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**MONACO\***

[27 May 2008]

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\* Annexes may be consulted in the files of the Secretariat.

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## I. LAND AND PEOPLE

1. The Principality of Monaco, an independent and sovereign State, covers an area of 2.02 square kilometres, of which almost 0.40 square kilometres have been reclaimed from the sea over the past 30 years. The Principality is composed of a single city, Monaco, whose boundaries coincide with those of the State. The population is therefore 100 per cent urban. The territory of the Principality is largely surrounded by that of France, with one side open to the Mediterranean. Since the signing of the Franco-Monegasque convention of 16 February 1984, the territorial waters under the sovereignty of the Principality cover an area of 71 square kilometres, beyond which the maritime area (the continental shelf, over which Monaco has sovereign rights) extends along a corridor which is 3.160 kilometres wide and 88 kilometres long.
2. French is the official language, but Italian and English are also widely understood and spoken. The traditional language, Monegasque, is used by older inhabitants and is also taught to young children at school from fourth grade onwards; it may be studied as a baccalaureate option.
3. The apostolic Roman Catholic religion is the religion of the State, but article 23 of the Constitution guarantees freedom of worship. Hence Protestant, Anglican, Greek Orthodox and Jewish places of worship exist in Monaco.
4. Pursuant to the monetary relationship that exists between the Principality of Monaco and the French Republic - established by sovereign ordinance of 4 January 1925, as amended on 17 July 1928 - the coinage and bank notes of the French State are legal tender in the territory of the Principality of Monaco. Accordingly, the Government introduced the euro in Monaco on 1 January 1999, adopting the same timescale as the French and making the necessary changes to domestic legislation. The Principality, as a third country in relation to the European Union, was authorized to grant legal status on its territory to the euro by decision of the Council of Ministers of the European Union dated 31 December 1998. Moreover, coins denominated in euros and bearing a Monegasque design on one side have been struck and are legal tender in all eurozone States.
5. At the last general population census, held in July 2000, the population of the Principality stood at 32,020 (15,544 males and 16,476 females), a 7 per cent increase over 1990. The population residing in Monaco has grown by over 31 per cent since 1968, and has doubled since the beginning of the twentieth century. The new neighbourhood of Fontvieille, on land reclaimed from the sea, has absorbed the bulk of this population increase, whereas the longer-settled neighbourhoods (Monaco-Ville and the Condamine neighbourhood) are experiencing very slight declines in the numbers of their inhabitants.
6. The population of the Principality is made up of some 126 nationalities. There are 8,039 Monegasques (24.5 per cent),<sup>1</sup> 8,831 French (36.8 per cent), 5,521 Italians

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<sup>1</sup> On 1 May 2007, 8,039 Monegasques were officially registered with the civil registry at the Monaco mayor's office.

(23 per cent) and 2,054 British (6.2 per cent). The Swiss, German, Belgian, Portuguese and North American (United States of America and Canada) communities are also well represented.

7. The number of persons of Monegasque nationality residing in Monaco has risen by almost 75 per cent over the past 30 years, from 3,489 in 1968, to 7,175 in 2000 and 7,842 in 2005. There are several reasons for this large increase:

(a) The fact that, since 1992, any mother born with Monegasque nationality (or any naturalized Monegasque woman with an ascendant in the same branch who was born with Monegasque nationality) is able to pass her nationality on to her children (Act No. 1.155 of 18 December 1992 on nationality, as amended by Act No. 1.276 of 22 December 2003, which permits naturalized women to pass their nationality on to their children regardless of the nationality of their ascendants in the same branch);

(b) Article 1 of Act No. 1.296 of 12 May 2005 permits “any person born of a mother who, before birth, acquired Monegasque nationality pursuant to article 3 of Act No. 572 of 18 November 1952 ... [to] acquire Monegasque nationality by declaration in the year following the publication of this law, provided they can demonstrate that they were actually resident in the Principality at the date of publication of this law or have been resident there for at least 18 years”;

(c) The right of any foreign woman marrying a Monegasque to acquire Monegasque nationality by declaration (article 3 of the above-mentioned Act);

(d) The constitutional power of the Sovereign Prince to grant Monegasque nationality by naturalization.

8. A breakdown of the population of Monaco by age group produces a pyramid shaped like the ace of spades. Life expectancy at birth stands at 78.4 years (74.7 for men and 83.6 for women). In 2000, there were 7,181 persons aged over 65, constituting 22.4 per cent of the total population. This relatively high proportion has been stable for 30 years, as Monaco has historically attracted well-off retired people. The proportion of young people under 14 years of age is also stable, at 13.2 per cent. The fertility rate has remained unchanged for 10 years at 1.7 children per woman of childbearing age. Young people aged 15-24 account for only 8 per cent of the population, and those aged 25-64 more than 56 per cent.

9. The main health indicators show that Monaco has achieved particularly satisfactory levels in this area:

(a) Life expectancy at birth close to the highest world levels (78.4 years);

(b) A gross mortality rate of 17 per thousand, with about 30 per cent of deaths due to cancer (37.8 per cent in 2005), about 40 per cent due to diseases of the circulatory system (35.1 per cent in 2005) and under 10 per cent due to diseases of the respiratory system (6.3 per cent in 1999);

(c) A mortality rate for children aged under 5 of 7 per thousand for girls and 9 per thousand for boys - levels similar to those in the industrialized countries.

10. Gross domestic product (GDP) was calculated for the first time in 2005. GDP for 2006, which has just been calculated, is expressed, as is that for 2005, in current prices, and so without taking account of inflation, which was estimated by the National Institute for Statistics and Economic Studies (INSEE) at 1.6 per cent in France in 2006. The definition of the reference population takes into account, for both 2005 and 2006, the resident population and non-resident employees. The calculation of this economic aggregate for two years running reveals, for the first time, the economic growth rate in Monaco (not adjusted for inflation) - 6.5 per cent. In calculating GDP for 2006, GDP for 2005 was revised upwards, to account for the fact that the overall gross operating surplus included the public service's gross operating surplus, which had not been taken into account in 2005.

11. The results are presented in the table below:

	2005 (€)	2006 (€)	Variation (%)
Employees' wages	+ 1 759 819 893	+ 1 885 286 465	+ 7.13
Gross operating surplus	+ 1 459 113 675	+ 1 534 545 089	+ 5.38
Tax on production	+ 428 55 613	+ 463 941 595	+ 8.26
Subsidies	- 156 679 677	- 169 315 501	+ 8.06
GDP	3 490 804 504	3 717 457 647	+ 6.49
Population	68 973 persons	70 741 persons	+ 2.17
GDP per capita (€)	50 611	52 752	+ 4.23

*Source:* Directorate of Economic Expansion.

12. Economic activity is also evaluated on the basis of the annual turnover of commercial companies. In 2007, this figure stood at almost €15.4 billion, a rise of about 17 per cent over the previous year. The economic fabric of Monaco is highly diversified. The main sectors of activity are the wholesale and retail trade (almost 45 per cent of total turnover in 2007), the banking and financial sector (19 per cent), the property and public works sector (about 6 per cent) and the industrial sector (also about 6 per cent).

13. The hourly minimum wage is adjusted every year on 1 July on the same basis as that used to calculate the statutory minimum wage (SMIC) in France. It stood at €8.44 an hour, or €1,426.36 a month, in 2007 (see annex). Moreover, minimum pay must be topped up with a special allowance of 5 per cent of the salary. In practice, the "Monegasque 5 per cent" is applied to all wages paid in Monaco.

14. The number of employees was estimated to be 45,636 as at 1 January 2007. The number has risen by 11.28 per cent since 2003. The unemployment rate, which has traditionally been low, stood at 0.73 per cent as at 31 January 2008. The public sector employs 8.68 per cent of the working population, while the private sector accounts for the remaining 91.32 per cent, with 41,674 workers. Of the latter, 16.04 per cent are resident in Monaco, 75.16 per cent are cross-border workers, mainly from adjoining communes in the French department of Alpes-Maritimes, and 8.80 per cent are from Italy (12 kilometres away). Men account for 58.01 per cent of employees in the private sector, and women 41.99 per cent. The tertiary sector (services) absorbs 83.34 per cent of manpower, while the secondary sector (industry) accounts for 16.60 per cent. The primary sector is almost non-existent (0.06 per cent), since the territory of Monaco is entirely urbanized apart from 39 hectares of green spaces.

## II. GENERAL POLITICAL STRUCTURE

### A. Survey of the political history of the Principality

15. From the most ancient periods of prehistory and earliest antiquity, the Rock of Monaco and the natural harbour served as a refuge for the early populations, and later for navigators coming from the East. In the sixth century BC, a Ligurian tribe lived in the region and is said to have given its name to Monaco. Following a period when Phoenicians were present, the Romans settled in the region between the second century BC and the fifth century AD. They used the harbour at Monaco, which took the name of Portus Herculis Monoeci. Between the beginning of the sixth century and the end of the tenth century, the region was invaded many times, and it was only in 975 that the Count of Provence succeeded in driving off the Saracens and opening up a new era.

16. In 1162, the Emperor Frederick I (Barbarossa) acknowledged the authority of Genoa over the Ligurian coast as far as Monaco. The Genoese placed a settlement on the Rock and built a castle (1215), which became the border post on the Republic's western side. In 1270, a civil war in Genoa was fought between the Guelphs, who supported the Pope, and the Ghibellines, who supported the Holy Roman Emperor. Following the victory of the Ghibellines, many Guelph families, including the Grimaldis, went into exile.

17. Reacting to the exile imposed on them, some of the Guelphs took the castle of Monaco by surprise on 8 January 1297, under the leadership of François Grimaldi, known as "Malizia". This date marks the start of the Grimaldis' sovereignty over Monaco. In 1346 and 1355, the Grimaldis took over the seigniories and fiefs of Menton and Roquebrune. These seigniories, together with that of Monaco, were to constitute the territory of the Principality until 1861. The will of Jean I, who died in 1454, contained fundamental provisions which for five centuries formed the basis of the rules of succession in the house of Monaco. He laid down that the succession should take place within the direct legitimate line, in order of birth, priority being given to male descendants within the same degree of kinship. Women would be called upon only by default, and on condition that their descendants took the name and arms of the Grimaldis.

18. During the fifteenth century, the seigniorship was recognized by the Duke of Savoy, and in 1512 by the King of France, Louis XII, who recognized that Lucien, Lord of Monaco from 1481 to 1523, held the seigniorship of Monaco only "thanks to God and his sword". At that time, any links of vassalage with Genoa disappeared. Alliances led the lords of Monaco to adopt a close relationship with France, to combat Naples, and to fall under the protection of Spain from 1524 to 1641, until, by the Treaty of Péronne (1641), King Louis XIII of France returned the Principality once and for all to the French sphere of influence, while reaffirming the freedom and sovereignty of the Prince of Monaco. The Treaty of Péronne allocated the fiefs of Valentinois, Carladès, Les Baux and Saint-Rémy to Prince Honoré II and his son. In December 1678, Louis I promulgated the legal rules governing the Principality, or the *Code Louis*. During the French revolution, the Principality was joined to the Republic under the name "Fort Hercule" from 1793 to 1814, when the Treaty of Paris restored the rights and prerogatives of the Grimaldis, and placed them under the protection of the King of Sardinia.

19. In 1848, Menton and Roquebrune declared themselves to be "free towns" and were placed under Sardinian protection. Sovereign rights over the two towns were ceded officially to France

by Charles III in the treaty of 2 February 1861 signed with Napoleon III (when Monaco lost over nine tenths of its territory and six sevenths of its population), which once again guaranteed Monaco's independence. Under secret articles in the treaty, the Prince committed himself and his heirs not to transfer any of his sovereign rights except to France, and to accept a protectorate only from France. Another clause in the treaty provided for a customs union between the two States, which was established in 1865. On 5 January 1911, Prince Albert I laid down an effective constitutional structure for Monaco for the first time,<sup>2</sup> governing the organization of the authorities and the operation of its institutions.

20. On 17 July 1918 the "Treaty establishing the relations between France and the Principality of Monaco" was signed. Under this treaty, France ensures the defence of the independence, sovereignty and integrity of the territory of the Principality. In return, this sovereignty may be expressed only in full conformity with France's political, military, naval and economic interests. Similarly, measures concerning the Principality's international relations are always subject to prior agreement between the Government of the Principality and the Government of France. This treaty is currently being renegotiated.

21. On 9 May 1949, Prince Rainier III ascended to the throne. His reign has been among those which have most transformed the Principality. He intensified and diversified actions taken during the preceding three reigns, in the political, diplomatic, international, economic and social fields as well as in education and sport, health, science, culture and communication, and added an industrial dimension. On 17 September 1962, he promulgated a new constitution, which enshrined the separation of powers and the rule of law. In 1993, he secured Monaco's entry into the United Nations as a Member State, and in 2004 Monaco was admitted to the Council of Europe.

22. On Thursday 31 March 2005, in accordance with the Statutes of the Sovereign Family, the Crown Council, to which the matter had been referred by the Secretary of State, after notifying Crown Prince Albert, established that Prince Rainier III was unable to perform his royal duties following his admission to the Cardiothoracic Centre on 7 March 2005. From that point onwards, Crown Prince Albert acted as regent. On 6 April 2005, Prince Albert II succeeded his father, Prince Rainier III, who died on that day. Prince Albert II pronounced his accession speech on 12 July 2005.

## **B. Institutional framework**

23. The political and institutional regime of the Principality of Monaco is governed by the Constitution of 17 December 1962, as amended by Act No. 1.249 of 2 April 2002. As the State's basic law, it defines the nature of the Government, the organization of the authorities and the relations between them. It also enshrines the fundamental rights and freedoms recognized to Monegasque citizens and foreigners.

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<sup>2</sup> A first constitution agreed by Prince Florestan I in 1848 contained provisions on the separation of powers that were modern for their time, but the text never entered into force for historical reasons related to the partition of the territory.



24. The Principality of Monaco is a hereditary, constitutional monarchy that asserts the primacy of the law in all institutions and ensures the separation of powers.
25. The Principality of Monaco is a hereditary, constitutional monarchy. The primacy of the law in all institutions is recognized, and the separation of the major functions of the State has been strengthened and refined. The Constitution enshrines the sovereignty and independence of the Principality “within the framework of the general principles of international law and special conventions with France”.
26. The Constitution also states that “the Principality is a State under the rule of law committed to the respect of liberties and fundamental rights”. The latter are enumerated in Title III of the Constitution and correspond to numerous rights set out in the principal international human rights instruments, in particular the 1948 Universal Declaration of Human Rights.
27. The Constitution may not be suspended. Any revision, in full or in part, requires the joint agreement of the Prince and the National Council, an elected assembly.

## **1. Executive**

### **(a) Head of State**

28. The Sovereign Prince is Head of the State of Monaco:
- (a) Executive power derives from his high authority;
  - (b) Legislative authority is exercised jointly by the Prince and the National Council;
  - (c) Judicial authority is delegated by the Prince to the courts.
29. Succession to the throne, following death or abdication, shall pass to a direct legitimate descendant of the reigning prince, in order of birth, with priority being given to male descendants with the same degree of kinship.
30. In the absence of a direct legitimate descendant, succession shall pass to the brothers and sisters of the reigning prince and to their direct legitimate descendants, in order of birth, with priority being given to male descendants with the same degree of kinship.
31. If the heir to the throne, as set out in the preceding paragraphs, dies or renounces the throne before the succession process is initiated, devolution shall be in favour of his direct legitimate descendants, in order of birth, with priority being given to male descendants with the same degree of kinship.
32. If the procedure outlined in the above paragraphs does not succeed in filling the vacant throne, succession shall pass to a collateral relative designated by the Crown Council with the concordance of the Regency Council. The powers of the prince shall be temporarily exercised by the Regency Council.
33. Only a person having Monegasque nationality on the day the succession process is initiated may succeed to the throne.

34. The conditions for the application of this article shall be set out, as necessary, in the Statutes of the Sovereign Family, and shall be the subject of a sovereign ordinance.

35. The Prince represents the Principality of Monaco in its relations with foreign Powers. This is reflected in the expansion of Monaco's diplomatic representation abroad: 11<sup>3</sup> ambassadors are accredited with 23 countries and international organizations (the United Nations, the European Union and the Council of Europe); and 113<sup>4</sup> consular missions have been opened in 62 States in Europe, Asia and Africa and in North, Central and South America. It is also reflected in foreign consular representation in Monaco: 73<sup>5</sup> countries are represented there by a consulate. The Prince may conclude bilateral agreements with foreign Powers in the areas of cooperation, mutual assistance, extradition, individual sectors and so on.

36. However, article 14 of the Constitution stipulates that certain treaties must be ratified by a legislative act. This applies to the following:

(a) International treaties and agreements affecting constitutional arrangements;

(b) International treaties and agreements whose ratification would require amendments to existing legislation;

(c) International treaties and agreements involving the Principality becoming a member of an international organization whose work would require the participation of members of the National Council;

(d) International treaties and agreements whose implementation would impose a cost on the budget for expenditure that by its nature or purpose is not provided for in the Budget Act.

37. After consulting the Crown Council, the Prince signs and ratifies international treaties and conventions. He transmits them to the National Council via the Minister of State before ratification. He has authorized Monaco to join a number of international organizations and encouraged international scientific organizations to establish offices in Monaco: these include the International Commission for the Scientific Exploration of the Mediterranean Sea, the International Hydrographic Organization and the Marine Environment Laboratory of the International Atomic Energy Agency.

38. The Prince, after consultations with the Crown Council, exercises the right to grant pardons and amnesties, as well as the right to grant naturalization and restoration of Monegasque nationality.

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<sup>3</sup> Figure for 2007 (see annex).

<sup>4</sup> Figure for 2007 (see annex).

<sup>5</sup> Figure for 2007 (see annex).

**(b) Government**

39. Government functions are performed, under the high authority of the Prince, by the Minister of State and five government councillors appointed by the Prince, who are answerable to him. The Minister of State and the government councillors make up the Government Council, which meets as a rule once a week. The Council is chaired by the Minister of State, who has a casting vote.

**(c) Minister of State**

40. The Minister of State represents the Prince. He is in charge of the executive and the security forces. He issues the orders necessary for the implementation of laws and sovereign ordinances.

41. He is directly responsible for certain administrative services: the General Audit Office, the General Secretariat of the Ministry of State, the Directorate of Legal Affairs, the Directorate for the Civil Service and Human Resources, the Centre for Administrative Information, the Central Archive Services, the Official Gazette, the Information Technology Service and the Press Centre.

**(d) Government councillors**

42. The government councillors head the five ministerial departments, whose duties are as follows.

*(i) Department of the Interior*

43. The Department of the Interior is responsible for carrying out public policy in the following areas:

- (a) National education;
- (b) Youth and sport;
- (c) Public security and security of institutions;
- (d) Cultural affairs;
- (e) Civil protection.

44. It monitors and supervises associations, federations and foundations and also handles relations with religious institutions in Monaco.

45. It deals with all matters concerning the Commune of Monaco.

*(ii) Department of Finance and the Economy*

46. The Department of Finance and the Economy has a very broad sphere of action, since all matters with budgetary implications are submitted to it. It runs a wide range of services and is responsible for carrying out public policy in the following areas:

- (a) The budget;
- (b) Government finance;
- (c) The economy and trade;
- (d) Tourism;
- (e) Housing;
- (f) State property;
- (g) Gambling oversight;
- (h) Supervision of the financial markets;
- (i) Innovation and new technologies;
- (j) Commercial services (State Tobacco Company and Office for the Issuance of Postage Stamps).

*(iii) Department of Infrastructure, the Environment and Town Planning*

47. The Department of Infrastructure, the Environment and Town Planning is responsible for:

- (a) Public infrastructure;
- (b) Urban development;
- (c) Building construction,
- (d) The environment, green spaces and living conditions;
- (e) Upkeep of State property;
- (f) Land, sea and air transport;
- (g) Public community services.

*(iv) Department of Social Affairs and Health*

48. The Department of Social Affairs and Health is responsible for carrying out public policy in the following areas:

- (a) Employment;
- (b) Labour relations;
- (c) Occupational medicine;

(d) Social insurance in the private and public sectors;

(e) Public health;

(f) Social welfare;

(g) The family, older persons and persons with disabilities, in the daily work of the Directorate of Labour, the Directorate of Health and Social Welfare, the State Medical Service, the Labour Court Secretariat and State-run institutions such as the Princess Grace Hospital, and the Social Welfare Office.

The Department of Social Affairs and Health is also responsible for monitoring and implementing international agreements in the field of social welfare, particularly the bilateral agreements on social security with France and Italy.

(v) *Department of Foreign Affairs*

49. The Department of Foreign Affairs is responsible for carrying out public policy in the following areas:

(a) Immunity, diplomacy and consular affairs;

(b) European affairs;

(c) International and multilateral affairs;

(d) The international context, in the daily work of the Directorate of International Cooperation, the Directorate of International Affairs, and the Directorate of Diplomatic and Consular Relations, as well as in the interventions of Monaco's embassies and representatives abroad and with international organizations.

50. Each government councillor is assisted by a director-general and by a secretariat and administrative services reporting to a director or head of service.

51. Civil servants are appointed by sovereign ordinance. Their basic duties, rights and guarantees, as well as their responsibilities, are laid down in Act No. 975 of 12 July 1975 on the regulations governing civil servants.

## **2. Legislature**

### **(a) National Council**

52. The National Council has 24 members, elected for a term of five years in a single round of voting using the list system, with the possibility of voting for candidates from more than one party but with no preferential vote. All Monegasque citizens of either sex who are over 18 years of age and in possession of their civic rights are eligible to vote.

53. Voters of either sex over 25 years of age who have held Monegasque nationality for at least five years and who have not been deprived of the right to stand for election for one of the reasons set out in Act No. 839 of 23 February 1968 on national and communal elections may stand for election (see annex).

54. The Prince may dissolve the assembly, after hearing the views of the Crown Council (see para. 37 above). In such cases, new elections are held within a period of three months.

55. The National Council exercises legislative authority with the Prince. Each year, during the November session, it votes the budget of the State. No direct taxation may be introduced except by decision of the Council or with its consent. The budget is voted and enacted in the form of a law. The Higher Audit Commission oversees its implementation and the financial management of the State, the Commune and the public institutions.

56. The officers of the National Council, who stand for re-election each year, include a president and vice-president appointed by the assembly from among its members. The Minister of State and the government councillors attend the meetings of the assembly.

**(b) Laws and sovereign ordinances**

57. *Laws*: Only the Prince may propose laws. However, the National Council has the right to submit proposed laws which, if accepted by the Government, are forwarded by the latter to the Prince for approval, in the form of bills. These bills are then submitted by the Minister of State to the National Council for discussion and vote. A process of cooperation then begins, within the assembly committees studying the bills, between members of the National Council and representatives of the Government. Once the law has been voted, it has to be endorsed by the Prince, who may either enact it or refrain from doing so. It is enforceable against third parties from the day after its publication in the Official Gazette.

58. *Sovereign ordinances*: After discussion in the Government Council, sovereign ordinances are submitted to the Prince, and become enforceable when he signs them. They may be enforced against third parties in the same way as laws, in other words, from the day after their publication in the Official Gazette.

59. Sovereign ordinances are often instruments designed to specify the manner in which laws are to be implemented. They may also relate to matters over which the Prince has independent competence, under his regulatory powers. Sovereign ordinances dealing with the following are not submitted for prior discussion to the Government Council: matters dealt with by the Directorate of Judicial Services; the appointment of members of the Sovereign House and the diplomatic and consular corps, the Minister of State, the government councillors and members of the judiciary; the issuance of *exequatur* orders to foreign consular representatives in Monaco; the dissolution of the National Council; and honorary awards.

60. Sovereign ordinances make international treaties to which the Principality is a party enforceable in Monaco, or specify the terms for their implementation. The Prince has the power to initiate and conduct diplomatic negotiations, and, after consulting the Crown Council, ratifies international conventions signed by his plenipotentiaries. Only treaties having an impact on constitutional arrangements must be ratified by means of a law.

### 3. Judiciary

61. Under article 88, paragraph 1, of the Constitution, judicial power is vested in the Prince, who delegates its full exercise to the courts and tribunals, which render justice in his name.
62. At the operational level, justice is administered by the Directorate of Judicial Services, the Monegasque justice ministry.
63. The Directorate is governed by a sovereign decree dated 9 March 1918. It is an administrative service that is independent of the Government, and is headed by the Director of Judicial Services.
64. The Director of Judicial Services has similar powers to those exercised by justice ministers in other countries.
65. He is responsible for the proper administration of justice, and answers to the Prince alone in this respect. Accordingly, he has powers in the field of the administration of justice that are comparable to those that the Minister of State has in the overall administration of the country.
66. The Director of Judicial Services has hierarchical and disciplinary authority over the civil servants who report to him. Accordingly, he performs his duties in conditions similar to those applicable to the Minister of State or civil service chiefs, as provided for in Act No. 975 (art. 74). In disciplinary matters, he may issue a warning or reprimand to the civil servant concerned, or order a meeting of the disciplinary board with a view to handing down a more severe penalty under a sovereign ordinance. As a precautionary measure, he may also suspend the civil servant who is at fault, with or without pay.
67. Under article 10 of the ordinance of 9 March 1918, the Director of Judicial Services may also call to order or reprimand a judge for public or private acts.
68. Under article 139, paragraph 2, of the Code of Civil Procedure, the Director of Judicial Services represents the State before the courts when the authorities are challenged regarding the operation of the justice system.
69. The actual judicial responsibilities of the Director of Judicial Services basically concern criminal matters.
70. Under article 20 of the ordinance of 9 March 1918, he directs criminal prosecutions - i.e. criminal proceedings against the alleged perpetrators of an offence of any sort - but does not bring them himself, and cannot halt or suspend a trial once it is under way. Accordingly, he is authorized to give instructions to officials of the Public Prosecutor's Office, mainly the Principal Public Prosecutor and his deputies, who are brought together in the prosecution service.
71. Moreover, the Director of Judicial Services may grant, by decree, parole to convicted criminals, provided that the conditions set out in Sovereign Ordinance No. 4.035 of 17 May 1968 are met.
72. Lastly, his opinion may be sought by the Prince on any justice-related matter.

73. The following services are administered by the Directorate of Judicial Services:
- (a) The general secretariat of the Directorate;
  - (b) The prosecution service;
  - (c) The courts;
  - (d) The General Registry;
  - (e) The prison service.
74. The general secretariat has particular responsibility for administering judicial services, under the Director's authority. It is headed by a secretary-general who assists the Director in all matters concerning the administration of justice.
75. It consists of managers and executive staff (category A) who may be assigned to an administrative job and civil servants subject to the civil-service regulations as set out in Act No. 975 of 12 July 1975.
76. In practice, the general secretariat handles the day-to-day administration of justice, including budgetary and financial questions, human resources and career-related issues.
77. It also manages Monegasque naturalization procedures and performs duties assigned to the Directorate of Judicial Services, as the central authority for the implementation of various conventions under private international law. In this role, the general secretariat coordinates the administrative phase of international child-adoption procedures, issues *apostilles*, and deals with international cases of child abduction.
78. The Directorate of Judicial Services is also authorized to transmit and communicate requests for mutual legal assistance (judicial documents, requests for international judicial assistance).
79. The internal judicial management of the courts is of course the responsibility of the court administrators, not the Directorate of Judicial Services.

#### **4. Commune**

80. The territory of the Principality forms a single commune. It is administered by a communal council composed of 15 members elected for a term of four years by universal direct suffrage. All adult citizens who have not been deprived of the right to vote cast their vote under a list-based, double-ballot plurinominal majority system. All voters other than those excluded by law are eligible to vote. The Communal Council appoints a mayor and the mayor's deputies from among its members, to form the governing body. It may be dissolved by the Minister of State by means of an order setting out the grounds for the decision, after consultations with the State Council.



81. *Areas of competence of the Commune*: a distinction should be made between competences assigned to the mayor as the representative of the higher authority, advisory competences exercised by the Communal Council, and the Commune's tasks as a decentralized public authority.

82. The mayor, as a government official, is responsible for ensuring the implementation of the laws and regulations and for municipal policing, including in the areas of public hygiene and traffic. He gives an opinion on applications for naturalization or restoration of Monegasque nationality. Under the supervision of the Principal Public Prosecutor, he performs the duties of registrar (keeping civil registers) and judicial police officer (with the power to take part in investigations into crimes, offences and infractions, issue tickets, and receive complaints or reports).

83. The Communal Council must be consulted by the Minister of State on proposed town-planning projects, civil-engineering projects, State or private building construction projects (major projects requiring special dispensation, especially in Monaco-Ville), proposals for the creation or elimination of green spaces, and projects likely to change the city's appearance, attractiveness or traffic flows.

84. The tasks of the Commune, as a decentralized public body, include managing communal real estate, organizing and designing communal services, organizing municipal festivities and other activities, dealing with urban hygiene and pollution, naming streets, creating, equipping or eliminating green spaces, and managing the cemetery.

## **5. Consultative bodies**

### **(a) Crown Council**

85. The Crown Council is composed of seven members of Monegasque nationality, appointed by the Prince for a term of three years. The president and three members are directly nominated by the Prince, while the three others are appointed at the suggestion of the National Council, but may not be members of it. Meetings of the Council are called by the Prince at least twice a year.

86. The Crown Council advises on issues brought before it by the Prince which relate to the higher interests of the State. It must be consulted about the signing and ratification of international treaties, the dissolution of the National Council, applications for naturalization or restoration of Monegasque nationality, pardons and amnesties. It may make suggestions to the Prince on matters which it has itself undertaken to study.

### **(b) State Council**

87. The State Council is chaired ex officio by the Director of Judicial Services and is composed of 12 members appointed by the Prince. Its task is to offer advice on draft legislation and sovereign ordinances, or any other draft instruments. The draft State budget is submitted to it in cases where the National Council has not voted the necessary funds before 31 December and the Government has decided to carry over the funds corresponding to the services agreed during the previous financial period.

**(c) Economic and Social Council**

88. The Economic and Social Council is composed of 36 members, appointed by sovereign ordinance for a term of three years (see annex):

(a) 12 are proposed by the Government on the grounds of their competence;

(b) 12 are selected by the Government from a list of 20 names drawn up by the Union of Workers' Associations; and

(c) 12 are selected by the Government from a list of 20 names drawn up by the Monaco Employers' Federation.

89. Members of the Council, who may be Monegasque or foreign nationals, must be at least 21 years of age. The president must be a Monegasque national. As a consultative body, the Council issues opinions on social and financial matters and on issues related to tourism, the hospitality industry, commerce, industry, property and town planning that are generally of relevance to the economic life of Monaco.

**C. Judicial framework**

**1. General**

90. Title X of the Constitution of 17 December 1962, entitled "Justice", establishes the principles underpinning the organization of the judiciary.

91. Among other things, Title X establishes the principle of "delegated justice", whereby 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 (art. 88). This delegation of judicial authority is consistent with another fundamental principle of all States governed by the rule of law, namely the separation of administrative, legislative and judicial responsibilities, which is also laid down in the Constitution (art. 6).

92. The combined application of these 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.

93. That being so, the Government does not include a councillor for justice. The administration of the judiciary is, in fact, provided by an independent office, the Directorate of Judicial Services.

94. Within his area of responsibility, the head of the Directorate, the Director of Judicial Services, 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.

95. The Constitution also guarantees the principle of the independence of judges (art. 88). This provision relates more particularly to judges sitting on the bench, that is, those called upon to resolve - by collegiate or individual decision - disputes which are submitted to them by the parties concerned in accordance with the conditions laid down by law.

96. In accordance with this principle, judges may not be removed from their posts, that is, they may not be dismissed, suspended or transferred.

97. 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 rules governing judges, are to be determined by law (art. 88). Consequently, they cannot be determined by the regulatory authority except in accordance with the law, which provides an important guarantee.

98. In judicial matters, the only prerogatives which the Prince enjoys are the powers to grant a pardon or amnesty (Constitution, art. 15).

99. Judges in the prosecution service are part of a hierarchical structure headed by the Principal Public Prosecutor and are not appointed for life; nor are substitute judges. The office of substitute judge is the first level in Monaco's judicial hierarchy.

100. Monegasque law is largely based on French law - the result of the close and long-standing special relationship between the two countries.

101. 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, including the Commercial Code of 5 November 1866, the Criminal Code of 19 December 1874 and the Civil Code of 21 December 1880. Subsequently, Prince Albert I 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.

102. Until the early 1960s, these five codes constituted the core of Monegasque positive law.

103. 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 contemporary standards. This body was presided over from the outset by the Director of Judicial Services, who is also president of the State Council. 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).

104. 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 settlement of liabilities, criminal law, criminal procedure, administrative law and so on.

105. The tasks assigned to the Public Prosecutor's Office, which relate to the application of the law, as well as the preservation and defence of the higher interests of society, are carried out by a single body of judges in the prosecution service.

106. Individuals may be represented by defence attorneys 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.

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

- (a) The courts are collegiate in nature;
- (b) There is a right to appeal to a higher court;
- (c) It is possible to appeal to have a judgement set aside;
- (d) In criminal matters, prosecution and judgement are separate functions.

108. The very few exceptions to these principles will be described below.

109. An investigating judge is given the task of investigating serious crimes and certain offences.

110. Cases involving minor offences are dealt with by a justice of the peace sitting in a police court; cases involving offences, by the court of first instance, sitting as a criminal court; and serious crimes, by the criminal court, that is to say a court in which, like the French assize courts, randomly selected persons 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.

111. 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.

112. Secondly, as regards administrative proceedings, jurisdiction does not fall to a particular court, as in France. In Monaco, jurisdiction is allocated differently: the Supreme Court hears disputes concerning the misuse of power, that is to say applications for the annulment of administrative acts on grounds of illegality, while the ordinary courts hear cases involving claims for compensation (public authority liability, administrative contracts, fiscal matters and so on).

113. It should be noted that, in this area, the ordinary courts (court of first instance and court of appeal, in particular) apply rules similar to those established by the French administrative courts.

114. Thirdly, as regards constitutional matters, it should be emphasized that the Supreme Court, in dealing with cases referred to it by any Monegasque or foreign natural person or legal entity

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.

## 2. Judicial authorities

### (a) Courts

#### (i) *Supreme Court*

115. Monaco's Supreme Court was set up under the Constitution of 5 January 1911 and holds an important position from a historical perspective. On the basis of that Constitution, granted by Prince Albert I and drawn up by renowned French jurists and internationalists (Louis Renault, André Weiss and Jules Roche), Monaco became a genuine constitutional monarchy.<sup>6</sup>

116. 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 fundamental rights and freedoms are set forth in Title II of the Constitution.

117. To protect and guarantee those rights and freedoms, the 1911 Constitution also established a higher court, the Supreme Court, which is regarded as the oldest constitutional court in Europe, if not the world.

118. Adopted in 1962, Monaco's new Constitution confirms the existence of fundamental rights and freedoms, and, in addition to the traditional rights enshrined in the 1911 Constitution (individual freedom and security; legal definition of crimes, offences and penalties; the right to respect for one's private and family life and the confidentiality of correspondence; property rights; and the abolition of the death penalty), includes economic and social rights, including 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).

119. As the logical corollary, article 90 of the Constitution (see below) 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.

120. *Composition:* The Supreme Court is made up of five full members and two alternate members appointed by the Prince for a period of four years on a proposal from the National Council, the State Council, the Crown Council, the court of appeal and the court of first instance. Each of those institutions proposes a full member; only the National Council and the State Council propose an alternate member also. Two names must be put forward for each seat on the Supreme Court, in the case of both full and alternate members.

121. Members of the Supreme Court are appointed by sovereign ordinance, which also designates, from among its members, the president of the Court and a vice-president, who deputizes for the president if the latter is absent or otherwise unable to be present.

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<sup>6</sup> See footnote 2 above.

122. 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 “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 Council of State or Court of Cassation.

123. *Jurisdiction*: The Supreme Court has jurisdiction in both administrative and constitutional matters, as laid down by article 90 of the Constitution.

124. In constitutional matters, the Supreme Court decides on applications for annulment, appeals challenging the validity of a decision, and actions for damages in relation to 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 “concurrence of wills” of the Prince and the National Council.

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

126. 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 Act 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).

127. 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, patently unlawful conduct. Consequently, in Monaco, blatantly unlawful conduct falls within the jurisdiction not of the ordinary courts but of the constitutional court.

128. Secondly, appeals challenging the validity of a decision enable individuals to invoke the unconstitutionality of the law.

129. 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 adoption of the 1962 Constitution.

130. 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.

131. The Supreme Court also has jurisdiction to hear:

- (a) Applications for judicial review of decisions of the administrative courts that are not subject to appeal;
- (b) Appeals challenging the interpretation or validity of decisions of the various administrative authorities and sovereign ordinances enacted to implement laws;
- (c) Disputes over jurisdiction.

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

133. *Initiating proceedings*: 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 both administrative and constitutional matters.

134. Thus, any law may be annulled on the ground that it is unconstitutional, at the initiative of a natural person or legal entity, be they Monegasque or foreign. This is a special feature which is particularly worth stressing, since individuals in States governed by the rule of law rarely have direct access to the constitutional courts by way of an action or preliminary objection.

135. In administrative matters, appeals for misuse of authority may be preceded by a preliminary administrative appeal, either to the person who took the decision - an application for reconsideration, or “discretionary” remedy - or to that person’s superior - a “hierarchical” remedy.

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

- (a) Formal or procedural irregularities: lack of jurisdiction, procedural flaws;
- (b) Substantive irregularities: breach of the law, illegality of the reasons for a judgement, abuse of authority.

137. *Hearings*: The Court sits in Monaco’s Palais de Justice. Its hearings are held in public. Where constitutional matters are concerned, the Supreme Court is required to sit in plenary.

138. The Principal Public Prosecutor acts as prosecutor at the Supreme Court; he makes oral submissions at the hearing.

139. *Decisions*: The decision must be read at a public hearing by a member of the Court within a fortnight of the hearing itself. It must include a number of compulsory elements and contain a statement of the reasons.

140. Where the Court is considering 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 the same ruling.

141. 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 its president and are published in the Official Gazette. They may be subject to appeal by a third party. Such an appeal is admissible only if it is lodged by a person whose rights have been infringed, with the exception of individuals summoned to intervene by the president during the proceedings. No further appeal is permitted, except to rectify a factual error.

142. *Review of decisions*: Where constitutional matters are concerned, it may be stressed that, on the basis of the wording of article 90 of the 1962 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.

143. Similarly, in a decision of 1 February 1994 on the same topic, the Supreme Court refers to the "constitutional principle of the equality of all in relation to 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.

144. In administrative matters, the Court assesses the legality of decisions referred to it on the basis of principles and the application of techniques comparable to those employed by the French courts. This 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 a clear error of judgement.

(ii) *Court of Review*

145. The Court of Review is at the top of Monaco's judicial pyramid. Except where the law provides otherwise, it rules, in all matters concerning a breach of the law, on applications for judicial review of any decision that is not subject to appeal and that has the force of *res judicata*.

146. It does not constitute a third level of jurisdiction but adjudicates on matters of law alone.

147. In practice, most of the decisions referred to it are judgements handed down by the court of appeal in civil, criminal, commercial and administrative cases, but they also include a significant number of judgements from the court of first instance sitting as a court of appeal for decisions of the Labour Court or justice of the peace.

148. The Court of Review is made up of eight judges: a president, a vice-president and five judges called upon to sit in the order in which they were appointed. The members of the Court of Review are appointed by sovereign ordinance. They are usually selected from among the emeritus judges of the French Court of Cassation. The Court does not give rulings unless at least three of its members are present.

149. It is open to the Court to consider without a hearing, that is, in an exclusively written procedure, those appeals deemed to be urgent. An appeal may also be referred to it in the interest of the law, as in the case of an application for a retrial lodged, even though the time limit may have expired, by the Principal Public Prosecutor at the instigation of the Director of Judicial Services.



150. In its judgements, the Court of Review may reject appeals, annul the decisions referred to it and/or remit the case to a subsequent hearing for reconsideration of the merits after the parties have made additional pleadings. In this case, the Court of Review judging the case on the merits must be of a different composition.

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

152. In criminal matters, unappealable judgements or decisions that have been handed down by the criminal or police courts and that are definitive as to the merits may be referred to the Court of Review in cases concerning a breach of the law or the rules of jurisdiction or a failure to observe essential procedural requirements.

153. Those requirements encompass the procedures applicable to the court or the decision and those established to guarantee the prosecution of criminal acts and the right to a fair hearing.

154. The Court considers appeals in documentary form only.

155. An appeal may also be referred to the Court of Review in the interest of the law. The Court also decides on applications for the resumption of proceedings where a court has made a factual error.

156. Since the adoption of Act No. 1.327 of 22 December 2006 (published in the Official Gazette on 29 December 2006), the Court of Review has been able, once it has quashed a judgement, to rule on the merits of a criminal case (Code of Criminal Procedure, new art. 496). Consequently, where it quashes a judgement in a criminal case, the Court of Review may itself take up the case for a judgement on the merits, though the Court must be of a different composition when it does so.

157. The Court of Review continues to play a key role in disciplinary proceedings brought against judges, as provided for by Title IV of Act No. 783 of 15 July 1965 on the organization of the judiciary.

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

159. Disciplinary proceedings are adversarial in nature. The prosecution service brings the prosecution. The Court's disciplinary decision contains a statement of the reasons, is signed by all the judges who took part in the decision, and is then entered in a special register 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.

160. It should be noted that a bill on the regulations governing the judiciary, which the Government set before the National Council in May 2004, provides for the establishment of a high council of the judiciary which would have jurisdiction in disciplinary matters.

161. As a result of its case law, which is very widely published and sometimes commented upon, the Court of Review makes a significant contribution to the development of Monegasque law, as well as exerting an influence through the Association of High Courts of Cassation using the French Language (AHJUCAF), of which the Court of Review is a member, and the Association of Constitutional Courts using the French Language (ACCPUF). This association was set up in 1997 to strengthen the links between French-speaking States. A meeting place and forum for discussion between its member institutions, ACCPUF endeavours to create and publish ready-to-use comparative law tools such as the CODICES database, which records the principal court decisions on constitutional matters following the signing of agreements with the European Commission for Democracy through Law (“the Venice Commission”) of the Council of Europe. The database improves the dissemination of constitutional case law in the French language and enables courts to access the decisions of their counterparts elsewhere.

(iii) *Court of appeal*

162. 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.

163. There are always at least three members present when it hands down a ruling. Where it cannot be constituted from its members, the court of appeal may be completed by a judge who 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.

164. *Appeals in civil, commercial or administrative matters:* The court of appeal hears appeals against judgements handed down by the court of first instance. The time limit for lodging an appeal is 30 days as of the notification of the judgement, unless otherwise stipulated by law. It takes the form of a writ; that is, process is served by a court bailiff. The appeal suspends enforcement of the judgement, unless the judgement was declared immediately enforceable. However, such a declaration may be revoked by prior order of the Court if it was issued in a case in which it was not authorized.

165. 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.

166. Sitting in chambers, the Court may consider decisions of the court of first instance which have also been taken in accordance with this procedure, as well as appeals against orders of the president of the court of first instance handed down on request, and orders of the guardianship judge.

167. It also hears appeals against decisions of the Housing Rent Arbitration Commission and the Commercial Rent Arbitration Commission.

168. *Appeals in criminal matters:* Convicted persons, persons recognized as having incurred third party liability, the Principal Public Prosecutor and parties claiming damages may appeal judgements of the criminal court.

169. The appeal is decided on the basis of the report of a judge and the procedure laid down for the criminal court, in relation to both the preparation for the hearing, the taking of evidence and the drafting and passing of judgement (Code of Criminal Procedure, art. 413).

170. The court of appeal can only decide on the points for decision which have been referred to it. Where an appeal is lodged by the Public Prosecutor's Office, it can confirm the judgement or set it aside, in whole or in part.

171. 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 judgement in a manner unfavourable to the latter.

172. 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.

173. The court of appeal also hears appeals against orders handed down by the investigating judge or the guardianship judge. It must also issue an opinion in extradition proceedings.

174. When the court of appeal is sitting in chambers, its hearings are not public; only the Public Prosecutor's Office must be represented. Counsel for the complainant and defence counsel are invited to attend, and those parties may attend at their request.

175. After having deliberated without the presence of the representative of the Public Prosecutor's Office, 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 until the day before the hearing.

176. *Special remit of the president:* 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.

177. In matters of protocol, the president is responsible for the formal re-opening of the courts, which takes place every year on 1 October. The president of the court of appeal ranks immediately below the president of the Court of Review.

178. However, the president of the court of appeal is, above all, responsible for supervising the activities of various bodies and players within the judicial system, including investigator's offices and court registrars.

179. In addition to these personal responsibilities, the president has responsibilities, pursuant to article 434 of the Code of Civil Procedure, in relation to rulings in summary proceedings on difficulties in enforcing judgements of the court of appeal, and as president of the court when it sits in chambers as a disciplinary body.

180. When a matter is referred to it by the Principal Public Prosecutor, 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, police officers, defence attorneys, lawyers, trainee lawyers and court bailiffs.

181. 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 the legal and the judicial level.

182. Firstly, at a purely legal level, it should be noted that many of its decisions constitute the case law that determines the position of Monegasque law.

183. An example of this is the judgement of 25 June 1974, *Minister of State, State Property Administrator and the Treasury v. Mathyssens and 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.

184. Secondly, at the judicial level, the court of appeal, through its supervisory and disciplinary functions, makes a significant contribution, alongside the Director of Judicial Services and the Principal Public Prosecutor, to reassuring the public that the justice system respects not only the law but also the code of ethics that are essential to justice.

(iv) *Court of first instance*

185. The court of first instance, a lynchpin of the justice system, 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. The president may delegate his powers to one of the vice-presidents or, indeed, a judge, depending on the needs of the service.

186. The court hears civil and criminal cases. When the criminal court is trying criminal offences, it is made up of the same judges as the court of first instance. All the judges sitting on the court of first instance are therefore competent to hear both civil and criminal cases.

187. *Jurisdiction:* The court of first instance hears:

(a) At first instance, all civil and commercial cases which, because of their nature or the sums involved, fall outside the jurisdiction of the justice of the peace;

(b) Also at first instance, as the ordinary court in administrative matters, all cases other than those over which the Supreme Court or another court has jurisdiction under the Constitution or by law;

(c) Appeals against judgements handed down at first instance by the justice of the peace, against arbitration awards in civil or commercial matters, and against judgements over which it has jurisdiction by law.

188. The criminal court hears:

(a) At first instance, all violations of the law categorized as offences and punishable by penalties generally limited to five years' imprisonment and a maximum fine of €90,000;

(b) Minor offences connected with a more serious offence;

(c) Criminal offences committed by persons under the age of 18, provided that the minor is not being prosecuted at the same time as adults;

(d) Appeals against judgements handed down by the police court.

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

190. Any person unable to advance the costs of the proceedings without drawing on the resources needed to support themselves and their family, may apply for legal aid.

191. Applications for legal aid are addressed, on plain paper, to the Principal Public Prosecutor, who notifies the applicant of his decision; that decision is final.

192. Legal aid is granted for the purposes of a court case and applies only to the court hearing the case, except where the party opposing the recipient of the legal aid lodges an appeal or an appeal for the proceedings to be reopened. In criminal cases, every defendant can ask for the assistance of a court-appointed lawyer, who will be designated by the Principal Public Prosecutor or the president of the court.

(v) *Police court and justice of the peace*

193. The main task 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 between the parties, and to resolve disputes where the sums involved do not exceed a certain figure, currently set at €4,600.

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

195. In criminal matters, the justice of the peace presides over the police court, which hears cases involving minor offences, that is, offences punishable by a fine of less than €600 and/or a maximum of between one and five days' imprisonment.

196. Judgements of the police court may be appealed before the criminal court.

(vi) *Criminal court*

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

(a) Three judges:

(i) A president drawn from the judges sitting on the court of appeal;

(ii) Two other judges 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 by ministerial order, of 30 Monegasque citizens who have reached the age of majority and have never been convicted of a serious crime or offence.

198. As well as offences which are classified as serious crimes, the criminal court has jurisdiction to hear cases involving offences committed by minors but with adult participation.

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

200. Hearings before the criminal court take place, in principle, in public, failing which they may be invalid. The requirement that there be an oral hearing is another fundamental principle governing the procedure in the criminal court.

201. The criminal court is a sovereign court whose decisions may not be appealed. However, the parties (the convicted person, the complainant and the Public Prosecutor's Office) may apply for proceedings to be reopened on the following grounds:

(a) Breach of the rules on jurisdiction;

(b) Failure to observe essential procedural requirements;

(c) Breach of the law.

202. If the Court of Review annuls the decision of the criminal court, the case is returned to the latter, which must be of a different composition for the retrial.

(vii) *Judges with specialized functions*

203. In addition to the ordinary courts, Monaco's judicial system includes judges with specialized functions whose role is to resolve certain conflicts or protect certain rights. The following judges carry out these functions.

204. *Guardianship judge*: The functions of the guardianship judge 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.

205. A substitute judge may be appointed in the same way. The judge has the authority to deal, in the cases provided for by law, with the problems to which family relationships may give rise.

206. In criminal cases involving juvenile offenders, in accordance with the special arrangements set in place in 1963, he 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 centre, abandonment of any action for damages, discharge order, order for release under supervision).

207. If the guardianship judge refers the juvenile offender to the criminal court, the latter will take its decision on the basis of a report delivered orally by that judge at the hearing.

208. In all matters, the orders of the guardianship judge must state the reasons and may be referred to the court of appeal, which will take a decision in chambers within a month of the appeal.

209. *Investigating judge*: The investigating judge deals solely with criminal matters.

210. 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 for trial.

211. Cases are referred to the investigating judge either at the request of the Public Prosecutor's Office 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 every crime.

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

(a) Visit the scene to draw up a report recording the corpus delicti and state of the crime scene and to take statements from witnesses;

(b) Order or carry out searches;

(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 summons for a suspect or witness to be brought before him or, indeed, an arrest warrant.

213. Monegasque trial courts are also authorized to issue requests for international judicial assistance.

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

215. In accordance with the principle of the right to appeal, the Principal Public Prosecutor may, in all cases, appeal the orders issued by the investigating judge. This 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.

216. More generally, the president of the court of appeal ensures that the investigator's offices function properly. The president:

(a) Ensures that there are no delays in proceedings;

(b) Checks on the situation of persons who have been remanded in custody;

(c) During the first week of each quarter, receives a detailed report on the procedures in progress from each investigating judge.

217. 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 Public Prosecutor, acting either of his own accord or at the request of one of the parties.

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

219. *Custodial judge*: This post was established by Act No. 1.343 of 26 December 2007 on justice and liberty, amending certain provisions of the Code of Criminal Procedure. The new article 60-4 of the Code stipulates that in the event of an extension of police custody from 24 hours to a further 24 hours, "the Principal Public Prosecutor or the investigating judge must seek approval of the extension of police custody from the custodial judge, attaching all appropriate documents to the request. The custodial judge is a judge appointed by the president of the court of first instance, who may establish a rota for this purpose. The rulings of the custodial judge are reasoned and immediately enforceable".

220. *Judge responsible for dealing with accidents at work*: This post was established not by a code but by welfare legislation, namely Act No. 636 of 11 January 1958, as amended, amending and coordinating the legislation on the declaration of, and compensation and insurance for, accidents at work.

221. This judge is required to act as a conciliator in any dispute that may arise between the victim of an accident at work, that person's representatives and dependants and the employer's insurance company or the employer itself. It should be noted that Monegasque employment law does not confer any responsibility 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*, in order to be covered against the consequences of accidents at work.

222. If necessary, the judge responsible for dealing with accidents at work undertakes any 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.



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

(a) Release on probation: under this arrangement, the sentence is suspended for a period of between three and five years, provided the convicted person complies with the measures for assistance or supervision stipulated by law;

(b) Serving a prison sentence in instalments: if the sentence handed down in a criminal case is less than three months, the judge decides how it is to be served, but may withdraw this benefit from a convicted person who fails to comply with his obligations;

(c) Release on parole: the judge supervises the support measures designed to encourage and bolster the efforts of a person released on parole to become reintegrated into society and readjusted to life at home and at work. The authority to grant 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.

224. No appeal is possible against orders issued by the judge responsible for the enforcement of sentences.

225. *Bankruptcy judge:* The bankruptcy judge deals solely with collective proceedings for the settlement of liabilities, usually referred to as bankruptcy.

226. The bankruptcy judge is appointed by the court of first instance hearing a commercial case, in its decision to suspend payments or wind up a company.

227. *Judge responsible for overseeing expert reports:* This judicial officer is appointed either by the court dealing with applications for interim relief or by the court of first instance, to monitor and supervise the procedures for expert reports commissioned by those courts.

228. *Conciliation judge in divorce or separation proceedings:* 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.

229. If this approach is unsuccessful, he issues a non-conciliation order and authorizes the plaintiff to file for divorce before the court of first instance.

230. In the same order, he sets out 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 for the education of children.

(viii) *Special courts*

231. The so-called special courts deal exclusively with economic and social relations. What is unusual about them is that they bring together lay persons and professional judges to find the best possible solution to a variety of disputes, such as those between employers and employees or those between landlords and tenants.

232. The following courts are special courts.

233. The *Labour Court*, established by Act No. 446 of 16 May 1946, 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 the decisions of the grading committee (Act No. 739, art. 11-1).

234. The Labour Court is made up of 24 employees and 24 employers, in accordance with Sovereign Ordinance No. 3.851 of 14 August 1967, as 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.

235. The *High Court of Arbitration* is a special court able to hear cases concerning the regulation of industrial disputes. It was set up by Act 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.

236. The conciliation and arbitration procedure is instigated when the earliest petitioner transmits to the Minister of State a request for conciliation.

237. The *Housing Rent Arbitration Commission*, established by Act No. 1.235 of 28 December 2000, rules on 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.

238. It tries to get the parties to agree 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 this purpose. The decisions handed down by the Commission 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 give rise to an application to reopen proceedings.

239. The *Commercial Rent Arbitration Commission*, established by Act No. 490 of 24 November 1948, is responsible for settling disputes between proprietors and tenants concerning the conditions for the renewal and review of commercial leases.

240. The Commission's decisions contain a statement of the reasons and may be appealed. The decision may give rise to an application to reopen proceedings.

### **III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED**

241. The whole of Monaco's legal system is designed to ensure respect for human rights. Under article 19 of the Constitution, no one may be prosecuted except as provided for by law and no one may be arbitrarily detained: arrests may be carried out only by reasoned order of a judge (or within 24 hours following the order).

242. The laws, and particularly the Criminal Code, the Civil Code, the Code of Criminal Procedure and the Code of Civil Procedure, set forth the conditions for the realization and protection of these rights and the courts apply these conditions.

#### **A. Authorities in the field of human rights**

243. The function of the Commission for the Monitoring of Personal Information (CCIN) established by Act No. 1.165 of 23 December 1993, which has been operative since 2000, is to receive applications to undertake computerized processing of personal information by individuals and legal entities in private law; its opinion must also be sought when such processing is undertaken by individuals and legal entities in public law. Further to the registration (or updating) of processing applications, CCIN may request economic entities or interested third parties to submit any documentation or information that it considers relevant. CCIN investigators may monitor computerized processing operations and flag any irregularities that come to light; they may summon and interrogate interested parties. CCIN investigates cases and complaints which are referred to it and forwards its proposals to the Minister of State: when individuals and legal entities in private law are found to have committed irregularities, the Minister of State serves notice on the person or entity concerned to remedy the irregularity or undo its effects. In the event of non-compliance with this order, the president of the court of first instance, seized of the matter by the Minister of State in interim relief proceedings, orders the taking of all appropriate measures (including, if need be, a penalty payment) to discontinue the irregularities, without prejudging possible criminal penalties. When irregularities are brought to light in the course of data-processing by services answerable to a legal entity in public law, the Minister of State, likewise seized of the matter by the president of CCIN, takes whatever measures may be necessary to discontinue the irregularities or undo their effects.

244. Upon accession to the Council of Europe in October 2004, Monaco signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) and in 2005 established a human rights unit which fulfils the role of a national commission ensuring the observance of the fundamental rights guaranteed under both the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Bodies of this kind often provide a link between the State, NGOs and individuals. In Monaco, however, there are as yet no NGOs that specialize in dealing with infringements of human rights.

245. 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, once every three months, for all who are required to apply the European Convention on Human Rights, particularly members of Monaco's judiciary. Training schemes in secondary schools and for the police are currently under review;

(d) To provide assistance: the unit is of course available to provide assistance to the various Monegasque authorities in the field of fundamental rights, and can act as a permanent legal adviser 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.

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

247. 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.

248. 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.

249. Sovereign Ordinance No. 461 of 23 March 2006, on assistance for the victims whose property was plundered in Monaco during the Second World War, established a commission, which reports to the Minister of State, to examine requests from individuals for compensation for victims or victims’ beneficiaries in respect of material or financial injury resulting from the plundering of property in Monaco during the Second World War, when the Principality was under occupation.

250. The commission was set up to “seek and propose compensation measures or other appropriate means of reparation” (art. 2). To this end, it may submit conciliation proposals to individuals who can prove that they suffered injury and to those who may be required to compensate them.

251. Act No. 1.343 of 26 December 2007 on justice and liberty, amending certain provisions of the Code of Criminal Procedure, introduced a special system of compensation for injury arising as a result of unjustified pretrial detention (Code of Criminal Procedure, new arts. 202-202-4).

## **B. Remedies available to individuals who claim that their rights have been violated; compensation and rehabilitation schemes**

252. Any law or regulation or administrative decision that violates the rights and fundamental freedoms of the individual may be appealed to the Supreme Court, which has the power to annul such a decision (Constitution, art. 90). The annulment has absolute authority as *res judicata* and is binding on everyone, including the Administration, which is required to execute the judgements handed down (Supreme Court, 20 February 1969, *Aureglia heirs et al.*, volume corresponding to the date).

253. Any person who ascertains that a breach of the law has occurred during the processing of personal information concerning him or her may refer the matter to CCIN, which will order the appropriate checks and, if necessary, refer the case to the Minister of State with a view to rectifying the situation in accordance with the procedure cited above.

254. If a disputed administrative decision has caused injury, the victim may seek to hold the State responsible and obtain compensation for special and abnormal injury (Supreme Court, 1 February 1994, *Monaco Landowners' Association*, volume corresponding to the date). The Criminal Code provides specific penalties for violations committed by officials in the exercise of their duties (Criminal Code, arts. 106-136).

255. If the violation of rights and freedoms has been committed by a private individual, the victim may appeal to the criminal courts when an offence has been committed, or to the civil courts in cases involving loss or injury. In all cases, if the violation is confirmed, the court seized of the case will award compensation for the injury sustained by the victim.

### **C. Protection of the rights referred to in the various international human rights instruments**

256. Monaco is a party to the majority of human rights instruments. It is a party to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child. The Constitution of 17 December 1962, as revised on 2 April 2002, states that the Principality is a State under the rule of law committed to the respect of liberties and fundamental rights. These are listed in detail in Title III of the Constitution and correspond to most of the rights provided for in the various international human rights instruments.

257. *Rights guaranteed under the Constitution:* Title III of the Constitution enumerates fundamental rights and freedoms (Constitution, arts. 17-32), which comprise rights of the individual and civil liberties:

- Equality before the law (art. 17)
- Individual liberty and security (arts. 19 and 20)
- The legality of penalties and the non-retroactivity of criminal laws (art. 20, para. 1)
- Right to respect for human personality and dignity (art. 20, para. 2)
- Abolition of the death penalty (art. 20, para. 3)
- Sanctity of the home (art. 21)

- Right to respect for private and family life and confidentiality of correspondence (art. 22)
- Freedom of worship (art. 23)
- Freedom of opinion (art. 23)
- Right to own property (art. 24)
- Freedom of labour (art. 25)
- Right to receive public assistance in connection with poverty, unemployment, illness, disability, old age and maternity (art. 26)
- Right to free primary and secondary education (art. 27)
- Right to engage in trade union activity (art. 28)
- Recognition of the right to strike (art. 28, para. 2)
- Right of assembly (art. 29)
- Right of association (art. 30)
- Right to petition the authorities (art. 31)

258. Under article 93 of the Constitution, the Constitution may not be suspended, thereby guaranteeing the permanence of the rights set forth therein.

259. *Rights guaranteed under the law and judicial precedent:* Lawmakers have also taken action in the form of laws and regulations to ensure the protection of fundamental rights. For example, trade-union action is protected and any obstacle to the free exercise of this right is a criminal offence according to law (Act No. 417 of 7 June 1945 protecting the right to form trade unions, as amended by Act No. 1.005 of 4 July 1978 and Act No. 957 of 18 July 1974). Freedom of association is guaranteed (Act No. 1.072 of 27 June 1984), as is the right to strike (Act No. 1.025 of 1 July 1980). In addition, Act No. 1.165 of 23 December 1993 regulates the processing of personal information and stipulates that such operations must not violate the fundamental rights and freedoms set forth in Title III of the Constitution. With the exception of duly authorized judicial, administrative, health or medical authorities, no one may collect, record or make use of personal information of a medical nature or concerning offences, convictions or protective measures, or any information that reveals political, racial, religious, philosophical or trade-union opinions or affiliation, other than with the express written consent of the person concerned. He or she may withdraw such consent at any time and request the compiler or user of the information to destroy or erase any information that concerns him or her.

260. The practice of the courts has clarified the various rights set forth in the Constitution, for example the principle of equality (Supreme Court, 31 January 1975, *Weill*, volume corresponding to the date), freedom of expression (Supreme Court, 13 August 1931, *Chiabaut*, volume corresponding to the date), the right to own property (Supreme Court, 3 June 1970, *S.C.I. Patricia*, volume corresponding to the date), and the right to engage in trade-union activity (Supreme Court, 14 June 1983, *Princess Grace Hospital Staff Union*, volume corresponding to the date).

#### **D. Incorporation of the human rights instruments into domestic law and the procedure for invoking these instruments before the courts**

261. Human rights instruments, like all international treaties, must be signed and ratified by the Prince (Constitution, art. 14). They are then given force of law by a sovereign ordinance. If the international instrument which has been ratified and given force of law requires a change in Monegasque domestic law, the Prince may issue appropriate ordinances for the execution of the said instrument or have recourse to a statute, pursuant to article 68 of the Constitution. However, under article 14 of the Constitution, a law is needed if a treaty has an impact on constitutional arrangements.

262. The provisions of an international instrument can be invoked before the administrative authorities or courts of the Principality only after having been made enforceable in Monaco (laws and sovereign ordinances are enforceable against third parties only from the day after their publication in the Official Gazette).

263. Thus, by an order of 30 August 2001, the court of appeal confirmed the principle of the direct applicability in Monegasque law of the International Covenant on Civil and Political Rights.

#### **E. Institutions or national machinery with responsibility for overseeing the implementation of human rights**

264. Apart from the judicial and administrative authorities which are entitled to act in the human rights sphere as described in section A above, each of which is responsible for monitoring the areas under its jurisdiction, there are no independent institutions or machinery specifically responsible for overseeing the implementation of human rights in Monaco. The lack of such structures is attributable to the smallness of the country and the fact that the wide-ranging power of judicial review exercised by the Supreme Court enables individuals to defend their fundamental rights directly in the case of a violation.

265. Legal aid is nevertheless crucially important in effectively guaranteeing respect for human rights. The system defrays the legal costs of any persons - Monegasques or foreigners - who cannot commit themselves to pay litigation costs without tapping into funds required to support themselves or their families. Legal aid covers litigation costs, and also exempts the aided party from payment of fees, emoluments and remuneration of ministerial officers and defence lawyers; where appropriate, the aided party is not required to put up security against the payment of costs and damages resulting from the trial. Finally, legal aid also covers service of the judgement and the bringing of action on a judgement obtained thereby.

266. Legal aid is available in civil and administrative proceedings (Code of Civil Procedure, arts. 38-56); criminal proceedings (Code of Criminal Procedure, arts. 167 and 399); and in certain proceedings before the specialized courts such as the Labour Court (Act No. 446 of 16 March 1946 establishing the Labour Court, art. 52; Act No. 790 of 18 August 1965 on accidents at work, art. 32).

#### **IV. INFORMATION AND PUBLICITY**

267. When Monaco is considering becoming a party to a legally binding treaty, the authorities concerned meet to study the compatibility of the treaty provisions with Monegasque legislation.

268. This study is submitted to the Government Council so that the Prince can, with full knowledge of the facts, decide whether Monaco should become a party to the treaty or not. Under the Constitution, the power to sign and ratify international agreements is vested in the Prince (art. 14).

269. If the international agreement concerns the cases listed in article 14, paragraph 2, the treaty cannot be ratified except by a law authorizing ratification adopted by the National Council. Where necessary, the Government notifies this body of its intention to become a party to an instrument.

270. Finally, the representatives of Monaco at the international organizations that produced the instrument receive instructions to deposit the relevant instruments of ratification.

271. The Monegasque authorities issue press releases, which are widely reported in the local press, to keep the people informed about the different stages in the procedure for ratifying international instruments.

272. Once ratified in conformity with articles 14 and 68 of the Constitution, international human rights instruments, like all other instruments, are published in the Official Gazette. The texts of international instruments can be accessed on the websites of the National Council and the Government.

273. Monaco pays particular attention to publicizing human rights conventions. Both civil society and the Government play a key role in their dissemination, at home and abroad, through publications, seminars, lectures and activities to raise public awareness.

274. The reports submitted to the human rights treaty-monitoring bodies are prepared by the Department of Foreign Affairs. Although the reports are not the subject of a public debate before they are submitted, the departments concerned are systematically consulted. Comments and suggestions are made, thanks to which the draft of the document can be improved.

275. After the reports have been considered by the relevant committees, the results and recommendations of the committee members are brought to the attention of the public through the press and are made available on the Internet.

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