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**ECRI CONCLUSIONS  
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS  
IN RESPECT OF MONACO  
SUBJECT TO INTERIM FOLLOW-UP**

*Adopted on 5 December 2018<sup>1</sup>*

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<sup>1</sup> Unless otherwise indicated, any developments which occurred after 14 May 2018, the date on which the response of the Monegasque authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

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## FOREWORD

As part of its fifth round of monitoring work, ECRI has renewed its process of interim follow-up with respect to two specific recommendations made in each of its country reports.

In line with the Information Document on ECRI's fifth monitoring cycle brought to the attention of the Ministers' Deputies on 14 November 2012<sup>1</sup>, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

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<sup>1</sup> CM/Del/Dec(2012)1154/4.2.



1. *In its report on Monaco (fifth monitoring cycle) published on 1 March 2016, ECRI recommended that the authorities bring Monegasque criminal law into conformity with General Policy Recommendation No. 7 and, in particular, that the law explicitly make racist motivation an aggravating circumstance for any ordinary offence.*

ECRI welcomes Monaco's ratification of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, which came into force in the country on 1 July 2017. In this context, a new Article 234-2, which increases the penalties for racist threats, was included in the Criminal Code. In addition, law No. 973, which was adopted on 4 December 2018, provides for harsher penalties for insults and defamation against a person or group of persons on grounds such as their origin or belonging to a particular ethnic group, nation, race or religion.<sup>1</sup> Moreover, the authorities do not rule out the possibility of introducing, in the context of a bill on penalties, new aggravating circumstances, in particular on the grounds of racist motivation.

Furthermore, the authorities consider that the public expression of an ideology which claims the superiority of a grouping of persons on the ground of their race (§ 18d of ECRI's General Policy Recommendation (GPR) No. 7) comes within the ambit of Article 16 of Law No. 1 299 of 15 July 2005; that Articles 16 and 26 of the said law could be applied to the denial of genocide (§ 18e of ECRI's GPR No. 7); that the dissemination, production or storage of racist material (§ 18f of GPR No. 7) are constituent elements of the crimes punishable by Articles 16, 21, 24 and 25 thereof; and that the creation or leadership of a racist group (§ 18g of GPR No. 7) may also fall within the scope of Article 16 thereof. The High Commissioner for the Protection of Rights and Freedoms and for Mediation (the High Commissioner) has pointed out that the list of the grounds of criminal law norms for combating racism, homo- and transphobia should be harmonised and that she had suggested that racist motivation be established as an aggravating circumstance for all ordinary offences.

ECRI considers that Article 15 of Law No. 1 299 partially covers the recommendation that the dissemination of racist material be criminalised. However, contrary to paragraph 18f of its GPR No. 7, this article requires that the distribution of the racist material have consequences and it does not criminalise the preparatory acts of producing or storing such material. Regarding the other elements of GPR No. 7 mentioned by the Monegasque authorities, ECRI considers that in view of the criminal law principle "nulla poena sine lege" (no punishment without a clear law), these acts should be expressly criminalised; in this context, ECRI refers to §§ 5 to 13 of its report on Monaco.

In view of the ratification of the Additional Protocol to the Cybercrime Convention and the inclusion of the new Article 234-2 on harsher penalties for racist threats in the Criminal Code, ECRI considers that this recommendation has been partially implemented.

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<sup>1</sup> In this context, see ECRI's recommendation that the law penalise *public* racist insults and defamation, § 18b of its General Policy Recommendation (GPR) No. 7.

2. *In its report on Monaco published on 1 March 2016, ECRI recommended that the Monegasque authorities repeal the provisions whereby a majority of the members of the organs of trade unions and their federations need to be Monegasque and French nationals.*

The Monegasque authorities have informed ECRI that they are currently continuing their discussions on devising a regulatory framework on trade unions and on federations of trade unions. The High Commissioner, who does not have the right to open proceedings on her own initiative, has informed ECRI that she has received no complaint on this matter. Nevertheless, she has noted a certain degree of flexibility by the authorities when implementing the rules in question.

ECRI concludes that this recommendation has not been implemented.

