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I. Territory and population

1. The Principality of Monaco is an independent, sovereign State covering a surface area of 2.02km², 0.40km² of which have been reclaimed from the sea over the last 30 years. The Principality of Monaco consists of a single town, Monaco, the boundaries of which are identical to those of the State. For this reason, 100 per cent of the population is urban. The territory is semi-enclaved within that of the French Republic, but has a coastline bordering the Mediterranean Sea. Under the Convention on maritime delimitation between France and Monaco of 16 February 1984, the territorial waters over which the Principality exercises sovereignty have a surface area of 71km² and the maritime areas beyond that (the continental shelf to which Monaco holds sovereign rights) extend along a corridor that is 3.160km wide and 88km long.

2. French is the official language, but Italian and English are also widely understood and spoken. The traditional Monegasque language is spoken by “elders” and is also taught in school to children from the age of 7-8 (second year of elementary school). It is also an optional subject on the baccalaureate (school-leaving examination) programme.

3. The Roman Catholic Apostolic religion is the State religion, but article 23 of the Constitution guarantees freedom of religion. Hence, there are also Protestant, Anglican, Greek Orthodox and Jewish places of worship in Monaco.

4. In the light of the monetary ties between the Principality and the French Republic that were approved by a sovereign ordinance of 4 January 1925, which was amended on 17 July 1928 and made French coins and bank notes legal tender throughout the Principality, the Government of the Principality adopted the euro for use in Monaco as from 1 January 1999. For this, it adopted the same timetable as France and made the necessary legal arrangements at the domestic level. Although the Principality is a third State vis-à-vis the European Union, it was authorized to make the euro legal tender in Monaco pursuant to a decision of the European Union Council of Ministers issued on 31 December 1998. Furthermore, euro coins with a Monegasque obverse have been minted and are accepted as legal tender in all Euro-zone countries.

5. As of the most recent general population census, conducted between 7 June and 29 July 2016, the Principality had 37,308 residents (18,240 men and 19,068 women), an increase of 5.5 per cent over 2008. The population is divided among the eight wards defined by a sovereign ordinance, with 22 per cent of the total population being concentrated in the Monte Carlo ward, 19 per cent in La Rousse and 12 per cent in Fontvieille, which has been reclaimed from the sea.

6. In 2016, the population of Monaco comprised 139 nationalities, with 8,378 Monegasque nationals (22.47 per cent), 9,286 French nationals (24.89 per cent), 8,172 Italian nationals (21.90 per cent) and 2,795 United Kingdom nationals (7.49 per cent). The Swiss, Belgian, German and Russian communities are also well represented.

7. The population of Monegasque nationals has grown substantially over the years to reach a total of 9,326 persons in 2018, an increase of 30 per cent since 2000. Almost 95 per cent of these persons reside in the Principality.

8. The age distribution of the Monegasque population produces an atypical pyramid with a bulge in the over-40 age group owing to a large number of “newcomers”.

9. These are persons who have acquired nationality by declaration, either after 10 years of marriage to a Monegasque citizen or by naturalization. The former legal provisions entitling only women to apply for nationality after five years of marriage explain the male/female imbalance. Life expectancy at birth is 85.7 years (83.6 for men and 87.9 for women). In 2018, 2,378 nationals were aged 65 or over, accounting for 25.5 per cent of Monegasque nationals in the population. Persons aged between 0 and 14 made up 16.7 per cent of that population, the 15-24 age group accounted for 10.4 per cent and the 25-64 age group represented 47.1 per cent. The total fertility rate was 1.9 children per women in 2018, but over 2.5 between 2015 and 2017.

10. The main health indicators show that Monaco has attained particularly good levels in this area:

(a) Life expectancy at birth close to the best averages in the world (85.7 for nationals);

(b) A crude death rate of 10 per cent among nationals. Almost 43 per cent of deaths registered at the Princess Grace Hospital Centre (all nationalities and all places of residence included) are due to cancer, more than 24 per cent to circulatory diseases and 12 per to respiratory diseases.

11. The gross domestic product (GDP) was calculated for the first time in 2005. The definition of the reference population takes account of both the resident population and the non-resident, gainfully employed population. This economic aggregated figure can be used to determine the Monegasque economy's growth rate. In 2017, the Monegasque GDP amounted to €5.68 billion, as compared with €5.85 billion in 2016, or a drop of 3.5 per cent adjusted for inflation. At current prices, it works out at €67,786 per capita and €104,603 per employed person.

12. The following table shows the exact figures:

	2016 (€)	2017 (€)	Variation 2016/2017
Employees' earnings	+2 771 980 857	+2 884 929 467	+4.1%
Gross operating surplus	+2 564 825 237	+2 321 777 792	-9.5%
Tax on production	+745 980 438	+746 471 089	+0.1%
Subsidies	- 235 075 766	-272 930 806	+16.1%
GDP	5 847 710 766	5 680 247 542	-2.9%
Population covered	81 059 persons	83 797 persons	+3.4%
Per capita GDP (in €)	72 141	67 786	-6.0%

Source: IMSEE (Monegasque Institute of Statistics and Economic Studies).

13. Economic activity can also be measured based on local enterprises' annual turnover. In 2018, this amounted to €14.2 billion, excluding financial activities and insurance, an increase of some 3.6 per cent over the previous year. The economic fabric of the Principality is made up of very diverse elements. The main sectors of activity, in terms of turnover, are the wholesale trade (almost 33.2 per cent of the Principality's turnover, excluding financial activities and insurance) and the building trade (12.7 per cent), followed by scientific and support activities (11.7 per cent) and the retail trade (10.7 per cent).

14. The minimum hourly wage is recalculated every year, on 1 January, using baseline figures identical to the inflation-indexed minimum wage applicable in France. As of 1 January 2019, this amounted to €10.03 gross an hour, or €1,695.07 gross for 169 hours' work. An additional allowance of 5 per cent must be added to minimum wage. In practice, the 5 per cent "Monegasque weighting" is applied to all wages paid in the Principality.

15. It is estimated that 56,303 persons were gainfully employed in the public or private sector as at 31 December 2018, an increase of 7.8 per cent since 2014. The public sector employs 8.4 per cent of wage or salary earners, while the private sector accounts for 91.6 per cent, or 51,601, of such earners. Of the latter, 12.8 per cent are resident in Monaco and 78.9 per cent live in France. Some, 24.9 per cent of the latter group live in neighbouring areas, while 8.3 per cent live in Italy (which is 12km away). Men make up 60 per cent of the workforce in the private sector and women 40 per cent. The tertiary (services) sector accounts for 86.1 per cent of the workforce and the secondary (industrial) sector 13.7 per cent. The primary sector is virtually non-existent (0.2 per cent) as, apart from 43 hectares of green spaces, Monegasque territory is entirely urban.

II. General political structure

A. Brief outline of the Principality's political history

16. In the earliest prehistoric era and in antiquity, the Rock of Monaco and the natural port served as a shelter for primitive populations and then for navigators from the East. In the sixth century B.C., the region was inhabited by a Ligurian tribe, which reputedly gave its name to Monaco. After a period of colonization by the Phoenicians, the Romans settled in the region between the second century B.C. and the fifth century A.D. They used the harbour of Monaco, which had acquired the name of Portus Herculis Monoeci (Port Hercules). The region was invaded on numerous occasions from the beginning of sixth century up to the end of the tenth century and it was not until the year 975 that the Count of Provence ushered in a new era after successfully repelling the Saracens.

17. In 1162, the Emperor Frederick I (Barbarossa) recognized the authority of Genoa over the Ligurian coast as far as Monaco. The Genoese set up a colony on the Rock and built a fortified castle (1215), which became the Republic's frontier post on its western border.

18. In 1270, a civil war in Genoa pitted the Guelphs, who supported the Pope, against the Ghibellines, who supported the Holy Roman Emperor. After the victory of the Ghibellines, many Guelph families, including the Grimaldis, were exiled.

19. As a reaction against the Guelphs' enforced exile, a group, led by François Grimaldi, who was also known as "Malizia", seized the castle of Monaco in a surprise attack on 8 January 1297. This date marks the beginning of the Grimaldis' reign in Monaco.

20. In 1346 and 1355, the Grimaldis acquired the seigneuries (estates) and fiefs of Menton and Roquebrune. These seigneuries, together with that of Monaco, constituted the Principality's territory until 1861. Before he died in 1454, Jean I made a will that included some key clauses establishing the rules of succession for the House of Monaco for five centuries. He stipulated that he should be succeeded by his direct, legitimate issue in accordance with the principle of male-preference primogeniture within the same degree of kinship; only if there were no male heirs, would it be the turn of women, provided that their descendants took the name and arms of the the Grimaldis.

21. During the fifteenth century, the Seignury was recognized, inter alia, by the Duke of Savoy. In 1512, King Louis XII of France acknowledged that Lucien, Lord of Monaco from 1481 to 1523, possessed the Seignury of Monaco solely "by the agency of God and his sword". All vassalage to Genoa ceased at that time. The close alliance between France and the Lords of Monaco led them to go to war with the Kingdom of Naples. Monaco was under the protection of Spain between 1524 and 1641 until, under the Treaty of Péronne (1641), Louis XIII of France finally brought the Principality back into the French sphere of influence, while at the same time reaffirming the freedom and sovereignty of the Prince of Monaco. The Treaty of Péronne granted the fiefs of Valentinois, Carladès, Baux and Saint-Rémy to Prince Honoré II and his son. In December 1678, Louis I promulgated the legal statutes of the Principality, or the *Code Louis*. In 1793, during the French revolution, the Principality was again joined to the territory of the Republic under the name of "Fort Hercule", until in 1814, the Treaty of Paris reinstated the rights and prerogatives of the Grimaldis and placed them under the protection of the King of Sardinia.

22. In 1848, Menton and Roquebrune were proclaimed "free towns" and were placed under Sardinian protection. The sovereign rights over both towns were officially ceded to France by Charles III in a treaty signed with Napoleon III on 2 February 1861, which again secured the independence of Monaco (at which point Monaco lost more than nine tenths of its territory and six sevenths of its population). Under some secret articles of the treaty, the Prince gave an undertaking on his own behalf and that of his descendants that he would only forfeit his sovereign rights to France and would only accept a protectorate if provided by France. Another clause of the treaty made provision for the setting up of a customs

union between both States, which was established in 1865. On 5 January 1911, Prince Albert I gave Monaco its first effective constitution¹ which determined how the powers of State were to be organized and institutions were to operate. 23. The treaty on relations between France with the Principality of Monaco was signed on 17 July 1918. Through this treaty France is required to defend the independence and sovereignty of the Principality of Monaco and to guarantee its territorial integrity. In return, the exercise of this sovereignty must be assured wholly in keeping with the political, military, naval and economic interests of France. Measures concerning the international relations of the Principality must likewise be taken subject to prior consultations between the Government of the Principality and the French Government. This treaty is currently being renegotiated.

24. Prince Rainier III ascended the throne on 9 May 1949. His reign was one that did the most to transform the Principality. He stepped up and diversified actions taken during the reign of his three predecessors in the political, diplomatic, international, economic and social fields, as well as in education, sports, health, science, culture and communications, and he added an industrial dimension to his work. On 17 December 1962 he promulgated a new constitution which regulating the separation of powers and the rule of law. He secured the State's admission as to the United Nations in 1993 and to the Council of Europe in 2004.

25. On Thursday, 31 March 2005, in accordance with the Statutes of the Sovereign Family, the Crown Council, to which the matter had been referred by the Secretary of State after informing Crown Prince Albert, took note that Prince Rainier III was prevented from performing his royal duties by his hospitalization in the Cardiothoracic Centre on 7 March 2005. Crown Prince Albert thereafter acted as regent until he succeeded his father, Prince Rainier III, on his death on 6 April 2005. Prince Albert II made his accession speech on 12 July 2005.

B. Institutional framework

26. The political and institutional regime of the Principality of Monaco is governed by the Constitution of 17 December 1962 (as amended by Act No. 1.249 of 2 April 2002). As the State's basic law, the Constitution defines the nature of the Government, how the authorities are to be organized and the relations between them. It also sets forth the civil rights and freedoms that are granted to Monegasque citizens and foreign nationals.

27. The Principality of Monaco is a hereditary, constitutional monarchy which upholds the primacy of law over all institutions and ensures the separation of powers.

28. The Principality of Monaco is a hereditary, constitutional monarchy. The primacy of the law over all institutions is recognized and the separation of the major functions of the State has been strengthened and regulated in detail. The Constitution enshrines the sovereignty and independence of the Principality "within the framework of the general principles of international law and the particular conventions with France".

29. The Constitution further states that "the Principality is a State that is subject to the rule of law and committed to fundamental freedoms and rights". These are listed in chapter III and mirror many of the rights to be found in the principal international human rights instruments, first and foremost the 1948 Universal Declaration of Human Rights.

30. The Constitution may not be suspended. Its revision, in full or in part, must be agreed jointly by the Prince and an elected assembly, the National Council.

¹ A first constitution granted by Prince Florestan I in 1848 contained some provisions on the separation of powers which were modern at the time, but this text never entered into force for historical reasons related to the partition of the territory.

1. The executive branch

(a) The Head of State

31. The Sovereign Prince is the Head of the State of Monaco:
- (a) Executive power flows from his high authority;
 - (b) Legislative authority is exercised jointly by the Prince and the National Council;
 - (c) Legislative authority is delegated by the Prince to the courts and tribunals.
32. On the death or abdication of the reigning prince, the succession to the throne passes to his direct, legitimate issue in accordance with male-preference primogeniture within the same degree of kinship.
33. If the reigning prince has no direct, legitimate issue, the succession to the throne passes to his brothers and sisters and their direct, legitimate issue, in accordance with male-preference primogeniture within the same degree of kinship.
34. If the person who would have been heir to the throne under the foregoing paragraphs dies or renounces the throne before it becomes vacant, succession devolves upon his/her own direct, legitimate issue in accordance with male-preference primogeniture within the same degree of kinship.
35. If the application of the procedure outlined in the above paragraphs does not make it possible to fill the vacant throne, subject to the assent of the Regency Council it passes to a collateral relative designated by the Crown Council. The prince's powers are temporarily exercised by the Regency Council.
36. Only a person possessing Monegasque nationality on the day the throne becomes vacant may succeed to it.
37. Such terms and conditions as are required for applying the article in question are set forth in the Statutes of the Sovereign Family and adopted by sovereign ordinance.
38. The Prince represents the Principality in its relations with foreign Powers. This relationship is reflected in the expansion of Monaco's diplomatic representation abroad: 16² ambassadors accredited to 28 States and international organizations (United Nations, European Union and the Council of Europe), 138³ consulates in 80 States in Europe, Asia, Africa and North, Central and South America. It is also reflected in foreign representation in Monaco: 117⁴ foreign embassies are accredited in Monaco and 90 States are represented by an active consulate, whether or not the consul is resident in Monaco. The Prince may conclude bilateral agreements with foreign Powers on cooperation, mutual assistance, extradition, specific sectors, etc.
39. However, article 14 of the Constitution specifies that some treaties require ratification by a legislative act. This is the case of:
- (a) International treaties and agreements affecting constitutional arrangements;
 - (b) International treaties and agreements, ratification of which entails amendment of existing legislation;
 - (c) International treaties and agreements on the accession of the Principality to an international organization the workings of which require the participation of members of the National Council;
 - (d) International treaties and agreements, the implementation of which results in budgetary charges for expenditure that, by its nature or purpose, is not provided for in the Budget Act.

² Figure for 2018.

³ Figure for 2018.

⁴ Figure for 2018.

40. After consulting the Crown Council, the Prince signs and ratifies international treaties and conventions. He forwards them to the National Council through the Minister of State before their ratification. He has authorized the accession of Monaco to numerous international bodies and has encouraged the siting in the Principality of the headquarters of international scientific organizations such as the International Commission for the Scientific Exploration of the Mediterranean Sea, the International Hydrographic Organization and the Marine Environment Laboratory of the International Atomic Energy Agency.

41. The Prince, after consulting the Crown Council, exercises the right to grant pardon and amnesty and the right to grant naturalization and restore nationality.

(b) The Government

42. Government powers are exercised, under the Prince's high authority, by a Minister of State and five Minister-Government Councillors appointed by the Prince and answerable to him. The Minister of State and the Minister-Government Councillors make up the Government Council which convenes regularly once a week. The Council is chaired by the Minister of State, who has the casting vote.

(c) The Minister of State

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

44. Some administrative services respond directly to him: General Audit Office, the General Secretariat of the Ministry of State, the Legal Affairs Department the Human Resources and Civil Service Training Department, the Digital Administration Department, the Central Records Service, the Official Gazette, the Communication Department, etc.

(d) The Minister-Government Councillors

45. The Minister-Government Councillors head the five ministries which have the following responsibilities:

(i) Ministry of the Interior

46. This ministry is in charge of the implementation of public policy in the following fields:

- (a) National education;
- (b) Youth and sport;
- (c) Public security and examining applications for residence permits;
- (d) Cultural affairs;
- (e) Civil defence.

47. It monitors and supervises associations, federations and foundations, as well as relations with religious communities in the Principality.

48. It likewise holds a watching brief over all matters concerning the Commune of Monaco.

(ii) Ministry of Finance and Economy

49. The Ministry of Finance and Economy has a very wide field of action, as all matters with budgetary implications are submitted to it. A wide variety of services, whose activities it pilots, respond to it.

50. It is in charge of carrying out public policy in the following areas:

- (a) Budget;
- (b) Public revenue;

- (c) Economy and trade;
- (d) Tourism;
- (e) Housing;
- (f) State property;
- (g) Gambling supervision;
- (h) Financial regulation and supervision;
- (i) Innovation and new technologies;
- (h) Commercial services ((State Tobacco Company and Office for the Issuance of Postage Stamps).

(iii) *Ministry of Public Works, the Environment and Urban Development*

51. The Ministry of Public Works, the Environment and Urban Development is responsible for:

- (a) Public works;
- (b) Urban development;
- (c) Construction of buildings;
- (d) Environment, green spaces and quality of life;
- (e) Maintenance of State property;
- (f) Land, sea and air transport;
- (g) Public community services.

(iv) *Ministry of Health and Social Affairs*

52. It is in charge of carrying out public policy with regard to:

- (a) Employment;
- (b) Labour relations;
- (c) Occupational health;
- (d) Social security insurance in the private and public sectors;
- (e) Public health;
- (f) Social welfare;
- (g) The family, the elderly and persons with disability through the daily action

of:

- The Labour Department
- The Health and Social Services Department
- The Social Assistance and Welfare Department
- The State Medical Services Department
- The Secretariat of the Employment Tribunal
- Public establishments under its aegis, such as the Princess Grace Hospital Centre and the Social Welfare Office.

The Ministry of Health and Social Affairs is also responsible for monitoring and taking action in response to any changes in international social protection agreements, in particular the bilateral social security agreements with France and Italy.

(v) *Ministry of Foreign Affairs and Cooperation*

53. It is in charge of public policy related to the following fields:

- (a) Immunity, diplomatic relations and consular matters;
- (b) European affairs;
- (c) International and multilateral affairs;

(d) International environment through the daily action of the International Cooperation Department and the Diplomatic and Consular Relations Department and through Monaco's embassies and representations abroad and to international organizations.

54. Each Minister-Government Councillor is assisted by a Director General, a secretariat and administrative services responding to a director or head of service.

55. Civil servants are appointed by sovereign ordinance. Their basic duties, rights and guarantees, as well as their responsibilities, are set forth in Act No. 975 of 12 July 1975 laying down the civil service regulations.

2. The legislative branch

(a) The National Council

56. The National Council has 24 members who are elected for a five-year term of office in a single-round ballot from lists. It is possible to vote for candidates from different lists, but preferential voting is not allowed. All Monegasque citizens of either sex who are over the age of 18 and in possession of their civic rights may vote.

57. Members of the electorate of either sex who are over 25 years of age, who have held Monegasque nationality for at least five years and who are not ineligible for one of the reasons laid down in Act 839 on national and communal elections of 23 February 1968 may stand for election.

58. The Prince, having obtained the opinion of the Crown Council (see para. 37, above), may dissolve the Assembly. In this case, new elections are held within three months.

59. The National Council exercises legislative power together with the Prince. Every year, during the October session, it votes on the State budget. No direct taxation may be imposed without its assent or against its wishes. Once adopted, the budget is published as a legislative act. A Board of Auditors supervises its implementation and the financial management of the Government, the Commune and public institutions.

60. The officers of the National Council, who are elected every year, consist of a president and a vice-president, appointed by the Assembly from among its members. The Minister of State and the Minister-Government Councillors attend the Assembly's sittings.

(b) Acts and sovereign ordinances

61. Acts: the Prince has the sole power to initiate legislation. However, the National Council may submit bills which, if they are accepted by the Government, are submitted by the latter to the Prince in the form of draft texts for approval. These drafts are then submitted by the Minister of State to the National Council for debate and a vote. At this point, members of the National Council and Government representatives cooperate within the assembly committees which are studying the draft. Once an act is voted, it lies with the Prince to promulgate it or to refrain from doing so. An act is enforceable against third parties as from one day after its publication in the Official Gazette.

62. Sovereign ordinances: sovereign ordinances which have been debated in the Government Council are presented to the Prince, who signs them and thus gives them executive force. They are enforceable against third parties on the same conditions as acts, in other words as from one day after their publication in the Official Gazette.

63. The purpose of sovereign ordinances is often to determine the terms and conditions for implementing acts. They may also concern matters falling within the Prince's autonomous sphere of competence as part of his regulatory power. The following sovereign ordinances are not subject to prior debate in the Government Council: those related to the Statutes of the Sovereign Family or concerning its members; those concerning matters within the jurisdiction of the Department of Judicial Services; the appointment of members

of the Sovereign House, the diplomatic and consular corps, the Minister of State, members of the Government Council or members of the legal service; the issue of *exequator* authorization to foreign consular representatives in Monaco; the dissolution of the National Council and the award of honours.

64. Lastly, sovereign ordinances make international treaties to which the Principality is a party enforceable in Monaco or determine the terms and conditions for implementing them. The Prince has the power to initiate and conduct diplomatic negotiations and, after consulting the Crown Council, to ratify international conventions which his plenipotentiaries have signed. However, the following may be ratified only by means of a legislative act: international treaties and agreements affecting constitutional arrangements; international treaties and agreements, ratification of which entails amendment of existing legislation; international treaties and agreements on the accession of the Principality to an international organization the workings of which require the participation of National Council members; international treaties and agreements, the implementation of which results in budgetary charges for expenditure that, by its nature or purpose, is not provided for in the Budget Act.

3. The judiciary

65. Article 88, first paragraph, of the Constitution vests judicial power in the Prince. He delegates full exercise thereof to the courts and tribunals which render justice in his name.

66. In practice, justice is administered by the Department of Judicial Services, the Monegasque ministry of justice.

67. In accordance with Act No. 1.398 of 24 June 2013 on judicial administration and organization, a recent text embodying all the principles and rules pertaining to the administration of justice which, until then, had been scattered among texts which were sometimes antiquated, the Department of Judicial Services is an independent administrative body of the Government and is headed by the Director of Judicial Services.

68. The Director of Judicial Services holds powers similar to those exercised in other countries by ministers of justice or the Lord Chancellor.

69. He attends to the sound administration of justice for which he is answerable to the Prince alone. In this capacity, in the field of judicial administration, he has responsibilities comparable to those devolved upon the Minister of State for the general administration of the country.

70. The Director of Judicial Services is also the supervisory and disciplinary authority of civil servants responding to him as staff of the general secretariat of the Department of Judicial Services, the General Registry and the Public Prosecution Service or of the remand prison. In this capacity, he performs his duties on conditions similar to those governing the exercise of those of the Minister of State or the heads of government administrative bodies, as laid down in Act No. 975 (art. 74). In disciplinary matters, he may issue a warning or a reprimand to a civil servant, or may order the convening of the Disciplinary Council with a view to handing down a more serious penalty by sovereign ordinance. As a precautionary measure, he may also temporarily suspend an offending civil servant from his/her duties, with or without salary.

71. Disciplinary power over members of the State legal service is exercised by the High Judicial Council (see para. 98, below) on referral by the Director of Judicial Services (art. 47 of Act No. 1.364 of 16 November 2009 on the staff regulations of the State legal service). Apart from disciplinary measures, when urgent action is warranted, a member of the State legal service may be suspended from duty by a reasoned decision of the Director of Judicial Services after obtaining the opinion of the First President of the Court of Appeal and the Public Prosecutor (art. 56 of the aforementioned Act No. 1.364).

72. Pursuant to the provisions of article 8 of Act No. 1.398 and the second paragraph of article 139 of the Code of Civil Procedure, the Director of Judicial Services represents the State before judicial bodies in all matters concerning the administration of justice, in particular in cases where the liability of public authorities is at issue owing to a miscarriage of justice. Under article 4 of the Civil Code, the issue of liability may be raised only in the

event of gross negligence, with a view to the award of compensation, by a compensation committee the membership and working methods of which are set forth in Part I, book III, chapter VIII of the Code of Civil Procedure.

73. The strictly judicial responsibilities of the Director of Judicial Services essentially pertain to criminal matters.

74. For example, article 26 of the aforementioned Act No. 1.398 provides that he/she directs prosecution – in other words criminal proceedings against the alleged perpetrators of offences of any kind – without being able personally to bring proceedings, to end them, or to stay their course. In this capacity, he/she gives instructions to the officers of the Public Prosecution Service, mainly the Public Prosecutor and his/her deputies within the public prosecution service. The latter is principally in charge of bringing proceedings. The instructions of the Director of Judicial Services are given in writing and placed in the case file (arts. 26 and 27 of the aforementioned Act No. 1.398). The prosecutors who are “directed and supervised by the Public Prosecutor who is under the authority of the Director of Judicial Services” (art. 8 of Act No. 1.364 of 16 November 2009 on the staff regulations of the State legal service) must follow them in written investigative proceedings, freedom of speech being reserved for rights of conscience. “During the hearing, they have freedom of speech” (art. 8 of the aforementioned Act No. 1.364). The Director of Judicial Services is therefore the leading player in criminal policy.

75. The Director of Judicial Services may order the release on parole of convicted criminals on the conditions set forth in Sovereign Ordinance No. 4.035 of 17 May 1968.

76. His/her opinion may be sought by the Prince on any justice-related matter.

77. The services administered by the Department of Judicial Services comprise:

- (a) The general secretariat of the Department;
- (b) The Public Prosecution Service;
- (c) The courts;
- (d) The General Registry;
- (e) The prison service.

78. The general secretariat has particular responsibility for administering judicial services under the Director’s authority. It is headed by a secretary-general who is required to assist the Director of Judicial Services in all fields of the administration of justice (art. 9 of the aforementioned Act No. 1.398).

79. Its staff also include (category A) senior officials and policy managers who may be assigned to an administrative post, and civil servants subject to the general civil-service regulations contained in Act No. 975 of 12 July 1975.

80. In practice, the general secretariat handles the day-to-day administration of justice including budgetary and financial matters, human resources and career-related issues.

81. It is also in charge of Monegasque naturalization proceedings, as well as performing duties devolved upon the Department of Judicial Services as the central authority for implementing various private international law agreements. In this capacity, the general secretariat coordinates the administrative stage of international child adoptions, issues apostilles and deals with international cases of child abduction.

82. The Department of Judicial Services is also responsible for forwarding and communicating requests for mutual legal assistance (judicial documents and letters rogatory).

83. It goes without saying that the internal management of courts is the responsibility of the most senior judges and prosecutors and not of the Department of Judicial Services.

4. The Commune

84. The territory of the Principality of Monaco consists of a single commune. It is administered by a Communal Council composed of 15 members who are elected for a four-

year term of office, by direct universal suffrage, from lists, in a double-ballot plurinomial majority election, by all adult citizens who have not been deprived of their right to vote. All members of the electorate over the age of 21 are eligible, save in cases of exclusion provided for by law. The Council appoints from among its members a mayor and deputy mayors who constitute the municipality. It may be dissolved by a reasoned order of the Minister of State after consultation of the State Council.

85. The Commune's responsibilities: in this connection, a distinction must be drawn between responsibilities devolved upon the mayor as a representative of the supreme authority, advisory functions performed by the Communal Council and duties which fall to the Commune as a decentralized local authority.

86. The mayor, as a public servant, is responsible for ensuring the implementation of laws and regulations and for exercising local administrative powers, including in the areas of urban hygiene and traffic. He/she gives an opinion on applications for naturalization or restoration of Monegasque nationality. Under the supervision of the Public Prosecutor, he/she performs the duties of registrar (keeping civil registers) and law enforcement officer (with the power to take part in investigations into crimes, offences and petty offences, draw up a record of them, and receive complaints and accusations).

87. The Communal Council must be consulted by the Minister of State about town-planning projects, major public works projects, plans to construct State-owned or private buildings (large-scale projects or those requiring special exemptions, especially in Monaco-Ville), plans to create or remove green spaces and projects likely to alter the townscape, the aesthetics of the town or traffic flow.

88. The Commune, as a decentralized local authority, is responsible for managing communal property, arranging and organizing communal services, organizing municipal festivities and events, dealing with urban hygiene and pollution, naming streets, creating, equipping or removing green spaces and looking after the cemetery.

5. Advisory bodies

(a) The Crown Council

89. The Council consists of seven Monegasque nationals who are appointed by the Prince for a three-year term of office. The Chairperson and three members are directly appointed by the Prince. The three others are appointed on a proposal from the National Council, but must not be members of the latter. Meetings of the Council are convened by the Prince at least twice a year.

90. Its duty is to provide an opinion on issues submitted to it by the Prince which concern the best interests of the State. It must be consulted on the signature and ratification of international treaties, the dissolution of the National Council, applications for naturalization or restoration of Monegasque nationality, pardons and amnesties. It may submit suggestions to the Prince with regard to matters which it has itself considered.

(b) The State Council

91. The State Council is chaired ex officio by the Director of Judicial Services and consists of 12 members who are appointed by the Prince (Sovereign Ordinance No. 3.191 of 29 May 1964 on the organization and working of the State Council). It is responsible for giving an opinion on draft acts or sovereign ordinances submitted for its consideration by or on the orders of the Prince, or by the Minister of State or the Director of Judicial Services. The State Council may also be consulted on the same conditions on any issues submitted to it and its opinion is sought on the draft State budget if the National Council has not voted appropriations by 31 December, or if the Government decides to carry over appropriations for services voted during the previous financial year.

(c) The Economic and Social Council

92. The Council consists of 36 members appointed for a three-year term of office by sovereign ordinance. It is a tripartite body comprising:

(a) 12 government members proposed by the Government on grounds of their expertise;

(b) 12 wage or salary-earning members, eight of whom are appointed on a proposal from the Union of Monaco Trade Unions and four on a proposal of workers' trade unions not affiliated to that organization;

(c) 12 members representing employers, eight of whom are appointed on a proposal from the Monegasque Employers' Federation and four of whom are proposed by employers' associations not affiliated to that organization, or by professional bodies.

93. The members, who may be Monegasque or foreign nationals, must have been gainfully employed in the Principality for more than five years. The Chairperson must have Monegasque nationality. As a consultative assembly, the Economic and Social Council is required to give opinions on social and financial matters and on questions related to tourism and hotels, trade, industry, property and town planning, which are of general relevance to the country's economic life.

C. The Courts

1. General characteristics

94. Chapter X of the Constitution of 17 December 1962 is devoted to "justice". It sets forth the principles underpinning the organization of the judiciary.

95. The provisions of Chapter X establish the principle of delegated justice, meaning that judicial power lies with the Prince who delegates the full exercise thereof to courts and tribunals. They render justice in his name (art. 88). Such delegation is consistent with another basic principle of any State governed by the rule of law, namely the separation of the administrative, legislative and judicial branches, which is likewise embodied in the Constitution (art. 6).

96. The combined application of these constitutional provisions makes the judiciary completely independent of the executive branch in respect not only of judicial proceedings and decisions but also of the administration of justice.

97. For this reason, the Government has no Minister-Government Councillor of Justice. The administration of the judiciary is, on the contrary, in the hands of an independent department, the Department of Judicial Services.

98. Within his/her field of responsibility, its head, the Director of Judicial Services, has powers comparable in nature and scope to those devolved upon the Minister of State for the general administration of the country (Act No. 1.398 of 24 June 2013 on judicial administration and organization) and, like the latter, is answerable to the Prince alone.

99. The principle of judicial independence is also guaranteed by the Constitution (art. 88). This provision chiefly concerns judges who are called upon, either as a member of a panel or sitting alone, to settle disputes submitted to them by the parties on conditions laid down by law.

100. In pursuance of this principles, judges enjoy security of tenure and may not be dismissed, suspended or transferred.

101. In order to guarantee judicial independence, the Constitution states that the organization, jurisdiction and functioning of the courts and the regulations of the State legal service must be established by law (art. 88). The fact that they may not be determined by the regulatory power, save in implementation of the law, constitutes a substantial guarantee. Pursuant to this provision of the Constitution, the legislature recently passed Act No. 1.398 of 24 June 2012 on judicial administration and organization (see para. 63, above) and, before that, Act No. 1.364 of 16 November 2009 on the staff regulations of the State legal service. The latter consolidated, in a single text, regulations that had been contained in different pieces of legislation or instruments that had the force of law and were often antiquated or obsolete. These regulations define the rights and obligations of members of the State legal service and the conditions under which they incur liability.

102. In addition, the aforementioned Act No. 1.364 introduced a major innovation into the Monegasque *corpus juris* in the form of a new institution, the High Judicial and Prosecutorial Council. This collegiate body (see article 22 of the above-mentioned Act No. 1.364, for its membership), which is crucial to the effectiveness of the staff regulations of the State legal service, has been given three essential tasks. The first consists in ensuring fairness and equal treatment and safeguarding all the principles which a State governed by the rule of law must observe when managing the careers of independent judges. As part of its second essential duty, the High Council must deal with any disciplinary offences, it being understood that proceedings are accompanied with extra guarantees to ensure observance of the adversarial process. Thirdly and lastly, this institution plays a general role in that the High Council may be consulted by the Prince on any issue touching on the organization and functioning of the courts. The High Council, which has a firm statutory basis, is therefore intrinsic to the Monegasque rule of law, in that it helps to ensure the independence of judges in accordance with the second paragraph of article 88 of the Constitution.

103. In judicial matters, the Prince's only prerogatives are the right to grant pardons and amnesties (art. 15 of the Constitution). He also rules on requests for extradition after receiving the opinion of the Appeal Court.

104. Security of tenure does not apply to prosecutors, who are members of a hierarchical structure headed by the Public Prosecutor, or to in-service trainees (Act No. 1.364 of 16 November 2009 on the staff regulations of the State legal service, art. 3). In-service trainees perform the duties of entrants to the Monegasque State legal service.

105. Because of the long, close, special relationship between Monaco and France,, Monegasque law is mainly derived from French law.

106. For example, between 1793 and 1816, codes promulgated under the First French Empire were applied in Monaco. In order to overcome the mismatch between French legislation and particular realities in the Principality in some areas, specific Monegasque codes were subsequently adopted, such as the Commercial Code of 5 November 1866, the Criminal Code of 19 December 1874 and the Civil Code of 21 December 1880. At a later stage, Prince Albert I decided to entrust Baron de Rolland, a French lawyer, with the drafting of two new codes, the Code of Civil Procedure and the Code of Criminal Procedure, which were enacted in 1896 and 1904 respectively.

107. These five codes made up the bulk of Monegasque positive law until the beginning of the 1960s.

108. On 26 May 1954, the Prince ordered the setting up of a commission for the updating of codes, which was instructed to propose the requisite amendments to Monegasque law in order to attune it to the new needs of those subject to it and to contemporary standards. This body was chaired, from the outset, by the Director of Judicial Services who is also the Chairman of the Council of State. Its deliberations resulted in the enactment in 1963 of a new Code of Criminal Procedure and in 1967 of a new Criminal Code.

109. Its membership is now supplemented by law professors, judges from other Monegasque courts, a member of the Bar Association and two representatives of the National Council (and a member of the Government).

110. Nowadays, although it draws heavily on French law, Monegasque law has some noteworthy special features in a very wide variety of areas such as family law, nationality law, company law, collective procedures for settling liabilities, criminal law, criminal procedure, administrative law, etc.

111. Prosecutorial duties, the purpose of which is to apply the law and to preserve and defend the best interests of society, are carried out by a single body, the members of the Public Prosecution Service.

112. Persons subject to the jurisdiction of Monegasque courts may be represented by senior lawyers or lawyers who are members of the Monegasque Bar Association. They may also be represented by foreign counsel who are authorized to plead by the president of the

court concerned and, except in criminal cases, are assisted in matters of form and procedure by a Monegasque colleague.

113. In the sphere of criminal law, mention should be made of the founding, in July 2014, of the Victims Help Association (AVIP) as part of measures under Act No. 1.382 of 20 July 2011 on the prevention and suppression of particular forms of violence. The purpose of the government-funded association, which was approved by Ministerial Order No. 2014-660 of 20 November 2014, is to support crime victims, including victims of violence in the wider sense (physical, sexual and psychological violence, etc.). This assistance is provided on a confidential basis, free of charge.

114. Moreover, judicial organization and procedure in Monaco is based on the following principles:

- (a) Collective responsibility;
- (b) Right of appeal;
- (c) Possibility of judicial review;
- (d) Separation of prosecutorial and judicial functions in criminal cases.

115. The few exceptions to these principles are explained in the following paragraphs.

116. An investigating judge is in charge of inquiries regarding crimes and certain offences.

117. Cases concerning summary offences (*contraventions*) are heard by the justice of the peace sitting in a petty offences court, those concerning less serious offences (*délits*) by the Court of First Instance sitting as a court responsible for hearing misdemeanours and those concerning crimes by the criminal court. The latter is a court, like French assize courts, where citizens who are selected by drawing lots participate in reaching the verdict. The organization of courts, as described above, is mainly based on the system effect in France. However, a number of distinctive features deserve to be highlighted.

118. The first of these is the handling of commercial disputes. It should be noted that in Monaco there is no commercial court bringing together professional judges and commercial judges appointed by their peers. Commercial law as it derives from the Code of Commerce is applied by an ordinary court.

119. Secondly, unlike in France, jurisdiction over administrative cases does not lie with special courts.

120. In fact, a different kind of division operates in the Principality: cases concerning abuse of power, in other words those seeking the setting aside of administrative acts on the grounds of unlawfulness, are heard by the Supreme Court, whereas full jurisdiction proceedings (liability of public authorities, administrative contracts, tax matters, etc.) are heard by an ordinary court.

121. It must be noted that, in these proceedings, an ordinary court (either a first instance or an appeal court) applies similar rules to those established by French administrative courts.

122. Thirdly, with regard to constitutional disputes, the Supreme Court, to which a case may be referred by any Monegasque or foreign, natural or legal person able to demonstrate a sufficient interest, may set aside legislation or regulations on the grounds that they fail to respect constitutional rights and freedoms. This direct access of litigants to the constitutional court is a distinctive feature of the Principality.

2. Judicial authorities

(a) The courts

(i) The Supreme Court

123. The Supreme Court of Monaco, which was set up under the Constitution of 5 January 1911, is of great historical importance. Through this constitution, which was

granted by Prince Albert I and drafted by renowned French lawyers and internationalists (Louis Renault, André Weiss and Jules Roche), the Principality of Monaco became a genuine constitutional monarchy.⁵

124. It rested on democratic principles covering the organization of the public authorities (an elected parliament and a government, a municipality and independent courts and tribunals) and in chapter II it embodied fundamental freedoms and rights.

125. In order to protect and safeguard these rights and freedoms, the 1911 Constitution also made provision for a higher court, the Supreme Court, which is regarded as the oldest constitutional court in Europe, if not of the world.

126. The new Monegasque Constitution adopted in 1962 confirms the existence of fundamental rights and freedoms by adding to the classic rights embodied in the 1911 version (individual freedom and security; legal definition of crimes, offences and penalties; right of respect for private and family life and the confidentiality of correspondence; right to own property, and abolition of the death sentence) economic and social rights including the freedom of association (art. 30), the right to engage in trade union action (art. 28), freedom of employment (art. 25) and the right to strike (art. 28).

127. Quite logically, in article 90 (see below) it also confirms the establishment of the Supreme Court. More detailed rules on its organization and workings are laid down in Sovereign Ordinance No. 2.984 of 16 April 1963.

128. Membership: the Supreme Court is made up of five full members and two alternate members appointed by the Prince on a proposal of the National Council, the Council of State, the Crown Council, the Court of Appeal and the Court of First Instance. All these institutions propose a full member; only the National Council and the Council of State also propose an alternate. Two names must be put forward for each position as either a full or alternate member.

129. The members of the Supreme Court are appointed by a sovereign ordinance which also designates, from among its members, the president of the court and the vice-president who deputizes for the president if the latter is absent or unable to attend. The members of the Supreme Court serve an eight-year term of office which is not renewable, except when full or alternate members are appointed for a term of less than two years after a resignation, impediment, death or dismissal (art. 1 of the above-mentioned Sovereign Ordinance No. 2.984, as amended by Sovereign Ordinance No. 5.371 of 19 June 2015).

130. Article 2 of Sovereign Ordinance No. 2.984 of 16 April 1963 stipulates that these members must be at least 40 years of age and “chosen from among particularly well-qualified lawyers”. In practice, these persons are either eminent professors of public law or senior French judges from the Council of State or the Court of Cassation.

131. Jurisdiction: the Supreme Court has jurisdiction over administrative and constitutional matters. Its jurisdiction is determined by article 90 of the Constitution.

132. In constitutional matters, the Supreme Court rules on actions for annulment, applications challenging validity or action for damages in relation to breaches of constitutional rights and freedoms, ensuing primarily from a law, that is to say a legislative text expressing, in the words of article 66 of the Constitution, the joint wishes of the Prince and the National Council.

133. Two distinctive features of Monegasque public law warrant underlining in this context.

134. First, with regard to action for damages, the Constitution has made provision for this specific remedy before the Supreme Court as an exception to the rule that, under the second paragraph of article 21 of the Code of Civil Procedure, as amended by Act No. 1.135 of 16 July 1990, such actions against public bodies fall within the jurisdiction of ordinary courts

⁵ See footnote 1 above.

when a case concerns compensation for injury resulting from a law which the Court has found to be unconstitutional (or from an unlawful administrative act).

135. It must also be emphasized that article 90-A-2, by employing the phrase “action for damages in relation to a breach of freedoms and rights” makes it clear that a law or legal instrument do not necessarily have to be at issue, but that it is sufficient for a breach to stem from a physical act of a public authority, in other words from blatantly unlawful conduct. For this reason, in Monaco, blatantly unlawful conduct is a matter not for the ordinary courts but for the constitutional court.

136. Secondly, applications challenging validity enable the litigant to raise an objection to the constitutionality of a law.

137. Lastly, it should be noted that the Supreme Court may likewise rule on the constitutionality and/or lawfulness of the rules of procedure of the National Council, as decisions on this subject have been delivered since the 1962 Constitution.

138. As far as administrative law is concerned, the Supreme Court rules on applications to set aside, on grounds of abuse of power, decisions taken by various administrative authorities and sovereign ordinances implementing laws and it awards the resultant compensation. In practice, most of the Court’s decisions are handed down in response to such actions.

139. Subsidiarily, it may hear:

(a) Judicial reviews of decisions of administrative courts acting as courts of last instance;

(b) Appeals challenging the interpretation or validity of decisions of various administrative authorities and sovereign ordinances implementing laws;

(c) Disputes over jurisdiction.

140. Procedure: Sovereign Ordinance No. 2.984 of 16 April 1963 establishes the rules of procedure before the Supreme Court. They are similar to those in force before French administrative courts. The most important of these rules may be summarized as follows.

141. Institution of proceedings: any natural or legal person with *locus standi* and able to demonstrate a sufficient interest, may bring an administrative or constitutional case to the Court.

142. For this reason, any law may be annulled, on the grounds that it is incompatible with the Constitution, at the initiative of a Monegasque or foreign, natural or legal person who is subject to the jurisdiction of the Monegasque courts. This distinctive feature particularly warrants underlining as individuals in States governed by the rule of law can rarely seek a remedy or raise an objection directly before a constitutional court.

143. In the field of administrative law, an appeal on the grounds of an abuse of power may be preceded by preliminary administrative appeal either to the authority which took the decision – in which case it is called an application for reconsideration – or to a higher authority – in which case it is called a hierarchical appeal.

144. Appeals on grounds of abuse of power may be entered in respect of:

(a) Formal or procedural irregularities: lack of jurisdiction or procedural flaws;

(b) Substantive irregularities: breach of the law, unlawful reasons or abuse of authority.

145. The hearing: the court sits in the Palais de Justice. Its hearings are public. The Supreme Court sits and deliberates as a full court when settling constitutional disputes concerning jurisdictional competence and when the President of the Court orders the referral of an administrative case to it.

146. In all other cases it sits and deliberates as the Administrative Division (art. 91 of the Constitution and arts. 10 and 12 of Sovereign Ordinance No. 2.984 of 16 April 1963 on the organization and functioning of the Supreme Court).

147. The Public Prosecutor acts as prosecutor in hearings before the Supreme Court. He/she makes the final submissions at the hearing.

148. The decision: This must be delivered orally in a public hearing by a member of the Court within two weeks of the hearing. It must include a number of compulsory elements and a statement of the reasons.

149. If, when a claim for damages for injury resulting from the unconstitutionality of a law or the unlawfulness of an administrative act is submitted to the Court, it sets aside the law or act, it must rule on compensation in the same decision.

150. The Court may also issue a provisional decision ordering all appropriate investigative measures. Decisions of the Supreme Court are addressed to the Minister of State by its President and are published in the Official Gazette. They may be subject to appeal by a third party. Such an appeal is admissible only if it is lodged by a person whose rights have been infringed, with the exception of individuals summoned to intervene by the President during the proceedings. No further appeal is permitted, except to rectify a factual error.

151. Review: in the field of constitutional law, the Court exercises a relatively wide power to review the constitutionality of acts on the basis of the wording of article 90 of the Constitution which specifically states that appeals may relate to “breaches of the freedoms and rights embodied in chapter III of the Constitution”.

152. Similarly, in a decision of 1 February 1994 on the same subject, the Court refers to the “constitutional principle of the equality of all in relation to public burdens”. In a commentary to this decision, the eminent legal writer Georges Vedel emphasized that, while the principle of equality before the law is explicitly referred to in article 17 of the Constitution, the principle of equality in relation to public burdens, although derived from it, is a novel concept created by the Court’s case law.

153. In the field of administrative law, the Court determines the lawfulness of decisions submitted to on the basis of principles and using methods comparable to those employed by French courts. This applies, in particular, to cases requiring a review of the exercise of discretionary administrative power, where, for example, the Supreme Court has no hesitation in examining whether there has been a manifest error of judgment.

(ii) *The Court of Revision*

154. The Court of Revision is at the top of the Monegasque judicial pyramid. Except when otherwise stipulated by law, it rules on breaches of any areas of the law and on appeals against final instance courts’ decisions which have *res judicata* force.

155. It is not a court of third instance, but one which considers only whether the law has been correctly applied.

156. In practice, most of the decisions referred to it are judgments handed down by the Court of Appeal in civil, criminal, commercial and administrative cases, but a not inconsiderable number of them are judgments of courts of first instance sitting as a court of appeal for decisions of the Employment Tribunal or Justice of the Peace.

157. The Court of Revision has eight members: a president, a vice-president and five associate judges who are called upon to sit in the order in which they have been appointed. The members of the Court of Revision are appointed by sovereign ordinance. They are generally chosen from the emeritus judges of the French Court of Cassation. The Court’s decisions must always be taken by a bench of at least three members.

158. The Court may consider, between sessions, in other words by written procedure, appeals deemed to be urgent. An appeal may also be referred to it in the interests of the law, as in the case of an appeal for review entered out of time by the Public Prosecutor on the orders of the Director of Judicial Services.

159. In its judgments, the Court of Revision may dismiss appeals, set aside the decisions referred to it and/or remit the case to a subsequent hearing for reconsideration of the merits

after the parties have filed additional submissions. In this case, the composition of the panel of Court of Revision judges determining the merits of the case must be different.

160. It must be noted that although, in administrative cases, it lies with the Supreme Court to decide whether there has been abuse of power and whether the effects thereof give entitlement to damages, it is the ordinary courts, and therefore also the Court of Revision, which deal with the remaining litigation concerning the responsibility of the State and administrative authorities, which therefore enjoy no jurisdictional privilege.

161. In the field of criminal law, judgments or decisions in cases concerning criminal offences, misdemeanours or petty offences, delivered by courts of last instance, which have become final in respect of the merits, may be referred to the Court of Revision in order to ascertain whether there has been a breach of the law or the rules of jurisdiction, or non-compliance with essential procedural requirements.

162. These requirements are deemed to include those pertaining to the membership of the court, the essential elements of the decision, or those prescribed in order to guarantee the prosecution of criminal acts and the rights of defence.

163. The Court examines appeals solely on the basis of written submissions.

164. The Court of Revision may also consider appeals filed in the interests of the law. It likewise rules on requests for the reopening of proceedings when a court has made a error of fact.

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

(iii) *The Court of Appeal*

166. The Court of Appeal is the court of second instance for civil, criminal, commercial and administrative cases. It consists of a president, a vice-president and at least two associate judges.

167. The bench must always comprise at least three members when hearing any case. When it cannot be constituted from its own members, it may be supplemented by one or more judges from a court which did not hear the case in the first instance, by a Justice of the Peace or, failing that, by a senior lawyer or the longest serving lawyer, who are members of the Bar Association.

168. Civil, commercial or administrative appeals: the Court of Appeal hears appeals against decisions of first instance courts. The time limit for filing an appeal is 30 days within notification of the judgment, unless otherwise stipulated by law. It takes the form of a writ, that is to say process served by a bailiff. The appeal stays the execution of the judgment unless provisional enforcement has been ordered. However such enforcement may be revoked by the Court if the court order was *ultra vires*.

169. The appellants and respondents may not appear in person, but must be represented by senior lawyers registered on the roll of Monegasque lawyers, which does not, of course, prevent them from instructing foreign lawyers to advise them or enter pleas on their behalf.

170. The Court sitting in chambers may consider first instance court decisions adopted in closed session and appeals against ex parte orders of the president of the first instance court and orders of the Guardianship Judge.

171. It may also hear appeals against decisions of the Rent Arbitration Commission and the Arbitration Commission for Commercial Leases.

172. Criminal appeals: Convicted persons, persons recognized as having incurred third party liability, the Public Prosecutor and parties claiming damages may appeal against judgments of the criminal court.

173. The appeal is decided on the basis of a judge's report and in accordance with the procedures established by the criminal court both with regard to the judicial investigation and taking of evidence and to the delivery and drafting of the judgment (art. 413 of the Code of Criminal Procedure).

174. The Court of Appeal rules only on the points for decision which have been referred to it. Where an appeal is lodged by the Public Prosecution Service, it can uphold the judgment or set it aside in whole or in part.

175. On the other hand, it may not increase the appellant's sentence if the latter is the accused or has incurred third party liability. Similarly, where an appeal is lodged only by a party claiming damages, it may not amend the judgment in a manner unfavourable to that party.

176. In criminal cases, the Court of Appeal sitting in chambers decides whether or not to bring an indictment. If the law classifies the act referred to it as a crime and if it considers the evidence to be sufficient for committal for trial, it orders that the accused should be brought before a criminal court.

177. It likewise hears appeals against orders issued by the Investigating Judge or the Guardianship Judge. It must also give an opinion on extradition proceedings.

178. The hearings of the Court sitting in chambers are not public. Attendance by the prosecution service is compulsory.

179. Counsel for a plaintiff claiming damages and defence counsel of the accused are invited to attend and these parties may attend if they so request.

180. After deliberating without the presence of the prosecution service, the Court of Appeal sitting in chambers rules at the earliest opportunity on the claims contained in the written submissions which counsel for the accused or the plaintiff claiming damages are allowed to produce at the latest on the eve of the hearing.

181. The special duties of the President: The President of the Court of Appeal occupies a special position in the Principality's judicial system owing to the specific responsibilities and prerogatives which the law confers on him/her.

182. In matters of protocol, the President is responsible for the formal reopening of the courts, which takes place every year on 1 October. The President of the Court of Appeal ranks immediately below the President of the Court of Revision.

183. Above all, the President of the Court of Appeal supervises the action of all the various judicial players and bodies, for example investigating judges' offices and court registries.

184. In addition to these personal responsibilities, under article 434 of the Code of Civil Procedure, the President has responsibilities in summary proceedings related to difficulties with the execution of Court of Appeal judgments and responsibilities as President of the Court sitting in chambers as a disciplinary body.

185. When a matter is referred to it by the Public Prosecutor, the Court sitting in chambers may, without prejudice to the outcome of any criminal proceedings, impose a variety of disciplinary penalties on registrars, criminal investigation officers, senior lawyers, lawyers and trainee lawyers and bailiffs.

186. The Court of Appeal has a position in the Monegasque judicial system which is noteworthy in many respects owing to its juridical and judicial regulatory functions.

187. At the strictly juridical level, it must first be noted that many of its judgments constitute precedents that set Monegasque law.

188. One example of this is the judgment of 25 June 1974 in the case *Minister of State, State Property Administrator and the Treasury v. Mathyssens and Dame Bureau Sénac*, which established the principle that public authority liability is distinct from civil liability under general law.

189. This is a feature which sets the Principality apart from neighbouring countries where it is the high courts of cassation which set legal standards through their case law.

190. Secondly, at the judicial level, the Court of Appeal through its supervisory and disciplinary functions makes a significant contribution, along with the Director of Judicial Services, to providing persons subject to the jurisdiction of Monegasque courts with the assurance that the latter will comply not only with the law but also with the code of ethics which is of essential importance to guaranteeing justice.

(iv) *The Court of First Instance*

191. The Court of First Instance is the kingpin of the judicial system. It is a collegial court presided over by a panel of three judges consisting of a president and two vice-presidents and it comprises one or more senior judges, judges or trainee judges. The president may delegate his/her powers to a vice-president or even a judge, depending on the needs of the service.

192. It hears civil and criminal cases. When trying less serious offences as the court for misdemeanours it consists of the same judges as those of the Court of First Instance. All the judges of the court are therefore entitled to hear civil and criminal cases.

193. Jurisdiction: the Court of First Instance hears:

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

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

(c) Appeals against judgments handed down at first instance by the Justice of the Peace, against arbitration awards in civil or commercial cases, and against judgments over which it has jurisdiction by law.

194. The court for misdemeanours hears:

(a) At first instance, all breaches of the law categorized as less serious offences carrying sentences of generally no more than five years' imprisonment and a maximum fine of €90,000;

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

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

(d) Appeals against judgments handed down by the petty offences court.

195. In order that everyone, even the poorest people, have access to justice, Monegasque law provides for a legal aid system (Act No. 1.378 of 18 May 2011 on legal aid and lawyers' fees).

196. Any person who is unable to pay the costs of proceedings in advance without drawing on resources needed to support him/her and his/her family may apply for legal aid.

197. Applications for legal aid are addressed on plain paper to the General Court Registry. Applications for legal assistance are examined by the Legal Aid Office, the membership of which is prescribed in article 4 of the aforementioned Act No. 1.378. The applicant is notified of the decision by the President of the Legal Aid Office. If the application is rejected, the reasons for the decision are stated, as are the terms and conditions for appeal. Any appeal must be filed with the Court of Appeal, sitting in chambers, within 15 days of receipt of notification of the decision. No appeal may be

entered against the Court's decision, which is handed down as a final ruling (art. 8 of Act No. 1.378).

198. Except in the event of an industrial accident, legal aid granted for specific proceedings applies only in respect of the court hearing the case, apart from appeals or applications for review. It covers notification of the judgment or decision and execution. In criminal cases, any accused may ask for the assistance of a court-appointed lawyer who is then appointed by the president of the Court of First Instance from a roster drawn up by the Chairman of the Bar Association.

(v) *The petty offences court and the Justice of the Peace*

199. The Justice of the Peace sits alone and acts as a court of first instance and, as the title suggests, his/her main duty in civil cases is, wherever possible, to reconcile the parties and to settle disputes where the sum of money at issue does not currently exceed the figure of €4,600 (art. 6 et seq. of the Code of Civil Procedure).

200. He/she also chairs the Employment Tribunal panel (art. 33 of Act No. 446 of 16 May 1946), and is competent to settle disputes concerning the election of employee representatives (Act No. 459 of 19 July 1947) and to order the affixing of official seals (Code of Civil Procedure, arts. 853 et seq.).

201. In criminal cases, he/she presides over the petty offences court, which hears cases concerning summary offences, that is, offences punishable by a fine of less than €600 and/or no more than one to five days' imprisonment.

202. Appeals against the judgments of the petty offences court may be filed with the court for misdemeanours.

(vi) *The criminal court*

203. The criminal court is a non-permanent court with jurisdiction to try cases concerning acts which the law classifies as crimes. A mixed court, it includes both professional and lay members, namely:

(a) Three judges:

- A president drawn from the judges of the Court of Appeal;
- Two assessor judges who may be members of the Court of Appeal or the Court of First Instance, or the Justice of the Peace;

(b) Three jurors selected from a list drawn up every three years by ministerial order, of 30 Monegasque citizens who have reached the age of majority and have never been convicted of a crime or misdemeanour.

204. The criminal court has jurisdiction to hear not only cases concerning offences which are classified as crimes, but also cases concerning criminal offences committed by minors with adult participation.

205. Since the death penalty was abolished by the Constitution of 17 December 1962, as subsequently amended, the most severe penalty that may be imposed on an accused person is life imprisonment.

206. Hearings before the criminal court are normally public, failing which they are invalid. The requirement that there be an oral hearing is another fundamental principle governing proceedings before the criminal court.

207. The criminal court is a sovereign court whose decisions may not be appealed. However, the parties (the convicted person, the party claiming damages and the Public Prosecution Service) may apply for a review on the following grounds:

- (a) Breach of the rules on jurisdiction;
- (b) Failure to observe essential procedural requirements;
- (c) Breach of the law.

208. If the Court of Revision sets aside the decision of the criminal court, the case is referred back to the latter, which must be of a different composition for the retrial.

(vii) *Judges with special functions*

209. In addition to ordinary courts, the Principality's judicial system has judges who perform special functions in order to settle certain kinds of disputes or to protect certain rights. These functions are as follows:

210. The Guardianship Judge: The duties of the Guardianship Judge are performed by a judge of the Court of First Instance, who is appointed for a three-year period by order of the Director of Judicial Services.

211. A substitute guardianship judge may be appointed according to the same procedure. He/she may issue rulings, in circumstances stipulated by law, on difficulties which may arise in family relationships.

212. In criminal cases concerning juvenile offenders, pursuant to special rules introduced in 1963, he/she replaces the investigating judge and in his/her place, adopts any measures which he/she considers necessary (inquiries, placing of the minor in a supervised observation centre, abandonment of any action for damages, discharge order or release on probation).

213. If the Guardianship Judge sends the juvenile offender for trial before the court for misdemeanours, this court will base its decision on the Guardianship Judge's oral report during the hearing.

214. In all cases, the Guardianship Judge must state the reasons for his/her orders which may be referred to the Court of Appeal sitting in chambers which must take a decision within one month of the appeal.

215. The Investigating Judge: The Investigating Judge's responsibility pertains solely to criminal matters.

216. For a judge, an investigation (or inquiry) consists in seeking to determine the existence of offences, the circumstances in which they were committed and identifying the alleged perpetrators and, if there is sufficient evidence in respect of the persons concerned, in indicting them and sending them for trial.

217. A case is referred to the Investigating Judge either at the formal request of the Public Prosecution Service or in response to a complaint filed by an injured party (against persons unknown or together with an application to join the proceedings as a civil party claiming damages).

218. He/she may also intervene in proceedings concerning crimes or flagrante delicto offences. Any crime necessarily triggers the opening of an investigation.

219. In the course of his/her duties, the Investigating Judge is entitled to take any measures deemed necessary for ascertaining the truth.

220. To this end, he/she may:

- (a) Visit the scene of the crime to draw up a report recording the *corpus delicti*, document the scene and take statements from witnesses;
- (b) Order or carry out searches;
- (c) Appoint one or more experts to prepare the requisite reports for the court;
- (d) Interview persons whose testimony seems useful;
- (e) Issue subpoenas or warrants to bring a person before the court or arrest warrants.

221. The Investigating Judge or trial court may also issue requests for international mutual assistance in judicial matters in the form of letters rogatory. Prosecutors may also issue such requests predicated on international treaties.

222. The Investigating Judge alone has the authority to decide, during the investigation, whether to leave the accused at liberty, or to place him/her under pretrial supervision or in detention. The Investigating Judge issues his/her decisions in the form of reasoned orders.

223. In accordance with the rule of the right to appeal, the Public Prosecutor may, in all cases, enter an appeal against the Investigating Judge's orders. Such an appeal is also open to the accused and parties claiming damages, when they can demonstrate a sufficient interest, on the conditions laid down in the Code of Civil Procedure.

224. More generally speaking, the President of the Court of Appeal ensures that the offices of the investigating judges function properly. He/she:

- (a) Sees to it that there are no delays in proceedings;
- (b) Checks on the situation of persons who have been remanded in custody;
- (c) During the first week of each quarter, receives a detailed report on the progress of proceedings from each investigating judge.

225. In the interests of a sound administration of justice, the case may be transferred from one investigating judge to another by the President of the Court of First Instance, at the reasoned request of the Public Prosecutor acting on his/her own motion or at the parties' request.

226. If required to sit as a trial judge, an investigating judge may not hear a case which he/she has investigated.

227. In accordance with article 60-2 of the Code of Criminal Procedure, the Judge for Custody and Release is a judge appointed by the President of the Court of First Instance (who may draw up a roster for this purpose). The position was created by Act No. 1.343 of 26 December 2007 on justice and liberty which amended a number of provisions of the Code of Criminal Procedure relating to remand in custody. The rules on the latter were then overhauled in Act No. 1.399 of 25 June 2013 although, as a result of the amendment introduced in 2007, in order to obtain an extension of twenty-four hour police custody for a further twenty-four hours the Public Prosecutor or Investigating Judge already had to obtain the approval of the judge for custody and release of this extension and had to enclose all relevant documentation with his/her request (art. 60-9 of the Code of Criminal Procedure). The judge for custody and release issues his/her decision in the form of a reasoned order which is immediately enforceable and not open to appeal, after the person in custody has been brought before him/her, if he/she deems it necessary.

228. The Judge for Workplace Accidents: this position was created not by a code, but by social legislation, namely Act No. 636 of 11 January 1958, as subsequently amended, which modified and coordinated legislation on declaration, compensation and insurance of occupational accidents.

229. This judge is required to act as a conciliator in any dispute that may arise between the victim of an accident at work, that person's representatives and beneficiaries and the employer's insurance company or the employer itself.

230. Monegasque labour law does not confer any responsibility in this field on social security funds, but requires each employer to take out a special policy with an insurance company, known as a statutory insurer, in order to be covered against the consequences of industrial accidents.

231. If necessary, the Judge for Workplace Accidents conducts the requisite inquiries and investigations to determine the causes, nature and circumstances of the accident. If mediation fails, he/she refers the case to the Court of First Instance.

232. A Sentence Enforcement Judge is appointed every year by the Director of Judicial Services to supervise the execution of criminal sentences, especially in the following cases:

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

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

(c) Release on parole: the judge supervises the support measures designed to encourage and bolster the efforts of a person released on parole to become reintegrated into society and readjusted to life at home and at work. The authority to grant parole rests with the Director of Judicial Services, in accordance with the procedure and time limits laid down by articles 409 et seq. of the Criminal Code and Sovereign Ordinance No. 4.035 of 17 May 1968.

233. The orders of the Sentence Enforcement Judge are not open to appeal. A bill to amend some provisions relating to sentencing was submitted on 27 November 2018 to the officers of the National Council.

234. If this bill were to be approved, the Sentence Enforcement Judge would be given new powers to order day-fines and community service which would be introduced into the range of possible penalties.

235. Similarly, with regard to the execution of sentences, the bill would establish rules on semi-custodial arrangements and external placement and give the Sentence Enforcement Judge authority to determine the terms and conditions for enforcing these measures.

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

237. This judge is appointed by the Court of First Instance when hearing a commercial case if it decides to order the cessation of payments or the liquidation of assets.

238. Judge responsible for overseeing expert reports: this judge is appointed either by the court hearing applications for interim relief or by the Court of First Instance in order to monitor and supervise any expert report proceedings decided by these courts.

239. The Conciliation Judge for Divorce or Separation Proceedings: this judge hears petitions in such cases. His/her role is to try to achieve reconciliation of the spouses by interviewing each of them separately and then together.

240. If these endeavours prove fruitless, he/she issues an order *pendente lite* regarding the wife's domicile and alimony and wardship of the children and authorizes the plaintiff to file for divorce before the Court of First Instance.

241. In this order, he/she establishes provisional measures governing the spouses' residence and personal effects, advances to cover the costs of proceedings, applications for maintenance, interim custody, parental contact with children and conditions for the education of children.

(viii) *Specialized courts*

242. The so-called specialized courts' field of action is confined to economic and social relations. Their original feature is that they bring together lay persons and professional judges in an attempt to find an optimal solution to a variety of disputes between employers and employees or between landlords and tenants.

243. They consist of the following courts:

244. The Employment Tribunal, set up by Act No. 446 of 16 May 1946, hears disputes which have arisen in relation to the implementation or termination of employment contracts, irrespective of the amount of the sums or compensation claimed. It also has jurisdiction to hear work-related disputes between employees and appeals against the decisions of the classification committee (Act No. 739, art. 11-1).

245. It consists of 24 employee members and 24 employer members in accordance with Sovereign Ordinance No. 3.851 of 14 August 1967, as subsequently amended. Its members are appointed by sovereign ordinance for a six-year term of office at the proposal of employers' associations and workers' trade unions. Half of the membership is renewed

every three years. This triennial renewal must cover half of the members representing employees' trade unions and half of the members representing employers' associations. Outgoing members may be reappointed. The Employment Tribunal has a conciliation office, a tribunal panel and a judge hearing applications for interim measures. The Employment Tribunal's judgments are final and not open to appeal, apart from on grounds of lack of jurisdiction, when the capital claim does not exceed the figure of €6,000. Above that amount, an appeal may be filed with the Court of Appeal within 30 days of notification of the judgment.

246. Final judgments of the Employment Tribunal and decisions of the Court of Appeal may be referred to the Court of Revision if the law has been breached.

247. The Higher Court of Arbitration is a special court to which a collective labour dispute may be referred. It was set up under Act No. 473 of 4 March 1948, which concerns collective labour disputes which cannot be settled directly, either out of court applying the provisions of collective agreements, or by specific mediation or arbitration proceedings.

248. Mediation or arbitration proceedings are initiated by the submission by the party making the complaint of a petition requesting mediation to the Minister of State.

249. The Rent Arbitration Commission, set up by Act No. 1.235 of 28 December 2000, rules on disputes between landlords and tenants with regard to the amount of rent stipulated in the lease or lease renewal agreement for certain residential premises constructed or completed before 1 September 1947.

250. It seeks to achieve conciliation between the parties on the amount of rent, or failing agreement, it sets the amount thereof. If necessary, it may commission an expert report for that purpose. The reasons for the decisions of the Rent Arbitration Commission must be stated and the decisions may be referred to the Court of Appeal within the time limits and on the conditions laid down by the Code of Civil Procedure. An appeal on points of law may be entered against the decision.

251. The Arbitration Commission for Commercial Leases, set up by Act No. 490 of 24 November 1948, is responsible for settling disputes between landlords and tenants with regard to the terms for renewing and updating commercial leases.

252. The reasons for the decisions of the Arbitration Commission must be stated and the decisions are appealable. An appeal on points of law may be entered against the decision.

III. General legal framework for the protection of human rights

253. The whole of the Monegasque legal system is designed to guarantee the respect of human rights. Under article 19 of the Constitution, no one may be prosecuted except in the cases permitted by law and no one may be arbitrarily detained: arrests may be carried out only on the reasoned order of a judge (or within 24 hours following the order).

254. Laws, mainly those contained in the Criminal Code, the Civil Code, the Code of Criminal Procedure and the Code of Civil Procedure, set forth the conditions for the realization and protection of these rights. The courts ensure their application.

A. Authorities with responsibility for human rights

255. The Commission for the Monitoring of Personal Information (CCIN) established by Act No. 1.165 of 23 December 1993, which has been operative since 2000, is responsible for receiving applications to undertake computerized processing of personal information by natural persons and legal entities under private law.

256. Its opinion must also be sought when such processing is undertaken by legal entities under public law, public authorities or private law bodies performing duties in the public interest or licensed to provide a public service which are registered on a list established by ministerial order.

257. Furthermore, when registering (or updating) processing applications, the CCIN may request economic entities or interested third parties to submit any documentation or information that it considers relevant. CCIN investigators may monitor computerized processing operations and flag any irregularities that come to light; they may summon and hear interested parties. The CCIN investigates petitions and complaints which are referred to it. When natural persons or legal persons under private law are found to have committed irregularities, the CCIN may issue warnings or serve notice on the person concerned to end the irregularity or remove its effects. If no action is taken in response to the formal notice, the Chairman of the Commission, having first invited the data processor to furnish explanations within a further one-month time limit, may order the end of processing or the elimination of its effects.

258. In the event of non-compliance with this order by the expiry of this time limit, the Chairman of the Commission may ask the President of the Court of First Instance to which the matter is referred in interim relief proceedings, to order the end of processing or the elimination of its effects, without prejudice to any criminal penalties incurred or applications for compensation from persons who have suffered injury. The decision may be accompanied by a fine. When irregularities are noted in processing by services responding to a legal person under public law, the Minister of State to whom the matter is also referred by the Chairman of the Commission, may adopt any measures to ensure that the irregularities noted are ended and their effects are eliminated. In the case of administrative authorities not responding to the Minister of State, the latter refers the matter to the competent administrative bodies and may, if the appropriate measures are not adopted, take them of his/her own motion, having due regard to article 6 of the Constitution.

259. When it joined the Council of Europe in October 2004, Monaco signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights). The Government has set up an international human rights and fundamental freedoms section within the Department of Legal Affairs which has the following responsibilities:

- Study bilateral or multilateral international treaties, conventions and agreements to which the Principality is party or intends to become a party to ascertain their impact on domestic law;
- Carry out any legal work or studies entrusted to it by the Director of Legal Affairs, in particular in the field of international law and human rights and fundamental freedoms.

260. This section has a special unit for the preparation of the Government's defence memorials to the European Court of Human Rights and its representation before the Court (art. 3-1 of Sovereign Ordinance No. 117 of 19 July 2005 establishing a Department of Legal Affairs, as subsequently amended). To date no non-governmental organization specialized in combating human rights violations exists in the Principality.

261. As the Principality is a member of the Council of Europe and as the European Convention on Human Rights has been given force of law by Sovereign Ordinance No. 408 of 15 February 2006, it is now possible to bring a case before the Court.

262. National courts, and therefore Monaco's courts, are required to apply the rules deriving from the European Convention on Human Rights even if they conflict with national legislation, or there is no national legislation on the matter.

263. Any High Contracting Party (State application) or individual claiming to be the victim of a violation of the Convention (individual application) may, after they have exhausted all domestic remedies, directly file with the European Court of Human Rights an application alleging a violation by a High Contracting Party of one of the rights set forth in the Convention. If the Court finds the Monegasque Government guilty of such a violation, the applicant may request the reopening of civil or criminal proceedings before a national court if the decision continues to produce its effects and only the reopening of proceedings makes it possible to obtain compensation for the injury suffered (arts. 459-8 of the Code of Civil Procedure and 508 of the Code of Criminal Procedure incorporated through Act No.

1.421 of 1 December 2015 introducing various measures regarding State responsibility and remedies).

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

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

266. Act No. 1.343 of 26 December 2007 on justice and liberty, amending certain provisions of the Code of Criminal Procedure, introduced a special system of compensation for injury arising as a result of unjustified pretrial detention (Code of Criminal Procedure, new arts. 202-202-4). In addition, Act No. 1.421 of 1 December 2015 relating to various measures regarding State responsibility and remedies permits liability claims against the public authorities on the grounds of a miscarriage of justice.

267. In 2013, the Government set up an Office of the High Commissioner for the protection of rights and freedoms and for mediation (Sovereign Ordinance No. 4.524 of 30 October 2013 setting up an Office of the High Commissioner for the protection of rights and freedoms and for mediation).

268. Any natural or legal person who believes that their rights or freedoms have been flouted by the Minister of State, the President of the National Council, the Director of Judicial Services, the Mayor or through the action of an administrative service answerable to one of these authorities or of a public institution, may refer the matter to the High Commissioner's Office (art. 15 of the aforementioned ordinance).

269. A matter may also be referred for mediation to the High Commissioner's Office by the Minister of State, the President of the National Council, the Director of Judicial Services, the Mayor or the directors of public institutions (art. 16 of the aforementioned ordinance). Complaints from natural or legal persons claiming to have been the victims of unwarranted discrimination in the Principality may likewise be referred to the High Commissioner's Office (art. 28).

B. Remedies available to persons alleging a violation of their rights; compensation and rehabilitation systems

270. Any law, regulation or administrative decision that violates the rights and fundamental freedoms of an individual may form the subject of an appeal to the Supreme Court, which has the power to rescind such a decision (Constitution, art. 90). The rescission has absolute *res judicata* force and is binding on everyone, including the Administration, which is required to execute the judgements handed down (Supreme Court, 20 February 1969, *Aureglia heirs et al.*, volume corresponding to the date).

271. Any person who ascertains that a breach of the law has occurred during the computerized processing of personal information concerning him or her may refer the matter to the Commission for the Monitoring of Personal Information (see para. 243, above).

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

273. If the violation of rights and freedoms has been committed by a private individual, the victim may refer the matter to the criminal courts when an offence has been committed, or to the civil courts in the event of misconduct. In all cases, if the violation is proven, the court seized of the case will award compensation for the injury sustained by the victim.

C. Protection of rights embodied in various international human rights instruments

274. Monaco is a party to the majority of human rights instruments. It has acceded to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the optional protocol thereto, the Convention on the Rights of the Child and the three optional protocols thereto and the Convention on the Rights of Persons with Disabilities and the optional protocol thereto.

275. The Constitution of 17 December 1962, as revised on 2 April 2002, states that the Principality is a State governed by the rule of law and committed to the respect of liberties and fundamental rights.

276. These are listed in detail in Chapter III of the Constitution and mirror most of the rights embodied in the various international human rights instruments.

277. Rights safeguarded by the Constitution: Chapter III sets forth particular rights and fundamental freedoms (arts. 17 to 32) which cover both individual rights and civil liberties, including:

- Equality before the law (art. 17)
- Individual liberty and security (arts. 19 and 20)
- The legality of penalties and the non-retroactivity of criminal laws (art. 20, para. 1)
- Right to respect for human personality and dignity (art. 20, para. 2)
- Abolition of the death penalty (art. 20, para. 3)
- Sanctity of the home (art. 21)
- Right to respect for private and family life and confidentiality of correspondence (art. 22)
- Freedom of worship (art. 23)
- Freedom of opinion (art. 23)
- Right to own property (art. 24)
- Freedom to work (art. 25)
- Right to receive public assistance in the event of poverty, unemployment, illness, disability, old age and maternity (art. 26)
- Right to free primary and secondary education (art. 27)
- Right to engage in trade union activity (art. 28)
- Recognition of the right to strike (art. 28, para. 2)
- Right of assembly (art. 29)
- Right of association (art. 30)
- Right to petition the authorities (art. 31).

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

279. As a member of the Council of Europe, Monaco has ratified the most important human rights instruments:

- European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols 2, 3, 4, 5, 6, 7, 8, 11, 13, 14, and 15;
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Additional Protocol thereto;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- Convention on Cybercrime and the Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems;
- Convention on Action against Trafficking in Human Beings;
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- Council of Europe Convention on preventing and combating violence against women and domestic violence.

280. Rights guaranteed by statute and judicial precedent: The legislative branch has also passed laws and regulations to ensure the defence of fundamental rights. For example, there are legal texts protecting trade-union action and penalizing any obstacle to the free exercise of this right (Act No. 417 of 7 June 1945 protecting the right to form trade unions, as amended by Act No. 1.005 of 4 July 1978 and Act No. 957 of 18 July 1974) as well as guaranteeing freedom of association (Act No. 1.355 of 23 December 2008 concerning associations and federations of associations) and the right to strike (Act No. 1.025 of 1 July 1980).

281. Moreover, Act No. 1.165 of 23 December 1993 regulates the processing of personal information and stipulates that such operations must not violate the fundamental rights and freedoms set forth in Chapter III of the Constitution. Consequently, apart from the exceptions laid down in the aforementioned Act No. 1.165, as subsequently amended, no one may collect, record or make use of personal information of a medical nature or concerning offences, convictions or protective measures, or any information that reveals political, racial, religious, philosophical or trade-union opinions or affiliation.

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

D. Procedure for the incorporation of human rights instruments into domestic law and conditions permitting reliance on these instruments in courts

283. Like all international treaties, international human rights instruments must be signed and ratified by the Prince (art. 14 of the Constitution). They are then give force of law by sovereign ordinance.

284. If the international instrument which has been ratified and given force of law requires an amendment of Monegasque domestic law, under article 68 of the Constitution the Prince may issue appropriate ordinances for the implementation of the said instrument or have recourse to a statute.

285. However, under article 14 of the Constitution, a law is needed if a treaty affects constitutional arrangements, if its ratification entails the amendment of existing legislative

provisions, if it entails the Principality's accession to an international organization the workings of which require the participation of National Council members, or the implementation of which results in budgetary charges for expenditure that, by its nature or purpose, is not provided for in the Budget Act.

286. The provisions of an international instrument may be relied on before the administrative authorities or courts of the Principality only after they have become enforceable in Monaco (laws and sovereign ordinances apply to parties subject to the jurisdiction of the Principality's courts only as from the day after their publication in the Official Gazette).

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

E. National institutions or bodies responsible for ensuring respect of human rights

288. As stated in paragraph 267, above, in 2013, the Government set up the Office of the High Commissioner for the protection of rights and freedoms and for mediation (Sovereign Ordinance No. 4.524 of 30 October 2013 setting up an Office of the High Commissioner for the protection of rights and freedoms and for mediation).

289. Legal aid is also of crucial importance in effectively guaranteeing respect for human rights. It enables natural persons with meagre resources to assert their rights in court. Legal aid entitles a beneficiary to assistance by a senior lawyer, lawyer or trainee lawyer and that of all judicial officers appointed from a roster by the Legal Aid Office. It also covers sums due to the Treasury for stamp duty, registration and registry fees and the costs of expert reports, translation, interpretation or insertion fees, witnesses' expenses and in general all legal expenses necessitated by the conduct of proceedings.

290. It applies to all cases. However, in criminal cases it may be granted only to the party claiming damages, since the accused may request the appointment of an officially appointed lawyer under articles 167 and 399 of the Code of Criminal Procedure (see Act No. 1.378 of 18 May 2011 on legal aid and lawyers' fees).

IV. Information and dissemination

291. When Monaco is considering accession to a legally binding treaty, the authorities concerned meet to study the compatibility of the treaty's provisions with Monegasque domestic law.

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

293. If the international agreement concerns the cases listed in article 14(2), the treaty may not be ratified unless a law authorizing ratification is adopted by the National Council. If the case arises, the Government notifies this body of its intention to become a party to an instrument.

294. Finally, the representatives of Monaco to the international organizations which are the authors of these instruments receive instructions to deposit the relevant instruments of ratification.

295. The Monegasque authorities strive to keep the population informed about the different stages in the procedure for ratifying international instruments by issuing press releases which are widely reported in the local press.

296. Once ratified in accordance with articles 14 and 68 of the Constitution, international human rights instruments, like all other instruments, are published in the Official Gazette.

The texts of international instruments can be accessed on the websites of the National Council and the Government.

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

298. The reports submitted to the human rights treaty-monitoring bodies are prepared by the Department of Foreign Affairs and Cooperation. Although the reports are not debated in public before they are submitted, the departments concerned are systematically consulted. The comments and suggestions made help to improve the drafting of the document.

299. After the reports have been considered by the ad hoc committees, the results and the recommendations of their members are brought to the attention of the public through the press and are made available on the Internet.
