



**International Convention on  
the Elimination of All Forms  
of Racial Discrimination**

Distr.: General  
14 February 2022  
English  
Original: French  
English, French and Spanish only

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**Committee on the Elimination of Racial Discrimination**

**Combined seventh to ninth periodic reports  
submitted by Monaco under article 9 of the  
Convention, due in 2012<sup>\*, \*\*</sup>**

[Date received: 26 November 2021]

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\* The present document is being issued without formal editing.

\*\* The annex to the present document may be accessed from the web page of the Committee.



## Replies to the questions raised in the list of issues prior to submission of the report of Monaco

### General information

See annex 1 (tables and charts relating to the 2016 population census).

#### 1. Resident population

##### *Paragraph 1*

1. Data on the resident population of the Principality of Monaco are collected through the general population census, which was most recently carried out in 2016.
2. The 2016 census showed that the Principality had 37,308 residents, which represents an increase of 5.5 per cent compared with the previous census, carried out in 2008, or around 2,000 additional residents in eight years.
3. In 2016, 139 different nationalities were represented in Monaco, the main ones being from the European continent. There were 8,378 residents of Monegasque nationality, who accounted for 22.5 per cent of the total population. They were second only to French nationals, who made up a quarter of the population (9,286 persons). The Italian community was the third largest (8,172 persons). Some nationalities that had not been well represented in previous years were among the most common in 2016. This was particularly true of Russians, who accounted for 2 per cent of the population in 2016, compared with 0.3 per cent in 2008.
4. Tables 1 and 2 of the annex show the changes in the resident populations of Monegasque nationals and foreign nationals.
5. In 2016, nearly a quarter of residents (8,547 persons) had moved to Monaco in the preceding eight years. This was a larger proportion than had been recorded in the 2008 census. Most of these new arrivals are European (see table 3).
6. The Monegasque Institute of Statistics and Economic Studies estimates the number of residents in Monaco each year, albeit without the granularity of the census.
7. The resident population, including all nationalities, was thus estimated to have been 38,100 on 31 December 2019, and Monaco had 9,571 nationals, 94 per cent of whom lived in the country.

#### 2. Sociodemographic and socioeconomic characteristics of residents

8. The data on sociodemographic characteristics show that in 2016 residents were highly educated. In 2016, 7.4 per cent of the census population aged over 17 years held no diploma. A quarter had the baccalaureate or equivalent as their highest diploma, and nearly half of residents held higher education degrees.
9. With regard to the economic situation of residents, employment was the primary professional situation of 46 per cent of residents aged 17 years or above in 2016. Around one third of the resident population is retired (figure 4).
10. More than three quarters of working residents are not Monegasque nationals, and around 9 in 10 work in Monaco.

##### *Paragraph 2*

11. The Government of Monaco is not planning to withdraw its reservations in accordance with article 20 (3) of the Convention.

**A. Reply to the questions raised in paragraph 3 (a) to (c), concerning article 1**

*Paragraph 3 (a)*

12. Racial discrimination is not defined in Monegasque law.

*Paragraph 3 (b)*

See the reply to the question raised in paragraph 3 (a), above.

*Paragraph 3 (c)*

13. A number of constitutional provisions concern only persons of Monegasque nationality.

14. Article 25 of the Constitution provides that: “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.”

15. The protection afforded to nationals is justified by the specific situation of the Principality. It is not a question of discrimination, but of giving priority to protecting nationals, who are a minority in their country, insofar as they account for less than 25 per cent of residents, and who, without such protection, would be unable to work in their own country.

16. This system promotes the full employment of nationals without depriving non-nationals of the opportunity of being hired. The large number of foreign nationals working in Monaco shows that the rules according priority to Monegasque nationals in relation to employment in no way undermine the access of foreign nationals to employment in the Principality.

17. In practice, it is not only Monegasque nationals who occupy public sector posts. In fact, only 30 per cent of employees in the sector are Monegasque. There has been no change, either to this situation or to the consequences flowing from it.

18. Under the Constitution, Monegasque nationals have priority access to employment in the public and private sectors, provided that they have the necessary skills, assessed at least as favourably as those of other candidates (Act No. 629 of 7 July 1957 regulating the conditions of recruitment and dismissal in Monaco, art. 5).

19. The conditions according priority to Monegasque nationals in relation to employment are laid down in the civil service regulations and in various texts establishing a preferential regime in specific sectors: the Ordinance of 1 April 1921 (physicians); Act No. 1.434 of 8 November 2016 (dental surgeons); Act No. 1.047 of 8 July 1982 (lawyers); Act No. 1.231 of 12 July 2000 (accountants), Ordinance-Law No. 341 of 24 March 1942 and Act No. 520 of 20 June 1950 (architects); and article O.512-1 of the Code of the Sea (shipbrokers). They may also derive from the Prince’s power of appointment, as is the case for the Ordinance of 4 March 1886 (notaries).

20. Conditions on priority in relation to employment that are intended to help Monegasque nationals to embark on self-employment for the first time are set out in article 3 of Ministerial Decree No. 2004-261 of 19 May 2003 on assistance and loans for setting up a self-employed activity.

21. According to article 1 of Act No. 629 of 17 July 1957 regulating the conditions of recruitment and dismissal in Monaco: “No foreign nationals may hold private employment in Monaco without a work permit. They may not be employed in any line of work other than that stated on the permit.”

22. According to article 4 of Act No. 629:

“Any employer who intends to hire or rehire a worker of foreign nationality must obtain authorization in writing from the Directorate for Labour and Employment before that person starts work.”

23. With regard to hiring, article 5 of Act No. 629 provides that:
- “For candidates who have the skills required in the post, and where there are no workers of Monegasque nationality, the authorization provided for in article 4 is granted in the following order of priority:
- (1) Foreign nationals married to Monegasque women who have retained their nationality, where they are not legally separated, and foreign nationals born to a Monegasque parent;
  - (2) Foreign nationals living in a de facto union who are bound by a partnership agreement with a Monegasque national who has retained his or her nationality;
  - (3) Foreign nationals resident in Monaco who have worked there previously;
  - (4) Foreign nationals resident in neighbouring communes and authorized to work there.”
24. With regard to dismissals, article 6 (1) of Act No. 629 provides that:
- “Dismissal for suppression of posts or redundancy may be carried out, for a given professional category, in the following order only:
- (1) Foreign nationals resident outside Monaco and neighbouring communes;
  - (2) Foreign nationals resident in neighbouring communes;
  - (3) Foreign nationals resident in Monaco;
  - (4) Foreign nationals living in a de facto union who are bound by a partnership agreement with a Monegasque national who has retained his or her nationality;
  - (5) Foreign nationals married to Monegasque women who have retained their nationality, where they are not legally separated, and foreign nationals born to a Monegasque parent;
  - (6) Monegasque nationals.”
25. According to article 7 (2) of Act No. 629, re-engagements are carried out in the reverse order to that established for dismissals.
26. Article 5 of Act No. 1.144 of 26 July 1991 on the exercise of certain economic and legal activities provides that:
- “The exercise of the activities listed in article 1 by natural persons of foreign nationality is subject to administrative authorization. Administrative authorization is also required to open or operate an agency, branch or administrative or liaison office of an undertaking or company headquartered abroad.
- Within five working days of the submission of an application for authorization to exercise one of the activities listed in article 1, the Minister of State shall notify the applicant, by registered letter with acknowledgment of receipt, either that the application is admissible or, where the application is incomplete, that it is inadmissible.
- Authorization must be granted by decision of the Minister of State within three months of notification that the application is admissible.
- The three-month period may be suspended:
- If authorization is contingent, pursuant to an international agreement, on the prior decision of a foreign body
  - If the authorities make a substantiated request that additional documents necessary for the consideration of the application should be supplied
- This period may be extended for up to six months if the authorities require a foreign body to communicate information necessary for the consideration of the application.
- If no reply is received by the end of the period, authorization is deemed to have been granted. The authorization granted by decision of the Minister of State sets out

exhaustively all the activities that may be carried out, the premises at which they may be implemented and, where necessary, any conditions that must be respected.

The authorization is for a named person and is non-transferable.

Whenever there is a change in the activities exercised, in the person to whom authorization was originally granted or in the premises used, it is necessary to obtain a new authorization, as stipulated and in accordance with the conditions set out in the preceding two subparagraphs.”

27. Article 6 of Act No. 1.144 provides that:

“A natural person of foreign nationality who is the lessee manager of a business shall be subject to the provisions of article 5 above and the provisions of lease management law.

The effects of a declaration made by a lessor of Monegasque nationality or of authorization granted to a lessor of foreign nationality shall be suspended for the duration of the lease management contract.”

28. Article 7 of Act No. 1.144 provides that:

“If they are foreign nationals, the partners and managers referred to in article 4 must obtain administrative authorization from the Minister of State.”

(Partners in a non-commercial company not incorporated as a limited company and established to carry out a professional activity; partners in a commercial partnership or limited partnership established to carry out commercial, industrial or professional activities; and partners and managers of a limited liability company.)

29. Article 8 of Act No. 1.144 provides that:

“The provisions of this section also apply to natural persons of Monegasque nationality intending to carry out, for remuneration, activities of any kind involving banking, credit, the exchange of physical currency and money transfers, the provision of consulting or advice in the legal, tax, financial and stockbroking sectors and brokerage or portfolio or asset management, with power of disposal. They also apply to those persons if they are partners in any of the companies referred to in article 4, established to carry out such activities.”

30. Furthermore, on 14 December 2011, bill No. 895 amending Act No. 975 of 12 July 1975 on the status of civil servants, which was designed to incorporate into the Act the principle of non-discrimination among civil servants on the basis of, inter alia, their ethnic background, was submitted to the National Council.

31. Other rights accorded only to Monegasque nationals under title III of the Constitution include the right to social assistance benefits (art. 26) and the right to free primary and secondary education (art. 27).

32. However, the fact that a right is accorded only to Monegasque nationals under the Constitution in no way prevents the public authorities from extending it, in practice or by law, to foreign nationals.

33. With regard to social assistance, article 26 of the Constitution provides that: “Monegasques are entitled to the assistance of the State in the event of destitution, unemployment, sickness, handicap, old age and maternity in the circumstances and manner laid down by law.”

34. However, some social rights are accorded only to foreign nationals who meet residence conditions. Most of these rights were originally reserved for nationals, before being extended to foreign nationals who meet conditions relating to length of residence; such conditions are essential given the very favourable nature of the Monegasque social system.

35. The State provides medical coverage for employees or self-employed persons residing in the Principality who have ceased their professional activity and no longer have health insurance coverage.

36. However, with regard to social protection, the relevant legislation and regulations make no distinctions among beneficiaries based on their nationality. Social protection is based on the notion of place of work, and there is no discrimination. Monegasque employees and foreign employees legally entitled to work in the Principality receive the various benefits at the same level, irrespective of their nationality.

37. The bilateral social security agreements concluded with France and Italy exceptionally contain special provisions on the situation of cross-border workers who are nationals of the two signatory countries.

38. Self-employed persons have their own social scheme, financed by their contributions alone; for health insurance, however, they and the persons covered by their insurance policies receive the same benefits in kind as employees.

39. Pursuant to Act No. 1.493 of 8 July 2020, a family benefit allowance scheme was established for self-employed workers who meet all the following conditions:

- They are habitually resident in Monaco, Switzerland or a State member of the European Economic Area
- They are not personally entitled, by virtue of another professional or similar activity, to benefits for the same purpose under another statutory family benefit scheme (art. 1)

40. With regard to public education, article 27 of the Constitution provides that “Monegasques are entitled to free primary and secondary education.”

41. However, under article 3 of Act No. 1.334 of 12 July 2007 on education, education is compulsory for all children between the ages of 6 and 16 who are Monegasque nationals or foreign nationals whose parents or legal representatives are resident or lawfully established in Monaco, or who are in the effective custody of a natural or legal person resident or lawfully established in Monaco.

42. Lastly, it should be emphasized that the Constitution and the legislation and regulations in force in Monaco contain no discriminatory provisions on the grounds of race, colour, sex, language or religion.

## **B. Reply to the questions raised in paragraph 4, concerning article 2**

43. The principle of equality is enshrined in article 17 of the Constitution as follows: “All Monegasques are equal before the law. There is no privilege among them.” This principle also covers foreign nationals; according to article 32 of the Constitution, they enjoy in Monaco “all public and private rights” that are not “formally reserved for nationals”.

44. This principle is recognized by the Supreme Court. Any law, regulation or administrative decision affecting this right may be the subject of an appeal before the Supreme Court, which has the power to rescind such a decision (Constitution, art. 90) and award compensation accordingly.

45. The Office of the High Commissioner for the Protection of Rights and Freedoms and for Mediation, established by Sovereign Ordinance No. 4.524 of 30 October 2013, may receive complaints from natural or legal persons who believe that they have been victims of unjustified discrimination in the Principality.

46. Civil remedies would also be available (Civil Code, art. 1229); they provide compensation for damages resulting from such discrimination.

47. The police force focuses its efforts on recruitment, initial training and standing instructions on compliance with police ethics, the principles of which are reiterated; there are penalties for breaches, and the General Inspectorate of Police may also carry out disciplinary investigations.

48. In its concluding observations of 26 March 2010 ([CERD/C/MCO/CO/6](#), para. 14), the Committee on the Elimination of Racial Discrimination mentioned the absence or small number of complaints, prosecutions and convictions, noting that it may reveal that victims

have inadequate information, fear censure or reprisals, or fear the cost and complexity of the judicial process.

49. The figures provided with regard to police investigations into allegations of racism should be interpreted in the context of the size of the State's population. In 10 years (from 2008 to 2017 inclusive), 15 incidents of racism were reported, and 4 incidents were reported in the last three years.

50. Consequently, the figures relating to the population in question do not reflect concealment, lack of information or any social censure.

51. From a constitutional point of view, Monaco is a State governed by the rule of law.

52. By renown and in practice, Monegasque society is open, modern and peaceful.

53. There is no distrust of the police, a highly valued and respected institution that enjoys an excellent reputation among residents.

### **C. Reply to the questions raised in paragraph 5, concerning article 2**

54. Before 2013, the functions of the national human rights institution were performed by the Minister responsible for appeals and mediation.

55. Sovereign Ordinance No. 3.413 of 29 August 2011 on relations between the authorities and citizens formally enshrined the status of the Minister responsible for appeals and mediation, and mediation was established in Monegasque legislation as an autonomous activity and an integral part of the human rights protection system.

56. In a fundamental contribution, Sovereign Ordinance No. 4.524 of 30 October 2013 established the Office of the High Commissioner for the Protection of Rights and Freedoms and for Mediation, with responsibilities including those previously assigned to the Minister responsible for appeals and mediation.

57. The Commissioner was appointed by His Serene Highness the Sovereign Prince on 3 February 2014.

58. The Commissioner's main functions are to protect citizens in their dealings with the authorities and to combat unjustified discrimination, including racial discrimination.

59. In accordance with the statutory and procedural guarantees of the Office, the Commissioner is the focal point for the protection mechanism accessible to all rights holders. In consequence:

- With respect to the protection of citizens' rights and freedoms in their dealings with public authorities, any natural or legal persons who deem their rights or freedoms to have been infringed by the Minister of State, the President of the National Council, the Director of Judicial Services or the Mayor, or by the actions of an administrative department reporting to one of those authorities or to a public body, may refer the matter to the Commissioner (Sovereign Ordinance No. 4.524 of 30 October 2013, art. 15). This power of direct referral is a guarantee of independence.
- The Commissioner may receive complaints from natural or legal persons who consider themselves to have been a victim of unjustified discrimination in the Principality (Sovereign Ordinance No. 4.524, art. 28). However, the Commissioner does not have the power to take action on his or her own initiative in this regard.
- The Commissioner may receive requests for rulings or studies on any matter relating to the protection of citizens' rights and freedoms in their dealings with public authorities, as well as to unjustified discrimination (Sovereign Ordinance No. 4.524, art. 33).

60. The role of the Commissioner entails a number of guarantees, such as neutrality, impartiality and operational and financial independence.

61. The guarantees enshrined in the aforementioned Ordinance also apply to the procedures for referring cases to the Commissioner and to his or her powers to investigate and make recommendations to the administrative authorities.

62. The Commissioner carries out the duties assigned to him or her in a neutral, impartial and independent manner. This guiding principle is enshrined in article 6 (1) of the aforementioned Sovereign Ordinance. Furthermore, when carrying out his or her duties, the Commissioner may not receive any order, instruction or directive of any nature, including from the Minister of State, the President of the National Council, the Director of Judicial Services or the Mayor (Sovereign Ordinance No. 4.524, art. 6 (2)).

63. The Commissioner is independent first and foremost financially. Article 13 of the aforementioned Ordinance provides that the State shall provide to the Commissioner the material means to conduct his or her duties. Moreover, the funds necessary for the remuneration of the Commissioner and the staff placed at the Commissioner's disposal, as well as, more generally, for the resources required to perform his or her duties constitute a specific item in the State budget (Sovereign Ordinance No. 4.524, art. 46).

64. The Commissioner's independence also stems from the fact that the Commissioner's functions are incompatible with those of a national or communal councillor, of a member of the Economic and Social Council, or with any political office, in Monaco or abroad (art. 10 (1)). Furthermore, they are also incompatible with the exercise of any other public function or any gainful, professional or paid activity, in Monaco or abroad (Sovereign Ordinance No. 4.524, art. 10 (2)).

65. Moreover, the principle that the Commissioner may not, either in person or through an intermediary, have interests of any type or form that compromise his or her independence is clearly established (Sovereign Ordinance No. 4.524, art. 11 (1)).

66. Furthermore, the Commissioner must refrain from any action, activity or event that is incompatible with the discretion and reserve inherent to his or her duties, whether on his or her own behalf or that of any other natural or legal person (Sovereign Ordinance No. 4.524, art. 11 (2)).

67. The Commissioner's independence and autonomy also lie in the different guarantees to which citizens are entitled throughout the examination of their requests. These include an investigative phase that respects the adversarial principle and ensures that the citizen is kept informed (Sovereign Ordinance No. 4.524, arts. 19 and 20). To foster a direct relationship, the Commissioner informs citizens of the likely consequences of the referral, and may also provide all the relevant information on the outcome of mediation, particularly, if applicable, about appeal deadlines (Sovereign Ordinance No. 4.524, art. 19).

68. The Commissioner's functional independence stems from the investigatory power which allows him or her to consult with and inspect the departments concerned, examine files and interview complainants.

69. The Commissioner is thus able to require the relevant administrative departments to provide any document, information or assistance necessary to carry out his or her duties.

70. The Commissioner may also verbally request supplementary items from the person in question and from the aforementioned departments so as to clarify any discrepancies. The Commissioner ensures respect for the adversarial principle by, if necessary and unless impossible, listening to the explanations of the persons in question or their representatives, as well as those of the administrative body concerned (Sovereign Ordinance No. 4.524, art. 20).

71. In the private sector realm, the Commissioner hears the claimants and can request them to provide any additional items to clarify the facts and the situation that gave rise to the grievance. After examining the complaint, the Commissioner can refer it to the authorities or to the relevant parties. In application of the adversarial principle, the Commissioner may also invite the accused party to comment on the acts of discrimination that are the subject of the complaint (art. 29).

72. Furthermore, as part of the prerogatives of the position, the Commissioner benefits from functional protection, under which the State, in accordance with instructions issued by

sovereign decision, provides protection against threats, abuse, insults, defamation or attacks of all kinds that the Commissioner might face in the exercise of his or her duties (Sovereign Ordinance No. 4.524, art. 13 (1)). To that effect, the authorities are moreover liable for ensuring the rights of the victim to any damages due from the perpetrators of the offences, in reparation.

73. When providing this functional protection for the Commissioner, the public authorities may claim damages before the criminal court (Act No. 975 of 12 July 1975 on the status of civil servants, art. 14).

74. Lastly, as is the case with the Commissioner's foreign counterparts, both independent and institutional, under articles 23 and 30 of the aforementioned Sovereign Ordinance No. 4.524 of 30 October 2013, the Commissioner has the actual authority to make recommendations and to thus submit proposals to the Ministry of State, the President of the National Council, the Director of Judicial Services and the Mayor, or to any other accused party. These are issued by analysing the facts, the law and basic fairness, with the aim of remedying detected cases of discrimination and of providing information within a given deadline on the follow-up given to a recommendation, once issued. If necessary, the Commissioner follows up on the application of decisions or agreements made on the basis of his or her recommendation. If no information is forthcoming, the Commissioner can make the recommendation public or prepare a special report for the attention of the Prince.

75. It is thus apparent that the Commissioner's independence is demonstrated in various ways, whether by the channels through which matters may be referred to him or her, the procedural guarantees applicable during the examination of complaints, the powers of investigation and recommendation at the Commissioner's disposal and, in particular, the follow-up given to his or her recommendations.

#### **D. Reply to the questions raised in paragraph 6, concerning article 3**

76. Racial segregation, defined as any form of physical separation between persons based on race or ethnicity, in daily activities, professional life and the exercise of civic rights, does not exist in Monaco.

See replies regarding article 2 above.

77. Article 2-1 of Act No. 739 of 16 March 1963 on wages, as amended, sets out the principle of equal pay for equal work, in the context of gender equality. Any distinction in remuneration made on the basis of race would necessarily be in breach of the Act and would consequently be prohibited. The Court of Revision handed down a judgment along those lines on 9 June 2005, in which it found that the aim of the instruments invoked, which included Act No. 739, was to "protect employees from unequal pay based on differences in sex or origin or on any discrimination" (See Court of Revision, 9 June 2005, *P. v. Sté des Bains de Mer et du Cercle des Étrangers*).

78. On 14 December 2011, the Government submitted bill No. 895 to the National Council, with the intention of amending Act No. 975 of 12 July 1975 on the Status of Civil Servants, to introduce the principle of non-discrimination among civil servants on the grounds of political, philosophical, religious or trade union-related opinions, sexual orientation, health, disability, physical appearance or ethnicity.

#### **E. Reply to the questions raised in paragraphs 7 (a) to (e), 8 and 9, concerning article 4**

##### *Paragraph 7 (a)*

79. The dissemination of ideas based on racial superiority or hatred may fall under the scope of Act No. 1.299 of 15 July 2005 on freedom of expression, as amended, specifically under article 16, on incitement to hatred or violence against a person or group of persons based on their origin or their actual or perceived membership of a particular ethnic group,

nation, race or religion, or under articles 24 and 25, on defamation and libel based on the same grounds.

80. Article 16 of Act No. 1.299 of 15 July 2005 on freedom of expression, amended by Act No. 1.464 of 10 December 2018, provides that: “Anyone who uses one of the means set out in the previous article to incite hatred or violence against a person or group of persons based on their origin or their actual or perceived membership of a particular ethnic group, nation, race or religion shall be liable to 5 years’ imprisonment and the fine stipulated in article 26 (4) of the Criminal Code.”

81. Beyond the personal criminal liability of the perpetrator for any hate speech or speech inciting racial discrimination provided for in article 16 of Act No. 1.299 of 15 July 2005, mentioned above, the Act also provides for the criminal liability of persons disseminating or facilitating the dissemination of such speech.

82. Under article 35, if one of the criminal offences provided for in the Act is committed using a written medium, regardless of the place of publication, the following persons are prosecuted as principals in the first degree, in the following order:

1. Editors or publishers, regardless of their profession or title and, in the case provided for in the last paragraph of article 3, coeditors;
2. Failing that, the authors;
3. Failing that, the printers;
4. Failing that, the vendors, distributors or bill posters.

83. Moreover, under article 36 of the Act, “when the editors or publishers are the accused, the authors of the text shall be prosecuted as accomplices”.

84. In respect of Internet service providers, article 29 of Act No. 1.383 of 2 August 2011 for a digital Principality provides that:

“A service provider supplying a hosting service, exclusively or otherwise, consisting in the storage of signals, texts, images, sounds or messages of any kind supplied by a service recipient shall not bear civil or criminal liability owing to the activities or information stored at the request of the service recipient if the service provider did not have actual knowledge of the illegal nature of the activities and information or of facts and circumstances revealing that nature, or if the service provider has acted promptly upon obtaining such knowledge to remove the information or disable access to it.”

85. Under the same article, such service providers are assumed to have obtained knowledge of the actions in question when they receive a notification with the following information:

- Date of the notification
- If the notifier is a natural person: the person’s full name, profession, domicile, nationality and date and place of birth; if the notifier is a legal person: its form, name, headquarters and legal representative
- Name and place of residence of the recipient or, if the recipient is a legal person, its name and headquarters
- Description of the actions in question and the exact location where they took place
- Reasons why the content should be removed
- A copy of the message sent to the author or publisher of the information or activities in question requesting their termination, removal or modification, or evidence that the author or publisher could not be contacted

86. Lastly, under article 31 of the Act: “A service provider who transmits over a communication network, exclusively or otherwise, information provided by a service recipient or who provides access to a communication network may only bear civil or criminal liability owing to such information in cases where the service provider either makes the transmission request in question, selects the transmission recipient or selects or modifies the

information constituting the transmission. Service providers shall inform their subscribers of the existence of technical means of restricting access to certain services, of preventing potential fraudulent uses of a network or of selecting them, and they shall offer at least one of those means.”

*Paragraph 7 (b)*

87. Act No. 1.478 of 12 November 2019, which modified certain provisions on sentencing, introduced an amendment to article 238-1 of the Criminal Code, which now provides that violence not resulting in any illness or total incapacity to work is subject to correctional measures if it is committed on the basis of the victim’s origin or actual or perceived membership or non-membership of an ethnic group, nation or race. This provision establishes a punishment of 6 months’ to 1 year’s imprisonment and the fine provided for in article 26 (2) for violence not resulting in any illness or total incapacity to work if it was committed “on account of the victim’s sex, disability, origin, sexual orientation, actual or perceived membership or non-membership of a particular ethnic group, nation or race or actual or perceived affiliation with a particular religion”.

88. Moreover, the new article 239 of the Criminal Code provides that the penalties provided for in article 236 (Violence resulting in total incapacity to work for more than eight days; Violence unintentionally resulting in mutilation or death), article 237 (Violence under article 236 committed with premeditation or malice aforethought) and article 238 of the Criminal Code (Violence resulting in total incapacity to work of less than or equal to eight days) are increased if the violence is committed on the basis of the victim’s origin, actual or perceived membership or non-membership of a particular ethnic group, nation or race or actual or perceived affiliation with a particular religion.

89. Under article 239 of the Criminal Code, any violence resulting in illness or total incapacity to work for more than eight days and committed “on account of the victim’s sex, disability, origin, sexual orientation, actual or perceived membership or non-membership of a particular ethnic group, nation or race or actual or perceived affiliation with a particular religion” is now punishable by 10 years’ imprisonment.

90. Article 15 of Act No. 1.299 of 15 July 2005 provides for the punishment of incitement to commit criminal offences such as acts of violence and of the glorification of such acts when the incitement or glorification result in an actual act, as follows:

“Direct incitement to commit criminal offences or the public glorification of such acts, whether through words, shouts or threats uttered in a public place or at a public meeting or through written material, printed matter, drawings, engravings, paintings, symbols, images or any other written, spoken or visual medium sold or distributed, offered for sale or displayed in a public place or at a public meeting, or through posters or notices displayed for public view or through any publicly accessible electronic medium or through any audiovisual medium, if the incitement or glorification results in an actual act, shall be considered complicity and punishable as such.

This provision shall also be applicable if the incitement is followed by an attempted act, under articles 2 and 3 of the Criminal Code.”

91. If the incitement does not result in an act, article 16 establishes a punishment of 5 years’ imprisonment and the fine provided for in article 26 (4) of the Criminal Code for:

“Anyone who uses one of the means set out in article 15 to incite hatred or violence against a person or group of persons on the basis of their sex, disability, origin, sexual orientation, actual or perceived membership or non-membership of a particular ethnic group, nation or race or actual or perceived affiliation with a particular religion.”

92. Lastly, article 234-2 of the Criminal Code provides for a punishment of up to 5 years’ imprisonment for threats made “to a person or group of persons on the basis of their sex, disability, origin, sexual orientation, actual or perceived membership or non-membership of a particular ethnic group, nation or race or actual or perceived affiliation with a particular religion”.

*Paragraph 7 (c)*

“Article 4 – Accomplices to criminal offences shall be liable to the same penalties as principals in the first degree, except where the law provides otherwise.

Article 42 – The following persons shall be liable as accomplices for actions categorized as a criminal offence:

- Anyone who instigates the action or gives instructions to commit or facilitate execution of the act through donations, promises, threats, abuse of official authority or exceeding of authority, manipulation or criminal deception
- Anyone who acquires weapons, tools or any other means used for the act, knowing that they would be used for that purpose
- Anyone who knowingly aids or abets the perpetrator or perpetrators in the preparation, facilitation or commission of the act, without prejudice to specific penalties provided for in this Code against the perpetrators of conspiracies or incitement that infringe on the internal or external security of the State, even if the criminal offence intended by the conspirators or instigators has not been committed

Article 43 – Persons who provide housing, shelter or a meeting place to criminals engaging in banditry or violence against State security, public order, persons or property, while aware of these persons’ criminal conduct, shall be liable as accomplices.”

*Paragraph 7 (d)*

93. As stated above, the dissemination of ideas based on the notion of racial superiority or on racial hatred and incitement to racial discrimination are punishable under the Act on freedom of expression and the Criminal Code.

94. Propaganda activities may fall under the scope of Act No. 1.299 of 15 July 2005, specifically under article 16 on incitement to hatred or violence against “a person or group of persons on the basis of their sex, disability, origin, sexual orientation, actual or perceived membership or non-membership of a particular ethnic group, nation or race or actual or perceived affiliation with a particular religion”.

95. The dissemination of such speech by an organization or group through organized propaganda activity would result in the disbandment of the group in question.

96. Article 6 of Act No. 1.355 of 23 December 2008 on associations and federations of associations, amended by Act No. 1.462 of 28 June 2018, stipulates that:

“Any association whose aims are contrary to the law or which infringes on the Principality’s independence or institutions, the fundamental rights and freedoms recognized therein, public order or morals or national security, or is sectarian in nature, shall be null and void.”

97. Any association whose direct or indirect aim or effect is to facilitate or justify the commission of an act falling under articles 391-1 to 391-8 bis of the Criminal Code, regardless of the means used for such purpose, is deemed to infringe on national security.

98. Such acts include offences against persons and property, such as murder, violence, offences against morality, false arrest and false imprisonment.

99. The penalty for such associations is disbandment (art. 22).

100. This entails, by law, the immediate obligation to cease all activity and to liquidate the association’s assets.

101. Disbandment is ordered by the court of first instance at the request of the Public Prosecution Department or of any interested party.

102. The court, if necessary, designates one or more court-appointed liquidators and may also order the closure of the association’s premises and the prohibition of all meetings of its members.

103. Furthermore, remaining in such an organization or continuing to administer it is a criminally punishable offence. Under article 33 of the Act:

“Anyone who administers or continues to administer an association or federation of associations that continues to operate or is re-established after its disbandment has been ordered is liable to 1 to 5 years’ imprisonment and the fine provided for in article 26 (3) of the Criminal Code.”

104. The article goes on to state that:

“Anyone who remains in or takes part in a disbanded association or federation of associations without administering it is liable to 6 months’ to 3 years’ imprisonment and the fine provided for in article 26 (2) of the Criminal Code.”

*Paragraph 7 (e)*

105. The public authorities neither incite nor encourage racial discrimination.

106. Under article 4-4 of the Criminal Code, “any legal entity, with the exception of the State, the municipality and public establishments, shall be criminally liable as perpetrator or accomplice, according to the distinctions set out in articles 29-1 to 29-6, for any criminal offence committed on its behalf or by one of its bodies or representatives”.

107. Nonetheless, even though no national or local public authority or institution in Monaco incites or encourages racial discrimination, if representatives or members of an authority or institution were to commit such acts, they would personally be held criminally liable before the ordinary law courts, notwithstanding any disciplinary or administrative penalties they faced.

*Paragraph 8*

108. Racist motives constitute an aggravating circumstance for the criminal offences of threats (Criminal Code, art. 234-2), violence (Criminal Code, arts. 238-1 and 239), public defamation and insults (Act No. 1.299 of 15 July 2005, arts. 24 and 25) and non-public defamation and insults (Criminal Code, art. 421).

*Paragraph 9*

109. The judicial authorities of Monaco have received no complaints relating to offences referred to in article 4 of the Convention and have handed down no convictions under such offences.

110. This situation has made it unnecessary to establish a separate data collection system for hate crimes, racism or racial discrimination.

**F. Reply to the questions raised in paragraphs 10 (a) to (d), 11, 12, 13 (a) to (c) and 14 (a) to (d), concerning article 5**

*Paragraph 10 (a)*

111. Persons who have become Monegasque by naturalization or reinstatement can transmit their nationality to their children and spouse (see Act No. 1.155 of 18 December 1992 on nationality, arts. 1, 3, 5, 6 and 7, amended by Act No. 1.470 of 17 June 2019).

112. However, persons who have become Monegasque through a previous marriage cannot transmit their nationality (Act No. 1.155 of 18 December 1992, arts. 1 and 3).

113. There are no plans to take measures to allow persons who have become Monegasque through a previous marriage to transmit their nationality.

114. It should be noted that once Monegasque nationality has been acquired by marriage, divorce has no effect on nationality and does not result in its loss.

*Paragraph 10 (b)*

115. Persons without Monegasque nationality are entitled to social services if they carry out a work activity in the country or if they have a claim as a beneficiary, regardless of where they are domiciled.

116. Persons who do not meet these conditions but have more than five years' residence in Monaco and whose total household resources do not exceed a certain threshold enjoy health coverage through State medical assistance.

117. Given the high price of housing, persons without Monegasque nationality with less than five years' residence in Monaco would not be able to live in the country without a certain level of income.

118. Regarding refugees and asylum seekers, the Monegasque authorities themselves ensure administrative, social and legal protection for refugees living in the country. However, asylum applications in Monaco are extremely rare.

*Paragraph 10 (c)*

See replies regarding article 1, above.

119. In addition, given the size of the foreign population, the system giving priority in employment to Monegasque nationals has no negative impact on the employment of foreign nationals. According to the statistics for 2019, only 1.9 per cent of the 53,091 private-sector employees had Monegasque nationality and almost 90 per cent did not reside in the country.

*Paragraph 10 (d)*

120. All wage earners in Monaco have the same working conditions, regardless of race, origin or nationality.

121. Any person claiming to be a victim of labour exploitation in Monaco may therefore file a complaint with the Police Department or the Labour Inspectorate. For domestic workers housed by their employers, the Department of Social Welfare and Social Services will intervene to provide material and psychological support.

122. As for undeclared workers, the Government is strongly committed to combating underground work and has accordingly carried out broad monitoring operations since 2017, specifically in the construction and food service sectors. Several press releases have been issued to recall that the punishment for the employer can be a fine of up to €9,000 in the event of repeated violations. Application of this policy has detected irregularities in less than 5 per cent of cases in the territory of Monaco.

*Paragraph 11*

123. Asylum applications in Monaco are extremely rare. The Monegasque authorities themselves ensure administrative and legal protection for refugees living in the country.

124. The procedure is the result of the country's ratification of the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugees of 31 January 1967. It is open to persons who are outside their country of nationality or habitual residence and have a well-founded fear of being persecuted in that country, including on the basis of race, in accordance with article 1 A (2) of the Convention relating to the Status of Refugees.

125. The application must be addressed to the Minister of State who, in accordance with an exchange of letters dating from 1955, consults the French Office for the Protection of Refugees and Stateless Persons. The Minister of State then makes a decision on the asylum application, bearing in mind the technical advice of the French Office. If the decision is favourable, the Principality grants protection to the applicant, including by issuing a travel document, as stipulated in article 28 of the Convention relating to the Status of Refugees.

126. It is also worth noting that the Minister of State has sometimes disregarded the opinion of the French Office, including on the grounds that the persons concerned could be at risk of persecution or torture if returned to their country of origin.

127. As specified in the addendum submitted by Monaco under article 9 of the Convention (CERD/C/MCO/CO/6 of 13 June 2008, paras. 60–65), refoulement is never motivated in any way by considerations related to ethnicity, race, religion or other affiliation but is instead based on the grounds of the danger posed by the person or prior convictions, as already reported to the Committee. To update the figures given in paragraph 63 of the document, the number of persons subjected to refoulement was 82 in 2018, 78 in 2019, 122 in 2020 and 110 from 1 January to 31 August 2021.

*Paragraph 12*

128. Banishment has been abolished, pursuant to Act No. 1.478 of 12 November 2019, which modified certain provisions on sentencing.

*Paragraph 13 (a)*

129. As part of follow-up to the recommendations made by the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe, the Government and the judicial services are working to draft and adopt a circular containing an inter-service coordination plan on identification of and support for victims of trafficking.

130. The purpose of this circular is to recapitulate the legal framework, to promote the detection and identification of possible victims of trafficking and to offer victims a guaranteed recovery and reflection period and the issuance of a residence permit.

131. In line with various recommendations made by both the Group of Experts and the Working Group on Trafficking in Persons of the United Nations, the Department of Justice is considering publication of a circular setting out a legal approach excluding the prosecution or punishment of victims of trafficking, including:

- Legal provisions on “coercion” that forces victims of trafficking to commit offences
- Legal provisions on “causality”, when an offence committed by a victim of trafficking is directly related to the trafficking

132. However, this circular must be drafted in line with the provisions of article 27 of Act No. 1.398 of 24 June 2013 on the administration and organization of justice, under which the Secretary of Justice may issue instructions to public prosecutors to prosecute, but under no circumstances may instruct them to refrain from prosecution.

*Paragraph 13 (b)*

133. Apart from the above-mentioned circular, which is in the process of being drafted, under article 37-1 of the Code of Criminal Procedure, the Public Prosecutor may, if warranted by the urgency of the situation, prohibit the perpetrator of a criminal offence from entering into contact in any way, including using electronic communications, with the victim of the offence and from appearing at or residing in certain places.

134. On an exceptional basis, until such time as the president of the court of first instance has handed down a decision on housing for the victim, the Public Prosecutor may provide the victim of one of the aforementioned offences and other household members who so wish with emergency accommodation to ensure their safety.

135. After informing the persons concerned, the Public Prosecutor sends the president of the court of first instance a request for a protection order, in accordance with article 24-1 of the Civil Code.

136. Under article 24-1 of the Civil Code, within 24 hours of receiving the request, the president of the court of first instance may hand down a protection order prohibiting the perpetrator of a criminal offence from entering into contact in any way, including using electronic communications, with the victim of the offence and from appearing at or residing in certain places.

*Paragraph 13 (c)*

137. On 7 June 2019, the Department of Justice organized a training day on combating trafficking in persons, which addressed the definition of trafficking, indicators of different forms of trafficking, the distinction between trafficking and migrant smuggling, and victims' rights. The training course was completed by many judicial and administrative staff members, including from the Department of Employment; labour inspectors have thus been trained to recognize the distinctive signs of a trafficking victim. It is planned that Department of Employment staff will also attend the next training sessions, which will be organized by the Human Resources and Training Department.

138. In addition, the Government conducted a campaign on the occasion of the thirtieth anniversary of the Convention on the Rights of the Child to raise public awareness, in particular regarding the trafficking of children for forced labour. This awareness-raising campaign took the form of a flyer distributed in schools and a double photography exhibition at Albert I High School.

*Paragraph 14 (a)*

139. The Government has put in place a hotline and a website exclusively dedicated to the coronavirus disease (COVID-19), while conducting extensive communication campaigns on protection measures, mask-wearing, testing and vaccination.

140. Vulnerable persons and non-national cross-border workers, when duly informed, have thus been able to participate in the response to the COVID-19 pandemic.

141. In addition, the Monegasque authorities have gone further by involving residents, including older persons, in the development of public health policies. With the national serological monitoring activity, residents who wish to do so can, free of charge, find out their level of protection against COVID-19 through a blood test, and thus reliably contribute to genuine epidemiological surveillance in the Principality.

*Paragraph 14 (b)*

142. In the context of the COVID-19 pandemic, the health, social and economic measures taken by the Government apply to the entire population and are not subject to any distinction based on race or ethnic origin. The same applies to vaccinations, which began on 31 December 2020 in the Principality and were opened first to people in vulnerable categories and later progressively to all residents, citizens and cross-border commuters, in accordance with health recommendations and the availability of vaccines.

143. In the vaccination schedule, priority groups were defined according to objective criteria related to health status and the risk of developing a severe form of the disease, and never according to race or ethnic origin.

144. Lastly, it should be noted that access to screening tests (RT-PCR tests) has been extended to the entire population, including vulnerable groups in the Principality and cross-border commuters.

*Paragraph 14 (c)*

145. As previously stated, Monegasque law prohibits hate speech. In particular, Act No. 1.299 of 15 July 2005 on freedom of expression punishes the instigation of crimes and offences followed by an actual or attempted act, instigation of hatred or violence and public defamation and insults. Non-public threats, defamation and insults are also punishable, under articles 230 ff. and article 421 of the Criminal Code.

*Paragraph 14 (d)*

146. The Principality responded to the economic impact of the pandemic using its public finances (see Act No. 1.487 of 23 April 2020 establishing the corrected general budget for 2020 and Act No. 1.504 of 23 December 2020 establishing the initial general budget for 2021) and by legally adopting protection measures, through Act No. 1.488 of 11 May 2020. The Act prohibited abusive dismissals, made telecommuting compulsory for jobs where it was

feasible and instituted other measures to deal with the COVID-19 epidemic, benefiting private individuals, wage earners and companies in several areas: in respect of contractual relations; employment (risk of dismissal or early termination of fixed-term contracts); and working conditions; but also in relation with the continued activity of legal entities and adjustments to their rules of operation (regardless of whether they were civil society organizations or commercial companies, economic interest groups, associations or joint ownership cooperatives, etc.).

## **G. Reply to the questions raised in paragraphs 15 and 16, regarding article 6**

### *Paragraph 15*

147. The principle of equality is enshrined in article 17 of the Constitution as follows: “Citizens of Monaco are equal before the law. There is no privilege among them”. This principle extends to foreign nationals; according to article 32 of the Constitution, in the Principality, they enjoy “all public and private rights” that are not “formally reserved for nationals”.

148. This principle is recognized by the Supreme Court. Any law, regulation or administrative decision affecting this right may be the subject of an appeal before the Supreme Court, which has the power to rescind such a decision (Constitution, art. 90) and award compensation accordingly.

149. Civil remedies would also be available (Civil Code, art. 1229); they provide compensation for damages resulting from such discrimination.

150. Likewise, the Office of the High Commissioner for the Protection of Rights and Freedoms and for Mediation, established by Sovereign Ordinance No. 4.524 of 30 October 2013, may receive complaints:

- From any natural or legal persons who consider that their rights or freedoms have been infringed by one of the administrative authorities, or by an administrative service under the authority of such an authority, or by a public body
- For the purpose of mediation, as a means of amicable settlement of disputes that may arise between citizens and an administrative authority

151. At the end of the investigation, the High Commissioner’s Office may make any recommendation to the administrative authority or to the director of the public body in question that it considers likely to guarantee respect for the rights and freedoms of the complainant or to resolve, or avoid the recurrence of, the difficulties that have been reported. Such recommendations set out the facts and the considerations of law and fairness upon which they are based. If necessary, they may also propose any general measures to remedy a possible dysfunction or suggest any amendment of the legislative or regulatory provisions in force, so as to bring their inequitable effects to an end.

152. Lastly, the High Commissioner’s Office may recommend an amicable settlement of the dispute, if necessary by means of an agreement negotiated through its mediation.

153. In addition, under Act No. 1.382 of 20 July 2011 on the prevention and repression of specific forms of violence, the Victims of Offences Help Association (AVIP), approved by Ministerial Decree No. 2014-660 of 20 November 2014, is mandated to inform and assist victims of offences and to help them in their efforts to assert their rights.

### *Paragraph 16*

154. The burden of proof in civil proceedings would be on the person claiming to be a victim of racial discrimination.

155. If applicable, the person would be entitled to reparation in the form of compensation for damages.

## H. Reply to the questions raised in paragraphs 17, 18 and 19, regarding article 7

### *Paragraph 17*

156. Combating prejudice obviously involves the country's educational system, which has long followed the French programmes, based on equality, openness to others and tolerance.

157. The emphasis on these aspects is even greater in view of the very large number of different groups living in Monaco and, in very concrete terms, the closeness and small size of the country, which make it possible to provide day-to-day support and to quickly handle the cases of prejudice that are detected, reports of such cases and the associated risks.

158. There are approximately 6,300 schoolchildren and students in Monaco, of 88 different nationalities (figures from 2020).

### *Paragraph 18*

159. Sovereign Ordinance No. 8.609 of 12 April 2021 established the Monegasque Institute for Training in the Legal Professions.

160. The Institute is responsible for:

- Preparing candidates enrolled at the Institute, as applicable, for the competitive examination for access to the judiciary or for the Bar examination
- Providing training seminars for judges, lawyers and defence attorneys, and also for other legal professionals
- Organizing events and colloquiums on legal topics, and
- Participating in the dissemination of Monegasque law through the publication, in any medium, of legal reports and studies, as well as court decisions

161. The Monegasque Institute for Training in the Legal Professions has a scientific council chaired by the Secretary of Justice and Director of Judicial Services, which is also composed of:

- The First President of the Court of Revision
- The First President of the Court of Appeal
- The Public Prosecutor
- The Batonnier of the Bar Association
- The Director of the Department of Legal Affairs, and
- Two university professors or lecturers from French law faculties appointed by decree of the Secretary of Justice and Director of the Department of Justice

162. The Secretary of Justice and Director of the Department of Justice may occasionally add any qualified person involved or active in the field of law to the scientific council, as necessary.

163. The scientific council is convened at least once a year by the Secretary of Justice and Director of the Department of Justice. It met for the first time a few days after its creation.

164. The Monegasque Institute for Training in the Legal Professions is now in operation and gave its first training courses for candidates for the competitive examination for access to the judiciary or for the Bar examination during the week of 25 May 2021.

165. As part of its work, it will in the future provide continuing education for judges, including training in human dignity and the defence of the fundamental rights of all persons, without discrimination based on race, colour, or national or ethnic origin.

166. Judges working in Monaco benefit from continuing education provided by the French National School for the Judiciary, including sessions on this topic.

167. In addition, thorough initial and in-service training for law enforcement personnel is aimed at ensuring that everyone is treated equally, with due tact, courtesy and respect.

*Paragraph 19*

168. As previously stated, Monegasque law prohibits hate speech. Specifically, Act No. 1.299 of 15 July 2005 on freedom of expression punishes the provocation of crimes and offences followed by an actual or attempted act, instigation of hatred or violence and public defamation and insults. Threats and non-public insults and defamation are also punishable under articles 230 ff. and 421 of the Criminal Code (see para. 68 of the Programme of Action).

169. These offences are also punishable when such acts are committed online. With regard to the offences provided for in Act No. 1.299 of 15 July 2005, mentioned above, article 15 lists the means of committing such offences; it specifically refers to “any method of communicating to the public by electronic means”.

170. Similarly, in terms of threats, articles 230 ff. also cover threats made “through information systems”.

171. Lastly, in matters of non-public defamation and insult, article 421 of the Criminal Code makes no distinctions between the means used. Such offences would thus be punishable if committed online (see para. 145 of the Programme of Action).

172. Moreover, as previously mentioned, article 6 of Act No. 1.355 of 23 December 2008 on associations and federations of associations declares null and void any association whose purpose is contrary to the law, infringes on the fundamental rights and freedoms recognized therein or is contrary to public order or morality (see para. 99 of the outcome document). This would be the case for associations based on ideas or theories of superiority of a specific race or of a group of persons of one colour or ethnic origin, or associations which attempt to justify or promote any form of national, racial or religious hatred or discrimination.

173. The penalty for such associations is disbandment (art. 22).

174. This entails, by law, the immediate obligation to cease all activity and to liquidate the association’s assets.

175. Disbandment is ordered by the court of first instance at the request of the Public Prosecution Department or of any interested party. The court, if necessary, designates one or more court-appointed liquidators, and it may also order the closure of the association’s premises and the prohibition of all meetings of its members.

176. Furthermore, remaining in such an organization or continuing to administer it is a criminally punishable offence. Under article 33 of the Act:

“Anyone who administers or continues to administer an association or federation of associations that continues to operate or is re-established after its disbandment has been ordered is liable to 1 to 5 years’ imprisonment and the fine provided for in article 26 (3) of the Criminal Code.”

177. The article goes on to state that:

“Anyone who remains in or takes part in a disbanded association or federation of associations without administering it is liable to 6 months’ to 3 years’ imprisonment and the fine provided for in article 26 (2) of the Criminal Code.”

178. With regard to the repression of hate-motivated violence, Act No. 1.478 of 12 November 2019, mentioned above, marked a significant step forward in this area. It established new aggravating circumstances relating to violence.

179. The Act thus amended article 238-1 of the Criminal Code, which now provides that persons responsible for violent acts not resulting in any illness or total incapacity to work will be subject to correctional measures when the acts are committed “on account of the victim’s sex, disability, origin, sexual orientation, real or supposed membership or non-membership of a particular ethnic group, nation or race, or real or supposed membership or non-membership of a particular religion.”

180. Similarly, the new article 239 of the Criminal Code stipulates that the penalties provided for in articles 236 (Violence resulting in total incapacity to work for more than eight days or resulting in mutilation or death without the intent to kill), 237 (Violence provided for in article 236 committed with prior intent or premeditation) and 238 of the Criminal Code (Violence resulting in total incapacity to work of less than or equal to eight days) are to be increased, with aggravating circumstances, if the violence is committed “on account of the victim’s sex, disability, origin, sexual orientation, real or supposed membership or non-membership of a particular ethnic group, nation or race, or real or supposed membership or non-membership of a particular religion” (see para. 84 of the Programme of Action).

181. The offences of trafficking in human beings and smuggling of migrants are criminalized by articles 8 to 11 of Sovereign Ordinance No. 605 of 1 August 2006 implementing the United Nations Convention against Transnational Organized Crime, its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and its Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted in New York on 15 November 2000 (see para. 69 of the Programme of Action).

182. With regard to the repression of violence against women and children, it is important to highlight the contribution of Act No. 1.344 of 26 December 2007 on the reinforcement of the repression of crimes and offences against the child.

183. The body of standards introduced under this Act into the Monegasque repressive arsenal adapted and complemented the previously existing penal system, focusing on legal measures providing increased protection for child victims of violence, abuse and sexual exploitation. Specifically, the aim was to harmonize the concept of the best interests of the child and the definition of criminal offences against children by increasing – through new or modified charges – the repression of the numerous crimes and offences committed against them: murder, organ trafficking, forced labour, indecent assault, commercial sexual exploitation of children and child prostitution, procuring, the production, possession and distribution of child pornography, attempts to use the Internet to lure underage children into situations for sexual purposes, criminal use of children by drug traffickers, etc.

184. Furthermore, on a procedural level, this law changed the statute of limitations, increasing it, for sexual crimes and offences committed against a minor, to 20 years from the time when the victim reaches the age of majority. It was increased to 30 years by Act No. 1.401 of 5 December 2013 on civil statutes of limitation (see paras. 87 and 89 of the outcome document).

185. Act No. 1.382 of 20 July 2011 on the prevention and repression of specific forms of violence was adopted to strengthen the protection of women, minors and persons with disabilities. Its purpose is to prevent and repress violence that would require or justify specific methods of repression or reparation, the application of aggravating circumstances or the adaptation of penalties, owing to the particular vulnerability of the victims or the situations in which such violence is perpetrated. This is specifically applicable to any form of violence or threat of violence, whether physical, psychological, sexual or economic (see para. 87 of the outcome document).

186. In terms of repression in the strict sense, the Act strengthens domestic law in order to specifically address all forms of violence or threats of violence, whether physical, psychological, sexual or economic, directed specifically against women.

187. In order to guarantee that such heightened protection is effective, specific measures to protect women and prevent and repress violence against them have been introduced into the country’s legislative arsenal, including measures addressing “honour killings”, female genital mutilation, forced marriage, marital rape and harassment.

188. In all cases where such acts are committed between spouses or persons living together or between persons who have lived together for some time, Act No. 1.382 of 20 July 2011, mentioned above, substantially increases the penalties, either by doubling the penalty for ordinary offences or by applying the maximum permissible penalty.

189. Act No. 1.382 of 20 July 2011 on the prevention and repression of specific forms of violence led to the adoption of measures to protect victims and to train judges and other officials responsible for dealing with the victims of such acts.

190. Indeed, the Government of Monaco has attached great importance to ensuring that victims have access to qualified contacts and that professionals working in this field are optimally trained to provide victims with the most effective assistance adapted to their situation, particularly in view of the psychological distress they endure.

191. Thus, Act No. 1.382 of 20 July 2011 on the prevention and repression of specific forms of violence, mentioned above, establishes the right for victims of such violence to obtain full information and to receive advice in consideration of their personal situations.

192. In addition, Act No. 1.478 of 12 November 2019, which modified certain provisions on sentencing, amended article 238-1 of the Criminal Code, which now provides that persons responsible for violence that has not resulted in illness or incapacity to work will be subject to correctional measures when the violence is committed against a minor or on account of the victim's sex.

193. In addition, the new article 239 of the Criminal Code stipulates that the penalties provided for in articles 236 (Violence resulting in total incapacity to work for more than eight days or resulting in mutilation or death without the intent to kill), 237 (Violence covered by article 236, committed with prior intent or premeditation) and 238 of the Criminal Code (Violence resulting in total incapacity to work of less than or equal to eight days) are to be increased, taking into account aggravating circumstances, if the violence was committed against a minor or on account of the victim's sex.

194. In addition, this law extended the possibility for the investigating judge to oblige the accused not to appear or reside in certain places and not to enter into contact with the victim, by any means whatsoever, including electronic communications. It also provides for the possibility for courts, for a specified period, to impose additional penalties on natural persons convicted of crimes or misdemeanours, thus prohibiting them from entering into contact with the victims by any means whatsoever, including electronic communications, and from appearing in certain places for a specified time.

195. Victims of criminal offences, such as the above-mentioned offences, can obtain compensation from the perpetrators (see para. 160 of the Programme of Action).

196. A claim for compensation, which is admissible "indiscriminately, for all types of damage, whether material, physical or moral", may be pursued at the same time and before the same judges as the criminal proceedings (art. 3 of the Code of Criminal Procedure).

197. Article 73 of the Code of Criminal Procedure provides a crucial clarification, stipulating that "any person injured by a crime, misdemeanour or infraction, or allowed under article 68 to file a complaint on behalf of another person, may file a civil action before the competent court, in any case, until the end of the proceedings".

198. Article 75 (2) of the Code of Criminal Procedure stipulates that in cases of misdemeanours or infractions, "the prosecuting party shall be deemed to be a civil party by the mere fact of bringing the case" against the offender before the competent court. In such cases, there is no need for a formal expression of intent to pursue a claim.

199. In addition to the filing of claims for criminal indemnification according to strictly specified forms, which generally results from an expression of intent to do so, two other conditions must be met for a person claiming damages in criminal proceedings to receive compensation:

- The offender must be criminally convicted (unless covered by the exception under article 392 of the Code of Criminal Procedure, according to which "in the event of dismissal [or acquittal], the claimant for damages in criminal proceedings may, on the basis of the same facts, claim compensation for damage resulting from a fault of the accused distinct from the one addressed by preventive measures, or in a provision of private law", with such legal action brought before the same judge who heard the criminal proceedings), and
- There must be actual and direct prejudice

200. To this end, legal aid is provided for in Monegasque law by Act No. 1.378 of 18 May 2011 on legal aid and compensation for lawyers (see para. 104 of the Programme of Action), article 1 of which specifically provides that:

“The purpose of legal aid is to enable physical persons with insufficient resources to assert their rights in court ... it applies in all matters ...”.

201. Such aid “gives beneficiaries entitlement to assistance from a defence attorney and a lawyer or trainee lawyer and to the assistance of all ministerial officers appointed on a rotating basis by the office dealing with legal assistance. It also covers amounts owed to the Treasury for stamp duty, registration and registry fees and for the costs of expert reports, translation, interpretation or insertion fees, witnesses’ expenses and, in general, all legal expenses required for the conduct of proceedings” (art. 10). The article goes on to specify that:

“Legal aid covers all of the above costs; the resulting expenses shall be borne by the State, subject to recovery as provided for in chapter III. To this end, a copy of any court decision concerning a person receiving legal assistance shall be sent by the chief clerk to the registration service of the tax department”.

202. Legal aid is granted to persons whose income is less than an amount established by Sovereign Ordinance, which takes into account, if necessary, corrections for family expenses (art. 2).

203. At the international level, the Principality has, since 2001, ratified the following (see para. 78 of the Programme of Action):

- The Convention against Discrimination in Education, adopted on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organization (brought into force by Sovereign Ordinance No. 4.101 of 20 December 2012)
- The Convention on the Elimination of All Forms of Discrimination against Women of 1979 (brought into force by Sovereign Ordinance No. 96 of 16 June 2005), and its Optional Protocol of 1999 (brought into force by Sovereign Ordinance No. 6.212 of 23 December 2016)
- The Optional Protocols of 2000 to the Convention on the Rights of the Child (brought into force by Sovereign Ordinance No. 15.204 of 23 January 2002 and Sovereign Ordinance No. 1.920 of 24 October 2008)
- The United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention of 2000 (brought into force by Sovereign Ordinance No. 16.025 of 3 November 2003 and Sovereign Ordinance No. 16.026 of 3 November 2003), and
- The Convention on the Rights of Persons with Disabilities and its Optional Protocol (brought into force by Sovereign Ordinance No. 6.630 of 2 November 2017 and Sovereign Ordinance No. 7.677 of 16 September 2019; see para. 97 of the outcome document)

204. Furthermore, as mentioned above, article 3 of Act No. 1.334 of 12 July 2007 on education stipulates that education is compulsory from the age of 6 to 16 for any child of Monegasque or foreign nationality whose parents or legal representatives or persons effectively assuming custody reside or are legally established in Monaco. Article 12 enshrines the principle of free education and related exemptions:

“Compulsory education shall be free of charge at public educational institutions. At private educational establishments under contract, tuition shall be charged according to a fee schedule defined by the contract governing relations between the State and such establishments, in accordance with the provisions of chapter I of title III. In private educational institutions without a contract, tuition fees shall not be subject to restriction” (see para. 121 of the Programme of Action).

205. Bill No. 1036 on the fight against harassment and violence in schools, introduced on 10 May 2021, is aimed at bolstering the arsenal of criminal provisions by strengthening the definition of the offence of harassment under article 236-1 of the Criminal Code and by including offences that, although not specific to the school environment, may be deemed to be related to it, such as hazing, provocation to suicide or what is commonly known as “revenge porn”.

206. In addition, the bill seeks to establish a comprehensive educational approach to reducing harassment and violence in schools, whether or not such acts are motivated by racism, racial discrimination, or xenophobia (see para. 123 of the Programme of Action).

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