

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

Adopted on 19 March 2014¹

¹ Unless otherwise indicated, any developments which occurred after 21 June 2013, 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.

ECRI Secretariat
Directorate General II - Democracy
Council of Europe
F-67075 STRASBOURG Cedex
Tel.: +33 (0) 390 21 46 62
Fax: + 33 (0) 388 41 39 87
E-mail: ecri@coe.int

www.coe.int/ecri

FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007¹, 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.

¹ CM/Del/Dec(2007)986/4.1.

1. *In its report on Monaco (fourth monitoring cycle) published on 8 February 2011, ECRI recommended that the Monegasque authorities bridge the existing legislative gaps in the field of protection against discrimination and to this end, introduce the necessary legal safeguards in the bills on the civil service and employment contracts to protect non-Monegasque workers from any discrimination based on one of the grounds covered by ECRI's mandate.*

In its report on Monaco, ECRI recalled that Monegasque legislation covering employment and civil servants gives priority in employment to nationals, to persons residing on Monegasque territory and to persons living in neighbouring areas and that this order of priority applies in reverse in the case of dismissal and suppression of posts.

The authorities have informed ECRI that Bill No. 895 to amend Law No. 975 of 12 July 1975 on the status of civil servants was introduced on 14 December 2011 to the National Council. Article 13 of the draft provides that no distinction may be made between civil servants on the grounds of their political, philosophical or religious opinions, their opinion relating to trade unions, their sexual orientation, health, disability, physical appearance or ethnicity. Article 11 of the draft prohibits to include in personnel files any indication of the racial or ethnic origin of the person concerned. This bill was referred to the Commission on Social Interests and Various Matters. ECRI regrets that no visible progress has been made in the legislative procedure for more than one year and that citizenship is not included in the list of prohibited grounds.¹ It considers that higher priority should be given to this bill.

The bill introduced on 3 April 2007 relating to employment contracts was withdrawn by the Government. ECRI regrets that no new bill has been introduced in order to improve the protection against discrimination in labour law.

ECRI therefore considers that this recommendation has not been implemented.

2. *In its report on Monaco (fourth monitoring cycle) ECRI recommended that the Monegasque authorities enshrine the independence of the institution of Médiateur in legislation and prepare a draft law to this end in the short term. This draft law should also assign him or her as many as possible of the responsibilities provided for in ECRI Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and racial discrimination.*

Sovereign Order No. 3 413 of 29 August 2011 provided for the first time a solid legal basis for the institution of Médiateur (Advisor responsible for appeals and mediation), which is the subject matter of this recommendation. At the time of the adoption of its fourth-cycle monitoring report on Monaco, ECRI had considered that this institution could be developed into an independent specialised body, as per its General Policy Recommendation No. 2. In the meantime, the Monegasque authorities informed ECRI that another institution was set up, by Sovereign Order No. 4 524 of 30 October 2013 (hereafter the order)², the Office of the High Commissioner for the Protection of the Rights and Freedoms and Mediation (Office of the High Commissioner). The competencies of the High Commissioner, who heads the office, include the protection of human rights (Articles 15-27 of the order) and the fight against discrimination (Articles 28 to 32). The responsibility for mediation was also shifted to the new institution.

Article 2 of the order provides that the High Commissioner is appointed by sovereign order for a term of four years. He may serve a second term. The issue of preterm termination is governed by Articles 39 to 44 of the order. This can happen upon the High Commissioner's express request or further to an impediment or serious misconduct; another sovereign order is required. According to Article 6 of the order, the High Commissioner carries out his/her functions independently and cannot receive any instructions. According to Articles 10 and 11, being High Commissioner is

¹ See §§ 22 and 64 of ECRI's second report on Monaco.

² Following a request from ECRI, the Monegasque authorities provided additional information on the new institution on 11.02.2014.

incompatible with holding other offices, such as elective posts, and carrying out activities which would endanger his independence. The Government has the duty to protect the High Commissioner from threats, attacks or insults of any kind (Article 13). The High Commissioner is the hierarchical superior of his/her office's staff and exercises disciplinary authority over them (Article 14.3). The State provides the office with the means necessary for fulfilling its mission (Article 13.2). The State budget has a separate line for the High Commissioner and his office. The High Commissioner can manage his/her resources as s/he thinks fit (Article 46).

According to Article 28.1 of the order, the High Commissioner may receive complaints from natural and legal persons who consider themselves victims of discrimination. S/he investigates the case (Article 29) and may request any document, information or assistance s/he deems necessary from the competent authorities. S/he may also hear the plaintiff and the defendant (Articles 29, 30 and 20). S/he may provide the plaintiff with appropriate information on for example the expiry of time limits for appeals (Articles 28.3 and 19). At the end of the investigation s/he may try to obtain a settlement, make a recommendation to the defendant, ask the latter to keep him/her informed about the follow-up given to his/her recommendation and file a complaint with the General Prosecutor (Article 30). If such a recommendation is addressed to a state authority (Article 23), the latter will inform the High Commissioner on the follow-up given within four months (Article 26). Any authority can seize the High Commissioner with a request for an opinion or study concerning discrimination (Article 33). The High Commissioner can consult organisations having similar objectives to his/hers (Article 34). S/he may participate in the dialogue with international organisations on human rights (Article 35). The High Commissioner issues an annual report, which may contain general recommendations based on the cases s/he has examined during the year.

ECRI considers that the setting up of the High Commissioner constitutes significant progress towards better protection against racism and discrimination. The new institution has certainly been provided with more guarantees of independence than the Médiateur. However, ECRI notes that a concern has not been dispelled; the authorities have informed it that the Prince has the power to abolish the new institution by another sovereign order. Therefore, ECRI considers that the statute of the High Commissioner cannot be considered fully in line with ECRI's standards on independence yet.³ To meet these standards fully, his/her terms of reference would need to be set out in primary legislation and not in a sovereign order.⁴

ECRI naturally welcomes the fact that the High Commissioner has been given significant responsibilities; individuals can address complaints to his/her office directly (Principle 3 f to g of GPR No. 2). At the same time, ECRI considers that the Monegasque authorities should widen the scope of the High Commissioner's competence, in particular by conferring upon him/her the powers and responsibilities described in Principle 3 a, b, d, e and i to k of GPR No. 2.

ECRI considers that this recommendation has been largely implemented.

3. *In its report on Monaco (fourth monitoring cycle) ECRI recommended that the authorities continue their efforts as regards human rights training for judicial staff and police officers and to this end, asks them to ensure that their in-service training includes issues concerning racial discrimination and racism. In addition, the authorities should make sure that employee and employer members of the Labour Court are included in this training.*

The Monegasque authorities have informed ECRI that the new Ministerial Order No. 2012-144 dated 22 March 2012 provides that the Labour Court organises and provides funding for the training of its members. This training can take the form of an annual conference or individual training. Training is planned for the second semester of 2013.

³ See Principles 5 and 1 of ECRI's General Policy Recommendation (GPR) No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

⁴ See in this context Article 45 of the Monegasque Constitution.

In addition, several conferences and training sessions have been held in 2012 and 2013. They were addressed to members of the courts including employee and employer members of the Labour Court, as well as police officers and covered the European Convention on Human Rights, racism and racial discrimination. ECRI was informed that the last training workshop in April 2013 on Combating racism in Europe included input from the Council of Europe Commissioner for Human Rights and a former President of the European Court of Human Rights. It was attended by more than 100 officials and executive staff from the police and the judiciary and led to intense discussions.

ECRI considers that this recommendation has been implemented. It encourages the Monegasque authorities to pursue their in-service training activities in the areas of racism and racial discrimination.

