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## **Honouring of obligations and commitments by Monaco**

Report

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Co-rapporteurs: Mr Leonid SLUTSKY, Russian Federation, Socialist Group, and Mr Pedro AGRAMUNT, Spain, Group of the European People's Party

*Summary*

Five years after the accession of the Principality of Monaco to the Council of Europe, the Monitoring Committee finds that Monaco is sufficiently well advanced on the path of democratic reforms to fulfil its obligations and commitments towards the Organisation. While inviting Monaco to pursue these reforms and fulfil its remaining commitments, and having regard to the progress achieved since 2004, the committee expresses its confidence that the Monegasque authorities continue the reforms commenced and invites the Assembly to close the monitoring procedure and carry on the post-monitoring dialogue with the Monegasque authorities on the questions raised in its resolution, through its Monitoring Committee.

## A. Draft resolution

1. The Principality of Monaco will celebrate five years of Council of Europe membership on 5 October 2009. The Parliamentary Assembly finds that Monaco is well advanced on the path of democratic reforms to fulfil its obligations and commitments towards the Organisation, particularly in connection with its procedure of supervising and implementing the Constitution revised in 2002. It supports and encourages the Monegasque authorities' efforts in this regard.
2. The Assembly welcomes France's recent ratification of the Convention to adapt and develop administrative co-operation between the French Republic and the Principality of Monaco, signed in Paris on 8 November 2005. This convention replaces the 1930 convention and stipulates compliance with the principle of non-discrimination enabling Monegasque citizens to be appointed to high public positions and government offices hitherto reserved for French nationals, in particular the offices of Minister of State, Government Counsellor for the Interior, Director of Judicial Services, Director of Public Safety and Director of Fiscal Services.
3. The Assembly notes that to date Monaco has ratified 40 of the 205 Council of Europe conventions and signed three others, namely Protocol No. 1 to the European Convention on Human Rights (ETS No. 9), the Revised European Social Charter (ETS No. 163) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).
4. The Assembly is gratified that the Principality has honoured many of its undertakings to ratify the conventions specified in its Opinion 250 (2004) on Monaco's application for membership of the Council of Europe. In particular, it has ratified:
  - 4.1. the European Convention on Human Rights (ETS No. 005), accompanied by the lodging of two declarations and several reservations, and Protocols Nos. 4, 6, 7, 13, 14 and 14bis thereto;
  - 4.2. the European Convention for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment (ETS No. 126);
  - 4.3. the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2) and the additional protocols thereto;
  - 4.4. the Criminal Law Convention on Corruption (ETS No. 173);
  - 4.5. the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30);
  - 4.6. the European Agreement relating to persons participating in proceedings of the European Court of Human Rights (ETS No. 161);
  - 4.7. the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106);
  - 4.8. the European Convention on the Suppression of Terrorism (ETS No. 90).
5. The Assembly nevertheless observes that the Principality of Monaco has so far not honoured its undertakings to:
  - 5.1. ratify the First Protocol to the European Convention on Human Rights (ETS No. 9) securing the right of property, the right to free elections and the right to education, within the agreed time of one year after accession;
  - 5.2. sign Protocol No. 12 (ETS No. 177) within the agreed time of one year after its entry into force, that is by 1 April 2006;
  - 5.3. ratify the revised European Social Charter (ETS No. 163) within the agreed time of one year after accession. The Assembly takes note of the comments submitted by the Monegasque authorities during the co-rapporteurs' visit in July 2009 and hopes that the draft of the ratifying law for the Social Charter will be tabled in the National Council no later than October 2009;

5.4. ratify the Convention on Cybercrime (ETS No. 185) within the agreed time of five years after accession, which expires on 5 October 2009. During the co-rapporteurs' July 2009 visit, the Monegasque authorities gave an assurance that the preparation of a bill on the ratification of the instrument was in hand and that it would be promptly tabled in the National Council.

6. The Assembly takes note of the Monegasque Government's misgivings and decision to give itself extra time for consideration before it proceeds to respectively ratify or sign Protocols Nos. 1 and 12 to the European Convention on Human Rights. While aware of Monaco's special situation and particularly that its indigenous population is numerically smaller than the foreign population living and/or working in the Principality, it must nonetheless recall that these undertakings were freely made on accession to the Council of Europe and will have to be honoured.

7. The Assembly welcomes the fact that the Principality has honoured all the commitments made in Opinion 250 (2004) where domestic legislation is concerned; notably, the following laws have been enacted:

7.1. amendments to the Civil Code incorporating equality between women and men as parents and spouses as well as in other respects;

7.2. two laws amending the law of 18 December 1992 on nationality;

7.3. the law on freedom of the media;

7.4. the law on the statement of grounds for administrative decisions;

7.5. the law on associations and federations of associations. The Assembly encourages the Monegasque authorities to continue the legislative reforms aimed at maximum transparency in public finances, while regretting that the question of financial oversight of subsidised associations was not addressed in this new law.

8. The Assembly supports the work undertaken by the Monegasque Government's legislative staff to draw up a bill on the punishment of domestic violence committed by persons living under one roof, and encourages the authorities to prepare a law in keeping with Council of Europe standards of non-discrimination.

9. Reiterating its earlier recommendations, the Assembly invites the Monegasque authorities to envisage preparing a law on political parties, particularly to ensure greater transparency in political party financing, and a law on the organisation of elections and the election campaign.

10. The Assembly notes that Monegasque criminal legislation is selectively amended to be brought into line with the provisions of the international conventions to which Monaco is a party. However, it asks the Monegasque authorities to speed up the reform of the Code of Criminal Procedure and finalise the reform of the Penal Code so as to transpose into the corresponding statutes the implementing measures in the criminal law sphere that follow from the Principality's ratification of an international treaty, in accordance with the European Convention on Human Rights as interpreted by the European Court of Human Rights.

11. The Assembly values at their true worth the Principality's significant efforts to strengthen its criminal justice apparatus for combating money laundering and takes particular note of the enactment in June 2008 of a law amending the Penal Code and instituting the criminal liability of legal persons as regards the predicate offences to the offence of laundering, and of the passing in July 2009 of a law to combat money laundering, financing of terrorism and corruption.

12. The Assembly notes with satisfaction that the Monegasque authorities have taken a good number of measures to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which were awaiting action, set out in its report of 31 May 2007. It asks that the Monegasque authorities also take account of the recommendations in the report of the European Commission against Racism and Intolerance (ECRI) of 24 May 2007.

13. The Assembly welcomes the progress made in budgetary and financial independence at the level of the municipality after the enactment of the law on local self-government. It encourages the Monegasque authorities to carry on the reform for enabling the Principality's resident aliens to participate in the conduct of municipal affairs in accordance with the relevant Council of Europe standards.

14. As to the National Council's role in the operation of a pluralist democracy within the meaning of the Council of Europe Statute, the Assembly recalls the recommendations in paragraph 11 of Opinion 250 (2004) on supervision of government action particularly as regards the annual presentation of the governmental programme, the right of legislative initiative, and the budgetary debate. It is aware that the 2002 constitutional revision prepared the way for an improvement in preservation of the institutional balance peculiar to Monaco's hereditary constitutional monarchy. It nevertheless wishes that these constitutional provisions may be transposed into the legislative and regulatory texts, thus allowing the legislature's independence vis-à-vis the executive, and balance between the institutions, to be secured.

15. The Assembly takes note of the Sovereign Prince's position, stated during the meeting with the co-rapporteurs on 28 July 2009, which is that the extension of the powers of the National Council desired by the Assembly can be achieved by including the presentation of the governmental programme and the discussion of the initial and rectified budgets in the annual joint meetings between the government and the National Council on the economic and social situation in the Principality.

16. The Assembly takes note of the formation of a joint National Council-government working group. It has met on several occasions and the Assembly sincerely wishes that its proceedings may lead to the early enactment of a new law on the operation and organisation of the National Council, accommodating the constitutional amendments which occurred in 2002. The Assembly also invites the National Council to revise its rules of procedure accordingly. It furthermore encourages the government to espouse transparency in its relations with the National Council to enable it to consolidate its role and improve the system of checks and balances and, through its press centre, to secure direct access for the National Council members to the local television channel.

17. In addition, the Assembly reiterates its recommendations to the Monegasque authorities to redraw the list of international conventions and treaties requiring the passage of a ratifying law by the National Council under Article 14 of the Constitution and, in the meantime, to put to the National Council beforehand any draft reservation or declaration pertaining to a treaty on which the National Council must pass a ratifying law.

18. Accordingly, and in the context of the current process of reforms undertaken by the Monegasque authorities, the Assembly invites Monaco to:

18.1. ratify the First Protocol to the European Convention on Human Rights (ETS No. 9) and the Revised European Social Charter (ETS No. 163); to sign and ratify Protocol No. 12 to the European Convention on Human Rights (ETS No. 177) and the Convention on Cybercrime (ETS No. 185). The Assembly urges the Monegasque authorities' speedy consideration, with the Council of Europe, of the necessary measures for ratifying these instruments;

18.2. hasten the reform of the Code of Criminal Procedure and finalise the reform of the Penal Code;

18.3. enact expeditiously the new law on the functioning of the National Council;

18.4. redraw the list of international conventions and treaties requiring the passage of a ratifying law by the National Council;

18.5 strengthen its relations with international organisations.

19. The Assembly considers that over the past five years Monaco has clearly demonstrated its determination and ability to fulfil the undertakings made upon its accession to the Council of Europe, and the statutory obligations which it contracts as a member state. Having regard to the progress achieved since 2004, the Assembly expresses its confidence that the Monegasque authorities will continue the reforms commenced. The Assembly therefore decides to close the monitoring procedure.

20. The Assembly, through its Monitoring Committee, will carry on the post-monitoring dialogue with the Monegasque authorities on the questions raised in this Resolution, particularly in paragraph 18 above, or on any other question that may arise out of Monaco's obligations as a Council of Europe member state.

**B. Explanatory memorandum by Mr Slutsky and Mr Agramunt, co-rapporteurs****Table of contents**

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**I. Introduction**

1. This draft report reviews the honouring of the obligations and commitments made by the Principality of Monaco on joining the Council of Europe on 5 October 2004.

2. In March 2005, in accordance with Resolution 1115 (1997) setting up the Monitoring Committee and Opinion 250 (2004) on Monaco's application for membership of the Council of Europe, the Committee appointed two co-rapporteurs, Mr Pedro Agramunt (Spain, EPP/CD) and Mr Leonid Slutsky (Russia, SOC), to monitor the situation in Monaco. They undertook four fact-finding visits in all to the country and presented a first report to the Assembly's June 2007 session on behalf of the Monitoring Committee, which led to the adoption of Resolution 1566 (2007) on the honouring of obligations and commitments by Monaco.

3. In connection with the preparation of this second monitoring report, the co-rapporteurs visited Monaco in October 2008 then in July 2009 to assess progress in implementing Resolution 1566 (2007). The Monegasque authorities' display of full and wholehearted co-operation allowed a great deal of information to be gathered for this report. We thank the Monegasque delegation for the excellent organisation of this visit and Ms Karine Marquet, Secretary to the parliamentary delegation of Monaco's National Council, for her invaluable assistance and co-operation.

4. The preliminary draft report on Monaco's honouring of its obligations and commitments was examined by the Monitoring Committee at its meeting in January 2009 then sent to the Monegasque authorities for comment within a maximum period of three months. On 5 June 2009 the Monitoring Committee considered

the comments by the various parties or coalitions of parties represented in the National Council, and by the Government of the Principality.<sup>1</sup>

## II. Franco-Monegasque treaties and Council of Europe conventions

### *i. Co-operation treaties with France*

5. The Convention signed in November 2005 "to adapt and develop administrative co-operation between the French Republic and the Principality of Monaco",<sup>2</sup> which replaced the 1930 convention, was finally ratified by the French parliament in June 2008. The new agreement, which was applied by the two countries even before ratification, enables Monegasque nationals to fill all posts in their country's civil service, including the most senior ones, in particular the offices of Minister of State, Government Counsellor for the Interior, Director of Judicial Services, Director of Public Safety and Director of Fiscal Services, which under the 1930 convention were traditionally reserved for French nationals.

6. Even though the 2005 Convention represents major progress in modernising the Principality's relations with France, Article 6 stipulates that in the case of functions and posts that affect both countries' "basic interests", particularly the aforementioned five posts, "consultations between the two parties will ensure that the senior persons concerned enjoy their mutual trust". In our last report, we expressed the hope that the "mutual trust" condition would enable the Prince to appoint Monegasques to these senior posts. At present, four government members are Monegasques.

7. We welcome the French parliament's recent ratification of the 2005 Convention as confirmation of the Principality's sovereignty *vis-à-vis* France. We reiterate that practice alone will tell whether the new Franco-Monegasque agreements signify substantial recognition by France of the Principality's full sovereignty and not just purely formal modifications. We will therefore follow developments in the application of the 2005 Convention's provisions in practice with interest and hope that a growing number of senior functions and highly responsible posts will be filled by Monegasque nationals in the near future.

### *ii. Council of Europe conventions*

8. By 3 August 2009, Monaco had ratified 40 Council of Europe conventions out of 205 and had signed 3 others, namely the First Protocol to the European Convention on Human Rights (ETS No. 009), the Revised Social Charter (ETS No. 163) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

9. The Principality ratified the European Convention on Human Rights and its Protocols Nos. 4, 6, 7 and 13 on 30 November 2005, accompanied by two declarations and a number of reservations. On 10 March 2006 Monaco also ratified Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194).

10. Three months after the adoption of Resolution 1566, on 18 September 2007, Monaco ratified the European Convention on the Suppression of Terrorism (ETS No. 090).

11. The Criminal Law Convention on Corruption, the Convention on Mutual Assistance in Criminal Matters and the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights were ratified on 19 March 2007. On 24 December 2008, Monaco ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its additional protocol regarding supervisory authorities and transborder data flows (ETS No. 181).

12. At a still later date, 30 January 2009, the European Convention on Extradition (ETS No. 024) and additional protocols (ETS Nos. 086 and 098) were ratified. Monaco also ratified Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204) on 1 July 2009.

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<sup>1</sup> The comments are reproduced in document AS/Mon(2009)17, made public by decision of the Monitoring Committee on 5 June 2009.

<sup>2</sup> We would recall that Monaco's exercise of its sovereign rights is conceived strictly in accordance with the conventions by which it is bound to France, under Article 1 of its Constitution, which states that: "The Principality of Monaco is a sovereign and independent state within the framework of the general principles of international law and special conventions with France". For an analysis of the 2005 Convention and of the 2002 treaty that replaced the 1918 one, see our previous report, Doc. 11299.

a. *The European Social Charter (revised)*

13. Monaco was also required to ratify the Revised European Social Charter (ETS No. 035) within two years of accession, that is not later than 5 October 2006. The Charter was signed on 5 October 2004 but has still not been ratified.

14. Ratification was already on the agenda in 2006, but the government decided to allow itself more time to reflect on ratification in view of recent developments in the case-law of the European Court of Human Rights, in particular the *Demir and Baykara v. Turkey* judgment of 21 November 2006.<sup>3</sup>

15. We repeated our view that this Turkish case was not relevant and once again expressed our incomprehension at the government's position based on the opinion of a single expert.

16. During our October 2008 visit, the authorities told us that they could envisage ratification of the Revised Social Charter by the end of the year, once the *Demir and Baykara v. Turkey* case had been reviewed by the Grand Chamber of the European Court of Human Rights. In its judgment on the case, delivered on 12 November 2008,<sup>4</sup> the Grand Chamber of the Court confirmed that the Court could refer to articles of the revised Social Charter and the case-law of the European Committee of Social Rights even if the state concerned (eg Monaco) had not ratified this treaty, as one among a number of factors to take into account when interpreting the provisions of the European Convention on Human Rights, which alone are directly applicable, in particular Article 11 on freedom of association.

17. Thus, Monaco's ratification of the Social Charter in itself would make no difference whatsoever to this state of affairs. It has nothing to fear from ratifying the European Social Charter. Whether or not it does so, it could still be faced with a European Court interpretation of Article 11 of the Convention based on the Charter.

18. In their comments on our preliminary draft report, and during the co-rapporteurs' latest visit, the authorities took note of the new *Demir and Baykara* precedent which ended doubts about the scope of the Court judges' powers of interpretation, a cause of anxiety for the authorities in connection with the ratification of the revised Social Charter.

19. Furthermore, HSH Prince Albert II, the Minister of State and the President of the National Council assured us that the ratification of the Social Charter could come about as soon as the Council of State had given its opinion on the question of the Social Charter's applicability in Monegasque law and on the measures necessary for its transposition into domestic law, expected in the course of September 2009, having been requested by the Prince. HSH Prince Albert told us that he wished to see the Charter ratified by the end of the year.

20. We also wish to recall at this juncture that at the time of our initial visits the government told us that under Article 14 of the Constitution the ratification, if made, would be made by Sovereign Order and not by a vote of the National Council because it ought not to entail any entry of a budgetary heading. The Prince would notify the National Council of it through the Minister of State, before ratification. In our opinion, however, the ratification of the Charter should entail amendment of existing legislative provisions, as will probably be confirmed by the opinion of the Council of State. As a further step in the significant progress of relations between the government and the National Council which followed the constitutional reform of 2002, and in accordance with Article 14 of the Constitution, we invite the Minister of State to consult the National Council<sup>5</sup> beforehand on the Charter and any reservations, in a spirit of compliance with the laws but also of transparency in the democratic process actuated by accession to the Council of Europe.

b. *Protocols Nos. 1 and 12 to the European Convention on Human Rights (ECHR)*

21. Within a year of accession, Monaco was also meant to ratify the First Protocol to the ECHR safeguarding property rights, the right to education and the right to free elections (ETS No. 009). Moreover, Opinion 250 (2004) provided that Protocol No. 12 on the collective enforcement of a general prohibition of discrimination (ETS No. 177) was to be signed within one year of its coming into force and ratified within five

<sup>3</sup> Application no. 34503/97, judgment of 21 November 2006.

<sup>4</sup> Application No. 34503/97, judgment of 12 November 2008.

<sup>5</sup> Since 2002, the National Council has been required to approve the ratification of treaties where they affect constitutional organisation, entail changes in existing legislation, involve participation by the National Council in an international organisation or create a budgetary cost of a new kind or with a new purpose – see the section on the ratification procedure and the role of the National Council, paragraphs 28-40.

years. Protocol No. 12 came into force on 1 April 2005 and should therefore have been signed by 1 April 2006. These two undertakings have not so far been met.

22. Protocol No. 1 has been ratified by 45 out of 47 member states, Switzerland and Monaco alone have not ratified.<sup>6</sup> The main argument put to us is that ratification of Protocol No. 1 would result, *ipso facto*, in application of Article 14 of the Convention, which prohibits discrimination in enjoyment of the rights safeguarded by the Convention. The issue is a delicate and complex one in view of the geographical and demographic makeup of the Principality, and especially the minority status of the population of Monegasque nationals.

23. Priority of employment for nationals, residents and inhabitants of the adjacent municipalities, qualifications and skills being equivalent, and the eligibility of Monegasques for moderate-rent, state-owned housing, are measures deemed essential to the preservation of a community of nationals on Monegasque territory and thus to the country's very survival. These constraints would form impediments both to Monaco's ratification of Protocol No. 1 and to the signature of Protocol No. 12.

24. The authorities nonetheless recall in their comments on the preliminary draft report that the national preference in respect of social support is not a discriminatory factor in so far as the forms of assistance granted to Monegasques are complementary to a social protection system of great liberality towards the entire working and retired population of the territory, irrespective of nationality. We find that this argument militates in favour of the ratification or signature of Protocols Nos. 1 and 12.

25. We would recall in this connection that in paragraph 9 of its Opinion 250 the Assembly "acknowledges the particular situation of a country such as Monaco where the indigenous population is numerically smaller than the total number of people working and/or living there. It considers that, in interpreting the commitments which Monaco is to honour, the Council of Europe should take account of this situation which has led the authorities to introduce preferential schemes, chiefly benefiting Monegasque nationals, in respect of work and employment, housing and social welfare. It notes, in this connection, that the social security system is accessible to all people working in Monaco".

26. In their comments on the preliminary draft report, the Monegasque authorities consider that the unconditional implementation of Protocols Nos. 1 and 12 would cause profound upsetting of the social equilibrium, which they cannot countenance. We would nevertheless point out once again that Monaco freely and formally undertook to ratify Protocol No. 1 and to sign Protocol No. 12 within one year of accession. Ratification of the one and signature of the other could possibly be carried out with the formulation of appropriate reservations taking into account the peculiarities of Monaco. The authorities have said that they are willing to pursue dialogue on this issue, and we would wish this consultation to be placed in the context of the post-monitoring dialogue which will be established at the conclusion of the monitoring procedure.

*c. The Convention on Cybercrime*

27. The Convention on Cybercrime (ETS No. 185) was to be ratified by October 2009 in order to comply with the commitment to ratify it within 5 years of accession. We encouraged the authorities to go ahead with this ratification as soon as possible in so far as it did not raise any particular problems. During our last visit, we received confirmation from the authorities that the examination of the Convention had raised no significant objection to its ratification and confirmed that it should soon occur although it was not exactly a priority of the government. We invite them to enlist the aid and expertise of the Council of Europe in this sphere in order to take the measures necessary to arrive at ratification.

*iii. The ratification procedure for international treaties and the role of the National Council*

28. Since the 2002 constitutional reform, and under Article 14 of the Constitution, the National Council has been required to give its agreement to the ratification of treaties where they affect constitutional organisation, entail changes in existing legislative provisions, involve participation by the National Council in an international organisation or create a budgetary cost of a new kind or with a new purpose. We considered this insufficient.

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<sup>6</sup> Protocol 12 has at present been signed by 20 countries and ratified by 17.



29. The Assembly, in its Resolution 1566 (2007) on honouring of obligations and commitments by Monaco, recommended that the Monegasque authorities “redraw the list of international conventions and treaties in respect of which the National Council must pass a ratification law in accordance with Article 14 of the Constitution and meanwhile submit initially to the National Council any draft reservations or declarations to a treaty in respect of which the National Council must pass a ratification law.”

30. As regards treaties which it is for the National Council to ratify in the cases provided for in Article 14 of the Constitution, the ratification procedure still does not include prior consideration by the National Council of any reservations and declarations which it is planned to make when a particular treaty is ratified. We feel it is abnormal, for example, that the National Council, despite being called upon to approve ratification of the European Convention on Human Rights, was not informed beforehand of the reservations and declarations which the Principality was intending to make. The members of the National Council whom we met expressed their regret that this situation persisted and that the government was reluctant to espouse transparency.

31. According to the government, Article 14 of the Constitution specifies the cases in which ratification requires an approving law and the exhaustive list of these cases is in no way "artificial" but has been drawn up in accordance with precise and reasoned considerations. In addition, prior examination by the National Council of reservations and declarations to a ratification would implicitly but necessarily mean restricting the Prince's authority in the field of international relations. While, in those cases laid down in the Constitution, rejection of a bill approving ratification bars ratification of the international treaty, adoption of the bill does not compel the Prince to ratify the international treaty in question. The making of reservations and declarations is inherent in the discretionary powers which the Prince enjoys in exercising his authority. The government states that no constitutional revision is envisaged in that respect.

32. Elected members of the National Council stressed the fact that they had no wish to restrict the powers of the Prince. Nonetheless they felt, and we entirely agree, that voting on ratification of a treaty without having been acquainted with the reservations and declarations was tantamount to asking them to sign in a state of ignorance.

33. We reiterated that Monaco should fall into step with European standards in this field and ensure that the national parliament was totally involved in the treaty ratification process, though without prejudice to the powers of the Prince.

34. Furthermore, regarding the international treaties ratified by the Prince without the intervention of the National Council, the Constitution expressly provides for the cases in which a law is required.

35. The government states that an implementing Sovereign Order is issued both in the case of treaties or agreements ratified solely by the Prince and in the case of those requiring a law where certain provisions call for implementing measures. Whether or not ratification is subject to the enactment of a law has no legal bearing on the need for issuing a Sovereign Order. A law is a measure preceding ratification, whereas the issuance of an implementing Sovereign Order is subsequent to ratification.

36. The fact is that in cases where a law is not necessary, new offences and criminal penalties can be created by the sole means of a Sovereign Order implementing an international treaty that provides for such offences and penalties, whereas Article 20 of the Constitution provides that no penalty may be imposed or applied except in accordance with the law.<sup>7</sup> Note that any conviction in the absence of a corresponding law which specifies the criminal offence established in a Sovereign Order could result in violations of Article 7 of the European Convention on Human Rights, which enshrines the same principle of compliance with statute.

37. Both the Prince and the government told us that these orders had been adopted as a matter of urgency, in particular to respond to the recommendations of international organisations on fighting international crime, money laundering and drug trafficking. However, it has proved that the Principality's undertaking arising from the ratification of an international treaty may indeed entail an obligation to take other implementing measures of a legislative kind.

38. According to the government, this has already been done in respect of the law on the criminal liability of legal persons passed in June 2008, almost two years after the promulgation of Sovereign Order No. 605 of 1 August 2006 implementing the United Nations Convention against Transnational Organised Crime. The

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<sup>7</sup> See, for example, Sovereign Order No. 605 of 1 August 2006 implementing the United Nations Convention against Transnational Organised Crime and its protocols on trafficking in human beings and the smuggling of migrants or Sovereign Order No. 653 of 25 August 2006 on the taxing of profits and on VAT, which prescribes fines and prison sentences for tax evasion.

authorities stated that in view of the schedule of the National Council and the government and the corresponding workload of the administration, the legislative process could not be concluded any faster.

39. Nor indeed were we told of any case of a criminal conviction in the absence of corresponding legislation. We could ascertain during our various talks with representatives of different judicial departments and the authorities that the European Convention on Human Rights and the case-law of the Court formed an integral part of the body of reference material used by lawyers and members of the judicial service.

40. We asked that all implementing measures in criminal-law matters be transposed into the corresponding legislative texts and that the reform of the Penal Code be carried out as soon as possible in order to incorporate all the offences and related penalties which at present are set out solely in Sovereign Orders, and afford a sufficiently extensive criminal justice apparatus to diversify penalties according to the seriousness of offences.

41. We appreciate that the reform of the Penal Code, like that of the Code of Criminal Procedure moreover, is a huge task and that given the size of the Monegasque administration it requires considerable resources and time. Which is why we call on the Monegasque authorities to enlist the expertise of the Council of Europe in order to optimise resources and speed up the process of the necessary modernisation of the Monegasque legal system.<sup>8</sup>

### III. Domestic law

42. Key laws were passed from 2006 to 2008 amending certain provisions of the Code of Criminal Procedure and the Penal Code on conditions of pre-trial detention, police custody, telephone intercepts, punishment of crimes and offences against minors, and the liability of legal persons.

43. The enactment of the law on associations in December 2008 means that Monaco has fulfilled all its undertakings regarding domestic law set out in Opinion 250 (2004).

#### *i. The law on associations*

44. At the time of our visit in October 2008, Monaco had not yet passed the law on associations. It was already being debated and should have been passed during the National Council's spring 2007 session.

45. The National Council was not satisfied with the bill (No. 728) tabled by the government on associations and federations of associations, and felt that to avert certain abuses it was of fundamental importance to reinforce checks on the use made of public funds paid to subsidised associations and to ensure effective monitoring in this area. The government, which was opposed to the retention of an amendment of this kind in legislation intended to establish the proper conditions for freedom of association, opted to make financial checks on individuals and private-law entities receiving public funds the subject of a separate piece of draft legislation. Bill No. 812 on the financial supervision of subsidised associations was officially tabled in April 2006 and at once underwent close scrutiny by the Legislation Committee, which expressed regret at the absence of substantive revisions and was compelled to make numerous changes. The National Council attached particular importance to having the two bills, which were inseparable from each other, debated and voted on together.

46. The government however withdrew the draft law, Bill No. 812. In the interests of consensus, the National Council accepted the government's proposal, even though the legislation on the financial supervision of subsidised organisations was no longer on the agenda.

47. After more than five years of debate, Law No. 1355 on associations and federations of associations was finally approved by the National Council on 18 December 2008.

#### *ii. The law to combat domestic violence*

48. A private member's bill tabled by a group of majority parliamentarians was approved by the National Council on 28 April 2008 and was intended to make provisions offering protection from and establishing penalties for domestic violence between couples, whether or not married, of opposite sexes or the same sex. The bill would insert a part V entitled "unmarried cohabitation" and a new Article 196-1 into Book 1 of the Monegasque Civil Code, worded as follows: "Unmarried cohabitation consists in a *de facto* union, characterised by a shared life of a stable and continuing nature between two persons of opposite sex living

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<sup>8</sup> See also chapter III below.

as a couple." After examining this proposed wording referred to it for report, the Committee on the rights of women and the family considered it necessary to delete the words "of opposite sex" to avoid any discrimination based on sexual orientation.<sup>9</sup> After a stormy debate the proposal, as amended, was approved by the National Council, against the advice of the Minister of State. We were shocked to discover that in the course of this debate in the National Council, homophobic views were expressed by a senior public authority.

49. The Minister of State has 6 months as from the bill's adoption to signify his decision to the National Council concerning his intended action on the text, either to convert the private member's bill into a draft law or to interrupt the legislative process. In their comments on the preliminary draft report, the Monegasque authorities have informed us that the governmental legislative services are currently preparing the draft law against domestic violence committed between persons living or having lastingly lived under one roof, irrespective of the type of relationship between the perpetrator and the victim(s).

50. The Monegasque authorities informed us that the draft law should be tabled in the Assembly by the end of 2009. Again according to the authorities, in its present state of preparation it contains provisions on the criminalisation, prosecution and punishment of the specific offences of violence under one roof. Moreover, administrative measures and technical stipulations on psychological supervision, prevention, education and information would be issued, with the aim of achieving genuine synergy between public safety, the judicial departments and the specialised medical and welfare teams.

### *iii. The law on political parties*

51. In its Resolution 1566 (2007) on the honouring of obligations and commitments by Monaco, the Assembly recommended that the Monegasque authorities begin considering the case for a law on political parties, in particular to ensure greater transparency in party financing. The recommendation was repeated in Resolution 1619 (2008) on the state of democracy in Europe concerning the functioning of democratic institutions in Europe and the progress of the Assembly's monitoring procedure. The various parties represented in the National Council, whether in the majority or the opposition, gave us confirmation of the necessity of drafting a law to regulate at least the funding of election campaigns.

52. The various parties represented in the National Council expressed the wish to see a significant increase in reimbursement of expenses incurred during election campaigns, at present limited to 25 000 Euros, given that the expenses declared by political parties involved in the 2008 election campaign amount to over 300 000 Euros for the parties currently represented in the National Council.

53. The "Rally and Issues" Group told us that it was working to draft a private member's bill on political parties in the Principality of Monaco. We encourage the National Council and the government to press ahead with this in order to arrive at a law ensuring greater transparency in the funding of political parties, as also recommended by MONEYVAL.

54. We are convinced that in the absence of taxation, hence of tax assessment or inspection, in the Monegasque system, it is advisable to develop greater transparency and a mature process which should be regulated by legislative texts also applying to political parties or movements. On this depends the voters' confidence in the democratic process and in their elected representatives, as well as in the country's good governance.<sup>10</sup>

## **IV. Functioning of democratic institutions**

### *i. The Parliamentary elections of 3 February 2008*

55. We recall that Monaco held parliamentary elections on 3 February 2008. The results of the ballot produced a parliament composed of members of two of the three lists that ran in the elections, with UPM (Union for the Principality) obtaining 21 out of the 24 seats and RE (Rally and Issues) winning 3 seats.

56. In its report on the observation of these elections held on 3 February 2008, the Ad hoc Committee of the Bureau of the Assembly concluded that given the particular situation of Monaco, the election had taken place largely in line with Council of Europe electoral standards. The Electoral Commission had conducted its work in an impartial and professional manner, displaying considerable transparency and efficiency.

<sup>9</sup> See also chapter VI, section i below, on combating discrimination and racism, with reference to ECRI's recommendations.

<sup>10</sup> See also chapter IV, section i below.

57. The Ad Hoc Committee was confident that these elections marked an important milestone along the road of Monaco's further integration into the Council of Europe, and it concluded with a number of recommendations.

58. While no particular problems had been reported concerning media behaviour at the last elections, the Ad Hoc Committee thought that the Monegasque authorities could consider introducing new media legislation that would, amongst other things, specifically address media behaviour during the electoral campaign.

59. The Ad Hoc Committee reiterated the Assembly's recommendation that the Monegasque authorities take into account the expediency of enacting a law on political parties, not least with a view to ensuring the transparency of party funding.

60. Our talks with the National Council members highlight the need for election campaigns to be more precisely regulated and funded with complete transparency. The UPM majority supports the idea that the official election campaign should commence several weeks before the national elections and not a mere 8 days previously as is the case at present. Of course, and as in most European countries where parliamentary elections are concerned, speaking time on the government-controlled medias should reflect the strength of each political force's National Council membership.

*ii. The National Council*

61. Strengthening the prerogatives of the National Council has been the subject of intense negotiation and is still central to the Parliamentary Assembly's concerns.

62. The 2002 constitutional revision conferred new powers on the National Council which is trying them out as the need arises. The Council of Europe had asked for these changes to the Constitution so that Monaco could become a genuine "pluralist democracy" within the meaning of the Council of Europe statute.

63. In its Opinion 250 (2004), the Assembly recommended that the Monegasque authorities further broaden, within five years of its accession, the powers of the National Council, particularly as regards supervision of government action, the annual presentation of the governmental programme, the right of legislative initiative, and the budgetary debate, in the hope that the institutions would evolve in the course of time.

64. In its Resolution 1619 (2008) on the functioning of democratic institutions in Europe, the Parliamentary Assembly recommended that the Monegasque authorities continue the reform process in order to strengthen further the role of the National Council and to improve the system of checks and balances.

65. The 2002 constitutional reform preceding accession to the Council of Europe allowed the powers of the National Council to be substantially increased, though without unseating a system based on collaboration, consultation and negotiation between the powers. Neither the fundamental principles of the apportionment of powers nor the nature of the relations between them were affected, and today the Principality is endowed with institutions founded on a consensual logic.

66. During our visit in October 2008, the members of the National Council, irrespective of their political affiliation, complained of the lack of a genuine working relationship between the government and the National Council. Both the majority and the opposition stress that the powers of the National Council as stipulated in the 2002 revised Constitution would be enough to guarantee the independence of the legislature *vis-à-vis* the executive and the balance between the institutions. During our latest visit in July 2009, we gained the impression that things had moved in the right direction, with the National Council acquiring an ever firmer foundation and independence as the institution matured.

67. However, the constitutional provisions are not yet being fully applied, failing the transposition into implementing legislation which would permit their application. The National Council members also criticise the attitude of the government, which still does not practice transparency (particularly as regards the vote on the budget or legislative initiatives). As a result, the National Council is unable to act as a genuine counter-force.

68. In the debates in the National Council on the 2009 budget, which the government presented in December 2008, the National Council members publicly questioned the government's working methods and criticised the lack of dialogue and the fact that it treated the National Council as nothing more than a rubber-stamp body. Notwithstanding a Finance Committee report calling on members not to approve the budget, it

was finally adopted after more than 70 hours' debate by 14 votes to 5, with 4 abstentions. These debates showed that parliamentarians are gaining experience of institutional relations and are increasingly exploiting the powers vested in them by the 2002 revised Constitution. The Minister of State, who, in accordance with the current Constitution, itemised the government's annual programme, has himself acknowledged that the government's working method was perhaps not ideal and that for next year consideration had to be given to the timetable of government activities, so that the debate with the National Council could be better organised and more interactive.

69. The UPM majority members have moreover asked that the government give an account each spring session of its general policy, in order to initiate dialogue on political action and prompt a real debate. During our meeting with the Prince last July, he declared that the extension of the powers of the National Council desired by the Assembly can be achieved by including the presentation of the governmental programme and the discussion of the initial and rectified budgets in the annual joint meetings between the government and the National Council on the economic and social situation in the Principality.

70. With regard to legislative initiative, our contacts felt that the government regularly availed itself of the possibility of withdrawing a private member's bill if it disagreed with the substance, thereby negating *de facto* the National Council's power of legislative initiative. As a result, certain members of the National Council said that, regrettably, they lacked the power to implement the programme on which they had been elected.

71. By way of an example, in June 2005 the National Council unanimously adopted a private member's bill to amend Law No. 771 of 25 July 1964 on the organisation and functioning of the National Council, aimed at modernising its activities and, in particular, improving the rights of the opposition, always under the terms of and in accordance with the 2002 revised Constitution.

72. For reasons that were strongly criticised at the time by members of the National Council, the government, while not disagreeing on the substance of this bill, decided to interrupt the legislative process and take no further action. At elected members' insistence, a working group on the organisation and functioning of the National Council has since been set up by the Council and the government so that the two institutions can jointly determine ways to achieve improvement and modernisation of the rules governing the Assembly's activities. We were told that the working group would be meeting in late October 2008 and that the modernisation of the National Council's rules of procedure would be undertaken in 2009, immediately after the adoption of the law on the functioning of the National Council.

73. In their comments on the preliminary draft report, the Monegasque authorities confirmed that the consultations between the National Council and the government were proceeding in order to arrive at an amendment of Law No. 177. At all events, we received no information on the actual outcome of these consultations, and we regret that four years on, the legislation and rules of procedure governing the National Council's operations are still not compatible with the 2002 Constitution.<sup>11</sup> During our last visit in July 2009, no progress was observed. We believe that this issue should be addressed as a matter of priority by the government.

74. Improving the functioning of parliament and strengthening its prerogatives, particularly by passing the legislation on the National Council's functioning and modernising its rules of procedure, are essential for the balance of powers between Monegasque institutions, so that the country is better prepared for its future. We fully support the efforts made on both sides (National Council and government) and wish to point out that the Council of Europe, and particularly the Parliamentary Assembly, could assist the process with their relevant experience.

75. We are well aware that the opposition's role in the National Council is not comparable to that found in parliamentary democracies. At present, however, it is regrettable that the rights of the opposition are not formalised in official texts. The opposition members expressed the wish to be associated more systematically and formally with the parliamentary committees of political importance.

76. Whereas in our first monitoring report on Monaco we noted that the National Council was in the process of trying out the new powers vested in it by the 2002 constitutional revision, today we observe plain progress in the position and role of the National Council in practice. Numerous reforms called for by the National Council were undertaken by the government from 2003 onwards (state-owned housing construction

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<sup>11</sup> The National Council majority supports the view that the relevant legislation should confine itself to institutional and budgetary aspects, leaving other matters to the Council's internal rules of procedure, which it should have full power to determine, subject only to validation by the Supreme Court.

programme, home ownership on easier terms for Monegasques, tabling of a bill on termination of pregnancy, etc.)

77. The authorities also informed us that their assembly's facilities and material resources, including funds, had been substantially increased to cope with the parliamentarians' heavier national and international workload. Furthermore, a new building is now under construction to meet the growing needs of the National Council.

78. Some of its members told us, however, that the deficiencies of the rules of procedure placed them in sometimes difficult situations in coping with the burden of their parliamentary office at the same time as their full-time jobs, in the absence especially of resources for creating parliamentary assistants' posts.

79. Our attention was drawn to the charge laid against the President of the National Council in 2007, a few months before the parliamentary elections, during a parliamentary session. Monaco's highest judicial authority (the Review Court) finally found the action unlawful and therefore declared it null and void.

80. In this connection, it might help improve the efficiency of the National Council if an elected representative's status was defined, and this might also clarify the rules of immunity, which is crucial to the observance of separation of powers and the undisturbed exercise of the legislative mandate.

### *iii. Local Democracy*

81. Monaco has neither signed nor ratified the European Charter of Local Self-Government, no doubt because the Principality historically comprises a single municipality whose boundaries correspond to those of the state.

82. The view of the Congress of Local and Regional Authorities of the Council of Europe, shared by eminent lawyers, is that the creation of a Monegasque municipal structure is basically in compliance with the Council of Europe's principles of local democracy.

83. In the constitutional revision of 2002 (see Article 87 of the Constitution) the municipality's financial independence was somewhat strengthened. A new law on local self-government was passed by the National Council on 6 June 2006 and came into force on 29 June 2006. In our discussions with the mayor and municipal council, we received confirmation that as a result of this law, since 2007, the municipality had acquired more financial and budgetary independence, making it much easier for the municipal authorities and mayor to do their work.

84. Monaco ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) in December 2007, and the protocols thereto.

85. With regard to ways of involving foreign residents (three-quarters of Monaco's population) more closely in the management of public life at local level, a town hall website has been set up, designed to inform all users about the life of the municipality. However, the question of foreigners' participation in local elections is not contemplated.

### *iv. The role of the media*

86. We described the media landscape in our last monitoring report on the Principality.<sup>12</sup>

87. According to the journalists we met, there is still a problem of access to information because the government continues to confuse communication and information. The press centre remains a government department which, they claim, imposes the circulation of its information bulletins. Even though the media landscape remains varied, there is no investigative journalism and journalists appear to rely on information supplied by the government via the press centre, since the various government departments apparently do not pass on information but refer inquiries directly to the centre, which thus acts as an information filter. We still consider it essential to develop a more open and transparent policy on access to information.<sup>13</sup> The Council of Europe's expertise on this subject might be sought.

88. The journalists we met also told us that they practiced self-censorship with regard to the Prince and his family. Here it should also be noted that Monaco has entered a reservation concerning Article 10 of the

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<sup>12</sup> See Doc. 11299, section 9, on the role of the media in a democratic society, paragraphs 139 to 151.

<sup>13</sup> Nor, it should be recalled, is there legislation in Monaco authorising public access to administrative documents.

European Convention on Human Rights, according to which: "The provisions of Article 10 of the Convention apply without prejudice to the provisions, on the one hand of Article 22 of the Constitution establishing the principle of the right to respect for private and family life, especially concerning the person of the Prince whose inviolability is guaranteed in Article 3, sub-paragraph 2, of the Constitution and, on the other hand, of Articles 58 to 60 of the Penal Code concerning the offence of contempt<sup>14</sup> of the person of the Prince and His family."

89. All our contacts deplored the National Council's lack of direct access as legislative power to the local television channel. At present, access to the television channel Monaco Info is controlled by the press centre which is subordinated to the government, a position which was actually described to us as censorship of parliament and denial of democracy.

90. At a more general level, as regards the handling of information about the National Council on Monaco Info, the UPM majority would draw attention to a consistently biased selectiveness. Indeed, some arguments of interviews or communiqués originating from the National Council are not broadcast where contrary to the stances of the government.

91. As an example, it mentions a question on the sensitive issue of established foreign residents (*enfants du pays*), which vanished during editing in connection with the European Conference of Presidents or Speakers of Parliament (22-23 May 2008). More recently when Ms Sophie Thevenoux, just appointed Government Counsellor on Finance and Economy, paid her inaugural visit to the National Council on 20 March 2009, one of the sentences of the National Council's communiqué not mentioned on the air concerned the request, hitherto rejected by the government, for the introduction of objective criteria and a joint board to allocate state-owned premises for professional use. Moreover, at the meeting of the Sub-Committee on Human Rights of the Council of Europe Parliamentary Assembly, held in Monaco on 10 March 2009, the interview with Mr Jean-Charles Gardetto, Chairman of the External Relations Committee, referring in particular to the absence of magistrates from Monaco at the meeting, was totally censored.<sup>15</sup>

## V. Rule of law

### i. *The functioning of justice*

92. We examined the Monegasque judicial system in our last report.<sup>16</sup> Moreover, it was already clear from the report by the eminent lawyers that there were no major problems with the functioning of justice in Monaco and that the country's legal system duly guaranteed the enjoyment of fundamental rights and freedoms.

93. The Principality indeed possesses a complete and effective judicial system, particularly as regards procedural time limits, which rarely exceed 6 months or 1 year in all courts.

94. Various reforms have taken place or are under way to modernise the system and bring it into line with Monaco's international obligations.

95. The justice and freedom law, No.1343, was approved under urgent procedure on 26 December 2006. It amended the Code of Criminal Procedure so as to:

- protect the rights of persons in police custody;
- regulate telephone intercepts;
- limit the duration of detention on remand, according to the offence committed;
- establish compensation arrangements for arbitrary detention.

96. The National Council is currently considering a general reform of the Code of Criminal Procedure, but according to the Director of Judicial Services it does not have the necessary resources to undertake a detailed analysis. We would emphasise that the Council of Europe has sound expertise in this field and could provide the Monegasque authorities with assistance.

<sup>14</sup> If committed publicly, contempt of the person of the Prince is punishable by 6 months' to 5 years' imprisonment (Article 58 of the Penal Code) and contempt of the Prince's family by 6 months' to 3 years' imprisonment (Article 59 of the Penal Code).

<sup>15</sup> See Doc. AS/Mon(2009)17.

<sup>16</sup> See Doc. 11299, section 10, on the rule of law, paragraphs 152 to 190.

97. We had already underlined that the Penal Code and the Code of Criminal Procedure alike dated back to 1966 and definitely needed revision. The main examples we have been given concern the impossibility of criminal action against certain unlawful acts for want of their definition as offences in the statute book. The problem was confirmed by Monaco's investigating judges, who were sometimes forced to terminate proceedings because there was no provision defining such and such a crime in the legislation.

98. The Director of Judicial Services, Mr Philippe Narmino, told us that there were no plans at present for a comprehensive reform of the Code of Criminal Procedure, but the Monegasque authorities were filling any gaps as and when they appeared. According to the Monegasque authorities, criminal legislation is regularly amended either to be brought into line with the stipulations of international conventions to which the Principality of Monaco accedes, or to be consistent with the development of custom and thought in the Principality's multi-community society. For example, in December 2007, the crimes and offences against children law, No. 1344, filled an existing legal vacuum by introducing the notion of abuse of weakness into the Penal Code. More lately still, Law No. 1349 of 25 June 2008 amending Book I of the Penal Code instituted the criminal responsibility of legal persons.

99. In our last report we also identified a problem when the state itself was found to be at fault, since there was no legislation providing for enforcement against the state or a public-law corporation. However, Mr Philippe Narmino informed us that the state of Monaco has never refused to comply with judgments of the European Court of Human Rights. Besides, the responsibility of the state can be questioned before a legal or administrative jurisdiction and many cases are brought against the state, questioning for example whether or not it is responsible for contracts or other matters. He does not consider legislation to that effect necessary since practice shows that the system does function *de facto* without the state failing in its obligations.

100. We also pointed out earlier that there was no possibility under Monegasque law of obtaining a retrial in the event of a finding by the Court of a violation of the European Convention on Human Rights. Mr Narmino has informed us that his officials are currently working on draft legislation, which is being considered by a multidisciplinary committee. Once it has been finalised and approved by the Director of Judicial Services it will be presented to the National Council, although he was unable to give us a date. We encourage this initiative and invite the authorities to continue this work expeditiously.

101. As regards the functioning of the judiciary itself, considerable modernisations of the system are awaited. As long ago as 2004, the National Council was to examine a bill on the administration of justice and a new statute for judges to replace that laid down in the laws of 1918 and 1965 on the administration of justice, with the aim, *inter alia*, of setting up a judicial service commission for breaches of discipline and reorganising judges' career structure. On our visit in October 2008, Mr Narmino and Ms Brigitte Grinda-Gambarini, President of the court of first instance, confirmed the imminence of this reform.

102. In particular, section 22 of Bill No. 779, tabled by the government in May 2004, provides for the future judicial service commission to have 6 members, 2 of whom will be *ex officio* (the Director of Judicial Services, who will be its chairman, and the First President of the Review Court) and 3 will be appointed respectively by the Council of State (which is not a court), the National Council and the Supreme Court (but not from its own members). The National Council has proposed the addition of one member elected by the judiciary.

103. Although the government appears to have accepted this last proposal, it would be appropriate to check whether the envisaged membership of the judicial service commission is in line with European standards, and particularly with the 1998 European Charter on the Status of Judges, bearing in mind that appointed members may not be civil servants, judges or lawyers and that judges will therefore be in a minority on this body. It will also be necessary to state clearly whether the commission's opinions on appointments are consultative or binding, as well as which posts are concerned.

104. In its evaluation report on Monaco adopted in October 2008,<sup>17</sup> the Council of Europe's Group of States against Corruption (GRECO) considers that the Director of Judicial Services currently has considerable discretion in arrangements for the selection, appointment and careers of judges and prosecutors, which raises a number of queries about the independence of the institutions responsible for investigating, prosecuting and trying corruption offences especially. Referring to the bill on the administration of justice and the status of judges and the proposal to set up a judicial service commission, GRECO considers the bill to be a very welcome initiative, which might also be an opportunity to discuss and review, together with the French authorities, the arrangements for selecting seconded judges from France, since the Monegasque authorities

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<sup>17</sup> See *joint first and second evaluation rounds, evaluation report on Monaco*, adopted by GRECO at its 39<sup>th</sup> Plenary Meeting, Strasbourg, 6-10 October 2008, (Doc. Greco Eval I/II Rep (2008)1E).



were unable to describe with any precision the criteria used by France to choose the three candidates it had to propose for each vacant post. Finally, the current rules governing French secondments (renegotiated in 2005 and brought into effect in 2008) – a three year period, renewable once, as with all other seconded French personnel – pose practical problems because of the excessively rapid turnover that results. GRECO also considers that this could affect the independence of judges and prosecutors faced with the pressure of renewal as the end of their first three-year term approaches. The renewal of their secondments is not by right for judges, and the decision depends on the respective intentions of the French and Monegasque authorities. According to the GRECO report, while the former period of up to twenty years was far too long, the current one is too short, and a reasonable balance has to be struck.

105. The executive, in the form of the Director of Judicial Services, also has a predominant and largely discretionary role in the exercise of disciplinary authority over prosecutors, and to a lesser extent judges. GRECO recommends that the authorities, in consultation with the French authorities where necessary, a) complete the proposed reorganisation of the judiciary and establish a judicial body that would be responsible for the recruitment, appointment, promotion and training of Monegasque and seconded French judges, together with disciplinary and other aspects of their careers; and b) review the arrangements for the secondment of French judges to offer more safeguards for their independence, particularly at the time of possible renewal of secondment.

106. According to the Monegasque judicial authorities, the government bill on the administration of justice and the status of judges and prosecutors, still in preparation, provides for the delivery of an opinion by the judicial service commission on appointment to a judicial office and on promotion and career development. Guided by the key ideas in the explanatory memorandum to the 1998 European Charter on the Status of Judges, the bill is reported to provide in particular that after two years in the judicial service auxiliary magistrates receive final appointment as judges or substitutes subject to the approval of the judicial service commission. In other words, it is an approval which exceptionally is binding on the appointing authority. The judicial service commission's opinion is also stipulated where the terms of service required to receive automatic promotion are reduced to take account of the judicial officer's merits, and for appointments, regardless of the grade at which they are made. The bill will thus bring all magistrates under the same system.

107. Regarding the independence of the judiciary, the bill in hand should afford some improvements while again enshrining the guarantees of independence constituted by the principle of tenure or the conditions of disciplinary action. It will limit the disciplinary power of the Director of Judicial Services whose sole function will be to bring actions for breaches of discipline, whereas the ordering of the sanction will rest with the judicial service commission.

108. At present the bill is still under consideration pending the current French reform of judicial investigation, particularly where members of the prosecution are concerned, from which the Monegasque Government may take inspiration.

109. Turning to the legal profession in Monaco, there is still talk of modernising the law on the profession of barrister, among other things in order to extend the membership of the Bar Council. At our meeting with the recently appointed Attorney-General, Mr Jacques Raybaud, we learnt that he had just received proposals from the relevant professional organisations, to which he would give close attention. Since the profession comprises some 28 barristers for the whole country, we believe important that disciplinary questions must be tackled with great thoroughness and regulated by law.

*ii. Combating corruption and money laundering*

*a. Combating corruption*

110. Monaco signed and ratified the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) on 13 March 2007, and it came into force on 1 July 2007, which entailed automatic accession to GRECO.

111. Monaco does not appear on Transparency International's annual index of perception of corruption. Judicial statistics on corruption have only recently been established. As to incoming applications, the Attorney General's staff registered 39 international letters rogatory concerning corruption offences between 2002 and late December 2007.

112. The ratification of the Criminal Law Convention on Corruption (ETS No. 173) and participation in GRECO were a first step for the Principality of Monaco in introducing anti-corruption measures, and it was indicated that GRECO's evaluation report<sup>18</sup> would serve as a basis for wider reflection and for the introduction of new measures. Corruption is thought to be a negligible phenomenon in Monaco, but the country attaches great importance to the preservation of its image, which may potentially result in cases not being brought to justice. Monaco has no record hitherto of any convictions or even court decisions in this area, despite the presence of sectors sometimes considered to be at risk of corruption, and the marked inadequacy of anti-corruption measures and internal/external controls over administration and public officials, often ignorant of the few preventive measures that do already exist. GRECO has identified further deficiencies that could explain the few cases uncovered to date.<sup>19</sup> Finally, it has also been found that there is room for improvement in the status of prosecutors and judges, including the protection of prosecutorial work in criminal matters.<sup>20</sup>

113. From a constitutional standpoint, GRECO has concluded that "there is little in the way of political counterbalance in Monaco", given the peculiarities of the constitutional system, granting the Prince a prominent role whereas Parliament (the National Council) has limited powers and the media have very restricted access to information held by the authorities.<sup>21</sup>

114. Having regard to its assessment of relevant Monegasque law and practice, GRECO has addressed no fewer than 28 recommendations to Monaco and has invited the Monegasque authorities to report on their implementation by 30 April 2010 at the latest.<sup>22</sup>

115. For our part, we urge the Monegasque authorities to implement the GRECO recommendations, where appropriate making use of Council of Europe assistance to draw up the various programmes and items of draft legislation.

*b. Combating money laundering*

116. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) adopted its most recent report on Monaco in December 2007, following a visit to the country in November 2006.<sup>23</sup>

117. According to MONEYVAL, since its previous report in 2003 the Monegasque authorities have made several changes to the legislation and regulations to supplement Monaco's anti-money laundering apparatus. In particular, they have amended the provision of the Penal Code making a criminal offence of money laundering, introduced additional customer identification measures, adopted a variety of legislation regulating electronic transfers, relations with politically exposed persons and the activities of correspondent banks, and ratified a number of international conventions.

118. The volume of suspicious transaction reports has increased in recent years, particularly those originating from casinos and accountants. According to MONEYVAL, supervision of the financial institutions, in particular on-site supervision, needs to be significantly strengthened, as does the number of staff assigned for this purpose.

119. In recent years, the Monegasque financial system has become increasingly more concentrated as a result of a series of mergers and acquisitions starting in 2003 and the arrival of big names in the world of finance and wealth management. The financial sector is dominated by private banking activity and fund management companies. In late 2005, the total value of assets managed by Monegasque banking establishments was 70 billion euros. By the end of 2006, credit establishments and portfolio management had a turnover of 2.1 billion euros and represented 15.6% of total turnover of the private sector in Monaco.

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<sup>18</sup> See Doc. Greco Eval I/II Rep (2008) 1.

<sup>19</sup> For example, according to GRECO, it is regrettable that the most advanced arrangements in the area of detection, seizure and confiscation of proceeds from crime which have been introduced in recent years in the anti-money laundering context, do not fully benefit the fight against corruption and are still confined to organised crime and drug trafficking, despite the fact that the Principality itself has to face far from negligible economic and financial crime. Besides, there is regrettably no express provision for bribery-related expenditure to be non-tax deductible, as the tax authorities do not consider themselves to be involved in the detection and reporting of possible criminal offences including corruption.

<sup>20</sup> See Doc. Greco Eval I/II Rep (2008) 1, paragraph 145.

<sup>21</sup> See Doc. Greco Eval I/II Rep (2008) 1, paragraph 14.

<sup>22</sup> See Doc. Greco Eval I/II Rep (2008) 1, paragraphs 146 and 147.

<sup>23</sup> For a summary of the report, see Doc. MONEYVAL (2007) 28 SUMM.

Most of the banks' activities were concerned with non-resident customers (Italy, Germany, Belgium, northern Europe), who in 2006 accounted for 66% of customer deposits.

120. According to the Monegasque authorities, occurrences of laundering in Monaco nearly always stem from predicate offences committed abroad, evidence for which requires investigations abroad. Proceedings tend to be lengthy because investigations depend on the co-operation of foreign authorities. The main types of predicate offences are difficult to identify. MONEYVAL believes that, like any major financial centre, Monaco has to deal with very sophisticated forms of money laundering that are mainly concerned with the second and third stages of the process: conversion and integration.

121. National and international co-operation and co-ordination mechanisms have been set up between the competent authorities responsible for implementing anti-laundering arrangements, which appear to work properly and ensure that information circulates. However, the effectiveness of some co-operation machinery between supervisory authorities in particular could be improved.

122. In June 2000 the Principality of Monaco alongside Andorra and the Principality of Liechtenstein was kept on the list of unco-operative tax havens drawn up by the Organisation for Economic Co-operation and Development (OECD) as it has not given any undertakings regarding the transparency or the effective exchange of information for taxation purposes. MONEYVAL notes though that Monaco does respond to requests for mutual assistance in matters regarding organised tax fraud and related crime, subject to compliance with the specialty rule.<sup>24</sup>

123. For over a year the Principality de Monaco which, in the light of its banking, fiscal and financial practices has always considered it unjustified to be kept on this list, has approached the European Union and the OECD in order to be struck off. Discussions on this are still in progress and passed a milestone with the signature of a letter of intent from the Minister of State His Excellency Mr Jean-Paul Proust to Mr Angel Gurría, Secretary General of the OECD, conveying Monaco's official undertaking to conclude an anti-fraud agreement with the European Union by the end of 2009, and bilateral agreements of the same kind with non-European Union countries. These treaties presumably concern exchange of information in tax matters, according to OECD criteria, on the basis of vouchers transmitted by the requesting states and would probably result in legislative measures of internal transposition. The government did not forward a copy of this letter of intent to the National Council.

124. Besides, the Principality very lately embarked on a new strategy by signing as a first step on 15 July this year an agreement between Monaco and Belgium authorising the circulation of tax information. Monaco contemplates the signature of ten more conventions on fiscal transparency in order to meet OECD standards and get off the grey list of tax havens.

125. MONEYVAL considers that Monaco has a satisfactory legal framework to combat money laundering and financing of terrorism, although the evaluators regretted the fact that, in general, the legal provisions are not very detailed or otherwise supplemented by detailed secondary legislation and instructions. They recommend ways in which certain aspects of the system could be strengthened.

126. On 23 July 2009 the National Council passed Law No. 136 on the prevention of money laundering, financing of terrorism and corruption. The law was enacted as a matter of urgency under the strategy seeking to change Monaco's image and get off the OECD grey list, and required the holding of three extraordinary sessions. Moreover, the three National Council members of the "Rally and Issues" group decided, for the first time since the present legislature began, not to take their seats in the public sitting where the vote on the law was taken. According to the opposition, the government made the urgency extreme by placing intolerable pressure on the National Council which thus could not enjoy the necessary time and detachment for normal consideration of a text with major implications. It was adopted three months after tabling in the National Council.

127. The authorities describe the draft law as entirely in conformity to the MONEYVAL recommendations. The assessment of the law by MONEYVAL will take place at its plenary meeting in Strasbourg from 21 to 24 September 2009.

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<sup>24</sup> At a meeting in Monaco in late November 2008, the Chair of MONEYVAL, Mr Vasil Kirov, made it clear that they must not confuse the notion of tax haven with the issue of money laundering and financing of terrorism. Not all tax havens comply with the relevant rules, but this is not the case with Monaco. In the Principality, it is possible to establish the origin of funds, identify the real owners and exchange information as part of criminal investigations. Limiting these exchanges in the case of tax transactions is acceptable. What counts for MONEYVAL, and for the Financial Action Task Force (FATF), is that the country should co-operate in criminal, rather than fiscal, investigations. See *l'Observateur de Monaco*, no 73, January 2009, pages 18-19.

## VI. Human rights

128. Concerning the national human rights safeguards, we refer to the report of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, following his visit to Monaco (20-21 October 2008)<sup>25</sup> and reiterate the Commissioner's recommendations inviting the Monegasque authorities to set up an independent institution for the protection of human rights, able to receive complaints from individuals on human rights issues. To ensure full compliance with international standards, the incumbent of this office should be appointed by the National Council, the duties of office defined by a law, if not the Constitution, and its functional, financial and material independence guaranteed.

### *i. Combating discrimination*

129. Our last report considered in some detail the specific issues of Monegasque national identity, the particular situation of established foreign residents ("*enfants du pays*"), nationality laws, naturalisation and national preference regarding social assistance and the right to housing.<sup>26</sup> Since we do not wish to repeat ourselves, we refer readers to the last report for detailed particulars and will confine ourselves here to what has happened since. Readers are also referred to the aforementioned report of the Council of Europe Commissioner for Human Rights.

130. Most significantly, in May 2007 the European Commission against Racism and Intolerance (ECRI), the Council of Europe's independent human rights monitoring body specialising in problems of racism and intolerance, published a report on Monaco.<sup>27</sup>

131. ECRI notes that since joining the Council of Europe, Monaco has taken a number of measures to combat racism and intolerance, including the ratification of a large number of international legal instruments, including the European Convention on Human Rights.

132. Monaco has also made a declaration whereby the country recognises the competence of the Committee for the Elimination of Racial Discrimination to examine complaints alleging violations of the rights set out in the International Convention on the Elimination of All Forms of Racial Discrimination. The Monegasque authorities have also honoured a number of commitments made when the Principality joined the Council of Europe, such as enacting a law on the statement of grounds for administrative decisions. They have furthermore enacted a law on freedom of public expression, which punishes incitement to racial hatred. The Monegasque authorities have set up a commission to assist victims of despoilment in the Principality during the Second World War and have adopted a code of conduct for police officers which includes the principle of non-discrimination.

133. According to ECRI some steps still remain to be taken. Apart from the expected signature and ratification of Protocol No. 12 to the European Convention on Human Rights and its general non-discrimination clause, conferment of Monegasque nationality is still by sole authority of the Sovereign Prince and applicants are not informed of the reasons for a refusal. The Principality still needs to adopt anti-discrimination provisions in civil and administrative law and criminal law provisions which punish racist acts. The racist motivation of a crime is not regarded as an aggravating circumstance when the sentence is determined. Procedural safeguards are needed with regard to persons subject to a turning back or deportation order. Safeguards are also required with regard to the preferential rules applying to Monegasques and certain others in the employment sector. This will serve to protect workers who do not benefit from such rules against any discrimination in the application of this system.<sup>28</sup>

134. The ECRI therefore recommends that Monaco ratify Protocol No. 12 to the European Convention on Human Rights, ensure that the Constitution contains provisions granting equal status to everyone within the Principality's jurisdiction, include anti-discrimination provisions in civil and administrative law, amend criminal legislation to include provisions against racist acts, such as allowing the racist motivation of a crime to be considered as an aggravating circumstance, and ensure that the preference granted to Monegasques and certain others in employment matters is coupled with legal protection against racial discrimination. Finally,

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<sup>25</sup> *Report of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, following his visit to Monaco (20-21 October 2008)* CommDH(2009)10, 11 March 2009.

<sup>26</sup> See Doc. 11299 adopted in June 2007, sections 6 and 11.

<sup>27</sup> *Report on Monaco* adopted on 15 December 2006 and published on 24 May 2007 and appended comments and observations of the Monegasque authorities on the draft report of the European Commission against Racism and Intolerance (ECRI), reference CRI(2007)25.

<sup>28</sup> *op. cit.*

ECRI considers it necessary to set up a specialised body for the protection of human rights, whose tasks would include combating racism and racial discrimination.<sup>29</sup>

135. We encourage the Monegasque authorities to implement the ECRI recommendations and inform us of the relevant measures taken.

ii. *Prevention of torture and inhuman or degrading punishment or treatment*

136. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Monaco from 28 to 31 March 2006, and the Government of the Principality of Monaco authorised publication of the first report in May 2007.<sup>30</sup>

137. The CPT heard no allegations of torture or serious bodily ill-treatment from persons who had been detained by the police, and received no other evidence of such conduct. This positive impression was confirmed by information which the CPT gathered from other sources, in particular judges, lawyers and members of the medical profession.

138. In this connection, let us point out that the case of *Prencipe v. Monaco*,<sup>31</sup> the first judgment of the European Court of Human Rights finding a violation of the Convention by the Principality, did not disclose a violation of Article 3 (torture; inhuman or degrading punishment or treatment). The Court nevertheless found a violation of Article 5§3 (pre-trial detention) and ordered the State authorities to pay the applicant 6 000 euros for redress of non-material damage. The various laws enacted from 2006 to 2008 amending certain provisions of the Code of Criminal Procedure and the Penal Code with regard to conditions of pre-trial detention especially should avert this type of violation in future.<sup>32</sup>

139. It should be recalled that under the Neighbourhood Agreement between France and Monaco of 18 May 1963, persons convicted in Monegasque courts serve their sentences in French prisons. In practice, persons who are finally sentenced to imprisonment are transferred to the Nice short-stay prison, and then to other places of detention in accordance with the French prison system. In principle, Monaco's short-term prison is not intended for serving prison sentences and should only be used for detention on remand or for persons serving the final part of their sentence.

140. The Monegasque authorities have made serious efforts to comply with certain CPT recommendations, particularly the reform of the Penal Code regarding conditions of police custody.<sup>33</sup> In addition, the doors of the short-term prison remain open longer. However, the educational facilities, particularly for young persons, are poor and sporting activities are limited. Finally, the Monegasque authorities carried out work on the visiting rooms in December 2007 to comply with the CPT recommendations. In addition to these improvements, the frequency of visits has been reviewed and these are now authorised for 45 minutes twice a day, five days a week.

141. Access to the telephone is still limited. Everyone who is admitted is entitled to make a call to inform their family. Thereafter, only convicted persons can make a call, once a month. The European Prison Rules recommend that prisoners be allowed to communicate with the outside world as frequently as possible, particularly by telephone. Prisoners awaiting trial must be granted greater access to means of communication with the outside world, except where specifically and individually prohibited by the judicial authorities.<sup>34</sup>

142. In their comments on the preliminary draft report, the Monegasque judicial authorities informed us that investigating judges and members of the prosecution department were being consulted about telephone conversations with the outside world. Far more flexible regulations, particularly for prisoners awaiting trial, are due to be issued.

<sup>29</sup> *op. cit.*

<sup>30</sup> *Report to the Government of the Principality of Monaco relating to the visit to Monaco carried out by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) from 28 to 31 March 2006 (CPT/Inf (2007) 20) and the Government of Monaco's response to the report of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) concerning the visit to Monaco carried out from 28 to 31 March 2006 (CPT/Inf (2007) 21)*, both reports published on 31 May 2007.

<sup>31</sup> Judgment in the case of *Prencipe v. Monaco* of 16 July 2009. Application No. 43376/06.

<sup>32</sup> See section III, on domestic legislation.

<sup>33</sup> See section III, on domestic legislation.

<sup>34</sup> See Recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules, 11 January 2006, § 24.1 and 99.

143. We congratulate the Monegasque authorities on the steps taken and invite them to make further efforts to implement the remaining CPT recommendations.

## VII. Conclusions

144. Monaco will soon have been a member of the Council of Europe for five years. In the monitoring procedure that commenced immediately after its accession, the two co-rapporteurs fully supported the efforts of the Monegasque authorities and encouraged them, where necessary, to honour their obligations and commitments towards the Organisation. Our objective has been, and remains, to ensure that the monitoring procedure can be terminated as rapidly as possible.

145. This report shows that serious work has been accomplished with regard to conventions and legislation. Given that the Principality of Monaco has honoured most of its obligations and commitments and that the remaining obligations and commitments are being fulfilled, we would recommend that the Assembly consider the current monitoring procedure completed. The implementation of other reforms in the matters itemised in our preliminary draft resolution will be closely watched in the context of the post-monitoring dialogue with the Monegasque authorities which the Monitoring Committee will conduct on behalf of the Assembly.

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*Reporting committee:* Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

*Reference to committee:* Resolution 1115 (1997)

*Draft resolution* unanimously adopted by the committee on 9 September 2009

*Members of the committee:* Mr Serhiy **Holovaty** (Chairperson), Mr György **Frun**da (1<sup>st</sup> Vice-Chairperson), Mr Konstantin **Kosachev** (2<sup>nd</sup> Vice-Chairperson), Mr Leonid **Slutsky** (3<sup>rd</sup> Vice-Chairperson), Mr Aydin Abbasov, Mr Pedro **Agramunt Font de Mora**, Mr Miloš **Aligrudić**, Mrs Meritxell Batet Lamaña, Mr Ryszard **Bender**, Mr József Berényi, Mr Luc **van den Brande**, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise Christoffersen, Mr Boriss **Cilevičs**, Mr Georges **Colombier**, Mr Telmo Correia, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette **Durrieu**, Mr Mátyás **Eörsi**, Ms Mirjana Ferić-Vac, Mr Giuseppe Galati, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Andreas **Gross**, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin Hajibayli, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mrs Olha **Herasym'yuk**, Mr Andres **Herkel**, Mr Kastriot Islami, Mr Mladen Ivanić, Mr Michael Aastrup **Jensen**, Mr Miloš Jevtić, Mrs Evguenia Jivkova, Mr Hakkı **Keskin**, Mr Haluk **Koç**, Mrs Katerina Konečná, Mr Jaakko **Laakso**, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran **Lindblad**, Mr René **van der Linden**, Mr Eduard **Lintner**, Mr Pietro Marcenaro, Mr Bernard **Marquet**, Mr Dick Marty, Mr Miloš **Melčák**, Mrs Nursuna Memecan, Mr Jean-Claude **Mignon**, Mr João Bosco **Mota Amaral**, Mrs Yuliya **Novikova**, Mr Theodoros Pangalos, Mrs Elsa Papadimitriou, Mr Alexander **Pochinok**, Mr Ivan **Popescu**, Mrs Maria Postoico, Mrs Marietta **de Pourbaix-Lundin**, Mr Christos **Pourgourides**, Mr John Prescott, Mrs Mailis Reps, Mr Andrea Rigoni, Mr Ilir Rusmali, Mr Armen **Rustamyan**, Mr Indrek Saar, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Samad **Seyidov**, Mr Sergey Sobko, Mr Christoph Strässer, Mrs Chiora **Taktakishvili**, Mr Mihai Tudose, Mrs Özlem **Türköne**, Mr Egidijus **Vareikis**, Mr José Vera Jardim, Mr Piotr Wach, Mr Robert **Walter**, Mr David **Wilshire**, Mrs Renate Wohlwend, Mrs Karin S. Woldseth, Mrs Gisela Wurm, Mr Andrej Zernovski.

N.B.: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the committee:* Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko