi antérieure du 27 juin 1984, ses nouvelles dispositions répondant aux préoccupations du Commissaire.

**1. sur les engagements de la Principauté**

Les « engagements » de signer et ratifier les protocoles premier et 12 de la Convention Européenne des Droits de l'Homme ainsi que la Charte Sociale Européenne révisée ne sont en rien contraignants pour la Principauté. (§10 à 12)

Pour ce qui est des protocoles, tout engagement dans des processus d'égalisation des droits, des précautions particulières doivent, à Monaco plus qu'ailleurs, être prises pour s'assurer de leur innocuité, ce qui est le cas en l'espèce.

De plus, s'agissant de la Charte Sociale révisée, si le premier arrêt de la Cour Européenne avait conduit la Principauté de Monaco à faire jouer le principe de précaution en raison de l'imprécision de l'arrêt qui pouvait dès lors prêter à des interprétations contradictoires, le second arrêt dans l'affaire DEMIR et BAYKARA, précise clairement les choses, de sorte que la Principauté n'a plus d'objections particulières sur ce plan.

Toutefois, la décision de la Principauté d'adhérer, ou non, à la Charte Sociale n'était pas exclusivement suspendue à cette jurisprudence mais procède d'une réflexion beaucoup plus large et complexe intégrant des paramètres de droit interne, réflexion non aboutie à ce jour.

## **2. sur la structure nationale de droits de l'Homme**

Les Autorités monégasques ont pris note avec satisfaction de la reconnaissance de la valeur et du travail tant du Conseiller en charge des recours et de la médiation que la Cellule des droits de l'Homme monégasque. Compte tenu de la performance de ce dispositif adapté à la taille et aux besoins de la Principauté il n'apparaît pas, en revanche, nécessaire de procéder à la modification constitutionnelle suggérée dans le rapport, aux fins de transférer au Conseil National la compétence décisionnelle de nomination d'un médiateur.

Le Gouvernement réaffirme que la nomination, par le Prince Souverain, à tous les emplois de l'Etat ainsi que les règles statutaires y afférentes offrent toutes garanties au regard de l'exercice des fonctions publiques concernées.

## **3. sur l'organisation judiciaire monégasque**

Les Autorités monégasques rappellent les termes des articles 5 et 88 de la Constitution selon lesquels, d'une part, le pouvoir judiciaire appartient au Prince, Qui en délègue l'exercice aux juridictions et, d'autre part, l'indépendance des juges est garantie.

Ainsi, le Prince Souverain est le garant de l'indépendance de la justice et de ceux qui la rendent ; Il ne saurait donc être, par principe, privé, directement ou indirectement de toute compétence en matière de nomination ou de carrière des magistrats.

S'agissant de la référence à un « avis conforme » du Haut Conseil, dans le domaine des recrutements, mutation, ou sanction disciplinaire des magistrats, elle ne paraît pas compatible avec les dispositions de la Constitution qui réserve au Prince et à lui seul les nominations de tous les agents publics notamment les magistrats. Instauration de façon systématique et en toutes matières un avis conforme du futur Haut Conseil de la Magistrature conduirait à limiter les prérogatives du Souverain et pourrait être jugé non conforme à la Constitution.

Concernant les problèmes de transparence des candidats, aux postes de magistrats, proposés par la France, les Autorités monégasques souhaitent souligner qu'un texte de loi ne peut revoir les conditions de détachement de magistrats français

à Monaco, cette révision ne peut intervenir que par le biais d'une négociation bilatérale avec la France, au niveau diplomatique et gouvernemental, dans un cadre conventionnel.

En parallèle, les Autorités monégasques précisent que les éditions Lexisnexis, au-delà de la version papier, éditent des CD-Roms, qui contiennent tant la partie législative que la partie jurisprudence. En particulier, toutes les décisions du Tribunal Suprême sont publiées. Ce même CD-Rom, qui rassemble le contenu de sept juriscenseurs, donne une idée significative de la jurisprudence des Cours et Tribunaux de la Principauté.

Dans quelques semaines, comme cela a été mis en œuvre par le site Legimonaco pour ce qui concerne la partie « législation », le contenu de ces CD-Roms sur la jurisprudence sera mis en ligne.

De même, dans le cadre de l'informatisation du Palais de justice en cours, toutes les décisions sont « scannées » en vue d'être, à court terme, disponibles sur un site interne. Dans un premier temps, toutes les décisions depuis le mois de février 2008 seront accessibles, puis, petit à petit, les décisions antérieures.

Enfin, cet accès, pour l'instant réservé aux magistrats de Monaco, sera ouvert aux praticiens monégasques et, à moyen terme, mis en ligne sous certaines conditions. Cette dernière étape nécessite en effet un délai allongé en raison des difficultés d'anonymisation des décisions.

#### **4. sur les recours**

Il peut être constaté, qu'à ce jour, il n'existe pas de procédure permettant « la réouverture d'affaires déjà jugées en droit interne ayant fait l'objet d'une décision de violation par la Cour européenne des droits de l'Homme ».

Mais il peut être précisé que les Autorités monégasques travaillent actuellement sur ces possibilités de recours et que des projets de textes sont en préparation.

Ainsi, un avant projet de texte sur le réexamen, suite à un arrêt de la CEDH, d'une décision pénale devenue définitive a été finalisé au mois de juin 2008.

Les difficultés posées quant à l'exécution des décisions de justice sont liées, en premier lieu, en matière pénale, au phénomène de la criminalité de passage que connaît la Principauté. Ainsi, de nombreux individus sont jugés en leur absence. En second lieu, pour ce qui concerne la matière civile, lorsque les personnes ne résident plus en Principauté, il dépend des Autorités du pays où elles ont élu domicile d'apprécier l'exécution des décisions monégasques. Dès lors, les Autorités monégasques ne voient pas par quel procédé elles pourraient parvenir au résultat souhaité, mais elles sont prêtes à solliciter l'expertise de tout organe du Conseil de l'Europe pour mettre en place de telles procédures.

## **5. la Principauté poursuit ses efforts dans le domaine du droit social**

En effet, la proposition de loi relative à la lutte contre les violences domestiques adoptée par le Conseil National en avril 2008 est actuellement à l'étude au sein du Gouvernement. L'adoption d'un texte législatif permettra de doter la Principauté de Monaco d'un dispositif juridique spécifiquement consacré à la protection contre les violences domestiques.

Sur le plan social, les dispositifs d'aide aux victimes mis en place depuis janvier 2005 au sein de la Direction de l'Action Sanitaire et Sociale (DASS) et de la Direction de la Sûreté Publique et les mesures d'accompagnement des victimes qu'ils proposent, garantissent une réactivité dans la prise en charge des situations, notamment dans le cadre de l'urgence ainsi qu'une efficacité accrue.

Le Service Social de la DASS qui regroupe une équipe de travailleurs sociaux de formation différente (assistantes sociales, éducateurs spécialisés, médiatrice familiale) et une psychologue, assurant une permanence tous les jours ouvrables, effectue une prise en charge rapide des victimes en étant à même de mettre en œuvre les mesures d'accompagnement adaptées.

Ce Service dispose de logements réservés à l'urgence sociale permettant de mettre rapidement la victime et ses enfants en sécurité, à titre gratuit et le temps de trouver une solution à leur situation. En cas d'indisponibilité de ces logements, une alternative est proposée. Cet hébergement s'accompagne des aides financières appropriées à la situation.

Une assistante sociale et un éducateur spécialisé peuvent également aider la personne dans la recherche d'un emploi, en partenariat avec le Service de l'Emploi.

Enfin, le dispositif de médiation familiale établi en 2004, a été développé en 2008 avec le recrutement d'une personne à mi-temps au sein du lieu d'accueil parents-enfants. Celle-ci est actuellement en cours de formation de médiateur familial.

S'agissant des enfants, le Service Social apporte une protection et une assistance à l'enfant témoin de violence à l'égard de sa mère, par un personnel spécifiquement formé pour répondre à leurs besoins. Les services pour cet enfant sont gratuits. La violence dont l'enfant est témoin ayant les mêmes effets sur lui que s'il en était victime, des mesures de protection peuvent être nécessaires suivant la gravité de la situation telle que la mise en place d'une « mesure d'assistance éducative ». Ce type de mesure, ordonnée par la Justice (sur signalement de la Direction de l'Action Sanitaire et Sociale) s'impose aux parents et consiste à assurer un suivi de l'enfant dans sa famille.

Concernant l'amélioration des conditions de vie des personnes handicapées, les actions existant en matière d'emploi ont été développées récemment avec la mise en place de la convention de placement d'un travailleur handicapé sur un stage dans le milieu ordinaire de travail.

De plus, bien qu'aucun texte législatif ou réglementaire ne régit spécifiquement l'accès des personnes handicapées au travail, les actions concrètes sont nombreuses :

- un représentant de la fédération patronale monégasque siège à la Commission d'orientation et de reclassement professionnel (C.O.R.P.) afin de faire la liaison avec le personnel du service de l'emploi en charge des recherches d'emploi pour les personnes handicapées déclarées aptes au travail par la C.O.R.P. L'Etat participe à hauteur de 85 % du salaire versé par l'employeur. Toutes les demandes sont satisfaites.
- l'offre en milieu protégé est très complète avec l'atelier du Centre d'activité Princesse Stéphanie qui accueille les personnes handicapées dont la capacité de travail est au moins égale au tiers de la capacité normale et le Centre d'Aide par le travail Léo MAZON pour celles dont la capacité de travail est inférieure à ce seuil et le Foyer occupationnel pour les personnes handicapées reconnues inaptes au travail.

Ce dernier a fait l'objet d'une extension de sa structure ce qui a permis d'augmenter le nombre de places disponibles (25 en atelier protégé et 25 pour le foyer occupationnel).

Au niveau législatif, la Loi n° 1.348 du 25 juin 2008 relative au reclassement des salariés déclarés inaptes par le médecin du travail prévoit, dans des conditions définies, des aides financières de l'Etat aux employeurs qui aménageront l'organisation interne de leurs entreprises dans le but de reclasser un salarié.

En outre, un projet de loi cadre sur le handicap est actuellement en préparation et comportera des dispositions spécifiquement consacrées à l'emploi des personnes handicapées.

Par ailleurs, un service de transport et d'accompagnement à la demande des personnes à mobilité réduite a été mis en place à compter du mois de juillet 2008.

## **6. sur les spécificités monégasques**

La priorité d'emploi aux monégasques doit être considérée comme une discrimination positive à l'égard des nationaux qui représentent un faible pourcentage de la population salariée de la Principauté.

Elle n'apparaît donc pas avoir de conséquence négative sur la possibilité pour les étrangers résidant à Monaco d'accéder à un emploi ni même pour ceux habitant dans les communes limitrophes de Monaco qui bénéficient eux-mêmes d'une priorité d'embauche.

En effet, il n'entre nullement dans les intentions des pouvoirs publics monégasques d'édicter un statut général pour certains étrangers, en fonction de critères d'attachement à la Principauté difficiles à appréhender par le droit, parce que relevant avant tout de la subjectivité et susceptibles de donner lieu, de la part des résidents qui en seraient exclus, à de légitimes contestations quant à la constitutionnalité d'un tel dispositif. Il ne saurait pour autant être admis qu'existent à Monaco des sujets de seconde zone; il n'y a que des Monégasques et des étrangers.



Ce principe classique n'exclut pas bien entendu que certains domaines spécifiques, l'embauche par exemple, fassent l'objet d'un traitement différencié entre sujets de droit mais sur la base de critères objectifs clairs: nationalité et lieu de résidence en l'occurrence .

De plus, la proposition de créer un « conseil des étrangers élus régulièrement par la population étrangère résident à Monaco » est schématiquement difficile à mettre en place pour la Principauté qui souffrirait d'un déficit démocratique dès lors que les résidents, qui constitue la majorité de la population, ne disposeraient pas de droits politiques.

Par ailleurs, ces suggestions tendent à remettre en cause l'ordonnancement politique de la Principauté.

#### **7. Amélioration des dispositions pénales.**

Les Autorités monégasques relèvent que la suppression des dispositions obsolètes telles que celles relatives à l'adultère et au bannissement a été étudiée par la Commission de Révision des Codes dont l'avis est sans équivoque sur ces points.

Le nouveau règlement intérieur de la Maison d'arrêt contiendra des dispositions sur l'interdiction de pointer les objectifs des caméras de vidéosurveillance sur des espaces privés.

De plus, le Gouvernement Princier a déposé le projet de loi intitulé « sécurité publique » dont le 1<sup>er</sup> chapitre est consacré à la vidéosurveillance. Ce projet de loi est en cours d'examen pour le Conseil d'Etat.

S'agissant de l'extension de l'accès au téléphone aux prévenus, la Direction des Services Judiciaires a engagé des consultations avec les magistrats concernés et la Direction de la Maison d'arrêt.

Les Autorités monégasques se félicitent de la reconnaissance de la conformité à l'article 7 de la Convention européenne des droits de l'homme du dispositif permettant au Prince Souverain d'édicter les sanctions pénales par Ordonnance à l'effet d'assurer l'exécution d'engagements internationaux de la Principauté. Le Gouvernement a par ailleurs bien pris note de ce que le Commissaire « considère qu'il pourrait être opportun » de recourir systématiquement à la loi en la matière, ce qui correspond à la pratique en principe suivie à Monaco, l'Ordonnance Souveraine demeurant une exception très circonscrite et dont les avantages pratiques au regard des objectifs poursuivis sont établis.