



**International Covenant  
on Civil and Political Rights**

Distr.  
GENERAL

CCPR/C/MCO/2  
19 September 2007

ENGLISH  
Original: FRENCH

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT**

**Second periodic report**

**PRINCIPALITY OF MONACO \* \* \* \* \***

[4 March 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* The annexes may be consulted in the files of the Secretariat.

\*\*\* For the initial report submitted by the Government of Monaco, see CCPR/C/MCO/99/1; for the Committee's consideration of that report, see CCPR/C/SR.1935 and SR.1936, and see CCPR/CO/72/MCO for the Committee's concluding observations.

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## INTRODUCTION

1. The Principality of Monaco signed the International Covenant on Civil and Political Rights on 26 June 1997, and ratified it on 28 August 1997. The Covenant entered into force in relation to Monaco on 28 November 1997. Monaco sent its initial report to the Human Rights Committee, which considered the report at its seventy-second session, on 13 July 2001.
2. On 24 July 2001, at its 1949th meeting, the Committee adopted its concluding observations which appear in the document issued under reference number CCPR/CO/72/MCO.
3. Among the positive aspects, the Committee noted that the death penalty had long since been abolished in Monaco. The Committee also welcomed the State party's ratification, in 2000, of the second Optional Protocol to the Covenant aiming at the abolition of the death penalty.
4. With a view to improving the arrangements for implementing the Covenant in the Principality, the Committee made a number of recommendations, which appear in paragraphs 4 to 23 of its concluding observations.
5. The Human Rights Committee sent the Principality comments based on its consideration of the initial report, and the Principality responded to those comments in February 2003 (CCPR/CO/72/MCO/Add.1).
6. Part One of this report seeks to provide additional information concerning the legal framework and general political structure of the Principality to supplement the information already provided in the initial report. Part Two is designed to bring to the attention of the members of the Committee the decisions and measures which the Monegasque authorities have taken, particularly in the light of the above-mentioned recommendations.

## PART ONE

### I. LAND AND PEOPLE

For information on the situation, the land area and the language, we would refer the Committee to the initial report.

7. The Principality has a population of 32 020, which is made up of 122 nationalities, including 7,845 Monegasques, 10, 229 French nationals and 6,410 Italian nationals (according to the most recent official census of 2005).
8. On the basis of the monetary relationship that exists between the Principality of Monaco and the French Republic – which was established by sovereign ordinance of 4 January 1925, amended on 17 July 1928 – pursuant to which the coinage and bank notes of the French state are legal tender in the territory of the Principality of Monaco, with the same status as the national currency, the Princely Government introduced the euro to Monaco as of 1 January 1999, on the same timescale as the French, and adopted the domestic legal instruments needed for that purpose:
  - Ministerial Order No 98-632 of 31 December 1998 on the introduction of the euro;
  - Law No 1.211 of 28 December 1998 on various provisions concerning the introduction of the euro;

- Sovereign Ordinance No 13.827 of 15 December 1998 on the introduction of the euro;
- Sovereign Ordinance No 15.191 of 17 January 2002 authorizing the issue and introduction of coins with a value of € 0.01 – € 0.02 – € 0.05 – € 0.10 – € 0.20 – € 0.50 – € 1 and € 2;
- Sovereign Ordinance No 13.845 of 6 January 1999 implementing the provisions of Section III of Law No 1.211 of 28 December 1998 on the introduction of the euro;
- Sovereign Ordinance No 15.256 of 15 February 2002 removing from legal tender coins and bank notes denominated in francs;
- Sovereign Ordinance No 13.916 of 1 March 1999 putting into effect the provisions of the Franco-Monegasque Exchange of Letters concerning the introduction of the euro to Monaco;
- Sovereign Ordinance No 14.984 of 3 August 2001 converting into euros sums expressed in francs in certain sovereign ordinances in implementation of international treaties;
- Sovereign Ordinance No 15.116 of 23 November 2001 converting into euros sums expressed in francs in certain sovereign ordinances adopted in implementation of international treaties.

## **II. GENERAL POLITICAL STRUCTURE**

9. According to the Constitution of 17 December 1962, amended by Law No 1.249 of 2 April 2002, the Principality is a sovereign State “within the framework of the general principles of international law and special agreements with France”.

10. It establishes the principle of an hereditary and constitutional monarchy. Executive authority, which derives from the high authority of the Prince, is exercised by the Minister of State, assisted by a Government Council composed of five councillors.

11. The National Council (parliament), made up of 24 members elected by the people of Monaco, adopts laws. In that context, the Government has an annual opportunity to explain and clarify its policy in the course of a parliamentary debate on the budget law.

12. Monaco also has an elected Communal Council which is responsible for matters pertaining to the City of Monaco itself (see, in particular, articles 16 and 17 of Law No 1.316 of 29 June 2006 amending Law No 959 of 24 July 1974 on the organization of the commune and Law No 841 of 1 March 1968 on budget legislation).

13. The 1962 Constitution, amended by Law No 1.249 of 2 April 2002, enshrines the principle of the independence of the judiciary and accords a specialized court, the Supreme Court, the power to review the legality of administrative acts.

### III. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

14. The Constitution of 17 December 1962 includes a Title X, entitled “Justice” which establishes the principles underpinning the organization of the judiciary.
15. Among other things, the provisions of Title X of the Constitution establish the principle of delegated justice, pursuant to which judicial authority is vested in the Prince who delegates the full exercise of that authority to the courts. The latter deliver justice in the name of the Prince (article 88). That delegation of judicial authority is consistent with another fundamental principle of all constitutional states, namely the separation of administrative, legislative and judicial responsibilities, which is also laid down in the Constitution (article 6).
16. The combined application of those constitutional provisions means that the judiciary is entirely independent of the executive, in regard to both judicial decisions and procedures and the administration of justice.
17. That being so, the Princely Government does not include a Councillor for Justice. The administration of the judiciary is, in fact, provided by an independent directorate, the Directorate of Judicial Services (*Direction des Services judiciaires*).
18. Within his area of responsibility, the head of that directorate, the Director of Judicial Services (*Directeur des Services judiciaires*), enjoys powers similar, in nature and scope, to those devolved upon the Minister of State for the general administration of the country. Like the Minister of State, the Director of Judicial Services is answerable to the Prince alone.
19. The Constitution also guarantees the principle of the independence of judges (article 88). That provision relates more particularly to judges sitting on the bench, that is to say those called upon – by collegiate or individual decision – to resolve disputes which are submitted to them by the parties, in the conditions laid down by the law.
20. In accordance with that principle, judges may not be removed from their posts, that is to say that they may not be dismissed, suspended or transferred, in conditions identical to those which apply to public servants.
21. In order to guarantee the independent administration of justice, the Constitution lays down that the organization, jurisdiction and operation of the courts, as well as the status of judges are to be determined by law (article 88). Consequently, they cannot be determined by the regulatory authority, except in accordance with the law, and that provides an important guarantee.
22. In judicial matters, the only prerogatives which the Prince enjoys are the powers to grant a pardon or amnesty (article 15 of the Constitution).
23. Judges in the Office of the Principal State Counsel (*parquet général*) are part of a hierarchical structure headed by the Principal State Counsel and are not appointed for life; nor are substitute judges. The office of substitute judge is the first level in Monaco’s judicial hierarchy.
24. Monegasque law generally is largely based on French law – the result of the close and long-standing special relationship between the two countries.

25. From 1793 to 1816, for example, the French codes promulgated under the First Empire were applied to Monaco. In certain areas, to compensate for the fact that the French legislation was ill-adapted to the Principality's distinctive features, codes specific to Monaco were subsequently promulgated: the Commercial Code of 5 November 1866, for instance, the Criminal Code of 19 December 1874 and the Civil Code of 21 December 1880. Subsequently, Prince Albert 1<sup>st</sup> decided to entrust to Baron de Rolland, a French judge, the task of drafting two new codes, the Code of Civil Procedure and the Code of Criminal Procedure, which were promulgated in 1896 and 1904 respectively.

26. Until the early 1960s, those five codes constituted the core of Monegasque positive law.

27. On 26 May 1954, the Sovereign Prince ordered that a Commission be set up to update the codes, with a specific mandate to propose the necessary amendments to Monegasque legislation to adjust it in line with the new needs of individuals and modern standards. That body was presided over from the outset by the Director of Judicial Services – who is also President of the Council of State (*Conseil d'Etat*) – and was originally made up of four councillors at the Court of Revision (*Cour de Révision*). The Commission's work resulted in the promulgation, in 1963, of a new Code of Criminal Procedure and, in 1967, the promulgation of a Criminal Code. Membership of the Commission has now been extended to include professors of law, judges from other Monegasque courts, a member of the Bar and two representatives of the National Council (as well as a member of the Government).

28. To this day, and despite the fact that Monegasque law has drawn heavily on French law, many of the distinctive features of Monegasque law are quite noteworthy, in very varied fields: family law, the law on nationality, company law, collective proceedings for the reorganization of creditors, criminal law, criminal procedure, administrative law and so on.

29. The responsibilities devolved upon the Office of the Principal State Counsel (*Ministère public*), which relate to the application of the law, as well as the preservation and defence of the higher-ranking interests of society, are carried out by a single body of judges within that office.

30. Individuals may be represented by defence attorneys (*avocats-défenseurs*) or lawyers at the Monegasque Bar. They may also be represented by foreign lawyers authorized to appear by the president of the relevant court and assisted on matters of form and procedure, save for certain exceptions in criminal cases, by a Monegasque colleague.

31. In other respects, Monaco's judicial organization and procedure is based on the following principles:

- the courts are collegiate in nature;
- there is a right to appeal to a higher court;
- it is possible to appeal to have a judgment set aside;
- in criminal matters, prosecution and judgment are separate functions.

32. The very few exceptions to those principles will be described below.

33. An investigating judge is given the task of investigating serious crimes (*crimes*) and some more serious offences (*délits*).



34. Cases involving minor offences are dealt with by the Justice of the Peace sitting in the Police Court; cases involving more serious offences, by the Court of First Instance, sitting as a criminal court; and serious crimes and for serious offences, by the criminal court, that is to say a court in which, like the French assize courts, persons randomly selected take part in the decision-making process. The organization of the courts, as described above, is largely based on the French model. It is, however, worth drawing attention to certain distinctive features.

35. Firstly, in relation to commercial disputes, it should be noted that Monaco has no commercial court combining career judges and commercial judges nominated by their peers. Commercial law, in particular as provided for under the Commercial Code, is applied by the ordinary courts.

36. Secondly, as regards administrative proceedings, jurisdiction does not fall to a particular court, as in France. In the Principality, jurisdiction is allocated differently: the Supreme Court hears disputes concerning the misuse of powers, that is to say the annulment of administrative acts on grounds of illegality, while the ordinary courts hear cases concerning full jurisdiction proceedings (public authority liability, administrative contracts, fiscal matters and so on). It should be noted that, in those fields, the ordinary courts (Court of First Instance and Court of Appeal, in particular) apply rules similar to those established by the French administrative courts.

37. Thirdly, as regards constitutional cases, it should be emphasized that the Supreme Court, seised of a matter by any natural person or legal entity, whether Monegasque or foreign and able to justify an interest, may annul a legislative or regulatory text on the ground that it is in breach of rights and freedoms guaranteed under the Constitution. The fact that individuals have direct access to the constitutional court in this way is a distinguishing feature of the Principality.

#### **A. Status of the International Covenant on Civil and Political Rights in domestic law**

38. The Principality of Monaco recognizes the principle of the hierarchy of laws: a vital guarantee of the Constitution which the Sovereign Prince, who is the source thereof, freely grants his subjects. The Constitution is the supreme law, and the Sovereign Prince the guardian and arbiter of both the Constitution and all other laws of constitutional value, that is to say the special agreements with France, the general principles of international law pertaining to the sovereignty and independence of States, and, in addition, the Statutes of the Sovereign Family. International treaties and agreements duly signed and ratified by the Prince rank higher than the laws.

39. In Monegasque law, international conventions, which have been duly incorporated into the legal order, fit into the hierarchy of laws below the Constitution but above the law, whether that law predates (Court of Appeal, 12 March 1974, *Société monégasque du gaz* and *Société monégasque de l'électricité v Caisse de compensation des services sociaux*, *Recueil des décisions des juridictions de l'ordre judiciaire* [court reports]) or postdates them (*Cour de révision*, 21 April 1980, *Dame Maier, veuve Naneau Smyth v Dame Quere, veuve Priol*, *Recueil des décisions des juridictions de l'ordre judiciaire*). Where their provisions are directly applicable (self-executing), the Monegasque courts apply them directly, if necessary.

40. The majority of international treaties to which the Principality is a party have been specifically incorporated into domestic law by a sovereign ordinance. The effect of that formal process is to confer on the provisions of an agreement or treaty the character of a rule of domestic

law, provided that the Principality has adopted the legislative measures necessary for their application. This reflects the dualist nature of Monaco's legal system.

41. Once duly incorporated into domestic law, an agreement or treaty produces the effects that normally attach to the primacy that international law enjoys over domestic law. However, the possibility of relying on the agreement in relation to third parties is absolutely dependent on its having been published. In point of fact, a sovereign ordinance may not be cited in relation to third parties until the day after its publication in Monaco's Official Journal (Constitution: art. 69).

42. In international law, the Covenant is generally recognized as a directly applicable treaty.

43. Monaco's courts have cited the Covenant on a number of occasions, see *inter alia*:

- Court of Appeal, sitting in chambers, taking of evidence, 24 June 2004 concerning the application of article 9, paragraph 3, of the Covenant;
- Court of Revision, 5 October 2004, *Société Arts et couleurs v Banque populaire de la Côte d'Azur* – citation of article 14 of the Covenant;
- Court of Appeal, 11 November 2005, *Farrell v Karlsson* – citation of article 14, paragraph 2, of the Covenant;
- Court of Revision, 9 June 2005, *Palmaro v la Société des Bains de mer et le cercle des étrangers* – citation of article 7 of the Covenant;
- Court of Revision, 13 October 2006, *Lipsky v Ministère public* – citation of article 14, paragraphs 1 and 7, of the Covenant;
- Court of Revision, 25 January 2006, *Dame Tomi, épouse Mondoloni v Ministère public* – citation of article 14, paragraphs 2 and 3 of the Covenant.

## **B. Monaco's judicial and administrative authorities**

### **1. The Supreme Court**

44. Monaco's Supreme Court was set up under the Constitution of 5 January 1911 and holds an important position from an historical perspective. On the basis of that Constitution, granted by Sovereign Prince Albert 1<sup>st</sup> and drawn up by renowned French jurists and internationalists (Louis Renault, André Weiss, Jules Roche), the Principality became a genuine constitutional monarchy.

45. It was founded on democratic principles concerning the organization of the public authorities (an elected parliament and a government, a municipality and a system of independent courts), and Title II of the Constitution establishes fundamental rights and freedoms.

46. To protect and guarantee those rights and freedoms, the Constitution also established a higher court, the Supreme Court, which is regarded as the oldest constitutional court in the world.

47. More specifically, Title II of the Constitution, entitled "Rights under public law" included an article 14 worded as follows: "A Supreme Court shall be established to rule on actions concerning an infringement of the rights and freedoms established under this Title".

48. According to article 58, the Supreme Court was composed of five members appointed by the Prince and nominated by the Council of State (one seat), by the National Council, that is to

say Monaco's parliament (one seat), the Court of Appeal (two seats) and the civil Court of First Instance (one seat).

49. The rules concerning the organization and procedure of the Supreme Court were laid down by an order of 21 April 1911. Article 1 of that order provided that the Court "shall rule, in sovereign capacity, on appeals concerning infringements of rights and freedoms enshrined by Title II of the constitutional law, which do not fall within the jurisdiction of the ordinary courts". An appeal was to be lodged within two months "of the date of the event which gave rise to it or of the date on which the party concerned gained knowledge of it".

50. As a consequence of the First World War, the Supreme Court was not actually set up until 1919. It handed down its first judgment on 3 April 1925.

51. Adopted in 1962, Monaco's new Constitution confirms the existence of fundamental rights and freedoms, and, in addition to the traditional rights enshrined in 1911 (individual freedom and security, legal definition of serious crimes, serious offences and penalties, the right to respect for private and family life and the confidentiality of correspondence, property rights and the abolition of the death penalty), it includes economic and social rights, including the freedom of association (art. 30), the right to engage in trade union activity (art. 28), freedom of employment (art. 25) and the right to strike (art. 28).

52. As the logical corollary, article 30 of the Constitution (see below) then confirms the establishment of the Supreme Court. More detailed rules concerning its organization and procedure were laid down by Sovereign Ordinance No 2.984 of 16 April 1963.

53. The 1911 Constitution had been preceded by an initial Constitution of 25 February 1848, which had remained a dead letter for historical reasons (the revolution of 1848, the year in which Menton and Roquebrune declared themselves independent republics). Drawing on liberal and democratic values, and surprisingly extraordinarily modern for its time, it set out fundamental rights and established a parliament with the power to pass laws, adopt the budget and introduce all forms of taxation.

a) *Composition*

54. The Supreme Court is made up of five full members and two substitute members who are appointed by the Prince, for a period of four years, on a proposal from the National Council, the Council of State, the Crown Council (*Conseil de la Couronne*), the Court of Appeal and the Civil Court of First Instance. Each of those institutions proposes a full member; only the National Council and the Council of State also propose a substitute member also. Two names must be put forward for each seat on the Supreme Court, in the case of both full and substitute members.

55. In practice, the names are proposed to the Director of Judicial Services, who forwards them to the Prince. Under article 89 of the Constitution, the Prince may reject the nominations and ask for new nominations.

56. Members of the Supreme Court are appointed by sovereign ordinance, as is the president of the court, from among its members, and a vice-president who deputizes for the president if the latter is absent or otherwise prevented from being present.

57. According to article 2 of the above-mentioned Sovereign Ordinance No 2.984 of 16 April 1963, members of the Supreme Court must be at least 40 years of age and “be selected from among particularly highly qualified jurists”. In practice, the individuals concerned are either eminent professors of public law, or senior French judges from the *Conseil d’État* or Court of Cassation.

b) *Jurisdiction*

58. The Supreme Court has jurisdiction in both administrative and constitutional matters, and that jurisdiction is laid down by article 90 of the Constitution.

59. In constitutional matters, the Supreme Court decides on applications for annulment, for an assessment of validity and for damages concerning an infringement of constitutional rights and freedoms, principally resulting from the law, that is to say the legislation that gives expression, in the words of article 66 of the Constitution, to the agreement between the Prince and the National Council.

60. In that connection, it is worth highlighting two distinctive features of Monegasque public law.

61. As regards, firstly, actions for damages, the Constitution established this very specific remedy before the Supreme Court, as an exception to the rule whereby, pursuant to Law No 783 of 15 July 1965 on the organization of the judiciary, actions for damages directed against public bodies fall within the jurisdiction of the ordinary courts, if the action concerns compensation for harm resulting from a law which the court has declared to be unconstitutional (as in the case of illegal administrative acts, moreover).

62. It should further be pointed out that though article 90-A-2 employs the expression “applications for annulment (...) concerning an infringement of constitutional rights and freedoms”, it is not necessary that a law or legal instrument should be at issue. It is sufficient that the infringement is the result of a physical act by a public authority, that is to say patently unlawful conduct. Consequently, in Monaco, blatantly unlawful conduct falls within the jurisdiction not of the ordinary courts but of the constitutional court.

63. Secondly, applications for an assessment of validity enable individuals to invoke the unconstitutionality of the law.

64. Finally, it should be pointed out that the Supreme Court also has jurisdiction to determine, where necessary, the constitutionality and/or legality of the rules of procedure of the National Council, decisions on that subject having been taken in the period following the 1962 Constitution.

65. In administrative matters, the Supreme Court is competent to decide on applications seeking the annulment, on the grounds of misuse of authority, of decisions of the various administrative authorities and sovereign ordinances enacted to implement laws, as well as on the award of compensation in such cases. In practice, most of the Supreme Court’s decisions are handed down in response to applications of this kind.

66. The Supreme Court also has jurisdiction to hear:

- appeals on points of law concerning decisions of the administrative courts ruling at final instance;
- applications concerning the interpretation or assessment of the validity of decisions of the various administrative authorities and sovereign ordinances enacted to implement laws;
- disputes concerning jurisdiction.

c) *Procedure*

67. Sovereign Ordinance No 2.984 of 16 April 1963 lays down the rules of procedure before the Supreme Court. Those rules are similar to the rules in force before the French administrative courts. The main thrust of those rules may be summarized as follows.

i) *Initiating proceedings*

68. A case may be referred to the Supreme Court by any natural person or legal entity who has the capacity and is able to demonstrate an interest in taking part in legal proceedings, in both administrative and constitutional matters.

69. Thus, in particular, any law may be annulled, on the ground that it is unconstitutional, at the initiative of an individual – whether a Monegasque or foreign natural person or legal entity. That is a special feature which is particularly worth stressing, since individuals are rarely able, in constitutional states, to have direct access to the constitutional courts, by way of an action or preliminary objection.

70. The time-limit for recourse to the courts, in both constitutional and administrative matters, is two months as of either the completion of the legal requirements concerning publicity (notification, service or publication of the legal instrument that has been referred), or of the date on which the person concerned learnt of the event on which the action is based.

71. As regards appeals for an assessment of validity and for interpretation on referral, they too must be made within two months of the date on which the decision of the ordinary court became final.

72. In administrative matters, appeals concerning the misuse of authority may be preceded by a preliminary administrative appeal, either to the author of the decision – known as an automatic right of appeal – or to that person's superior, known as a hierarchical appeal. That preliminary measure must be completed within the above-mentioned time-limit. If the appeal is rejected, or the competent authority has failed to respond within four months, the applicant has a fresh period of two months in which to refer the matter to the Supreme Court.

73. The grounds for bringing an appeal for misuse of authority are:

- a) Defects in external legality: lack of jurisdiction, procedural defect;
- b) Defects in internal legality: breach of the law, illegality of the reasons, misuse of power.

74. Actions before the Supreme Court do not have suspensory effect, but may be accompanied by a request to defer implementation of the contested act, with that request being subject to the same conditions, particular as regards the time-limit.

75. A summary application may also be made to the president of the Supreme Court requesting that he take all appropriate measures without prejudice to the merits. The application to the Supreme Court must be signed by a defence attorney registered at the Bar of the Principality. It may, however, be drawn up by a foreign lawyer, with the assistance of a Monegasque colleague to complete the procedural formalities.

76. The application must be lodged at the general registry in return for a receipt. Appeals to a court that lacks jurisdiction are subject to the same time-limits as appeals to the administrative courts.

ii) Conduct of the proceedings

77. The administration has two months in which to submit a defence, to which the applicant must respond by way of a reply, followed, where appropriate, by a rejoinder from the administration.

78. The reply and rejoinder must be submitted within a period of one month. Unless otherwise authorized by the president of the court, the exchanges of written submissions are limited to those four documents, and this does influence on the time taken to hand down judgment – six months on average.

79. The president of the court appoints a rapporteur for each case. Once the exchange of written submissions is complete, the president closes the procedure and sets the date for the hearing. The applicant may discontinue proceedings or the action, either in the course of proceedings or at the hearing. A decision on this is taken either by order of the president in the former case or by the court in the latter.

iii) The hearing

80. The court sits in Monaco's *Palais de Justice* (law courts). Its hearings are held in public. In constitutional matters, the Supreme Court is required to sit in plenary.

81. Hearings of the Supreme Court are serviced by one of the Principality's court bailiffs; registry services are provided by the registrar.

82. The Principal State Counsel acts as public prosecutor at the Supreme Court; he makes oral submissions at the hearing. After the parties have been heard, the president gives the floor to the rapporteur, who summarizes the facts, pleas and claims, without stating an opinion. Although the procedure is in writing, the lawyers usually submit oral argument. Once the hearing has ended, the members of the Supreme Court retire to deliberate in chambers.

iv) The decision

83. The decision must be read at a public hearing by a member of the court within a fortnight of the hearing itself; it is generally read on the day after the hearing. It must include a number of compulsory elements and contain a statement of the reasons.

84. Where the court has been seised of an action for damages based on the unconstitutionality of a law or the illegality of an administrative act, it must, if it annuls that act, give a decision on damages in that same ruling.

85. The Court may also issue a provisional decision ordering all appropriate investigative measures. Decisions of the Supreme Court are addressed to the Minister of State by the president of the Court and are published in Monaco's Official Journal. They may be subject to appeal by a third party. That appeal is admissible only if it has come from a person whose rights have been infringed, except in the case of individuals summoned to intervene by the president during the proceedings. No other appeal is permitted, except to rectify a clerical error.

d) *Review of acts*

86. In constitutional matters, it may be stressed that, based on the wording of article 14 of the 1911 Constitution which cites, as the subject-matter of appeals, "infringements of the rights and freedoms established by Title III of the Constitution", the Supreme Court has relatively extensive powers to review constitutionality.

87. Similarly, in a decision of 1 February 1994, handed down in that same field, the Supreme Court refers to the "constitutional principle of the equality of all in relation to the discharge of public burdens". Georges Vedel has commented on that decision, pointing out that while the principle of equality before the law actually appears in article 17 of Monaco's Constitution, the principle of equality in relation to public burdens, even though derived from it, is a judicial creation of the Supreme Court.

88. In administrative matters, the Court assesses the legality of decisions referred to it on the basis of principles and applying techniques comparable to those employed by the French courts. That applies, in particular, to cases involving a review of the exercise of discretionary administrative power, where, for example, the Supreme Court has no hesitation in citing clear error.

89. However, its decisions may differ from those of the French administrative courts, in relation, for example, to a change in jurisdiction linked to urgency.

## **2. The Court of Revision**

90. The Court of Revision is at the top of Monaco's judicial pyramid. Save where the law provides otherwise, it decides on all matters concerning breaches of the law, on appeals on points of law against any decision that has been handed down at last instance and become final.

91. Except where it has quashed a judgment in civil or commercial matters and remitted the case to itself, in response to new claims by the parties, it does not constitute a third level of jurisdiction but a court adjudicating on matters of law alone.

92. Consequently, it is unable to rectify the decisions referred to it, whatever the subject-matter, as regards the terms of those decisions, as they relate to the facts and the accuracy of the facts.

93. Indeed, according to article 448 of the Civil Code, "[t]he facts duly established by the decision which has been appealed, may not be called into question".

94. In practice, most of the decisions which are referred to it are judgments handed down by the Court of Appeal in civil, criminal, commercial and administrative cases, but there are also a significant number of judgments from the Court of First Instance sitting as a court of appeal from the Labour Court or the Justice of the Peace.

95. The Court of Revision is made up of eight judges: a president, a deputy-president and five judges called upon to sit in the order in which they were appointed. The members of the Court of Revision are appointed by sovereign ordinance. In principle, they are selected from among the emeritus judges of the French Court of Cassation. The Court always gives rulings when at least three of its members are present.

a) *Revision in civil and commercial matters*

96. The time-limit for lodging an appeal with the Court of Revision is, in principle, 30 days as of notification of the decision referred. That time-limit applies to parties residing in Monaco and most European countries, including France and Italy. It is extended to 60 days for persons residing in North America, and 90 days for all other countries.

97. The appeal is lodged in the form of a declaration at the general registry, which is entered in an *ad hoc* register. During the next 30 days, the appellant must notify the declaration to the other party, accompanied by a petition signed by a defence attorney and setting out the arguments. As in the case of the other courts, that legal requirement (articles 445 and 456 of the Code of Civil Procedure) does not prevent the parties from being represented by lawyers from foreign Bars, who are admitted to the Monegasque Bar by authorization of the president. They provide advice and representation, while the Monegasque defence attorney deals with procedural issues exclusively. Article 459 of the Code of Civil Procedure lists the categories of appeal that are deemed to be urgent.

98. At the hearing, a judge from the court, whom the president has appointed as rapporteur, reads out his report. Thereafter, where appropriate, the lawyers present oral argument, followed by the public prosecutor. The case is then the subject of deliberation, with judgment having to be handed down within 30 days of the conclusion of the hearing.

99. It is open to the Court to consider without a hearing, that is to say in an exclusively written procedure, those appeals deemed to be urgent. In such cases, the procedure must be closed and a decision handed down within 45 days. The Court may also be seised of an appeal in the interest of the law. This is an application for the re-opening of proceedings, which is lodged, even though the time-limit may have expired, by the State Counsel at the instigation of the Director of Judicial Services.

100. In its judgments, of the Court of Revision may reject appeals, annul the decisions referred to it and/or remit the case to a subsequent hearing for re-consideration of the merits, after the parties have made additional pleadings.

101. It should be noted that while the Supreme Court hears administrative cases involving the misuse of authority and the damages consequent thereupon, it is the ordinary courts, including the Court of Revision, which deal with the remaining litigation concerning the liability of the State and authorities; consequently, the latter do not enjoy any exemption from jurisdiction.



b) *Revision in criminal matters*

102. In criminal matters, the Court of Revision may be seised of judgments or decisions that have been handed down by the criminal or police courts, at last instance, and are definitive in relation to the merits, in cases concerning a breach of the law or the rules of jurisdiction, or a failure to observe essential procedural requirements.

103. Those requirements encompass the constituent elements of jurisdiction or the decision and the rules set in place to guarantee criminal prosecution and the right to a fair hearing.

104. The time-limit for lodging an appeal is five days from the time when the decision that has been referred was handed down or notified, as appropriate.

105. The procedural requirements are the same as in civil matters, except that the time-limit for filing a petition is 15 (instead of 30) days from the time the appeal is registered.

106. The Court considers the appeals in documentary form only and hands down judgment within 45 days of receipt of the case-file by the president.

107. Any judgment given on the referral may be contested – like the earlier decision and relying on all grounds of challenge other than those excluded by the Court of Revision’s judgment. If the new appeal cites the grounds of challenge which the latter judgment has excluded, the Court of Revision annuls the contested judgment on grounds of illegality and rules on the merits as swiftly as possible.

108. In those circumstances, the Court of Revision neither quashes nor remits the decision referred to it, but simply declares it annulled. As in civil matters, the Court of Revision may also be seised of appeals to re-open proceedings in the interest of the law. It also decides on applications for the resumption of proceedings where a court has made a factual error.

109. Since Law No 1.327 of 22 December 2006 (published in Monaco’s Official Journal on 29 December 2006) was adopted, the Court of Revision has been able, once it has quashed a judgment, to rule on the merits of a case (new article 496 of the Code of Criminal Procedure). Consequently, where it quashes a judgment in a criminal case, the Court of Revision may now refer the case to itself for a judgment on the merits, which it must hand down in different formation.

c) *The Court of Revision – a disciplinary court*

110. The Court of Revision plays a central role in disciplinary proceedings brought against judges, as provided for by Title IV of Law No 783 of 15 July 1965 on the organization of the judiciary.

111. In fact, while the Director of Judicial Services may impose the less serious sanctions (call to order and reprimand), only the Court of Revision sitting in chambers may impose the penalties of censure, censure with reprimand and temporary suspension (for between two weeks and six months).

112. Disciplinary proceedings are adversarial in nature. The Office of the Principal State Counsel acts as public prosecutor. The Court’s disciplinary decision contains a statement of the

reasons, is signed by all the judges who took part in the decision and then entered in a special register which is kept in the general registry. Depending on the circumstances and the seriousness of the case, the Court may ask the Prince to remove the judge in question from office.

113. It should be noted that a draft law on the status of the judiciary, which the Government deposited with the National Council, in May 2004, provides for the establishment of a High Council of the Judiciary which will have jurisdiction in disciplinary matters.

114. As a result of its case-law, which is very widely published and sometimes commented upon, the Court of Revision makes a significant contribution to the development of Monegasque law, as well as exerting an influence through the Association of High Courts using the French language (*association des hautes cours de cassation ayant en partage l'usage du français* – A.H.J.U.C.A.F.) of which the Court of Revision is a member, and the Association of Constitutional Courts using the French language (*Association des cours constitutionnelles ayant en partage l'usage du français* – A.C.C.P.U.F.). That association was set up in 1997 to strengthen the links between member states of the French-speaking area. A meeting-place and forum for discussion between its member institutions, the A.C.C.P.U.F. endeavours to publish and create instruments of comparative law that can be used directly, such as, for instance, the CODICES database which records the principal court decisions on constitutional matters, following the signing of agreements with the Council of Europe's Venice Commission. That database facilitates improved dissemination of constitutional case-law in the French language and enables courts to access the decisions of their opposite numbers.

115. The quality of the judges that compose it and the powers conferred upon it under the law, including responsibility for disciplining judges, mean that, as far as the public is concerned, it provides a genuine guarantee that both the letter and the spirit of the law will be respected.

### **3. The Court of Appeal**

116. The Court of Appeal hears appeals in civil, criminal, commercial and administrative matters. It is made up of a president, a vice-president and at least two judges.

117. In all matters, it hands down rulings when at least three members are present. Where it cannot be formed of its own members, it may be completed by a judge from a court which did not hear the case at first instance, by the Justice of the Peace or, failing that, by the defence attorney or most senior lawyer at the Bar, or by a solicitor.

#### *a) Appeals in civil, commercial or administrative matters*

118. The Court of Appeal hears appeals against judgments handed down by the Court of First Instance. The time-limit for lodging an appeal is 30 days as of the notification of the judgment, unless otherwise stipulated by law. It takes the form of a writ, that is to say process served by a court bailiff. The appeal suspends enforcement of the judgment, unless provisional enforcement has been declared. However, provisional enforcement may be revoked by prior order of the Court if the Court of First Instance declared the judgment provisionally enforceable in a case in which provisional enforcement is not authorized.

119. Appellants and respondents may only enter an appearance through defence attorneys registered on the roll of Monegasque lawyers, although that does not, of course, prevent them from asking foreign lawyers to advise them and plead on their behalf.

120. Sitting in chambers, the Court may consider decisions of the Court of First Instance which have also been taken in accordance with that procedure, as well as appeals against orders of the president of the Court of First Instance, handed down on request, and those of the Juvenile Court.

121. It also hears appeals against decisions of the Arbitration Commission and the Arbitration Commission on Commercial Leases.

122. When the Court of First Instance is sitting in chambers, it sits as a bench, like the Court of Appeal, and hearings are not public.

123. Article 849 of the Code of Civil Procedure lays down those cases in which the Court of First Instance, sitting in chambers, has jurisdiction, chiefly in proceedings concerning family matters, property or civil status and in all other cases in which uncodified legislation accords it jurisdiction.

124. Article 850 lays down the procedure to be followed in chambers, depending on whether or not the proceedings are contentious.

b) *Appeal in criminal matters*

125. Convicted persons, persons recognized as having incurred third party liability, the Principal State Counsel and parties claiming damages may appeal judgments of the Criminal Court within 10 days of the judgment in question having been handed down or, where appropriate, notified. To be valid, the appeal must take the form of a declaration received at the general registry and recorded in the register of appeals.

126. The appeal is decided on the basis of the report of a judge and in the forms laid down for the Criminal Court, in relation to both the preparation for the hearing, the taking of evidence and the pronouncement and drafting of the judgment (article 413 of the Code of Criminal Procedure).

127. The Court of Appeal can only decide on the points for decision which have been referred to it. At the request of the Office of the State Counsel, it can confirm the judgment or set it aside, in whole or in part.

128. However, the Court of Appeal cannot increase the penalty imposed upon the appellant, if the latter is the accused or has incurred third party liability. Similarly, where an appeal is lodged by the party claiming damages only, the Court of Appeal may not amend the judgment in a manner unfavourable to the latter.

129. In criminal matters, the Court of Appeal sits in chambers to decide on committal for trial. If the law classifies the matter referred to it as a serious crime, and if it considers the evidence sufficient for committal for trial, it orders that the accused be sent for trial before the Criminal Court.

130. The Court of Appeal is also seised of appeals against orders handed down by the investigating judge, the judge in the Juvenile Court and in extradition proceedings.

131. When the Court of Appeal is sitting in chambers, its hearings are not public, only the Office of the State Counsel must be represented. Counsel for the complainant and defence counsel are invited to attend, and those parties may attend at their request,

132. After having deliberated without the presence of the representative of the Office of the State Counsel, the Court of Appeal, sitting in chambers, decides as soon as possible on the claims contained in the written submissions, which the defence counsel or counsel for the complainant are allowed to submit on the day before the hearing at the latest. However, interlocutory orders – that is to say orders that relate to the preparatory stages in the proceedings and are without prejudice to the merits – may not be appealed.

c) *The special remit of the president*

133. Within the Principality's judicial system, the president of the Court of Appeal holds a special position because of the specific powers and prerogatives which the law confers upon him.

134. In matters of protocol, the president is responsible for the formal re-opening of the courts, which takes place on 1 October annually. The president of the Court of Appeal ranks immediately below the President of the Court of Revision.

135. But the president of the Court of Appeal is, above all, responsible for supervising the activity of various bodies and players within the judicial system, including investigating offices and court registrars.

136. In addition to those personal responsibilities are the responsibilities which the President exercises, pursuant to Article 434 of the Code of Civil Procedure, in deciding, in summary proceedings, on difficulties in enforcing judgments of the Court of Appeal, as well as his responsibilities when presiding over the Court sitting in chambers as a disciplinary body.

137. When a matter is referred to it by the Principal State Counsel, the Court of Appeal may in fact – and without prejudice to the outcome of any criminal proceedings which may have been brought – impose various disciplinary sanctions on court registrars, officers from the criminal investigation department, defence attorneys, lawyers, trainee lawyers and court bailiffs.

138. Within Monaco's system of justice, the Court of Appeal has a position which is, in many ways, noteworthy because it performs a regulatory function at both legal and judicial level.

139. At a purely legal, it should be noted, in the first place, that many of its decisions constitute case-law that determines the position of Monegasque law.

140. An example of this is the judgment of 25 June 1974, *Ministre d'État, Administrateur des Domaines et Trésorier général des finances v Mathyssens et Dame Bureau Sénac*, which established the principle that public authority liability is distinct from civil liability. This is a feature that distinguishes the Principality from neighbouring countries, where legal standards are usually set by the high courts of cassation.

141. Secondly, at a judicial level, it must be pointed out that, as a result of its supervisory and disciplinary responsibilities, the Court of Appeal significantly contributes, alongside the Director of Judicial Services and the Principal State Counsel, to providing the public with a guarantee that the justice system respects not only the law but the code of ethics essential to it.

#### 4. The Court of First Instance

142. The Court of First Instance is a collegiate court on which three judges sit. The court is made up of a president, one or two vice-presidents, one or more judges, assistant judges and substitute judges. It has just one chamber; depending on the needs of the service, the president can delegate his powers to one of the vice-presidents or, indeed, a judge.

143. The Court of First Instance hears civil and criminal cases. When the Criminal Court (*Tribunal correctionnel*) is hearing cases involving serious offences (*délits*), it is made up of the same judges as the Court of First Instance. All of the judges sitting on the Court of First Instance are, therefore, competent to hear both civil and criminal cases.

##### a) *Jurisdiction*

144. The Court of First Instance hears:

- a) at first instance, all civil and commercial cases which, because of their nature or value, fall outside the jurisdiction of the Justice of the Peace;
- b) similarly, at first instance, as the ordinary court in administrative matters, the Court of First Instance hears all cases other than those for which the Supreme Court or another court has jurisdiction under the Constitution or by law;
- c) on appeal, the Court of First Instance examines judgments handed down at first instance by the Justice of the Peace and arbitral awards made in civil or commercial matters, as well as judgments over which it has jurisdiction by law.

145. The Criminal Court hears:

- a) at first instance, all offences categorized as serious offences (*délits*) and punishable by penalties generally limited to five years imprisonment and a maximum fine of € 90 000;
- b) minor offences where closely connected with a more serious offence;
- c) in criminal matters, offences committed by minors of 18<sup>1</sup> years of age, provided that the minor is not being prosecuted at the same time as adults;
- d) on appeal, the Criminal Court examines judgments handed down by the Police Court.

##### b) *Referral*

146. In order to be valid, cases must be referred to the Court of First Instance by writ served by a court bailiff, which must indicate:

- the name of the court which is to hear the application;
- the date and time of the court appearance;

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<sup>1</sup> Translator's note : the French text is not clear here; later in the text, it is made clear that the age of majority has now been reduced, in Monaco, from 21 to 18.

- full details of the identity and domicile of the plaintiff and addressee of the act;
- the name of the person to whom the act will be notified;
- the name, place of residence and signature of the bailiff;
- the subject-matter of the application and a brief statement of the grounds.

The normal period of notice for a summons on a person domiciled in Monaco is six clear days; that is extended to 30, 60 or 90 days, depending on where in Europe or other continents the person to be summonsed is domiciled. The president of the court is at liberty to reduce that period, if so requested.

147. Cases are referred to the Criminal Court:

- either as a result of referral by the investigating judge or higher courts, in the event of an appeal;
- or by direct reference from the Office of the State Counsel or the party claiming damages;
- or as a result of the voluntary appearance of the parties;
- or because the accused person enters an appearance upon notification by the Office of the Principal State Counsel.

148. In all cases, the act of referral must set out the alleged facts and accurately record the documents of the proceedings. There must be a period of at least three clear days between the summons and the date of appearance, failing which both the summons and any judgment handed down *in absentia* will be invalid. Where the person summonsed is resident outside Monaco or is of no known abode, the period of notice required is at least 30 clear days.

c) *Conduct of the proceedings*

149. Once the summons has been duly recorded at the registry, the defendant must enter an appearance.

150. More often than not, the defendant appoints a defence attorney to represent him. During the preparatory investigation, lawyers forward to each other the documents which they intend to use and exchange written submissions.

151. When the parties consider that the case is ready to be heard, the president of the court sets a date for the hearing. At that hearing, both counsel for the plaintiff and counsel for the defendant speak and, once the oral pleadings are concluded, they hand over their dossier to the court. Judgment is handed down at a public hearing, usually between seven days and eight weeks later.

152. The defendant must appear in person before the Criminal Court, assisted, if necessary, by a lawyer, except in the case of offences which do not carry a prison sentence, where the defendant may be assisted by a lawyer; a defendant who fails to enter an appearance is judged *in absentia*.

153. In appeal hearings, the president questions the defendant; the witnesses are then heard and the complainant, if appropriate, makes his submissions; the public prosecutor makes his case, the

defendant and the party liable for damages present their defence, but the defendant must be the last to speak.

154. Judgment is handed down from the bench or the case is adjourned for further deliberation. If the accused is remanded, the court imposes the punishment prescribed by law and rules on damages. If not, the court acquits the defendant.

155. In order to ensure that everyone, including the poorest, have access to the justice system, Monegasque law provides for a system of legal aid.

156. Any person unable to advance the costs of the proceedings, without drawing on the resources needed for their own maintenance and that of their family, may apply for legal aid.

157. Applications for legal aid are addressed to the Principal State Counsel, on plain paper. The applicant is informed of its decision by the Office of the Principal State Counsel; that decision is final.

158. Legal aid is granted for the purposes of a specific level of proceedings and applies only to the court hearing the case at that level, except where the party opposing the recipient of the legal aid lodges an appeal or an appeal for the proceedings to be re-opened.

## **5. The Police Court and the Justice of the Peace**

159. The main responsibility in civil matters of the Justice of the Peace, who sits as a single judge and acts as a court of first instance, is, as the title suggests, to bring about, as far as possible, a friendly settlement among the parties, and to resolve disputes where the sums involved do not exceed a certain figure, currently set at € 4 600.

160. The Justice of the Peace also chairs the trial board of the Court of Labour (art. 33 of Law No 446 of 16 May 1946), and has jurisdiction in disputes concerning the election of employee representatives (Law No 459 of 19 July 1947) and the affixing of official seals (arts. 853 *et seq* of the Code of Civil Procedure).

161. In criminal matters, the Justice of the Peace presides over the Police Court.

### *a) In civil matters*

162. The three procedures most commonly heard by the Justice of the Peace are: orders to pay, attachment of earnings and what is known as “ordinary” civil procedure.

### *b) In criminal matters*

163. The Police Court is made up of the Justice of the Peace and a police superintendent appointed by the public prosecutor representing the Office of the State Counsel.

164. The Police Court hears cases involving minor offences, that is to say offences punishable by a fine of less than € 600 euros and/or a maximum of between one to five days imprisonment.

165. Judgments of the Police Court may be appealed before the Criminal Court.

## 6. The Criminal Court

166. The criminal court is a non-permanent court with jurisdiction to hear matters which the law classifies as serious crimes. A composite court, it includes both professional and lay members, namely:

- a) Three judges:
  - a president drawn from the judges sitting on the Court of Appeal;
  - two judges acting as assessors and drawn from the Court of Appeal, the Court of First Instance or the Justice of the Peace.
- b) Three jurors taken from a list, drawn up every three years, of 30 Monegasques who have reached the age of majority and have never been convicted of a serious indictable offence or a lesser indictable offence.

167. As well as offences which are classified as serious crimes, the Criminal Court also has jurisdiction to hear cases involving offences committed by minors but with adult participation.

168. Since the amended Constitution of 17 December 1962 abolished the death penalty, the most severe penalty which may be imposed is life imprisonment.

169. Hearings before the Criminal Court take place, in principle, in public, failing which they may be invalid.

170. However, it is open to the president to ban minors from the courtroom. Moreover, if publicity is likely to be dangerous to public order or morals, the court may order that the case be heard in camera, at the request of the Office of the State Counsel or of its own motion, on the basis of a decision stating the reasons. If the accused is a minor, the hearing has to be held in camera, in the presence of the adult(s) implicated. However, the judgment on the merits is always delivered in open court.

171. Moreover, the requirement that there be an oral hearing is another fundamental principle governing the procedure before the Criminal Court.

172. The requirement that there be an oral hearing is matter of public policy; consequently, failure to comply with that requirement means that the proceedings are invalid. It applies principally to witnesses, who must be heard orally, save in exceptional circumstances.

173. It should, finally, be noted that once the hearing has commenced, it must continue without interruption until it is concluded, unless the president orders its suspension or adjournment.

174. The Criminal Court is a sovereign court whose decisions may not be appealed. However, the parties (the convicted person, the complainant and the Office of the State Counsel) may apply for proceedings to be reopened on the following grounds:

- breach of the rules on jurisdiction;
- failure to observe essential procedural requirements;
- breach of the law.



175. The application for the proceedings to be re-opened must be made within five clear days of delivery of the judgment.

## 7. Judges with specialized functions

176. In addition to the ordinary courts, Monaco's judicature includes courts with specialized functions whose role is to resolve certain conflicts or protect certain rights.

### a) *The Juvenile Court*

177. The functions of the judge in the Juvenile Court are carried out by a judge from the Court of First Instance, appointed for a three-year period by order of the Director of Judicial Services.

178. A substitute judge may be appointed in the same way. The judge has the authority to decide, in the cases for which the law provides, on the difficulties to which family relationships may give rise.

179. Among other things, he may:

- a) take the measures necessary to protect minors and legally incapacitated adults. In such matters, he may take up cases of his own initiative;
- b) he alone also has the authority to change the habitual residence of a minor whose parents are separated or divorced;
- c) in such cases, he determines the amount of the contribution to the maintenance and educational costs of a minor that the parent with whom that minor is not habitually resident must pay;
- d) he decides on the conditions for the exercise of parental authority or the difficulties those conditions cause, in the light of child's best interest;
- e) in the child's interest, he may accord correspondence or visiting rights to the child's relatives in the ascending line or other persons;
- f) he also receives the agreements required for the simple adoption or full adoption (*adoption légitimante*) of a minor.<sup>2</sup> In the event of unreasonable refusal to consent by the minor's father, mother or board of guardians, the judge may disregard this and consent to the adoption;
- g) the judge in the Juvenile Court is also responsible for exercising general supervision of the right of administration and guardianship, as well as measures taken in relation to legally incapacitated adults.

180. The judge does not give decisions in public. In the exercise of his responsibilities, he is assisted by a registrar or, if the latter is unable to assist, by a person whom the judge swears in to perform this task.

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<sup>2</sup> Translator's note: in Monaco, in cases of "simple" adoption, the child retains ties with the biological parents, whereas in "full" adoption, the child takes the name of the adoptive parents and does not retain ties with its original family.

181. Furthermore, the Directorate of Judicial Services provides him with the assistance of a social worker to carry out, under his authority, any task involving the acquisition of information, supervision or enforcement that is considered necessary.

182. In criminal matters, in accordance with the special arrangements set in place, in 1963, for juvenile offenders, in cases involving juvenile offenders, the judge in the Juvenile Court replaces the investigating judge and, in his place, takes all the measures which he deems to be appropriate (inquiries, placement of the minor in a supervised monitoring centre, abandonment of any action for damages, discharge order, supervision order).

183. If the judge in the Juvenile Court refers the juvenile offender to the Criminal Division (Court of First Instance), that court will take its decision based on the report which that judge has drawn up.

184. In all matters, orders of the judge in the Juvenile Court must state the reasons and may be referred to the Court of Appeal, which takes a decision in chambers within a month of the appeal.

b) *The investigating judge*

185. The work of the investigating judge relates solely to criminal issues.

186. For judges on the bench, the investigation (or inquiry) involves determining the existence of offences, establishing the circumstances in which they were committed, identifying the alleged perpetrators and, if there is sufficient evidence against the parties concerned, charging them and sending them before the court which will hear the case.

187. In Monaco, investigating judges are selected from among the members of the Court of First Instance and appointed by sovereign ordinance for three years, on the recommendation of the president of the Court of Appeal and the advice of the Office of the Principal State Counsel.

188. Their mandate may be renewed for successive periods of the same duration. During those periods, they may be removed from investigations only at their own request, or with the approval of the Court of Revision, which is given in accordance with the rules laid down on disciplinary matters.

189. The court currently has two investigating offices headed by two judges. In relation to the provision of written information, they must have the assistance of a registrar or, failing that, an individual sworn in by the investigating judge specifically for that purpose.

190. Cases are referred to the investigating judge either at the request of the Office of the State Counsel or as a result of a complaint brought by an injured party (against persons unknown or by way of an application to join the proceedings as a civil party claiming damages). The investigating judge may also intervene in cases involving serious crimes or cases of *flagrante delicto*. An investigation must be opened into serious crimes.

191. In carrying out his duties, the investigating judge is empowered to take all of the measures which he considers necessary to establish the truth. He may, for instance:

- a) visit the scene to draw up a report recording the *corpus delicti* and state of the crime scene and to interview witnesses;

- b) order searches to be carried out or undertake searches himself;
- c) appoint one or more experts to prepare the requisite expert reports;
- d) interview witnesses whose evidence he considers to be useful;
- e) issue subpoenas, a warrant for a suspect or witness to be brought before him or, indeed, an arrest warrant.

192. Where it is necessary to make inquiries abroad, the investigating judge will send a request for judicial assistance to the competent foreign authority, through the intermediary of the Office of the Principal State Counsel. Except in relation to the questioning of accused persons, the investigating judge may delegate investigative measures, which he specifies, to police officers.

193. The Principal State Counsel sends the request for international judicial assistance to the Directorate of Judicial Services, which forwards it to the Department of External Relations to be served on the competent foreign authority through the diplomatic channel. Once the request has been served, it is returned to the investigating judge through that same channel. Monegasque trial courts also have the power to issue requests for international judicial assistance, which are subject to the same requirements.

194. The investigating judge alone has the authority to decide, in the course of the investigation, to leave the accused person at liberty, place him under court supervision or in detention. The investigating judge takes his decisions in the form of reasoned orders.

195. In accordance with the principle of the right to appeal, the Principal State Counsel may, in all cases, appeal the orders issued by the investigating judge. That remedy is also available to accused persons and civil parties claiming damages, where they can demonstrate an interest in this, subject to the conditions laid down in the Code of Criminal Procedure.

196. Appeals are heard by the Court of Appeal sitting in chambers as an investigating court. If an investigating judge fails to appear, the Court of Appeal, sitting in chambers, is also competent to take decisions in his place, at the request of a prosecuting party.

197. More generally, the president of the Court of Appeal ensures that the investigating offices function properly:

- he ensures that there are no delays in proceedings;
- he checks on the situation of persons who have been remanded in custody;
- during the first week of each quarter, he receives a detailed report of the procedures in progress from each investigating judge.

198. An investigating judge may be replaced by another investigating judge, in the interests of the proper administration of justice, by the president of the Court of First Instance, at the reasoned request of the Principal State Counsel, acting either of his own accord or at the request of one of the parties.

199. If he has to sit on a trial bench, the investigating judge may not hear a case into which he has conducted investigations.

c) *The judge responsible for dealing with accidents at work*

200. The role of the judge responsible for dealing with accidents at work was established not by a code but under social legislation, namely Law No 636 of 11 January 1958, as amended, amending and co-ordinating the legislation on the declaration of, compensation and insurance for accidents at work.

201. That judge is selected from among the judges sitting on the Court of First Instance. He is appointed on the recommendation of the president of the Court of First Instance, for a three-year period, by order of the president of the Court of Appeal. If he is unavailable, he is replaced by another member of the court or by the Justice of the Peace, appointed in accordance with the same procedures.

202. Like the investigating judge, the judge responsible for dealing with accidents at work has an office comprising a registrar and a secretariat.

203. He is required to act as a conciliator in all disputes which may arise between the victim of an accident at work, that person's representatives and dependents and the employer's insurance company or the employer itself. It should be noted that Monegasque employment law does not confer competence in this field on the social security funds, but requires each employer to take out a special policy with an insurance company known as an "*assureur-loi*".

204. If necessary, the judge responsible for dealing with accidents at work undertakes the investigations and research deemed necessary to identify the causes, nature and circumstances of the accident. If it is not possible to achieve a friendly settlement between the parties, he refers the case to the Court of First Instance.

d) *The judge responsible for the enforcement of sentences*

205. The judge responsible for the enforcement of sentences is appointed annually, by the Director of Judicial Services, to monitor the enforcement of criminal convictions, in relation, in particular:

- a) to release on probation: under this arrangement, the sentence is suspended for a period of between three to five years, provided the convicted individual complies with the measures for assistance or supervision stipulated by law;
- b) where a prison sentence is to be enforced in instalments: if the sentence handed down in a criminal case is less than three months, the judge decides on the arrangements and may withdraw this benefit from a convicted person who fails to comply with his obligations;
- c) where a person is released on parole: the judge supervises the support measures designed to encourage and bolster the efforts of a person released on parole to achieve social reintegration and family and occupational rehabilitation. The power to accord release on parole rests with the Director of Judicial Services, subject to the formal conditions and time-limits laid down by articles 409 *et seq* of the Criminal Code and Sovereign Ordinance No 4.035 of 17 May 1968.

206. Orders issued by the judge responsible for the enforcement of sentences may not be appealed.

e) *The bankruptcy judge*

207. The role of the bankruptcy judge relates solely to procedures for the reorganization of creditors, more usually described as bankruptcy.

208. That judge is appointed by the Court of First Instance, hearing commercial disputes, in its decision suspending payments or winding up the company.

209. The judge is responsible for monitoring the procedure, avoiding any delay in its conduct, monitoring the operations and actions of the receiver(s), who is (are) also appointed in the same court order.

210. That procedure, which is based on article 406 of the Code of Criminal Procedure, is regularly applied in Monaco and causes no particular difficulties.

211. The judge is empowered to obtain from appropriately qualified persons all of the information which he deems necessary to assess the situation of the company and its prospects of recovery.

212. For instance, he may summon the creditors to a meeting, appoint and remove by order one or more of the auditors mandated to assist him in supervising the work of the receivers and take protective measures.

213. Orders issued by the bankruptcy judge are published in Monaco's Official Journal and may be referred to the Court of Appeal, which must rule on them within a month.

f) *The judge responsible for overseeing expert reports*

214. This judicial officer is appointed by either the judge responsible for granting interim relief, or by the Court of First Instance, to monitor and supervise the requests for expert reports which those courts have commissioned.

215. For that purpose, the judge summons the parties and the experts to establish when the process will commence and fix the retainer to be paid to the expert, by way of advance. He has absolute authority to change the expert's terms of reference, the time-limit for submission of the report and even, in some cases, to replace the expert.

g) *The judge presiding over conciliation proceedings in divorce or separation proceedings*

216. This judge hears petitions in such cases. His role is to seek to achieve reconciliation between the spouses by interviewing each of them separately and then together.

217. If that approach is unsuccessful, he issues an order *pendente lite* regarding issues of domicile, maintenance and wardship of the children, and authorizes the plaintiff to file for divorce before the Court of First Instance.

218. By that same order, he lays down the provisional measures governing the residence of the spouses, their personal effects, advances to cover the costs of proceedings, applications for maintenance, interim custody, visitation rights and conditions regarding the education of children.

219. There may be no application to set aside the decision on those measures, but it may be appealed within a week of notification.

## **8. The special courts**

220. Monaco's special courts act exclusively in the field of economic and social relations. What is unusual about them is that they bring together individuals and professional judges for the purpose of resolving, in the best possible way, a variety of disputes between, for example, employers and employees and landlords and tenants.

These courts are more specifically:

### *a) The Labour Court*

221. Established by Law No 446 of 16 May 1946, the Labour Court hears disputes which have arisen in relation to the implementation or termination of employment contracts, whatever the amount of the sums or compensation claimed. It also has jurisdiction to hear disputes arising between employees at work and appeals against decisions given by the grading committee (article 11-1 of Law No 739).

222. Its territorial jurisdiction is determined by the situation of the establishment in which the work is done and, if the work is not performed within an establishment, by the place at which the contract of employment was concluded. For administrative purposes, it falls under the auspices of the Department of Social Affairs and Health. Secretarial services are provided not by the general registry but by a secretary.

223. It is made up of 24 employees and 24 employers, in accordance with Sovereign Ordinance No 3.851 of 14 August 1967, amended by Sovereign Ordinance No 573 of 29 June 2006. Its members are appointed by sovereign ordinance for a period of six years, on a proposal from the employers' federations and trade unions. Half of the members in each category are replaced every three years. Procedure before the Labour Court is divided into two phases: the preliminary conciliation phase and the judgment phase.

#### *i) The preliminary conciliation phase*

224. The Court's prime responsibility is to achieve a friendly settlement between the parties.

225. The conciliation office consists of an employee and an employer who chair the office on a rota basis. It meets at least once a week – but does not sit in public – and tries to achieve conciliation between the parties.

226. Cases are referred to the conciliation office at the request of one of the parties. The parties may also attend the office voluntarily.

227. The parties are summoned by the secretary of the Labour Court, by means of a letter which must state both the names of the parties and the date on which they are required to appear, as well as the subject-matter of the application.

228. The parties are required to attend in person, unless they are legitimately prevented from doing so. They may be assisted or represented by a defence attorney or a lawyer registered at the

Monaco Bar or by a person engaged, in Monaco, in the professional activity of employer or employee. Employers may, in addition, be represented by a director, administrator or employee of the company or establishment.

229. At the conciliation office, the applicant may clarify or, indeed, expand its application, and the defendant may put all of the questions which it considers to be appropriate.

230. If a friendly settlement is achieved, a report is drawn up recording the agreement, on all or on some of the issues. In the event of a failure to comply with the commitments entered into therein, the report, signed by the president of the court and the secretary, is non-appealable and enforceable.

231. If no friendly settlement is arrived at, a report is drawn up and the parties are referred to the adjudication panel.

ii) Proceedings before the adjudication panel:

232. The adjudication panel sits in public in the courtroom of the Justice of the Peace at the *Palais de Justice*. It is presided over by the Justice of the Peace, assisted by four judges chosen in equal numbers from the employer and employee groups. Decisions are taken by absolute majority, after deliberation.

233. The parties may attend in person, be assisted or represented by a defence attorney or a lawyer registered at the Monaco Bar, or by a person engaged, in Monaco, in the professional activity of employer or employee. Employers may, in addition, be represented by a director, administrator or employee of the company or establishment (article 44 of Law No 446).

234. In so far as they are not incompatible with the provisions of Law No 46, the provisions of Book 2, Section 1 of the Code of Civil Procedure are applicable to proceedings before the adjudication panel.

235. Since the claims set out in the report recording the failure to achieve a friendly settlement determine the scope of the dispute, the adjudication panel may not hear additional claims that were not included in the preliminary conciliation phase.

236. The adjudication panel rules on the merits of the dispute by means of a reasoned judgment.

237. The judgment is handed down as a final decision where the value of the case is less than [€ 1 800]<sup>3</sup>.

238. Above that level, it is possible to lodge an appeal; the appeal must be brought before the Court of First Instance, at which the rules governing appearance are the same as those laid down in respect of the adjudication panel (Article 63 of Law No 446). An application for proceedings to be re-opened may be made in respect of decisions handed down at last instance, on the grounds of misuse of authority or breach of the law. It is also possible to make an application to have the decision set aside.

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<sup>3</sup> Translator's note: the figure has been omitted from the French text, but the sum of [€ 1 800] appears on the Government of Monaco's official website.

b) *The High Court of Arbitration*

239. The High Court of Arbitration is a special court able to hear cases concerning the regulation of industrial disputes. It was set up by Law No 473 of 4 March 1948, which covers industrial disputes that cannot be directly resolved, either by way of a friendly settlement, or by applying the provisions of collective agreements, or on the basis of specific conciliation or arbitration procedures.

240. The conciliation and arbitration procedure is instigated when the earliest petitioner transmits to the Minister of State a request for conciliation. That document is drawn up in triplicate on plain paper, setting out the points of fact and/or law to which the dispute relates.

241. The Minister of State may also refer the matter to the conciliation committee of his own initiative. That request is then referred to a conciliation committee made up of two employers and two employees who sit on the Labour Court and presided over by the president of the adjudication panel of the Court of Work, that is to say the Justice of the Peace.

242. If a friendly settlement cannot be reached, the parties are required to appoint a mediator. If they fail to do so, the Minister of State appoints one or more mediators. The mediators' awards contain a statement of the reasons. They may not be the subject of an appeal or an application to re-open proceedings on grounds of errors of fact or law, but they may be referred to the High Court of Arbitration on grounds of lack of jurisdiction, misuse of power or breach of the law.

243. The High Court of Arbitration is presided over by the president of the Court of Appeal or the judge representing him.

244. It also includes two judges from the ordinary courts and two senior officials, either working or retired, appointed by sovereign ordinance for a period of two years. If the High Court of Arbitration is required to take a decision on the merits, the president of the Labour Court also selects two employee and two employer representatives from among the members of that court.

245. The Office of the State Counsel is represented by the Principal State Counsel or a judge nominated by him from his office. He makes oral submissions in the name of the law. Judgments of the High Court of Arbitration are handed down in the name of the Prince. When ruling on the merits, the High Court of Arbitration may annul an arbitral award. Its decisions may not be appealed.

c) *The arbitral committee for rents*

246. Established by Law No 1.235 of 28 December 2000, the Arbitral Committee for rents hears disputes between landlords and tenants concerning the amount of rent payable in respect of leases or the renewal of leases for certain premises for residential use built or completed before 1 September 1947.

247. The arbitral committee for rents has four members, namely:

- the president of the Court of First Instance or the judge delegated by him, who has the casting vote, if the votes are equally divided;
- a landlord and a tenant of premises for residential use appointed by the president from a list of 20 landlords and 20 tenants drawn up by the Minister of State for six years;



- a registered architect or any other competent person, selected by the president of the Court of First Instance from a list drawn up by the Minister of State and valid for six years.

The parties are summoned to appear by registered letter with acknowledgement of receipt or by notification served by a bailiff.

248. The arbitral committee for rents tries to achieve reconciliation between the parties on the amount of the rent and, if agreement cannot be reached, it determines that amount. It may, if necessary, commission an expert report for that purpose. The decisions handed down by the arbitral committee contain a statement of the reasons and may be appealed within the time-limits and in the conditions laid down in the Code of Civil Procedure. The decision may be subject to an application to re-open proceedings.

d) *The arbitral committee for commercial rents*

249. Set in place by Law No 490 of 24 November 1948, the arbitral committee for commercial rents is responsible for resolving disputes between proprietors and tenants concerning the conditions for the renewal and review of commercial leases.

250. A dispute will be referred to it after an attempt to arrive at a friendly settlement initiated by application to the president of the Court of First Instance (or the judge delegated by the latter) has failed. The committee then has full jurisdiction to hear the dispute and may, for that purpose, decide to seek expert evidence. However, the scope of the reference to the arbitral committee is determined by the terms of the report recording the failure to achieve conciliation.

251. Decisions of the arbitral committee contain a statement of the reasons and may be appealed. The decision may give rise to an application for the proceedings to be re-opened.

252. The arbitral committee has five members:

- the president of the Court of First Instance or the judge delegated by the latter;
- two landlords;
- two commercial or industrial tenants appointed, as associate judges, by the president from a list of 15 proprietors and 15 tenants drawn up annually by the Minister of State.

## **9. The Crown Council**

253. The Crown Council must be consulted by the Prince on a number of issues which are specifically listed in the Constitution and fall within the framework of the Prince's constitutional powers: the signature and ratification of treaties, dissolution of the National Council, applications for naturalization and reintegration, pardon and amnesty.

254. In addition, if he considers it appropriate, the Sovereign Prince may consult the Crown Council on matters pertaining to the interests of the State.

255. The Crown Council has seven members of Monegasque nationality, appointed by the Prince for a renewable three-year period. The president and three other members are appointed at

the discretion of the Prince. The remaining three members are appointed by the Prince at the recommendation of the National Council; they may not be members of the National Council.

## **10. The State Council**

256. The State Council gives opinions on draft laws and ordinances on which the Prince seeks its view. It may also be consulted on all other proposals. It contributes to the activity of the Government by giving its opinion on the legislation and regulations on which it is consulted. It is made up of 12 members, selected and appointed by the Prince, on the recommendation of the Minister of State and the Director of Judicial Services, ex officio president of the State Council.

### **C. Procedures for incorporating instruments pertaining to human rights into domestic law**

257. All international treaties must be signed and ratified by the Prince (Constitution: art. 14, as amended by Law No 1.249 of 2 April 2002). They are then put into effect by sovereign ordinance. The following cannot, however, be ratified until a law authorizing ratification has been passed:

- a) international treaties and agreements affecting the constitutional order;
- b) international treaties and agreements whose ratification involves the amendment of existing provisions of law;
- c) international treaties and agreements which involve the accession of Monaco to an international organization whose operation requires the participation of members of the National Council;
- d) international treaties and agreements whose implementation results in a budgetary burden relating to expenditure of a kind or for a purpose for which the Budget Law does not provide.

258. Only once they have become enforceable in Monaco can the provisions of a treaty be relied upon before Monaco's administrative authorities or courts.

259. Finally, where necessary, the Prince promulgates the ordinances required for the implementation of international treaties or agreements (Constitution, art. 66).

### **D. Institutions or bodies responsible for ensuring the observance of human rights**

260. In Monaco, a human rights unit has been set up within the Department of External Relations. Established in 2005, it fulfils the role of a national commission ensuring the observance of the fundamental rights guaranteed both under the Covenant and under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). An independent and permanent body is more especially required in countries which have experienced serious violations of human rights; this is not true of Monaco, which has yet to see any complaint of that nature.

261. Moreover, in neighbouring countries, bodies of that kind provide a link between the States, the NGOs and individuals. In the Principality of Monaco, there are as yet no NGOs that specialize in dealing with infringements of human rights.

262. The responsibilities of the human rights unit are:

- a) to assess whether Monegasque law is compatible with fundamental rights and freedoms and propose reforms;
- b) to study the conventions of the Council of Europe and ensure that the recommendations of the Commissioner for Human Rights are followed up;
- c) to provide training; the unit provides training, once every three months, for all who are required to apply the European Convention on Human Rights, and, in particular, members of Monaco's judiciary. Training schemes at secondary educational level and for the police are currently under review;
- d) to provide "assistance"; the unit is naturally available to the various Monegasque authorities to provide assistance in the field of human rights; it may act as a permanent legal advisor to those authorities in matters involving human rights;
- e) to defend Monaco before the European Court of Human Rights: the unit, whose head is also the "Government's agent", will obviously be responsible for defending Monaco before the European Court of Human Rights, should applications be made against it.

263. Since the Principality of Monaco became a member of the Council of Europe and the European Convention on Human Rights was brought into effect under Sovereign Ordinance No 408 of 15 February 2006, it has been possible to bring a case before the European Court of Human Rights.

264. National courts and, therefore, Monaco's courts, are required to apply the rules deriving from the European Convention on Human Rights, even if they conflict with national legislation or there is no national legislation on the matter. It should be borne in mind that the national court is the first judicial forum for the European Convention on Human Rights.

265. Any High Contracting State (State application), or any individual that considers that they have been the victim of a breach of the Convention (individual application) may submit a direct application to the European Court of Human Rights in Strasbourg, alleging that a High Contracting State has violated one of the rights guaranteed by the Convention, once all domestic remedies have been exhausted.

## PART TWO: REVIEW BY INDIVIDUAL ARTICLE

### ARTICLE 1

#### A. Paragraph 2<sup>4</sup>: The right of peoples freely to dispose of their natural wealth and resources

266. Although Monaco has not specifically enshrined the right of peoples to dispose freely of their wealth in legislation, individuals residing or living in the country are never deprived of their means of substance.

267. Public servants benefit from a 5% increase in salary. In the private sector, that award must be made to employees in receipt of remuneration equivalent to the minimum level in the pay structure applicable to their post (Law No 739 of 16 March 1963 and Ministerial Order No 63.131 of 21 May 1963, as amended).

268. The right to property is laid down in article 24 of the Constitution, as well as in Title II (“property”) of Book II (“assets and various changes to ownership”) of the Civil Code, in articles 438 *et seq* thereof “[o]wnership constitutes the right to enjoy and dispose of property absolutely, provided that it is not used in a manner that is contrary to laws or regulations” (art. 438).

269. Law No 502 of 6 April 1949 on expropriation in the public interest, giving effect to article 439 of the Civil Code in particular, provides that “no-one may be compelled to transfer ownership, other than in the public interest and in return for fair and prior compensation”.

270. The accession, transmission or acquisition of property is governed by the Civil Code in the form of the general provisions contained in Book III (the different methods of acquiring property), in articles 595 *et seq* thereof:

- Article 595: “Ownership of goods shall be acquired and transmitted by succession, donation *inter vivos*, and by the effect of obligations.”
- Article 596: “Property shall also be acquired by means of accession, incorporation and prescription.”
- Article 600: “Ownership of treasure trove shall rest with the person who finds it on his own land. If the treasure trove is discovered on another’s land, it shall belong fifty percent to the person who discovered it and fifty percent to the land owner ...”.

#### B. Paragraph 3:<sup>5</sup> Freedom to administer the territory

271. On 21 February 1861, a Treaty between France and Monaco confirmed the sovereignty of Monaco and defined its new frontiers.

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<sup>4</sup> Translator’s note: the French text in facts reads Paragraph 1.

<sup>5</sup> Translator’s note: the French text in facts reads Paragraph 2.

272. The powers that signed the Treaty of Versailles of 28 June 1919 acknowledged having cognizance of and having taken formal note of the Treaty signed between the Government of the French Republic and the Prince of Monaco, on 17 July 1918, defining relations between France and the Principality.

273. In October 2000, at the request of the Monegasque authorities, the process of updating the treaty of 17 July 1918 was set under way.

274. On 24 October 2002, France and the Principality of Monaco signed a Treaty designed to adapt and uphold friendly and co-operative relations between the French Republic and the Principality of Monaco. The treaty was brought into force by Sovereign Ordinance No 407 of 15 February 2006.

275. The new treaty clarifies and confirms the framework within which sovereignty is exercised and reaffirms the independence of the Principality of Monaco, bearing in mind its special links with the French Republic. The treaty's title establishes a link with the 1918 treaty, which it "adapts" and "upholds". It preserves the interests of Monaco, while guaranteeing it greater autonomy.

276. Thus, article 1 lays down the requirement of bilateral consultation in the political, economic, security and defence fields, while maintaining the guarantee of Monegasque sovereignty, as established under the 1918 treaty.

277. Article 2 provides for consultation in regard to international relations; and, in that context, the "prior consultations" clause which appeared in the 1918 treaty has been deleted.

278. Article 3 merely states that France will be "informed" of any change in the order of succession laid down under Monaco's Constitution, in contrast with the "prior consultations" for which article 2 of the 1918 treaty provided.

279. France provides military protection for Monegasque territory at the request of the Principality's authorities, and may intervene of its own initiative, if the sovereignty, independence or integrity of Monaco's territory is seriously threatened and the proper functioning of the government has been interrupted (art. 4).

280. The consequences of the reaffirmation of Monaco's sovereignty derive from article 5. That article clearly provides that the relations between the two States are diplomatic in nature. As a result, the diplomatic representations in their respective capitals have been elevated to the rank of embassy and are no longer just consulate-generals.

281. In accordance with current practice – an example of which is the support France gave Monaco in 1993 to become a member of the United Nations – France's diplomatic network assists Monaco in its relations with intergovernmental organizations, and its consular network helps Monegasque citizens in States in which the Principality has no consular representation.

282. In order to maintain legal certainty, the various agreements between France and Monaco will remain in force, thereby avoiding the need for immediate revision of all of the bilateral agreements (art. 6).

283. Article 7 lays down the principle of regular consultations, and thus gives the Commission for Franco-Monegasque Co-operation the legal framework it had lacked. The final provisions are set out in article 8. They relate principally to the treaty's entry into force. There is no provision for unilateral denunciation; amendments to the treaty must be made by agreement between the two parties.

**1. Revision of the Convention of 28 July 1930 on access for certain Monegasque subjects to certain public posts in France and the recruitment of certain public officials of the Principality**

284. In the spirit of adjusting to current circumstances, which led to the negotiations on the 2002 Treaty, France and Monaco have drawn up a Convention on administrative co-operation to replace the Convention of 28 July 1930 on access for certain Monegasque subjects to certain public posts in France and the recruitment of certain public officials of the Principality.

285. The new convention envisages reinforcing administrative co-operation between the two States, under the supervision of the Commission for Franco-Monegasque Co-operation, while continuing to use French citizens, or indeed French civil servants on secondment – giving them precedence over all other nationalities – to fill a whole range of posts and functions. Secondment is limited to three years and may be renewed once only.

286. From now on Monegasques will have access to all public posts in the Principality which the Convention of 28 July 1930 previously “reserved” to French officials.

287. Monegasque or French citizens selected and appointed by the sovereign Prince of Monaco will have to have the confidence of both States. The posts and functions covered by this mutual confidence clause are those of the Minister of State, the Government Advisor for Internal Affairs (*Conseiller de Gouvernement pour l'intérieur*), the Director of Judicial Services, the Director of Fiscal Services and Director of Public Security.

288. Outside those sensitive functions and posts, as well as posts in the field of public order and security, Monaco may employ foreign citizens other than French citizens, but priority is given to French citizens.

289. Moreover, the Convention on administrative co-operation provides that Monegasques are to have access to posts in the French public service under the same conditions as citizens of the European Union.

290. Finally, the Convention seeks to improve the effectiveness of administrative co-operation between France and the Principality. The Commission for Franco-Monegasque Co-operation, which replaced the Joint Franco-Monegasque Commission, following the entry into force of the Treaty of 24 October 2002, which was given force of law by Sovereign Ordinance No 407 of 15 February 2006, is the special forum for that administrative co-operation. That intergovernmental structure determines the posts which French public servants may take up in Monaco. The vital role which the Minister of Foreign Affairs plays in relation to the pursuit of administrative co-operation between the two States is also confirmed. The Commission met in Monaco on 26 February 2007.

291. The Convention on administrative co-operation has been the subject of a draft law authorizing ratification, which was submitted to the French Council of Ministers on 20 December 2006.

- Monegasque maritime territory:

292. Decree No 85-1064 of 22 October 1985 publishing the Convention on maritime boundaries between the Government of the French Republic and the Monegasque Government, signed in Paris on 16 February 1984, and incorporated into the Maritime Code in articles L 210-1, 210-2 and 210-3, as well as Sovereign Ordinance No 5.094 of 14 February 1973 defining Monegasque territorial waters, define Monegasque territorial waters.

- Monegasque airspace:

293. Articles 11 to 13 of Sovereign Ordinance No 7101 of 5 May 1981 lay down flight conditions in a specific zone of airspace.

294. Moreover, Sovereign Ordinance No 16.065 of 21 November 2003 implementing the Agreement on relations in the field of air transport, between the Principality of Monaco and the French Republic, seeks to enhance relations in the field of air transport between the two countries.

## ARTICLE 2

295. The Committee has made no comment or recommendation concerning article 2 of the Covenant, and legislative developments material to that article are described in the remainder of the document.

## ARTICLE 3 (CCPR/CO/72/MCO, para. 8)

296. Because Monaco is a small country and because of certain other of its specific characteristics, it does not have a minister or institution with specific responsibility for promoting the situation of women, and it does not apply a specific policy on women.

297. Nonetheless, the Principality has, for many years, been aware that the contribution of women is essential to its social stability and continuing economic development.

298. Access to employment for women has, therefore, been encouraged. Women play an essential part in Monaco's economic life. That participation has also led women to assume greater responsibilities in decision-making bodies and to prompt debates extending beyond the strictly economic context.

299. The existing legislative framework guarantees legal equality between the sexes on the labour market and allows women substantial access to that market.

300. Law No 978 of 19 April 1974 and Implementing Ordinance No 5393 of 4 July 1974 provide that all employees, whatever their gender, must receive equal pay for equal work or work of equal value.

301. The labour inspectors or, where appropriate, other public officials, may demand to be informed of all the different factors which combine to determine rates of pay in undertakings.

302. They may also conduct investigations in which both sides are heard, and employers and employees may be assisted by a person of their choice.

303. Furthermore, the access of women to the labour market has been promoted by the education policy which has established free and compulsory primary education (Law No 826 of 14 August 1967) for both girls and boys. There is also provision for non-discriminatory access to general secondary education and vocational training, as well as to university scholarships.

304. Women are well represented in the different sectors of the economy. They have access to economic activities involving the use of information and communications technologies, as well as computer systems and enhanced technologies.

305. The statistics recorded in the attached tables demonstrate the participation of women in Monaco's economic activities and, in particular, the sectors that utilize communication technologies in a significant way, such as: financial activities (1 417 of a total of 2 771 posts), trade (2 458 of a total of 4 702 pots), transport and communications (877 of a total of 1 274 posts) and education (161 of a total of 250 posts).

306. Monaco's law enforcement services (fire fighters and *carabiniers*) form part of the military, and do not as yet include women, mainly because of physical fitness requirements.

307. Women account for 25% of the professions, but only 8.6% of company managers.

308. However, Monaco has social legislation that more particularly protects women in the context of their employment: Ministerial Decree No 58-168 of 29 May 1958 on health and safety measures in relation to work carried out by women and children, prohibits them from undertaking certain hazardous tasks, by limiting the weight of burdens which they may carry, drag or push. It also provides that businesses must provide seating equivalent to the number of female staff.

309. Law No 870 of 17 July 1969, amended by Law No 1.245 of 21 December 2001, on the employment of pregnant or nursing mothers contains the following provisions:

- a female employee may not be dismissed once her pregnancy has been medically confirmed, or during the periods of suspension of the employment contract to which she is entitled by way of maternity leave;
- the employer may not seek information concerning the pregnancy;
- the employer may not take the pregnancy into account for the purposes of refusing to take on a female employee, terminate an employment contract during the probationary period or effecting a transfer;
- a job applicant is not required to disclose her pregnancy;
- when her maternity leave is at an end, the employee must be reinstated in her former post or given a similar post, with at least equivalent remuneration;



- when her maternity leave is at an end, the mother may refrain for resuming work and request to be re-employed the following year, with all of the benefits and advantages she had acquired at the time she went on maternity leave.

310. The above-mentioned Monegasque legislation does not apply to women of Monegasque nationality only, it also applies to foreign women who are employed in Monaco (see annex).

311. In 2005, of a total of 16 664 posts occupied by women in the private sector, without distinction as to domicile, 299 were occupied by Monegasque women, 11 381 by French women, 2 152 by Italian women, 1 500 by nationals of the European Union and 2 832 by various other nationalities.

312. A significant proportion of women employed in Monaco are domiciled in France and Italy. In January 2005, 4 879 women employed in the Principality were domiciled in neighbouring French communes, 6 927 in other French communes and 1 436 in Italy.

313. The social security conventions concluded, on 28 February 1952, with France and, on 11 October 1961, with Italy, enable women who are employed in Monaco but domiciled in those neighbouring countries to enjoy the social welfare and medical benefits provided by Monaco's social welfare funds (Social services compensation fund - *Caisse de compensation des services sociaux* – and the State medical benefits service – *Service des prestations médicales de l'État*), on the same basis as residents of the Principality, and subsequently to draw a retirement pension in their country of residence.

314. Similarly, the option of educating children or having access to crèches in Monaco is also open to all female employees in the Principality, subject to the number of available places.

315. Many Monegasque NGOs, in which Monegasque women are particularly active, also offer specific assistance to women and children. Examples of this are: the Union of Monegasque Women, the Monegasque Red Cross, the World Association of Children's Friends (AMADE), Fight AIDS Monaco, the Association of Women Business Leaders (...). Those associations receive financial assistance from the Monegasque Government.

316. The second congress of Women's Associations from the smaller States of Europe was held in Monaco in June 2004. Its theme was developments in the legal position of women. Eight delegations took part from Andorra, Cyprus, Iceland, Liechtenstein, Luxembourg, Malta, San Marino and Monaco.

317. Monegasque women are thus currently in a better position to take part in the debate that will frame political, economic and social approaches over the coming years.

318. Article 53 of the Constitution of 17 December 1962 gave women the vote.

319. Monegasque women are significantly represented within the elected assemblies and the Government.

320. Within the Government: there is no female minister in the Government, which is very small (five members only). However, women currently occupy many posts as heads of department (which would attract ministerial rank in larger States). That applies to the following departments: the Directorate for Economic Expansion, the Directorate for National Education, Young People

and Sport, the Directorate for the Budget and Exchequer, the Directorate for Health and Social Affairs, the Employment Service and the Directorate for Legal Affairs.

321. Within the National Council: women occupy five of the 24 seats, that is to say 16.6% corresponding to the international average. It may also be noted that, since 2003, a Commission for the rights of women and the family has existed within the National Council.

322. Within the Communal Council: women occupy five of the ten seats. Among the responsibilities of the Communal Council are, for example, social services such as crèches and enabling the elderly to continue to live in their own homes.

323. Furthermore, the Principality of Monaco has just appointed its first woman Ambassador extraordinary and plenipotentiary as Permanent Representative to the Council of Europe.

324. In the judicial sphere, it should be pointed out that many senior members of the judiciary, including the president of the Court of Appeal and the president of the Court of First Instance, are women. The Office of the Principal State Counsel is headed by a female Principal State Counsel. Moreover, a female Monegasque judge sits on the European Court of Human Rights.

325. It is interesting to note that Monaco's Trade Union Association is also headed by a woman.

326. Proposed legislation on divorce by mutual consent and abortion is being considered.

327. Monaco's example helps to demonstrate that there is a close link between the participation of women in economic growth and their involvement in political life: it is clear that the access of women to the labour market plays a vital part in Monaco's economic upturn, but their participation in economic life also leads women to take a more active interest in their rights and the opportunities for action at a political level. That development should enable them to be increasingly effective in influencing the conditions of their social and professional activity.

328. Finally, it is interesting to note that outside the strictly national framework, which is geographically very small, Monaco contributes to the economic encouragement of women beyond its frontiers, on the basis of its policy of international co-operation.

329. As a Member State of the United Nations and the Council of Europe, the Principality, which is party to the Convention on the elimination of all forms of discrimination against women, is involved in the work of the Commission on the status of women and the Council of Europe's Steering Committee for equality between women and men (CDEG).

330. Since 1975, the International Year of the Woman, 8 March has been declared the International Women's Day to "to commemorate the historic struggle to improve women's lives", and is celebrated in Monaco.

331. The theme of International Women's Day in 2006 was "Women in decision-making: meeting challenges, creating change".

332. That day provides an opportunity to remember some of the activities in which the Principality of Monaco is engaged, particularly in connection with its development co-operation policy, since the Princely Government has embarked upon a number of projects in Africa to combat poverty, specifically targeting women's groups.

333. In all of the countries involved, excellent results have been obtained with the help of these women, particularly through co-operatives.

334. Based on its development co-operation objectives, Monaco gives priority to both economic development and education, in order to bring about lasting improvements in the situation of women. By helping to make the most of traditional know-how and facilitating access to microfinance, Monaco is opening up economic prospects to many beneficiaries. This is often achieved by setting in place durable crafts activities which may, in the long term, lead to the establishment of export business or undertakings. There is a real improvement in the living conditions of these women and their families.

335. In Dakar, Senegal, for example, Monaco has funded the creation of a small-scale fish-processing company, which is run by a group of women. In addition to the economic aid, literacy training and help with accounting and management skills have been provided. In connection with that activity, which has an impact on some 200 families, a crèche has been set up for the children of employees, as have an infirmary to provide basic care and vaccination and a credit fund to develop initiatives that are offshoots of that activity.

336. In Burkina Faso, Monaco is supporting the development of the Shea Network in three villages. These initiatives by women's groups enable them to be trained in organic production methods and to acquire the production tools needed to obtain the [eco]label. Literacy and management programmes are also provided.

337. In Morocco, a co-operative for the production of argan oil, involving some 60 Berber women has been established in Tiout, a douar in Taroudant province. The argan, a tree native to Morocco, is present in arid regions where its exploitation is sometimes the main source of revenue-generating activities for people living below the poverty threshold. The oil extracted from the argan nut has properties and virtues of particular interest for food use, and is highly valued for cosmetic uses. This co-operative is a real example of the concept of sustainable development and has beneficial economic, social and environmental effects. The economic activity of the co-operative enables women to boost their income substantially, to join literacy classes and engage in other forms of training. They have also understood the need to preserve the Arganerie, which is currently under threat of deforestation, and have recently embarked upon a campaign for reforestation in a 10 hectare pilot plot. Currently, the positive results of this project, and the increasingly widespread use of argan oil in various foodstuffs and cosmetic products, are encouraging Monaco to support the initiatives of these women's groups, by promoting the establishment of a "fair trade" network able to make the best use of their work and traditional know-how.

338. By Sovereign Ordinance No 15.203 of 23 January 2002, Monaco recognized the authority of the Committee on the Elimination of Racial Discrimination, in accordance with article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

339. As stated above, Monaco has also acceded to the Convention on the Elimination of All Forms of Discrimination against Women. That Convention was given effect in the Principality by Sovereign Ordinance No 96 of 16 June 2005.

340. The following declarations and reservations were attached to Monaco's accession:

- a) Declarations

“1 – The implementation of the Convention on the Elimination of All Forms of Discrimination against Women does not affect the validity of conventions concluded with France.

2 – The Principality of Monaco deems that the aims of the Convention are to eliminate all forms of discrimination against women and to guarantee every individual, irrespective of gender, equality before the law, when the aforementioned aims are in line with the principles stipulated in the Constitution.”

3 – The Principality of Monaco declares that no provision of the Convention can be interpreted as impeding the provisions of the laws and regulations of Monaco that are more favourable to women than to men.”

b) Reservations

“1 – The ratification of the Convention by the Principality of Monaco shall have no effect on the constitutional provisions governing the succession to the Throne.”

2 – The Principality of Monaco reserves the right not to apply the provisions of article 7, paragraph b, of the Convention regarding recruitment to the police force.”

3 – The Principality of Monaco does not consider itself bound by the provisions of article 9 which are not compatible with its nationality laws.

4 – The Principality of Monaco does not consider itself bound by Article 16, paragraph 1 (g), regarding the right to choose one’s surname.

5 – The Principality of Monaco does not consider itself bound by Article 16, paragraph 1 (e), to the extent that the latter can be interpreted as forcing the legalization of abortion or sterilization.

6 – The Principality of Monaco reserves the right to continue to apply its social security laws which, in certain circumstances, envisage the payment of certain benefits to the head of the household who, according to this legislation, is presumed to be the husband.

7 – The Principality of Monaco declares, in conformity with the provisions of Article 29, paragraph 2, that it does not consider itself bound by the provisions of the first paragraph of this article.”

341. Monaco has also adopted legislative provisions on paternity leave to accord fathers more extensive rights in that context.

342. Paternity leave and adoption leave form the subject-matter of several laws which have been passed recently:

- According to article 1 of Law No 1.309 of 29 May 2006, and Implementing Ordinance No 574 of that same date, concerning paternity leave for employees: “[o]n the birth of his child, a father in paid employment in the Principality may, once fatherhood is confirmed, benefit from paternity leave in the conditions for which this law provides;”

- Law No 1.310 of 29 May 2006 on paternity and adoption leave for public servants of the State;
- Law No 1.311 of 29 May 2006 on paternity and adoption leave for public servants of the Commune.

343. Law No 1.275 of 22 December 2003 introduced the possibility of part-time working in the public service.

344. Finally, the social welfare system provides both women and men with a very satisfactory level of cover (equivalent or, indeed, higher than is provided in France and Italy) and to have access free of charge to screening for certain illnesses (AIDS and breast cancer, for example).

#### ARTICLE 4

345. In Chapter 1 (crimes against the security of the State) of Title I (crimes against the public good) of Book III (crimes and penalties) of the Criminal Code, the Principality of Monaco has laid down the penalties applicable where an individual conspires against the security of the State or the royal family.

346. That legislation has been drawn up in entirely consistently with the provisions of the Constitution – which represents higher-ranking law – and of the Covenant.

347. The measures adopted to combat crimes of that nature do not involve discrimination on the ground of race, colour, gender or language; only article 50 of the Criminal Code specifically provides that “[a]ny Monegasque who has taken up arms against the Principality shall be punished by life imprisonment”, the following articles make no mention of the perpetrator’s nationality.

348. Article 15 ECHR, which is applicable in positive law, guarantees the same rights as the above-mentioned Article 4 of the Covenant:

“1. In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from article 2, except in respect of deaths resulting from acts of war, or from articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”

#### ARTICLE 5

349. The Committee has made no comment or recommendation concerning article 5 of the Covenant, and legislative developments material to that article are indicated in the remainder of the document.

## ARTICLE 6

350. Strictly defined, the right to life protects human beings from attacks on their physical integrity.

351. Article 20, third subparagraph, of the Constitution stipulates that the death penalty is abolished. The single article comprising Law No 763 of 8 June 1964 on the death penalty stipulates that “in the laws in force, the death penalty shall be replaced by penal servitude for life”; that law is considered obsolete and has never been applied.

352. Title II of the Monegasque Criminal Code deals with serious offences against individuals, property and animals; Chapter 1 of that Title relates to serious offences against individuals.

353. The Code differentiates between murder (*meurtre*) (intentional homicide) and assassination (*assassinat*) (homicide with premeditation or ambush). Articles 222 *et seq* define ambush and premeditation.

354. The Code defines parricide as murder of the “father or mother, whether legal, adoptive or natural, or of other legitimate ascendants”, and infanticide, which is usually considered to be the murder of a child, to be the murder of a new-born baby.

355. Under article 228 of the Criminal Code, crimes committed with acts of torture or cruelty are treated in the same way as assassination, and incur the maximum penalty, that is to say life imprisonment.

356. Poisoning is also provided for and punishable by life imprisonment under articles 226 and 227 the Code.

357. Under article 236, assault and battery which has, involuntarily, resulted in death, is punishable by between ten and 20 years imprisonment.

358. Articles 239 *et seq* provide for aggravating circumstances in such cases, if the crime was committed:

- a) against a legitimate ascendant or a legal, natural or adoptive father or mother;
- b) in conjunction with others or using a weapon;
- c) against of child of less than 15 years of age.

359. Articles 250 *et seq* of Section III of Chapter III of the Criminal Code deal with involuntary homicide, stipulating that “any person who, through clumsiness, carelessness, inattention, negligence or a failure to observe the rules, involuntarily commits homicide or was involuntarily the cause of that homicide, shall be liable to a period of imprisonment of between six months and 3 years (...)”.

360. Paragraph 2 of Section III set out the grounds for mitigation of sentence in relation to serious offences.

361. Article 253 provides that “there shall be grounds for mitigating sentence in the case of murder or assault and battery, if those acts have been provoked by serious assault or violence

against individuals”; there are also mitigating circumstances, if acts of that nature have been committed in order to repulse any individual seeking to enter a dwelling that appears to be inhabited (art. 254). It is made clear that no mitigating circumstances apply in relation to parricide (art. 255).

362. Moreover, the Criminal Code provides for exemptions from prosecution where the crime was committed in response to a legal directive or the command of a legitimate authority, or in the case of legitimate defence ((articles 257 *et seq*). Case-law envisages a further exception linked to a state of emergency.

363. Finally, the Criminal Code provides that there is no indictable offence, if the perpetrator was suffering from a mental disorder or was compelled by force which he was unable to withstand.

364. Less restrictively, the right to life is a term encompassing all of the rights accorded to living beings generally, and human beings in particular. Infringements of that right may be listed as, *inter alia*:

- the death penalty;
- voluntary abortion;
- euthanasia;
- eugenics;
- suicide.

365. The Princely Government has recently undertaken a study on abortion on medical grounds. A draft law was adopted by the National Council in public session on 10 October 2006. It is currently being considered by the Princely Government.

366. Suicide, eugenics and euthanasia are not regulated for under national law.

367. Rules concerning *in vitro* fertilization and medically assisted conception have been introduced into national law, and the relevant laws are as follows:

- Law No 1.267 of 23 December 2002 on medical devices;
- Sovereign Ordinance No 15.504 of 28 February 2002 giving effect to the Administrative Arrangement between the Principality of Monaco and the French Republic, adopted in accordance with the Convention of 18 May 1963 on the regulation of pharmacies and concerning co-operation for the purpose of implementing Community acts in relation to health products, signed in Paris on 26 April 2002;
- Ministerial Decree No 2000-360 of 7 July 2000 amending the general classification system for laboratory analyses and tests;
- Ministerial Decree No 2000-359 of 27 July 2000 amending the general classification system for the professional activities of doctors, dental surgeons, midwives and medical auxiliaries;

- Ministerial Decree No 2003-582 of 10 November 2003 on the maintenance of and quality controls on medical devices;
- Ministerial Decree No 2003-584 of 10 November 2003 classifying and determining the procedures for the assessment and certification of conformity of medical devices for *in vitro* diagnosis;
- Ministerial Decree No 2003-586 of 10 November 2003 laying down the materials vigilance procedures to be applied to medical devices and the reagent vigilance procedures to be applied to medical devices for *in vitro* diagnosis;
- Ministerial Decree No 2003-414 of 31 July 2003 amending the general classification system for the professional activities of doctors, dental surgeons, midwives and medical auxiliaries;
- Ministerial Decree No 2003-118 of 10 February 2003 laying down the conditions for implementing Law No 1.265 of 23 December 2002 on the protection of persons involved in biomedical research;
- Ministerial Decree No 2006-320 of 28 June 2006 concerning the declaration provided for in article 20 of Law No 1.267 of 23 December 2002 on medical devices;
- Ministerial Decree No 2006-319 of 28 June 2006 amending annexes I and II of Ministerial Decree No 2003-586 of 10 November 2003 laying down the materials vigilance procedures to be applied to medical devices and the reagent vigilance procedures to be applied to medical devices for *in vitro* diagnosis.

368. Finally, article 2 ECHR, which is applicable in domestic law, provides that:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction for a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a) in defence of any person from unlawful violence;
- b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c) in action lawfully taken for the purpose of quelling a riot or insurrection”.

## ARTICLE 7

### A. Prohibition of torture, cruel, inhuman or degrading treatment

369. In addition to the information set out in the Principality’s initial report, it should be added that Monaco has ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – given force of law by Sovereign Ordinance No 436 of 27 February 2006 – which provides for preventive, non-judicial arrangements to ensure that the rights of detainees and persons in police custody are respected.



370. Those arrangements are based on a system of visits carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

371. The CPT visited Monaco from 28 to 31 March 2006 to assess the conditions of detention.

372. It should also be borne in mind that the Principality has ratified the European Convention on Human Rights, and, according to Article 3 thereof: “No one shall be subject to torture or to inhuman or degrading treatment or punishment”.

373. No provision of law can justify the use of torture. Furthermore, were it possible, under a law, to invoke an exceptional circumstance to justify acts of torture, that law would be adjudged contrary to article 20 of the Constitution and, therefore, repealed by the Supreme Court.

374. In regard to extradition, it should be pointed out that articles 4 and 6 of Law No 1.222 of 28 December 1999 stipulate that:

Article 4: “Extradition shall be refused if the offence is deemed to be a political offence. An attack against a Head of State or member of that person’s family shall not be deemed to constitute a political offence.

An offence shall also be deemed to constitute a political offence if there is reason to believe that the request for extradition, based on an ordinary offence, has been made for the purpose of prosecuting or punishing an individual on grounds of race, ethnic origin, religion, nationality, political opinion and, more generally, on the basis of considerations infringing the dignity of that individual, or if the situation of that individual is likely to be made worse for one or other of those reasons.”

Article 6: “Extradition may be refused if the offence in respect of which it is requested:

- 1) was committed in, or
- 2) is being prosecuted in Monaco, or
- 3) judgment in respect of that offence has been handed down in a third State.

Extradition may also be refused if the offence in respect of which it is requested is subject to the death penalty under the law of the requesting State, unless the latter State provides assurances, which the Principality deems to be sufficient, that the person concerned will not be condemned to death or, if a death sentence has been handed down, that it will not be enforced, or that the person concerned will not be subjected to treatment prejudicial to his physical integrity.”

375. In the concern to apply the prohibition on torture, cruel, inhuman or degrading punishments or treatment, in a judgment of 7 November 2002, the Court of Appeal requested further information from the requesting State concerning the risk of a deterioration in the situation of Mrs X, within the meaning of Article 4 of the above-mentioned law, if she were extradited to Azerbaijan.

376. In a second judgment, handed down on 20 February 2004, the Court of Appeal ordered that all assurances should be given that, if the death penalty constituted one of the punishments that

could be imposed for one of the offences cited by the requesting State, that punishment would not be required, enforced or applied.

377. In practice, no complaint or report of acts of torture or other cruel, inhuman or degrading treatment has been recorded to this point in time.

378. If an act of torture were to be ascribed to an officer of the criminal investigation department, an auxiliary of the Principal State Counsel, the procedure whereby the Court of Appeal sitting in chambers exercises supervision may be instigated by the president of the Court of Appeal or the Principal State Counsel (arts. 48 *et seq* of the Code of Criminal Procedure).

379. The person concerned may be banned temporarily or permanently from carrying out his police duties, without prejudice to the administrative penalties which his superiors may impose upon him.

380. Criminal penalties are also provided for in article 126 of the Criminal Code, which deals with the misuse of authority by a police commander or deputy-commander who, for no legitimate reason, has used or ordered the use of violence against individuals, in the exercise or on the occasion of the exercise of his functions.

381. Criminal penalties for the unlawful arrest or illegal confinement of persons are also provided for by articles 275 *et seq* of the Code of Criminal Procedure. Thus, any person who – without being ordered to do so by the proper authorities and outside of the cases in which the law requires arrest – arrests, detains or illegally confines an individual, will be punished by imprisonment of between ten and 20 years.

382. Article 278 provides that the maximum term will apply if the person who has been illegally arrested and held has been tortured.

383. As regards Monaco's prison (*Maison d'arrêt*), under article 78 of Sovereign Ordinance No 69 of 23 May 2005 regulating the prison, staff are strictly prohibited, from "engaging in acts of physical or moral coercion against inmates" or to "addressing them in a familiar or uncouth manner."

384. Article 79 of that ordinance adds that "any breach of the obligations set out in this order will give rise to disciplinary penalties, without prejudice, where appropriate, to the penalties laid down by law."

385. Article 1, third subparagraph of the sovereign ordinance regulating Monaco's prison provides that "[t]he prison is placed under the authority of the Director of Judicial Services who shall be assisted by a "prison administration office."

**B. A detainee may draft a letter to any Monegasque administrative  
or judicial authority, to his lawyer or to the authorities  
of the Council of Europe**

386. If a complaint is made against a member of staff of the prison, a detainee may, in accordance with article 32 of the internal rules of the prison, draft a letter to any Monegasque administrative or judicial authority, to his lawyer or to the authorities of the Council of Europe, a list of the latter being included in the internal rules of the prison. That letter is given in a sealed

envelope to the prison governor, and its dispatch may not be delayed on any pretext. In principle, the complaint is addressed to the Director of Judicial Services who is responsible for disciplining prison staff, but it may also be addressed to the Principal State Counsel who must keep the Director of Judicial Services informed.

### **C. Drafting a report on the facts and circumstances**

387. Consequently, where detainee makes a complaint against a member of the prison staff, the Director of Judicial Services asks the prison governor to draw up an incident report, pursuant to article 80 of the prison rules, if he has not yet done so. Before any penalty is imposed, the duly summoned contract staff member must be permitted to give an explanation. He has, in any event, the right to consult his case-file. The Director or, where necessary, the Secretary-General of Judicial Services, draws up a record of the hearing accorded to the staff member concerned and a detailed report of the facts and of circumstances in which they took place.

### **D. Disciplinary measures**

388. If a disciplinary measure is imposed, it will be pronounced, depending on the gravity of the measure, by the Director of Judicial Services or the Secretary-General and notified to the person concerned.

389. In respect of established staff, the Director of Judicial Services or the Secretary-General may impose penalties in the conditions laid down by Law No 957, that is to say, a warning, reprimand, downgrading or demotion, temporary exclusion from post for between three months and one year, compulsory retirement or removal from post. In cases of misconduct, be it a failure to comply with professional obligations or a breach of ordinary law, the person concerned may be suspended by decision of the Director of Judicial Services. If the person concerned is subject to criminal proceedings, his situation will not be finally resolved until the decision handed down by the trial court has become final.

390. For contract prison staff, the procedure laid down by the general regulations applicable to contract staff of the Directorate of Judicial Services and the prison will apply in the event of a complaint against a contract staff member. Consequently, any misconduct on the part of a contract staff member in the exercise of his duties will render him liable, without prejudice, where appropriate, to the penalties provided for under the law, to the following disciplinary measures: warning, reprimand, delayed promotion, temporary exclusion without pay for a maximum of one month, with the retention of family benefits, or dismissal without notice or compensation.

391. The Secretary-General issues a warning or reprimand and notifies it to the person concerned by letter, while the more serious penalties are a matter for the Director of Judicial Services and are notified by registered letter with acknowledgement of receipt.

392. Substitute prison staff are attached to the public service and, in the event of a complaint, the disciplinary procedure laid down by Law No 975 of 12 July 1975 on the status of public servants of the State will apply.

## ARTICLE 8

393. Slavery defines the social condition of a slave: a worker who lacks freedom and is generally unpaid and is, legally, the property of another individual and, therefore, negotiable in the same way as an item of goods. In the broader sense, slavery is a socio-economic system which is based on keeping people in that situation and exploiting them.

394. Slavery was abolished in the Principality, including as a result of Monaco's accession to the Geneva Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery of 25 September 1926, given force of law by sovereign ordinance of 13 February 1930, as well as the New York Protocol amending that Convention of 7 December 1953, given force of law by Sovereign Ordinance No 1.065 of 14 December 1954.

395. Although it has been abolished for a considerable time, a new form of criminality similar to slavery and described as "modern" has come into being.

396. Before it drafts new legislation, recent case-law has prompted the Principality to contemplate a provision banning any form of forced labour, slavery or servitude, with aggravating circumstances where the offence involves a minor. That legislation is at the drafting stage.

397. Furthermore, according to article 4 ECHR:

- “1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purposes of this article, the term ‘forced or compulsory labour’ shall not include:
  - a) any work required to be done in the ordinary course of detention imposed according to the provisions of article 5 of this Convention or during conditional release from such detention;
  - b) any service of a military character or, in the case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
  - c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - d) any work or service which forms part of normal civic obligations”.

## ARTICLE 9 (CCPR/CO/72/MCO, para. 15)

398. In the light of the Committee's recommendations and observations, and aware that the provisions of the Code of Criminal Procedure are not entirely consonant with the requirements of international law, including the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, or the Covenant, the Monegasque authorities have embarked on the process of amending the incompatible provisions of the Code.

399. However, the process of amending the law is taking longer than originally envisaged.

400. Under the proposed amendments, articles 1401 to 1412 will include the following provisions:

- a person placed in police custody must immediately be informed of the accusations levelled against him, which he is required to explain;
- that person has the right to be examined by a doctor who must, in particular, determine whether he is fit to remain in custody;
- that person may also immediately inform his relatives or employer, by telephone, of the measure which has been imposed on him;
- as soon as custody commences, a person taken into custody may demand to see a lawyer of his choice or an officially designated lawyer, who must be informed of the nature and alleged date of the offence and submit, on conclusion of that confidential interview, written observations attached to the case-file;
- the deposition of any person taken into custody must state the date and time on which custody commences and, where appropriate, when it is renewed; the date and time when the person concerned is notified of his rights; the date and time when the person in custody was able to exercise his rights; the duration of interviews, and the times when the person concerned was able to eat and drink; the date and time of his release or when he was brought before the public prosecutor. Those references must be initialled by the person in custody and be entered in a special register;
- the person in custody has the right to be interviewed in his own language; where necessary, the Code provides for the mandatory use of an interpreter.

401. The proposed article 1401-18 of the new Code of Criminal Procedure provides that those formal requirements must be fulfilled if the process is not to be invalid.

402. Moreover, Article 5 ECHR, to which Monaco is party, stipulates that:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a. the lawful detention of a person after conviction by a competent court;
- b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

- e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f. the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.”

## ARTICLE 10

### A. Deprivation of liberty

403. Monaco's prison (*Maison d'arrêt*) is an unusual institution, since it houses foreign detainees and convicted persons, but also, *de facto* if not *de jure*, is the detention centre for convicted persons of Monegasque nationality.

404. The prison is divided into three wings:

- a male wing;
- a female wing;
- a wing for minors.

405. As far as possible, accused persons are kept separate from convicted persons. The prison has a total capacity of 78.

406. At 26 December 2006, the prison population was 27 [sic]<sup>6</sup>, and included 10 women and 35 foreigners. There were 21 people on remand. The latter spend an average of eight to ten months on remand.

407. Where foreign detainees are finally sentenced to a term of imprisonment, they are transferred to a French prison to serve their time, as provided for under article 14 of the Franco-Monegasque Neighbourhood Agreement of 18 May 1963. In practice, convicted persons are

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<sup>6</sup> Translator's note: these figures do not appear to add up.

transferred to the prison in Nice. From there, they may be transferred to other places of detention. In such cases, the French prison system applies.

408. The role of the prison authorities is to ensure that judicial decisions imposing a prison sentence or ordering temporary detention are implemented, and also to ensure that prisoners placed in detention or kept in detention by the courts are guarded and provided for.

409. In regard to all detainees, the prison authorities guarantee proper respect for individuals and take the measures necessary for their social rehabilitation. Under the terms of article 78 of Sovereign Order No 69 of 23 May 2005 on the organization of the prison, prison staff are categorically prohibited from “engaging in acts of physical or moral coercion against detainees” or even from “addressing them in a familiar or uncouth manner”.

410. The prison is placed under the authority of the Director of Judicial Services, who is assisted by a prison office.

411. Sovereign Ordinance No 69 of 23 May 2005 on the organization of the prison provides for the possibility of detainees working.

412. Article 22 thereof lays down a rule concerning the financial assets of detainees. At a legal level, that article also establishes the general rules pertaining to the allocation of detainees’ financial assets, as well as the procedure for compensating civil parties in respect of the portion reserved for them, by stipulating that a portion equivalent to 20% of net remuneration is to be allocated fifty-fifty to building a nest-egg for use on release and to compensating civil parties.

413. With a view to their social rehabilitation, detainees are able to attend general educational courses within the prison. They may also, at their own expense and subject to approval by the prison governor, receive and follow correspondence courses.

414. In order to maintain family, social, cultural and religious ties, detainees are able to have regular visits which are authorized, depending on whether they are on remand or have been convicted, by either the investigating judge or the Principal State Counsel.

415. Detainees may also take advantage of social and educational services, as well as spiritual help; they may see a Catholic chaplain and keep the reading matter they need for their spiritual life. The social worker at the Directorate for Judicial Services plays a vital role in the context of the prison’s social and educational services.

a) She has a discussion with new detainees as soon as possible and, is, therefore, informed by the prison governor of the identity and situation of anyone who is imprisoned;

b) She is also informed when a prisoner is released so that she can take the appropriate measures for that person’s rehabilitation;

c) She has free access to the premises in which prisoners are detained during daily working hours;

d) She receives detainees in her office at the prison, without a prison officer being present, unless the detainee requests this or the prisoner officer has been summoned to attend;

- e) The social worker pays special attention to the organization of the library, the studies and activities of detainees;
- f) Subject to the agreement of the prison governor, she is able, in the context of her duties, to procure for detainees any item or product which poses no threat to security or health;
- g) She guides and co-ordinates the activities of prison visitors.

416. Charitable bodies may, if appropriate, lend assistance to detainees. For example, Monaco's Red Cross offers detainees support, including by providing poor prisoners with stamps and parcels.

417. Detainees may correspond with anyone they wish, unless otherwise decided by the judge responsible for their case. They may communicate freely with their legal representative, without the presence of a prison guard and in a special visitors' room, and engage in correspondence with their legal representative unsupervised by the prison authority.

418. Order No 2005-8 of the Directorate of Judicial Services of 3 June 2005 lays down the procedures for implementing Sovereign Ordinance No 69 of 23 May 2005 on the organization of the prison.

419. The rules on prison work are laid down in the following articles:

Article 16: "Applications to work must be made in writing and addressed to the prison governor.

Posts are to be allocated by the prison governor in the light of the positions available.

The failure to obey orders or instructions given in connection with the performance of a task may result in the imposition of disciplinary measures."

Article 17: "No form of work may be taken up unless prior authorization has been obtained from the Director of Judicial Services.

The organization, working methods and remuneration must, in so far as possible, reflect those of similar occupational activities outside the prison context."

Article 18: "The allocation of work shall be subject to the general terms and conditions adopted by the Director of Judicial Services.

Daily and weekly working time may not exceed the working hours that apply in the type of activity in question.

Respect for the weekly rest day and public holidays must be ensured. Working hours must make provision for the time needed for rest, meals, exercise and educational and leisure activities.

Health and safety must be guaranteed."

420. When sentence is handed down, the courts may make use of the options for individualizing sentences, such as ordering a suspended sentence or a suspended sentence with probation, or impose alternatives to imprisonment, such as a fine.



421. In point of fact, by Sovereign Ordinance No 3.960 of 12 February 1968 on the social rehabilitation of offenders, the Principality of Monaco provides for that option in respect of offenders given a suspended sentence with probation; it also set out the broad lines of the measures for supervision and assistance that are designed to encourage and support a prisoner's efforts to achieve social rehabilitation.

421. [sic] Sovereign Ordinance No 3.996 of 22 March 1968 on the split serving of certain prison sentences enables convicted persons who are in employment, to serve their sentence at weekends only, in order to avoid disrupting their social ties. One "weekend" counts as one week's imprisonment.

422. Sovereign Ordinance No 4.035 of 17 May 1968 on conditional release permits a detainee who has obtained a certificate of work and an accommodation certificate, and who has a record of good behaviour in detention, to leave before sentence has been served in full, subject to certain conditions.

### **B. The special case of juvenile offenders**

423. There are no special provisions governing the detention of minors. A wing of the prison is, however, reserved for them. In practice, the prison endeavours to facilitate access to education for them.

424. Juvenile detainees who are less than 16 years of age attend compulsory classes provided by a teacher who has been approved by the Directorate of Judicial Services. In addition, either on the occasion of family visits or via the social worker working with the prison authority, they receive the homework as well as the courses provided by the French or Monegasque educational establishments which they attended before their imprisonment. The homework which they complete in detention is sent to the relevant teachers, and the continuation of their schooling is thus assured. Juvenile detainees aged 16 and over are able either to make use of that procedure, or to follow correspondence courses (AUXILIA), with the help of the social worker.

425. Furthermore, juveniles in detention are accorded more physical exercise time than adults. Indeed, as well as two daily sessions of sporting activity, juvenile prisoners may take part in an additional weekly session organized by a sports instructor.

426. In addition, the prison obtains, as a priority, for juvenile detainees who wish to have one, CD players, as well as CDs purchased by the social worker.

427. Alternatives to prosecution are also provided for juveniles, so that imprisonment is only the last resort (article 9 of Law No 740 of 25 March 1963).

428. Article 7 of Law No 740 also provides for the possibility of the judge in the Juvenile Court to issue, on application from the Principal State Counsel – in the interest of the juvenile and if the injured party decides not to bring a civil action for damages – a discharge accompanied, if appropriate, by one of the measures to which article 9, paragraph 2, refers.

429. Consequently, if the juvenile is found to have committed the offence, the court seised of the case may take one of the following decisions:

- a) The president of the court may give the juvenile a simple reprimand;

b) The juvenile may be “returned” either to his parents or to the person who had custody of him or to a person specified in the decision, either directly, or under the parole system, until the juvenile reaches the age of 21, or for a lesser period;

c) Order, subject to the same time-frame, that the juvenile be placed in a Monegasque or French establishment that is authorized to hold juveniles;

d) Impose on the juvenile, if he is at least 13 years of age, the penalty provided for under the criminal law establishing the offence, bearing in mind both the need for punishment and the possibilities for the juvenile’s spiritual recovery and re-education.

#### ARTICLE 11

430. The Committee has made no comment or recommendation concerning article 11 of the Covenant.

#### ARTICLE 12 (CCPR/CO/72/MCO, para. 18)

431. Banishment is referred to generally in Article 7 of Monaco’s Criminal Code, and then, subsequently, in articles 17, 20, 21 and 24 of the Code.

432. It was already explained to the Committee in 2003 that the Government recognized that these provisions were antiquated, and that this punishment had not been handed down by Monaco’s courts for decades. It is therefore proposed that this obsolete provision be repealed.

433. A distinction must be made between banishment and *refoulement*, which is an administrative measure and is, therefore, a matter not for the judicial authorities but for the Minister of State.

434. In practice, *refoulement* often accompanies a criminal penalty on which it is based.

#### ARTICLE 13

##### A. Conditions governing the expulsion of a foreigner

435. The Committee is asked to take note of the following declaration of the Principality concerning article 13 of the Covenant:

“The Princely Government declares that the implementation of the principle set forth in article 13 shall not affect the texts in force on the entry and stay of foreigners in the Principality or those on the expulsion of foreigners from Monegasque territory.”

##### B. Recommendations in paragraphs 4 and 16 of the Committee’s concluding observations (CCPR/CO/72/MCO, paras. 4 and 16)

436. The rules on expulsion are laid down by Sovereign Ordinance No 3.153 of 19 March 1964 on the conditions governing the entry and residence of foreigners in the Principality, and particularly articles 22 and 23 thereof:

- Article 22: “The Minister of State may, by issuing a control measure or an expulsion order, enjoin any foreigner to leave Monegasque territory immediately or ban that

person from entering Monegasque territory. Any foreign who has been the subject of *refoulement*, expulsion or banishment from French territory and is present in the Principality shall, as soon as the relevant measure or judgment has been notified to the Minister of State, be subject to *refoulement* or expulsion from Monegasque territory and handed over to the French authorities (...).”

- Article 23: “Any person who has evaded enforcement of the measures set out in the article 22 above or who, after leaving the principality, enters it without permission, shall be sentenced to between six months and three years imprisonment and to a fine of between € 75 and € 750, or to one of those penalties only. On completion of sentence or payment of the fine, that person will be conducted outside Monegasque territory”.

437. Furthermore, according to article 13 of the Franco-Monegasque Neighbourhood Agreement of 18 May 1963, “no non-Monegasque who is expelled or banished from the territory of the French Republic and whose expulsion or conviction is notified to the Princely Government through the intermediary of the Consulate-General of France in Monaco, shall be allowed to reside in the Principality.”

438. Article 3 of Protocol No 4 ECHR, which was brought into force by Sovereign Ordinance No 409 of 15 February 2006 stipulates that “[n]o one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national”; and, according to article 4, “[c]ollective expulsion of foreigners is prohibited”.

439. Before the law requiring the Monegasque State to state the reasons for any decision to expel was promulgated, the Supreme Court reserved the right to annul a decision, if the State did not provide it with the information it needed to assess whether the administrative measure of *refoulement* was justified. The case-law of the Supreme Court has evolved considerably.

440. Originally, the Supreme Court took the view (see the decision of 20 October 1949) that the expulsion order did not need to contain a statement of the reasons: “considering, as regards the first complaint, that an expulsion order is a control and security measure which cannot be prejudiced by the principle of individual liberty; that the Minister of State, who is responsible for the security of the Principality, has the authority to remove from Monegasque territory foreigners whose presence represents, in his view, a threat to public policy (*ordre public*) or the peace, that he does not have to state the reasons for his decision and that it is not for the Supreme Court to assess whether that decision is appropriate or well founded” (Supreme Court, *Recueil des decisions*, [Court reports]).

441. The Supreme Court took that same view in two judgments of 10 February 1982, *sieur E. Fischer* and *dame D. Chohler, épouse Fischer*.

442. That precedent was then overturned by a decision of 8 March 2005 in the case of *Sieur P.A de Carli v Ministère public*, in which the Supreme Court annulled the Minister of State’s decision refusing to rescind an expulsion order. The Minister was required to explain the reasons for his refusal. The Court held that “it is apparent from the documents drawn up by the State Counsel at the court of San Remo

(...) that Mr. de Carli had no criminal record and there was no record of any prosecution against him; that the Minister of State provides no evidence capable of

establishing that, since his expulsion, the applicant has engaged in practices of a kind that would justify in law the refusal to rescind that measure;

(...) consequently, Mr. de Carli was right to claim that, in so far as it refuses to rescind the expulsion order of 22 May 1995, the decision at issue is vitiated by abuse of authority". (Supreme Court, *Recueil des decisions*).

443. Therefore, the Minister of State must determine whether the expulsion is justified on the basis of the facts. If he does not do so, he is deemed to have committed an abuse of authority.

444. Case-law has also evolved in relation to *refoulement* and expulsion measures. One of the most significant decisions here is the decision of Supreme Court of 11 March 2003 in the case of *Sieur P. Osuch v Ministre d'État*:

"Whereas, although, in decisions handed down between 1949 and 1982, the Supreme Court held that the decisions of the Minister of State enjoining a foreigner to leave Monegasque territory did not need to state the reasons, account must be taken of developments over a period of 50 years; in neighbouring countries, decisions of that nature must now state the reasons; under article 13 of the International Covenant on Civil and Political Rights, brought into effect by Sovereign Ordinance No 13.330 of 12 February 1998: "[a]n alien lawfully in the territory of a State Party to the present Covenant [...]"

(...) while the Princely Government has declared that the application of the principle set out in article 13 cannot affect the texts in force on the entry or stay of foreigners in the Principality or those on the expulsion of foreigners from Monegasque territory, that reservation cannot be enforced in regard to the plaintiff; in its declaration concerning the process of the accession of the Principality of Monaco to the Council of Europe, the Princely Government indicated that it has prepared a draft law stipulating that the authorities must give the reasons for their acts (...);

**Its deliberations completed:** considering, on the one hand, that neither that draft law nor any other law or regulation requires the Minister of State to state the reasons for the decision by which he orders an foreigner to quit Monegasque territory; that such a requirement may not derive from article 13 of the International Covenant on Civil and Political Rights either, the application of which, pursuant to a declaration of the Princely Government attached to the above-mentioned Sovereign Ordinance bringing the Covenant into effect, cannot affect the texts in force concerning the expulsion foreigners from Monegasque territory;

Consequently, the plaintiff is not justified in claiming that the decision at issue – by which the Minister of State issued in his regard a measure of *refoulement* from Monegasque territory is illegal – on the ground that it does not contain a statement of the reasons."

445. However, on 12 March 2003, in the case of *Sieur L. Battifoglio v Ministre d'État*, the Supreme Court held that:

"[...] considering, however, that if the contested decision did not contain a statement of the reasons, it is for the Supreme Court to verify the accuracy and legality of the reasons which the Minister of State cites as the grounds for his decision [...] thus, in the

circumstances of this case, the Minister did not provide the Court with the information it needed to review the legality of the decision.”

446. The State party invites the Committee to refer to the additional information that was conveyed to it in 2003 (CCPR/CO/72/MCO/Add.1., paras. 2 to 8).

447. The law which was then being drafted (*ibid*, para. 9) has been adopted and stipulates that individual administrative decisions (Law No. 1.312 of 29 June 2006) must state the reasons, failing which they are null and void:

- Article one: “The following must state the reasons, failing which, they shall be null and void: administrative decisions which:
  - 1° – restrict the exercise of individual freedoms or constitute a control measure;
  - 2° – impose a penalty;
  - 3° – refuse authorization or approval;
  - 4° – make the grant of authorization subject to restrictive conditions or impose constraints;
  - 5° – withdraw or rescind a decision establishing rights;
  - 6° – invoke prescription, extinction or lapse;
  - 7° – refuse an advantage, the award of which is a matter of entitlement for persons fulfilling the statutory conditions for its acquisition;
  - 8° – grant a derogation, pursuant to the law or regulations in force.”

## ARTICLE 14

### A. Public hearings

448. Declarations made by the Principality: “The Princely Government interprets article 14, paragraph 5, as embodying a general principle to which the law can introduce limited exceptions. This is particularly true with respect to certain offences that, in the first and last instances, are under the jurisdiction of the Police Court, and with respect to offences of a criminal nature. Furthermore, verdicts in the last instance can be appealed before the Court of Judicial Review<sup>7</sup>, which shall rule on their legality.”

449. In the Principality, every individual has the right to have his case heard fairly and in public, by a court that has jurisdiction, is independent and impartial.

450. The general principle is that cases are heard in public, except for the possibility of hearing a case in camera, provided for by articles 291 *et seq.* of the Code of Criminal Procedure.

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<sup>7</sup> Translator’s note: text taken from the UN Treaty Series, but this court is described elsewhere as the “Court of Revision”.

- Article 291: “Hearings shall be held in public, if they are not, they shall be invalid. However, the president may prohibit minors or certain minors, from having access to the courtroom.”
- Article 292: “If, because of the nature of the acts, a public hearing seems to pose a threat to public policy (*ordre public*) or morals, the court may, at the request of the Office of the State Counsel, or of its own motion, order, by a reasoned decision which is stated in public, that the hearing will take place, in whole or in part, in camera. The judgment on the merits shall always be delivered in a public hearing.”

451. For cases that fall within the jurisdiction of the civil courts, articles 188 and 189 of the Code of Civil Procedure provide:

- article 188: “*Hearings shall be public*”;
- article 189: “Nonetheless, the court may order, including of its own motion, that the hearings, including the submissions of the Office of the State Counsel and the judges’ reports, are to take place in camera:
  - 1) in cases between spouses and between ascendants and descendants;
  - 2) in cases in which paternity is being denied;
  - 3) in banning applications;
  - 4) in motions of challenge;

and, generally, in all cases in which public debate could cause offence or have serious disadvantages.”

**B. Paragraph 2: Presumption of innocence**  
(CCPR/CO/72/MCO, para. 14)

452. The implementing measures provided for in article 14, paragraph 2 *et seq.*, of the Covenant have yet to be incorporated into the national *corpus juris*, but will very soon be incorporated into the Code of Criminal Procedure; the draft law amending the latter has been tabled for adoption at the National Council.

453. By Sovereign Ordinance No 408 of 15 February 2006, the Principality of Monaco gave effect to the European Convention on Human Rights, as amended by Protocol No 1.

454. Article 6, paragraph 2, ECHR enshrines the presumption of innocence: “[e]veryone charged with a criminal offence shall be presumed innocent until proved guilty according to law (...)”.

455. Moreover, the introductory article to the proposed Code of Criminal Procedure appears as a permanent guideline that should direct the activities of the judiciary. Respect for human dignity and the presumption of innocence, for example, are given the status of obligations *ad infinitum*.

### **C. Paragraph 3: The rights of the accused**

#### **1. To be informed in a language he understands**

456. Proposed article 1401-17 provides for the possibility that if a person in custody neither understands nor speaks the French language, notifications and hearings are to be in a language which that person understands.

#### **2. Right to legal aid**

457. Articles 38 *et seq* of the Code of Civil Procedure determine the procedures governing the grant of legal aid:

- Article 38: “Any person who has rights to enforce before the courts, but is unable to meet the costs of proceedings in advance, without drawing on the resources needed for his subsistence or that of his family, may request legal aid.”

458. In criminal proceedings, article 167, subparagraph 2, of the Code of Criminal Procedure provides for that possibility: “An accused person who is able to demonstrate that his resources are insufficient may (...) request that a (lawyer) be officially appointed for him.”

#### **3. The right to a lawyer**

459. Article 375 of the Code of Criminal Procedure provides that:

“The president of the court shall officially appoint a defence counsel for an accused person who requests this.

It is for the president to appoint a defence counsel, including for an accused person who is not in detention, if the circumstances require this.

He may authorize an accused person to be defended by a foreign lawyer or even by one of his relations or friends.”

#### **4. Examining witnesses or obtaining the examination of witnesses**

460. Under article 125, subparagraph 2, of the Code of Criminal Procedure: “The Office of the State Counsel, the complainant and the accused may ask for witnesses to be questioned, and must indicate the facts on which such witnesses are to be questioned, failing which their request may be refused.”

#### **5. The right to be tried without excessive delay**

461. Article 5 and 6 ECHR provide for the right to be tried without excessive delay.

462. Article 5 ECHR guarantees the rights of persons who have been deprived of their liberty (cited in full at para. 402 above).

463. Article 6 ECHR then provides:

“1. In the determination of his civil right and obligations or of any criminal charge against him everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest or morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:
- a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b. to have adequate time and facilities for the preparation of his defence;
  - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

#### **D. Paragraph 4: Procedure applicable to juveniles**

464. Persons aged less than 21 years of age were deemed to be minors in the Principality of Monaco. That rule was amended by Law No 1.261 of 23 December 2002 lowering the age of majority to 18 years of age.

465. Being a minor may be pleaded as a mitigating factor under Monegasque criminal law. Special provisions are in place for minors, specifying that they may not be sentenced to more than half of the penalty that would have been applicable to an adult in respect of the same acts.

466. Article 46 of the Criminal Code in fact provides that:

“If it is decided that a minor of between 13 and 18 years of age must be sentenced to imprisonment, the sentence may not exceed 20 years imprisonment in the case of a serious crime.

In the case of a serious offence, the penalty may not exceed half of the penalty that would have applied to an 18 year-old adult.”

467. Moreover, Law No 740 of 25 March 1963 on juvenile offenders, and Sovereign Ordinance No 3.031 implementing it, lay down special rules in regard to minors who have committed offences.



468. Article 5-1 of Law No 890 of 1 July 1970 on drugs lays down specific rules in cases where the acts have been committed by a minor.

469. Finally, in civil matters, the protection of minors is ensured by the educational support measures provided for under articles 317 to 322 of the Civil Code, which enable the judge at the Juvenile Court to intervene whenever the health, safety, morals or education of a minor are at risk, whatever the nationality of that minor.

#### **E. Paragraph 5: The right of appeal**

470. The principle of the right of appeal is recognized in Principality of Monaco:

- articles 110 to 112 and 422 to 435 of the Code of Civil Procedure lay down the general rules governing appeals against judgments of the civil courts in domestic law;
- articles 110 and 111 of that Code govern appeals against judgments handed down by the Justice of the Peace;
- article 112 of the Code of Civil procedure provides that “[w]here the Court of First Instance quashes a judgment which has been appealed, it shall rule on the merits, unless the Justice of the Peace has incorrectly declared that he lacks jurisdiction, in which case it shall remit the case back to that judge;”
- articles 403 to 423 of the Code of Criminal Procedure lay down the rules governing appeals against judgments handed down in criminal proceedings;
- articles 446 to 454 of that Code govern appeals against judgments handed down by the Police Court.

471. The rules governing appeals against orders of the investigating judge are laid down in articles 227 to 232 of the Code of Criminal Procedure.

472. Moreover, the Principality of Monaco’s legal system permits individuals to appeal for proceedings to be re-opened, if an error of law has been committed.

473. Under article 90 of the Constitution:

«A. – In constitutional matters, the Supreme Court shall itself determine:

1) whether the rules of procedure of the National Council are compatible with constitutional and, if appropriate, legislative provisions, in the conditions laid down in article 61;

2) applications for annulment, for an assessment of validity and for damages concerning a breach of the rights and freedoms established under Title III of the Constitution, and not referred to in section (B) of this article.

B. – In administrative matters, the Supreme Court shall itself determine:

1) applications for annulment in regard to misuse of authority that are made against decisions of the various authorities and sovereign ordinances adopted in implementation of the laws, as well as the award of compensation;

2) appeals on a point of law in respect of decisions of the administrative courts ruling at last instance;

3) applications seeking an interpretation and for an assessment of the validity of the decisions of the various administrative authorities and sovereign ordinances adopted in implementation of the laws.

C. – The Supreme Court shall determine conflicts of jurisdiction.”

474. In the light of the Principality of Monaco’s recent accession to the Council of Europe, convicted persons will be able to refer their case to the European Court of Human Rights, if they consider that one of the fundamental rights protected by the European Convention on Human Rights has been flouted (see below)

475. A decision handed down by the Criminal Court may be subject to appeal on a point of law only. Pursuant to 362 of the Code of Criminal Procedure: “[a]fter having delivered judgment, if the defendant is convicted, the president shall inform him that, under the law, he is entitled to lodge an appeal on a point of law (...)”.

476. As far as the Justice of the Peace is concerned, if decisions of that judicial body are given at first instance, they may be appealed before the Court of First Instance.

477. Judgments issued by the Police Court may be appealed before the Court of First Instance, sitting as a criminal court. However, some decisions of the Police Court are not subject to appeal.

#### **F. Paragraph 6: Right to pardon and amnesty, right to compensation**

478. Article 15 of the Monegasque Constitution provides that:

“After consulting the Crown Council, the Prince shall exercise the right to pardon and to grant an amnesty, as well as the right to accord naturalization and to restore nationality.”

479. According to articles 625 and 626 of the Code of Criminal Procedure: “[i]t is for the Prince to grant amnesties and pardons within the framework of article 15 of the Constitutional Ordinance of 17 December 1962 (amended by the Law of 24 April 2002), “an amnesty shall expunge the conviction, subject to the rights of civil parties claiming damages and third parties”.

480. Article 5(5) ECHR provides that “[e]veryone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation”.

#### **G. Paragraph 7: Principle of non *bis in idem***

481. The principle of *non bis in idem* is recognized in Monaco by article 351 of the Code of Criminal Procedure, according to which: “an accused person who has been acquitted or convicted may not be prosecuted for the same act, even if differently defined.”

482. Article 7 ECHR also stipulates:

“1. No one shall be held guilty of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at

the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general provisions of law recognized by civilized nations.”

#### ARTICLE 15

483. Article 20 of the Constitution provides that laws may not be retroactive: “the criminal laws may not have retroactive effect.”

484. The Constitution also applies the principle that no act can be qualified as a punishable crime without pre-existing prohibitory law; according to the first subparagraph of article 20: “no penalty may be established and applied other than pursuant to the law.”

#### ARTICLE 16

485. The Committee has made no comment or recommendation concerning article 16 of the Covenant, and legislative developments material to that article are indicated in the remainder of the document.

#### ARTICLE 17

486. On the question of interference in private life, two laws are currently being drafted:

- the first relates to the amendment of Law No 1.165 of 23 December 1993 concerning the treatment of personal data, which will accord complete independence to the Supervisory Commission on Personal Data (*Commission de Contrôle des Informations Nominatives -- CCIN*) and guarantee better respect for the protection of individual rights and freedoms;
- the second draft legislation concerns public security, and will regulate public and private video surveillance.

487. Article 8 ECHR provides:

“1. Everyone shall have the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

**ARTICLE 18** (CCPR/CO/72/MCO, para. 20)

488. According to article 9 of Monaco's Constitution: "[t]he Catholic, Apostolic and Roman religion shall be the official State religion."

489. However, pursuant to article 23 of the Constitution:

"Freedom of worship and of its public practice shall be guaranteed, as well as the freedom to express opinions on all subjects, save where offences are committed in the exercise of such freedoms.

No one may be compelled to take part in the acts or ceremonies of a religion or to observe its rest days."

490. While the Catholic religion has continued to be the official State religion, the rules governing religions are based on two principles:

- a) The Catholic religion is the official State religion;
- b) Freedom of religion is guaranteed.

491. Followers of religions other than the Catholic religion are able to practise their religion freely and in public. In accordance with a very long-standing tradition of liberalism and tolerance, that principle, which respects the conscience of everyone, excludes any form of discrimination against non-Catholics. Within the education system, no pupil is required to follow courses of Catholic instruction; such courses are provided with due respect for conscience and subject to parental approval.

492. Ministers of the different religions benefit, in the exercise of their duties, from the protection of the law and from special provisions should they suffer insult (articles 205 to 208 of the Criminal Code).

493. Finally, under the law, obstacles to the freedom to practise a religion and constraints designed to prevent person from attending a ceremony or celebrating a religious festival, are punishable by terms of imprisonment and fines.

494. Furthermore, article 9 ECHR provides for freedom of thought, conscience and religion:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

**ARTICLE 19** (CCPR/CO/72/MCO, para.19)

495. Declaration by the Principality of Monaco: “[t]he Princely Government declares that article 19 is compatible with the existing system of monopoly and authorization applicable to radio and television corporations.”

496. Article 1 of Law No 1.299 of 15 July 2005 on the freedom of public expression provides that:

“There shall be freedom to publish any document on any medium. The exercise of that freedom may be limited only in so far as is required by respect for human dignity, private and family life, the freedom and property of others, the pluralist nature of the expression of schools of thought and opinion and the safeguarding of *ordre public* (public policy)”.

497. Consequently, it accords respect for the rights and reputation of others and safeguards *ordre public*.

498. Nonetheless, and although the Principality of Monaco respects and accepts freedom of opinion, as article 19 of the Covenant requires, the system of monopoly and authorization that exists in the Principality continues to apply. The rules governing methods of public expression relate to Law No 1.299 of 15 July 2005 on freedom of public expression.

499. According to article 1 of that law, the freedom to publish any document on any medium exists, but subject to strict limits.

500. Moreover, article 10 ECHR establishes the right to freedom of expression:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

**ARTICLE 20**

501. As regards the specific legal measures which the Monegasque authorities have taken to combat racism and intolerance, article 16 of Law No 1.299 of 15 July 2005 on the freedom of public expression provides that:

“Any person who, by one of the methods listed in article 15 above, has directly incited the commission of the offences listed below, but that incitement has been without

effect, shall be punishable by five years' imprisonment and the fine laid down in article 26, No 4, of the Criminal Code, or by one of those penalties only:

- 1) intentional crimes against life, intentional crimes against the integrity of the person and sexual attacks;
- 2) theft, extortion and destruction, and intentional damage and spoil that is dangerous to persons;
- 3) acts of terrorism or justification of such acts.

The same penalties shall apply to any person who, by one of the methods listed in article 15 above incites hatred or violence in regard to an individual or group of persons because of their origin, membership or non-membership of an ethnic group, nation, race or particular religion, or because of their real or assumed sexual orientation.”<sup>8</sup>

502. Article 18 of Law No 1.299 of 2005 is particularly important, since it provides that: “any person who, using one of the methods set out in article 15 above, has sought to disturb the peace by inciting hatred against the inhabitants of or persons temporarily in the Principality, shall be subject to the penalties provided for in article 17 above.”

503. Moreover, two draft laws, which are currently under consideration – one on sport and the other on computer crime – are also to include provisions which are specifically designed to combat acts of racism and problems linked to intolerance.

504. The draft law concerning computer-related crime provides for the incorporation of an article 294-4 into the Criminal Code, making it an offence to manufacture, produce, transport, broadcast or market, by whatever method and using whatever medium, a violent or pornographic message that is likely seriously to violate human dignity. It will provide for aggravating circumstances, if the message was able to be read by a minor.

505. Moreover, article 12 of Law No 1.165 of 23 December 1993 on the processing of personal data provides that:

“The collection, recording and use of information which would reveal opinions or political, racial, religious, philosophical or trade-union views shall be prohibited, unless the person concerned has given their written or express consent. That person may, at any time, withdraw that consent and ask the author or user to destroy or delete the information pertaining to him.”

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<sup>8</sup> NB: article 15 “Persons who, either through speeches, calls or threats made in public places or gatherings, or by documentation, printed matter, drawings, engravings, paintings, symbols or any other documentary, verbal or pictorial image, that is sold or exhibited in public places or gatherings, or through publicly exhibited posters or notices, or through any method of audiovisual communication, have directly incited the author or authors of an act, which is classified as a serious crime or serious offence (*crime* or *délit*), to commit that act, shall be punished as accessories to the act, if the incitement had effect. That provision also applies where the incitement resulted only in an attempt, as provided for by article 2 of the Criminal Code.”

**ARTICLE 21** (CCPR/CO/72/MCO, para.17)

506. The draft law on public security will regulate the right to peaceful assembly and association to enable individuals to associate freely. It will ease the formalities that are currently required, and the State will intervene only if there is a threat to security.

507. According to article 11 ECHR:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

**ARTICLE 22** (CCPR/CO/72/MCO, para. 17)

**A. Freedom of association**

508. Freedom of association is a constitutional right in the Principality, established by article 30: “Freedom of association shall be guaranteed within the framework of the laws that regulate it.”

509. Law No 1.072 of 27 June 1984 on associations lays down the rules governing the organization of associations in the Principality.

510. Moreover, article 11 of the European Convention on Human Rights, which formed the subject of Law authorizing ratification No 1.304 of 3 November 2005, and was brought into force in the Principality by Sovereign Ordinance No 408 of 15 February 2006, provides for the freedom of assembly and association.

511. Finally, a draft law on freedom of association, which has been tabled at the National Council – a single-chamber parliament – is currently under consideration.

**B. Trade union freedom**

512. The Principality is not party to the International Labour Organization’s Convention No 87 on the Freedom of Association and Protection of the Right to Organize. Trade union activity is, however, recognized by article 28 of the Constitution, which provides that:

“Any person may defend the rights and interests of his profession or function by trade union action.

The right to strike is recognized, within the framework of the laws which regulate it.”

**1. The limitations on the right to strike**

513. The conditions in which the right to strike, recognized by article 28 of Monaco’s Constitution, may be exercised are regulated by Law No 553 of 7 February 1952 governing the

right to strike and lock-out, and Law No 1.025 of 1 July 1980 governing the exercise of the right to strike and safeguarding the right to work non-applicable to officials of the State, the Commune and Public Institutions.

514. Law No 533 of 1952 stipulates that any strike or lock-out that is likely to jeopardize *ordre public* (public order) or the interests of Monaco's economy is prohibited.

515. Pursuant to Law No 1.025 of 1980:

a) Only a strike that is conducted in breach of the laws in force or contrary to one of the following provisions is illegal:

- the sole purpose of the strike must be to defend the professional interests of the employees who take strike action;
- the reason for the strike must be founded on internal industrial relations within the Principality;
- it must begin and end on the same day and at the same time for all of the employees who take part in it;
- it must take place outside the establishment.

b) However, a concerted protest does not constitute a strike and is unlawful, if:

- it consists, for the same purpose, of interruptions to work affecting the different professional groups or categories of employees in one and the same establishment, on a staggered or concerted rota basis;
- it takes the form of below-standard work or a slow-down.

c) The decision to take or to continue strike action may not have the effect of removing or restricting the right to work of employees who do not wish to take part;

d) Employees who are taking strike action are required to guarantee the safety measures necessary to prevent accidents to individuals and physical destruction or damage, particularly to equipment;

e) Undertakings which hold a public service concession or have a function of general interest (such as undertakings responsible for the supply of electricity, gas and water, undertakers, sanitation services, public transport and radio and television broadcasters) must provide a minimum service, the terms of which are laid down by Ministerial Decrees Nos 80.392 and 80.393 of 28 August 1980.

## **2. The trade unions**

516. A collective employment agreement is an agreement concluded between, on the one hand, an employer or one or more employers' associations or legally constituted employer groups, and, on the other, one or more employee trade unions or an association of legally constituted employee trade unions, for the purpose of determining working conditions and the mutual undertakings of the parties in one or more companies or industries, in respect of an entire occupational group or a cluster of occupations.



517. Collective employment agreements have, for example, been signed between trade union, employer and employee organizations in most occupational sectors: the hotel industry, construction industry, banks, metal industry and so on.

518. Working relationships within undertakings follow one of two patterns:

a) In undertakings with more than ten employees, all staff, whether or not they belong to a trade union, are represented vis-à-vis the employer by staff delegates, who are periodically elected by all of the employees. The delegates are responsible for presenting all individual or collective complaints concerning the application of the employment legislation in force, and to refer matters, if necessary, to the labour inspector. They are also responsible for ensuring, together with the company director, that the establishment's social institutions function properly. Basically, they have a dual supervisory and managerial role;

b) In undertakings with more than 40 employees, and parallel to that form of staff representation, trade union rights properly speaking may be exercised in certain conditions laid down by law. Moreover, if staff members join it, any trade union for the occupational group concerned may be represented vis-à-vis the company director by a delegate based on the actual purpose of the trade union activity. The task of the trade union delegate in the undertaking is to improve working conditions and conditions of pay. Consequently, the trade union delegate has a dynamic role and focuses on collective objectives, unlike staff delegates, whose role is essentially to ensure that the laws, practices and contracts are respected, in regard to every employee viewed individually.

519. Trade unions exercise their power of representation not in terms of managing social bodies but by co-operating with the public authorities in the general interest. Consequently, their delegates sit on those bodies required to give the Government their views on certain methods of applying legislation and even on certain draft laws or sovereign ordinances.

520. These bodies are, first and foremost, joint consultative committees which also include officials and experts in the field. An example would be the special committee for accidents at work and occupational diseases.

521. At a higher level, the trade unions are also represented on the Economic and Social Council, a consultative assembly whose basic role is to advise the Government on the economic, social, financial, hotel- and tourist-related problems (...) of general interest to life in Monaco.

522. Pursuant to Law No 403 of 28 November 1944 authorizing the setting up of employer organizations: "all natural persons or legal entities, which are legally authorized to engage in a commercial or industrial activity may – for the purposes of representing their profession or corporation – join trade unions which they set up to study and protect their economic, industrial, commercial or professional interests, and for the presentation of their profession or corporation."

523. The only restrictions which apply under that law are the following:

- a) the trade unions which are set up may include only persons engaged in the same occupation or linked occupations or running similar trades or industries;

- b) however, persons engaged in different trades or industries may form a joint trade union, if they are sufficient in number to form separate trade unions for each occupational group.

524. Pursuant to Ordinance-Law No 399 of 6 October 1944 authorizing the setting up of professional trade unions:

- a) Monegasque employees and foreign employees who are legally authorized to work in the Principality, may join trade unions which they have set up, provided the purpose of those trade unions is to study and protect their economic or professional interests and to represent the profession and its members;
- b) the trade unions which are established may include only persons engaged in the same occupation, similar or linked occupations.

525. Moreover, those two pieces of legislation provide that:

- members may not belong to several different trade unions at the same time;
- the majority of members of the trade union bureau must be of Monegasque or French nationality;
- juveniles over 16 years of age may join a professional trade union, unless their legal representative objects;
- persons who have left their profession may continue to belong to a trade union, provided that they were engaged in their occupation for at least five years in Monaco and actually reside there;
- members are required to pay a joining fee and subscriptions;
- trade union federations may not become affiliated, for any reason whatsoever, to a foreign organization.

## ARTICLE 23

### **A. Paragraph 2: The right to marry** (CCPR/CO/72/MCO, paras. 9 et 12)

526. Article 117 of the Civil Code provides that: “[m]en may not marry before they reach 18 years of age, and women may not marry before they reach 15 years of age. However, the Prince may make an exemption from the age requirement, if there are serious reasons for doing so.”

527. The Princely Government has no current plans to amend the Civil Code in relation to that provision.

528. According to article 12 ECHR: “[m]en and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

### **B. Paragraph 3: Consent to marriage**

529. Article 16 of Monaco’s Civil Code provides that “there shall be no marriage without consent.”

**C. Paragraph 4: Equality of the rights and responsibilities of spouses during the marriage and on its dissolution**

530. Law No 1.278 of 29 December 2003 amending certain provisions of the Civil Code, the Code of Civil Procedure and the Commercial Code establishes equality between men and women within the home by revising the articles of the Civil Code:

- Pursuant to article 182 of the Civil Code: “Spouses shall jointly provide moral and material support to the family and contribute to maintaining it. They shall provide for the children’s education and prepare their future.”
- Pursuant to Article 187 of the Civil Code: “Spouses shall mutually commit to matrimonial cohabitation.

The family residence shall be at the place which the spouses choose by common accord; it shall constitute their principal place of residence.

In case of disagreement, or if the chosen residence threatens the family with moral or physical danger, the judge in the Juvenile Court may – including of his own initiative – if the interest of the child requires this, fix that residence at a place which he specifies or even authorize the spouses to have two difference residences.

Spouses may not unilaterally dispose of the property which secures the family’s accommodation, or the furniture and fittings pertaining thereto. Whichever of the spouses has not consented to that measure may seek its cancellation. He or she may bring an action for annulment within a year of the date on which he/she was apprised of the measure, but such action may never be brought more than one year after the marriage is dissolved.”

531. The concept of paternal authority has been removed from the Civil Code and replaced by the concept of parental authority. Law No 1.278 of 29 December 2003 introduced that new concept (Book I, Title IX, Chapter II of the Civil Code entitled “Parental Authority”).

532. Article 206-20 of the Civil Code has been amended as follows:

*“The father and the mother shall retain joint exercise of parental authority.*

*The courts may also award the exercise of parental authority to either the father or the mother, if the interest of the children requires this. It shall determine visitation rights and the level of contributions to their care and education.*

*If no friendly settlement can be reached between the spouses, or if such settlement seems contrary to the interest of the children, the court shall determine whether the children shall habitually reside with the father or the mother.*

*The court may, however, decide that the children are to reside with another person or institution which shall take all of the usual measures pertaining to their supervision and education.*

*Whatever decision is taken, the father and mother shall retain the right to supervise the care and education of their children and are required to contribute to it in accordance with their resources.”*

533. According to Article 301 of the Civil Code, “parental authority shall be exercised jointly by the father and the mother.”

534. However, where parenthood is established in regard to either the father or the mother more than two years after the birth of a child whose parenthood has already established in regard to the other parent, that parent shall retain the exclusive right to exercise parental authority. The same applies where parenthood is declared by the courts in regard to the child’s other parent.

535. Parenthood may, nonetheless, be exercised jointly in response to a joint declaration before the judge in the Juvenile Court or at the latter’s decision.

536. In relation to bona fide third parties, both father and mother are supposed to exercise, with the other’s consent, the usual measures of parental authority in relation to the person of the child.

#### ARTICLE 24

537. The Civil Code provides for the legal administration of a minor by placing the latter under the judicial supervision of the Juvenile Court, “if either the father or mother has died or falls into one of the categories for which articles 303-1, 323 and 323-1 provide’ (article 306 of the Civil Code), that is to say the inability to exercise parental authority, the partial or total removal of parental authority as a result of a judgment in criminal proceedings, and the partial or total removal of parental authority for reasons other than a judgment in criminal proceedings (risk to the child’s health, safety, morals or education).

#### **A. Paragraph 2: Every child must be registered immediately after birth and must have a name**

538. Article 44 *et seq* of the Civil Code provides for a child’s birth to be declared and for that child to be given a name. Article 44 in fact provides that: “[t]he birth of a child shall be declared to the registration officer within four days of its birth (...)”.

539. Articles 77 *et seq* provide for the child to be given a patronymic:

- Article 77: “A legitimate child shall bear its father’s name”.
- Article 77-1: “A child whose paternity has been denied shall take its mother’s name”.
- According to article 228 of the Civil Code, “a child that is born out of wedlock shall bear the name of the parent whose parenthood is first established; it shall bear the name of its father if parenthood is established at the same time in regard to both parents”.

540. The public authorities are currently engaged in a study which is designed to enhance the rights of children who fall victim, in particular, to transnational and ‘internet’ crime. The issue, as far as the Principality is concerned, is to attune its domestic legislation to the requirements of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child

prostitution and child pornography (New York, 25 May 2000), in order to protect minors, more particularly, from crimes linked to the new technologies, such as pedopornography. The reforms are also intended to make the sale of organs, forced labour and the act of procuring criminal offences, where the perpetrators exploit children for the purposes of prostitution.

541. In response to the recommendation that appears in paragraph 11 of the Committee's Concluding Observations (CCPR/CO/72/MCO, para.11), the Principality would point out that article 227, as amended by the Law No 1.278 of 29 December 2003, provides that: "in its non-pecuniary relations with its father and mother, a child born out of wedlock shall have the same rights and duties as a legitimate child".

### **B. Paragraph 3: The right to acquire nationality**

542. Monegasque nationality is acquired by descent, declaration or naturalization. The acquisition of nationality through naturalization is governed by articles 5 and 6 of Law No 1.155 of 18 December 1992, as amended, and relates to the acquisition of nationality by means of a sovereign act by the Sovereign Prince in the form of a sovereign ordinance.

543. The acquisition of nationality by declaration is governed by articles 2 and 3 of the abovementioned law, and relates more particularly to minors who are adopted by a Monegasque by means of the simple adoption procedure (art. 2) or a foreign woman who marries a Monegasque (art. 3).

544. Authority in matters of naturalization lies with the Prince. The law determines the minimum requirements for obtaining Monegasque nationality, and the opinion of several bodies is required before any decision on naturalization can be made.

#### **1. The naturalization procedure (CCPR/CO/72/MCO, para.17<sup>9</sup>)**

545. An application for naturalization must be submitted to the Prince, accompanied, if necessary, by a request for an exception to be made, if the person in question does not satisfy the condition of having resided in Monaco for ten years after reaching the age of majority. The request is passed on the Directorate for Legal Services, which forwards it to the Office of the Principal State Counsel; the case is then processed by the Directorate for Public Security. The Directorate invites persons wishing to acquire Monegasque nationality to attend its offices and provides them with a set of forms to fill in.

546. The administrative police department carries out checks, and the applicants are invited to attend for a second time to hand in their completed dossier. The latter is then forwarded to the town hall for an opinion. Once that opinion has been obtained, the dossier is submitted to Monaco's Council of Government for its opinion.

547. The Council's decision is transmitted to the Directorate of Judicial Affairs so that it can give an opinion. The latter then forwards the whole dossier to the Office of the Prince, which then submits it to the Crown Council to decide whether or not to confer Monegasque nationality.

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<sup>9</sup> Translator's note: the French texts in fact refers to para. 14.

**ARTICLE 25 (CCPR/CO/72/MCO, para.17)**

548. Declaration of the Principality: “The Princely Government formulates a reservation concerning article 25, which shall not impede the application of article 25 of the Constitution and of Order No 1730 of 7 May 1935 on public employment.”

549. Under a constitutional provision, nationals enjoy priority in relation to employment in the Principality of Monaco; the second subparagraph of article 25 of the Constitution thus provides: “Monegasque nationals shall enjoy priority of access to employment in the public and private sectors, under the conditions laid down by law or international conventions”.

550. In the public service, Law No 975 of 12 July 1975 stipulates the rights and duties of public servants, without discrimination as to gender, race or nationality.

551. The Principality wishes to point out that the principle of an hereditary and constitutional monarchy is compatible with the representation of citizens within the National Council and the Communal Council, which enjoy specific and separate powers.

**A. The National Council**

552. Since submitting its initial report, the Principality of Monaco has amended its legislation to give greater power to the National Council and provide the best possible protection for the rights which the Covenant guarantees. Indeed, in order to guarantee that its democratic system functions properly, it has amended its Constitution to extend the National Council’s powers.

553. The 1962 Constitution conferred on the National Council the real status of an elected assembly with legislative and budgetary powers.

554. Originally made up of 18 (now 24) members elected by all Monegasques, both men and women, who had reached the age of majority, the National Council was required to give its opinion on draft legislation – either laying down or amending provisions of law, or authorizing the ratification, accession to or approval of an international agreement – referred to it by the Government, as well as on the draft budget, adopted in legislative form.

555. Furthermore, only the National Council could authorize the introduction of direct taxes. In terms of international relations, the ratification of any treaty or international convention that affects constitutional arrangements had first to be submitted to the National Council.

556. Under the 1962 Constitution, the National Council could draw up draft legislation, but whether that legislation reached the statute books depended upon Government approval, and the Government was not required to justify its stance. Similarly, the legislative amendments which the National Council proposed could not be incorporated into the text of a draft law without the prior approval of the Government.

557. The 2002 revision of the Constitution confirms more clearly the position of the National Council within Monaco’s institutions. Three major changes have been introduced:

a) The National Council’s right to initiate legislation is better secured, since the Government must respond, with a maximum of six months, to any draft law which the National Council adopts. If the Government gives its agreement in principle, it has a period of one year in

which to deposit the text of the relevant draft law at the National Council's bureau. In case of disagreement, the Government must state the reasons for its position, and a debate may be held in public session;

b) The National Council enjoys a genuine right to amend legislative texts (except for the special case of the laws on the budget) and enabling legislation. Article 67 of the Constitution now provides that voting on a piece of legislation "shall take place on the draft law, which may have been amended, without prejudice to the Government's right to withdraw the draft law before the final vote takes place".

c) The scope of the National Council's powers has also been extended in the field of international relations. Three additional categories of treaty and international agreement have now, in fact, to be approved by the National Council before they can be ratified: treaties and agreements whose ratification involves changes to existing legislative provisions; treaties and agreements which involve the accession of the Principality to an international organization whose operation requires the participation of the members of the National Council; and, finally, treaties and agreements whose implementation has the effect of creating a budgetary burden, the nature or purpose of which is not provided for by the budget law. Furthermore, it is now stipulated that the Principality's foreign policy is to be the subject of a Government report which is forwarded to the National Council; the information contained in that report may be the subject of discussion and debate.

558. In Monaco, however, the Government is not answerable to parliament (in other words, the National Council may not challenge the Government's political responsibility or, if the need arises, overturn the Government). This, then, is a system of representation which is based on entirely traditional democratic machinery, but it is not a parliamentary regime.

## **B. The Commune**

559. Law No 1.314 of 29 June 2006 amending Law No 959 of 24 July 1974 on the organization of the Commune and Law No 841 of 1 March 1968 on budgetary legislation confer more extensive powers on the Communal Council and accord it budgetary independence.

560. In order to facilitate certain administrative measures, the Princely Government, in collaboration with the Commune of Monaco, has provided for a different system of allocating responsibilities in the following areas:

- social outreach policy;
- sanitation, health checks and veterinary checks;
- issuing of trading permits in the catering sector.

### **1. Social outreach policy**

561. The Commune of Monaco, which was already running a day nursery and a municipal crèche, is now responsible for managing all public facilities for early childhood – traditional crèches currently [sic] run by the *Foyer Sainte Devote* and the family crèche. The services allowing elderly people to continue to live in their homes, which used to fall within the remit of the Social Welfare Office, are all now provided by the Commune, which was already responsible for supplying remote alarm systems and "meals on wheels".

562. That transfer of responsibilities is, of course, accompanied by a transfer of staff – whose current contracts remain in place, of budgets and the necessary resources. That transfer of responsibilities took place in 2002.

## **2. Sanitation, health checks and veterinary checks**

563. A Department for Health Security and Food Safety has been set up within the Directorate for Sanitary and Social Affairs (*Direction de l'action sanitaire et sociale – DASS*). It is responsible for carrying out health checks, taking the emergency measures necessary to protect consumers and drafting the laws and regulations needed to enable such checks to be carried out, as this is a subject which is becoming an increasingly sensitive issue is the legislation of the European Union. The Municipal Health Service and a small unit of the municipal police service are attached to the DASS which, consequently, benefits from the contribution of their staff and their technical resources.

## **3. Issuing trading permits in the catering sector**

564. The Directorate for Economic Development (*Direction de l'expansion économique*) now issues all permits for the exercise of activity in this sector, whereas, until 2002, the Commune was responsible for issuing permits for the sale of cold food and sandwiches.

### **ARTICLE 26**

#### **A. The Committee's recommendation in paragraph 17 of its concluding observations (CCPR/CO/72/MCO, para.17)**

565. The provisions of the Covenant apply without prejudice to the stipulations of article 25, paragraph 2, of the Constitution concerning the priority accorded to Monegasques in relation to employment; articles 5 to 8 of Law No 1.144 of 26 July 1991 and articles 1, 4 and 5 of Law No 629 of 17 July 1957 on prior authorization for the exercise of a trade or profession; as well as article 6, subparagraph 1, and article 7, subparagraph 2, of that same law on arrangements for redundancy and re-employment.

566. The conditions according priority of employment to Monegasques are laid down in the civil service regulations and in various texts establishing a preferential scheme in certain sectors of activity: Ordinance of 1 April 1921 (doctors); Law No 249 of 24 July 1938 (dental surgeons); Law No 1.047 of 8 July 1982 (lawyers); Law No 1231 of 12 July 2000 (accountants); Legislative Ordinance No 341 of 24 March 1942 (architects); Sovereign Ordinance No 15.953 of 16 September 2003 (ship brokers). The relevant conditions may also derive from the Prince's power of appointment: Ordinance of 4 March 1886 (solicitors).

567. The conditions concerning priority of appointment, which are designed to make it easier for Monegasques to embark on self-employment, are laid down in article 3 of Ministerial Decree No 2004-261 of 19 May 2003 (assistance and loans for setting up a self-employed activity):

568. According to article 5 of Law No 1.144 of 26 July 1991 on the exercise of certain economic and legal activities:



“The exercise of the activities listed in article 1 above [self-employment in the craft sector, in commerce, industry and the professions] by natural persons of foreign nationality shall be subject to such persons obtaining authorization from the authorities.

The opening or operation of an agency, branch or administrative or representative bureau of an undertaking or company with its registered office abroad shall also require the authorization of the authorities.

That authorization, issued by decision of the Minister of State, shall specifically determine, for a period of time which it stipulates, the activities which may be exercised, the premises at which they may be engaged in and, if appropriate, the conditions of their exercise.

The authorization is personal and may not be transferred.

Any change in the activities pursued, in the person who holds the original authorization or any change of premises must be the subject of fresh authorization issued in the forms and conditions set out in the two subparagraphs above.”

569. According to article 6 of Law No 1.144: “[a] natural person who is a foreign national and the lessee manager of business premises shall be subject to the provisions of article 5 above, as well as to the provisions of the law on business leasing-management. The effects of the declaration made by the lessor of Monegasque nationality or the authorization held by the lessor of foreign nationality shall be suspended for the duration of the business-leasing contract.”

570. According to article 7 of Law 1.144: “[i]f they are of foreign nationality, the following shall be required to obtain the authorization of the authorities, issued by decision of the Minister of State: the partners referred to in article 4, Nos 1 and 2 “[partners in a civil-law company which is not constituted as a public limited company and whose object is the exercise of trades or professions, as well as partners in an ordinary partnership or a partnership limited by shares whose object is the exercise of commercial, industrial or professional activities].

571. According to article 8 of Law No 1.144:

“The provisions of this section shall also apply to natural persons of Monegasque nationality intending to exercise, for remuneration, activities of whatever form in the banking or credit sector, in consultancy or assistance in the legal, fiscal, financial and stock-broking sectors, as well as in brokerage, portfolio or asset management, with power of disposal; they shall also apply to those same persons if they are partners in any of the companies referred to in article 4 whose object is the exercise of those same activities.

The decision of the authorities must state the reasons, and the mention professional qualifications and the financial guarantees and moral undertakings submitted.”

572. According to article 1 of Law No 629 of 7 July 1957 regulating the conditions of recruitment and dismissal in the Principality: [n]o foreigner may be employed in the private sector in Monaco unless that person has a work permit. He may not be employed in a trade or profession other than that stated on the permit”.

573. According to article 4 of Law No 629: “[a]ny employer who intends recruiting or re-employing a worker of foreign nationality must obtain written permission from the Directorate for the workforce and employment (*Direction de la main-d’œuvre et des emplois*), before that person starts work”.

574. According to article 5 of Law No 629:

“For job applicants who are suitably qualified for the post, and in the absence of workers of Monegasque nationality, the authorization for which article 4 above provides, shall be issued according to the following order of priorities:

- foreigners married to Monegasques who have kept Monegasque nationality and are not legally separated, and non-Monegasques who have a Monegasque parent;
- foreigners who are domiciled in Monaco and have already been in employment there;
- foreigners who are domiciled in neighbouring communes and are authorized to work there”.

575. According to article 6, first subparagraph, of Law No 629: “[r]edundancies resulting from job cuts or the shake-out of labour, in any given occupational category, may only be made in the following order:

- foreigners domiciled outside Monaco and neighbouring communes;
- foreigners domiciled in neighbouring communes;
- foreigners domiciled in Monaco;
- foreigners married to Monegasques [...] and non-Monegasques who have a Monegasque parent”.

576. According to article 7, second subparagraph of Law No 629: “[r]e-employment shall take place in reverse order to redundancies ...”.

**B. The Committee’s recommendation in paragraph 10 of its  
concluding observations  
(CCPR/CO/MCO/, para. 10)**

577. Law No 572 of 18 November 1952 on the acquisition of Monegasque nationality applies in the Principality. In addition, Law No 1.155 of 18 December 1992 on nationality, Section II of which lays down the procedures for obtaining Monegasque nationality through naturalization, was amended by Law No 1.276 of 22 December 2003.

578. Naturalization is a royal prerogative which belongs to the Sovereign Prince alone, and while minimum conditions are required, as well as the opinion of various bodies – the Directorate for Judicial Services or the Commune, for example – the final decision rests with the Sovereign Prince. In point of fact, bearing in mind the number of Monegasques (less than 8 000) who are a minority in the population (of some 32 000) and the fact that it is, consequently, essential to maintain a balance, and in view of the Principality’s particular features, it has long been considered that, in the final analysis, it is for the Sovereign Prince, who is the guarantor of Monaco’s unity and durability, to ensure, after receiving all of the permitted opinions, to

supervise the entry of foreigners into the national community through the process of naturalization.

579. The restrictions linked to the transmission of nationality between men and women are tending to diminish. Indeed Law No 1.155 of 18 December 1992 on nationality redefines the criteria for nationality.

580. According to article 1 of that law, for example, the following have Monegasque nationality:

- “Any person born of a Monegasque mother having acquired Monegasque nationality by naturalization, reintegration or in accordance with the provisions of article 6, second subparagraph, or article 7, fourth subparagraph of this law.
- Any person born of a mother having acquired Monegasque nationality by declaration following simple adoption”.

581. Law No 1.276 of 22 December 2003 amending Law No 1.155 of 18 December 1992 on nationality stipulates:

- Article 2 (first subparagraph amended by Law No 1.162 of 23 December 2002, and then by Law No 1.276 of 22 December 2003): “A foreigner of less than 18 years of age who has been adopted under the simple adoption procedure, pursuant to articles 264 *et seq* of the Civil Code, by a person of Monegasque nationality, in accordance with the provisions of article 1 above, may acquire Monegasque nationality by declaration. The legal representative shall act on behalf of a minor who satisfies the legal requirements”.
- Article 5 (first subparagraph amended by Law No 1.162 of 23 December 2002): “a foreigner who can demonstrate that he has been resident in the Principality for ten year after reaching the age of 18 years, may apply for naturalization”.
- Article 6 (second subparagraph amended by Law No 1.276 of 22 December 2003): “a child who is a minor of a person who obtains Monegasque nationality through naturalization shall become Monegasque. However, such persons may decline Monegasque nationality by declaration, during the year after they have reached their majority, as regulated under the Civil Code”.
- Article 7 (fourth subparagraph amended by Law No 1.276 of 22 December 2003): “a child who is a minor and is born of a Monegasque father or mother, pursuant to article 1 of this law, who has been reintegrated into Monegasque nationality, is Monegasque. However, such persons may decline Monegasque nationality by declaration, during the year after they have reached their majority, as regulated under the Civil Code.

582. Article 1 of Law No 1.296 of 12 May 2005 on the transmission of nationality by mothers having so opted pursuant to the provisions of article 3 of Law No 572 of 18 November 1952, now repealed, provides for a mother who has obtained Monegasque nationality through naturalization to transmit her nationality to her children:

“Any person born of a mother who, before its birth, acquired Monegasque nationality pursuant to article 3 of Law No 572 of 18 November 1952, may acquire Monegasque nationality by declaration in the year following the publication of this law, provided they can demonstrate that they were actually resident in Monaco at the date of publication of this law or have been resident in the Principality for at least 18 years.

**C. The Committee’s recommendation in paragraph 13 of its  
concluding observations  
(CCPR/CO/72/MCO, para. 13)**

583. The Constitution of 17 December 1962 (amended by Law No 1.249 of 2 April 2002) establishes, in particular, the fundamental rights and freedoms accorded to residents. Residents of Monaco, who are of extremely diverse origin, since they include 122 nationalities, have to co-exist in a territory of more than [sic] 2 km<sup>2</sup>. In that context, instances of racism, xenophobia, discrimination and anti-Semitism are extremely rare.

584. To provide chapter and verse, Monaco’s courts have yet to convict anyone of offences based on racism or intolerance. Similarly, no racist act was brought to the attention of the authorities in 2005. The same is true of 2006.

585. Recently, there have been only two complaints, the first concerning the deliberate defacement, of anti-Semitic nature, of the shop front of a business, and the second, swastikas which were discovered in the communal area of a block of flats in the Principality. However, those cases were closed without further action because it was impossible to identify the perpetrators.

586. More generally, article 17 of Monaco’s Constitution provides that “Monegasques are equal before the law. No one shall enjoy preferential status”, and, according to article 32, [f]oreigners shall enjoy, in the Principality, all of the public- and private-law rights which are not formally reserved for nationals”. Moreover, according to article 23, “[f]reedom of worship and of its public practice shall be guaranteed, as well as the freedom to express opinions on all subjects, save where offences are committed in the exercise of such freedoms. No one may be compelled to take part in the acts or ceremonies of a religion or to observe its rest days”.

587. Furthermore, the Principality of Monaco is party to the following international conventions combating racism and intolerance:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950);
- Convention on the prevention and punishment of the crime of genocide (New York, 9 December 1948);
- Convention relating to the status of refugees (Geneva, 28 July 1951);
- International Convention on the elimination of all forms of racial discrimination (New York, 7 March 1966);
- International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights (New York, 16 December 1966).

588. Pursuant to article 14, paragraph 1, of the International Convention on the elimination of all forms of racial discrimination, the Principality of Monaco recognized, by Sovereign Ordinance No 15.023 of 18 September 2001, the jurisdiction of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by the Principality of Monaco of any of the rights set forth in the Convention.

589. As regards the administrative and political measures adopted by the Monegasque authorities to combat racism and intolerance, certain training and educational programmes, which are provided in the Principality, incorporate the principles linked to respect for human rights and fundamental freedoms.

590. For example, the training programme for Monegasque police officers includes a section devoted to respect for human dignity. Similarly, by means of the civic education that Monaco's educational establishments provide, the teaching staff endeavour to establish, with their pupils, relations based on the respect, tolerance and co-operation that life in society demands. In addition, school trips are organized from time to time by lecturers or teachers on specific topics requiring substantial preparation.

591. The proposed reform of the Criminal Code envisages introducing a specific penalty for racial discrimination and will provide for aggravating circumstances in cases of racist or xenophobic insult.

592. Finally, like France and other European countries, the Principality set up, in 2006, under Sovereign Ordinance No 461 of 23 March 2006, a Commission to assist victims of the despoilment of assets in Monaco during the Second World War and their beneficiaries.

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