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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

Corruption prevention in respect of members of parliament, judges and prosecutors

EVALUATION REPORT

MONACO

Adopted by GRECO at its 76th Plenary Meeting
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SUMMARY

1. The management of anti-corruption policies has continued to evolve in the right direction in recent years and the mechanisms in this area are gradually being strengthened. Cases of corruption have appeared sporadically and an important case has recently been opened in connection with residence permits involving several Monegasque police officers. Large cases involving the activities of Monegasque entities, linked to town planning and international consultancy in the oil field, have also been initiated and are being dealt with by the courts of other countries. In April 2017, a bill was tabled to create an anti-corruption agency which would be responsible for raising awareness among the public and private sectors.

2. Parliamentarians would be much less exposed to risks of corruption than the members of government, given the primacy of the executive. There is, in any case, no record of criminal or disciplinary proceedings relating to the integrity of a parliamentarian, which can be as much due to the absence of intrinsic problems as to the absence of specific rules and mechanisms designed to preserve the integrity of national elected representatives. Indeed, there are few mechanisms to ensure satisfactory transparency of parliamentary work and consultations. Nor is there a code of conduct that would govern, among other things, the acceptance of gifts and other benefits, the management of conflicts of interest, or relations with lobbies and other third parties seeking to influence parliamentary processes and decisions. GRECO calls for improvements in these areas, as well as for the introduction of an obligation to disclose periodically the income, interests and wealth of elected representatives, as is the case in a growing number of European countries. GRECO also recommends the establishment of an effective system for monitoring the various rules on the integrity and transparency of elected representatives as well as training and other measures to raise awareness of their future obligations in this area.

3. As regards judges and prosecutors, the working conditions in Monaco are generally considered excellent by the persons concerned. The judicial supply is also very developed for a country of this size and inevitably Monaco still has to resort to French practitioners seconded or recruited directly to fill the various posts at the different court levels. This element of extranity moderates the possible consequences of close social relations and the frequent withdrawal of Monegasque magistrates (when they have links with one of the parties). But recruitment needs to be more transparent and based on objective criteria in order to put an end to controversies that have regularly come to the fore in recent decades. Monaco also created in 2009 a High Council of the Magistracy: its role must be strengthened to enable it to play a full role as a guarantor of the independence of the judiciary. Members of most courts are in principle subject to a single statute, which also dates from 2009, but some of the courts still have specific features that require specific improvements, in particular to ensure publicity of hearings or the management of risks related to secondary activities. Monaco is also considering adopting a code of conduct for judges and prosecutors, which is to be welcomed; steps will have to be taken to ensure that this text is implementable (and implemented) by practitioners in daily work, including through regular training and awareness-raising. At the same time, Monaco needs to also define more precisely the breaches of the duties laid upon judges and prosecutors. To date, no disciplinary proceedings have been registered. Lastly, on the relations between the Public Prosecutor's Office and the executive branch of power, additional guarantees of operational independence (in individual cases) appear desirable.

I. INTRODUCTION AND METHODOLOGY

4. The Principality of Monaco joined GRECO in 2007. Since then it has been the subject of a joint report on the First and Second rounds (October 2008) and a report on the Third Evaluation Round (March 2012). The evaluation reports concerned and the corresponding compliance reports are available on GRECO's homepage: (http://www.coe.int/greco).

5. GRECO's Fourth Evaluation Round, launched on 1 January 2012, addresses "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". In choosing this theme GRECO is breaking new ground, underlining the multidisciplinary nature of its remit. At the same time, the theme is clearly linked to GRECO's previous work: the First Evaluation Round, which focused on the independence of the judiciary, the Second Round, which examined public administration, and the Third Round, which looked at incriminations and corruption (including in respect of members of parliament, judges and prosecutors) and the prevention of corruption linked to the funding of political parties.

6. The same priority issues are dealt with in this Fourth Evaluation Round, in respect of all the people/functions examined; they are:

- ethical principles, rules of conduct and conflicts of interest;
- the prohibition or restriction of certain activities;
- the declaration of assets, income, liabilities and interests;
- the application of the rules in force;
- awareness.

7. Concerning parliamentary assemblies, the evaluation covers the members of national parliaments, including all their chambers, regardless of whether their members are appointed or elected. As to the judicial system and all the actors involved in the pre-judicial phase and in judicial proceedings, the evaluation focuses on prosecutors and judges, professional or otherwise, bound by the domestic legislation and regulations, irrespective of the type of court in which they sit.

8. In preparing this report GRECO used Monaco's replies to the evaluation Questionnaire (document GrecoEval4(2016)7 REPQUEST). In addition a GRECO evaluation team (hereafter "the GET") carried out a visit to the Principality from 21 to 25 November 2016, where it was able to collect additional information and documents, either from the people it met or from public sources. The GET was composed of Mrs Muriel BARRELET, District Judge, Member of the Administrative Committee of the Judiciary and Chair of the Notary Supervisory Committee (Switzerland); Professor Richard GHEVONTIAN, Vice-President of the University of Aix-Marseille in charge of legal affairs, Faculty of Law and Political Science, Director of Research at the Louis Favoreu Institute, Research and Study Group on Constitutional Justice (France); Mrs Ria MORTIER, Chair of the Judicial Service Commission and of the Dutch-speaking Nominations and Appointments Committee, Advocate-General at the Court of Cassation (Belgium) and Mr Philippe POIRIER, Professor of research in parliamentary studies, Chamber of Deputies of Luxembourg, Associate Professor of Political Science at the Collège des Bernardins and the University of Paris Sorbonne (Luxembourg). The GET was assisted by Mr Christophe SPECKBACHER of the GRECO Secretariat.

9. The GET met representatives or members of the following institutions: National Council (Chair, Vice-Chair, leaders and members of the various political groups), Directorate of Judicial Services (including the Director) ; Supreme Court ; Court of Review; Appeal Court; Criminal Court ; Court of First Instance; Justice of the Peace and investigating judges; Labour Court; Prosecutor General's Office (including the Prosecutor General); Judicial Service Commission; High Commissioner for the Protection of Rights,

Freedoms and Mediation. The GET also met with representatives of the Council of the Bar and Lawyers' Association, the Economic and Social Council and national mass media.

10. The main purpose of this report is to evaluate the effectiveness of the measures adopted by the institutions in Monaco to prevent corruption in respect of members of parliament, judges and prosecutors and enhance their real and perceived integrity. The report contains a critical analysis of the situation in the country, describing the efforts made by the authorities concerned and the results achieved, identifying any shortcomings and making recommendations to improve the situation. In keeping with its practice GRECO sends its recommendations to the Monegasque authorities, who must designate the institutions or bodies responsible for taking the required measures. The Principality will be called upon to account for the measures taken in reply to the recommendations contained in this report within 18 months of its adoption.

II. BACKGROUND INFORMATION

11. Monaco is one of the very small countries not covered by the indexes published periodically by the NGO *Transparency International*. Nor are there any NGOs in Monaco working on questions of integrity/corruption, and no relevant national surveys have been conducted recently. As GRECO has already pointed out in the past, there are factors which traditionally tend to limit interest in corruption cases, including self-censorship by the national media (which often belong to large firms who like to protect their clients), and the importance of the Principality's image. Things are evolving, anti-corruption measures are gradually being strengthened, corruption cases have occasionally come to the fore and one important case was recently opened concerning suspicions of corruption in connection with residence permits involving several Monegasque police officers.[1] Major recent cases involving actions of Monegasque entities, concerning planning permission and international consulting in the oil industry[2], were also opened and are being conducted by judicial authorities abroad. In April 2017 a draft law was tabled with a view to setting up an anti-corruption agency responsible, among other things, for awareness-raising in the public and private sectors.

12. Members of parliament and the functioning of the National Council (Parliament) are not really a source of controversy in such matters. The on-site discussions referred once again to the primacy of the Executive (also regarding law-making), already mentioned in the first GRECO report[3]. The ministers do not come from the Parliament, and the Government appears to play a key role also in day-to-day decisions (allocation of housing and public jobs, public contracts and planning permission at state and municipal level etc.). Members of parliament would be less exposed to threats to their integrity than members of the Government. Some discussions also pointed to the little appeal there was to being an MP, the potential candidates preferring to focus on their professional activity. No criminal or disciplinary case was recorded concerning the integrity of a parliamentarian.

13. Judicial practitioners consider the general working conditions excellent. Monaco continues to have to rely to a large extent on seconded French *magistrates* (judges and prosecutors, which is a positive factor in the context of the country's small size. They make up for the lack of national officials and help offset the effects of the frequent withdrawal of their Monegasque colleagues when they consider themselves to be too close to one of the parties. That said, the perception of a lack of transparency – or even a politicisation of appointments from France[4], as well as allegations of "instrumentalisation" of the justice system, appear again from time to time in the (mainly foreign) media. One recent case involved the premature termination of the secondment of a French practitioner working as Prosecutor General in Monaco[5]. In the last few years no disciplinary action has, however, been taken in Monaco in connection with the conduct of a judge or prosecutor. The Monegasque authorities underline that in January 2017, the Prince reiterated his determination to combating corruption[6].

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[1] http://www.ouest-france.fr/europe/monaco/interpellation-de-six-belges-soupconnes-de-corruption-monaco-4626956

[2] UNAOIL case: http://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/the-company-that-bribed-the-world.html

[3] See Joint First and Second Round Evaluation Report

[4] http://www.monacohebdo.mc/14552-affaire-sarkozy-azibert-une-histoire-abracadabrantesque.

[5] http://www.atlantico.fr/decryptage/justice-monaco-bruits-et-chuchotements-procureur-general-qui-pourrait-etre-contraint-quitter-poste-gilles-gaetner-1961426.html
http://www.lepoint.fr/monde/le-procureur-jean-pierre-dreno-va-quitter-monaco-01-04-2015-1917616_24.php

[6] http://www.monacohebdo.mc/19675-prince-albert-voeux-nouvel-an

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

14. Monaco is a constitutional monarchy where executive power devolves from the Prince. Government is exercised under the authority of the Prince by a Minister of State assisted by a Council of Government. The functioning of the National Council (Parliament) and the work of its members are regulated by the Constitution of 1962,[7] Act no. 771 of 25 July 1964 on the organisation and operation of the National Council, which was largely updated and amended in 2015,[8] and its Rules of Procedure. The single-chamber Parliament comprises 24 members elected for five years by direct universal suffrage using a list system. Two thirds of the seats are allocated to the two parties which win the most votes and eight seats are reserved for parties which score at least 5%. The basic principle is to represent the general interest and society as a whole. The reform of 2015 brought a number of major changes, including greater budgetary autonomy for the Council (the budget is drawn up in agreement with the Minister of State but managed by the Bureau), the institutionalisation of the political groups and the introduction of parliamentary assistants.

15. Each year the Council holds two ordinary sessions, convened by its President, from April to the end of June, and from October to the end of December. The spring session is devoted exclusively to the examination of legislation and the autumn session to the examination of the state budget, but laws may also be examined. Extraordinary sessions may also be convened in the intervening months by the Prince or, at the request of two thirds of the Council members, by the President. This provides an opportunity to examine special texts when it is not possible or advisable to wait for an ordinary session.

Transparency of the legislative process

16. Legislative power is shared between the Prince and the National Council. It is the Prince who gives authority to the laws by endorsing and promulgating them. The members of the National Council do not have the power to initiate laws, however; their "proposals" must first be submitted to the Government (which also has the right to initiate draft laws) and the Government decides whether to submit the proposal as a bill of law or to discard it. The Prince then submits the draft laws to the Council. He also issues the Sovereign Orders necessary for the enactment of laws and the implementation of international treaties and agreements, or concerning the organisation of certain courts (Supreme Court). These Orders are in principle debated in the Council of Government and submitted to the Prince after being signed by the Minister of State; their signature by the Prince makes them enforceable. Sovereign Orders on certain subjects do not have to be debated by the Government and presented by the Minister of State.[9]

17. Draft laws and proposed legislation are made public subsequent to their receipt and registration by the Secretariat of the National Council. The texts are examined by the competent committees, which produce reports describing the main points discussed. These are an integral part of the preparatory work and are made accessible to the public on line, on the Council's website and in the official journal, a few days before the public sessions. The public in general and the press in particular can thus follow the progress of parliamentary work. There is no provision for procedures for consulting the public on draft laws. National Council members may decide in committee that professionals – and

[7] Link to the Constitution
[8] Link to the legislation
[9] Those concerning: a) the status of the Sovereign Family or its members; b) "matters within the remit of the Directorate of Judicial Services"; c) the appointment of members of the Sovereign Household, members of the diplomatic and consular corps, the Minister of State, members of the Government Council and related officials, members of the judiciary; d) the exequatur given to consuls; e) the dissolution of the National Council; f) the awarding of honorary distinctions.

members of civil society in general – concerned by a draft law under examination should be consulted on a given subject.

18. As to the level of transparency of the composition and the work of the parliamentary committees: the composition of each committee can be freely consulted on the Internet site of the National Council and is determined by vote in a public sitting at the start of each annual session. As to the transparency of the committees' work, the authorities refer to what was said above about the publication of reports on the work done in meetings. Committee discussions themselves are not public and the minutes are made available only to the members of the National Council.[10] Concerning the transparency of work in plenary sessions, debates in public sittings are broadcast live and in full on the local channel, as well as on the website of the National Council, before being published in the *Journal de Monaco* (the Official Gazette). The Assembly Chamber is also open to the public. Members of the public following the proceedings in the Chamber, on the local channel or on the Internet, can see how members of parliament vote. The details are also published in the Official Gazette.

19. The GET considers that the general transparency of the National Council's work remains an issue in spite of some recent reforms and increased use of audiovisual technologies and the Internet. This subject also arises occasionally in political discussions. First of all, consultations are a matter of practice; there is no provision in law for any procedure in this field which would make it possible, in all transparency, to involve associations in the work or allow citizens to give their opinion without it being necessary for them to be formally invited to do so by a committee or the Council.

20. Secondly, committee work is confidential. Even the documents and reports discussed in committee are not published: this makes it very difficult to obtain any information about possible consultations with representatives of interest groups. The GET was told that the final documents presented to the plenary session provided information on the people consulted.

21. Thirdly, even though the plenary sessions are in principle public, the GET notes that the rules also provide for "plenary committee" meetings, to which absolute confidentiality applies; the rules leave the calling of such meetings fully to the discretion of the committees,[11] except in a few specific cases (discussions on the lifting of immunity, or objection to a decision of the Bureau, for example).

22. Fourthly, according to the information submitted by Monaco and regulations governing the Council there is no provision for any (sufficient and reasonable) clear or minimum deadlines for the presentation and discussion of draft laws in committee (contrary to the general Public session[12]). Nor do there appear to be any clear deadlines for posting draft laws on line. The GET received reports of incidents in the internal transmission of documents (very late transmission, incomplete files, etc.) and the media sometimes report on delays in the transmission of documents by the Government to the National Council, and even cases where the authority of the Council or a committee chairperson were ignored.[13] In view of the above consideration, GRECO recommends that a series of significant measures be taken to enhance the transparency of

[10] Under Rule 44 para. 1 of the Rules of Procedure "Minutes of committee meetings shall be drawn up. The minutes shall be confidential and shall be communicated by the Secretariat of the National Council only to members of the Assembly."
[11] "The National Council may also meet in plenary study committee, either at the request of its President, or at the request of a third of the members of the Assembly. Any National Council member may request a meeting of the National Council in plenary study committee; the request must give reasons and be addressed to the President." (Rule 25)
[12] See article 43 of the Rules of Procedure, as amended in 2015.
[13] http://www.monacohebdo.mc/14395-mea-culpa-sur-les-tamaris
http://www.lexpress.fr/actualite/societe/justice/a-monaco-le-mystere-de-la-tour-odeon_1700655.html
http://www.monacohebdo.mc/5248-%e2%80%9cje-ne-vois-ni-evolution-ni-serenite%e2%80%9d

the legislative process, including with regard to easy public access to adequate information on consultations held, and with regard to reasonable deadlines for submitting draft texts, amendments and working documents.

Remuneration and material benefits

23. Out of concern to avoid the professionalisation of political life, Council members simply receive a representation allowance, which is generally less than what members of parliament in other comparable European countries tend to receive. After the visit, the authorities explained that there are no general rules defining once and for all the amount of allowances; instead, these are determined by decisions of the Bureau, depending on the Council's overall annual budget[14]. At the time of adoption of the present report, this amount is 3,000 euros per month. No social contributions are payable on these allowances and there is no special social security or pension scheme for MPs. Nor do they enjoy any special housing or other benefits. As for working facilities, each National Councillor has a fully equipped office.

24. Since the reform of 2015 Council members are allowed to have parliamentary assistants, who may work for one or more Councillors, and a budget of 868 euros a month (1/24the of an overall budget head)[15] is allocated to each of them to cover the corresponding expense. When a Councillor is a member of a political group (which must be a legally constituted association), they donate this sum to their group, and by pooling these small amounts in this way they may be able to afford one or more assistants (the assistant is then employed by the group on a private contract). Of course, National Councillors can also hire and pay assistants out of their own funds. However, under Rule 21 of the Rules of Procedure the sums used by an MP or a political group to pay an assistant may not exceed double the amount allocated out of the budget. In general the rules applicable to parliamentary assistants are set out in sections 8-1 to 8-3 of Act no. 771 of 25 July 1964 on the organisation and operation of the National Council, as amended, and in Rules 18 to 24 of the Rules of Procedure. The rules are quite simple: they can only be recruited if they have not been convicted of certain offences, family members may be recruited, but the sums paid to them must be justified by receipts. The GET was not informed of any particular problem regarding this recent development. The small amount of money involved seems to rule out any great risk. The Council should nevertheless remain vigilant as regards the risk of insufficient oversight or the employment of family members by MPs.

25. The GET was not able to determine whether members of the Council or the political groups were allowed, in practice, to receive additional support from outside sources (national or foreign, public or private) – during the discussion of the present report, National Councillors pointed out that they do not receive in practice such support. If they are, it is important that Monaco should treat such income in a consistent manner, in terms of both the legislation on political funding and the rules recommended in this report regarding gifts and other benefits, and the obligation to declare them.

Ethical principles and rules of conduct

26. Some rules of conduct and a "rudimentary" disciplinary procedure appear in Rules 62 and 72 to 78 of the Rules of Procedure (RP); they concern the prohibition of personal attacks and the disruption of debates, the keeping of order in discussions and in relations between members of parliament and dignified conduct in the House. Rule 78 specifically prohibits: a) using and abusing the status of Member of Parliament in gainful professional

[14] See article 11.1 of Law n°1415 amending Law n°771 of 25 July 1964 on the organisation and functioning of the National Council

[15] The National Council has no budgetary autonomy and the funds allocated to it are fixed by agreement with the Minister of State (section 11 of the 1964 Act). The Minister of State is not required to give reasons for his decision, but he/she is required to attach an explanatory report.

activities and in any other manner alien to the office; b) conflict of interest (*prise illégale d'intérêts* – expression taken from Article 113-1 of the Criminal Code see below); c) entering into commitments linked to the office of National Councillor with a special interest group or association, with the exception of the political groups.

27. The Monegasque authorities pointed out that within the framework of the new revision of the RP – made necessary as a result of essential practical adjustments – the special Committee responsible for electoral matters and the rules governing the operation of the National Council should be starting work on the preparation of a code of conduct for National Councillors, which could be appended to the Rules of Procedure. The GET can but support such a project. Even if the National Council considers that it is not exposed to much risk in terms of ethics or the integrity of its members, it is still important to make a public display of commitment to integrity.

28. What is more, as indicated in the following sections, the existing regulations have many lacunae when it comes to the various forms of risks to which members of parliament may be exposed because of the nature of their work. This concerns conflicts of interest, which must be dealt with before they give rise to a criminally reprehensible situation, relations between members of parliament and third parties likely to want to influence them in their work, how to react to gifts and other benefits (hospitality, travel, and any non-pecuniary advantages and favours), engaging in accessory activities, etc. Ideally a code of conduct would go hand in hand with practical comments and/or examples, perhaps in an accompanying practical guide. Note also that a code of conduct should be a "living" document, updated in keeping with the changing context and ideas on what is acceptable conduct and what is not. It is also just as important that the public should know what is expected of their elected representatives. In consequence, GRECO recommends that i) a code of conduct be adopted for the attention of members of the National Council to set standards in respect of general conduct, gifts and other benefits, and relations with third parties, and that it be brought to the attention of the public; ii) that measures be taken to facilitate the its implementation in practice (explanatory comments, concrete examples etc.). The management of conflicts of interest is the subject of separate recommendations given the importance of the issue.

Conflict of interest

29. There are no special procedural rules on dealing with conflicts of interest. The authorities explain that in principle an elected representative could abstain from voting in such circumstances (the right to abstain is provided for in Rule 65 RP). The main provision is found in Rule 78 RP, which prohibits all National Council Members (a) from using or abusing their status as members of parliament in their professional activities (be they financial, industrial, commercial or linked to the liberal professions or other activities) and, generally speaking, from using their status for any purpose other than their electoral mandate, and (b) from benefitting from a conflict of interest (this is a criminal offence under Article 113-1 of the Criminal Code[16]).

[16] Criminal Code of Monaco
Article 113-1 - (Introduced by Act no. 1.394 of 9 October 2012)
There is conflict of interest when a national public official takes, receives or maintains, directly or indirectly, a personal interest in an operation or enterprise of which it is their responsibility, at the time of the act, in all or in part, to assure the supervision, the administration, the liquidation or the payment.
The participation by a national public servant in the deliberation, but not the voting, on a matter in which, directly or indirectly, he/she has a personal interest shall not suffice alone to qualify as supervision or administration within the meaning of the first paragraph of this article.
Article 114 (replaced by Act no. 1.394 of 9 October 2012)
The criminal offence of conflict of interest shall be punishable by one to five years' imprisonment and the fine provided for in Article 26.4 [from 18,000 to 90,000 euros] when it is committed by a national public official.

30. The above information calls for various remarks. First of all, regulations on conflicts of interest must not simply repeat the list of activities prohibited under criminal law. The purpose of preventive rules is to avoid that such situations arise, by clearly requiring MPs, for example, to report, on an *ad hoc* basis, any situation that might constitute a conflict (a decision could then be taken by the Council) and/or to refrain from participating in an act, or accepting responsibilities (acting as rapporteur) in case of doubt or possible conflict. And not only in connection with a vote. Moreover, certain representatives shared the GET's views that the offence of conflict of interest applied only marginally to MPs[17].

31. Secondly, it is important to understand the rules and ensure that they are consistent. The GET noted, for example, that another provision appears to regulate occasional conflicts of interest, namely Rule 61 RP, which states that "When a Council member requests the floor in respect of a personal matter related to the performance of his/her duties, the request shall be allowed only at the end of the debate". The GET was unable to obtain further information on the implications and the usefulness of this rule in practice. It might well become obsolete and have to be scrapped if the Council were to introduce new rules on occasional conflicts of interest.

32. Lastly, a distinction must be made between incompatibilities and conflicts of interest. Regulations on conflicts of interest do not mean first placing restrictions on the practice of a commercial, professional or other activity, in real estate or any other field. What matters first and foremost is that MPs should not be able to improve their personal and professional situation through their parliamentary activities and that any situations that raise questions are able to be discussed in all transparency. This transparency is necessary in addition to the introduction of a system whereby members of parliament declare any professional activities and interests (see below). The debate on such rules should take place within the framework of the preparation of the code of conduct recommended earlier. Accordingly, GRECO recommends that a requirement of *ad hoc* disclosure be introduced when a conflict between specific private interests of individual members of parliament may emerge in relation to a matter under consideration in parliamentary proceedings (in plenary or committee work) independently of whether such a conflict might also be revealed by members' declarations of activities and income.

Prohibition or restriction of certain activities

Gifts

33. The subject of gifts, offers of hospitality and other benefits, pecuniary or otherwise, is not regulated. The Monegasque authorities merely stated that in the performance of their duties representing the institution to which they were elected, members of parliament were invited to sporting, cultural or charity events. Activities and contacts of this type with society are inevitably part of the job of a member of parliament. However, as GRECO has pointed out on numerous occasions, it is important at the same time to regulate these situations, which can easily lead to cases where MPs finds themselves indebted to the sponsor concerned because of the magnitude of the benefits offered (generous forms of patronage, for example, or payment to speak at an event abroad together with VIP treatment), or become more favourably disposed towards a person or entity who repeatedly offers them certain benefits. In other countries nowadays parliaments regulate gifts by placing an upper limit on their value, obliging MPs to declare any invitations and other benefits they are allowed to accept, rules on diplomatic gifts and so on. The GET accordingly considers that reflection on the drafting

[17] Because the first paragraph of Article 113-1 refers to "a personal interest in an operation or enterprise of which it is their responsibility, at the time of the act, in all or in part, to assure the supervision, the administration, the liquidation or the payment"; at most it might apply in respect of acts relating to the administrative management of the Council.

of the code of conduct recommended above should also cover acceptability and transparency with regard to gifts, invitations and other advantages.

Accessory activities, financial interests, contracts with the public authorities, *post-employment restrictions*

34. It would appear that there are no special rules on these subjects. The authorities refer to the provisions mentioned below on incompatibilities, ineligibility and removal from office. The GET is not insensitive to the often-used argument that candidates for parliamentary office should not be deterred from standing when at the same time many of its members see the National Council as the only counterbalance to the Executive. Generally speaking it is for Monaco to regulate as a matter of priority certain subjects addressed in the recommendations made in the present report. Depending on how the situation develops, the time will come to examine the need to regulate parallel professional activities, restrictions linked to the fact that members of parliament are engaged in a contractual relationship with the public authorities, and restrictions applicable after they leave office.

Incompatibilities

35. On the subject of incompatibilities, according to a combination of texts:[18] (a) the following cannot be elected to the National Council: Crown Councillors; members of the Supreme Court; State Councillors; voters who, having another nationality, hold public or elected office in another country; (b) the following functions are incompatible with the office of National Councillor: membership of the Sovereign Household, Government Councillor, diplomatic or consular official, judicial official, member of the Board of Auditors and a series of similar senior official posts.[19]

36. Any National Council member who, when elected, finds himself/herself in a situation of incompatibility must, within thirty days of being elected (or, if the result is challenged, from the final court decision), resign from all functions incompatible with parliamentary office, or take a sabbatical leave where public office regulations so provide; failing this, he/she will be declared *ipso facto* to have given up his/her parliamentary office. Any national or municipal councillor who, for reasons that emerged after their election, finds himself/herself in a situation of ineligibility or incompatibility or loses the right to vote,[20] is required, within eight days, either to resign from elected office or to give up the activity at the origin of the ineligibility or incompatibility, failing which he/she will be declared *ipso facto* to have resigned from elected office. This automatic resignation may be pronounced *ex officio* by the court of first instance – see also the information, set out below, on verification. The authorities also explained that ineligibility may go hand in hand with a loss of civic rights, applicable in connection with certain criminal sentences.

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[18] Article 54 of the Constitution combined with Act no. 839 of 23 February 1968 on national and municipal elections, as amended, and more specifically sections 14, 15, 18 and 19 thereof.

[19] Direct colleagues of the Minister of State or a Government Councillor, the General Commissioners, the General Secretary of the Ministry of State, the Auditor General, the Inspector General of Administration, the State Property Administrator, the Director of Public Works, the Director of the Budget and the Treasury, the Director of Labour and Social Affairs, the General Secretary of the Department of International Relations, the Treasurer or Treasurer General of Finance, the Director of Public Security and the Police Superintendents, the General Secretary of the Directorate of Judicial Services, the Secretary General of the National Council, the General Secretary of the City Hall, officials of the state legislative services, law enforcement and public security officials and the municipal police.

[20] According to section 2 of Act no. 839 of 23 February 1968, the following categories of offenders lose the right to vote: 1) individuals convicted of crimes; 2) people sentenced to immediate imprisonment for more than five days or to a suspended sentence of more than three months, for theft, fraud, embezzlement, or an offence punishable by one of the sentences applicable to these same offences, misappropriation of public funds, perjury, forgery of passports and certificates, sexual offences, bribery of public officials or employees of private companies; 3) those sentenced to more than three months' immediate imprisonment or a suspended sentence of more than six months for an offence other than those listed in 2) above.

37. During the visit, an MP referred to a case of unresolved incompatibility. After the visit, the authorities pointed out that the situation concerned did not involve any of the incompatibilities specified in law. They also referred to a recent legislative proposal aimed at clarifying and updating the list of professions incompatible with a parliamentary mandate, and at introducing cooling off periods after the termination of certain functions before a person can be elected as an MP.

Misuse of public funds

38. The authorities refer to the general financial/budgetary framework and in particular to the role of the Bureau in the management of the Assembly's budgetary funds, to the role of the President (individually) in committing and authorising expenditure, to the oversight provided by the Board of Auditors (*Commission Supérieure des Comptes* – CSC, the body responsible for overseeing public accounts), to the procedure for settling and discharging the accounts (section 11-1 of Act no. 771 of 25 July 1964 on the organisation and operation of the National Council), to the fact that the Bureau has a body to assist it with additional expertise and enable it to involve people who are not members of the political majority more directly. The Monegasque authorities emphasise that the rules in place help to limit all risk of abuse, especially as members of the Council do not receive any benefits in kind (official car and chauffeur, for example). The GET welcomes the fact that the CSC also oversees the use of public funds by Parliament; this could inspire other countries.

Misuse of confidential information

39. Rules 44 and 45 of the new Rules of Procedure indicate that minutes of committee meetings are confidential and copies are made available only to Assembly members, and that the working documents distributed at these meetings are also confidential. What is more, Article 308 of the Criminal Code makes it an offence to divulge secrets (see the section on supervision and enforcement).

Contacts with third parties

40. The authorities refer to the rules on incompatibilities, ineligibility and removal from office, which in the opinion of the GET are a different matter. There would be no rules at all on the subject, the GET notes, were it not for Rule 78 RP (mentioned previously), which prohibits members of parliament from letting the work of the Council be instrumentalised by an association or interest group. This appears to be a first step towards rules on lobbying, but without more details, and supervision of their enforcement (see the section on supervision and enforcement), it probably serves no useful purpose at present and appears ineffective in practice.

41. The GET believes that dealings between members of the National Council and third parties likely to influence their work, while legitimate, must become more transparent and be more strictly and closely supervised than they are under Rule 78. As indicated in the section on general transparency, what contacts and consultations the Council may have are not really reflected in its documents, if at all. Meetings with representatives of the economic sphere also showed that the Principality is exposed to proposals from abroad, and at the same time the media give broad coverage to the lobbying which the Principality itself engages in abroad, in particular vis-à-vis the European Union, with regard to its own interests. So these issues are not alien to the Principality, even if the Council says it is not really affected by lobbying. A regulatory framework would lay down the conditions and manner in which Council members could conduct contacts and relations with third parties, professional lobbyists, representatives of private or public interest groups and NGOs, for example.

42. The Monegasque authorities are accordingly invited to give some serious thought to these issues in connection with the code of conduct it was recommended earlier that they adopt. The aim should be, *inter alia*, to provide members of parliament with guidelines or rules as to what is expected of them in their dealings with third parties, and to keep the public informed about potential links between third parties and members of parliament and their work in the National Council.

Declaration of assets, income, liabilities and interests

43. Monegasque law contains no obligation to declare any of the things mentioned in the above heading (or other items mentioned in the questionnaire, such as gifts, offers of payment for services, contracts with the state).

44. The GET has taken careful note of the reservations already expressed by the National Council[21] regarding the introduction of obligations for members of parliament to make such declarations. As GRECO has emphasised throughout the Fourth Evaluation Round - which is now nearing its end - in relation to a diversity of national systems, transparency in the work of elected representatives is an important feature of any democracy. The citizens must know who they are voting for and what interests their representatives are likely to defend once elected. Managing the risk of corruption also means putting deterrents in place today to dissuade people from resorting to prohibited or problematical sources of enrichment in the higher echelons of the state. Criminal law and the judicial authorities cannot be the only weapon to counteract these risks, because of the inevitably lengthy and cumbersome procedures involved, the need to enlist international co-operation and so on.

45. Furthermore, the primacy of the Executive (the Prince and the Government) must not justify maintaining a high degree of opacity as regards the MPs' financial interests. Lastly, the status of part-time member of parliament and their different accessory or main activities, all legitimate *per se*, call for sufficient transparency in respect of their income, assets and principal liabilities, in the form of public declarations which are easily accessible and regularly updated. That being so, GRECO recommends (i) introducing a system of public declaration of the National Councillors' financial and economic interests (income, assets and significant liabilities) and (ii) envisaging including information on their spouses and dependent family members (it being understood that such information would not necessarily be made public).

Supervision and enforcement

46. In the absence of the kind of declaration system mentioned in the preceding paragraph, the question of supervising the compulsory declarations does not apply to the situation in Monaco. As to monitoring compliance with the few rules of conduct contained in the Rules of Procedure – Rules 72 to 78 – in principle it is for the National Council itself to ensure compliance. The President may thus call a member of parliament to order if he/she disrupts the debates. In the event of insults, provocations or threats, or if a

[21] The fact, for example, that under Article 22 of the Constitution on the protection of private and family life only a law could possibly impose an obligation to declare. The lack of direct taxation on income and assets means that there is no obligation for Monegasque nationals to declare assets and income for tax purposes. This also means that no official authority is currently responsible for examining the content of the assets of Monaco's citizens and residents. Introducing the obligation to make such declarations would therefore mean setting up a body to verify the accuracy of the assets declared, as to create obligations without the corresponding sanctions would merely be to introduce non-binding provisions. Such a body would certainly need to be independent of the executive branch in keeping with the basic principle of the separation of powers, and independent of the National Council itself for reasons of objective and subjective impartiality. But Monaco's administrative organisation does not favour the creation of independent administrative authorities, unless imposed by the Principality's international commitments. Introducing additional constraints would create one more obstacle in the search for high-calibre candidates, especially if the declarations were to be made public. A sufficient array of sanctions already exists to punish corruption offences.

member has already been called to order, the President may issue a "call to order to be entered in the minutes". In the event of violence against another MP, the President may propose that the Bureau apply a disciplinary measure with a temporary expulsion. This prohibits the member concerned from participating in the Assembly's work for two weeks and reduces his/her parliamentary allowance by half for a month.

47. Regarding the monitoring of incompatibilities, as stated earlier dismissal from office may be pronounced by the court of first instance, acting on a complaint lodged by any concerned voter or national or municipal councillor, or by the Minister of State or the Prosecutor General. The authorities also state that ineligibility may result from loss of civic rights, applicable in connection with certain crimes and offences (Articles 22 and 27 of the Criminal Code), including under Article 122, first paragraph, applicable in cases of bribery, conflict of interest and trading in influence, according to which "In all the cases referred to in this paragraph the offender shall likewise incur the additional penalty of deprivation of the rights mentioned in Article 27 of this Code, for a minimum of five years and a maximum of ten years, from the time when they have finished serving their sentence."

48. According to the answers to the questionnaire and the interviews *in situ*, Monaco relies largely on criminal offences to prevent corruption on the part of MPs. For example, the misdemeanour of conflict of interest is punishable by one to five years' imprisonment and a fine of 18,000 to 90,000 euros. But as stated previously this offence does not really concern MPs. Violation of professional secrecy under Article 308 of the Criminal Code is punishable by a prison sentence of one to six months and/or a fine of 2,250 to 9,000 euros. The latest changes in Monegasque positive law on these matters were made by Act no. 1.394 of 9 October 2012, reforming the Criminal Code and the Code of Criminal Procedure in respect of corruption and special investigation techniques, published in the Official Gazette on 12 October 2012. As of that date, Articles 113 to 122 of Monaco's Criminal Code punish active and passive trading in influence and bribery in connection with members of elected assemblies. As has been said, situations of incompatibilities or loss of office following certain offences may be imposed by judicial decision.

49. According to the information supplied by Monaco, no sanctions have been applied to a member of parliament, and no criminal or disciplinary proceedings have been brought in the last three years in connection with the existing rules on integrity.

50. The GET considers that the recommendations made above regarding the introduction of a public system for declaring MPs' interests and for reporting conflicts of interest, and more generally the adoption of standards of conduct regarding integrity, should go hand in hand with measures to monitor compliance by MPs with these rules and apply appropriate sanctions in the event of failure to comply. As things stand at present, there is no supervisory machinery or corresponding sanction applicable with regard to many of the relevant obligations contained in the Rules of Procedure: dignity of conduct within the Council is one example (Rule 76 RP, which could be interpreted broadly). This is true in particular of the various obligations under Rule 78: not abusing one's parliamentary status in any manner alien to the office, ensuring there is no conflict of interest, not allowing the instrumentalisation of parliamentary work by an association or private interest group. What the Rules of Procedure do not say is whether the governing bodies of the Council should inform the courts of any suspicion that such offences are being committed (for example in the event of conflict of interest or breach of professional secrecy).

51. It is, of course, for the Monegasque authorities to decide how best to organise proper supervision. The GET stresses the importance of ensuring supervision of all the relevant provisions regarding integrity, and providing for proper sanctions in all cases. The most severe penalty at present (a two-week ban on participating in debates and loss

of half the monthly parliamentary allowance) is not sufficiently effective and dissuasive. . The disciplinary committee provided for in Rule 11 RP, which has the power to examine cases involving employees of the National Council, could be a source of inspiration for the formation of a similar body, with joint representation including prominent outsiders. Whichever form the body takes, it will need sufficiently collegiate decision-making, as well as resources to carry out its supervisory role and proper investigative powers, or even the power (or the obligation) to refer a case to the judicial authorities. Regard being had to the preceding paragraphs, GRECO recommends that measures be taken to ensure the proper supervision and enforcement of the obligations of declaration and the rules of conduct of members of parliament, together with proper sanctions for failure to honour all these obligations.

Immunities

52. Members of the National Council have no civil or criminal liability in respect of the opinions they express or the votes they cast in the course of their duties (non-accountability). This does not prevent action being taken against MPs who fail to observe the rules on respect for other MPs, as occurred under the previous legislature, when insults were hurled in the hemicycle. As to immunity, under Article 56 of the Constitution (immunity) members cannot, without the Council's authorisation, be prosecuted or arrested in the course of a session for a criminal offence or misdemeanour, except *in flagrante delicto*. The President of the National Council may, however, lift this immunity, by a majority vote of two thirds of the members present in the National Council, according to section 7 of Act no. 771 of 25 July 1964 on the organisation and operation of the National Council, as amended in 2015. Section 7 also now states that the immunity enjoyed by National Council members applies only during sessions and not on a permanent basis. They may accordingly be arrested and prosecuted between sessions.

53. This overdue reform provides a partial response to the recommendation GRECO made to Monaco in 2008, but which had not been implemented by the end of the compliance procedure. The fact remains that the National Council has still not adopted more specific criteria to help it reach decisions on the lifting of immunity. For example that immunity cannot be claimed against judicial proceedings for bribery offences, that the Council does not have to rule on the merits of the case or the guilt of the MP, and that it is sufficient for a request to be serious, sincere and objective. GRECO invites the Principality to re-examine these questions.

Advice, training and awareness

54. National Council members get their information through the law on the organisation and operation of the National Council and through the Rules of Procedure of the Assembly, which are published in the Official Gazette. They are also freely accessible on the websites of the National Council and the Government. And they are distributed to and placed at the disposal of each member by the Secretariat of the Council. Nobody has been created or appointed to dispense advice on the rules of conduct currently contained in the RP. As the Monegasque authorities pointed out, as part of the planned reform, which would consist in adopting a code of conduct (or an ethical charter) for National Council members, which could be appended to the RP, it is possible that an adviser on ethical issues might be appointed.

55. The GET considers that the introduction of a code of conduct, together with a system for managing and reporting conflicts of interest, and periodical declarations, will require greater effort in terms of training and awareness-raising for members of parliament, at the beginning of each legislature, for example, to enable them to incorporate the rules into their working habits. The proposal to introduce an adviser or reference person to advise on matters of ethics and professional conduct is a step in the right direction. This is all the more important in Monaco because MPs are not career

politicians and engage in parallel professional activities and have many connections with Monegasque society. Accordingly, GRECO recommends (i) that training and awareness measures be taken in respect of members of parliament concerning the conduct expected of them under the rules on integrity and the declaration of interests; and (ii) that MPs be provided with confidential counselling on these issues.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

56. The Constitution of 17 December 1962 includes a Title X entitled "The judicial system" which lays down the principles underpinning the organisation of the judiciary. In particular, it establishes the principle of "delegated justice", whereby judicial authority is vested in the Prince, who delegates the full exercise of that authority to the courts. The latter administer justice in the Prince's name (Article 88). The principle of separation of administrative, legislative and judicial functions is likewise enshrined in the Constitution (Article 6).

57. The administration and organisation of the judiciary are primarily governed by Act no. 1.398 of 24 June 2013 on the administration and organisation of the judicial system[22] and the Status of the Judiciary Act no. 1.364 of 16 November 2009.[23] The 2013 legislation was the culmination of a process that had begun nine years earlier, notably in response to the recommendations made by GRECO in the joint first and second evaluation rounds.[24]

Overview of the judicial system

58. Subject to some adjustments, the courts share jurisdiction over civil, criminal, administrative, commercial and labour matters. In particular, as there are no administrative courts at first instance and appeal level, the Court of First Instance and the Court of Appeal deal with these matters too, from the point of view of compensation for damage. Applications to review the validity of administrative decisions and texts, however, are handled by the Supreme Court ("ultra vires" cases).

59. Monaco has 38 judges, just under half of them women. Women are still very much in the minority in the two highest courts (the Supreme Court and the Court of Review).

60. At the top of the pyramid, therefore, stands the Supreme Court (TS), which, under the Constitution, is both the highest court in administrative matters and the country's constitutional court. In administrative matters, the TS rules on: a) applications for judicial review of decisions of the administrative courts that are not subject to appeal; b) appeals challenging the interpretation or validity of decisions of the various administrative authorities and sovereign orders enacted to implement laws (including the award of any resulting compensation); c) disputes over jurisdiction. In constitutional matters, the TS rules on applications for annulment, appeals challenging the validity of a decision, and actions for damages concerning a breach of constitutional rights and freedoms, arising primarily from the law. Depending on the circumstances, it sits either as a full court (for example, in constitutional matters) or as a three-person bench. The only court referred to in the Constitution, its composition is prescribed by Article 89:

> Article 89 – "*The Supreme Court shall have five full members and two substitute members.*
>
> *Members of the Supreme Court shall be appointed by the Prince, as follows:*
> *- one full member and one substitute member from among the candidates put forward by the National Council from outside its own membership;*
> *- one full member and one substitute member from among the candidates put forward by the State Council from outside its own membership;*

[22] http://www.legimonaco.mc/305/legismclois.nsf/ViewTNC/F23D90C1C93895A1C1257BB8002EC58F!OpenDocument
[23] http://www.legimonaco.mc/305/legismclois.nsf/ViewTNC/DB2A3497711D383CC125773F003DCAAC!OpenDocument
[24] http://www.conseil-national.mc/index.php/textes-et-lois/lois/item/268-1398-loi-relative-a-l-administration-et-a-l-organisation-judiciaires

- one full member from among the candidates put forward by the Crown Council from outside its own membership;
- one full member from among the candidates put forward by the Court of Appeal from outside its own membership;
- one full member from among the candidates put forward by the Civil Court of First Instance from outside its own membership.

Each of the bodies named above shall nominate two candidates per seat.
Should the Prince not approve the nominations, he may request new nominations.
The President of the Supreme Court shall be appointed by the Prince."

61. The rules on the status of the Monegasque judiciary do not apply to members of the Supreme Court, as, under Article 92 of the Constitution, the functioning of the TS and the status of its members are to be determined by sovereign order. Hence the adoption of Sovereign Order no. 2.984 of 16 April 1963 on the organisation and operation of the Supreme Court, as amended in 2015 (by Sovereign Order no. 5.371 of 19 June 2015).[25] According to this text, members are now appointed by the Prince for a period of eight years (which, in principle, may be renewed only in the case of members who have been appointed for less than two years, to replace a member who is indisposed or deceased or who has been dismissed). The president and vice-president are appointed by the Prince.

62. As regards the other courts, section 11 of Act no. 1.398 states that: "*Justice shall be administered in the name of the Prince by a Justice of the Peace, a court of first instance, a court of appeal, a criminal court and a court of review, without prejudice to the other judicial bodies provided for by law.*"

63. Justice of the Peace: the first tier in Monaco's judicial hierarchy, the Justice of the Peace sits as a single judge. His/her main task is to conduct conciliation proceedings in civil matters and to settle disputes where the sums involved do not exceed 4,600 euros. In criminal matters, he/she presides over the Police Court and adjudicates on contraventions which carry a maximum penalty of five days' imprisonment and/or a fine of less than 600 euros. Its decisions may be challenged before the Court of First Instance (TPI). The Justice of the Peace also has certain specific responsibilities such as chairing the judgment panel in the Labour Court, for instance.

64. The Court of First Instance (TPI) is likewise part of the first tier of the justice system. A collegiate court, it hears civil (Court of First Instance), criminal (Correctional Court) and administrative cases. All TPI judges are thus competent to adjudicate in these three areas of law. The Court of First Instance hears: a) at first instance, all civil or commercial cases (except for those which fall within the jurisdiction of the Justice of the Peace); b) similarly at first instance, as the ordinary court in administrative matters, the Court of First Instance hears all cases other than those which specifically fall within the jurisdiction of the Supreme Court or another court); c) on appeal, the Court of First Instance examines arbitration awards made in civil or commercial matters. In criminal matters, the Court of First Instance, acting as a Correctional Court, hears, at first instance, all offences that are categorised as misdemeanours. As mentioned earlier, the TIP also hears appeals against decisions handed down by the Police Court. TPI judges may also be assigned certain specific functions/responsibilities, either on a full time basis as an investigating judge or guardianship judge, or for individual cases or other assignments (cases involving the family, accidents in the workplace or bankruptcy, expert appraisals, etc.). The competence to hear administrative cases derives, to a large extent, from case law and civil procedure applies.

65. As in other countries which have this institution, the work of investigating judges relates solely to criminal issues. They act in the most serious or complex cases,

[25] http://www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/2ffc5cc166bd369ec125773f00383862!OpenDocument

which are referred to them by the prosecution service. The Prosecutor General may, in all cases, appeal the orders issued by the investigating judge. This right of appeal is also granted to accused persons and plaintiffs. Appeals are heard by the Court of Appeal sitting in chambers as an investigating court. In Monaco, investigating judges are appointed (from among the members of the TPI) by sovereign order for a period of three years, on the recommendation of the first President of the Court of Appeal and after consulting the Prosecutor General. Their mandate may be renewed for successive periods of the same duration. The TPI currently has two investigating chambers each headed by one judge.

66. The Court of Appeal forms the second tier of the judiciary in civil, criminal, commercial and administrative matters. It also adjudicates on appeals against decisions delivered by the Arbitration Commission and the Arbitration Commission for Commercial Leases. It is made up of a first President, a Vice-President and other judges. In all matters, it hands down rulings when at least three members are present. Where it cannot be formed because there are not enough members (owing to disqualification or withdrawal), it may be supplemented by a judge from a court which did not hear the case at first instance, by the Justice of the Peace or, failing that, by the most senior lawyer at the Bar or by a notary. It appears that external legal professionals of this kind are used only rarely. The first president has certain specific responsibilities in matters of protocol. His/her primary role, however, is a supervisory one, monitoring the activities of the different actors and bodies in the judicial system, such as the chambers of the investigating judges, criminal investigation officers, lawyers, bailiffs, court registrars (the court chamber has disciplinary jurisdiction in cases involving one of these actors or bodies).

67. The Criminal Court is a non-permanent court. As its name indicates, it has the power to try offences classified by law as crimes, as opposed to misdemeanours and contraventions. The Criminal Court's composition is twofold. It is made up of professional and lay members, specifically: a) three judges: a president appointed from the judges sitting in the Court of Appeal and two other judges acting as assessors and drawn from the Court of Appeal, the Court of First Instance or the Justice of the Peace; b) three jurors taken from a list, drawn up every three years by ministerial order, of thirty Monegasque nationals who have reached the age of majority and have never been convicted of a crime or misdemeanour. The Criminal Court is a sovereign jurisdiction whose decisions must contain a statement of reasons but are not open to appeal. The parties concerned (convicted person, plaintiff claiming for damages and the prosecution) may, however, challenge the Court's judgments before the Court of Review if they consider that it has violated the rules on jurisdiction, failed to observe essential procedural requirements or committed a breach of the law.

68. Along with the Supreme Court, the Court of Review forms the highest tier of the Monegasque judicial system. It rules on all matters, acting as a court of cassation. Accordingly, after a decision of the trial court has been set aside, the Court of Review (composed differently) may itself take up the case so as to retry it definitively in fact and in law. The majority of the decisions submitted to the Court through appeals are judgments delivered by the Court of Appeal in civil, criminal, commercial and administrative matters (disputes concerning the responsibility of the state and administrative authorities). The rulings of the Court of Review are only valid when it sits as a panel with at least three members. It may be supplemented by a member from the Court of Appeal or from the TPI if several of its members are indisposed or unable to serve in court. The Court of Review may also hear appeals lodged in the interest of the law. It likewise rules on applications for the resumption of proceedings where a court has made a factual error.

69. The Court of Review currently has nine judges: a President, two Vice-Presidents and six other judges, who are called upon to sit in the order in which they were

appointed. The majority of these judges are recruited from among serving or retired members of the French Court of Cassation, or from academia. They are appointed by the Prince for an indefinite term, but according to standing practice, they retire at the age of 80. Although part of the Monegasque judiciary and covered by the rules on the status of the judiciary, members of the Court of Review sit not on a permanent basis but rather at sessions held two or three times a year and between sessions without holding a hearing in those cases determined by the law. They are paid in the form of allowances and fees and so do not receive a fixed salary.

70. The Labour Court hears disputes that have arisen in connection with the performance or termination of employment contracts and in matters relating to collective disputes, among other things. The Labour Court is made up of twenty-four employers and twenty-four employees who are nominated by employers' federations and trade unions. They are appointed by sovereign order for a period of six years. Half of the members in each category are replaced every three years. The President and Vice-President are elected by a majority for three years. The Tribunal consists of a conciliation board, a judgment panel and an urgent applications judge. The conciliation board is made up of one employee and one employer.[26] The judgment panel consists of the Justice of the Peace, who acts as chair, and at least four assessors, chosen in equal number from the employer and employee groups. The sittings of the judgment panel are public. If the proceedings are likely to disrupt public order, the panel may order that the case be head in camera. The judgment must always be delivered in open court, however. The urgent applications judge is appointed by the president of the Court of First Instance. He/she may not subsequently examine the merits of the case, either at first instance or on appeal.

71. The Court of Appeal hears appeals against decisions handed down by the Labour Court. Final decisions rendered by the Labour Court and judgments of the Court of Appeal may be referred to the Court of Review in cases where there has been a breach of the law.

72. The Prosecutor General's Office is dealt with more specifically in the next chapter of this report, on prosecutors.

73. As regards the various categories of judges, the Monegasque judiciary is made up not only of judges and prosecutors who are Monegasque nationals but also of judges and prosecutors from the French courts who are seconded to Monaco for a period of three years, renewable once (see the comments on recruitment below). In addition to the judges mentioned above, there are a number of persons who sit on various commissions which are not, however, courts: a) the 30 assessors who sit on the Arbitration Commission for Commercial Leases; b) the 46 assessors who sit on the Rent Arbitration Commission; c) the 2 appointed lay judges and the 2 deputy lay judges who sit on the Independent Pension Fund commission; d) the 4 appointed lay judges and the 4 deputy lay judges who sit on the commission of the Independent Pension Fund for Self-Employed Workers; e) mention should also be made here of the jurors who sit alongside professional judges in the Criminal Court mentioned above.

Other institutions

74. The Directorate of Judicial Services (DSJ), which has around twenty employees and civil servants, performs tasks similar to those of a Ministry of Justice in other countries. Governed by Act no. 1398,[27] it is an administrative body that is

[26] There is a specific set of rules under which all employee and employer members serve on the board, with the employee and employer members taking it in turn to act as chair, according to a rota. The one who chairs the board first is chosen by lot. The conciliation board meets at least once a week. Its meetings are not public.
[27] http://www.legimonaco.mc/305/legismclois.nsf/db3b0488a44ebcf9c12574c7002a8e84/f23d90c1c93895a1c1257bb8002ec58f!OpenDocument&Highlight=0,1.398

independent of the government and is headed by the Director of Judicial Services. Act 1.398 states as follows: Section 1 - "*The Director of Judicial Services shall be responsible for the proper administration of justice. He shall be appointed by sovereign order*." Section 2 – "*The Director of Judicial Services shall adopt any orders and decisions necessary within the scope of the laws and regulations*." These orders and decisions may be challenged before the courts in the same way as any ministerial order or administrative decision. The Directorate of Judicial Services is responsible for the administration of the following services: a) the General Secretariat of the Directorate; b) the Prosecutor General's Office c) the courts; d) the general registry; e) the remand prison.

75. The Director of Judicial Services (hereafter the Director), as an administrative and – to some extent – judicial authority, has powers similar to those exercised by justice ministers in other countries. He/she is responsible for the proper administration of justice and answers to the Prince alone in this respect. Accordingly, he/she has powers in the field of judicial administration comparable to those devolved upon the Minister of State for the general administration of the country. The Director is not part of the government, however. Therefore, pursuant to Article 46 of the Constitution, sovereign orders concerning the judicial services are not debated in the Council of Government, but are adopted by the Prince based on reports submitted to him by the Director.[28] For the purpose of exercising his/her administrative powers, he/she has the power to issue orders of a regulatory or individual nature. For example, the terms and conditions of the professional examination for persons wishing to practise law are prescribed by directorial order (Sovereign Order no. 8.089 of 17 September 1984, Articles 7 and 8). The same is true of the recruitment of trainee court registrars (Act no. 1.228 of 10 July 2000, section 15). The Director is also required to make decisions which do not take the form of orders, e.g. as part of the process of managing the careers of the public officials who report to him/her (see above, the sectors under the responsibility of the DSJ). The legality of these orders may be challenged before the Supreme Court. In addition, the Director submits reports and proposals to the Prince regarding the appointment, by sovereign order, of all judges and prosecutors (following approval by the Judicial Service Commission), defending counsels, notaries, bailiffs and public officials assigned to the DSJ. The same applies with regard to their retirement or admission as honorary members.

76. The Director also has supervisory and disciplinary authority over the civil servants who report to him/her. Accordingly, he/she performs his/her duties under conditions similar to those applicable to the Minister of State or civil service chiefs, as provided for in Act no. 975 (section 74) of 12 July 1975 on the status of state public officials. With regard to judges and prosecutors, disciplinary power is now exercised by the Judicial Service Commission (see below), with the Director acting as prosecuting authority in this instance.

77. Lastly, pursuant to the provisions of Article 139, 2nd paragraph, of the Code of Civil Procedure, the Director of Judicial Services ensures that the state is represented before the courts in cases where the public authority is challenged in connection with the operation of the justice system. The DSJ is also the central authority for the application of certain international conventions. The specific judicial responsibilities of the Director of Judicial Services concern criminal matters in particular as under Act no. 1398 (section 26), s/he oversees public prosecutions, even though he/she does not bring prosecutions himself/herself. To this end, the Director has the authority to issue instructions to the Prosecutor General and officials in the prosecution service. The Director may also grant, by means of an order, parole to convicted prisoners, in accordance with the conditions

[28] According to Article 46 of the Constitution "*The following Sovereign Orders shall be exempt from debate in the Council of Government and from submission by the Minister of State:*
(…) – those concerning matters within the remit of the Directorate of Judicial Services" (the other areas include appointment of members of the Sovereign Household, members of the diplomatic and consular corps, the Minister of State, members of the Government Council and related officials, members of the judiciary).

laid down in Sovereign Order no. 4.035 of 17 May 1968. Lastly, his/her opinion may be sought by the Prince on any justice-related matter. This is a joint responsibility which the Director shares with the Judicial Service Commission.

78. The Judicial Service Commission (HCM) is governed by various texts.[29] It has seven members, of whom two are *ex officio* members, three are appointed and two are elected from among the judiciary (section 20 of the Status of the Judiciary Act) for a period of four years: a) the two *ex officio* members are the Director of Judicial Services, who acts as chair, and the first President of the Court of Review, who acts as vice-chair. The latter, who is covered by the rules on the status of the judiciary, has the same duties and obligations in terms of integrity as other judges and prosecutors. As regards the Director, who is among the most senior state officials, he/she is bound in this respect by the duties and obligations incumbent on public officials; b) the two elected members are judges or prosecutors elected by their peers and subject to the duties and obligations arising from their status as members of the judiciary; c) the three members appointed from the Judicial Service Commission cannot be serving judges, prosecutors, lawyers or public officials and all the members are required to observe discretion in relation to any facts or information which may come to their notice in the performance of their duties: one full member appointed by the Crown Council,[30] one full member appointed by the National Council, one full member appointed by the Supreme Court. An annual report provides a record of the Judicial Service Commission's activities over the past year.

79. The HCM has a specific budget heading (around 20,000 euros per year) within the budget allocated to the Directorate of Judicial Services and its operation is governed by Sovereign Order no. 2.706 of 7 April 2010 establishing the Commission's operating rules. The secretariat of the HCM is likewise provided by the DSJ, specifically its General Secretary who attends sittings in this capacity. Whenever the HCM sits in disciplinary matters, however, the tasks assigned to the DSJ are performed by the court registry.

The principle of independence

80. Independence of the judiciary is enshrined in the Constitution. Firstly, Article 6 states that "*separation of the executive, legislative and judicial functions shall be assure*d", while under Title X, which contains Article 88: "*Judicial power is vested in the Prince, who hereby delegates full authority to exercise it to the courts. The courts shall administer justice in the Prince's name. The independence of the judiciary shall be guaranteed. The organisation, jurisdiction and functioning of the courts, and the status of the judiciary, shall be determined by law.*"

81. The provision in Article 88 of the Constitution which guarantees the independence of the judiciary relates more specifically to members of the judiciary sitting as judges, that is, those called upon to settle disputes (the case of prosecutors is examined in the next chapter of this report). Accordingly, pursuant to this principle of independence, judges have security of tenure, meaning that they cannot be dismissed, suspended or transferred, under the same arrangements as those applicable to public officials. Security of tenure does not apply, however, to auxiliary members of the judiciary (*magistrats référendaires*), who are supposed to serve for a maximum of two years. Security of

[29] Status of the Judiciary Act no. 1.364 of 16 November 2009, Order no. 2.706 of 7 April 2010 establishing the operating rules of the Judicial Service Commission; Order no. 2.572 of 13 January 2010 on the arrangements for electing elected members of the Judicial Service Commission. The relevant texts may be found at: http://www.gouv.mc/Gouvernement-et-Institutions/Les-Institutions/La-Justice/Le-Haut-Conseil-de-la-Magistrature

[30] The Crown Council is a purely consultative body tasked with assisting the Prince in the exercise of his constitutional powers and whose composition and operating rules are prescribed by the Constitution. In some areas, consulting the Crown Council is mandatory whereas in others, it is optional. The Council has seven members, of Monegasque nationality, appointed by the Prince for a period of three years. The Chair and three other members are appointed directly by the Prince. The three remaining members are appointed by the Prince on the recommendation of the National Council, from outside its members. Neither the Minister of State nor members of the Council of Government may sit on the Crown Council.

tenure is provided for in section 7 of Act no. 1364 for judges in the various courts except for Supreme Court judges, who are subject to the rule laid down in Article 2 of Order no. 2984.

82. Independence also means that no individual or institution may give directives to judges in individual cases. Judges swear the following oath, in accordance with section 32 of the Status of the Judiciary Act: "*I hereby swear to respect the institutions of the Principality and to ensure that the law is applied fairly. I also hereby swear to fulfil my responsibilities with impartiality and diligence and to observe the duties that they impose on me, to keep secret all deliberations and to conduct myself with dignity and loyalty at all times."*

83. Section 18 of the Status of the Judiciary Act states that: "*The state, represented by the Director of Judicial Services, shall be bound to protect judges and prosecutors from threats, abuse, insults, defamation or attacks of any kind which they may face in, or in connection with, the performance of their duties and, where necessary, to remedy the damage caused.*" Independence of the judiciary thus also resides in the institutional arrangements. The Monegasque authorities emphasise that this independence of the executive, not only in terms of court procedures and decisions but also in terms of how justice is administered, is reflected in the fact that there is no government member responsible for justice, and that the task of judicial administration is performed by the above-mentioned DSJ, headed by the Director of Judicial Services. The latter is answerable to the Prince alone.

84. In the view of the GET, responsibility for ensuring the independence of the judiciary should, in principle, fall to the Judicial Service Commission (HCM). The whole purpose of such a body is to ensure the utmost impartiality and independence – including in the eyes of the public – in decisions relating to judges and prosecutors, their recruitment, careers and many other aspects as well. Compared to the executive, however, the Judicial Service Commission has only a minor role. Its existence is not guaranteed by the Constitution as it is established merely by legislation (Act no. 1364 of 2009). Responsibility for chairing it automatically falls to the executive even though the authorities stress that the Director of Judicial Services is independent of the government but the fact remains that he/she is a public official, subject, in principle, to the direct authority of the Prince – who appoints him/her – and whose status is not really defined in law. The Vice-Chairmanship of the HCM, too, automatically falls to a judge appointed by the executive (the President of the Court of Review). The heads of the HCM are not elected, therefore, from among its members and of the seven HCM members themselves, only two are elected by their peers, something the GET's interlocutors were keen to emphasise during the visit. There is thus a need to improve the management and composition of the HCM.

85. The HCM may be convened only by the Director, who is also the one who prepares the annual activity report and presents it to the Commission. The HCM cannot itself take up *ex officio* an issue relating to the functioning of the justice system, or an incident concerning its independence or the integrity of a judge or prosecutor. The activity report is not published and there is thus no transparent account of the HCM's activities and possible discussions on the judiciary, although an effort for increased transparency has been done since 2016 with a public presentation on the judicial activities being given in presence of the press; it also addresses the HCM's activity.

86. Both in the selection process of foreign seconded magistrates and members of the Court of Review (the Supreme Court is dealt with separately hereinafter) and in career development, the HCM does not always play a leading role. Often, its opinion is not required or it is not always binding on the Prince or the Director of Judicial Services. As indicated below, in the section on supervision and punishment, its power of initiative and decision-making power in disciplinary matters remains limited and, in any case, once

again, governed by the executive: first by virtue of the fact that the Director has a monopoly over the referral process and second, after a disciplinary decision has been taken, by the need for a sovereign order to implement it.

87. In conclusion, the Principality needs to give far more responsibility to the HCM, both in monitoring the functioning of the justice system and in specific decisions concerning judges and prosecutors. It could find some useful guidelines to this effect in the Magna Carta of European Judges and in the opinions of the Consultative Council of European Judges (in particular opinions 1, 3 and 10).[31] GRECO recommends that the authorities enhance the role and operational independence of the Judicial Service Commission, review its composition and give it a central role in guaranteeing the independence and good functioning of the justice system, as well as in the recruitment, career management and disciplinary proceedings in respect of judges and prosecutors.

88. As already noted in the overview of the judicial system, the Supreme Court (TS) acts both as a constitutional court and as an administrative court, with sole power to determine the validity of decisions and texts adopted by the administration and the state. Although GRECO's Fourth Evaluation Round is not generally concerned with constitutional courts, this second area of jurisdiction demands that the TS be examined here in greater depth. The GET is pleased to note that 2015 saw major changes to the way in which the TS is organised, aimed at making it more independent. Recent improvements include the fact that the seven members are now appointed for a single, non-renewable term and have security of tenure.

89. That said, the Judicial Service Commission, which is a crucial counterweight to the decisions of the administration and the state, including with regard to any conflicts of interest which may arise in the management of public affairs, still suffers from various shortcomings. Firstly, the Supreme Court (its President) itself decides the amount of the allowances and expenses payable to its members based on the cases which come before it. The discussions in situ showed that, as in the case of the Court of Review, any system of this kind would need to be based on objective criteria capable of being verified, as necessary. More important is the fact that when posts become vacant, there are no public calls for candidatures and the executive (the Prince) has considerable discretion (and the final say) in selecting all the members. It is thus open to him to reject the proposals put forward by various sections of the three branches of government, particularly as Order no. 2984 merely requires that candidates have reached the age of 40 years and be chosen "from among highly qualified jurists". It is not specified what is meant by "highly qualified" and, rather surprisingly, no courtroom experience is required. The disciplinary arrangements (see the section on supervision and punishment below) afford only limited flexibility as there is only one sanction available, namely dismissal. And even if a special commission whose members are drawn from various parts of the state apparatus (including two judges provided for by law and not elected) is involved in the process for the purposes of a hearing, the process is triggered, and any dismissal takes place, by order of the executive (in this case the Prince).

90. Order no. 2984, which deals with the status of members of the Supreme Court, lays down some rules of conduct, but only indirectly via the oath: independence, impartiality, diligence, observance of duties and non-disclosure of deliberations, dignified and loyal conduct. These obligations are thus far less extensive than the various principles laid down in the Status of the Judiciary Act no. 1.364 of 16 November 2009 (which does not apply to members of the Supreme Court). Given that Supreme Court judges do not serve full-time, conflict-of-interest rules are especially important yet no such rules exist for members of the TS. There is also the issue of whether Order no. 2013-17, which deals with gifts, contacts with third parties and other issues, applies to

[31] http://www.coe.int/t/dghl/cooperation/ccje/textes/avis_EN.asp?

members of the TS (the preamble of Order no. 2013-17 makes no reference to Order no. 2984 and the representative of the TS with whom the GET spoke was not familiar with the content of this text).

91. There is also a gap in the law as regards incompatibilities. Members of the Supreme Court may not, while in office, serve as National or Municipal Councillors, as judges in another court or as public officials. These incompatibilities, however, which would seem to date from the time when the order was enacted in 1963, have not been updated to take account of the fact that the TS may include French practitioners and that other incompatibility rules might be needed. At present, all the members of the TS are individuals working in France (academics, members of courts, lawyers, parliamentary advisor). These parallel activities and the conflicts to which they may give rise are not properly regulated, however. It is clear therefore that, given its role in overseeing acts and decisions of the state and administration, the TS requires further reforms in order to ensure its independence both from the other branches of government and from outside influence. As GRECO has repeatedly pointed out, it not enough for the justice system to be independent. It must also be seen to be independent. Consequently, GRECO recommends that i) the appointment of members of the Supreme Court be based on a transparent procedure and adequate objective criteria and ii) that they be provided with appropriate rules on incompatibilities, conflicts of interest and other obligations related to integrity.

Recruitment, career and conditions of service

Recruitment

92. The procedure for recruiting judges and prosecutors is governed by the Status of the Judiciary Act no. 1.364 of 16 November 2009. A distinction needs to be made, however, between national judges and French judges seconded by their government to Monaco. Sections 27 to 32 of the aforementioned Act determine the conditions for recruiting Monegasque judges.

93. Since 2009, Monegasque judges and prosecutors have been recruited exclusively via public competitions, as provided for in Part IV of the Status of the Judiciary Act no. 1.364 (prior to that, judges and prosecutors of Monegasque nationality who had graduated from France's Legal Service Training College - *l'Ecole Nationale de la Magistrature* - were recruited on the basis of their qualifications). The competition is declared open by order of the Director of Judicial Services who draws attention to the conditions mentioned above and further specifies: 1° - the number of posts to be filled; 2° - the closing date for applications and any supporting documents required; 3° - the number, schedule, purpose and terms and conditions of the written and oral tests, the weightings and the minimum average score required;[32] the names and titles of the jury members.[33] After the closing date, the Director of Judicial Services draws up a list of candidates who are to be allowed to sit the competition and decides when and where the tests are to be held. After the tests and based on the minutes prepared by the jury, the Director of Judicial Services confirms the results of the competition and the ranking of the candidates in order of merit.

[32] By way of example, the first round of tests, which are conducted anonymously, may include an essay on social, legal, political, economic or cultural aspects of today's world; a paper on civil law or civil procedure; a paper on criminal law (general or other) or criminal procedure; a test consisting of questions requiring short answers on topics relating to the organisation of the Monegasque state, the justice system, public freedoms and public law in Monaco. The second round includes a presentation on a (civil and/or criminal) case and an unstructured interview with the jury. After the second round, candidates sit a verbal language test in English, German, Italian or Spanish, according to the arrangements stipulated by the jury.

[33] The jury consists of: the first president of the Court of Review or his/her deputy, acting as chair; the first president of the Court of Appeal or his/her deputy; the Prosecutor General or his/her deputy; the president of the Court of First Instance or his/her deputy; three prominent persons chosen for their competence by the Director of Judicial Services, including an associate professor from a French law school.

94. The eligibility criteria for participation in competitions are as follows (section 28) – "*Competitions shall be open to candidates who meet the conditions laid down in items 1, 3, 4 and 7 of the previous section, who have reached the age of 21 years and who hold a degree in law certifying training of a duration equivalent to at least four years' post-baccalaureate study, recognised by the issuing state, or who have successfully completed training deemed to be equivalent by the Judicial Service Commission*." Following this selection process, the successful candidates attend the Legal Service Training College in France. The training lasts 16 months, as compared with the 31 months which French students are required to complete – see the section on training and awareness at the end of this chapter on judges.

95. On completing their training, individuals seeking an initial appointment as a *magistrat référendaire* must meet a further series of conditions: 1. be a Monegasque national; 2. have reached the age of 23 years; 3. enjoy civil and political rights; 4. be of good moral character; 5. have passed the competitive examination; 6. have successfully completed theoretical and practical training at a French-speaking judicial training college; 7. have been declared physically fit. Checks to ensure that individuals are of "good moral character" are carried out by the police and the results notified to the Directorate of Judicial Services. The equivalences recognised by the Judicial Service Commission are published in the Official Gazette on the initiative of the Director of Judicial Services. Monegasque candidates who have passed the competitive examination for entry to the profession of judge/prosecutor in another EU country and who have held judicial office for at least five months are not required to sit the competitive examination.

96. Individuals are initially appointed as *magistrats référendaires* for a period of two years and the young recruits are confirmed in their posts, at the appropriate grade, by sovereign order, i.e. by the Prince, based on a report drawn up by the Director of Judicial Services in the light of the competition results or, if they are not required to sit the competitive examination, following approval by the Judicial Service Commission. After two years and with the assent of the Judicial Service Commission, *magistrats référendaires* are appointed as judges or substitute prosecutors.

97. The practice of seconding French judges and prosecutors to Monaco is based on a bilateral agreement between France and Monaco and developed in response to a demand for staff in the Monegasque judiciary. The French judges are recruited on the basis of a job description. A notice is circulated internally by the French judicial authorities which then send a list of candidates to the Directorate of Judicial Services. The candidate chosen by the Monegasque authorities is appointed by sovereign order and then joins the ranks of Monegasque judges. French judges seconded to Monaco have, of course, already undergone the selection and appointment procedure in force in France by the time they enter the judiciary and the vast majority of them will have completed their initial training at France's Judicial Service Training College. Secondments are for a period of 3 years and may be renewed once only. Afterwards, the individuals concerned return to the institution from which they came. Once in Monaco, they are covered by the 2009 rules on the status of the Monegasque judiciary.

98. The discussions in situ flagged up a number of issues which require attention. First, there is the lack of transparency in decisions concerning the secondment of foreign judges – in practice, French practitioners. Some of these are in fact recruited through calls for candidatures published in France, at the request of the Principality. Between the time when a candidate applies and the time when an invitation is issued to attend a selection interview in Monaco, however, there is no way of knowing what the role of the French Ministry of Justice is or what the pre-selection arrangements are, as all the seconded judges themselves pointed out during the discussions. Nor did they conceal the fact that the process is sometimes perceived as politicised. It was also said that the procedure can sometimes take longer than planned, and that the rule requiring a

minimum of three shortlisted candidates is not always observed (there would often be only two, in practice), with the result that the Principality is sometimes forced to decide quickly or is left with not enough options. This can lead to problems in cases where none of the shortlisted candidates meets the requirements. It should also be borne in mind that the Principality sometimes needs people with very specific profiles, especially where economic and financial crime is concerned. The fact that Monaco does not master every stage of the recruitment and selection process could have a negative impact on its ability to meet its needs.

99. When it comes to extending the contracts of seconded staff after the initial three-year period, once again, the process suffers from a lack of transparency. During the discussions, it was said that the criteria used by the French side to authorise extensions were not known. The current practice is for extensions to be granted systematically (by France), and this is to be welcomed. In practice, many secondments last 4 to 5 years, bearing in mind that it takes roughly two years to become thoroughly familiar with Monegasque law and practice. All in all, Monaco has a fairly high turnover of judges and prosecutors and some simplification of the selection process would surely be beneficial in these circumstances (as well as a longer period of secondment).

100. As regards the most senior judicial posts, it appears that contact with prospective candidates is generally made in two ways, from Monaco. Either they are contacted directly, in the case of retired judges or academics, for example (the GET was also informed of a case where direct contacts had been used to approach a magistrate who had not been selected in a previous procedure). Or they are contacted indirectly, through the Ministry of Justice in the case of serving judges, with a subsequent agreement between France and Monaco regarding the individual(s) concerned. Neither route involves any (public or internal) vacancy notices, as the GET understood it. In some cases, the initial contact is made by telephone and, in practice, the Principality also receives unsolicited applications. Ultimately, agreements are reached on the basis of criteria (if any) of which the candidates or persons selected have no knowledge, according to what was said in several interviews. In the GET's view, direct dealings are generally to be preferred, as that way the Principality has control over the process. Once again, however, given the questions and (public) controversy to which this has given rise in the past,[34] it is important that a transparent procedure, with public calls for candidature and clear criteria, be introduced and widely publicised as regards the requisite competencies. While the 2009 rules on the status of the judiciary do in fact lay down certain requirements (age, enjoyment of civil and political rights, good moral character, completion of judicial training), these only apply to young recruits wishing to become *magistrats référendaires*. Neither the Status of the Judiciary Act nor the legislation on the organisation of the judiciary makes any mention of the criteria for appointment to more senior positions (including in the Court of Review).

101. Still on the subject of these more senior positions (members of a high court, Prosecutor General), both the interviews and recent media coverage have shown that there is a widespread perception that posts are "discretionary" and that, depending on the circumstances (for example, public controversies), secondments can be terminated at any time. The fact that during secondments, judges and prosecutors come under both the French and the Monegasque authorities means that such termination is, in theory, possible. In the view of the GET, safeguards are needed in the form of rules providing more protection for seconded staff.

102. There is also the issue of the expediency of using secondments. The ability to employ foreign judges and prosecutors has unquestionably been a necessity for Monaco as there are not enough national candidates for these positions (the majority of judges and prosecutors are French, therefore). Also, because of the close-knit nature of

[34] See for example http://www.lefigaro.fr/actualite-france/2014/07/03/01016-20140703ARTFIG00215-ecoutes-un-poste-de-magistrat-tres-ordinaire-au-coeur-de-l-affaire.php

Monegasque society, the justice system could quickly find itself paralysed in certain cases, if judges were forced to withdraw or disqualified. It is important to bear in mind for example that Monaco has two investigating judges. In this context, the GET was told that Monegasques were not formally informed about vacant posts (they may nevertheless apply spontaneously). This raises the wider issue of the failure to issue public calls for candidatures when recruiting judges and prosecutors, a practice which, were it to be mandatory, would help to make the system of filling vacancies more transparent.

103. The situation described in the above paragraphs grants too much discretion, therefore, to the executive and hardly paints a picture of objectivity in the selection of judges and prosecutors, especially ones who have been seconded and are destined for senior positions in the justice system. More transparent and objective procedures based on public calls for candidatures would be a major improvement. This would also enable Monegasque practitioners to apply for a first job or to a higher post/grade. It would appear that for the time being, the agreements in place with France may limit the Principality's autonomy in the implementation of such a reform. However, nothing prevents it from turning to practitioners from other countries should the existing agreements be too difficult to review. GRECO recommends that the authorities ensure the transparency of the process for appointing judges and prosecutors in Monaco, whether seconded or not, based on clear and objective criteria, including for appointments to the most senior positions and for the extension and early termination of secondments.

Career and conditions of service

104. Generally speaking, judges are appointed by sovereign order, based on a report prepared by the Director of Judicial Services, following approval by the Judicial Service Commission. Candidates' integrity and other qualifications for the position of judge are examined at the time of recruitment.

105. Sections 36 to 43 of the Status of the Judiciary Act deal with promotions and career development. Promotions are primarily based on seniority. They vary depending on the grade and step of the individual concerned. Section 36 of Act no. 1.364 of 16 November 2009 provides that judges and prosecutors are to be evaluated every two years by their head of court. Such evaluations may be carried out by the following persons: a) in the case of court-of-first-instance judges, guardianship judges, Justice of the Peace: the president of the court of first instance; b) in the case of the vice-president, appeal court judges and investigating judges: the first president of the court of appeal; c) in the case of the first general substitute, general substitute and substitute public prosecutors: the Prosecutor General; d) judges and prosecutors assigned to the Directorate of Judicial Services are evaluated in the same way by the Director of Judicial Services; e) (French) judges and prosecutors on secondment are also evaluated by the authority or body to which they have been seconded. The results of the evaluation are passed on to the judge in question.

106. On the basis of this evaluation, the length of service required may be reduced by decision of the Director of Judicial Services, after obtaining the approval of the HCM. The HCM is presented with a proposal to reduce the length of service either by the Director of Judicial Services or by the head of court to which the judge concerned belongs. Likewise, appointments to the most senior judicial positions are subject to completion of at least two years' service in the first grade and are made by sovereign order, based on a report by the Director of Judicial Services and following approval by the HCM. Under section 43, if the Director of Judicial Services' report does not concur with the HCM's view, the reasoned opinions of the dissenting members are set out in writing and submitted by the Director of Judicial Services together with his/her report.

107. Except in the case of *magistrats référendaires* (who are assigned, by order of the Director of Judicial Services, to any position on the bench or in the prosecution service, serving 12 months in each position), career mobility is regulated as follows. Under section 6 of Act 1.364, in the course of their careers, judges and prosecutors may be appointed to the bench or the prosecution service of any court. Section 7, however, establishes the principle of irremovability: "*Judges shall be irremovable from office. Consequently, judges may not, without their consent, receive a new appointment, even by way of advancement.*" In the case of Monegasque judges, mobility can only occur if a post becomes vacant. Secondments are possible too, including notably to international organisations,[35] and there is also a leave-of-absence scheme and the possibility of being assigned to work under the Director of Judicial Services. At the end of the mobility period, judges and prosecutors have the right to be reinstated and the Judicial Service Commission is responsible for supervising any transfers of this kind.

108. Judges are appointed for an indefinite period (except for Supreme Court judges who are appointed for eight years) and only leave office if they resign or voluntarily retire (the statutory retirement age is 65 years), or in the case of compulsory retirement or dismissal following a disciplinary procedure.

109. As regards the level of remuneration, this is prescribed by law, according to a system of grades and steps as set out in Sovereign Order no. 2.573 of 13 January 2010 and Order no. 2010-4 of the Director of Judicial Services of 25 January 2010. Like other public officials, judges and prosecutors receive 13 monthly salaries per year, made up of a basic index-related salary and a 25% allowance. In addition, judges and prosecutors receive a supplementary allowance equal to 9%. The gross annual starting salary of a judge (or prosecutor) at the beginning of his/her career is a little over 46,000 euros. The gross annual salary for a judge of the highest court, namely the first President of the Court of Appeal, is similar to that of the Prosecutor General, i.e. around 132,000 euros (the posts of first President of the Court of Appeal and Prosecutor General are in a special category, outside the general salary scale). Since members of the Court of Review and the Supreme Court do not serve full-time (as their courts sit in sessions), they are paid in the form of fees and allowances. For instance, in the case of the Court of Review these amounts vary between 120 and 6,000 euros and they are determined by the President of the court. The Directorate of Judicial Services ensures that duties are actually performed but it has no control function whatsoever as regards the allocation of cases among judges, which is the sole responsibility of the President. Consideration could be given to spelling out more specifically, if necessary, the criteria used for calculating these allowances.

110. As regards other benefits, it should be noted that housing (located in French towns near the border) is offered to French judges and prosecutors on secondment, based on the number of family members, but not to Monegasque judges and prosecutors who reside in Monaco and as such have access to housing provided by the state. The Prosecutor General is required to reside in Monaco for operational reasons. French judges and prosecutors seconded to Monaco are also entitled, during their secondment, to an autonomic salary increment of at least one grade, depending on their ranking in the organisation from which they came. Because of their status as a seconded staff member, their salaries are paid gross. There are, however, no special tax arrangements and French judges and prosecutors on secondment remain subject to the French tax system.

111. The GET welcomes the existence of a system of periodic evaluations every two years and the fact that the results are taken into account in career progression, which is thus based not only on length of service but also on merit. This is important for sustaining staff motivation, and because periodic evaluations also afford an opportunity to take stock of a judge's strengths and weaknesses, possibly, too, in an interactive way

[35] Such as the European Court of Human Rights, to which a Court of First Instance judge was elected in respect of Monaco in 2015.

that is beneficial for the evaluator as well. That said, the GET is disappointed that more extensive use is not made of this arrangement. For example, many high-ranking members of the judiciary are not required to undergo an evaluation: the first President of the Court of Appeal, the Deputy Prosecutor General and the Prosecutor General himself/herself, as well as all the members of the Court of Review and the Supreme Court. The situation is, in principle, the same for the President of the First Instance Court[36]. The GET further considers that the periodic evaluation forms are out of step with the current efforts to give greater prominence to ethical values and rules of conduct related to general integrity: these concepts receive no mention whatsoever in the forms, or at least in the one used for the first instance court judges and the Justice of the Peace whom the GET spoke to. The inclusion of these values in evaluations would provide an opportunity to promote them and to address any issues there may be during the interviews. Consequently, GRECO recommends that the authorities extend the principle of periodic evaluations to include more judges and prosecutors and ensure that consideration is given in this exercise to integrity-related matters.

Case management and procedure

Assignment of cases on the list

112. In the case of the Court of First Instance, the only first instance court of general jurisdiction in the Principality of Monaco, the criteria for assigning cases to judges are as follows. In criminal matters, during the investigation phase, the allocation of cases between the two investigating judges in the Court of First Instance is governed by Article 39 of the Code of Criminal Procedure, according to which cases are to be assigned to an investigating judge: - if the case is an urgent one, according to the quarterly rota drawn up by the President; if the case is not urgent, by decision of the President, who considers each case separately.

113. During the trial phase, cases are brought before the Correctional Court, which is a collegiate court, according to Article 368 of the Code of Criminal Court, either by appeal or by means of a notice to appear issued to the accused or to civilly liable parties by the public prosecutor or the civil party, or by means of appearance upon notification issued to the accused by the public prosecutor. The frequency and date of the criminal hearings and also the composition of the Correctional Court are decided each quarter by the President of the Court of First Instance and set out in a rota, a copy of which is attached. The task of arranging for cases to be heard, i.e. scheduling cases for hearing by the Correctional Court, falls to the Prosecutor General.

114. In civil matters, the frequency and date of civil, commercial and administrative hearings as well as the composition of the Court, at each hearing, are decided quarterly by the President of the Court of First Instance and set out in the rota mentioned above. The scheduling of cases which are ready to be heard is carried out by the President of the Court of First Instance once the preparations for trial have been completed. The decision is taken collectively by the three judges sitting on the bench. After the main hearing, the president of the bench distributes the case files among the judges so that they can prepare the judgment.

115. As a rule, cases cannot be withdrawn from judges to whom they have already been assigned. Under Article 39-1 of the Code of Criminal Procedure, however, an application may be made to have a case removed from one investigating judge and assigned to a different investigating judge in the interests of the proper administration of justice, upon a reasoned request from the Prosecutor General acting either on his/her own behalf or at the request of a party, submitted to the President of the Court of First Instance.

[36] The Monegasque authorities point out that where the function is exercised by a French seconded magistrate, s/he continues to be appraised in relation to the secondment.

Reasonable time

116. As regards criminal inquiries (investigating judges and guardianship judge), the first President of the Court of Appeal, pursuant to Article 249-1 of the Code of Criminal Procedure, ensures the proper functioning of the investigating chambers and, more specifically, sees to it that the proceedings do not suffer any undue delay, in particular those involving persons in pre-trial detention. To this end, the investigating judges send him/her, within the first fortnight of each quarter, a detailed report on the proceedings pending before their chamber, indicating the current status of the proceedings and the steps taken to date. Although not expressly referred to in Articles 249-1 and 249-2 of the Code of Criminal Procedure which apply only to investigating judges, the guardianship judge in charge of judicial inquiries concerning minors, under an agreement with the first President, likewise sends him/her quarterly reports on the cases pending before his/her Chamber. The first President of the Court of Appeal thus carries out checks every quarter regarding the length of the inquiries conducted by the investigating judges and the length of any pre-trial detentions (Article 294-1 of the Code of Criminal Procedure) and sees to it that correctional appeals are scheduled promptly and that appeals concerning detainees are heard at the first available date.

117. In proceedings before civil, administrative and criminal courts, in addition to the timeframes provided for in numerous areas by the Monegasque codes of criminal and civil procedure, Article 6 of the European Convention on Human Rights also applies. In civil matters, the heads of courts draw up priority schedules in the most urgent cases and ensure compliance with the Convention's reasonable-time rule in order to avoid excessive length of judicial proceedings as a whole. Only if court presidents have the power to issue orders and the ability to schedule cases on their own initiative, which is comparable to closure of a hearing, can effective safeguards be said to exist. Good practice of this kind is to be found in all Monegasque courts. The task of preparing civil cases is carried out, at bi-monthly hearings, by the President of the Court of First Instance who is responsible for ensuring that the parties exchange written submissions within a reasonable time and that, once they are ready, cases are presented and tried promptly. The date on which the court is expected to rule, usually within a period ranging from 15 days to 2 months, is verbally notified to the parties after the main hearing (any extension of the time-frame is notified in writing).

118. Any undue delay incurred by a judge or prosecutor in dealing with the cases assigned to him/her is liable to be regarded as a breach or professional negligence and as such may warrant, under sections 44 and 45 of the Status of the Judiciary Act, disciplinary action, in the form of a reminder of the relevant obligations by the President of the Court. Any judge who refused altogether to dispense justice would be guilty of denial of justice under Article 125 of the Criminal Code and as such liable, should he/she persist in this conduct, to the sanction provided for in Article 26.3 of the same code, i.e. a fine ranging from 9,000 to 18,000 euros.

119. Overall, the interviews held by the GET showed that there are no major delays in the Monegasque justice system due to judges or prosecutors. The number of cases per judge/prosecutor is deemed to be relatively reasonable in the Principality.

Transparency

120. As regards the various courts other than the Supreme Court, judicial proceedings are usually public. There are some exceptions, however, in both civil and criminal matters. In civil matters, the Court may order proceedings to be held behind closed doors in specific cases: family cases or cases where public proceedings "might cause a scandal or serious inconvenience", civil-status and family cases, inheritance cases, cases relating to the management of individuals who are absent, guardianship cases, etc. Judgments delivered after applying the in camera rule are always delivered in open

court, however. Under Article 291 of the Code of Criminal Procedure, hearings before the Criminal Court take place in public, failing which they may be invalid. The President may, however, ban minors, or certain minors, from the courtroom and the Court may order that the case be heard in camera if it is felt that publicity would pose a threat to public order or morals or if the interests of the victim so require (in rape cases, for example). Once again, the judgment on the merits is always delivered in open court. Administrative cases are likewise discussed in public, according to the rules of civil law. Cases concerning the internal operation of courts are discussed solely behind closed doors. The Supreme Court (TS) also holds, under Order no. 2984, public hearings. Again, the in camera rule may be applied (Art. 28) at the instigation of the TS or the prosecution service, if the TS "considers that the discussion is likely to disrupt public order". The Court of Review, too, holds its regular sessions in public (section 32 of Act no. 1398), although, under the same legislation, it may also give rulings based on written evidence (without a hearing).

121. The GET was informed that in practice, the Court of Review holds two sessions per year (in October and March), each lasting around three weeks, during which regular cases are dealt with. When called upon to decide a case on the written evidence, members of the Court meet every month at the Monaco embassy in Paris, to consider cases which are to be examined outside the sessions. Most criminal cases, for example, are therefore dealt with in Paris, behind closed doors[37]. The GET is conscious of the constraints that the number of sessions and hearings may place on members of the Court of Review, many of whom are still engaged in parallel activities in France.

122. Such a significant departure from the general principle of public hearings, according to rules which are not set out in the laws and regulations, is unsatisfactory, however. The GET notes that the purpose of public hearings is to protect members of the public from arbitrary court decisions by subjecting judges to the scrutiny of the parties and the public, and to increase public trust in the judiciary. This is a fundamental principle enshrined in the European Convention on Human Rights (Article 6, paragraph 1). The Court of Review, moreover, is the highest court in civil, criminal, commercial and administrative matters.

123. The GET is of the opinion that the relevant texts should clearly specify the circumstances in which it is possible to derogate from the principle of public hearings, as is the case for other courts – e.g. where there is a threat to public morals or public order, or in certain family cases or cases involving minors and victims of crimes, for instance. By way of example, the Court dealt with 70 cases in 2015. The volume of work is fairly reasonable, therefore. It should be feasible to handle a larger number of cases at public hearings in Monaco, even if that means holding more than two sessions per year so as to be able to deal with cases classified as urgent. GRECO recommends that the authorities take the necessary measures to ensure that Court of Cassation hearings are held, as far as possible, in public in Monaco, e.g. by adjusting the frequency of the sessions.

124. The discussions *in situ* also highlighted differences of opinion regarding access to court decisions. A secured, restricted database entitles "Jurimonaco" allows judges, prosecutors and lawyers access to a selection of decisions – those which contain important jurisprudential developments. The official "Legimonaco" website, on the other hand, provides public access to a small percentage of the decisions (some put the figure at 1%). Journalists interviewed by the GET spoke of difficulties in obtaining access to court decisions. According to the authorities, in principle, important decisions – in particular those handed down by the higher courts – are accessible but efforts were being made to significantly increase the proportion of texts published, although the

[37] See articles 458 and 459 of the Civil Procedure code. The Court can decide to hold the hearings publicly in Monaco and the parties may ask for the same, but this does not happen in practice, according to the Monegasque authorities.

parties identified in the decisions would have to be anonymised first. In that context, a merger of the two above systems is currently being envisaged and addressed by a draft law on access to court decisions. Moreover, a judicial information service, separate from the government's press centre, is also being set up, with a view to providing official information about the justice system and reducing the risk of poor communication or "leaks" concerning the justice system. The GET cannot but support these efforts and encourage the country to put these plans into practice.

Ethical principles and rules of conduct

125. In Monegasque law the safeguards to ensure the independence and integrity of judges, prosecutors, court staff and judicial auxiliaries are long-standing and have been adapted at regular intervals. These ethical principles or core values are enshrined in the Constitution itself as well as in Act no. 1.398 on the administration and organisation of the judicial system and in the Status of the Judiciary Act no. 1.364. Under section 32 of the latter, all judges and prosecutors swear the following oath before taking up office: "*I hereby swear to respect the institutions of the Principality and to ensure that the law is applied fairly. I also hereby swear to fulfil my responsibilities with impartiality and diligence and to observe the duties that they impose on me, to keep secret all deliberations and to conduct myself with dignity and loyalty at all times.*" The oath is sworn before the Court of Appeal. The first president and members of the Court of Review, the first president of the Court of Appeal and the Prosecutor General swear the oath before the Sovereign Prince, however. A similar oath is sworn by members of the Supreme Court, before the Prince, pursuant to Order 2.984 on the organisation and functioning of the Supreme Court.

126. Ethical rules regarding the rights and duties of judges and prosecutors are laid down in the Status of the Judiciary Act no. 1.364 of 16 November 2009 (Part II "*Rights and obligations of judges and prosecutors*") and order no. 2013-17 of 12 July 2013 on measures to enhance public confidence in the integrity, impartiality and efficacy of judicial service staff.[38] Under the rules, it is prohibited for judges to engage in activities or conduct themselves in a manner that would detract from the dignity of judicial office or interfere with the functioning of the justice system. In addition, judges are required to observe discretion in relation to any facts or information which may come to their notice in, or in connection with, the performance of their duties. Judges are entitled to defend the interests of their profession through industrial action, provided, once again, that it is not such as to halt or hamper the functioning of the courts. A trade union for judges was accordingly set up in 2011. Order no. 2013-17 deals with numerous topics such as caution in social relations and dealings with third parties, the ban on soliciting honorary distinctions, rules on gifts and other benefits and the ban on fund raising, rules on reporting suspected criminal offences to the authorities and protection for whistle-blowers, etc.

127. The GET notes that at the time of the visit, a draft compendium of ethical standards was in preparation. The on-site discussions showed that Order no. 2013-17 of 12 July 2013 remains largely ineffective and is not widely known among judges and prosecutors. For example, it was only through the discussions with the GET that some magistrates with managerial responsibility found out about certain practical implications of the order, such as the need to record gifts in a register, to be put in place by them. Some practitioners pointed out that they had never received any explanatory material or benefited from awareness measures following the enactment of the order.

128. The GET notes that a code of conduct must be a living document that is known to, and understood and accepted by, the persons for whom it is intended, but also commented on and discussed at regular intervals. And not simply a regulation which the addressees are

[38] http://www.legimonaco.mc/305/legismclois.nsf/ViewTNC/471BCE01E71EBBD3C1257BD5002F407B!OpenDocument

meant to be familiar with and understand, but which, once enacted, is quickly forgotten because no action is taken to publicise it. Ideally, such texts should be adopted in broad consultation with judges and prosecutors themselves. The authorities indicated after the visit that the new code will take the form of a compendium of deontological standards and that its preparation is being done under the responsibility of the HCM and actually with the involvement of all judges and prosecutors. The GET's hope is, therefore, that the new code of conduct will be more extensively promoted within the Monegasque judiciary and that it will fill a number of apparent gaps, e.g. the fact that only criminal offences committed by colleagues need to be reported, and not infringements of the rules on integrity, the need for clarification and specific examples to explain certain concepts, the various implications of the duty to observe discretion and exercise caution in social relations, or as regards the subject matter of conflicts of interest. It is also important that the new code set out clear arrangements for publicising it and ensuring compliance, something that does not appear to be the case with the 2013 order, as it stands at present. In view of the above, GRECO recommends that a Code of Conduct for judges and prosecutors be adopted as foreseen, which would cover in an appropriate manner their integrity, and that it be accompanied by measures to facilitate its implementation (with examples and practical guidance) and to raise awareness of, and compliance with these rules.

129. Lastly, it appears that members who sit in certain courts but who are not career judges (labour court, assessors sitting on trial benches in commercial matters) are not subject to proper rules of conduct/ethical principles. In the case of the labour court, it appears that many other issues have not been resolved either, such as incompatibilities and how to address them. The Principality ought to pay greater attention to these issues in order to remedy the shortcomings which sometimes cause problems in practice, according to the information received by the GET.

Conflicts of interest

130. Under section 10.2 of the Status of the Judiciary Act no. 1364 of 16 November 2009, judges and prosecutors are prohibited from having, either themselves or through intermediaries of any description or form, any interests which may compromise their independence vis-à-vis the public. According to the authorities, in everyday life and practice, any conflicts of interest are settled early on, in some cases before they even arise, in that the judge in question applies to the president of the court, who then takes immediate steps to have him/her replaced by a fellow judge. Because Monaco is a small country with a small population, such situations are common. Any failure by a judge or prosecutor to withdraw from a case where he/she is liable to find himself/herself in a conflict of interest with one of the parties would constitute a breach of his/her ethical obligations and as such could lead to the individual in question either being disciplined by the Judicial Service Commission or issued with a formal reminder of his/her obligations by the head of the court (or, in the case of a prosecutor, by the Prosecutor General). The authorities also indicated that conflicts of interest (*prise illégale d'intérêts*) is criminalised under Article 113-1 of the Criminal Code and punishable by imprisonment and a fine (see the relevant section, and the specific situations captured by this provision, in the previous chapter on members of parliament).

131. In the view of the GET, the rules on dealing with conflicts of interest could stand to be improved as there is no general mechanism in this area that would cover the wide variety of situations which judges and prosecutors are likely to encounter. Section 10.2, mentioned above, actually appears in the middle of provisions on incompatibilities, thereby suggesting that the only interests involved are those relating to property. Also, in the rules examined below on challenge and withdrawal, the concept is defined by reference to a personal interest ("if they have a personal interest in the dispute"). That does not include explicitly, therefore, the interests of relatives or spouses. Other relationships, whether positive or negative (friendship or enmity) are not covered by any rules, even though the GET was given practical examples showing that the mere fact of

being closely acquainted with a party had in some cases led to the withdrawal of judges. In any event, this criterion ought also to be included in the texts on challenge and withdrawal. These are some points that merit consideration.

Challenge or withdrawal

132. Under Articles 581 et seq. of the Code of Criminal Procedure, and Article 393 et seq. of the Code of Civil Procedure, judges may be challenged in civil and criminal matters (criminal, correctional and police proceedings), including investigating judges in the following instances: a) if they have a personal interest in the dispute; 2) if the judge himself/herself or his/her spouse are related by blood or marriage to one of the parties or his/her spouse; 3) if he/she is the guardian, deputy guardian, trustee, judicial counsel, provisional administrator, heir presumptive, donee or employer of one of the parties; 4) if he/she is an administrator of any establishment, company or division which is a party to the case; 5) if he/she was involved in the case in the capacity of judge, prosecutor, arbitrator or counsel or if he/she made a witness statement as to the facts of the case; 6) if within the five years preceding the challenge, correctional or criminal court proceedings have taken place between the judge, his/her spouse, their family members or relations by marriage in direct line, and any of the parties, his/her spouse or family members or relations by marriage in the same line; 7) if between the same persons, civil proceedings are pending or concluded within the past six months; 8) if the judge, his/her spouse or one of their family members or relations by marriage in direct line are involved in a dispute on a question similar to that in dispute between the parties.

133. In addition, under Article 403 of the Code of Civil Procedure, any judge can exercise his/her right to withdraw if s/he believes there is a ground for challenge. The Court can also authorise a judge to abstain for reasons of personal convenience not listed in the laws and regulations. The authorities stress that it is extremely rare for parties to avail themselves of the above provisions on challenges and that the Court disqualifies judges and prosecutors only in exceptional circumstances. Disqualification of the Justice of the Peace is covered by separate provisions which refer to the articles mentioned above. In the case of lay judges assigned to the Labour Court, disqualification is governed by Act no. 446 of 16 May 1946 establishing a Labour Court, sections 68 to 71 of which specify the grounds and procedure for challenge. The GET notes that, here too, the notion of interest is defined in relation to a strictly personal interest and does not include the interests of persons close to the individual in question.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

134. Part II of Act 1.364, on the rights and obligations of judges and prosecutors (section 9 et seq.) imposes very strict limitations: section 9- "*The office of judge or prosecutor shall be incompatible with membership of the National or Municipal Council and the economic and social committee and with the holding, in Monaco or abroad, of any elective office of a political nature*". In particular, under section 10- "*The office of judge or prosecutor shall likewise be incompatible with the holding, in Monaco or abroad, of any public office and any gainful activity, performed in a professional capacity or as an employee* [highlighted in bold by the GET]. *It shall further be prohibited for judges and prosecutors to have, either themselves or through intermediaries of any description or form, any interests which may compromise their independence vis-à-vis the public*."

135. Under sections 11 and 12 of the above statutory rules, derogations may be granted for teaching or other activities which would not interfere with the person's general obligations. Private activities may be pursued only after leave of absence and permission have been obtained from the Director of Judicial Services. Failure to comply

with this last rule is one of the few violations that is expressly punishable by disciplinary action, as noted by the GET, proof, if proof were needed, of the importance attached by Monaco to incompatibilities and accessory activities.

136. The GET notes that despite the incompatibilities referred to above, judges and prosecutors other than those assigned to the Supreme Court (which is the subject of a specific recommendation at the beginning of this chapter), in particular members of the Court of Review, have continued to engage in gainful and other activities in France, while serving as judges in Monaco. It was pointed out to the GET that most are retired members of French courts, meaning that their activities were compatible with their obligations under Monegasque law. The fact is that a number of members of the Court are still working either in French courts or as university lecturers, in some cases while also acting as legal advisers/lawyers. Apart from the apparent contradiction with the relevant texts, which can doubtless be explained by the pressing need to find candidates for the various posts to be filled, the GET was unable to ascertain whether all of these individuals had undergone thorough compatibility checks and were still being monitored with regard to possible new activities. The profession of university lecturer, where it goes hand in hand with involvement in certain cases, has the potential to raise questions about independence and impartiality, as does the profession of (business or other type of) lawyer. Even in the case of first instance and appeal court judges, it is clear that some clarification would be most welcome as to the legitimacy of certain accessory activities, e.g. conciliation or arbitration activities which have become more widespread in recent years and can be an additional source of earnings for judges and prosecutors. GRECO recommends that the authorities carry out an assessment of the parallel activities performed by judges and prosecutors, including those who are still working in France, and, depending on the results, take the necessary steps to ensure more robust and consistent rules on incompatibilities.

Gifts

137. Aside from judges' statutory obligations, specific rules on gifts were enacted in directorial order no. 2013-17 of 12 July 2013 on measures to enhance public confidence in the integrity, impartiality and efficacy of judicial service staff. Articles 4 to 6 prohibit gifts, favours or any other benefits in the performance of duties which might influence, or be seen to influence, a judge or which would constitute a reward or consideration for his/her work. This ban does not apply to small gifts bestowed as a gesture of hospitality or out of courtesy at traditional events (end-of-year celebrations). In case of doubt or if it is impossible to refuse an offer that is unacceptable, the senior managers must be notified immediately.

138. At the same time, any "undue advantage" must be refused, the instigator identified (with witnesses, if necessary), a report drawn up and the senior management or competent authority informed, especially if the gift cannot be refused or returned. Collective gifts (intended for an entire service) must be recorded in an official inventory.

139. The GET welcomes the existence of these rules. As noted earlier, the discussions showed that Order no. 2013-17 is not widely known at present, in particular as regards the above rules on gifts and other benefits. Some magistrates with managerial responsibility only became aware of the full extent of these rules during the visit to Monaco, in particular the need to create a register. The people met by the GET also stressed certain features specific to Monaco, where gifts, invitations and hospitable gestures are commonplace. Some practitioners said that when in doubt, they had opted to steer clear of any offers of this kind. A recommendation has already been made with a view to ensuring the effectiveness of Order no. 2013-17 and the new code of conduct, and consistency between the two texts. A recommendation has also been made at the end of this chapter to improve training on integrity-related matters.

Financial interests

140. There are no special provisions that would prevent or restrict judges from holding specific financial interests. The authorities, however, point to the fact that, under section 14 of Act no. 1.364, it is prohibited for judges and prosecutors to engage in activities or conduct themselves in a manner that would detract from the dignity of judicial office or interfere with the functioning of the justice system: "*Judges and prosecutors shall abstain from any conduct, attitude or activity, either on their own behalf or on that of any other natural person or legal entity, that is incompatible with the discretion and circumspection inherent in their duties.* (…)." The GET is of the opinion that this is an example of a general principle whose scope and implications could usefully be discussed and expounded with judges and prosecutors, in the training courses recommended below.

Post-employment restrictions

141. There are no provisions on incompatibilities after an individual leaves office. The only reference to incompatibilities after judges leave office is the one imposed on honorary judges and prosecutors, whose honorary status may be withdrawn in the event that they should "*engage in an activity incompatible with their capacity as an honorary* magistrat *or fail to exercise the circumspection which the dignity of judicial office requires*" (section 64.2 of the Status of the Judiciary Act no. 1.364). Following retirement, judges and prosecutors may be granted honorary status by sovereign order, based on a report prepared by the Director of Judicial Services and following approval by the Judicial Service Commission (section 64.1). The GET was not made aware of any problems or specific controversies in this area.

Contacts with third parties, confidential information

142. According to the authorities, section 14 of the Status of the Judiciary Act no. 1.364 states that "*Judges and prosecutors shall abstain from any conduct, attitude or activity, either on their own behalf or on that of any other natural person or legal entity, that is incompatible with the discretion and circumspection inherent in their duties.*" In the same vein, section 16 states that "*Judges and prosecutors shall be bound by an obligation to observe professional discretion regarding any facts and information that come to their attention in, or in connection with, the performance of their duties*." In addition, the oath sworn upon entering office requires them to "*keep secret all deliberations*". Any abuse of confidential data by a judge could also constitute a violation of professional secrecy under Article 308 of the Criminal Code (1 to 6 months' imprisonment and/or a fine ranging from 1,250 to 9,000 euros).

143. The GET also notes that Order no. 2013-17, of which there is still too little awareness, requires that judges and prosecutors exercise care in both professional and private relationships, so as to avoid arousing suspicions of bias, rendering themselves vulnerable to any kind of influence and detracting from the dignity of their office. The order also makes it clear that they must not place themselves, or allow themselves to be placed, in a situation that might oblige them to return a favour to any individual or entity. Likewise, soliciting advantages from third parties is strictly prohibited.

<u>Declaration of assets, income, liabilities, interests and accessory activities</u>

144. There is no general mechanism or framework for declaring assets, income, interests or accessory activities regarding judges (or their relatives), or job offers, including future offers.

145. Ad hoc arrangements exist. For example, under section 13 of the Status of the Judiciary Act, "*Where the spouse of a judge or prosecutor engages in private paid activities, a declaration must be made to the Director of Judicial Services*." As regards

gifts, the 2013 order issued by the Director of Judicial Services imposes certain reporting requirements, including notably the obligation to record any collective gifts in a register. Lastly, any judge wishing to pursue an accessory activity must seek permission from the Director of Judicial Services, as noted earlier (section 11 of the Status of the Judiciary Act and section 12 in connection with the granting of leave).

146. Given the general level of integrity in the justice system, the GET does not consider it necessary to address a recommendation in this area, beyond what was recommended before, notably on the conditions of appointments and secondments to the Principality and on accessory professional activities.

Supervision and sanctions

147. Disciplinary action against judges other than members of the Supreme Court is governed by Part VII of the Status of the Judiciary Act no. 1.364 of 16 November 2009 (section 44 to 58). Accordingly, "Any failure by a judge or prosecutor in terms of his/her statutory duties, the duties of that status, honour, sensitivity or dignity inherent in his/her office shall constitute a disciplinary offence" (section 44). Furthermore, outside the context of disciplinary action, judges and prosecutors can be reminded of their obligations, in cases of "professional negligence", by the president of the court to which they belong, the Prosecutor General if they are assigned to the Prosecutor General's Office, or the Director of Judicial Services if they report to him/her.

148. The body responsible for disciplinary matters is the Judicial Service Commission (hereafter the HCM). It is important to note that in disciplinary matters, the composition of the HCM differs from its usual one. The first President of the Court of Review acts as chair and the Commission also includes the first President of the Court of Appeal or, where appropriate, the vice-president (section 49).

149. The Director of Judicial Services is the prosecuting authority and it is with him/her that the power to take disciplinary action lies. The Director of Judicial Services may trigger such proceedings either on the basis of information of which he/she has personally become aware, or in response to a report of an offence submitted by the first president of the court of appeal, by the president of the court of first instance or by the Prosecutor General.

150. The judges concerned are summoned and required to appear in person, assisted, if they so wish, by (national or non-national) counsel of their choice. The Director of Judicial Services does not sit on the HCM in disciplinary cases but prepares written submissions in support of his/her claims. The sittings are chaired by the first president of the Court of Review, with the Director in that case being replaced by the first president of the court of appeal or, if necessary, the vice-president. The proceedings are adversarial and the judge concerned also has the opportunity to file written submissions. The Judicial Service Commission may order that any witnesses be heard, either at the request of the parties or of its own motion. The HCM's decision contains a statement of the reasons on which it is based, is signed by all the members who took part in the deliberations and is then entered in a register by the General Registry. Decisions to dismiss judges are rendered enforceable by sovereign order. The HCM's opinions, consultations and decisions are adopted by a majority of the members who took part in the deliberations.

151. A list of possible disciplinary sanctions appears in section 46 of the Status of the Judiciary Act: a) reprimand recorded in the file, b) relegation in step, c) downgrading, d) removal from all judicial duties for a maximum period of one year, e) compulsory retirement and f) dismissal. Temporary suspension from duties for a maximum period of three months may be imposed as an additional sanction. Decisions of the Judicial Service Commission involving a relegation in step, downgrading, removal from all judicial duties, compulsory retirement or dismissal are rendered enforceable by sovereign order. They

may be challenged before the Supreme Court. Disciplinary action does not preclude criminal proceedings (section 55 of the Act). The provisions of the Criminal Code are likewise applicable, therefore, in particular those relating to conflict of interest, bribery and trading in influence.

152. There is also an administrative procedure whereby a judge who has been disciplined, but not dismissed, can obtain permission from the Director of Judicial Services for any record of the disciplinary sanction to be removed from his/her file after 5 or 10 years, as the case may be (section 57 of the Act). The legislation likewise provides for the possibility, in urgent cases, and irrespective of any disciplinary action, of suspending judges from their duties. Such exceptional measures are taken by the Director of Judicial Services after consulting the first President of the Court of Appeal and the Prosecutor General (section 56 of the Act).

153. Members of the Supreme Court are covered by other arrangements, set out in Order no. 2984. The only sanction mentioned is dismissal, which may be ordered if judges pose a serious threat to public order or state security, or are guilty of a serious breach of the duties arising from their oath. Dismissal is declared by sovereign order after the individual concerned has been given an opportunity to access his/her file and, assisted by a counsel of his/her choice, if he/she so wishes, to state his/her case before a special disciplinary commission consisting of the President of the National Council, the President of the State Council, the President of the Crown Council, the first President of the Court of Appeal and the President of the Court of First Instance. The law gives no indication of the procedure to be followed: who may initiate such proceedings and how, the precise role of this special disciplinary body (does it merely issue an opinion or a decision, is the Prince bound to comply, etc.). A general recommendation has already been made on the subject of the TS.

154. The GET welcomes the existence of the Judicial Service Commission (HCM) which was set up in 2009. Its role is threefold: a) ensure that equity, equal treatment and all the principles that should govern the career management of independent judges and prosecutors under the rule of law are observed; b) exercise disciplinary power over judges and prosecutors while at the same time respecting the right of both sides to be heard; c) advise the Prince on any matter relating to the organisation and functioning of the judiciary. Within the framework thus defined, however, the role of the HCM is still insufficiently robust relative to that of the Director of Judicial Services, who is a public official under the direct authority of the Head of State. Under the laws and regulations, the Director has sole power to implement disciplinary proceedings, as it is he/she who approves any request received from a chief of tribunal or court (president of the court of appeal or court of first instance or Prosecutor General). The Director of Judicial Services told the GET that in practice, he would not object if such a chief applied to the HCM direct but the GET would prefer to see this option expressly enshrined in the laws and regulations for obvious reasons of legal certainty. The HCM cannot act on its own initiative if it becomes aware of certain dysfunctions or breaches of duties and it cannot itself receive individual complaints about a judge's conduct.

155. Another illustration of the HCM's weak role as compared with that of the Director of Judicial Services can be seen in the fact that the HCM is not even involved in decisions concerning the removal of records of sanctions from personal files or decisions concerning the temporary suspension of judges and prosecutors. In the latter instance, the Director merely consults the first President of the Court of Appeal and the Prosecutor General. A recommendation has been made to Monaco under the section on the "independence" of the judiciary, with a view to enhancing the role of the HCM in general, including in matters relating to recruitment, career management and disciplinary authority.

156. Given the absence of explicit powers attributed to the HCM to initiate disciplinary proceedings, difficulties could potentially arise when it comes to taking disciplinary action against a chief of tribunal or court or the prosecutor general since they are the ones with the power to initiate such proceedings. Nor, it appears, are there any provisions that would make it possible to take disciplinary action against a member of the Court of Review. The only option for which specific provision is made is the one whereby the president of the Court of Review, like any other court president, and the Prosecutor General, may remind a member of the court (or prosecution service) of his/her obligations. The disciplinary arrangements ought to be reviewed, therefore, so that proceedings can be initiated against any judge or prosecutor, whatever his/her rank.

157. At the same time, the breaches which are liable to give rise to disciplinary action remain ill-defined. At present, besides the general principle that any breach of the statutory obligations constitutes an act liable to sanctions, the only breach for which punishment is expressly provided under the 2009 rules is failure to comply with a prohibition on parallel activities by the Director of Judicial Services. There is also a lack of clear rules in cases where an investigation needs to be conducted. The authorities pointed out that in principle, proceedings would be conducted under the authority of the HCM; in the GET's views, this should then be put down in legislation. There is clearly room for improvement in those areas. Consequently, GRECO recommends that the authorities i) spell out in legislation the disciplinary power and capacity of action of the Judicial Service Commission, including in respect of senior judges and prosecutors; ii) define in greater detail those breaches of the integrity rules discussed in this report which are liable to result in disciplinary action.

Enforcement and immunities

158. Judges and prosecutors are not subject to special criminal proceedings and enjoy no particular immunities.

Statistics

159. Declarations have been made by judges and prosecutors regarding their spouses' occupations, including notably by one individual whose spouse is a lawyer. According to the authorities, while judges withdrawing voluntarily or being disqualified is a fairly common occurrence, it is one that is difficult to quantify. As regards disciplinary measures or proceedings as such, no action of this kind has ever been taken in Monaco, any controversies having been "resolved" by other means (e.g. the return of a French official to France).

160. The GET was informed during its visit that the Directorate of Judicial Services intended to produce, from 2017, a periodic report on the operation of the justice system. This report would be based on methods similar to those used by the Council of Europe's Commission for the Efficiency of Justice (CEPEJ). Such an initiative is to be welcomed.

Advice, training and awareness

161. The head of court is the authority to whom judges naturally turn for advice on the rules relating to integrity, as discussed in this report. The Monegasque authorities also point out that the Director of Judicial Services may be asked to examine any matter relating to the functioning of the justice system.

162. Broadly speaking, the initial training for Monegasque judges recruited through competitive examinations, which is provided in France by the Legal Service Training College, includes modules on the duties of judges/prosecutors and professional ethics. The training for Monegasque judges, however, takes place over a period of 16 months (as compared with 31 months for their French counterparts). The right to in-service

training (which is optional) for judges is governed by section 60 of the Status of the Judiciary Act. The practical arrangements for this in-service training are determined by the HCM and set out in an order issued by the Director of Judicial Services. A draft text was accordingly adopted by the HCM, which became Order no. 2010-16 of 5 July 2010 on in-service training arrangements for judges and prosecutors. As regards in-service training, under the terms of the Franco-Monegasque agreement, judges and prosecutors from the Principality of Monaco have access to all in-service training courses featured in the ENM's annual prospectus for the French judiciary. All judges and prosecutors are entitled to five days' training per year, under a flexible arrangement. The Directorate of Judicial Services draws up an annual inventory of in-service training needs and circulates a list of training sessions and traineeships to judges and prosecutors. According to the authorities, in practice, judges consistently opt for the course entitled "*Status, ethical rules and responsibility of judges and prosecutors*". In addition, the Director of Judicial Services organises regular conferences in Monaco which sometimes focus on these issues.

163. It is clear from the GET's interviews with a wide selection of practitioners, both Monegasque nationals and others seconded from France, that further efforts are needed in Monaco as regards training. In the first place, the newly recruited or seconded judges and prosecutors feel they are insufficiently prepared for the specific features of Monegasque law, which is largely based on court practice, and of Monegasque society. For example, the fact that a high proportion of cases involve what are often major or highly sensitive interests. Or the important role played by case law and practice, which serve to fill the gaps in laws and regulations that are not very detailed or codified (compared with other countries). Practitioners seconded from France generally endeavour to learn about these specific features by reading academic articles and analyses. The GET was told that many French judges and prosecutors tended to continue applying French law, when in fact there were often subtle differences. This problem has already been highlighted in previous GRECO reports. The opportunities for learning from colleagues, in the case of newly recruited or seconded judges and prosecutors, are likewise extremely patchy. As regards integrity-related matters and rules of conduct or professional ethics in particular, once again, the feeling is that insufficient efforts are being made, as evidenced, for example, by the lack of awareness of the Director of Judicial Services' Order no. 2013-17 of 12 July 2013 *on measures to enhance public confidence in the integrity, impartiality and efficacy of judicial service staff*. The GET's discussion partners expressed broad support for the idea of putting training in Monegasque law, including the rights and duties of judges and prosecutors, on a more formal footing. It should also be recalled that a code of conduct is in the process of adoption and that judges and prosecutors already in function will need to be made familiar with the content. GRECO recommends that a system of in-service training for judges and prosecutors be introduced on integrity-related matters and deontology, which will allow to also address the future rules adopted in this area. Such a system could be used more broadly for general training purposes to enable new judges and prosecutors to familiarise themselves more quickly and effectively with the specific features of Monegasque law.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

164. The prosecution service is fully part of the judicial system. It is regulated by Part VI of Act no. 1.398 of 24 June 2013 on the administration and organisation of the judicial system (sections 26 to 31 bis). The Status of the Judiciary Act applies to members of the prosecution service, who form part of the judicial body under section 2 of that Act (see paragraph ... on judges). Indeed, *"Any member of the judiciary may be appointed to the bench or the prosecution service of any court in the course of their career"* (section 6 of the Status of the Judiciary Act).

165. As a result, some of the comments and recommendations for improvement made in the preceding chapter on judges also concern prosecutors. This chapter accordingly covers only those aspects of the situation specific to prosecutors.

Overview of the prosecuting authorities

166. Public prosecutors are under the management and supervision of the Prosecutor General, who in turn reports to the Director of Judicial Services. As explained above, the Director of Judicial Services answers to the Prince, who appoints him/her by Sovereign Order, and he/she is not part of the Government.

167. The Prosecutor General's Office currently comprises five members: the Prosecutor General, a Deputy Prosecutor General, a first substitute (this post was filled in September 2016) and two substitutes. The Prosecutor General is also assisted in administrative tasks by a general secretary, a chief secretary and a secretariat.

168. The prosecution service of the Principality of Monaco is unusual in that there a single public prosecution department for all the Monegasque courts before which the prosecuting authorities are represented: the criminal and "correctional" courts, the Court of Appeal ruling both on "correctional" matters and in Chambers as the investigating court, as well as the Court of Review. Before the Police Court the prosecution service is represented by a police superintendent chosen by the Prosecutor General. In civil and commercial matters, the Prosecutor General acts either as the principal party or as an additional party before the Court of First Instance, the Court of Appeal and the Court of Review. In administrative matters the Prosecutor General is represented before the Court of First Instance and before the Court of Appeal ruling on administrative matters, as well as before the Supreme Court, where his/her role could be compared to that of the '*rapporteur public*' (reporting judge) before the French *Conseil d'Etat*. In constitutional and administrative matters the prosecution service is represented before the Supreme Court.

169. In criminal matters the Prosecutor General receives all complaints and allegations addressed directly to him/her, as well as those filed with the Monegasque police services, whose officers are under his/her authority and must send him/her their written statements and reports. When a case requires in-depth investigation which the normal investigation procedure cannot provide, the Prosecutor sets a judicial investigation in motion by referring the case to an investigating judge. In criminal matters or when the alleged perpetrator is a minor, opening a preliminary judicial investigation (and therefore referring the case to an investigating judge) is mandatory. The Prosecutor General is consulted by the Director of Judicial Services on applications for parole and on pardons and amnesty granted by the Prince. The Prosecutor General also has the power to inspect and monitor the remand prison and to monitor professionals in the judicial system (bailiffs, notaries, lawyers). He/she also helps to process naturalisation proceedings and the acquisition of Monegasque nationality. Lastly, the Prosecutor General chairs or sits on various commissions, including the special commission on driving licence suspensions and the commission responsible for supervising financial activities.

170. The guarantees of independence embodied in Article 88 of the Constitution are limited to judges only (and so do not cover prosecutors). Unlike judges, prosecutors, who belong to a hierarchy under the authority of the Prosecutor General, can be removed from office, as can *magistrats référendaires*, who are appointed for two years. Although hierarchically answerable to the Prosecutor General, who in turn answers to the Director of Judicial Services, all members of the prosecution service enjoy full freedom of speech, by virtue of the adage "The pen is subservient, the spoken word is free" ("*la plume est serve mais la parole est libre*"). This status and this freedom of speech in court proceedings are now enshrined in section 8 of Act no. 1.364, the Status of the Judiciary Act of 16 November 2009.

Recruitment, career and conditions of service

171. As in the case of judges, a distinction needs to be made here between Monegasque prosecutors and those seconded from France. The recruitment procedure is the same for judges and prosecutors, as explained earlier, and involves a public call for candidates, a competitive examination, 16 months' training in France then appointment by the Prince as *magistrats référendaires*, on the recommendation of the Director of Judicial Services, having consulted the Judicial Service Commission. After two years, with the assent of the Judicial Service Commission, the *magistrats référendaires* are appointed either as judges or as substitutes to the Prosecutor General. Monegasque judges and prosecutors are appointed for an indefinite period, the legal retirement age being 65 years. The prosecutor's career is similar to that of a judge: promotion is based on length of service, with the prosecutor being assessed every two years by the Prosecutor General.

172. The gross annual income of a prosecutor at the start of his/her career is the same as that of a judge in the same situation, namely a little over 46,000 euros. The gross annual income of the Prosecutor General is about 132,000 euros. The post is in a special category, outside the general salary scale.

173. The GET notes that, at present, three of the five members of the prosecution service, including the Prosecutor General, are French practitioners on secondment for three years, renewable once. Therefore, a majority of them was not recruited under the procedure described above, but by secondment (and therefore the recruitment procedure and training applied in France). The mechanism was described in the chapter on judges. In practice the most senior posts, like that of the Prosecutor General, are filled by direct contact or without internal communication. In the case of the Prosecutor General the Principality contacts the Ministry of Justice in France, which then proposes one or more candidates to Monaco based on criteria which remain unknown. The DSJ then proposes the chosen candidate to the Prince, who finalises the official appointment. The normal rules of secondment apply. As stated earlier, the selection and secondment procedures lack transparency, even for the most senior posts, and a recommendation is made to improve the situation and avoid public speculation about political or other arrangements that ultimately serves to undermine the credibility of the judicial and prosecution services.[39]

Case management and procedure

Hierarchy

174. Because of the unified hierarchical structure, the prosecution service and prosecutors individually are bound by instructions. Regarding instructions on prosecution

[39] See, for example http://www.leparisien.fr/faits-divers/le-prince-albert-renonce-au-procureur-bestard-25-01-2008-3296001665.php
http://www.ladepeche.fr/article/2014/07/12/1917550-au-telephone-sarkozy-promet-d-intervenir-pour-azibert-puis-recule.html

proceedings, section 27 of Act no. 1.398 states: "*where necessary, the Director of Judicial Services shall give instructions to the public prosecutors. These instructions shall be in writing and shall be included in the case file. The prosecutors are bound by these instructions in their written submissions but retain some freedom of speech in the trial proceedings*."

175. Act no. 1.394 of 9 October 2012, reforming the Criminal Code and the Code of Criminal Procedure as regards corruption and special investigation techniques, introduced into Monegasque law the principle of the expediency of proceedings (as opposed to the lawfulness of proceedings). It also introduced the principle that when the Director of Judicial Services issues instructions to prosecute, they must be given in writing and included in the case file. A plaintiff may challenge a decision of the prosecutor on the termination of proceedings before the Director of Judicial Services.

176. As to instructions not to prosecute, the law states that the Director of Judicial Services "*oversees the prosecution but does not have the power to prosecute or to suspend or discontinue the prosecution*" (section 26 of Act no. 1.398 of 24 June 2013 on the organisation and administration of the judicial system).

177. Inside the prosecution service, the Prosecutor General can overrule any decision after joint discussion of the matter in issue. If there is still disagreement the substitute has no other means of asserting his/her original position.

178. In the opinion of the GET, which welcomes the above changes, there is still room for improvement. For example, as well as being able to give instructions, the Director of Judicial Services may be kept informed where necessary of progress on certain cases handled by the prosecution service. That includes cases handled by the investigating judges, since the prosecutor may have access to the file at any stage of the proceedings. In principle this information is transmitted on a steady basis, as regular meetings take place between the Prosecutor General and the Director. Above all, the lack of a clear status where the Director is concerned means that he/she is not subject to strict regulations which must be complied with by the magistrates *inter alia* in terms of impartiality, protection of information and relations with parties. Only a few sections of Act no. 1.398 concern the Director. He/she is a special kind of high-ranking civil servant, whose task is first and foremost administrative. The GET believes that because of the central place occupied by the Director of Judicial Services between the head of the Executive (the Prince) and the prosecution service, additional safeguards appear necessary to guarantee as much as possible the independence of prosecutorial action in relation to concrete cases, which is something that raised public controversies in recent years for cases involving leading public figures. The authorities point out that in principle, the prohibition of negative instructions (not to prosecute) is interpreted broadly as covering also positive instructions (initiating proceedings); this would deserve to be laid down in legislation. GRECO recommends that the prohibition to issue any instruction in individual cases be laid down in legislation.

Case assignment

179. Cases are shared among the Prosecutor General, the Deputy Prosecutor General, the first substitute and the two substitutes, according to a flow chart. The chart is drawn up by the Prosecutor General following consultation with his/her colleagues. One deals with litigation concerning damage to people and another with cases concerning damage to property. Under the old flow chart the first substitute was in charge of economic and financial cases and international co-operation on criminal matters. The assignment of cases was reviewed in September 2016, when the Prosecutor General's Office was fully staffed.

180. In exceptional cases the Prosecutor General can take one of his/her staff off a case, either in order to handle it in person because it is an important, serious or high-profile case or because the colleague concerned does not appear to be the best qualified to handle the matter. The current Prosecutor General told the GET that once the cases have been assigned, the prosecutors each organise their work in a fairly autonomous manner.

Reasonable time

181. The use of data processing technology enables the prosecution service to ensure that there are no undue delays in dealing with cases. Also, cases sent back by the investigating judges for settlement are entered in a table, making it possible to check whether the prosecutors are handling the cases with due diligence.

182. The GET was told that in practice the prosecuting authorities tend not to pass too many cases on to the two investigating judges currently in post, as they have a fairly heavy workload and the cases they deal with are generally difficult ones.

Ethical principles and rules of conduct

183. The principles and rules are the same as for judges. In addition to the oath they take, rules of conduct regarding the rights and duties of prosecutors and judges are found in Act no. 1.364 of 16 November 2009 on the status of the judiciary (Part II "*rights and obligations of judges and prosecutors*") and Order no. 2013-17 of 12 July 2013 on measures to enhance public confidence in the integrity, impartiality and efficacy of judicial service staff. In particular that text prescribes a fairly detailed procedure concerning gifts and other benefits and the circumstances in which they should be accepted or refused.

184. Section 45 of the Status of the Judiciary Act provides for the Prosecutor General, in the event of professional negligence on the part of a public prosecutor, to remind the prosecutor of his/her obligations. The Director of Judicial Services is then informed.

185. As indicated earlier, a code of professional conduct for judicial staff is in preparation. It will apply to both judges and prosecutors. The GET reiterates the need to ensure consistency between the code and the rules already in place and to take the necessary steps to familiarise staff with these rules of conduct and make sure they apply them in their daily work.

Conflicts of interest

186. The rules applicable are the same as those described earlier in respect of judges. In particular, section 10.2 of Act no. 1.364 of 16 November 2009 on the status of the judiciary prohibits judges and prosecutors from having, either themselves or through intermediaries of any description or form, any interests which may compromise their independence vis-à-vis the public. Conflicts of interest are resolved in the Principality of Monaco by the withdrawal or removal of the judge or prosecutor concerned.

Challenge or withdrawal

187. The Monegasque authorities explain that the same rules apply to prosecutors as to judges, and that the former can be challenged in the same way as the latter.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities; Gifts; Financial interests; Post-employment restrictions; Contacts with third parties, confidential information

188. The rules are the same as for judges. Act no. 1.364 on the status of the judiciary lists several absolute incompatibilities between the office of prosecutor and other occupations or activities. In particular, a judge or prosecutor may not hold elective office or engage in political, public or gainful employment. These incompatibilities and any derogations are covered in Part II of Act no. 1.364, on the rights and obligations of judges and prosecutors (sections 9 and ff.): section 9 – "*The office of judge or prosecutor shall be incompatible with membership of the National or Municipal Council and the economic and social committee and with the holding, in Monaco or abroad, of any elective office of a political nature*". Under section 10 – "*The office of judge or prosecutor shall likewise be incompatible with the holding, in Monaco or abroad, of any public office and any gainful activity, performed in a professional capacity or as an employee. It shall further be prohibited for judges and prosecutors to have, either themselves or through intermediaries of any description or form, any interests which may compromise their independence vis-à-vis the public*." Any derogations are governed by sections 11 and 12 (teaching or other activities that do not affect the person's general obligations, and special conditions applicable during leave of absence.

189. As explained earlier, there is no ban on a judge or prosecutor holding financial interests (provided that they are not associated with an incompatible activity), and no restrictions apply once the official concerned has left office.

190. Prosecutors are not allowed, outside the context of adversarial proceedings, to discuss any case for which they are responsible with a third party. Under the Status of the Judiciary Act judges and prosecutors are bound by a duty of professional discretion in respect of any facts or information that come to their attention in the performance of their duties. The oath they take upon entering office requires them "to keep secret all deliberations". As was also pointed out earlier, any misuse of confidential information by a judge or prosecutor could also constitute a violation of the professional secrecy protected under Article 308 of the Criminal Code (punishable by 1 to 6 months' imprisonment and/or a fine of 1,250 to 9,000 euros).

Declaration of assets, income, liabilities and interests

191. As mentioned earlier, there is no general requirement in Monaco for judges and prosecutors to declare the details of their assets, income, interests, etc. They do have certain obligations, however; for example, when their spouse engages in a gainful private activity they must report it to the Director of Judicial Services.

Supervision and sanctions

192. All the observations concerning the rules applicable to judges with regard to conflicts of interest and the declaration of assets, income, liabilities and interests also apply to prosecutors, who are subject to the same rules and obligations.

193. The general disciplinary rules and machinery are also the same and violations are subject to the same sanctions and disciplinary procedures. Professional negligence on the part of a prosecutor is punished by a reminder of his/her obligations from the Prosecutor General, who also informs the Director of Judicial Services (section 45 of the Status of the Judiciary Act). The disciplinary procedure against judges and prosecutors is governed by Part VII of Act no.1.364 of 16 November 2009 on the status of the judiciary (sections 44 to 58). The body responsible for disciplinary action is the Judicial Service Commission,

chaired by the first President of the Court of Review, the Director of Judicial Services being the prosecuting authority.

194. A list of possible disciplinary sanctions appears in section 46 of the Status of the Judiciary Act: reprimand recorded in the file, relegation in step, downgrading, removal from all judicial duties for a maximum period of one year, compulsory retirement and dismissal. Temporary suspension from duties for a maximum period of three months may be imposed as an additional sanction. Decisions of the Judicial Service Commission involving a relegation in step, downgrading, removal from all judicial duties, compulsory retirement or dismissal are rendered enforceable by sovereign order. They may be challenged before the Supreme Court. Disciplinary action does not preclude criminal proceedings (for example in cases of conflict of interest, bribery and trading in influence). The Act also provides for the temporary suspension of a prosecutor from his/her duties, a decision taken by the Director of Judicial Services after consulting the first President of the Court of Appeal and the Prosecutor General.

195. Like judges, prosecutors enjoy no particular immunities from criminal prosecution or other sanctions.

196. A recommendation was made in the previous chapter, on judges, to improve the disciplinary machinery, extend its applicability to high-ranking officials and specify which types of wrongdoing are punishable. The machinery in place at present has never been used since 2009.

Advice, training and awareness

197. Prosecutors can seek advice on matters of integrity from their head of department (the Prosecutor General). For the rest, they undergo the same initial training as judges, which lasts 16 months and is dispensed in France by the Legal Service Training College. They also have the possibility of undergoing in-service training. As part of their training they may be familiarised with questions of ethics, integrity and corruption prevention. According to the authorities, steps are taken from time to time in Monaco to increase awareness of these issues, but the present report has found these efforts insufficient and a recommendation has been made to the country to introduce systematic training to address questions of integrity.

VI. RECOMMENDATIONS AND FOLLOW-UP

198. In view of the findings of the present report, GRECO addresses the following recommendations to Monaco:

Regarding members of parliament

i. that a series of significant measures be taken to enhance the transparency of the legislative process, including with regard to easy public access to adequate information on consultations held, and with regard to reasonable deadlines for submitting draft texts, amendments and working documents (paragraph 22);

ii. that i) a code of conduct be adopted for the attention of members of the National Council to set standards in respect of general conduct, gifts and other benefits, and relations with third parties, and that it be brought to the attention of the public; ii) that measures be taken to facilitate the its implementation in practice (explanatory comments, concrete examples etc.) (paragraph 28);

iii. that a requirement of *ad hoc* disclosure be introduced when a conflict between specific private interests of individual members of parliament may emerge in relation to a matter under consideration in parliamentary proceedings (in plenary or committee work) independently of whether such a conflict might also be revealed by members' declarations of activities and income (paragraph 32);

iv. (i) introducing a system of public declaration of the National Councillors' financial and economic interests (income, assets and significant liabilities) and (ii) envisaging including information on their spouses and dependent family members (it being understood that such information would not necessarily be made public) (paragraph 45);

v. that measures be taken to ensure the proper supervision and enforcement of the obligations of declaration and the rules of conduct of members of parliament, together with proper sanctions for failure to honour all these obligations (paragraph 51);

vi. i) that training and awareness measures be taken in respect of members of parliament concerning the conduct expected of them under the rules on integrity and the declaration of interests, and (ii) that MPs be provided with confidential counselling on these issues (paragraph 55);

Regarding judges and prosecutors

vii. to enhance the role and operational independence of the Judicial Service Commission, review its composition and give it a central role in guaranteeing the independence and good functioning of the justice system, as well as in the recruitment, career management and disciplinary proceedings in respect of judges and prosecutors (paragraph 87);

viii. that i) the appointment of members of the Supreme Court be based on a transparent procedure and adequate objective criteria and ii) that they be provided with appropriate rules on incompatibilities,

conflicts of interest and other obligations related to integrity (paragraph 91);

ix. to ensure the transparency of the process for appointing judges and prosecutors in Monaco, whether seconded or not, based on clear and objective criteria, including for appointments to the most senior positions and for the extension and early termination of secondments (paragraph 103);

x. to extend the principle of periodic evaluations to include more judges and prosecutors and ensure that consideration is given in this exercise to integrity-related matters (paragraph 111);

xi. to take the necessary measures to ensure that Court of Cassation hearings are held, as far as possible, in public in Monaco, e.g. by adjusting the frequency of the sessions (paragraph 123);

xii. that a Code of Conduct for judges and prosecutors be adopted as foreseen, which would cover in an appropriate manner their integrity, and that it be accompanied by measures to facilitate its implementation (with examples and practical guidance) and to raise awareness of, and compliance with these rules (paragraph 128);

xiii. to carry out an assessment of the parallel activities performed by judges and prosecutors, including those who are still working in France, and, depending on the results, take the necessary steps to ensure more robust and consistent rules on incompatibilities (paragraph 136);

xiv. i) to spell out in legislation the disciplinary power and capacity of action of the Judicial Service Commission, including in respect of senior judges and prosecutors; ii) to define in greater detail those breaches of the integrity rules discussed in this report which are liable to result in disciplinary action (paragraph 157);

xv. that a system of in-service training for judges and prosecutors be introduced on integrity-related matters and deontology, which will allow to also address the future rules adopted in this area (paragraph 163);

Regarding prosecutors specifically

xvi. that the prohibition to issue any instruction in individual cases be laid down in legislation (paragraph 178).

199. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Monaco to submit a report on the measures taken to implement the above-mentioned recommendations by 31 December 2018. These measures will be assessed by GRECO through its specific compliance procedure.

200. GRECO invites the authorities of Monaco to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on Romania specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the Romania evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

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