



# **ECRI REPORT ON MONACO**

**(fourth monitoring cycle)**

Adopted on 8 December 2010

Published on 8 February 2011



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## FOREWORD

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

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

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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

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

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 23 June 2010 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**



## SUMMARY

**Since the publication of ECRI's first report on Monaco on 24 May 2007, progress has been made in some fields covered by that report.**

A new law was adopted in 2008, which guarantees freedom of association without differentiating between citizens and non-citizens. In addition, legislative reform is planned to address existing shortcomings in the transmission of nationality. Draft laws are being prepared to better combat racist attitudes and signs in the area of sports and to combat racist threats disseminated through Internet. Discussions on a draft law on employment contracts and public service are on-going: they are expected to protect non-Monegasque workers more effectively.

Training has been organised on human rights for members of the judiciary and police officers. Education in Monaco includes this topic, even though it is on an *ad hoc* basis.

The Commission for monitoring personal information (*Commission de contrôle des informations nominatives*), established in 1998, has been functioning since 2009 as an independent administrative authority; it provides guarantees for the collection of ethnic data.

**ECRI welcomes these positive developments in Monaco. However, despite the progress achieved, some issues continue to give rise to concern.**

No progress has been achieved with regard to the ratification of Protocol No. 12 and the Revised European Social Charter. There are no discussions about including a non-discrimination provision in the Constitution.

Legislative reforms in the areas relevant to ECRI's mandate have been regrettably slow: although discussions are on-going with regard to a draft law on employment contracts and public service, no guarantees against racial discrimination have been introduced in the area of civil and administrative law. In addition, the restrictions on the eligibility of workers who are neither Monegasque nor French to sit on the bureaux of trade union federations as stipulated in Ordinance-Law N°399 do not seem to be appropriate. No follow-up has been given with regard to the recommended introduction of a specific provision in criminal law that would make the racist motivations of an ordinary offence an aggravating circumstance. There is still no obligation enshrined in the law to provide reasons for decisions relating to nationality and settlement on the territory of Monaco, hence leaving the individuals concerned with no adequate protection in their dealings with the administration, notably in the area of racial discrimination. Banishment, even though it is never applied in practice, is still enshrined in the legislation.

The *Médiateur* still operates as part of the state administration: this institution does not enjoy structural and material independence; moreover, it lacks some important powers such as the possibility to have recourse to the courts or monitor the impact of relevant legislation.

Human rights training of the judiciary and law enforcement officials does not include a module on combating racism and racial discrimination. No such training has been provided to the employee and employer members of the Labour Courts.

In the field of education, training on human rights has been delivered to selected teaching staff only occasionally.

The General Inspectorate of Police works under the instructions of the Directorate General of Public Safety and therefore lacks the necessary independence to investigate complaints of human rights violations by the police, including racial

discrimination. A number of civil society actors have expressed the view that identity checks affect visible minorities in a disproportionate manner.

The *Commission de contrôle des informations nominatives* is still confronted in practice with problems regarding its independence.

Overall, ECRI's impression is that more follow-up should have been given to its recommendations in the first report.

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

The Monegasque authorities should consolidate the legislative framework in the field of protection against discrimination: they should include the principle of non-discrimination in the Constitution and remove the requirement for naturalised Monegasques to have been citizens for five years before being eligible for election. Legislation against racial discrimination should be enacted in the field of civil and administrative law. In particular, the authorities should introduce the necessary legal safeguards in the bills on the civil service and employment contracts to protect non-Monegasque workers from any discrimination based on one of the grounds covered by ECRI's mandate<sup>\*</sup>.

The authorities should ensure that their planned reform of nationality law includes the necessary guarantees to avoid statelessness and that decisions relating to nationality include a statement of grounds and are open to administrative and judicial review. The same should apply to decisions relating to settlement in Monaco. Specific provision should be made in criminal law for racist motivations for ordinary offences to constitute an aggravating circumstance, taking account of the recommendations contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism.

Monaco should sign and ratify Protocol No. 12, and ratify the Revised European Social Charter as soon as possible. It should also sign and ratify the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature, the Convention on Nationality, the International Convention on the Protection of All Migrant Workers and Members of their Families. The authorities should also draw on the principles of the Convention on Participation of Foreigners in Public Life at Local level in establishing an institutional platform between themselves and the foreign population and complete the process of ratifying the UNESCO Convention against Discrimination in Education.

The independence of the institution of *Médiateur* should be enshrined in legislation: Monaco should prepare a draft law to this end in the short term, which should also assign him or her as many as possible of the responsibilities provided for in ECRI Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and racial discrimination<sup>\*</sup>.

The authorities should ensure that the five years' residence requirement for certain social and medical assistance measures as well as housing benefits are applied in a flexible manner; to this end, they should ensure that an examination of individual circumstances is possible, including by foreseeing this in the law.

Notwithstanding the complexity of the housing situation in Monaco, solutions for non-Monegasques who have been working in Monaco for many years should be continuously sought as many of them cannot afford living in Monaco.

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<sup>\*</sup> The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.



Efforts should be made to ensure that Monegasque workers are informed of their rights and existing mechanisms for challenging failure by their employers to observe those rights and the Labour Inspectorate should be provided with all the resources needed to perform its tasks and with the possibility to monitor the working conditions of domestic employees.

Efforts to provide human rights training for judicial staff and police officers should be expanded, notably by ensuring that in-service training includes issues concerning racial discrimination and racism. In addition, employee and employer members of the Labour Court should be included in this training\*.

Specific training for teaching staff on human rights, diversity and the fight against discrimination should be introduced and human rights education should feature more prominently in school curricula. Consideration should be given to introducing a course on the history of religions in a secular environment since interest for such a course has been expressed by civil society actors.

The dialogue with all religious communities should be pursued and attention should be paid to ensure that they are involved in official events.

There is a need for collecting data of the situation of all persons living and working in Monaco, without distinction and with full respect of the principles of anonymity, informed consent and free self-identification. In addition, the operational and financial independence of the *Commission de contrôle des informations nominatives* should be respected in practice.

A fully independent body with powers to investigate complaints of human rights violations by law enforcement officials should be established and the perceived ethnic bias in carrying out identity checks should be investigated to detect any racial profiling practices among the police.

The setting-up of a self-regulatory mechanism to deal with complaints against the media should be encouraged by the authorities.

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\* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.



## FINDINGS AND RECOMMENDATIONS

1. ECRI wishes to begin by noting that mention is made in the following paragraphs of the “specific features” of Monaco. These refer to a situation whereby Monegasque citizens are not a majority in their own country<sup>1</sup>. In order to preserve the position of these citizens, the authorities have introduced preferential treatment for Monegasques<sup>2</sup> in a number of areas, notably employment and housing.

### I. Existence and implementation of legal provisions

#### International legal instruments

2. In its first report, ECRI recommended that Monaco ratify, as soon as possible, Protocol No. 12 to the European Convention on Human Rights and the Revised European Social Charter.
3. Protocol No. 12 has not yet been signed and ratified, and the Revised European Social Charter has still not been ratified. These are two Council of Europe treaties which were expected to be signed and then ratified within certain time-limits, in accordance with the commitments undertaken by Monaco on joining the Council of Europe in 2004<sup>3</sup>.
4. ECRI is aware of the fact that ratifying these treaties raises a number of sensitive issues for Monaco, concerning the adjustments that might need to be made to the existing system of preferential treatment for Monegasque citizens, especially in the fields of employment and housing (see relevant sections below, paragraphs 58 et seq.).
5. The authorities have emphasised to ECRI that any examination of these issues requires a cautious and gradual approach in order to assess all the implications of ratifying these treaties for Monegasque law. ECRI notes in this regard that the *Conseil d'Etat* issued an opinion to the authorities on the ratification of the Revised Social Charter in February 2009 and that these last have assured ECRI of their determination to complete this examination in order to honour their commitments to the Council of Europe.
6. As will be explained in greater detail in part III of its report, ECRI wishes to draw the attention of the Monegasque authorities to the fact that ratification of these two treaties should enable the Monegasque authorities to steer their legislative reforms in a number of key areas (in particular employment and housing) in order to combat racial discrimination, as defined in General Policy Recommendation No. 7.<sup>4</sup> It is essential, therefore, that this process be conducted with care but also swiftly. ECRI likewise considers it important that

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<sup>1</sup> According to the last population census in 2008, of the 35,965 inhabitants living in Monaco, 28.2% are French, 21.5% Monegasque, 18.6% Italian, 7.5% British, 2.8% Belgian, 2.5% Swiss, 2.5 % German, 1.5% Portuguese, 1.3% Dutch, 1% American and 12% nationals of other countries. In total, more than 120 nationalities are represented in Monaco.

<sup>2</sup> This preferential treatment also extends to other categories, such as “children of the country”, including persons who, although they do not have Monegasque nationality, have been living in Monaco for several generations and so have close ties with the country.

<sup>3</sup> See Opinion No. 250 of the Parliamentary Assembly of the Council of Europe on Monaco's application for membership of the Council of Europe.

<sup>4</sup> According to General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, racism means the belief that a ground such as “race”, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. In this recommendation, racial discrimination is defined as “any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.”

the social partners be consulted about these matters, something which, according to the information available to ECRI, does not appear to have been the case so far.

7. ECRI urges the Monegasque authorities to sign and ratify Protocol No. 12, to ratify the Revised European Social Charter and to ensure that the reforms rendered necessary by the ratification of these two treaties are brought to a swift and successful conclusion.
8. It also recommends that the authorities consult the social partners during the ratification process.
9. In its first report, ECRI further recommended that Monaco ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems and the European Convention on Nationality. ECRI also called on Monaco to ratify the Convention on the Participation of Foreigners in Public Life at Local Level, the Framework Convention for the Protection of National Minorities and the Charter for Regional or Minority Languages. None of the treaties mentioned above has been ratified or signed.
10. The authorities have informed ECRI that a working group has been set up to prepare the process of ratification of the Convention on Cybercrime, which may be regarded as a first step.
11. The authorities have given no indication that they have taken steps to consider the Convention on Nationality (see also the comments below on Monegasque nationality law, paragraphs 29 et seq.).
12. ECRI notes in particular that the authorities are not intending to sign the Charter for Regional or Minority Languages insofar as no request has been made to apply this convention to the Monegasque language. ECRI notes that in practice, Monegasque is taught in primary school and can be chosen as an optional subject in secondary school. It considers that where appropriate, the principles set out in the Charter for Regional or Minority Languages (Part II of this treaty) could help the Monegasque authorities to take steps to protect and promote the Monegasque language.
13. With regard to the Framework Convention for the Protection of National Minorities, the authorities have stated that this treaty is not relevant for Monaco. ECRI understands that ratifying this treaty could legitimately raise the question of how the term “persons belonging to a national minority” is to be interpreted, in the light of the specific features of Monaco. Such ratification would be more in the nature of an act of solidarity given the aims of this convention.
14. With regard to the Convention on the Participation of Foreigners in Public Life at Local Level, ECRI refers to its comments on the participation of foreigners in public life as set out in paragraphs 104 et seq. It feels that the principles enshrined in this convention could usefully strengthen relations between the authorities and the foreign population in Monaco.

15. ECRI again recommends that the authorities sign and ratify the Convention on Cybercrime and its Additional Protocol and to this end, asks that ratification of this Additional Protocol also be considered by the working group responsible for preparing the ratification of the Convention on Cybercrime.
16. ECRI reiterates its recommendation that the authorities sign and ratify the Convention on Nationality.
17. ECRI recommends that the authorities draw on the principles of the Convention on the Participation of Foreigners in Public Life at Local Level in order to introduce institutional provisions ensuring a link between themselves and the foreign population (see recommendation in paragraph 106).
18. ECRI also recommended that the Monegasque authorities ratify the UNESCO Convention against Discrimination in Education, and sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. ECRI is pleased to note that the authorities are in the process of examining the above-mentioned UNESCO Convention with a view to ratifying it and that this examination is expected to be accompanied by an information campaign to raise awareness of the convention. No measures have been taken in respect of the International Convention on the Protection of the Rights of All Migrant Workers. ECRI is aware that ratifying this treaty, as well as others, raises a number of sensitive issues for Monaco.
19. ECRI encourages the Monegasque authorities to complete the process of ratifying the UNESCO Convention against Discrimination in Education.
20. ECRI reiterates its recommendation that Monaco sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

### **Constitutional provisions**

21. In its first report, ECRI recommended that the Monegasque authorities include in the Constitution a provision establishing the principle of equal treatment and non-discrimination on grounds such as “race”, colour, language, religion, nationality or ethnic origin. It also recommended that the right to peaceful assembly, currently reserved for Monegasques alone under Article 29 of the Constitution, be extended to non-Monegasques<sup>5</sup>.
22. No amendments have been made to the Constitution in response to the above-mentioned recommendations. ECRI understands the authorities’ reluctance to introduce a general provision on non-discrimination, in particular on the ground of nationality, as it could be seen as posing a threat to the preferential system put in place for citizens, having regard to the specific features of Monaco. ECRI reiterates that differences in treatment are not discriminatory if they have an objective and reasonable justification. It follows from this that the right not to be discriminated against, including on the ground of one’s nationality, should be enshrined in the Constitution, save where citizens have priority access to

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<sup>5</sup> There is already a provision in the Constitution, Article 17, providing for equal treatment but it applies only to nationals (“All Monegasques shall be equal before the law. None shall be granted any preference over others”). The same is true for certain provisions guaranteeing civil and political and economic and social rights, which are granted to nationals on a priority basis such as access to public employment (Article 25) or are reserved for nationals, such as freedom of assembly (Article 29, mentioned above) and social assistance (Article 26). In addition, Article 32 states that “foreign nationals in the Principality shall enjoy all the public and private rights which are not formally reserved for nationals”.

certain rights which are prescribed by law and are necessary in the light of the legitimate aim of preserving the specific features of Monaco.

23. ECRI welcomes the progress made, at sub-constitutional level, through the enactment of Law No. 1.355 of 23 December 2008 on associations and federations of associations, which guarantees freedom of association without differentiating between citizens and non-citizens. In ECRI's view, this absence of differentiation should also be incorporated in the Constitution with regard to the right of assembly (Article 29 of the Constitution, mentioned above). ECRI further notes that in practice the right of peaceful assembly is exercised without impediment by non-Monegasques and that it would therefore simply be a case of recognising a *de facto* situation.
24. In its first report, ECRI encouraged the authorities in their intention to review Articles 54 and 79 of the Constitution, which require a naturalised Monegasque to have been a citizen for five years before being eligible to stand in local and national elections.
25. ECRI notes that there has been no progress on this issue: it appears that the said review is no longer on the authorities' agenda. ECRI reminds Monaco that it should be guided by the principle of non-discrimination between its nationals, whether they are Monegasques by birth or acquired Monegasque nationality by naturalisation<sup>6</sup>. It considers that in this particular case, there is no objective and reasonable justification for requiring naturalised Monegasques to have been citizens for five years before being eligible for elections. It further considers that this distinction between native Monegasques and naturalised Monegasques introduces a form of indirect discrimination when it comes to exercising the rights associated with citizenship. In the light of the above, it feels that this review which, according to the authorities, does not appear to pose a problem, should be completed.
26. ECRI reiterates its recommendation that the authorities include a provision in the Constitution establishing the principle of the prohibition of discrimination, including on the ground of nationality, and accommodate, as an exception to this principle, the cases of preferential treatment for Monegasques envisaged by law.
27. ECRI strongly recommends that the authorities abolish the requirement for naturalised Monegasques to have been citizens for five years before being eligible for elections (Articles 54 and 79 of the Constitution) in order to do away with any inappropriate differentiation between its citizens.

### **Nationality law**

28. In its first report, ECRI called on the Monegasque authorities to ensure that the legislation included a requirement that reasons be given for decisions concerning applications for naturalisation.
29. The situation in this respect remains unchanged: the law on the statement of grounds for administrative decisions (Law No. 1.312 of 29 June 2006) does not cover the right of naturalisation and restoration of citizenship exercised by the Prince under Article 15 of the Constitution. The Monegasque authorities have reiterated their view that the right of naturalisation is a royal prerogative and that decisions taken by the Prince in such matters cannot be considered administrative decisions.

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<sup>6</sup> See in particular Article 5, paragraph 2, of the European Convention on Nationality of 6 November 1997.

30. As explained in ECRI's first report, no appeals against decisions refusing applications for naturalisation have been lodged with the Supreme Court although it is not out of the question that the latter might decide it is competent in the matter. It appears from ECRI's discussions with its contacts in Monaco, however, that the possibility of an appeal in this area remains largely theoretical.
31. ECRI reiterates that while it is for each State to determine through its legislation who are its nationals, this legislation must nevertheless respect the principles of law generally recognised with regard to nationality. ECRI also reiterates that these principles include the statement of grounds for decisions relating to the acquisition, retention, loss or recovery of nationality, and the fact that the above-mentioned decisions must be open to an administrative or judicial review<sup>7</sup>. It further considers it important that reasons be given for these decisions in order to avoid cases of discrimination based on ethnic origin. ECRI is aware that in Monaco, this issue impinges on the royal prerogatives provided for in Article 15 of the Constitution but feels that Monaco should take the necessary steps to bring its legislation into line with the principles of law generally recognised with regard to nationality.
32. ECRI notes that some legislative shortcomings relating to transmission of nationality have been observed, and that these can lead to cases of statelessness<sup>8</sup>. Although there are not actually many cases of this kind, ECRI notes that in practice, they can lead to discrimination based on lack of citizenship. The Monegasque authorities have informed ECRI that they intend to remedy this gap in the law as part of the nationality reform currently being considered.
33. ECRI understands that dual citizenship is in principle not allowed in Monaco unless renunciation or loss of one's nationality is not possible or cannot reasonably be required. ECRI knows however that discussions are under way to require persons applying for Monegasque citizenship to actually renounce (rather than undertake to renounce, as is the case at present) their former nationality. ECRI wishes to draw the authorities' attention to the fact that some Monegasque citizens, in particular those of Moroccan origin, will be adversely affected by such a proposed tighter requirement as it is not possible for them to renounce their nationality.
34. ECRI requests the Monegasque authorities to take the necessary steps as part of their revision of the nationality law to ensure that decisions relating to nationality include a statement of grounds and are open to an administrative or judicial review, in keeping with the principles of law generally recognised with regard to nationality.
35. ECRI encourages the Monegasque authorities to ensure that the planned revision of the nationality law incorporates the necessary provisions in order to avoid cases of statelessness.
36. ECRI invites the Monegasque authorities to continue to allow for dual citizenship in cases where renunciation of one's nationality is not possible or cannot be reasonably required, notwithstanding planned legislative changes to require actual renunciation of one's former nationality.

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<sup>7</sup> See Articles 11 and 12 of the European Convention on Nationality mentioned above.

<sup>8</sup> See the report of the Commissioner for Human Rights following his visit to Monaco on 20-21 October 2008, CommDH (2009)10, paragraphs 53 and 54 and the Parliamentary Assembly report on the honouring of obligations and commitments by Monaco, 8 June 2007, document 11299, paragraphs 53 to 59.

## Civil and administrative law provisions

37. In its first report, ECRI recommended that the Monegasque authorities ensure that legislation against racial discrimination in the field of civil and administrative law is enacted, taking account of the principles set out in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination<sup>9</sup>.
38. ECRI notes that there have been no legislative changes in the field of civil and administrative law. It refers to its comments on issues concerning discrimination in employment (see paragraphs 60 et seq.).
39. ECRI strongly recommends that the Monegasque authorities enact comprehensive legislation against racial discrimination, drawing on its General Policy Recommendation No. 7.

## Criminal law provisions

40. In its first report, ECRI recommended that the Monegasque authorities amend their criminal legislation to allow the racist motivation<sup>10</sup> of a criminal offence to be considered as an aggravating circumstance.
41. No changes have been made to the criminal legislation in this regard: as indicated in ECRI's first report, racist acts are punishable under Law No. 1.299 of 15 July 2005 on freedom of expression, but there is still no provision for the racist motivation of an ordinary offence to be considered as an aggravating circumstance. The Monegasque authorities, however, have informed ECRI that amendments to the Criminal Code and the Code of Criminal Procedure are still under consideration and that the ECRI recommendation referred to above will be examined in this context.
42. ECRI nevertheless notes that, generally speaking, the authorities do not appear to be entirely convinced of the need for a provision that would allow the racist motivation to be considered as an aggravating circumstance. In their view, the existing legal provisions include a range of sufficiently severe penalties. They also make the point that it is for the judge to assess the circumstances of the case in order to decide what penalties should be imposed, and once again draw ECRI's attention to the fact that cases involving racist attacks are rare in Monaco. ECRI fully appreciates these arguments. It considers it important, however, that there be a binding requirement to investigate possible racist motives for an offence in order to ensure that such motives are properly addressed, at a preliminary and crucial stage in the investigation. It further considers that such a provision sends a strong signal to the population at large about the criminal consequences of racially motivated offences. Lastly, it stresses that the fact that there have been hardly any reports of racist acts in Monaco is no reason to assume that there is no need to adopt a legal framework that gives the judicial authorities and the police all the legal means required to effectively punish any such offences that might occur in the future.
43. ECRI notes with approval that legislative efforts are under way to strengthen the criminal law provisions concerning certain offences: the authorities, for example, are planning to enact a law on sport that is expected to include a specific provision outlawing racist or xenophobic attitudes and the display of racist symbols or signs reflecting a racist ideology. In addition, under the terms

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<sup>9</sup> See footnote 4.

<sup>10</sup> According to General Policy Recommendation No. 7, grounds related to "race" are not the only ones that must be considered; grounds related to colour, language, religion, nationality or national or ethnic origin are relevant too.



of a bill on offences relating to computer systems, a provision is to be inserted in the criminal code to punish threats made via a computer system against persons or groups of persons on the grounds of their national, ethnic or religious background. ECRI draws the attention of the Monegasque authorities to the two general policy recommendations which ECRI has adopted on these issues, namely General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport and General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet.

44. ECRI strongly recommends that the Monegasque authorities make specific provision in criminal law for racist motivations for ordinary offences to constitute an aggravating circumstance, taking account of the recommendations contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.
45. ECRI encourages the Monegasque authorities to pass the bills on sport and offences relating to computer systems, drawing on the principles set out in its General Policy Recommendations No. 12 on combating racism and racial discrimination in the field of sport and No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet.

#### **Anti-discrimination bodies**

46. In its first report, ECRI recommended the setting-up of an independent body specialising in the protection of human rights and/or in combating racism and racial discrimination according to the principles set out in its General Policy Recommendations No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and No. 7 on national legislation to combat racism and racial discrimination.
47. The situation in this respect remains unchanged: Monaco has an ombudsman's office within the state administration. This "institutional *Médiateur*", appointed by Sovereign Order No. 158 of 22 August 2005, is tasked with proposing and negotiating solutions in disputes between the authorities and citizens, in application of the relevant laws. The *Médiateur* is under the direct authority of the Minister of State, who can take discretionary decisions to resolve the problems identified. The *Médiateur* deals with 180 to 200 cases a year, covering all aspects of administrative life.
48. ECRI does not rule out the possibility that a *Médiateur* may act as a specialised body, in line with its General Policy Recommendation No. 2, provided that certain conditions are met, including those relating to independence and the responsibilities assigned to him or her. ECRI notes, however, that these are issues on which discussions have begun but where there are still some problems. ECRI is aware that discussions have taken place in the National Council on the various ombudsman institutions found in Council of Europe member states<sup>11</sup>. It notes, however, that overall, the government has been reluctant to move from the current status of the *Médiateur* towards an institution that meets the requirements set out in ECRI's General Policy Recommendations Nos. 2 and 7, mentioned above.
49. In its dialogue with ECRI, the government gave two main reasons for this reluctance: the first reason is that with an "institutional *Médiateur*", it is possible to find solutions internally and avoid creating another body, which is considered unnecessary in the Monegasque context. The second reason is a legal one

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<sup>11</sup> Meeting to present ombudsman institutions organised by the National Council in co-operation with the Council of Europe on 23 April 2010 in Monaco.

and has to do with the fact that independent administrative authorities are not foreseen in Monegasque law, which can only change in this respect if a convention ratified by Monaco requires it to do so. This was recently the case with the ratification of the Council of Europe Convention for the Protection of Individuals with regard to the Processing of Personal Data, which led to the establishment of the Commission for monitoring personal information (*Commission de contrôle des informations nominatives* (CCIN)) under Law No. 1.353 of 4 December 2008 amending Law No. 1.165 governing the processing of nominal information (see Section VI, paragraph 110 et seq.).

50. ECRI welcomes the work accomplished by the Monegasque *Médiateur*. However like the Council of Europe's Human Rights Commissioner<sup>12</sup>, it believes that independence from the executive is essential for the institution of ombudsman. ECRI reiterates that although the principle of independence of such an institution has not been enshrined in an international convention, it exists in a number of international instruments, including the above-mentioned ECRI Recommendation No. 2 on specialised bodies, which form principles generally accepted in international law<sup>13</sup>. These instruments also provide for a number of powers and responsibilities by which states should be guided when setting up an institution of this type. Among these, ECRI draws the authorities' attention to the importance of providing for the possibility for the ombudsman to have recourse to the courts and to monitor the impact of relevant legislation, for these powers can be used to raise public awareness of issues concerning racism and racial discrimination and to protect the rights of individuals belonging to minority groups.
51. ECRI recommends that the Monegasque authorities enshrine the independence of the institution of *Médiateur* in legislation and prepare a draft law to this end in the short term. This draft law should also assign him or her as many as possible of the responsibilities provided for in ECRI Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

### **Training for members of the judiciary and law enforcement officials**

52. In its first report, ECRI recommended that the Monegasque authorities ensure that members of the judiciary and police officers receive training in the provisions of Law No. 1.299 on freedom of expression. More generally, ECRI recommended that Monaco ensure that members of the judiciary and police officers receive initial and in-service training in human rights, including on issues relating to racism and racial discrimination.
53. As pointed out in ECRI's first report, the judiciary in Monaco comprises French judges who constitute the majority as well as Monegasque judges<sup>14</sup>. They are all trained at the French Ecole Nationale de la Magistrature (ENM). French judges who request it have access to in-service training organised by the ENM. More specific training on issues relating to the European Convention on Human Rights is provided for judges and lawyers through conferences organised by the Human Rights Section of the Department of External Relations or by Monaco's

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<sup>12</sup> See the report of the Commissioner for Human Rights following his visit to Monaco on 20-21 October 2008, CommDH (2009)10, paragraphs 15 and 16.

<sup>13</sup> See for example the Principles relating to the status of national institutions or "Paris Principles" as set out in Resolution A/RES/48/134 of the General Assembly of the United Nations of 20 December 1993 or Recommendation 1615 (2003) on the Institution of Ombudsman of the Parliamentary Assembly of the Council of Europe.

<sup>14</sup> Of the 40 judges in the Supreme Court, the Court of Revision, the Court of Appeal, the Court of First Instance and the prosecution department, only 16 are Monegasque and all of these sit in the Court of First Instance.

Legal Services Directorate. Similar conferences may also be held for police officers<sup>15</sup>. Although none of the above-mentioned conferences have yet focused specifically on racial discrimination and racism, ECRI is pleased to note that the human rights section is ready to organise in the near future a conference on these issues.

54. ECRI appreciates the efforts made by the authorities to give members of the judiciary and police officers the opportunity to update their knowledge in the human rights field, however it notes that so far this training has been provided on an *ad hoc* basis. ECRI was moreover informed that newly recruited police officers receive training on ethical rules and practice to be respected in case of complaints related to discrimination. It hopes that in future the broader topic of the role of the law enforcement agencies in the fight against racial discrimination and racism will become a specific part of police training. ECRI also welcomes the fact that under Article 66 of Law No. 1.364 of 16 November 2009 establishing the status of the judiciary, judges who are appointed to a permanent post in the judiciary are now “entitled to training throughout their career”. ECRI hopes that the practical arrangements for this training can be swiftly determined and that racial discrimination and racism will form an integral part of the programme.
55. ECRI’s attention is drawn to the situation as regards human rights training among members of the Labour Court: except for the justices of the peace presiding over the judgment phase of this court, employee and employer members sitting on the conciliation and judgment boards<sup>16</sup> do not receive any training in human rights, including on issues concerning racism and racial discrimination. ECRI believes that this is a shortcoming that needs to be remedied, not least because of the issues relating to discrimination on the ground of nationality that are liable to arise in the field of employment.
56. ECRI recommends that the authorities continue their efforts as regards human rights training for judicial staff and police officers and to this end, asks them to ensure that their in-service training includes a specific module concerning racial discrimination and racism. In addition, the authorities should make sure that employee and employer members of the Labour Court are included in this training.

## **II. Discrimination in various fields**

57. As stated in paragraph 1 of this report, Monaco is in the unusual position of having a population in which its own citizens are not in the majority. In order to maintain conditions that allow its own citizens to remain in the country, the Monegasque authorities have introduced a system of priority for Monegasques, as enshrined in the Constitution (see Articles 25 and 26).
58. Today, in line with existing legislation and practice, not only Monegasques benefit from these measures but also a number of non-Monegasques: these include “children of the country” who live in Monaco and have close ties with the

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<sup>15</sup> It should also be noted that all new police recruits undergo a 40-hour module on police ethics.

<sup>16</sup> The Labour Court which, administratively speaking, comes under the Department for Social Affairs and Health, is made up of 20 employee and employer members (Sovereign Order No. 3.851 of 14 August 1967). The conciliation phase is conducted by a board consisting of one employee and one employer and is followed by a judgment phase if no conciliation is reached. The judgment phase is conducted by a board chaired by a justice of the peace and assisted by four assessors chosen in equal numbers from among the employers and employees.

country<sup>17</sup> as well as some other categories of foreigners whose treatment depends on whether they live close to Monaco or not.

## Employment

59. In its first report, ECRI recommended that the Monegasque authorities ensure that the system of priority established in relation to recruitment and dismissal does not in practice result in discrimination and asked the authorities to introduce legal safeguards to that effect, for example by introducing provisions relating to promotion and access to training. It recommended that the Monegasque authorities ensure that the new law on the civil service being drafted at the time provides for adequate safeguards against discrimination on one of the grounds covered by ECRI.
60. The situation described in ECRI's first report remains unchanged, in the absence of any legislative developments.
61. ECRI notes that this system gives priority in employment to nationals, to persons resident on Monegasque territory and to persons living in neighbouring areas<sup>18</sup>. It also notes that this order of priority applies in reverse in the case of dismissal and abolition of posts.
62. ECRI understands that, in view of the special nature of Monaco, measures may be taken to preserve the employment of Monegasque citizens in Monaco. It further notes that in practice, of the 50,000 or so jobs (public and private sectors combined) that exist in Monaco, more than 48,000 are held by non-Monegasques<sup>19</sup>.
63. ECRI's attention has nevertheless been drawn to cases where employers have made disproportionate use of this system by terminating the contract of a non-Monegasque in order to recruit a Monegasque citizen in their place. The Monegasque authorities have pointed out that such cases are relatively rare. They have indicated, however, that they are working to improve the protection of non-Monegasque workers from such abuses. The bill on the civil service, which is still under preparation, is expected to include provisions designed to grant non-Monegasques status in the civil service, with, *inter alia*, a guarantee of employment after a certain number of years of service. In addition, a bill on employment contracts is being discussed and is expected to include a requirement for the employer to give reasons for dismissal.
64. ECRI is aware that the authorities intend to include in the bill on the civil service a provision prohibiting discrimination on a range of grounds, except, however, nationality. As already explained in paragraph 23 and while recognising the reasons behind this decision, ECRI feels that nationality should not be excluded

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<sup>17</sup> As observed by the Parliamentary Assembly in its report on the honouring of obligations and commitments by Monaco of 8 June 2007 (document 11299), a legal definition of the "enfants du pays" category is given only in the context of the law governing access to housing (Law No. 1.291 of 21 December 2004). Under the terms of this law, the category covers: 1) persons born of a Monegasque parent; spouses, widows or widowers of Monegasques; 2) persons divorced from Monegasques and having children born of that union; persons born in Monaco (or born outside the Principality by chance, for medical reasons or for reasons of force majeure) who have been living in Monaco since birth, provided that one of the parents was likewise living in Monaco at the time of their birth and 3) persons who have lived continuously in Monaco for at least 40 years.

<sup>18</sup> See Law No. 629 of 17 July 1957 governing conditions of recruitment and dismissal amended by Law No. 1.091 of 26 December 1985.

<sup>19</sup> As at 31 December 2008, this figure could be broken down as follows: 4,052 public servants, of which 1,043 were Monegasques, and 44,736 private-sector employees, of which 984 were Monegasques. Source: Monaco en chiffres, édition 2009, Division des Statistiques et des Etudes Economiques, pages 179 and 182.

*a priori* from the list of grounds included in a general provision on non-discrimination. In its view, this principle should apply subject to the preferential treatment provided for by law. It also hopes that the authorities will ensure that the principle of non-discrimination applies in matters relating to training and promotion.

65. ECRI recommends that the Monegasque authorities bridge the existing legislative gaps in the field of protection against discrimination and to this end, introduce the necessary legal safeguards in the bills on the civil service and employment contracts to protect non-Monegasque workers from any discrimination based on one of the grounds covered by ECRI's mandate.
66. ECRI notes that apparently very few cases involving allegations of discrimination in employment or dismissal on the ground of nationality have been referred to the Monegasque courts<sup>20</sup>. It further notes that the Labour Inspectorate has received no complaints concerning alleged racial discrimination for several years now. ECRI wonders why this is when it itself has received reports of cases in which abuses have been committed. It considers that while the lack of legal safeguards with regard to non-discrimination may be a contributory factor, it would appear that the workers' lack of information about their rights and existing complaints mechanisms might also account for this situation.
67. ECRI recommends that the Monegasque authorities ensure that non-Monegasque workers are adequately informed about their rights and existing mechanisms for challenging any failure by their employer to observe those rights.
68. ECRI notes that Ordinance-Law No. 399 of 6 October 1944 authorising the establishment of trade unions states that the federal bureaux of trade union federations are to consist of a general secretary and a general treasurer of Monegasque nationality and a variable number of members who may be non-Monegasques, provided that the majority of members are Monegasque or French nationals (Article 12 of the Ordinance-Law). ECRI considers that the appropriateness of such a restriction concerning other nationalities' eligibility for these offices is questionable.
69. ECRI recommends that the Monegasque authorities consider the appropriateness of the restrictions on the eligibility of workers who are neither Monegasque nor French for seats on the bureaux of trade union federations, as stipulated in Ordinance-Law No. 399. It asks the authorities to take the necessary steps to amend these provisions in order to reflect the diversity of the working population in Monaco.
70. In its first report, ECRI recommended that the Monegasque authorities continue to combat the use of illegal workers and pay special attention to the situation of domestic employees.
71. The authorities recognise that illegal employment, especially in the hotel and catering industry and the construction industry, is a problem but that it is difficult to gauge its scale.<sup>21</sup> Some of the people to whom ECRI spoke have nevertheless pointed out that even though staffing levels in the Labour

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<sup>20</sup>ECRI has learned of a judgment delivered on 8 February 2010 by the Court of Appeal of the Principality of Monaco concerning failure to respect the order in which workers are to be dismissed.

<sup>21</sup> For example, some trade unions estimate that 25% of staff in the hotel sector are not declared. This figure has not been verified, however.

inspectorate have increased in recent years<sup>22</sup>, this body still does not have all the resources it needs to maintain an adequate presence in firms and to perform its monitoring function as provided for in Law No. 537 of 12 May 1951<sup>23</sup>. It further appears that under its remit, the Labour Inspectorate does not cover domestic employees<sup>24</sup> as the inspections which it carries out concern public places of employment<sup>25</sup> and not the home. ECRI notes that in practice, domestic staff are predominantly persons of foreign origin, in particular Philippine origin. ECRI draws the authorities' attention to the fact that, according to the case-law of the European Social Charter, "No workplace, even if inhabited, can be "exempted" from the application of health and safety rules. Workers employed on residential premises, i.e. domestic staff and home workers, must therefore be covered"<sup>26</sup>. In the light of the above, ECRI considers that the Labour Inspectorate should be empowered to inspect all workplaces, including residential premises.

72. ECRI recommends that the Monegasque authorities ensure that the Labour Inspectorate is provided with all the necessary resources, including in terms of staff and powers, to perform its task of monitoring working conditions and the occupational protection of workers, including domestic employees.

## Housing

73. In its first report, ECRI recommended that the Monegasque authorities ensure that the housing priority system favouring Monegasque citizens and other categories of persons does not in practice result in discrimination against non-Monegasque workers<sup>27</sup>.

74. As explained in its first report, the housing sector is regulated in such a way as to enable Monegasques and persons who have close ties with the country ("children of the country") to continue living in the small territory of Monaco, despite the high rents charged on the free housing market. Monegasques thus have exclusive access to the state-property sector, where the state owns the housing and rents are reasonable. In addition, a law on "residence-capitalisation" contracts was recently enacted (Law No. 1.357 of 19 February 2009) to make it easier for Monegasques to acquire tenancy rights in this sector. According to the information provided by the authorities, 800 people have already signed contracts of this kind since September 2009.

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<sup>22</sup> According to information received from the Labour Inspectorate, staffing levels have increased from 2 inspectors around ten years ago to 4 inspectors today.

<sup>23</sup> Article 7 of the said law states that: "The Labour Inspectorate shall inspect: 1) At least once every three months, all industrial establishments employing more than five persons, commercial establishments employing more than ten persons and, irrespective of the number of persons employed, establishments using installations or having recourse to work processes that are unhealthy and/or dangerous, 2) At least once every six months, all other establishments".

<sup>24</sup> According to information provided by the Monegasque authorities, there were 1,887 employers of domestic staff in Monaco at 1 January 2009.

<sup>25</sup> Article 2, paragraph 1, of the said law states that (italics added): "Labour inspectors may: a) Enter, during the day, freely and without advance warning, any premises where an industrial, commercial or craft activity is carried on and in which persons enjoying legal protection are working; b) Enter, at night, without advance warning, any industrial or commercial premises in which night work is authorised and where persons enjoying legal protection are working, and also industrial and commercial premises where night work is not authorised if, following an investigation and report by the labour inspectorate, an inspection is ordered by the Minister of State."

<sup>26</sup> See Conclusions XIV-2 of the European Committee of Social Rights concerning Belgium.

<sup>27</sup> See paragraph 58 above.

75. Monegasques and “children of the country” are also eligible for housing in the protected sector under Law No. 1.291 of 21 December 2004 where rents are regulated<sup>28</sup>. ECRI notes that new priorities have had to be included under this law as the period of continuous residence required in order to qualify for housing in this sector has been raised from 20 years to 40 years. It notes that the protected sector is made up of old housing, i.e. housing built or completed before 1 September 1947. ECRI notes that the supply of housing in this sector is in decline, mainly because owners of this type of housing feel they are overly restricted in terms of the use that can be made of their property. Because the buildings are old, moreover, some are being demolished to make room for new housing. In practice, ECRI notes that it is mainly long-time foreign residents in Monaco who live in this housing.
76. ECRI recognises the complex nature of the housing situation in Monaco and understands that a system of protection has been introduced in favour of Monegasques. ECRI nevertheless considers that similar attention should be given to those categories of persons who, although they have been working in Monaco for many years, are unable to find housing in Monaco. The Monegasque authorities have emphasised that they intend to tackle the problem of persons working in Monaco who cannot afford to live there. They have informed ECRI that a scheme to set aside housing in the neighbouring municipalities for such persons is being considered.
77. In its first report, ECRI also asked the authorities to reduce the five-year residence requirement governing non-Monegasques’ eligibility for housing benefit. The authorities have indicated that no such reduction is planned because in their view, it would create an incentive to live in Monaco at a time when the housing problems of Monegasque citizens and protected categories of persons have yet to be resolved.
78. ECRI encourages the authorities in their efforts to find housing solutions for non-Monegasques who have been working in Monaco for many years.
79. ECRI encourages the authorities to reconsider their position and take steps to reduce the five-year residence requirement governing non-Monegasques’ eligibility for housing benefit.

### **Social and medical assistance**

80. In its first rapport, ECRI recommended that the Monegasque authorities reduce as soon as possible the requirement for foreigners to have lived in the Principality for five years before being entitled to certain social and medical assistance measures.
81. The situation in this respect remains unchanged. ECRI notes that the assistance measures covered by the residence requirement are as follows: entitlement to free medical assistance for non-Monegasques (more than five years), monthly retirement pension paid to persons on low incomes (more than five years before reaching the age of 65), assistance for elderly persons placed in retirement homes (more than five years before reaching the age of 65), and housing benefit for persons with disabilities (three years).

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<sup>28</sup> See Article 1 of this law: “the following shall be protected under the present law, in the order of priority indicated: persons of Monegasque nationality and the categories in footnote 19.

82. ECRI notes that the authorities are not planning to reduce the residence requirement for the above-mentioned assistance measures. It is nevertheless pleased to note that according to the authorities, derogations are frequently granted to take account of difficult social circumstances.
83. ECRI recommends that the authorities consider the possibility of reducing the residence requirement for certain social and medical assistance measures and in the meantime, encourages the authorities to examine on a case-by-case basis any applications made, in order to take account of individual circumstances.

### **III. Racist violence**

84. ECRI has not been informed of any cases of racist violence in Monaco and therefore considers that the situation requires no comment.

### **IV. Climate of opinion and media (including internet)**

85. As already observed in its first report, there is an atmosphere of peace and understanding between the different communities which make up the population in Monaco. In its contacts, ECRI was not informed of any discourse inciting to racism and it notes with approval that in the opinion of everyone it spoke to, both governmental and non-governmental representatives, there is generally speaking considerable tolerance and acceptance of diversity in Monaco. ECRI also notes that the differences between the communities living in Monaco are widely accepted as they are based on a high degree of social homogeneity.
86. ECRI's attention has, however, been drawn to the fact that certain protectionist attitudes and statements with xenophobic overtones can occasionally be observed, which are due to the specific characteristics of the country. ECRI knows that these are largely marginal phenomena which do not spoil the atmosphere of mutual understanding that prevails in Monaco. It does feel, however, that some thought could usefully be given to how the segmentation of the population into Monegasques and non-Monegasques (and its sub-categories: "children of the country", foreigners) is perceived. ECRI considers, for example, that it would be helpful to conduct a poll to see how these different types of status are perceived by the public, and how they affect people's everyday lives and their sense of belonging to Monegasque society.
87. In its first report, ECRI recommended that the Monegasque authorities encourage the setting-up of an independent self-regulatory body to deal with complaints against the media and the drafting of a code of professional ethics. It further recommended that the authorities support any initiatives taken to raise media awareness of the issues of racism and racial discrimination.
88. ECRI notes that most of the media represented in Monaco have their headquarters outside Monegasque territory (mainly in France and Italy). Although there is no code of professional ethics specifically for journalists working in Monaco, the latter are nevertheless subject to the ethical rules of their country of origin. In their dialogue with ECRI, the authorities pointed out that, given Monaco's size, there was little reason to create an independent self-regulatory body to deal with complaints against the media. They also said that anyone who believed they had been the victim of racist remarks in a publication distributed in Monaco could apply to the Monegasque courts for a ruling against the publication under Law No. 1.299 of 15 July 2005 on freedom of public expression. ECRI nevertheless considers it important that members of the public have access to a non-judicial complaints mechanism in cases where there has been a breach of the rules of journalistic ethics, including the refusal



to promote, in any form, racism, xenophobia, antisemitism or intolerance. In ECRI's view, the setting-up of such a body cannot be ruled out *a priori* on account of the special nature of Monaco and it is important therefore that the authorities give further thought to this matter.

89. As pointed out in paragraph 44, ECRI has learned that a law on offences relating to computer systems is currently in preparation. ECRI believes that this is a laudable initiative and refers to its General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet.
90. ECRI recommends that the Monegasque authorities ask its population, via a poll, about their perception and experience of the different types of status that exist in Monaco and how they affect their sense of belonging to Monegasque society.
91. ECRI reiterates its recommendation that the Monegasque authorities promote, in full compliance with the principle of media independence, the setting-up by the media of a mechanism to deal with complaints against the media.
92. ECRI refers to its recommendation in paragraph 50 encouraging the enactment of a law on offences relating to computer systems in order to effectively combat the use of the internet to disseminate racist, xenophobic and antisemitic material.

## **V. Non-citizens, dialogue with religions and participation of foreigners in public life**

### **Non-citizens**

93. In its first report, ECRI recommended that the Monegasque authorities remove banishment from its legislation. It further requested them to introduce procedural safeguards for the implementation of turning back and deportation measures, for example in the future law on public security.
94. ECRI notes that the authorities are fully aware of the obsolete nature of the provision allowing banishment but is disappointed that no steps have been taken to repeal it. Even though it appears that this provision has never been applied in practice, ECRI considers it important for legal certainty in this area that this provision be removed from Monegasque legislation.
95. With regard to the procedural safeguards for the implementation of turning back and deportation measures, ECRI notes that, under Law No. 1.321 of 29 June 2006 on the statement of grounds for administrative decisions, any decisions taken in this area must include a statement of grounds; they can be challenged by non-contentious means via the *Médiateur* or appealed before the Supreme Court. ECRI notes that such remedies have been exercised in practice and that a number of decisions have been set aside by the Supreme Court.
96. In accordance with Law No. 1.321 of 29 June 2006 on the statement of grounds for administrative decisions, there are some exceptions to the requirement to give reasons for administrative decisions which relate to decisions to refuse permission for an individual to take up residence on the territory of the Principality (exceptions provided for in Articles 6 and 7 of the law, mentioned above; see also above on the subject of nationality)<sup>29</sup>. ECRI recognises that these exceptions concern sensitive areas that have to do with preserving the specific features of Monaco. It nevertheless considers that these specific

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<sup>29</sup> In practice, the number of refusals varies between 50 and 100 every year.

features must not deprive individuals of all protection in their dealings with the administrative authorities, notably in the area of racial discrimination. It therefore considers that in this particular case, the absence of a requirement to give reasons for the above-mentioned decisions, and consequently, the fact that these decisions cannot be challenged, is disproportionate to the aim pursued.

97. ECRI reiterates its recommendation that the Monegasque authorities remove banishment from their legislation.
98. ECRI recommends that the authorities introduce a provision to the effect that decisions relating to settlement in Monaco must include a statement of grounds and be open to administrative and judicial review.

### **Dialogue with religions**

99. In its first report, ECRI encouraged the Monegasque authorities to support the satisfactory integration of members of the Jewish community in society.
100. The situation in this area is still satisfactory according to representatives of the Jewish community. No antisemitic incidents or impediments to their freedom of religion have been reported to ECRI. The Commission for assistance to victims of despoilment in Monaco during the Second World War has continued its efforts, begun in 2006, with the support of the Monegasque authorities: its recommendations have been acted upon and compensation promptly paid.
101. ECRI notes that under Article 8 of the Constitution, Catholicism is a state religion in Monaco<sup>30</sup>. It further notes that Catholicism enjoys special status in relation to other religious communities (see also below, section VII, Education and awareness-raising, paragraph 118). It also observes that courtrooms contain crucifixes. However, the presence of religious signs in public buildings appears to attract no criticism from persons belonging to other religious communities. ECRI is pleased to note that there are harmonious relations between the state religion and the other religions present in Monaco (Jewish, Muslim, Anglican and Protestant). Several of its contacts in the minority religious communities, however, have expressed disappointment that these communities are not always invited to the major official events that punctuate the life of the Principality.
102. ECRI encourages the Monegasque authorities to pursue the dialogue with all the religious communities present in Monaco and to ensure that they are involved in all official events.

### **Participation of foreigners in public life**

103. ECRI notes that in Monaco, non-citizens do not have the right to vote in local elections<sup>31</sup>. With regard to the participation of foreigners in public life, however, the authorities have pointed out that the *Conseil économique et social* (CES) is open to anyone working in Monaco, without any requirement as to nationality. The CES, made up of three colleges (employees, employers and government) is designed to be a forum for government-facilitated dialogue between employers and trade unions. It can make proposals to the government once these have been approved by its plenary meeting and it may also be consulted by the government<sup>32</sup>. ECRI further notes that its proceedings are confidential.

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<sup>30</sup> Note also that Article 23 of the Constitution provides for freedom of religion.

<sup>31</sup> It should also be noted that the Municipal Council in Monaco deals with matters relating, inter alia, to municipal events, which are not among the tasks traditionally assigned to local authorities.

<sup>32</sup> Such was the case, for example, with the draft law on contracts of employment and dismissal.

While welcoming the CES's contribution in economic and social matters, ECRI notes that it is not meant to provide representation for the foreign population in Monaco<sup>33</sup>.

104. ECRI is aware that there are various foreigners' associations organised along national lines (French or Italian associations, etc.) and that an association open to all foreigners has been recently established in Monaco. ECRI welcomes the existence of an extensive network of associations involving numerous nationalities present in Monaco. In ECRI's view, however, an association is not necessarily an appropriate framework for initiating an institutionalised dialogue between Monaco's foreign population, in all its diversity, and the authorities. Like the Council of Europe's Commissioner for Human Rights<sup>34</sup>, ECRI feels that a body representing foreigners elected by Monaco's foreign population could usefully contribute to public debate on local issues. ECRI notes that the Monegasque authorities have already expressed the opinion that such a body would tend to undermine the political system in Monaco. ECRI, however, believes that, far from posing a threat to the institutions established by the Monegasque Constitution, such a body would provide a forum where foreign residents could discuss and formulate aspirations and proposals. Such a body should also further facilitate their integration into the life of the community, in accordance with the Convention on the Participation of Foreigners in Public Life at Local Level.
105. ECRI encourages the authorities to begin considering, in consultation with the various foreigners' associations in Monaco, institutional provisions that would allow the foreign population to play an active part in the life and development of the country via a representative body. It refers here to the principles of the Convention on the Participation of Foreigners in Public Life at Local Level (see also recommendation in paragraph 18).

## VI. Monitoring racism and racial discrimination

106. In its first report, ECRI also asked the Monegasque authorities to consider ways of establishing a system for ethnic data collection according to the rules laid down by Law No.1.165, pointing out that there were no data concerning various minority groups living in Monaco in areas such as employment, housing and access to state benefits and public services.
107. ECRI notes that there have been no developments in this respect. It further observes that this is due to the fact that access to certain rights is conditional mainly on nationality and possibly length of residence. With regard to housing, for example, it notes that the *Division des Statistiques et des Etudes Economiques* produces statistics on so-called "protected" categories of persons (see above)<sup>35</sup>. The same applies in the field of employment where statistics are broken down between Monegasques and non-Monegasques and, in the case of the private sector, between Monegasque, French and Italian nationals<sup>36</sup>. ECRI feels, however, that there is a lack of information about people who do not fall into the categories mentioned above. As emphasised in its first report, for ECRI it is a matter of obtaining information about their situation so as to be able,

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<sup>33</sup> Of the 36 members who make up this council, only the largest foreign communities in Monaco are represented.

<sup>34</sup> See the report of the Commissioner for Human Rights following his visit to Monaco on 20-21 October 2008, CommDH (2009)10, paragraph 48.

<sup>35</sup> See Monaco en chiffres, édition 2009, Division des Statistiques et des Etudes économiques, pages 112-113.

<sup>36</sup> Idem, pages 179 et seq.

where necessary, to take appropriate steps to resolve the problems facing them.

108. ECRI asks the authorities to collect information, in accordance with the principles of anonymity, informed consent and free self-identification, on the situation of persons living or working in Monaco without any distinction, in a number of areas, including housing and employment.
109. ECRI recalls the importance of having a mechanism for protecting personal data in order to ensure that the principles mentioned above are respected in practice. In its first report, ECRI recommended that the Monegasque authorities conduct an information campaign on the new legislation to be introduced on the processing of nominal information and the work of the commission responsible for monitoring it (*Commission de contrôle des informations nominatives* or CCIN).
110. ECRI notes that Law No. 1.353 amending Law No. 1.165 on the processing of nominal information came into force on 1 January 2009. Under the amendments introduced by this law and with a view to ensure compliance with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the CCIN is now independent of the government and its members cannot receive instructions from any authority. The CCIN has been given wider powers and responsibilities: as well as protecting nominal information, it is also tasked with informing people about their rights and obligations. ECRI is pleased to note that the CCIN regularly publishes a newsletter entitled "Right of access". It also posts on its website a range of practical information about the implementation of the new law, its newly extended remit and the right of any person concerned by the collection and processing of nominal information to be informed, to have access to the information and to object.
111. ECRI is aware that the CCIN, which since 2009 has been an independent administrative authority with extended powers, is in the process of establishing itself in Monaco's institutional landscape. ECRI learned from this commission, that there were still problems as regards the guarantees of its independence, as there was still some interference from the authorities when it came to authorising expenditure or recruiting staff who are also civil servants. ECRI understands that these difficulties, which are probably due to a change of administrative culture, will be resolved soon.
112. ECRI recommends that the Monegasque authorities continue to take all the steps required, including in terms of raising government awareness, in order to secure in practice the operational and financial independence of the *Commission de contrôle des informations nominatives*.
113. ECRI also asked the authorities to ensure that racist offences were in practice listed separately. The authorities are able to confirm that this is the case, pointing to the fact that such crimes are virtually non-existent in Monaco.

## VII. Education and awareness-raising

114. In its first report, ECRI recommended that the Monegasque authorities step up their efforts to include human rights education, including education for combating racism and racial discrimination, in the school curricula. ECRI also recommended that teaching staff at all levels receive initial and in-service training in this area.
115. ECRI notes with approval that efforts have been made along these lines in recent years: according to information received from the authorities, human rights education is an integral part of lessons in primary schools and lower and upper secondary schools. ECRI also notes that more specific training measures have been pursued, such as the awareness-raising initiatives to mark children's rights day and Holocaust Remembrance Day; as well as these, since 2008 the Human Rights Section has been introducing lectures/debates into sixth-form classes to mark the anniversary of the Universal Declaration of Human Rights.
116. ECRI regrets, however, that there have been no additional training measures for teaching staff other than those conducted for head teachers and history teachers, and described in ECRI's first report<sup>37</sup>. The authorities do not appear to be convinced of the value of specific training for teachers in human rights, arguing that the majority of teachers studied in Monaco and are therefore familiar with cultural diversity issues. ECRI agrees with the authorities that the fact that Monegasque schools are attended by pupils of 76 different nationalities<sup>38</sup> is a great asset to the country. It feels, however, that human rights and managing diversity are areas in which teachers ought to be supported with appropriate teaching material.
117. ECRI refers to its comments above concerning the issue of religions (see paragraph 102). As noted in its first report, for example, catechism is taught in state schools, but pupils may be exempted at the parents' request. ECRI nevertheless considers that the situation of other religious communities should not be overlooked. In this respect, it has noted the interest expressed by a number of its contacts in civil society, including persons from various religious communities, in having the history of religions taught as a subject in its own right, within a secular framework<sup>39</sup>.
118. ECRI reiterates its recommendation concerning the introduction of specific training for teaching staff, focusing on human rights, diversity and the fight against racism, in accordance with its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.
119. ECRI encourages the authorities in their efforts in the field of human rights education and urges them to give due prominence to this subject in school curricula.
120. ECRI recommends that the authorities explore the possibility of including in school curricula a course on the history of religions in secular state schools and to this end, institute a dialogue on this subject with representatives of the various religious communities, parents' and teachers' organisations.

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<sup>37</sup> See paragraph 31 of the first ECRI report.

<sup>38</sup> Figure obtained from the Monegasque authorities for 2009.

<sup>39</sup> Note that religious knowledge (including about religions other than Catholicism) is taught in history, geography (from Year 3 onwards) and philosophy classes, but not as a separate subject.

## VIII. Conduct of law enforcement officials

121. In its first report, ECRI recommended that the newly established police inspectorate be independent, and that it be provided with all the necessary human and financial resources to carry out its task.
122. ECRI notes that under Order No. 765 of 13 November 2006 on the organisation and operation of the Public Security Directorate, the General Inspectorate of Police reports directly to the Government Counsellor for the Interior and acts on the instructions of the latter or of the Minister of State, as well as on the instructions of the Office of the Chief Prosecutor in the context of judicial inquiries. The General Inspectorate of Police is responsible, *inter alia*, for conducting internal investigations aimed at ensuring that police ethics are observed (Article 4 of the said order).
123. In the light of the above, ECRI concludes that the General Inspectorate of Police has neither the structural nor the material independence needed to perform its task. In practice, it notes that this inspectorate consists of merely one police officer<sup>40</sup> and that to date, no complaints have been lodged about cases of racism or racial discrimination involving police officers. ECRI wishes to draw the authorities' attention to General Policy Recommendation No. 11 on combating racism and racial discrimination in policing which recommends, *inter alia*, that states provide for a body, independent of the police and prosecution authorities, entrusted with the investigation of alleged cases of racial discrimination.
124. Several civil society sources have drawn ECRI's attention to the issue of identity checks, which reportedly affect visible minorities more than other sections of the population. ECRI notes that this is more of a question of perceptions than of fact and that it cannot therefore assess whether such identity checks are an established practice. It does believe, however, that the authorities have a responsibility to show that the checks carried out are impartial and refers here to its General Policy Recommendation No. 11 which recommends carrying out research on racial profiling and introducing a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria.
125. ECRI reiterates its call for the establishment of a fully independent body with powers to investigate complaints of human rights violations on the part of law enforcement officials, including racial discrimination, in accordance with its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.
126. ECRI recommends that the Monegasque authorities carry out research on any practice concerning racial profiling and ensure independent monitoring of policing in order to identify cases where identity checks disproportionately affect persons belonging to certain visible minorities, while drawing on the guidelines in its General Policy Recommendation No. 11 mentioned above.

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<sup>40</sup> According to the information provided by the authorities, there are 519 police officers in Monaco (including administrative staff).

## INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the Monegasque authorities are the following:

- ECRI recommends that the Monegasque authorities bridge the existing legislative gaps in the field of protection against discrimination and to this end, introduce the necessary legal safeguards in the bills on the civil service and employment contracts to protect non-Monegasque workers from any discrimination based on one of the grounds covered by ECRI's mandate.
- ECRI recommends that the Monegasque authorities enshrine the independence of the institution of *Médiateur* in legislation and prepare a draft law to this end in the short term. This draft law should also assign him or her as many as possible of the responsibilities provided for in ECRI Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and racial discrimination.
- ECRI recommends that the authorities continue their efforts as regards human rights training for judicial staff and police officers and to this end, asks them to ensure that their in-service training includes issues concerning racial discrimination and racism. In addition, the authorities should make sure that employee and employer members of the Labour Court are included in this training.

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





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

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

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Monaco on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 23 June 2010, date of the examination of the first draft).

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



Précisions apportées par les Autorités Monégasques  
au Projet de rapport sur Monaco  
de la Commission européenne contre le racisme et l'intolérance  
(ECRI)

Les Autorités monégasques ont pris connaissance du projet de rapport de la Commission européenne contre le racisme et l'intolérance (E.C.R.I.) suite à la visite de ses représentants les 8 et 9 avril 2010.

A titre liminaire, les Autorités, confirment leur position exprimée dans les précédentes observations et éléments d'information communiqués au mois de décembre 2009, et se limiteront ici à présenter des développements complémentaires aux éléments précédemment transmis.

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

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

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

D'une manière générale, les Autorités précisent que la Principauté de Monaco est une société multiculturelle homogène composée de personnes d'origine ou de religion différentes, où cohabitent plus de 121 nationalités. Il convient également de rappeler que les forces de l'ordre n'interviennent que très rarement pour des cas de racisme ou d'intolérance. Dans ce cas de figure, les procédures instruites sont communiquées à l'autorité judiciaire qui se charge de donner les suites nécessaires.

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

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