

# **ECRI REPORT ON MONACO**

**(fifth monitoring cycle)**

Adopted on 8 December 2015

Published on 1 March 2016

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

ECRI Secretariat  
Directorate General II - Democracy  
Council of Europe  
F-67075 STRASBOURG Cedex  
Tel.: + 33 (0) 3 90 21 46 62  
E-mail: [ecri@coe.int](mailto:ecri@coe.int)

[www.coe.int/ecri](http://www.coe.int/ecri)

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation at 18 June 2015; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's second report on Monaco on 23 June 2010, progress has been made in a number of fields covered by that report.**

In 2010, a bill on protection from discrimination and harassment was tabled in the National Council. In addition, Monaco's courts have declared that, in the absence of a text, the provisions of article 14 of the European Convention on Human Rights (ECHR) are directly applicable for the sanctioning of cases of flagrant discrimination. The setting up of the Office of the High Commissioner for the protection of rights and freedoms and mediation in 2013 marked a further significant step forward in combating racism and discrimination.

In November 2013, Monaco approved ratification of the Convention on cybercrime. In this connection, its draft legislation on combating technological crime provides for the insertion of a new article in the Criminal Code expressly making racist threats punishable acts.

Awareness-raising and training initiatives in the area of combating hate speech, racism and intolerance continue to be organised in schools and among judicial staff and police officers. The courts, politicians and journalists have unequivocally condemned the racist and homophobic attacks coming to their attention.

A number of measures have been taken to facilitate the reception of foreigners in Monaco, including the creation of a reception plan and a dedicated structure (Monaco Welcome & Business Office).

Since 2011, homosexual couples have enjoyed protection from new provisions on the prevention of domestic violence, and a bill for the introduction of a civil union pact open to hetero- and homosexual couples was tabled in 2013.

**ECRI welcomes these positive developments in Monaco. However, despite the progress achieved, some issues continue to be a cause for concern.**

Monaco has not ratified Protocol no. 12 to the ECHR. Moreover, the law on freedom of expression in public does not criminalise incitement to discrimination and mentions neither skin colour nor language as prohibited motives.

Monaco's Criminal Code does not expressly criminalise a number of crimes and misdemeanours referred to by General Policy Recommendation (GPR) no. 7 on national legislation to combat racism and racial discrimination: these include genocide, its denial, publicly expression of an ideology claiming the superiority of a grouping of persons and leadership or participation in the activities of a group which promotes racism. Similarly, the Criminal Code does not always stipulate that racist motives constitute aggravating circumstances for ordinary law offences.

Monegasque law does not clearly define and does not expressly prohibit direct and indirect discrimination; it also lacks certain key components of effective legislation against discrimination such as the sharing of the burden of proof. Where proposed legislation on discrimination is concerned, the government has taken up only the provisions on harassment and violence in the workplace for inclusion in a bill.

Existing police and judicial statistics on hate crimes and hate speech are not published. Furthermore, ECRI has observed reluctance on the part of victims to file complaints.

The foreigner reception plan is still too vague in terms of its objectives, the measures to be taken, the actors involved and the plan's assessment. There are no specific indicators for measuring its impact. ECRI has been informed of cases of discrimination, notably in the labour market. Foreign women do not enjoy the same entitlement to social benefits as their male counterparts. Finally, the law requires the majority of members of a trade union's bureau to be of Monegasque or French nationality.

The political scene has been marked by a number of homophobic incidents. A lack of studies and information make it difficult to assess the level of tolerance towards LGBT persons in Monegasque society. LGBT persons do not enjoy a specific legal status in civil and administrative law.

**In this report, ECRI requests that the Monegasque authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.**

Monaco should ratify Protocol no. 12 to the ECHR. The authorities should bring criminal\*, civil and administrative law into line with ECRI's GPR no. 7. It should also broaden the sphere of competence of the Office of the High Commissioner by allowing it to assist victims of discrimination, particularly in judicial proceedings.

The authorities should publish their statistics on racist and homo/transphobic offences. In addition, the police and the Office of the High Commissioner should step up cooperation with civil society and the NGOs which are in contact with potential victims of hate speech.

The authorities should turn the Reception Plan into a real action plan for integrating foreigners and introduce indicators for measuring and reporting on its impact. The figures should be published and accommodation measures should be integrated into the plan. Furthermore, the Monegasque authorities should strengthen protection for foreign women against discrimination. They should also repeal the provisions whereby a majority of the members of the organs of trade unions and their federations need to be Monegasque and French nationals.\*

A systematic study should be carried out, while respecting the private life of LGBT persons, about their living conditions. The authorities should process the proposed legislation on civil union pacts as soon as possible and assess the need for other legislative reforms concerning these persons. Finally, a service should be tasked with a programme geared to guaranteeing equal treatment for LGBT persons.

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\* A process of interim follow-up for the recommendations in this paragraph will be conducted by ECRI no later than two years following the publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism<sup>1</sup> and racial discrimination<sup>2</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. Notwithstanding the commitment made when it acceded to the Council of Europe (CoE), Monaco has still neither signed nor ratified Protocol No. 12 to the ECHR, which provides for a general prohibition of discrimination. The authorities fear that accession would jeopardise Monaco's social covenant, which provides for preferential treatment for its nationals, particularly in respect of employment and housing.<sup>3</sup> The Parliamentary Assembly of the Council of Europe States in its Resolution 2052 (2015) ending the post-monitoring dialogue entered into with Monaco on accession to the Council of Europe that ratification of the Protocol should be the subject of an ongoing detailed examination by the Monegasque authorities.<sup>4</sup>
2. ECRI points out, as the explanatory report to Protocol No. 12 has already done, that only those distinctions or differences in treatment for which there is no objective and reasonable justification constitute discrimination. Certain distinctions based on nationality are made in the law of most Council of Europe member States. Furthermore, according to the explanatory report and the case-law of the ECHR, the contracting States are allowed a certain margin of appreciation in assessing whether and to what extent differences justify different treatment.<sup>5</sup>
3. ECRI maintains that ratification of Protocol No. 12 would constitute significant progress. Considering Monaco's particular situation, and especially the fact that Monegasque nationals are a minority of residents, the aforementioned interpretation of the Protocol enables certain prerogatives of Monegasques to be justified. If the authorities do not consider this arrangement sufficient, they should, in co-operation with the Council of Europe, prepare a reservation similar to that which Monaco was able to make when it ratified the ECHR, and, initially, ratify the Protocol subject to that reservation.<sup>6</sup>
4. ECRI reiterates its recommendation that Monaco ratify Protocol No. 12 to the European Convention on Human Rights.

##### - Criminal law

5. ECRI has already, during the previous cycles, verified the conformity of Monegasque legislation with its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. This report will therefore consider only the gaps which remain.
6. Article 16.2 of the Law on freedom of expression, under which any incitement to hatred or violence is punishable, is not completely in line with § 18a of GPR No. 7, since it does not make incitement to discrimination a criminal offence.

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<sup>1</sup> According to ECRI's General Policy Recommendation (GPR) No. 7, "racism" means the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

<sup>2</sup> According to ECRI's General Policy Recommendation (GPR) No. 7, "racial discrimination" means any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>3</sup> See inter alia Articles 25 to 27 of the Constitution. For more details, see ECRI 2010, §§ 1 et seq.

<sup>4</sup> Council of Europe, Parliamentary Assembly 2015: 1.

<sup>5</sup> Council of Europe 2000: §§ 18 et seq.

<sup>6</sup> See <http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?CL=ENG&CM=8&NT=005&DF=27/11/2014&VL=0>.

Furthermore, like Articles 24.3 and 25.3 of the same law, on insult and racial defamation, it does not include skin colour or language as prohibited grounds.<sup>7</sup>

7. ECRI notes with satisfaction the adoption of Law No. 1,402 of 5 December 2013 approving ratification of the Convention on Cybercrime<sup>8</sup> and the tabling of bill No. 934 of 27 February 2015 on the fight against technological crime. This law is intended to align national law with the provisions of the Convention and, among other things, provides for a new Article 234-2 to be incorporated into the Criminal Code expressly making racist threats punishable (§ 18c of GPR No. 7).<sup>9</sup> ECRI invites the authorities to complete the ratification process as soon as possible in accordance with the commitment entered into by Monaco on its accession to the Council of Europe. On the other hand, Monegasque criminal law makes punishable neither the public expression, with a racist aim, of an ideology which advocates the superiority of a group of persons, nor the trivialisation, justification or condoning of crimes against peace, crimes against humanity and war crimes (§ 18e of GPR No. 7).<sup>10</sup> In these circumstances, ECRI welcomes the interest shown by the Minister for Foreign Affairs when he took part, on 31 March and 1 April 2014, in an international conference on the prevention of genocide.<sup>11</sup> It encourages the Monegasque authorities also to ratify the Additional Protocol to the Convention on Cybercrime, Article 6 of which provides for the acts concerned to be made criminal offences.
8. There is no legal provision making the public dissemination or public distribution, or the production or storage, with a racist aim, of written, pictorial or other material containing manifestations of racism a criminal offence (§ 18f of GPR No. 7). In this context, ECRI regrets that the draft law on sport<sup>12</sup>, which was expected to include a specific provision condemning racist or xenophobic attitudes and the display of symbols or signs reflecting a racist ideology, has still not been finalised.
9. Also not punishable under Monegasque criminal law are the creation or the leadership of a group which promotes racism, support for such a group and participation in its activities (§ 18g of GPR No. 7) and racial discrimination in the exercise of one's public office or occupation (§ 18h of GPR No. 7).
10. Where action against genocide is concerned, Monegasque order No. 351 of 14 February 1951 provides for full and complete implementation of the Convention on the Prevention and Punishment of the Crime of Genocide. Considering the principle that conviction is possible only in pursuance of a clear and precise text of criminal law, and insofar as the Monegasque Criminal Code contains no specific provision making the crimes and offences set out in Article 3 of the Convention punishable, ECRI considers that further efforts are necessary to transpose that Convention into Monegasque domestic law: provisions on genocide should be incorporated in the Criminal Code (§ 19 of GPR No. 7).

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<sup>7</sup> Where the ground of gender identity is concerned, see § 64.

<sup>8</sup> <http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm>.

<sup>9</sup> Threats are already punishable in pursuance of Articles 230 to 235 CC.

<sup>10</sup> Only the condoning of terrorist acts is punishable under Article 16 of the law of 2005.

<sup>11</sup> <http://en.gouv.mc/Portail-du-gouvernement/Policy-Practice/Monaco-Worldwide/News/Monaco-Takes-Part-in-an-International-Conference-on-the-Prevention-of-Genocide>

<sup>12</sup> See § 43 of the previous report, ECRI 2010.

11. In its last report, ECRI recommended that the Monegasque authorities make specific provision in criminal law for racist motivation for ordinary offences to constitute an aggravating circumstance (§ 21 of GPR No. 7).<sup>13</sup> ECRI regrets that the authorities have not acted on this recommendation and seem unconvinced of the need for such a general provision. ECRI notes that Monegasque law contains no rule providing for aggravating circumstances for all offences, and that the number of racist, homophobic and transphobic acts in Monaco is low. However, it draws attention to the preventive benefits of such a measure, which enables a strong signal to be sent to potential offenders about the criminal-law consequences of acts committed on racist, homophobic or transphobic grounds. Furthermore, such a provision would ensure that the police and prosecution service comply with the obligation laid down by the ECHR to investigate the possible existence of racist motivation when violent acts have been committed.<sup>14</sup> Finally, such legislation would give the judicial authorities the necessary means of punishing all racist, homophobic and transphobic offences which might occur in the future given the international context and the situation in neighbouring countries.
12. Lastly, ECRI considers that the six-month time limit for prosecution laid down in the first paragraph of Article 59 of the law of 22 July 2005 for the offences of incitement to hatred, insults and defamation of a racist nature is too short (cf. § 23 of GPR No. 7). That law being based on French legislation, ECRI invites the Monegasque authorities to follow the current debate in France on the incorporation of such offences in the Criminal Code, which would have the effect of prolonging that time limit.<sup>15</sup>
13. ECRI recommends that the authorities bring Monegasque criminal law into line with its General Policy Recommendation No. 7 and in particular that the law explicitly make racist motivation an aggravating circumstance for all ordinary offences.

- **Civil and administrative law**

14. In its fourth cycle report<sup>16</sup>, ECRI recommended that the authorities enact comprehensive legislation against racial discrimination, drawing on GPR No. 7. It regrets that action has not yet been taken on this recommendation and that Monegasque civil and administrative law is only to a limited extent in line with §§ 4 to 17 of GPR No. 7. Although Articles 17 and 32 of the Constitution stipulate that all Monegasques are equal before the law and that foreigners enjoy all public and private rights that are not formally reserved for nationals, Monegasque law does not clearly define or explicitly prohibit direct and indirect discrimination; it also lacks other key elements of effective anti-discrimination legislation, such as the sharing of the burden of proof (§§ 4 to 8 and 10 to 15 of GPR No. 7).
15. ECRI is nevertheless satisfied to note that a legislative proposal was tabled in June 2010 (No. 198) on protection against discrimination and harassment and promotion of gender equality<sup>17</sup> and that the National Council adopted it on 13 July 2011. That proposal included the main grounds for discrimination set out in Article 14 of the ECHR, albeit without mentioning discrimination for

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<sup>13</sup> According to GPR No. 7, grounds of "race" are not the only ones which have to be taken into consideration, as grounds of colour, language, religion, nationality or national or ethnic origin are also relevant.

<sup>14</sup> This obligation exists under international law in respect of offences involving violence, ECHR *Nachova and Others v. Bulgaria* [GC], Nos. 43577/98 and 43579/98, 6.7.2005, §§ 160 to 168; *Dink v. Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14.09.2010, § 81.

<sup>15</sup> French Government 2015.

<sup>16</sup> See ECRI 2010: §39.

<sup>17</sup> Published at <http://www.conseil-national.mc>.

reasons of skin colour, nationality or national origin, and incorporated a good number of core elements of GPR No. 7. ECRI regrets that the government used its right under Article 67 of the Constitution to transform into a bill only those provisions of the said proposal relating to harassment and workplace violence.<sup>18</sup> Furthermore, that bill covers only part of § 15 of GPR No. 7. The National Council, for its part, referred this bill to its Committee on Social Issues and Other Matters, but no decision has subsequently been taken.<sup>19</sup> The main reasons for this reluctance to adopt a law against discrimination seem to be linked again to a fear of jeopardising the system of priorities granted to nationals.<sup>20</sup> ECRI refers here to §§ 2 and 3.

16. ECRI is pleased to note that the Labour Court and court of first instance of Monaco, in the continuing absence of a text, have declared the provisions of Article 14 of the ECHR directly applicable so as to be able to punish cases of flagrant discrimination.<sup>21</sup> In that particular case, a football club had dismissed an employee, and the court ruled that the complainant had been the subject of discrimination based on gender and “that there was no justification through objective criteria unrelated to gender-based discrimination”. Relying mainly on Article 14 of the ECHR, the court ruled the dismissal unlawful. That decision takes the same line as the case-law of the Court of Revision, which has, since a judgment of 21 April 1980, consistently ruled that international treaties take precedence over domestic law.<sup>22</sup>
17. ECRI considers that this case-law, by its nature revisable, does not guarantee a sufficiently sound legal basis in anti-discrimination matters. Furthermore, these judgments of the Labour Court and court of first instance have not been published on the legimonaco website, and the lawyers met by the ECRI delegation during its contact visit were therefore unaware of them. In this connection, ECRI welcomes the adoption of bill No. 219 designed to guarantee access to all judicial decisions of Monaco’s courts, inter alia via the Internet. At the same time, ECRI draws the Monegasque authorities’ attention to the fact that a law against discrimination would not only provide a clear legal framework for legal practitioners but also send a strong signal to society.
18. There is no provision for either the promotion of equality in the context of the awarding of public contracts (§ 9 of GPR No. 7) or the withdrawal of public funding from organisations which promote racism (§ 16 of GPR No. 7). Articles 6.1 and 22 of law No. 1,355 of 23 December 2008 concerning associations provide that any association whose purpose undermines fundamental rights and freedoms, public order or morality, is null and void and liable to dissolution. ECRI urges the authorities to make use of this provision in the event that organisations promoting racism were to appear (§ 17 of GPR No. 7).
19. ECRI again recommends that the Monegasque authorities adopt complete legislation on equal treatment and non-discrimination in the fields of private and administrative law.

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<sup>18</sup> Explanatory memorandum on bill No. 908 of 27 November 2012: 1, published at <http://www.conseil-national.mc>.

<sup>19</sup> Nor has work progressed on bill No. 895 concerning the status of public servants, which includes a prohibition of discrimination (cf. ECRI 2010: 5). This text will shortly be submitted to the National Council for consideration.

<sup>20</sup> Cf. *Monaco Hebdo* 2011a.

<sup>21</sup> Court of first instance, judgment of 3 February 2011. These courts also relied on the International Covenant on Civil and Political Rights, of 1966, and on the Convention on the Elimination of All Forms of Discrimination against Women, of 1979.

<sup>22</sup> See, for example, Monaco Court of Appeal, 14 December 2005, published at <http://www.legimonaco.mc>.

- **Specialised national bodies**<sup>23</sup>

20. In its fourth cycle report, ECRI had recommended that the Monegasque authorities establish the independence of the institution of ombudsman's office and grant to that office as many as possible of the responsibilities for which ECRI's GPR No. 2 on specialised bodies to combat racism provides. In its conclusions of 19 March 2014 on the application of that recommendation, ECRI noted with satisfaction that the authorities had set up, through Sovereign Order (OS) No. 4,524 of 30 October 2013, the office of High Commissioner for the Protection of Rights and Freedoms and for Mediation, which encompassed the duties hitherto incumbent on the institution of ombudsman's office. In addition, ECRI considered that the setting up of the High Commissioner's office marked appreciable progress. However, ECRI took the view that the independence of that office did not fully comply with the standards, insofar as the office could be abolished by a simple sovereign order. ECRI also took the view that the Monegasque authorities should expand its field of responsibilities (Principles 1.1, 3 and 5.4 of GPR No. 7).<sup>24</sup>
21. ECRI understands that there has been no change in the status of the High Commissioner during the first year since the office was set up. It still considers that the institution would become significantly more effective if the legislature entrusted it with all the functions listed in principle 3 of its GPR No. 2, particularly that of initiating and participating in court proceedings (§ 24 of GPR No. 7).
22. ECRI recommends that the Monegasque authorities assign to the High Commissioner for the Protection of Rights and Freedoms and for Mediation the function of providing victims of discrimination with legal aid, including representation in the event of court proceedings.

**2. Hate speech**<sup>25</sup>

- **Scale of the problem**

23. To gauge the scale of hate speech, the authorities rely on police and court statistics relating to criminal offences motivated by hatred. The crime level in Monaco is generally low, and the police have recorded a very limited number of cases of hate speech: an average of no more than five cases per year<sup>26</sup>. Those offences, furthermore, are not directed against one particular group. ECRI regrets that these statistics are not published to make better external monitoring possible (ECRI GPR No. 1).
24. ECRI recommends that the authorities publish their statistics relating to the number of racist, xenophobic, homophobic and transphobic offences reported to the police, the number of prosecutions, the reasons for non-prosecution and the outcome of prosecutions.
25. ECRI welcomes the fact that the peaceful atmosphere and good understanding between the different communities which it noted in its previous reports continues. All residents are accustomed to living in an international environment from their earliest years at school, which has a positive impact on their

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<sup>23</sup> Independent authorities specifically responsible at national level for combating racism, xenophobia, anti-Semitism, intolerance and discrimination on the basis of, for example, ethnic origin, skin colour, nationality, religion or language (racial discrimination).

<sup>24</sup> ECRI 2010.

<sup>25</sup> This part covers both racist and homophobic/transphobic speech. For a definition of "hate speech", see Recommendation No. R (97) 20 of the Committee of Ministers to member States on "hate speech", adopted on 30 October 1997.

<sup>26</sup> Between 2010 and 2014, the police have registered 11 "racist, two antisemitic and seven homophobic incidents.

perception of others. Those consulted from civil society confirmed that racist or xenophobic speech was rare.

26. Amongst the cases dealt with by the courts we may mention the five-day prison sentence imposed in June 2011 on a woman who had called a checkout operator a “negress”.<sup>27</sup> In another case two people arguing at a meeting of property co-owners who called each other “Italian” and “Jew” were not convicted, the court taking the view that the meeting was not public within the meaning of the law and that, in the particular context of the case, the statements were not in themselves racist insults<sup>28</sup>. ECRI was also informed of instances of racist hate speech in the hotel and catering sector and at a garage, some of these being related to skin colour. Official complaints had not, however, been made in those cases. ECRI also observed that some political speech and acts were perceived to be xenophobic by some of the foreigners living or working in Monaco. One example was the setting up, in 2013, of the national priority monitoring unit.<sup>29</sup> Lastly, ECRI was informed of the publication of xenophobic messages on a blog.<sup>30</sup>
27. In the sphere of homophobia and transphobia, the Criminal Court, on 6 July 2010<sup>31</sup>, sentenced a man to five days’ imprisonment and ordered him to pay €5,000 in damages for public insult. He had, for a six-month period, subjected the victim to homophobic insults. That harassment had caused a depressive state in the victim for which he had been given sick leave totalling 45 days.
28. ECRI also notes two homophobic incidents in the political world which hit the headlines. At the time of the first public sitting on the preliminary budget for 2013, a member of the National Council, Mr Spiliotis-Saquet, voiced homophobic insults against a colleague with whom he subsequently came to blows.<sup>32</sup> At the time of the National Council elections in February 2013, the sexual orientation of the future President of the National Council was published by a French media outlet<sup>33</sup>, and his private life and that of his family were criticised; ECRI considers it appropriate not to give more details of the case. A complaint was lodged with the Nice prosecution service for infringement of private life, and the 1,000 copies of the *Petit Niçois* in Monaco were seized.<sup>34</sup> ECRI finally notes that, in 2008, at the time of the debate on a bill concerning protection from domestic violence and its possible extension to same-sex couples, the Minister of State had stated: “It is not cohabitation that disturbs me. It is homosexuality in the name of the principles of the Princely Government”; “We have a society to maintain, and I do not accept this drifting in the name of human rights”.

#### - Responses to hate speech

29. In Monaco, a significant contribution to the combating of hate speech, racism and intolerance is already made by schools. The national human rights education strategy includes the raising of awareness of rights and values, multicultural education and tolerance. Human rights education is a compulsory subject at school. The National Education Directorate has also developed

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<sup>27</sup> *Monaco-Matin* 2011.

<sup>28</sup> *Nice Matin* 2014b.

<sup>29</sup> For more details, cf. Conseil National, <http://www.conseil-national.mc/index.php/priorite-nationale> and the *Observateur de Monaco* 2014.

<sup>30</sup> Cf. Monacomatin.mc 2014; this article, however, makes no direct reference to the racist speech reported to the ECRI delegation.

<sup>31</sup> For the years prior to 2010, cf. COWIa 2010: § 19.

<sup>32</sup> *Monaco Hebdo* 2012a.

<sup>33</sup> *Le petit niçois*.

<sup>34</sup> Parliamentary Assembly of the Council of Europe 2013: §§ 4 et seq.



“Health and Citizenship Education Committees” to encourage pupils to think about behaviour which develops self-respect and respect for others, as well as mutually supportive action, and fosters greater responsibility in young people. It has also run and taken part in several awareness-raising campaigns.

30. ECRI also notes with satisfaction that the initial training of court and police staff includes human rights-related issues. A discrimination module, inter alia, is taken by police trainees at the police college (*Ecole de Police de la Sûreté Publique*). That training is part of the ethics and policing ethics course and is primarily designed to give an understanding of racism, provide information about the penalties incurred and raise awareness amongst members of the police of the principles and values which should guide their conduct.<sup>35</sup> That training seems to bear fruit: according to civil society the police are, for example, particularly alert to anti-Semitic incidents.<sup>36</sup>
31. ECRI considers that this preventive system should go hand-in-hand with a strengthening of the legal arsenal against racism, as already stated in §§ 6 et seq. As far as the aforementioned argument between co-owners is concerned, ECRI refers to § 38 of the explanatory memorandum on its GPR No. 7, according to which member States should ensure that it is not too difficult to fulfil the publicity condition, particularly where a general meeting of the owners of large shared properties is concerned.
32. ECRI has noted a reluctance amongst victims to complain, sometimes motivated by a concern not to undermine the Principality’s image or by apprehension about going to a police station. This is why ECRI urges not only the police, but also the High Commissioner, to put in place, as the police have already done with the Jewish community, a framework for dialogue and co-operation with other population groups which might be victims of hate speech and harassment. Those authorities could inter alia introduce regular round table sessions with representatives of civil society and other organisations in contact with potential victims of hate speech (§ 18 of GPR No. 11). ECRI notes with satisfaction that, without waiting for this report to be published, the High Commissioner has decided to invite civil society to participate in a series of round tables.
33. ECRI recommends that the police authorities and High Commissioner put in place regular dialogue and co-operation with civil society and other organisations in contact with potential victims of hate speech.
34. As far as the two homophobic attacks on politicians are concerned, ECRI welcomes the authorities’ reaction. At the time of the first incident, the President of the National Council referred the matter to the public prosecutor and demanded sanctions against Mr Spiliotis-Saquet. He also during a public sitting condemned the MP’s conduct.<sup>37</sup> In the second case, the President of the National Council decided to express, in a letter to all MPs, his solidarity with the victim. His reprobation was relayed in a press release by the Monegasque Union candidates. ECRI also welcomes the way in which the press dealt with these attacks, clearly emphasising their homophobic nature. Furthermore, on 22 October 2014, Article 43 of the law on freedom of expression<sup>38</sup> was amended to prevent defamation or insult, particularly against citizens responsible for a public service or office.

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<sup>35</sup> Government of Monaco 2014: § 30.

<sup>36</sup> The police had, for example, contacted the Jewish community to ascertain the meaning of graffiti on a synagogue wall, which turned out not to be anti-Semitic.

<sup>37</sup> *Monaco Hebdo* 2012.

<sup>38</sup> Law No. 1,409 of 22 October 2014, inter alia amending law No. 839 of 23 February 1968 on national and municipal elections, as amended, and various provisions relating to those elections.

35. However, ECRI considers that the authorities should develop measures to prevent the homophobia which underlies such attacks, and refers, in this context, to §§ 63 et seq.

### **3. Racist and homophobic/transphobic violence**

36. ECRI again notes with satisfaction that no case of racist violence was brought to its attention and that the only cases of homophobic/transphobic violence were the incidents already mentioned.

37. In order to enable homosexual couples to benefit from the new provisions on the prevention of domestic violence, the concept of “persons who live or have lived together under the same roof as the victim” was introduced to the Criminal Code<sup>39</sup> following a long debate.<sup>40</sup>

### **4. Integration policies**

#### **- Description of integration policies**

38. In Monaco, the number of foreign residents who could benefit from integration policies is traditionally far higher than the number of nationals. At the time of the last census, in 2008, the Principality had a population of 35 352 representing 130 different nationalities, of whom 28.4% were French, 21.6% Monegasque and 20% Italian. As at 31 December 2014, the estimated population was 37 800.<sup>41</sup> There are currently, as well as the 8 800 Monegasques, almost 29 000 foreign nationals living in Monaco, which testifies to the appeal of the Principality. According to Monaco’s statistics institute (IMSEE), 51% of the small number of new Monegasques acquire that nationality through descent, 25% through marriage and 24% by means of a Sovereign Order on naturalisation.<sup>42</sup> A very large majority of the persons naturalised are nationals of the European Union.<sup>43</sup>

39. There are numerous measures for the integration of foreigners in Monaco, without the authorities explicitly using the term “integration policy”. International mixing is a constant feature and almost naturally creates the conditions for harmonious living together: Monegasque and non-Monegasque children are at school together from the youngest age (see § 29). The great majority of teachers at Monegasque schools are of foreign nationalities, and under a quarter of pupils have Monegasque nationality.<sup>44</sup> In adulthood, a majority of non-Monegasques participate in the country’s economic life. Thus all are accustomed to diversity from the very earliest age.

40. In 2010, the Prince took the new initiative of stepping up Monaco’s policy on making the Principality attractive. A “Reception Plan” was drawn up so as further to improve the reception given to firms and individuals, both within the civil service and in the private sector. This specifies that reception is a matter for all: everyone must help to develop an ongoing dialogue and open up to others. The plan requires departments and persons to anticipate new arrivals’

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<sup>39</sup> See the preliminary article of law No. 1,382 of 20 July 2011 on the prevention and punishment of particular forms of violence and Articles 234-1 and 236-1 of the Criminal Code.

<sup>40</sup> See § 28 of this report and COWI 2010a: §§ 33 et seq.

<sup>41</sup> Institut Monégasque de la Statistique et des Études Économiques (IMSEE), <http://www.imsee.mc/Actualites/Population-officielle-2014>, accessed on 15.05.2015; new figures on the precise distribution are due for publication in the near future.

<sup>42</sup> IMSEE, <http://www.imsee.mc/Population-et-emploi/Demographie>, accessed on 15.05.2015. One reason for the low number of naturalisations seems to be the lack of public housing to which new Monegasques are entitled, *Monaco Hebdo* 2011a.

<sup>43</sup> ECRI notes that a very large number of the naturalisation applications rejected also concerned nationals of the European Union.

<sup>44</sup> In 2011/2012, 1,008 pupils out of the total of 4,542, IMSEE 2013: 108.

requests and to understand their expectations. And finally, it highlights the need for constant evaluation and updating of the Reception Plan.<sup>45</sup>

41. In this context, the Monaco Welcome & Business Office (MWBO) has been set up. It makes available to new arrivals a range of services, information and useful contacts. These are also backed up by the foreign residents' club (CREM), an institution which aims to forge links between new arrivals and Monaco's economic and social fabric. Since March 2013, information meetings, at which the MWBO and other public services have participated, have been held on a regular basis at the CREM in order to meet and talk to other foreign residents. Subjects such as security, education, business opportunities, history and the annual cultural and sports diary are discussed.<sup>46</sup>
42. As described in §§ 73 onwards of the last report, other measures to facilitate the integration of certain groups of foreigners have been taken, relating, for instance, to housing. Those measures are intended to remedy the low number of housing units and the very high level of rents in Monaco's private sector. Thus certain kinds of housing units protected by the State have been opened up to (i) foreigners who are close relatives of a Monegasque, (ii) persons resident in Monaco since their birth, on condition that one of their parents was also resident in Monaco at that time, and (iii) persons continuously resident in Monaco for at least 40 years.<sup>47</sup> Such persons are termed "children of the country" (*enfants du pays*). Law No. 1 235 of 28 December 2000 introduced a differential rent allowance. Finally, there are housing programmes in the surrounding municipalities which are open to public servants and employees of companies operating under State concessions, regardless of nationality. Finally, there are housing programmes for French public servants.

- **Assessment of integration policies**

43. ECRI notes with satisfaction the Prince's initiative of stepping up the measures intended to facilitate the reception of foreigners in Monaco. It considers that the Reception Plan would be even more effective if it were accompanied by objectives and more concrete measures in terms of the reception of foreigners. The authorities could draw on international standards<sup>48</sup> and on similar plans developed by a good number of Council of Europe member States. It is good practice, for example, to designate for each of these objectives and measures a responsible person, a timetable and monitoring indicators.
44. ECRI recommends that the Monegasque authorities develop the Reception Plan to make it a true action plan for the integration of foreigners into Monegasque society.
45. ECRI welcomes the fact that the authorities, in the Reception Plan, have emphasised the need for evaluation and constant updating of integration policies. However, in the absence of specific statistics, it is difficult to evaluate the results of those policies.
46. One of the indicators often used to gauge the success of integration policies is the unemployment rate of foreigners, or even of persons of migrant origin. The latest unemployment figures date from 2014: with 1 647 job seekers and an employed population of 47 903 in 2011, Monaco's overall unemployment rate

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<sup>45</sup> Government of Monaco (undated), <http://www.monaco-welcome.mc/fr/le-plan-accueil/principes>, accessed on 15.05.2015.

<sup>46</sup> <http://www.gouv.mc/Action-Gouvernementale/Monaco-a-l-International/Actualites/CREM-Premieres-reunions-d-Information-aux-nouveaux-residents-Vivre-a-Monaco>, accessed on 15.05.2015. Some issues concerning foreign nationals were also dealt with within the Economic and Social Council.

<sup>47</sup> For more details, see Article 3 of law No. 1,235 of 28 December 2000.

<sup>48</sup> Cf. Secretary General of the Council of Europe 2015; OSCE 2012.

was just 3.4%.<sup>49</sup> Subsequently, the situation has remained stable.<sup>50</sup> That figure does not enable the situation to be fully evaluated, as it takes account only of the job seekers registered with the employment department. But, in order to register, it is necessary to be of Monegasque nationality or resident in Monaco or one of the neighbouring municipalities<sup>51</sup>; registration was also opened recently to persons dismissed for economic reasons.<sup>52</sup> In contrast, other foreigners dismissed in Monaco who have been forced to obtain housing outside Monaco because of the high price of property are not counted, as they depend on the services of their place of residence. ECRI accordingly is pleased to note that a statistical tool covering persons in receipt of unemployment benefit in France and Italy has been available to the authorities since 2010.

47. Given the importance of statistics to the evaluation and updating of integration policies, ECRI urges the authorities to develop a system of integration indicators relating, in particular, to education, housing and employment, drawing on international standards in this field.<sup>53</sup>
48. ECRI recommends that the Monegasque authorities put in place a system of indicators to gauge the impact of their integration policies, and publish the figures produced.
49. Notwithstanding the principle of employment priority for which Article 25 of the Constitution provides<sup>54</sup> and which is covered by the reservation made by Monaco when it ratified the ECHR, the number of foreign employees in the private sector is constantly growing: 98% of jobs are held by foreign nationals.<sup>55</sup> According to the authorities, in view of the large size of the foreign population working in Monaco, the rules on employment priority have no negative effects on foreigners' ability to obtain a job in the Principality.<sup>56</sup> Furthermore, the principle has to be implemented in accordance with job suitability criteria assessed at least equally with those applied to other employment candidates.<sup>57</sup> The great majority of Monegasques, for their part, work in the public service and for the *Société des Bains de Mer* (SBM), of which the State is a shareholder.
50. A number of persons to whom the ECRI delegation spoke wondered whether the effects of the employment priority principle were more positive or more negative for Monegasques and foreign nationals. The principle might even make Monegasques' access to the private employment market more difficult: nationals enjoying a high level of protection from dismissal, employers might prefer to recruit foreign nationals (Article 6 of law No. 629 of 17 July 1957). ECRI considers that the effects of this principle would deserve detailed study. That is why ECRI urges the authorities to commission a detailed independent study of those effects and of the expediency of a possible bringing closer together of the two statuses in the context of integration policies.

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<sup>49</sup> Information transmitted by the Government; this unemployment figure takes into account all unemployed persons including the ones living in Italy and the neighbouring municipalities in France, cf. footnote No. 52.

<sup>50</sup> *Nice Matin* 2014a.

<sup>51</sup> Roquebrune-Cap-Martin, Beausoleil, Cap-d'Ail/La Turbie.

<sup>52</sup> Only in cases of collective dismissal.

<sup>53</sup> Cf. for example European Commission 2013.

<sup>54</sup> For more details, see § 61 of the last report by ECRI and Article 5 of law No. 629 of 17 July 1957.

<sup>55</sup> IMSEE 2014.

<sup>56</sup> In this connection it should be noted that, according to the statistical tool mentioned in § 46 of the report, 5 394 persons resident in France received unemployment benefit in 2014. The number of beneficiaries resident in Monaco and Italy was 1 594.

<sup>57</sup> Article 5 of law No. 629 of 17 July 1957.

51. ECRI was informed, as it was at the time of its previous visit<sup>58</sup>, that some foreign workers suffered from uncertain working conditions, for example in the cleaning, security and construction sectors. In the two first-named sectors, it was said to be common practice to conclude part-time contracts for extremely short working hours, although in practice the employees worked virtually full-time because they worked overtime. By altering the overtime, the employer could thus exert pressure on the employee. In the construction sector, some foreign employees were said to have been replaced after trying to organise in order to claim their rights. ECRI was also informed that foreign women suffered twofold discrimination. There was, for example, a practice of dismissing female foreign employees shortly after their maternity leave, on the basis of Article 6 of law No. 729 of 16 March 1963, under which dismissal without reason is possible. ECRI considers that the responsible departments, particularly the Labour Inspectorate and, if a complaint is lodged, the High Commissioner, should investigate these allegations. Were it to prove to be accurate, the authorities should take measures to protect those employees and to combat the direct and indirect discrimination to which they are subjected.<sup>59</sup>
52. According to Article 4.4 of Ordinance-Law No. 399 of 6 October 1944 authorising the setting up of trade unions, the majority of members of a trade union bureau must be of Monegasque or French nationality.<sup>60</sup> ECRI welcomes the fact that consideration is being given to a reform of this law. It considers that this part of Article 4 should, in particular, be repealed in the private sector, where 98% of employees are of foreign nationality. There should no longer be any distinction between Monegasques and foreigners, or between French nationals and other foreigners.
53. ECRI recommends that the Monegasque authorities repeal the provisions whereby a majority of the members of the organs of trade unions and their federations need to be Monegasque and French nationals.
54. In the field of housing, ECRI is pleased to note the measures described in § 42 which are intended to facilitate access to housing for *enfants du pays*. In view of the continuing pressure on the real estate market<sup>61</sup>, it considers that the Monegasque authorities should further increase their activity in this field. ECRI also welcomes the wider discussion about measures which the authorities could take for the benefit of those persons who have a strong link with Monaco. At the same time, the authorities should take care not to create unjustified reasons for differentiating between different groups of foreigners and should analyse the extent to which foreigners forced in practice to live outside Monaco could also benefit from such arrangements.
55. ECRI recommends that the Monegasque authorities include in the Reception Plan housing measures for the benefit, in particular, of *enfants du pays*, but also for that of the other foreign nationals suffering from the pressure on the real property market.
56. Order No. 1 447 of 28 December 1956 gives priority to men over women in determining who is to be considered head of household and thus obtains for those entitled through him or her certain social benefits. That rule, which also affects a good number of foreign women, was condemned in legislative proposal 213, of April 2014, as discriminatory on grounds of gender. In order to bring that discrimination to an end, the drafters of the bill relied on the principle

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<sup>58</sup> §§ 71 et seq of the last report on Monaco.

<sup>59</sup> In the event of overtime abuses, employees may, among other things, apply to the Labour Inspectorate or the Labour Court for reclassification of their employment contract.

<sup>60</sup> Law No. 542 of 15 May 1957.

<sup>61</sup> *Monaco-Matin* 2015.

of equal treatment for which the Constitution provides and proposed that Monegasque women be similarly allowed to claim head of household status. They consider that this minimum proposal could be extended to *enfants du pays*, and possibly to residents. This kind of discrimination has, furthermore, already been done away with in other fields, such as the transmission of nationality through marriage.<sup>62</sup>

57. ECRI urges the authorities, particularly the government, to bring all discrimination of this kind to an end. Where the concept of head of household is concerned, it considers that not only Monegasque women, but also foreign women should benefit from the same rights as their male counterparts.
58. ECRI recommends that the Monegasque authorities increase the protection of foreign women against direct and indirect discrimination and provide for foreign women to be able to be heads of household in the same way as their male counterparts.
59. On the subject of naturalisation, which may be regarded as the final stage of successful integration, ECRI welcomes the first exercise of judicial monitoring by the Constitutional Court, in 2014.<sup>63</sup> In order to prevent any possible discrimination, it urges the authorities to provide for reasons to be given for all administrative decisions taken in this sphere.<sup>64</sup>
60. Finally, ECRI considers that the High Commissioner could bring true added value to the integration of foreigners by investigating the various allegations of discrimination referred to above.<sup>65</sup> It also encourages the authorities systematically to consult the High Commissioner during work on integration policies, so as to ensure that those policies contribute to the prevention and combating of discrimination.<sup>66</sup>

## **II. Topics specific to Monaco**

### **1. Interim follow-up recommendations from the 4th cycle**

#### **- Legislative gaps in the field of protection against discrimination**

61. ECRI examined in §§ 14 et seq the action taken on the recommendation which it addressed to the authorities in its last report concerning the legislative gaps that exist in the field of protection against discrimination.

#### **- Independence and responsibilities of the institution of *Médiateur***

62. ECRI examined in §§ 20 et seq the action taken on the recommendation which it addressed to the authorities in its last report concerning the independence and responsibilities of the national specialised body to combat racism and intolerance.

### **2. Policies to combat discrimination and intolerance against LGBT persons**

63. In Monaco, there is no organised community of LGBT persons and no organisation representing them. Nor are any statistics<sup>67</sup> or national study<sup>68</sup> of their situation and the discrimination that they may suffer available.

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<sup>62</sup> For more details, see the explanatory memorandum on legislative proposal No. 213.

<sup>63</sup> Supreme Court, *Sieur S. G. v. State of Monaco*, decision of 7 April 2014.

<sup>64</sup> Cf. in this context §§ 29 et seq of the last report by ECRI.

<sup>65</sup> During the first year of its existence, the High Commissioner's office had 65 cases referred to it. Amongst the 43 cases dealt with during the year, only four related to the field of discrimination.

<sup>66</sup> Cf. in this context OSCE 2012: 38 et seq.

<sup>67</sup> Research and estimates in other Council of Europe member States indicate that up to 7% of the population is made up of LGBT persons; cf. the reports on Germany, Norway and Austria.

<sup>68</sup> Cf. on the other hand COWI 2010a and 2010b.

## - **Legislation**

64. Articles 16 et seq of the 2005 law on freedom of expression make incitement to hatred, defamation and insults for reasons of sexual orientation a criminal offence. "Sexual orientation" is a term which generally relates to homosexual and bisexual persons. On the other hand, the criterion of gender identity, which serves to define the identity of transsexual persons and to ensure their protection, is not expressly included in the law. ECRI considers that this criterion should be added to the criminal-law provisions intended to protect LGBT persons.<sup>69</sup>
65. In the sphere of civil and administrative law, LGBT persons do not benefit from any specific legal status. Thus they cannot enter into civil or marital partnerships. No arrangements have been made in family and administrative law to deal with the practical problems associated with the social reality of the lives of homosexual couples.<sup>70</sup> ECRI was nevertheless informed of a practice which takes account, when public housing or housing assistance is allocated and residence permits issued, of the relations between persons of the same sex living as couples.<sup>71</sup> The authorities emphasised that LGBT persons were also protected by the rules on equal pay.<sup>72</sup>
66. ECRI welcomes the tabling, on 18 June 2013, of legislative proposal No. 207 on the "living together agreement" open to heterosexual and homosexual couples.<sup>73</sup> According to the explanatory memorandum, the aim of this is to recognise a number of rights for the partners, and it makes provision, inter alia, for an obligation to live together and an obligation to provide material assistance and to help each other. ECRI regrets that this proposal is still under examination by the Committee on Women's and Family Rights, and considers that it should be given greater priority and government support.
67. There is no text dealing with the fundamental issues of transgender persons, such as access to sex change treatment, change of first name and legal recognition of a change of sex.
68. ECRI recommends that the Monegasque authorities deal with the legislative proposal on the "living together agreement" as speedily as possible and evaluate the need for other relevant changes to the law.

## - **Policies**

69. While some of the persons to whom the delegation spoke told ECRI that there was a good level of tolerance of LGBT persons in Monaco, the homophobic incidents described above are evidence of a more contrasting situation.<sup>74</sup> In view of the uncertainty, ECRI considers it necessary to conduct quantitative and qualitative research into the living conditions of LGBT persons so as to be able to evaluate objectively compliance with their fundamental right to equality. That research could inter alia include a general opinion survey on LGBT issues. The findings would provide a sound working basis for devising and evaluating the legal framework and policies relating to LGBT persons.

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<sup>69</sup> Where the criminal-law protection of LGBT persons is concerned, also cf. § 36. The new Article 234-2 CP mentioned in § 7 of this report will also include the ground of sexual orientation.

<sup>70</sup> Committee of Ministers of the Council of Europe 2010.

<sup>71</sup> Cf. explanatory memorandum to legislative proposal No. 207; COW 2010b: § 44.

<sup>72</sup> Article 2-1 of law No. 739 of 16/03/1963 on pay.

<sup>73</sup> According to a survey conducted before the 2007 elections by political party Union pour Monaco, 51% of those interviewed (who were all people born in Monaco) took the view that living in a registered partnership should be accepted, COWI 2010a: § 19. For previous initiatives in this field, cf. COWI 2010b: § 34.

<sup>74</sup> Also cf. COWI 2010b: §§ 2 et seq.

70. ECRI recommends that the authorities conduct a systematic study, while respecting the private life of LGBT persons, about their living conditions and the intolerance and discrimination of which they may be victims.
71. For the time being, there is no systematic approach in Monaco, such as a strategy, action plan or specific programme to meet the special needs of LGBT persons. The relevant issues are, for example, not dealt with within the education system<sup>75</sup>, and health care staff are not trained in the specific needs of LGBT persons. Furthermore, no campaign has been run to raise awareness of the issues and improve understanding of LGBT persons.
72. The authorities told ECRI of the existence of a facility called “Jeunes J'écoute” run by an association to deal with young LGBT persons and their problems during adolescence. The High Commissioner also has responsibility for discrimination issues vis-à-vis LGBT persons.
73. Very little information is accessible about the situation of transsexual persons in Monaco. The authorities told ECRI that sex-change treatment or surgery are possible abroad and may be reimbursed on the basis of the social security authorisations in force. However, it seems that no applications for cover for such treatment or surgery have been submitted.
74. ECRI considers that the authorities should take a more proactive approach in this respect. Research carried out in other Council of Europe member States has shown, for example, that young homosexuals are very vulnerable and exposed to significant social and family pressure when they come out.<sup>76</sup> ECRI takes the view that the authorities should draw on the strategies and action plans drawn up in other member States to devise a programme for the promotion and protection of LGBT persons. They should in particular pay greater attention to LGBT adolescents, providing them with the information, assistance and protection they need in order to live according to their sexual orientation or gender identity.
75. ECRI recommends that the authorities make a department responsible for devising and coordinating, on the basis of a study of the situation of LGBT persons in Monaco, a programme for LGBT persons in order to ensure that those persons can live on an equal footing with the rest of the population.

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<sup>75</sup> On the subject of action by the fightaids NGO in the field of education cf. COWI 2010a: § 39.

<sup>76</sup> See for example the last ECRI reports on Switzerland and Norway.



## **INTERIM FOLLOW-UP RECOMMENDATIONS**

The two specific recommendations for which ECRI requests priority implementation from the authorities of Monaco are the following:

- ECRI recommends that the authorities bring Monegasque criminal law into conformity with General Policy Recommendation No. 7 and, in particular, that the law explicitly make racist motivation an aggravating circumstance for any ordinary offence.
- ECRI recommends that the Monegasque authorities repeal the provisions whereby a majority of the members of the organs of trade unions and their federations need to be Monegasque and French nationals.

A process of interim follow-up of these two recommendations will be conducted by ECRI no later than two years after the publication of this report.



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 4) ECRI reiterates its recommendation that Monaco ratify Protocol No. 12 to the European Convention on Human Rights.
2. (§ 13) ECRI recommends that the authorities bring Monegasque criminal law into line with its General Policy Recommendation No. 7 and in particular that the law explicitly make racist motivation an aggravating circumstance for all ordinary offences.
3. (§ 19) ECRI again recommends that the Monegasque authorities adopt complete legislation on equal treatment and non-discrimination in the fields of private and administrative law.
4. (§ 22) ECRI recommends that the Monegasque authorities assign to the High Commissioner for the Protection of Rights and Freedoms and for Mediation the function of providing victims of discrimination with legal aid, including representation in the event of court proceedings.
5. (§ 24) ECRI recommends that the authorities publish their statistics relating to the number of racist, xenophobic, homophobic and transphobic offences reported to the police, the number of prosecutions, the reasons for non-prosecution and the outcome of prosecutions.
6. (§ 33) ECRI recommends that the police authorities and High Commissioner put in place regular dialogue and co-operation with civil society and other organisations in contact with potential victims of hate speech.
7. (§ 44) ECRI recommends that the Monegasque authorities develop the Reception Plan to make it a true action plan for the integration of foreigners into Monegasque society.
8. (§ 48) ECRI recommends that the Monegasque authorities put in place a system of indicators to gauge the impact of their integration policies, and publish the figures produced.
9. (§ 53) ECRI recommends that the Monegasque authorities repeal the provisions whereby a majority of the members of the organs of trade unions and their federations need to be Monegasque and French nationals.
10. (§ 55) ECRI recommends that the Monegasque authorities include in the Reception Plan housing measures for the benefit, in particular, of *enfants du pays*, but also for that of the other foreign nationals suffering from the pressure on the real property market.
11. (§ 58) ECRI recommends that the Monegasque authorities increase the protection of foreign women against direct and indirect discrimination and provide for foreign women to be able to be heads of household in the same way as their male counterparts.
12. (§ 68) ECRI recommends that the Monegasque authorities deal with the legislative proposal on the “living together agreement” as speedily as possible and evaluate the need for other relevant changes to the law.
13. (§ 70) ECRI recommends that the authorities conduct a systematic study, while respecting the private life of LGBT persons, about their living conditions and the intolerance and discrimination of which they may be victims.

14. (§ 75) ECRI recommends that the authorities make a department responsible for devising and coordinating, on the basis of a study of the situation of LGBT persons in Monaco, a programme for LGBT persons in order to ensure that those persons can live on an equal footing with the rest of the population.

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## **APPENDIX: GOVERNMENT'S VIEWPOINT**

**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Monaco**

ECRI, in accordance with its country monitoring procedure, engaged in confidential dialogue with the authorities of Monaco on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which only takes into account developments up until 18 June 2015, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

## Précisions apportées par les autorités monégasques concernant le rapport de la Commission européenne contre le racisme et l'Intolérance (ECRI).

Les autorités monégasques ont pris connaissance du rapport de la Commission européenne contre le racisme et l'intolérance (ECRI) suite à la visite de ses représentants au mois de mars 2015.

### Précisions d'ordre général

Les autorités monégasques souhaitent rappeler les termes de la Constitution monégasque du 17 décembre 1962, selon lesquels la Principauté de Monaco est un Etat de droit attaché au respect des libertés et droits fondamentaux (article 2).

Elles souhaitent également indiquer que l'égalité de traitement entre les Monégasques est assurée en vertu des dispositions de l'article 17 de la Constitution selon lequel « les Monégasques sont égaux devant la loi. Il n'y a pas entre eux de privilèges » et que les droits des étrangers sont garantis par les dispositions de l'article 32 de la Constitution qui prévoit que « l'étranger jouit dans la Principauté de tous les droits publics et privés qui ne sont pas formellement réservés aux nationaux ».

Les autorités rappellent la situation particulière de la Principauté, Etat exigu sur le territoire duquel la communauté des Monégasques est minoritaire. Ainsi, un traitement différencié favorable aux Monégasques, voire à certains étrangers en fonction de leurs liens avec la Principauté, y compris pour ce qui est d'avantages économiques et sociaux est établi.

D'une manière générale, elles précisent que la Principauté de Monaco est une société multiculturelle composée de personnes d'origine ou de religion différentes, où cohabitent plus de 130 nationalités. Il convient également de rappeler que les forces de l'ordre n'interviennent que très rarement pour des cas de racisme ou d'intolérance. Dans ce cas de figure, les procédures instruites sont communiquées à l'autorité judiciaires qui se charge de donner les suites nécessaires.

Les autorités déclarent que les recommandations, questions et observations de la Commission ont été examinées dans un esprit positif et plus particulièrement dans le but de perfectionner le dispositif monégasque tout en tenant compte des spécificités et des caractéristiques de la Principauté de Monaco.

### Point de vue des autorités sur un point précis mentionné dans le rapport

Les autorités monégasques tiennent à réitérer leur point de vue concernant le point soulevé au paragraphe 50 page 18 du rapport.

L'argumentation contenue dans ce paragraphe en matière de licenciement, selon laquelle la priorité nationale pourrait desservir les Monégasques dans l'accès aux emplois du secteur privé, en raison d'une forte protection contre le licenciement, repose en effet sur un fondement techniquement erroné.

Le rang de priorité dont bénéficient les salariés monégasques, en application de la loi n°629 du 17 juillet 1957 tendant à réglementer les conditions d'embauchage et de licenciement en Principauté, non seulement ne s'applique qu'en cas de « *suppression d'emploi ou compression de personnel* », mais ne vaut que pour une même catégorie professionnelle de salariés, ce dernier critère étant apprécié souverainement par les tribunaux de la Principauté. Aussi les salariés monégasques peuvent-ils, comme les autres



salariés, être licenciés sur le fondement de l'article 6 de la loi n°729 du 13 mars 1963 concernant le contrat de travail.

Le Service de l'Emploi et l'Inspection du Travail ne manquent pas d'informer les employeurs de la Principauté sur les règles applicables et s'efforcent de fournir un accompagnement adapté en la matière.



