

**European Commission
against Racism and Intolerance**

Report on Monaco

Adopted on 15 December 2006

Strasbourg, 24 May 2007



For further information about the work of the European Commission against Racism and Intolerance (ECRI) and about the other activities of the Council of Europe in this field, please contact:

Secretariat of ECRI
Directorate General of Human Rights – DG II
Council of Europe
F - 67075 STRASBOURG Cedex
Tel.: +33 (0) 3 88 41 29 64
Fax: +33 (0) 3 88 41 39 87
E-mail: combat.racism@coe.int

Visit our web site: www.coe.int/ecri

TABLE OF CONTENTS

| | |
|--|-----------|
| FOREWORD | 5 |
| EXECUTIVE SUMMARY | 6 |
| SECTION I: OVERVIEW OF THE SITUATION | 7 |
| INTERNATIONAL LEGAL INSTRUMENTS | 7 |
| CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS | 8 |
| - The Constitution | 8 |
| - Nationality law | 9 |
| CRIMINAL LAW PROVISIONS | 10 |
| CIVIL AND ADMINISTRATIVE LAW PROVISIONS | 11 |
| ADMINISTRATION OF JUSTICE | 12 |
| SPECIALISED BODIES AND OTHER INSTITUTIONS | 13 |
| - Commission for assistance to victims of despoilment in Monaco during the Second World War and their heirs | 13 |
| EDUCATION AND AWARENESS-RAISING | 14 |
| RECEPTION AND STATUS OF NON-CITIZENS | 15 |
| ACCESS TO PUBLIC SERVICES | 16 |
| - Access to housing | 16 |
| - Access to state benefits | 16 |
| - Access to education | 17 |
| JEWISH COMMUNITY | 18 |
| MEDIA | 18 |
| CLIMATE OF OPINION | 19 |
| CONDUCT OF LAW ENFORCEMENT OFFICIALS | 19 |
| MONITORING THE SITUATION | 20 |
| SECTION II: ISSUES OF PARTICULAR CONCERN | 21 |
| EMPLOYMENT | 21 |
| BIBLIOGRAPHY | 23 |
| APPENDIX | 25 |

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.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003. This third cycle includes for the first time the preparation of a report on the situation in Monaco as regards racism and intolerance.

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 propose, if they consider it necessary, amendments to 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 following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 15 December 2006 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Monaco has taken a number of measures to combat racism and intolerance. They include ratifying a large number of international legal instruments, including the European Convention on Human Rights. Monaco has also made a declaration recognising 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 further 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.

However, some steps still remain to be taken. Protocol No. 12 to the European Convention on Human Rights which contains a general non-discrimination clause has not yet been ratified. Monegasque nationality is still granted by the Sovereign Prince alone 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 at the time of sentencing. 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, among 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.

In this report ECRI recommends that Monaco ratify Protocol No.12 to the European Convention on Human Rights. It also recommends that the Monegasque authorities ensure that the Constitution contains provisions granting equal status to everyone within the Principality's jurisdiction. ECRI recommends that they include anti-discrimination provisions in civil and administrative law. Furthermore, ECRI recommends that the Monegasque authorities amend the criminal legislation to include provisions against racist acts, including those allowing the racist motivation of a crime to be considered as an aggravating circumstance. It recommends that they ensure that the preference granted to Monegasques, among others, in employment matters is coupled with legal protection against racial discrimination. ECRI considers it necessary to set up a specialised body for the protection of human rights, whose tasks would include, among others, combating racism and racial discrimination.

SECTION I: OVERVIEW OF THE SITUATION

International legal instruments

1. Monaco has ratified several international legal instruments relevant to combating racism and racial discrimination. When the Principality joined the Council of Europe on 5 October 2004, it signed the European Convention on Human Rights and some of its protocols¹. The Convention and a number of Protocols thereto² were ratified on 3 November 2005 by Law No. 1.304.³ On the same date Monaco signed the revised Social Charter, and ECRI welcomes the Monegasque authorities' assurances that the Charter is in the process of being ratified and should be ratified by the end of 2006.
2. On 27 April 2004, the Parliamentary Assembly of the Council of Europe noted that Monaco was determined to sign Protocol No.12 to the European Convention on Human Rights within five years of its entry into force and to ratify it within five years of signing it. Protocol No.12 came into force on 1 April 2006. The Monegasque authorities have informed ECRI that they have not yet signed it and wish to consider the matter, since there are a number of situations in Monaco in which nationals are granted protection or preference⁴. The Monegasque authorities have therefore informed ECRI that they intend to inventory the different situations and that they consider some domestic adjustments necessary before they can ratify Protocol No.12.
3. Monaco has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, albeit with a reservation to Article 2 (1)⁵. ECRI notes in this respect that Monaco "reserves the right to apply its own legal provisions concerning the admission of foreigners to the labour market of the Principality"⁶. ECRI welcomes Monaco's decision⁷ to recognise the competence of the Committee for the Elimination of Racial Discrimination to receive and consider, under Article 14 of the said Convention, complaints from individuals and groups of individuals alleging violations by the state of the rights set out therein.
4. The Monegasque authorities have informed ECRI that Monaco has undertaken to sign and ratify by 2009 the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. They have also informed ECRI that ratification of the UNESCO Convention against Discrimination in Education is under consideration, but that neither the International Convention on the

¹ Protocols Nos.1, 2, 3, 4, 6, 7, 8, 13 and 14.

² Protocols Nos. 2, 3, 4, 6, 7, 8, 13 and 14.

³ Official Journal of Monaco, 11 November 2005.

⁴ For further information on the subject, see "Constitutional provisions and other basic provisions", "Access to public services" and "Issues of particular concern" below.

⁵ Monaco has been a party to this convention since 27 September 1995 and ratified the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights on 28 August 1997.

⁶ For a more detailed discussion of the admission of foreigners to Monaco's labour market, see "Issues of particular concern" below.

⁷ By declaration of 6 November 2001.

Protection of the Rights of All Migrant Workers and Members of Their Families nor the European Charter for Regional or Minority Languages have been ratified. Nor has Monaco ratified the European Convention on Nationality, the Framework Convention for the Protection of National Minorities or the Convention on the Participation of Foreigners in Public Life at Local Level. Furthermore, the Principality has not ratified International Labour Organisation Convention 111 on discrimination (employment and occupation) as it is not a member of the ILO.

5. ECRI encourages Monaco to ratify the revised Social Charter within the time limit indicated. It also recommends that Monaco ratify as soon as possible Protocol No.12 to the European Convention on Human Rights and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. ECRI also recommends that Monaco ratify the European Convention on Nationality and the Convention on the Participation of Foreigners in Public Life at Local Level.
6. ECRI recommends that Monaco ratify the UNESCO Convention against Discrimination in Education and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It also recommends that Monaco ratify the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities.

Constitutional provisions and other basic provisions

- *The Constitution*

7. The Constitution of Monaco, as amended by Law No.1.249 of 2 April 2002, contains several provisions relevant to ECRI's work. Article 17 of the Constitution provides that all Monegasques are equal before the law. Article 25 guarantees "*la liberté du travail*", but gives priority to Monegasques for access to jobs in the public and private sectors "under the conditions prescribed by law or by international conventions". Article 26 provides that Monegasques are entitled to state assistance in the event of destitution, unemployment, illness, invalidity, old age and maternity, and Article 27 provides that Monegasques are entitled to primary and secondary education. This right was extended to all residents of Monaco by Law No.826 of 14 August 1967. Article 29 grants Monegasques the right to assemble peacefully and without arms, and Article 32 provides that foreigners in the Principality enjoy all public and private rights which are not expressly reserved for Monegasques. The Constitution of Monaco thus includes provisions granting rights to Monegasques alone. The Monegasque authorities have explained to ECRI that this differentiation is necessary because of the particular situation of nationals, who are a minority in their own country⁸. However, while understanding this distinctive feature of Monegasque society, which can indeed, in some cases, justify differential treatment based on objective and reasonable criteria, ECRI stresses that such differential treatment should not in practice result in discrimination. That is why it is important that Monaco's Constitution should contain a general provision

⁸ Although these figures have increased since then, the 2000 census established that Monaco had 6,089 nationals out of a population of 32,020; see: *Monaco en chiffres, édition 2006, Principauté de Monaco, Département des finances et de l'économie, Direction de l'expansion économique, Division des statistiques*, p.19.

prohibiting all forms of discrimination on grounds such as race, colour, language, religion, nationality and ethnic or national origin in the Principality. Furthermore, Article 29, which grants the right of peaceful assembly to Monegasques alone, should be extended to all persons within Monaco's jurisdiction which is already the case in practice.

8. As regards naturalised Monegasques' participation in the electoral process, Articles 54 and 79 of the Constitution provide that they are not eligible to stand in local or national elections until they have been naturalised for five years. ECRI understands that the Monegasque authorities are currently reviewing this provision in order to reduce the requirement to one year, which is a positive step in the integration of naturalised persons.
9. ECRI recommends that in accordance with its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, the Monegasque authorities include in the Constitution of Monaco a provision establishing the principle of equal treatment, the state's commitment to promoting equality and the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality and national or ethnic origin.
10. ECRI encourages the Monegasque authorities in their review of Articles 54 and 79 of the Constitution, which require that a naturalised Monegasque has been a citizen for five years before being eligible for elections, and recommends that they complete it as soon as possible. It also recommends that Article 29, which grants the right of peaceful assembly to Monegasques alone, be extended to all persons within Monaco's jurisdiction.

- **Nationality law**

11. Article 18 of the Constitution provides that the law shall regulate the ways in which nationality is acquired and the conditions under which nationality granted through naturalisation may be withdrawn. It also provides that loss of Monegasque nationality in all other cases may only be provided for by law, in particular on account of the voluntary acquisition of another nationality. Monegasque nationality can be obtained by transmission or acquisition. It is transmitted by descent through the mother or father, and ECRI is pleased to note that a number of legislative amendments have been made to ensure greater equality for women in this area, thereby enabling more people to obtain Monegasque nationality. Law No.1.155 of 18 December 1992 thus provides that Monegasque nationality can be transmitted by women with Monegasque ancestry and can be acquired by marriage. Law No.1.276 of 22 December 2003 provides that women who have become Monegasque through naturalisation or by choice can transmit nationality. Law No.1.296 of 12 May 2005 also enables Monegasque nationality to be granted to the descendants of women who acquired citizenship between 1952 and 1959 under a 1952 law which enabled many children to acquire nationality by declaration if they could prove that their families had been natives of Monaco for three generations and that they lived there themselves.
12. As regards the acquisition of nationality, Section 5 of Law No.1.199 of 26 December 1997 provides that anyone who has been habitually living in Monaco for ten years may apply for naturalisation after reaching the age of 21. Naturalisation is granted by sovereign order after an investigation into the applicant's morality and situation. In legal terms, it is decided by the Sovereign Prince. The Monegasque authorities have informed ECRI that meeting the

requirements of Section 5 of Law No.1.199 is not enough to ensure that the applicant is granted Monegasque nationality. However, they have specified that the above-mentioned law was modified by Law No. 1.162 of 23 December 2002, which provides that anyone who can justify having habitually resided in Monaco for ten years after reaching the age of 18 can apply for naturalisation. No reasons are given for the decision to grant or refuse Monegasque nationality, but appeals against a negative decision can be lodged with the Supreme Court, which is the body with jurisdiction in the matter. ECRI regrets that Section 7 of the law on the statement of reasons for administrative decisions⁹, which will enter into force in 2007, provides that decisions arising from the exercise by the Sovereign Prince of the rights set out in Article 15 of the Constitution (the right of pardon and amnesty, as well as of naturalisation and restoration of citizenship) are not regarded as administrative decisions. On this matter, the Monegasque authorities have specified that these decisions, which come under royal jurisdiction would not by their nature be considered to be administrative decisions, and that this would imply that an appeal before the Supreme Court, an administrative court, could not be admissible. However, only the Supreme Court could decide on its competence in the matter, but to date this type of application has never been referred to it.

13. ECRI calls on the Monegasque authorities to ensure that the Principality's legislation includes the requirement that reasons be given for decisions concerning applications for naturalisation.

Criminal law provisions

14. As regards legislation against racist acts, ECRI welcomes Law No.1.299 of 15 July 2005 on freedom of public expression, enacted as part of the commitments made by Monaco on joining the Council of Europe. In Chapter II, entitled "Offences committed through the press or by any other means of public expression"¹⁰, this law provides for a five-year prison sentence and the fine provided for in Article 26 (4) of the Criminal Code¹¹, for incitement to hatred or to violence against an individual or a group of individuals on account of their origin or their membership or non-membership of a given ethnic group, nation, race or religion. This law also punishes defamation¹² and insults¹³ on the same grounds with a prison sentence of one month to one year and/or a fine, and a prison sentence of six days to six months and/or a fine, respectively. Section 18 punishes by one of those means anyone who seeks to breach the peace by inciting to hatred against residents of the Principality or persons temporarily in the Principality.
15. Apart from the above-mentioned law, Monaco's criminal legislation does not provide for sanctions in respect of other types of racist act, such as attacks motivated by racial hatred. Nor does it provide for the racist motivation of a criminal offence to be considered as an aggravating circumstance at the time of sentencing. The Monegasque authorities have assured ECRI that the Code of Criminal Procedure is currently being revised and they have specified that in

⁹ For further information on this law, see "Civil and administrative law provisions" below.

¹⁰ See Sections 15 and 16.

¹¹ From 18,000 to 90,000 euros.

¹² Section 24.2.

¹³ Section 25.3.

practice, racist acts are punished on the basis of offences covered by common law and that the racist nature would justify the pronouncement of an aggravated sentence. The authorities have also informed ECRI that racist acts are extremely rare in Monaco. Two cases occurred in 2004 and 2005: the first concerned graffiti on the window of a block of flats owned by a Jewish person and the second concerned writing on a trade union letterbox. However, the proceedings were dropped because the perpetrator of these acts could not be identified. While acknowledging the generally peaceable atmosphere prevailing between the communities living in Monaco, ECRI nevertheless considers it necessary to establish a legal framework enabling racist acts to be punished.

16. ECRI recommends that the Monegasque authorities ensure, in accordance with paragraphs 18-23 of its General Policy Recommendation No.7, that the Principality's criminal legislation provides for racist acts to be punished and for the racist motivation of a criminal offence to be considered as an aggravating circumstance at the time of sentencing. In this regard, it recommends that the Monegasque authorities ensure that criminal legislation is amended accordingly.
17. ECRI recommends that the Monegasque authorities ensure that the general public and all those concerned are aware of the sections of the law on freedom of public expression that concern incitement to racial hatred. It also recommends that the Monegasque authorities ensure that members of the judiciary and police officers receive training in applying these provisions.

Civil and administrative law provisions

18. On joining the Council of Europe, Monaco also undertook to enact within a year a law on the statement of grounds for adverse administrative decisions and on judicial review. ECRI is pleased to note that a law on the statement of grounds for administrative decisions was passed by the National Council on 6 June 2006¹⁴ and that it will enter into force on 1 January 2007. Section 1 of this law provides that in order to be valid, administrative decisions of an individual nature which, *inter alia*, refuse an authorisation or an approval shall include a statement of the grounds. However, Section 6 introduces a derogation from this provision with regard to decisions to refuse permission for an individual to take up residence on the territory of the Principality. The Monegasque authorities have confirmed that no reasons are given for the decision concerning a person's initial settlement in Monaco, but that they will be given for a decision concerning renewal of the residence permit. However, negative decisions can be appealed before the Supreme Court.
19. Generally speaking, the Principality appears to lack civil and administrative legislation against racial discrimination in areas such as employment. On this point, the Monegasque authorities have informed ECRI that the National Council is currently considering two bills on fixed-term and indefinite-term employment contracts. The bill on fixed-term contracts is expected to impose limits on the number of renewals and the duration of this type of contract. The Monegasque authorities have informed ECRI, and members of civil society have confirmed, that temporary employment is widely used in Monaco; ECRI therefore welcomes this decision, particularly as it understands that many foreigners who are in a particularly vulnerable situation, including persons of

¹⁴ Law No.1.321 of 29 June 2006 on the statement of grounds for administrative decisions, Official Journal of Monaco, 30 June 2006.

African and North African origin, work under this system. ECRI considers that such legislation should include provisions embodying the principles set out in its General Policy Recommendation No.7. This recommendation advocates, among other things, that such legislation 1) should define and prohibit direct and indirect racial discrimination, and 2) should provide that acts such as announced intention to discriminate, instructing another to discriminate and inciting another to discriminate are considered as forms of discrimination. The legislation should also provide that the prohibition of discrimination applies to all public authorities as well as to all natural or legal persons, both in the public and in the private sector, in all areas, including employment, membership of professional organisations, education, housing, health, social protection, goods and services intended for the public and public places, and the pursuit of economic activity.

20. ECRI recommends that the Monegasque authorities ensure that all administrative decisions include a statement of grounds.
21. ECRI also recommends that they ensure that legislation against racial discrimination, taking account of the principles set out in its General Policy Recommendation No.7, is enacted in the area of civil and administrative law.
22. ECRI encourages the Monegasque authorities in their enactment of the bills on fixed-term and indefinite-term employment contracts and recommends that they ensure that this is done without delay. It also recommends that they ensure that these laws include provisions against racial discrimination, in line with its General Policy Recommendation No.7.

Administration of justice

23. The Monegasque authorities have informed ECRI that Monegasque judges receive their initial training in France at the *Ecole Nationale de la Magistrature*. As regards their in-service training, according to the Monegasque authorities, they do not receive human rights training as such, but attend conferences and colloquies on the subject. Three quarters of the judiciary attended a training course on human rights at the Council of Europe. The Monegasque authorities have also informed ECRI that, in collaboration with the French *Ecole Nationale de la Magistrature* or the Human Rights Section of the Department of External Relations, around ten training courses, organised mainly by the Legal Services Directorate, were attended by a number of Monegasque magistrates between May 2005 and July 2006. These training courses, open to the entire legal profession, included human rights training and in particular on the European Convention on Human Rights and Council of Europe bodies. It would seem, however, that Monegasque judges do not receive in-service training specifically focusing on issues concerning racism and racial discrimination. Moreover, ECRI does not have any information enabling it to ascertain whether such training is offered to other members of the judiciary.
24. ECRI recommends that the Monegasque authorities ensure that members of the judiciary receive initial and in-service training in human rights in general and in issues concerning racism and racial discrimination in particular.

Specialised bodies and other institutions

25. There is no independent body specialising in the protection of human rights and/or in combating racism and racial discrimination in Monaco. However, the Monegasque authorities have informed ECRI that they are considering setting up a human rights institution. ECRI hopes that a body of this kind will soon be set up. As the Principality also lacks a body such as a genuine Mediator or Ombudsman whose tasks would include helping persons contesting a state or municipality decision, the setting up of such an institution would be particularly welcome.

- ***Commission for assistance to victims of despoilment in Monaco during the Second World War and their heirs***

26. ECRI welcomes the Monegasque government's decision to set up, on 23 March 2006, a commission responsible for considering requests by victims of despoilment in Monaco during the Second World War or their heirs¹⁵. This Commission, whose five members are appointed for a renewable three-year term¹⁶, proposes measures to provide compensation or other appropriate compensatory measures, and a conciliation procedure where necessary¹⁷. The Commission, which examines requests lodged by, among others, Jewish persons has informed ECRI that it has already started work on a number of files and that it has access to all of Monaco's archives. It has also explained that although its budget is not yet established, the Monegasque government has assured it that it will put all the necessary resources at its disposal and will implement its decisions. A press conference was held when the Commission was set up and the latter has informed ECRI that it will soon be holding a meeting with the government in order to make its existence known to all Monegasque consular staff, both in the Principality and worldwide.

27. ECRI recommends that the Monegasque authorities set up, as soon as possible, an independent body specialising in the protection of human rights, whose tasks will include combating racism and racial discrimination according to the principles set out in ECRI's General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. It also recommends that they draw inspiration from paragraph 24 of its General Policy Recommendation No.7 for this purpose.

28. ECRI encourages the Monegasque authorities to continue to provide material and logistical support to the Commission for assistance to victims of despoilment in Monaco during the Second World War. It also recommends that they ensure that the Commission's decisions are implemented.

¹⁵ See Sovereign Order No.461 of 23 March 2006 on assistance to victims of despoilment in Monaco during the Second World War or to their heirs, Official Journal of Monaco, 31 March 2006.

¹⁶ Sovereign Order No.473 of 31 March 2006 appointing the members of the Commission set up by Sovereign Order No.461 of 21 March 2006, Official Journal of Monaco, 7 April 2006.

¹⁷ Article 2 of Sovereign Order No.461.

Education and awareness-raising

29. The Monegasque authorities have informed ECRI that a number of measures are taken in schools regarding human rights education and awareness-raising. A Children's Rights Day is thus held in schools from nursery school upwards on 20 November of each year. Primary and lower secondary school pupils are also taught a civic education course based on self-respect and individual responsibility, during which they study institutions and practices concerning citizenship. One-off events are also organised, such as the Day of Holocaust Remembrance and Prevention of Genocide held on 26 January of each year, as well as exchanges and trips to other countries.
30. While acknowledging the importance of the above-mentioned measures, which undoubtedly help to instil human rights concepts into Monegasque pupils, ECRI considers that more efforts could be made in this area. For example, steps such as the decision by the Directorate of National Education, Youth and Sport to include teaching on the principles and basic points of the Universal Declaration of Human Rights in the 1998/1999 curriculum, and to distribute copies of the Human Rights Education Handbook published by UNESCO to all schools in the Principality, are good practices which should be permanently included in Monaco's school curriculum.
31. As regards teaching staff, the Monegasque authorities have informed ECRI that a special training course for head teachers was provided by the Teacher Training Centre in February 2006. It included, among other things, a presentation of books and a review of official texts. The authorities have also informed ECRI that a training course for 75 teachers (arts, history, geography and philosophy teachers and school librarians) will be held on 28 and 29 November 2006, with Council of Europe experts, as part of the introduction of the Day of Holocaust Remembrance and Prevention of Genocide. They have explained that the topics chosen concern the teaching of remembrance and the new teaching aids produced by the Council of Europe. According to the authorities, the second day of co-operation will bring together experts from several European countries to devise new teaching aids on the subject of discrimination. Furthermore, ECRI is pleased to learn that the Council of Europe's 2006-2007 campaign "All different, all equal: campaign for diversity, human rights and participation" will be conducted at national level in all schools. ECRI commends these initiatives, which are aimed at raising the awareness of teaching staff, and considers that they should be supplemented by more specifically targeted initial and in-service training.
32. ECRI recommends that the Monegasque authorities step up their efforts to include human rights education in general and education for combating racism and racial discrimination in particular, including through a cross-disciplinary approach, in the Principality's school curricula. It also recommends that school curricula cover the contribution of the various communities living in Monaco to Monegasque society and awareness-raising on the subject of diversity.
33. ECRI recommends that the Monegasque authorities continue to ensure that teaching staff at all levels receive initial and in-service training in human rights in general and issues concerning racism and racial discrimination in particular.

Reception and status of non-citizens

34. There are three procedures for removing foreigners from the Principality of Monaco: 1) deportation, 2) turning a person back and 3) banishment. As regards banishment, ECRI welcomes the Monegasque authorities' assurances that the legislation authorising this measure, which is one of the ignominious sentences that may be imposed by a judge in criminal law, is in the process of being repealed. Turning a person back (a measure which ensures that the person concerned can no longer enter the Principality) is ordered in the following cases: 1) after a criminal conviction, 2) if the Monegasque authorities are informed of a criminal conviction abroad and 3) if the person concerned is involved in international trafficking. The police notify the person concerned of this administrative measure and the Monegasque authorities have assured ECRI that decisions of this kind include a statement of grounds and are subject to appeal to the Supreme Court, which has annulled some of them. The Monegasque authorities have also explained to ECRI that a person who is turned back may request, by sending a letter to the Ministry of State, the setting aside of this measure as much as he/she so wishes. They have specified that the turning back measure is not taken automatically following a criminal conviction. The statistics provided by the Monegasque authorities on the number of persons who have been turned back from the Principality show that out of an average of 700 criminal convictions per year concerning over 1000 people, 92 decisions to turn persons back were taken in 2003, 67 in 2004 and 85 in 2005 (41% of the persons concerned were French, 14% Italian and 6% Polish, and the remainder were from various countries). Deportation is a measure intended to prohibit a foreigner from staying in Monaco and, under the treaty on border relations signed with France on 18 May 1963, in the Departments of Alpes-Maritimes, Alpes de Haute-Provence and Var. Although the Monegasque authorities have pointed out that this measure is very seldom applied, ECRI has no information on the arrangements for implementing it. It is concerned, as are members of civil society, at the inadequacy of the procedural safeguards relating to the turning back of a person and deportation. It therefore welcomes the information supplied by the Monegasque authorities that a future law on public security mentions removal measures in order to provide them with a better legal basis, and it hopes that this law will provide more procedural safeguards for persons subject to a deportation or turning back order. It also hopes that the law on the statement of grounds for administrative decisions, referred to earlier¹⁸, will serve to provide further safeguards in this area.
35. As regards the asylum application procedure in the Principality, the Monegasque authorities have informed ECRI that these applications must be lodged with the secretariat of the Ministry of State, which forwards them for examination to the *Office Français de Protection des Réfugiés et Apatrides* (French Office for the Protection of Refugees and Stateless Persons – OFPRA). The office gives an opinion, and if it is favourable, the applicant is given a travel document. However, the Monegasque authorities have informed ECRI that they are not bound by OFPRA's opinions.

¹⁸ See "Civil and administrative law provisions" above.

36. As regards setting up associations, members of civil society have welcomed the Monegasque authorities' decision to allow foreigners to set up an association by simply declaring the fact, rather than by requesting authorisation as was previously the case. This decision places them on an equal footing with Monegasque citizens.
37. ECRI encourages the Monegasque authorities to remove banishment from Monaco's legislation as soon as possible. Furthermore, it recommends that they introduce procedural safeguards for the implementation of turning back and deportation measures as soon as possible. It recommends that they ensure that these safeguards are clearly stated, for example in the future law on public security, and that this law is voted without delay.
38. ECRI recommends that the Monegasque authorities ensure that the asylum application procedure in the Principality comprises all the necessary safeguards.

Access to public services

- Access to housing

39. Monaco has three housing sectors: the public sector, which is state-owned and open only to nationals; the so-called protected sector, which is reserved for Monegasques and other categories of persons, namely the children, spouses, widows/widowers or divorced spouses of a Monegasque, the parents of a child born of a union with a Monegasque, persons born in Monaco who have lived there since birth and whose parents were living there when they were born, and persons who have lived in the Principality for at least 40 continuous years¹⁹. The third is the private sector. While understanding the problem of territorial space facing the Principality, namely 2 km² for more than 30,000 residents, ECRI hopes that this priority system will not result, as some members of civil society fear, in a situation in which a disproportionate number of non-nationals working in Monaco are compelled to live outside Monaco. ECRI also notes with concern that a non-Monegasque is required to live in Monaco for five years before being eligible for housing benefit.
40. ECRI recommends 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.
41. ECRI recommends that the Monegasque authorities ensure that the five-year residence requirement governing non-Monegasques' eligibility for housing benefit is reduced.

- Access to state benefits

42. The Principality also distinguishes between Monegasques and non-Monegasques in terms of certain state benefits. The state thus awards only nationals benefits such as business start-up grants and benefits for unemployed mothers. ECRI notes on this point that Monaco has made interpretative declarations and reservations to Article 2.2 of the International Covenant on

¹⁹ These categories were introduced by Law No.1.291 of 21 December 2004 amending Law No.1.235 of 28 December 2000 on rental requirements for certain housing premises built or completed before 1 September 1947.

Economic, Social and Cultural Rights, which requires States Parties to guarantee that the rights set out in the Covenant will be exercised without any discrimination on grounds such as race, colour, language, religion or national origin. In one of its reservations, the Princely Government declared that it interpreted the principle of non-discrimination on the grounds of national origin, embodied in Article 2, paragraph 2 of the Covenant, as not necessarily implying an automatic obligation on the part of states to guarantee foreigners the same rights as their nationals. The Princely Government also declared that Articles 6, 9, 11 and 13²⁰ of the Covenant should not be interpreted as constituting an impediment to provisions governing access to work by foreigners or fixing conditions of residence for the granting of certain social benefits.

43. ECRI notes that all workers and pensioners, as well as their families benefit from a social security system and the benefits provided by it. However, it is concerned at the fact that foreigners are required to live in the Principality for five years before being entitled to certain social and medical assistance measures. It therefore welcomes the Monegasque authorities' assurances that a change to this requirement is under consideration with regard to social assistance. The authorities have also explained that in practice, exceptions are made to this rule in respect of persons with disabilities and elderly persons. ECRI hopes that this requirement will be reduced as soon as possible with regard to both social and medical assistance.
44. ECRI recommends that the Monegasque authorities ensure that there is no discrimination between nationals and non-nationals in the matter of state benefits. In this respect, it recommends that Monaco withdraw the interpretative declarations and reservations made under Articles 2.2, 6, 9, 11 and 13 of the International Covenant on Economic, Social and Cultural Rights. ECRI also recommends that the Monegasque authorities reduce as soon as possible the five-year residence requirement for non-Monegasques to be entitled to social and medical assistance.

- **Access to education**

45. There are approximately 5,900 school pupils in Monaco and compulsory education is free of charge in state schools for Monegasque children and children living in Monaco²¹. According to the statistics supplied to ECRI by the Monegasque authorities, in 2006 state schools were attended by pupils of 65 nationalities. ECRI has moreover been informed that in accordance with a non-statutory administrative practice, the children of cross-frontier workers are also admitted to Monegasque schools when places are available. The informal criteria applied to applications for admission to state schools for the children of cross-frontier workers are "maximum ties" with the Principality and residence close to Monaco. The Monegasque authorities have informed ECRI that out of 493 requests from non-resident families in 2005, 105 were accepted in accordance with available places.

²⁰ Article 6 of the Covenant protects the right to work, Article 9 concerns social assistance for the family, Article 11 concerns the right to an adequate standard of living and Article 13 protects the right to education.

²¹ Section 8 of the 1967 law.

46. Catechism is taught in state schools, but pupils may be exempted at the parents' request. Moreover, religious knowledge and other religions such as Islam and Judaism are taught in history, geography and philosophy classes, but are not part of a specific subject.
47. As regards the reception of non-French-speaking children, the Monegasque authorities have explained that since 1977, the teaching of French as a foreign language has allowed newly-arrived children with little or no knowledge of French to reach the required level in a short time. They have also described some measures designed to cater for children from different backgrounds, such as training teachers in differentiated teaching methods.
48. ECRI encourages the Monegasque authorities to continue to grant the children of cross-frontier workers access to state schools, and to pay special attention to the case of children whose parents received their whole education in the Principality or work there. ECRI also encourages the Monegasque authorities to continue to ensure that non-French-speaking children can quickly learn French and recommends that they pursue and reinforce the steps taken to cater for pupils from different backgrounds.

Jewish community

49. ECRI welcomes the assurances given to it by the representatives of the Jewish community²² that the latter does not suffer from any particular problems of antisemitism or from a lack of integration in the Principality. They have assured ECRI that the Jewish community is effectively protected by the police and does not feel any hostility on the part of other Monegasques. They stated that there are no antisemitic incidents in Monaco. Furthermore, the fact that Catholicism is a state religion in Monaco has never hampered Jewish worship. For instance, Jewish children do not encounter any problems in practising their religion at school. The representatives of the Jewish community have also confirmed to ECRI that the communal cemetery includes a Jewish section which was substantially extended, with state funding, two or three years ago. They have further informed ECRI that they are represented on the Commission for assistance to victims of despoilment in Monaco during the Second World War and their heirs²³.
50. ECRI encourages the Monegasque authorities to continue to support the satisfactory integration of members of the Jewish community in society.

Media

51. Monaco has several media outlets, including a daily newspaper edited and printed in France, one weekly newspaper, a private television channel²⁴ and cable television. ECRI notes that according to the information it has received, no Monegasque journalists have to date been charged with racist or antisemitic remarks. As previously mentioned²⁵, the law on freedom of public expression now sanctions, *inter alia*, incitement to racial hatred by the media, which is a

²² They have informed ECRI that there are 100 to 130 Jewish families (that is 500 to 600 Jewish persons) in the Principality.

²³ See "Specialised bodies and other institutions" below.

²⁴ The TMC.

²⁵ See "Criminal law provisions" above.

significant step towards protecting foreigners and minorities against any such occurrences. The Principality does not appear to have an independent self-regulatory body with which complaints can be lodged against the media, nor does ECRI have any information on whether there exists a code of professional ethics for Monegasque journalists. ECRI therefore considers that although the above-mentioned law affords a degree of protection, further safeguards are needed in this area.

52. ECRI recommends that the Monegasque authorities encourage the setting up of an independent self-regulatory body to deal with complaints against the media. It also recommends that they encourage the drafting of a code of professional ethics for the media which will take account, among others, of the issues of racism and racial discrimination.
53. ECRI also recommends that the Monegasque authorities support any initiatives taken to raise media awareness of these issues.

Climate of opinion

54. ECRI is pleased to note that, as confirmed both by civil society and by the Monegasque authorities, there is in general a positive climate between the different communities living in the Principality. In Monaco there are thus virtually no violent racist acts such as physical or verbal attacks against individuals on account of their belonging to a racial or ethnic group. However, some questions deserve attention from the authorities and a certain amount of awareness-raising is needed. As there are not yet many visible minorities in Monaco, it would be advisable, in order to combat any prejudice, to make people aware of the existence of different cultures in the Principality and of their contribution to the Monegasque community. ECRI has also received reports that at certain times, particularly during electoral campaigns, a number of political figures resort to discourse with xenophobic overtones. While pleased to note that this is a rare occurrence, ECRI nevertheless considers it necessary that responsible actions should be taken in this area in order to prevent, on the one hand, that this type of discourse becomes commonplace and, on the other hand, that a feeling of intolerance towards non-nationals emerges among the population.
55. ECRI encourages the Monegasque authorities to continue to support the good relations between the Principality's different components. It encourages them to promote exchanges between these groups and to conduct awareness campaigns on issues concerning racism and racial discrimination.
56. ECRI also wishes to draw the Monegasque authorities' attention to the principles set out in the Charter of European Political Parties for a non-racist society and in ECRI's Declaration on the use of racist, antisemitic and xenophobic elements in political discourse.

Conduct of law enforcement officials

57. The Monegasque authorities have informed ECRI that police officers are taught courses incorporating specific units on police ethics. There is also a code entitled "Ethics and Practice"²⁶ which provides *inter alia* that members of the police force shall behave with the public in a spirit of absolute respect for all

²⁶ Designed and produced by the Administration and Training Division in January 2006.

persons irrespective of nationality, origin and religious belief. While welcoming these measures, ECRI considers that there is nonetheless a need for initial and in-service training specifically focusing on issues concerning the fight against racism and racial discrimination.

58. ECRI is also pleased to learn that a police inspectorate has recently been set up. This body is expected to be responsible for carrying out audits and to enforce disciplinary or even criminal sanctions.
59. ECRI recommends that the Monegasque authorities ensure that police officers receive initial and in-service training in human rights in general and issues concerning the fight against racism and racial discrimination in particular.
60. ECRI recommends that the Monegasque authorities ensure that the police inspectorate is independent, that it has all the necessary human and financial resources to carry out its task and that its staff are trained in issues concerning the fight against racism and racial discrimination.

Monitoring the situation

61. Law No.1.165 of 23 September 1993 regulating the processing of nominal information provides in Section 12 that the collection, recording and use of information indicating membership of a racial or religious group are prohibited unless the person concerned gives their express consent in writing. This section nevertheless provides for some derogations from the rule, namely on the one hand, concerning processing carried out by a public law corporation and justified by reasons relating to the public interest and on the other hand with regard to members of a church institution or a political, religious, philosophical, humanitarian or trade union grouping, within the statutory or social aim of the institution or grouping and for the purposes of its functioning. This law also established the Monitoring Commission for Nominal Information²⁷, before which a request for an opinion prior to any processing relating to the public domain is submitted. When asked for such an opinion, the Commission decides through confidential deliberations and draws up an annual report for the attention of the Minister of State and the President of the National Council, but the report is not made public. The Monegasque authorities have informed ECRI that a bill currently before the National Council which will make the Commission fully independent of the Ministry of State should be enacted by the end of 2006 or the beginning of 2007. This law will also allow the Commission to make its reports public. The Commission has informed ECRI that the general public is beginning to be more aware of its work. This is a positive development since, although statistics on nationality and residence appear to be compiled in Monaco, virtually no data is collected on the situation of foreigners and/or minorities in areas such as employment and housing. Information about the legislation on the collection of ethnic data and about the Commission's work on the subject will therefore ensure better awareness of the procedure in this area.
62. As regards criminal offences of a racist nature, Monaco has a register of offences committed and the Monegasque authorities have assured ECRI that it will contain a grid for listing the racist motives of a criminal offence.

²⁷ Section 2 of the law.

-
63. ECRI recommends that the Monegasque authorities consider ways of establishing a system for ethnic data collection according to the rules laid down by Law No.1.165 regulating the processing of nominal information, in order to assess the situation of the various groups living in the Principality and frame policies aimed at resolving the problems they might face in areas such as employment, housing and access to state benefits and public services. ECRI also recommends that they conduct an information campaign on the law and on the work of the Monitoring Commission for Nominal Information.
64. ECRI recommends that the Monegasque authorities ensure that such a data collection system complies with European regulations and recommendations on data protection and protection of privacy, as recommended in ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. They should also ensure that data collection fully respects the anonymity and dignity of the persons questioned and complies with the principle of informed consent. In addition, the system for collecting data on racism and racial discrimination should take account of the dimension of equality between women and men, especially in terms of the possibility of double or multiple discrimination.
65. ECRI recommends that the Monegasque authorities ensure that criminal offences of a racist nature committed in Monaco are in practice listed separately so that, if necessary, the existence of this type of problem can be established and appropriate measures can be taken.

SECTION II: ISSUES OF PARTICULAR CONCERN

Employment

66. According to the statistics supplied to ECRI by the Monegasque authorities, there are 41,000 private-sector employees in the Principality, of whom about 800 are Monegasques. The public sector comprises 3500 civil servants of whom 1000 are Monegasques. The authorities have also informed ECRI that there are 329 African and 1135 North African workers in Monaco.
67. As previously indicated, there is in Monaco's employment sector a system of priority²⁸ firstly for citizens, followed by their spouses, non-citizens living in Monaco, then French citizens from the neighbouring municipalities (Cap d'Ail, Beausoleil, La Turbie and Roquebrune-Cap Martin), and lastly non-Monegasques living outside the Principality and these municipalities. The nationality criterion applies for the purposes of recruitment (on the basis of equal merit), redundancy and the suppression of posts²⁹. The Monegasque authorities have explained that this system, which is enshrined in the Constitution, as mentioned above³⁰, is necessary to protect Monegasque workers, who are a minority in their own country. ECRI has no information on the practical application of this system and does not know either whether any research has been done on the subject. It is therefore difficult to establish whether or not there are cases of discrimination in the application of this system. On this point, the Monegasque authorities have informed ECRI that to

²⁸ See Law No.629 of 17 July 1957 governing conditions of recruitment and dismissal, amended by Law No.1.091 of 26 December 1985.

²⁹ Section 6 of Law No.629.

³⁰ See "Constitutional provisions and other basic provisions" above.

the best of their knowledge, no cases of racial discrimination in recruitment or dismissal have been referred to the courts. ECRI nevertheless considers it necessary to adopt legislation to prevent and/or punish, in the implementation of this system, any discrimination on grounds such as race, colour, language, religion, nationality and ethnic or national origin. This law could also cover areas such as promotion and access to training.

68. ECRI understands that a new law on the status of civil servants of the State and of the Municipality is being drafted and it hopes that this law will contain the necessary safeguards against any discrimination on grounds such as race, colour, language, religion, nationality and ethnic or national origin.
69. The Monegasque authorities have also informed ECRI that in Monaco there is a labour inspectorate which is open to all employees, without appointments being needed. This service, which receives about 3,000 complaints a year, refers them to the employers concerned with a request for information. ECRI has no information enabling it to ascertain whether this service has received complaints of racism or racial discrimination in employment and no information on any action taken in such cases.
70. As regards illegal work, the Monegasque authorities have explained to ECRI that three labour inspectors and four labour, health and safety inspectors operate in the Principality. They have assured ECRI that the labour inspectors or police officers conduct regular inspections in firms, on building sites and in restaurants and hotels. Approximately 40 official reports are drawn up each year in respect of employers using illegal workers. Some vigilance is nevertheless required, especially with regard to domestic employees³¹, who apparently include persons of Philippine origin in vulnerable situations. Vigilance is also needed in the hotel and catering industry and the building industry, which apparently use African and North African workers who may be in difficult circumstances.
71. ECRI calls on the Monegasque authorities to ensure that the recruitment and dismissal system established in the Principality does not in practice result in discrimination on grounds such as race, colour, language, religion, nationality and ethnic or national origin. It also recommends that they establish legal safeguards to that effect, for example by introducing provisions ensuring equality in promotion and access to training.
72. ECRI recommends that the Monegasque authorities ensure that the new law on the status of non-Monegasque civil servants provides for adequate safeguards against discrimination on grounds such as race, colour, language, religion, nationality and ethnic or national origin.
73. ECRI recommends that the Monegasque authorities continue to combat the use of illegal workers and pay special attention to the situation of domestic employees.

³¹ At 1 January 2006, 1,710 employees were listed in the domestic work sector, a third of them French, 15% Italian and quite a number Portuguese.

BIBLIOGRAPHY

This bibliography lists the main published sources used during the examination of the situation in Monaco; it should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

1. CRI (96) 43: *ECRI General Policy Recommendation n° 1: Combating racism, xenophobia, antisemitism and intolerance*, European Commission against Racism and Intolerance, Council of Europe, October 1996
2. CRI (97) 36: *ECRI General Policy Recommendation n°2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level*, European Commission against Racism and Intolerance, Council of Europe, June 1997
3. CRI (98) 29: *ECRI General Policy Recommendation n° 3: Combating racism and intolerance against Roma/Gypsies*, European Commission against Racism and Intolerance, Council of Europe, March 1998
4. CRI (98) 30: *ECRI General Policy Recommendation n° 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims*, European Commission against Racism and Intolerance, Council of Europe, March 1998
5. CRI (2000) 21: *ECRI General Policy Recommendation n°5: Combating intolerance and discrimination against Muslims*, European Commission against Racism and Intolerance, Council of Europe, April 2000
6. CRI (2001) 1: *ECRI General Policy Recommendation N° 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet*, European Commission against Racism and Intolerance, December 2000
7. CRI (2003) 8: *ECRI General Policy Recommendation n° 7: National legislation to combat racism and racial discrimination*, European Commission against Racism and Intolerance, Council of Europe, December 2002
8. CRI (2004) 26: *ECRI General Policy Recommendation n°8: Combating racism while fighting terrorism*, European Commission against Racism and Intolerance, Council of Europe, March 2004
9. CRI (2004) 37: *ECRI General Policy Recommendation n° 9: The fight against antisemitism*, European Commission against Racism and Intolerance, Council of Europe, June 2004
10. CRI (98) 80 rev 4: *Legal measures to combat racism and intolerance in the member States of the Council of Europe*, European Commission against Racism and Intolerance, Council of Europe, December 2005
11. Resolution Res(2004)10: Committee of Ministers of the Council of Europe, *Resolution Res(2004)10 inviting the Principality of Monaco to become a member of the Council of Europe*, 2 September 2004
12. Opinion No. 250 (2004): Parliamentary Assembly of the Council of Europe, *The Principality of Monaco's application for membership of the Council of Europe*, 27 April 2004
13. Doc. 10128: Parliamentary Assembly of the Council of Europe, *Report of the Political Affairs Committee on the Principality of Monaco's application for membership of the Council of Europe*, 8 April 2004
14. E/C.12/MCO/CO/1: Committee on Economic, Social and Cultural Rights (United Nations), *Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant – Concluding observations of the Committee on Economic, Social and Cultural Rights*, 13 June 2006
15. CCPR/CO/72/MCO: Human Rights Committee (United Nations), *Consideration of reports submitted by States parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee: Monaco*, 28 August 2001

16. CCPR/C/MCO/99/1: Human Rights Committee (United Nations), *Consideration of reports submitted by States parties under Article 40 of the Covenant, Initial report of the Principality of Monaco*, 15 May 2000
17. HRI/CORE/1/Add.118 : United Nations, *Core document forming part of the reports of State parties – Monaco*, 25 avril 2002
18. CRC/C/28/Add. 15: Committee on the Rights of the Child (United Nations), *Consideration of Reports submitted by States parties under Article 44 of the Convention – Initial reports of States parties due in 1995 – Monaco*, 17 July 2000
19. CAT/C/CR/32/1 : Committee against Torture (United Nations), *Consideration of reports submitted by States parties under Article 19 of the Convention - Conclusions and recommendations of the Committee against Torture : Monaco*, 28 May 2004
20. CAT/C/38/Add. 2 : Committee against Torture (United Nations), *Consideration of reports submitted by States parties under Article 19 of the Convention – Second periodic reports of States parties due in 1997, Addendum – Monaco*, 30 July 2003
21. U.S. Department of State, *International Religious Freedom Report 2005 – Monaco*, 8 November 2005
22. Central Intelligence Agency (CIA), *The World Fact book 2005 –Monaco*
23. AFP, Juifs spoliés par les nazis : un Belge réclame 14 millions d'euros à Monaco, le 27 janvier 2006
24. Dernière Nouvelles d'Alsace (DNA), Monaco: Un micro Etat et un paradis fiscal, édition du 07/04/2005 Assemblée parlementaire du Conseil de l'Europe, Avis n°250 (2004), *Demande d'adhésion de la Principauté de Monaco au Conseil de l'Europe*, 27 avril 2004

APPENDIX

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

ECRI wishes to point out that the analysis contained in its report on Monaco, is dated 15 December 2006, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Monaco was subject to a confidential dialogue with the authorities of Monaco. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the authorities of Monaco requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

« Commentaires et observations des Autorités monégasques relatifs au projet de rapport de la Commission européenne contre le racisme et l'intolérance (ECRI) »

Les Autorités monégasques, ayant pris connaissance du projet de rapport de la Commission européenne contre le racisme et l'intolérance (E.C.R.I.) souhaitent, préalablement à la présentation de leurs commentaires et observations, 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).

Elles ajoutent qu'ainsi, la Principauté a de longue date concrètement assuré le respect des règles fondamentales, en vigueur dans les Etats de droit, aux fins de protéger et de promouvoir la liberté, la sécurité et la dignité de la personne.

Elles se doivent toutefois de souligner que le 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 une composante essentielle et structurante de l'organisation des rapports sociaux à Monaco dont le fondement réside dans la Constitution elle-même.

Elles déclarent que les recommandations, questions et observations de la Commission ont néanmoins été examinées dans un esprit positif et plus particulièrement dans le but de perfectionner le dispositif monégasque en l'élevant vers des standards d'excellence au regard de l'objet des règles précitées, tout en tenant compte des spécificités et des caractéristiques propres à la Principauté.

* * * * *

* * *

- paragraphe 5

Depuis son adhésion au Conseil de l'Europe, la Principauté s'est attachée à respecter les engagements souscrits.

S'agissant plus particulièrement de la Charte sociale européenne révisée, et dans ce même esprit de respect des engagements pris, la Principauté, bien que s'interrogeant sur la réelle portée de la Charte dans l'ordre juridique interne, était sur le point, fin 2006, de la ratifier en faisant savoir très précisément le choix des articles retenus.

Un arrêt récent rendu en novembre 2006 dans une affaire concernant la Turquie a suscité des inquiétudes légitimes dans la mesure où il pourrait être interprété comme conférant à la Charte une applicabilité directe générale. Dans un domaine fondamental pour la sauvegarde de ses équilibres économiques et sociaux essentiels, la Principauté est fondée à faire jouer un principe de précaution justifiant une période de réflexion complémentaire, laquelle ne saurait être regardée comme un retour en arrière sur un engagement pris.

S'agissant de la non ratification du Protocole n°12, des explications ont déjà été données aux instances européennes dans le cadre du suivi de l'adhésion de la Principauté au Conseil de l'Europe. En effet, la situation locale est telle que tout engagement passe au préalable par un « toilettage » législatif. Ces modifications sont destinées à restreindre le nombre des situations préférentielles, de façon à ce que les engagements internationaux de la Principauté puissent être respectés de façon effective. A ce moment là, si certaines situations préférentielles subsistent, elles pourront, soit être justifiées au regard de distinctions non-discriminatoires admises par la Cour, soit faire l'objet d'une réserve.

S'agissant du Protocole additionnel à la Convention sur la Cybercriminalité, la Principauté de Monaco rappelle qu'elle s'est engagée, lors de son adhésion au Conseil de l'Europe, à signer et ratifier ladite Convention en 2009. A ce jour, la priorité est par conséquent donnée à la mise en œuvre de cet engagement, bien que l'éventuelle signature de certains textes du Conseil de l'Europe, tel que ce Protocole additionnel, puisse également être envisagée à terme.

Le Gouvernement Princier tient par ailleurs à souligner que pour la Principauté, ville/Etat, les Conventions européennes sur la nationalité et sur la participation des étrangers à la vie publique au niveau local ne constitue pas une priorité, pour autant la participation des étrangers est assurée tant au niveau associatif, qu'aux niveaux syndical et économique.

- paragraphe 13

Le Gouvernement Princier tient à rappeler le principe général de droit international selon lequel la détermination par un Etat de ses nationaux ne saurait constituer une discrimination, pour autant que soit toujours assuré le droit à une nationalité.

Par ailleurs, les questions de nationalité, en droit international privé, sont considérées comme relevant du domaine réservé des Etats, leur souveraineté en la matière ne pouvant être contestée.

Il en résulte qu'il n'y a pas lieu pour le Souverain, dans l'exercice de l'une de ses prérogatives régaliennes (article 15 de la Constitution) de motiver Sa décision de refus de naturalisation ou de réintégration dans la nationalité.

Ce point fait d'ailleurs l'objet d'un consensus réaffirmé à l'occasion du vote de la loi n° 1.312 du 29 juin 2006 relative à la motivation des actes administratifs.

Cette loi prend clairement soin de préciser - de façon superfétatoire puisque ces actes échappent par nature à la qualification d'actes administratifs mais précisément dans le dessein de lever l'équivoque sur ce point - que les décisions de naturalisation ou de réintégration ne sont pas considérées comme des décisions administratives.

- paragraphes 15, 16 et 17

S'il est exact que, hormis la loi n° 1.299 du 15 juillet 2005, la législation pénale ne sanctionne pas en tant que tels certains actes à caractère raciste, il est inexact d'affirmer que la motivation raciste d'une infraction n'est pas prise en compte lors de la fixation de la peine par les tribunaux.

L'arsenal pénal monégasque repose essentiellement sur le principe du libre choix de la peine à prononcer, entre un minimum et un maximum, par les juridictions appelées à connaître de l'infraction. Or, ce choix est bien entendu exercé en tenant compte à la fois de la personnalité de l'individu et de la gravité du fait infractionnel. Il n'est donc pas nécessaire qu'une disposition expresse de la loi envisage une circonstance aggravante pour que les tribunaux puissent prononcer une peine plus élevée, en présence d'un crime ou d'un délit motivé par la haine raciale.

Ceci étant, la Principauté n'est pas opposée à améliorer sa législation sur ce point, même en l'absence d'actes de nature raciste constatée jusqu'ici. Une réflexion est d'ailleurs menée en ce sens.

Quant à la formation du corps judiciaire et des fonctionnaires de police préconisée pour s'assurer qu'ils connaissent les dispositions de la loi n° 1.299 précitée relatives à la haine raciale, elle ne saurait être entreprise sans porter atteinte à la considération et la confiance qui leur est due. Est-il besoin de rappeler que par profession et par état, les magistrats et policiers ont pour mission d'appliquer la loi, ce qu'ils ont du faire au demeurant, en procédant à une enquête et en engageant des poursuites au cours de l'été 2006 pour « incitation à la haine » contre certaines personnes, sur le fondement des articles 17 et 18 de ladite loi, une condamnation ayant été prononcée le 17 octobre 2006.

- paragraphe 24

Les magistrats en poste à Monaco, qu'ils soient de nationalité française ou monégasque, reçoivent la même formation initiale et continue, telle que dispensée par l'Ecole Nationale de la Magistrature (école française de formation des magistrats).

Cette formation inclut bien entendu la matière des Droits de l'Homme et, plus spécifiquement, celle des discriminations.

En outre, la Direction des Services Judiciaires organise périodiquement à Monaco des conférences, dont certaines visent à sensibiliser les acteurs du monde judiciaire à ces questions et à élargir le champ de leurs connaissances.

- paragraphe 25

Bien qu'il n'existe pas en Principauté d'organe indépendant spécialisé dans la protection des Droits de l'Homme, la Principauté de Monaco a mis en place, à la suite de son adhésion au Conseil de l'Europe, une Cellule des Droits de l'Homme et des Libertés fondamentales au sein du Département des Relations Extérieures, qui s'attache à :

- Apprécier l'adéquation de la législation monégasque aux normes européennes et proposer des réformes ;
- Etudier des Conventions du Conseil de l'Europe ;
- Faire des actions de formation ;
- Effectuer une mission « d'assistance » auprès des Autorités monégasques.

Ainsi, beaucoup de missions de protection et de diffusion des Droits de l'Homme sont déjà assumées au niveau de la Cellule des Droits de l'Homme.

Il semble à cet égard inopportun de créer un autre organe spécialisé qui ferait double emploi avec cette Cellule. De plus, aucune revendication particulière sur des problèmes de racisme ou de discrimination raciale ne s'est pour l'heure manifestée dans la Principauté. Il n'y a donc pas un besoin avéré de mettre en place une telle structure.

- paragraphes 37 et 38

Les garanties procédurales dans la mise en application des mesures de refoulement et d'expulsion ont été portées à la connaissance de la Commission. Ces dernières garantissent un recours devant le Tribunal Suprême.

Le Gouvernement Princier confirme en outre que la procédure relative aux demandes d'asile contient toutes les garanties nécessaires en la matière.

- Paragraphe 44

Le Gouvernement Princier tient à préciser que la décision de formuler des réserves et déclarations à l'égard du Pacte relatif aux droits économiques, sociaux et culturels, comme à l'égard de tout engagement international, relève de la seule autorité du Souverain, suite à un examen minutieux des implications juridiques et pratiques du texte ainsi considéré.

- paragraphe 48

Le Gouvernement Princier précise que les établissements scolaires de la Principauté comptent 30% d'élèves frontaliers.

- paragraphe 52

Par nature, la création d'un organisme d'autorégulation indépendant chargé de recevoir des plaintes à l'égard des médias relève de l'initiative d'une structure indépendante du Gouvernement, comme par exemple celle du syndicat des journalistes et/ou du syndicat des entreprises de communication.

- paragraphe 54

Le Gouvernement Princier s'étonne des informations selon lesquelles durant certaines périodes, notamment lors de campagnes électorales, certaines personnalités politiques monégasques auraient eu recours à un discours aux relents xénophobes. De tels propos étant par nature condamnables, ils n'auraient pas manqué d'être portés à la connaissance des autorités compétentes, l'ensemble des nationalités présentes sur le territoire monégasque pouvant s'exprimer librement.

- paragraphe 59

Des actions de formation sont assurées par la Cellule des Droits de l'Homme du Département des Relations Extérieures. Ces conférences ont pour but de sensibiliser les personnes aux Droits de l'Homme et de participer à la publicité des règles européennes.

Ces conférences concernent pour l'instant les praticiens du droit et le personnel judiciaire (magistrats et avocats). D'autres conférences sont à l'étude pour les lycées et pour la Sûreté Publique, dans le cadre de la formation des nouvelles recrues. Toutefois, en attendant ces conférences spécifiques, des programmes de formation et d'enseignement, qui intègrent les principes liés au respect des Droits de l'Homme et des Libertés fondamentales, sont déjà dispensés. Ainsi, le programme de formation des agents de police monégasques comprend notamment une partie réservée au respect de la personne humaine.

- paragraphe 65

Le Gouvernement Princier a d'ores et déjà pris les dispositions nécessaires aux fins de répertorier séparément les crimes racistes pouvant être commis à Monaco.

- paragraphe 73

Le Gouvernement Princier tient à préciser qu'il entend poursuivre de manière déterminée la lutte contre le recours aux travailleurs clandestins. »

