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## Local democracy in Monaco

Monitoring Committee

Rapporteurs:<sup>1</sup> Michalis ANGELOPOULOS, Greece (L, EPP/CCE)  
Marianne HOLLINGER, Switzerland (L, ILDG)

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### Summary

This is the first report on local democracy in Monaco since the country ratified the European Charter of Local Self-Government in 2013.

The report shows that the country has a satisfactory level of local self-government. It welcomes good relations between central government and the Municipality of Monaco, existing legal mechanisms for consulting the Municipality in several fields and adequate administrative structures and financial resources of the Municipality. The Congress similarly welcomes that administrative controls are aimed exclusively at ensuring compliance with the law.

The report however raises certain concerns regarding the political responsibility of the mayor and his deputies, the lack of appropriate consulting of the Municipality on the annual lump-sum appropriations allocated to it and the absence of the right to judicial remedy to challenge a law that is found not compliant with Title IX of the Constitution or with the Charter.

It is therefore recommended that the national authorities introduce mechanisms to ensure political accountability of the municipal executive to the Municipal Council, put in place a mechanism for consulting the Municipality on the annual lump-sum and acknowledge the Municipality's right to challenge the constitutionality of laws on grounds of violation of Title IX of the Constitution and the compatibility with the Charter. The report calls on the Monegasque authorities to consider ratifying Articles 8.3, 9.2 and 10.2 of the Charter that are respected de facto.

Lastly, Monaco is invited to consider signing and ratifying the Additional Protocol to the Charter on the right to participate in the affairs of a local authority.

1 L: Chamber of Local Authorities / R: Chamber of Regions  
EPP/CCE: European People's Party Group in the Congress  
SOC: Socialist Group  
ILDG: Independent and Liberal Democrat Group  
ECR: European Conservatives and Reformists Group  
NR: Members not belonging to a political group of the Congress

## DRAFT RECOMMENDATION<sup>2</sup>

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of the Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that one of the aims of the Congress is to “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Chapter XVII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the appended explanatory memorandum on local democracy in Monaco.

2. The Congress would point out that:

a. Monaco became a member of the Council of Europe on 5 October 2004. It signed and ratified the European Charter of Local Self-Government (ETS No. 122, hereinafter: “the Charter”) on 10 January 2013, which came into force on 1 May 2013;

b. Pursuant to Article 12, paragraph 2, of the Charter, Monaco declared that it considered itself bound by Articles 2; 3.2; 4.1, 4.2, 4.4, 4.5 and 4.6; 5; 6.1 and 6.2; 7.1 and 7.3; 8.1 and 8.2; 9.5, 9.6 and 9.7; 10.1 and 10.3; and Article 11 of the Charter;

c. Monaco adopted a “Declaration of interpretation by the Principality of Monaco concerning Article 3”, stating that: “The Princely Government recalls that the territory of the Principality, with a surface area of approximately 2 km<sup>2</sup>, constitutes only one municipality which is an autonomous institution established by the Constitution, endowed with legal personality and governed by public law. Therefore, the concept of local self-government as stipulated in Article 3 of this Charter applies there, in Monaco, in light of the specific institutional and geographical characteristics of the country, within the framework defined by Title IX of the Constitution and by Law No. 959 of 24 July 1974”;

d. Monaco has not signed the additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

e. The Monitoring Committee decided to examine the situation of local democracy in Monaco in the light of the Charter. It entrusted Mr Michalis Angelopoulos, Greece (L, EPP/CCE) and Ms Marianne Hollinger, Switzerland (L, ILDG), with the task of preparing and submitting to the Congress a report on local democracy in Monaco. The delegation was assisted by Ms Tania Groppi,

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2 Preliminary draft recommendation approved by the Monitoring Committee on 14 February 2018.

Members of the committee, members of the Chamber of Local Authorities:

*H. Akgun, M. Angelopoulos, L. Ansala (alternate: J. Rostedt), T. Arifi, G.A. Axelsson, N. Barbu, V. Belikov, M. Belin, E. Bendodo Bensayag, R. Biedron, A. Bindi, A. Bogdanovic, Z. Broz, M. Bufi, X. Cadoret, V. Casian, M. Cools, V. Crudu, N. Dirginciene, G. Doganoglu, R. Fejstamer, M. Gauci, G. Geguzinskas, K. Germanova, L. Gidei (alternate: V. Dontu), B. A. Gram, N. Grozev, I. Hanzek, B. Hirs, J. Hlinka, V. Hovhanissyan, G. Illes, H. B. Johansen, A. Jozic, A. Kaleva, G. Kaminskis, O. Kasuri, N. Kavtaradze, J-P. Klein, A. Knobova, B. Krnc, L. Kroon (alternate: H. Bergmann), C. Lammerskitten, A. Leadbetter, F. Lec, K. Marchenko, T. Margaryan (alternate: E. Yeritsyan), G. Marsan, P. MCGowan, S. Mosharov, R. O’Grady, D. Pantana, N. Parlon Gil, S. Paunovic, V. Prokopiv, I. Radojicic, G. Riba Casal, R. Rio, J. Rocklind, R. Rohr, B. Rudkin, I. Seredyuk, A.-M. Sotiriadou, R. Spiegler, T. Taghiyev, P. Thornton (alternate: H. Carr), A. Torres Pereira, A. Ugues, S. Vaag, R. Vergili, B. Voehringer, A. Vyras, H. Weninger, J. Wiene, D. Wrobel.*

N.B.: The names of members who took part in the vote are in italics.

Secretariat of the committee: S. Poirel, secretary to the committee and S. Pereverten, co-secretary to the committee.

member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

*f.* The monitoring visit took place from 16 to 17 May 2017. During the visit, the Congress delegation met the representatives of various institutions. The detailed programme of the visit is set out in the appendix to this document;

*g.* The delegation would like to thank the Permanent Delegation of Monaco to the Council of Europe and the interlocutors it met during the visit for their assistance, their availability and the information they provided.

3. The Congress, given the specific features of Monaco, notes with satisfaction that:

*a.* the level of local self-government is generally satisfactory in Monaco;

*b.* relations between central government and the Municipality of Monaco, which are facilitated by the small size of the country, are good;

*c.* the law provides mechanisms for consulting the Municipality in several fields;

*d.* the Municipality has adequate administrative structures and resources;

*e.* administrative controls are aimed at ensuring compliance with the law;

*f.* the Municipality de Monaco has more than adequate financial resources.

4. The Congress notes that the following points call for special attention:

*a.* the political responsibility of the mayor and his deputies who, although elected by the communal council, cannot be put in question (Article 3.2);

*b.* the Municipality is not consulted in an appropriate manner on the annual lump-sum appropriations allocated to it (Article 9.6);

*c.* the Municipality does not have the right to judicial remedy to challenge a law that is found to not be compliant with Title IX of the Constitution nor with the Charter (Article 11);

*d.* Monaco has not ratified several provisions of the Charter, although it does in fact comply fully with several of these, namely Articles 8.3, 9.2 and 10.2.

5. In view of the above, the Congress asks the Committee of Ministers to invite the Monegasque authorities to:

*a.* introduce mechanisms to ensure that the municipal executive is politically accountable to the Municipal Council;

*b.* put in place a mechanism for consulting the Municipality on the annual lump-sum appropriation to be allocated to it;

*c.* acknowledge the Municipality's right to challenge the constitutionality of laws on grounds of violation of Title IX of the Constitution and its right to question whether the laws in question are compatible with the Charter;

*d.* consider the possibility of ratifying Articles 8.3, 9.2 and 10.2 that are respected de facto;

*e.* consider the possibility of signing and ratifying the Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

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## 1. INTRODUCTION: AIM AND SCOPE OF VISIT, TERMS OF REFERENCE

1. In accordance with Article 2 of Statutory Resolution CM/Res(2015)9 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereinafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.
2. The Principality of Monaco (hereinafter "Monaco") joined the Council of Europe on 5 October 2004. It signed and ratified the European Charter of Local Self-Government (CETS 122, hereinafter "the Charter") on 10 January 2013 and this treaty came into force in its respect on 1 May 2013.
3. Pursuant to Article 12, paragraph 2, of the Charter, Monaco declared itself bound by Articles 2; 3, paragraph 2; 4, paragraphs 1, 2, 4, 5 and 6; 5; 6, paragraphs 1 and 2; 7, paragraphs 1 and 3; 8, paragraphs 1 and 2; 9, paragraphs 5, 6 and 7; 10, paragraphs 1 and 3; and 11 of the Charter. Consequently, it is not bound by Articles 3.1, 4.3, 7.2, 8.3, 9, paragraphs 1-4 and 8, and 10.2 of the Charter.
4. When Monaco ratified the Charter, it adopted an interpretative declaration concerning Article 3, in which it stated as follows: "The Princely Government recalls that the territory of the Principality, with a surface area of approximately 2 km<sup>2</sup>, constitutes only one municipality which is an autonomous institution established by the Constitution, endowed with legal personality and governed by public law. Therefore, the concept of local self-government as stipulated in Article 3 of this Charter applies there, in Monaco, in light of the specific institutional and geographical characteristics of the country, within the framework defined by Title IX of the Constitution and by law No. 959 of 24 July 1974".
5. Monaco has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS 207).
6. Monaco had not yet received a visit from the Congress to monitor the situation of its local self-government.
7. The Monitoring Committee instructed Mr Michalis Angelopoulos, Greece (L, EPP/CCE) and Ms Marianne Hollinger, Switzerland (L, ILDG), to prepare and submit to the Congress a report on local democracy in Monaco.
8. A monitoring visit to Monaco took place on 16 and 17 May 2017. The delegation was assisted by Ms Tania Groppi, member of the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress secretariat.
9. During the visit, the Congress delegation met representatives of various political and judicial institutions and the Mayor of Monaco and his deputies. The detailed programme of the visit is appended to the present report.
10. The delegation would like to thank the Permanent Representation of Monaco to the Council of Europe and all the partners they met during this visit for their assistance, their availability and the information they provided.

## 2. HISTORICAL BACKGROUND, POLITICAL SITUATION AND REFORMS

### 2.1. Historical background

11. The Principality of Monaco's situation is undoubtedly an unusual one: its surface area is 2 sq. km, which makes it the second smallest state in the world, after the Vatican City. One single city covers the whole territory, which is surrounded by France. The population of Monaco is made up of 37 308 residents, 8 378 of whom are Monegasque. Among the non-Monegasques, there are 139 nationalities, 9 286 French people and 8 172 Italians.<sup>3</sup> 46 000 foreigners travel to work in Monaco every morning. Monegasques are therefore very much in a minority in their own country.<sup>4</sup>

12. There are close ties between the royal family and the Monegasques. Monaco's monarchy has always been founded on the union between the Prince and the national community; there have never been any uprisings by the people against the sovereign in Monaco's history, nor any antagonism between the people and the monarch; "the nation was not constructed in opposition to the Princes but with them" and the Prince "embodies" the Monegasque nation.<sup>5</sup>

13. People have lived on the Rock of Monaco since prehistoric times,<sup>6</sup> but 1297 was a real turning point in the history of the Principality because this was the year in which the fortress was taken by the Genoese family, the Grimaldis, who form the dynasty which still reigns today. In 1612 lordly power was transformed into monarchic power when Honoré II took the title "Prince of Monaco".

14. Having experienced various changes in fortune, which always called for a very close relationship with its neighbouring states, particularly France, Monaco reached its current borders in 1856, under Charles II. The second half of the 19<sup>th</sup> century was a time of modernisation and economic and urban development: the *Société des Bains de Mer* (SBM) was set up, recruiting 2 500 employees for its leisure and gambling activities, which would ultimately provide 95% of state revenue, explaining why direct taxation was abolished.

15. At the very beginning of the 20<sup>th</sup> century, tensions arose between the Prince and his subjects, who were increasingly demanding some form of representation. Until this point, the Prince had governed according to the rules of an absolute or paternalist monarch, exercising both executive power and legislative powers through orders.

16. Democracy had not been any stronger at municipal level, although in the 13<sup>th</sup> century, the heads of families had met in a "parliament" to deliberate on matters of common interest along with representatives of the lord. Since 1 December 1856, municipal affairs had been dealt with by a municipal board, which had had an advisory role, had been run by the Mayor and his deputies and had been made up of 21 councillors, all of whom had been appointed by the prince.

17. It was not until 1910 that the election by universal male suffrage of the members of a Municipal Board was introduced, in accordance with the people's wishes. However, the Prince retained the power to nominate the Mayor and the first deputy. In this way it was at municipal level that democracy began in the Principality.

18. On 5 January 1911, Monaco became a constitutional monarchy when Prince Albert I granted the Constitutional Act, which, although it did not provide for any method of revision, was later amended through orders. The Prince retained executive power but entrusted the task of implementing it to a Minister of State assisted by three counsellors and a Council of State, all appointed by the Prince. Legislative power, on the other hand, was assigned to a National Council, made up of 21 members elected for four years by universal suffrage. A Supreme Court was also established and was tasked, in particular, with reviewing the constitutionality of rights and freedoms set out in the Constitution.

19. Compared to other constitutions of the time, the 1911 Constitution attaches considerable importance to municipal institutions, which were covered by detailed provisions contained in Chapter VI. This unusual choice can be accounted for by the precursory role that the Municipality played in

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3 See Monaco Statistics, which refers to a census of 2016: <http://www.imsee.mc/Population-et-emploi>

4 See Venice Commission, "Opinion on the balance of powers in the Constitution and the legislation of the Principality of Monaco", adopted by the Venice Commission at its 95th Plenary Session, 14 and 15 June 2013, available on the Commission website, Opinion No. 695/2012, paragraphs 32-97.

5 G. GRINDA, *La Principauté de Monaco*, 2<sup>nd</sup> edition, preface by Prof. Weil, Editions Pedone, Paris, 2009, p. 10.

6 See, for this part, J.-B. D'ONORIO, *Monaco. Monarchie et démocratie*, Press Universitaire d'Aix-Marseille, Aix-en-Provence, 2016, pp. 23 et seq.

Monaco's history and the strong attachment of Monegasques to this institution. However, in being enshrined in the Constitution it was channelled and even fragmented, for in 1911 the Principality was divided into three separate municipalities: Monaco-Ville, La Condamine and Monte-Carlo, which, together, had a population of 20 000 (Article 37). The three municipalities were reunified by a sovereign order of 1917, at the population's instigation. From this point on the territory of the Municipality would coincide with that of the state, and the distinction between the two institutional levels would be based solely on the distribution of powers.

## **2.2. Political context and reforms**

20. The current Constitution of Monaco was promulgated by Prince Rainier III on 17 December 1962. In keeping with the model of "imposed" constitutions, the new Constitution derives from the Prince, who, of his own will, legally limits his own sovereign powers. The concept of the people or the will or sovereignty of the people does not figure anywhere as a principle. This is therefore a very old-fashioned or archaic type of constitution (although some of its content is very modern). The Prince remains the source of authority and the constitution itself. It is possible for it to be revised, under Article 94, which was a real innovation: "Any revision of this Constitution, in full or in part, shall be subject to the joint agreement of the Prince and the National Council". The Constitution was revised in 2002,<sup>7</sup> when 15 of its 97 articles were redrafted (see below).

21. The political system is that of a monarchy limited by a Constitution originating from the Prince.<sup>8</sup> According to Article 12 of the Constitution, "the Prince shall exercise his authority in compliance with the Constitution and the laws". The Constitution, for its part, refers to a "hereditary and constitutional monarchy" (Article 2.1). Not one time does the Constitution use the term parliament or parliamentarianism. This reflects the legal reality as the Principality's constitutional system is not parliamentary. At the same time the Principality presents itself as "a state under the rule of law, committed to fundamental freedoms and rights" (Article 2.2).

22. Monaco's constitutional monarchy is not a representative-type government, in which the executive is answerable to the elected parliament or the electorate. "Executive power shall be exercised by the high authority of the Prince" (Article 3.1) and "the person of the Prince is inviolable" (Article 3.2), which means, in particular, that no civil or criminal proceedings may be brought against him in court and he cannot be politically challenged. This inviolability exists in all monarchic systems but in parliamentary monarchies, it is counterbalanced by the countersignature of the minister, who appropriates the monarch's acts, legally and politically. No such thing happens in the Monegasque system though. In law, the Prince really does exercise full authority, to the extent that neither the Constitution or the law restricts him in this respect.

23. In practice, "Government is exercised, under the high authority of the Prince, by a Minister of State, assisted by a Government Council" (Article 43). Both the Minister of State and the Government Counsellors are appointed and dismissed by the Prince and are therefore accountable only to him (Article 50) and not vis-à-vis the National Council. The Minister of State chairs the Government Council, which is made up of members appointed by the Prince, each of whom is put in charge of a ministerial department: the Department of the Interior; the Department of Finances and the Economy; the Department of Social Affairs and Health; the Department of Amenities, the Environment and Town Planning; and the Department of External Relations and Co-operation.

24. Legislative power is exercised jointly by the Prince and the National Council, whose 24 members are elected by direct universal suffrage and a list system every five years (Article 53).

25. Law No. 839 of 23 February 1968 on national and municipal elections states that "elections to the National Council shall be by single, plurinomial, party-list ballot, with possibilities for vote-splitting but no preferential voting" (Article 20) "Two thirds of the seats in the National Council shall be allocated on the basis of majority voting and the remaining one-third on the basis of proportional voting. The sixteen candidates who have obtained the most votes shall be elected first. The remaining eight seats shall be allocated to those lists which have obtained at least 5% of the valid votes cast, on the basis of proportional representation" (Article 20.1).

<sup>7</sup> See Law No. 1249 of 2 April 2002.

<sup>8</sup> D. CHAGNOLLAUD, "Quel est le régime de Monaco?", *Commentaire* 2014/3 (Issue No. 147), pp. 622-626.

26. Under Article 66.1, “the enactment of law implies the shared will of the Prince and the National Council”, although only the Prince may initiate law (Article 66.2). The National Council is entitled to draft bills, which must be examined and presented as bills by the Government Council for signature by the Prince (Article 67). However, deliberating and voting on bills are the National Council’s responsibility (Article 66.3). It falls to the Prince to sanction laws, assigning them binding power through promulgation (Article 66.4).

27. The Constitution of 17 December 1962 includes Chapter X entitled “Justice”, which determines the principles upon which the judicial system is based.<sup>9</sup> In particular, the provisions of Chapter X of the Constitution enshrine the principle of delegated justice, under which judicial power belongs to the Prince, who delegates its full exercise to the courts and tribunals. These render justice in his name (Article 88). The Government does not have a Minister of Justice. Judicial administration is carried out by an independent department, the Department of Justice, which is governed by Law No. 1.398 of 24 June 2013 on the organisation and administration of the judicial system.

28. Similarly, the principle of judicial independence is guaranteed by the Constitution (Article 88). In application of this principle, judges are irremovable, which means that they cannot be dismissed, suspended or transferred, under the same conditions which apply to civil servants.

29. With the same aim of ensuring judicial independence, the Constitution also states that the organisation, jurisdiction and functioning of the courts, as well as the status of judges, are prescribed by law (Article 88). The law establishes the status of judges and prosecutors and the organisation, jurisdiction and functioning of the courts and lays down the principles giving defendants the best guarantees of impartial treatment and expertise, namely the collegiate operation of the courts, the separation of prosecution and investigation in criminal matters, a two-tier judicial system and the possibility of reopening proceedings.

30. Law No. 1364 of 16 November 2009 establishing the status of judges set up the High Council of Judges and Prosecutors, which is required to exercise disciplinary power with regard to judges and prosecutors and may be consulted by the Prince on any question relating to the organisation and functioning of justice.

31. Article 90-A of the Constitution confirms the Supreme Court’s role as a Constitutional Court. It has jurisdiction to take decisions of its own accord on “applications for annulment, for assessment of validity and for damages arising from infringements of the rights and freedoms enshrined in Chapter III of the Constitution”. It was one of the first courts in the world to provide direct access to natural persons to dispute laws which they alleged to violate the fundamental rights guaranteed by the Constitution. This amounts to an important guarantee of the effective protection of human rights in Monaco.<sup>10</sup>

32. The Supreme Court also rules in administrative matters (Article 90-B) on “applications to set aside *ultra vires* decisions taken by various administrative authorities and sovereign orders to enforce laws, and the award of related damages; appeals on points of law against final decisions of administrative courts; [and] appeals for interpretation and applications to review the validity of decisions taken by various administrative authorities and sovereign orders to enforce laws”.

33. It should also be borne in mind that many applications to set aside *ultra vires* decisions raise the objection that the law on which the administrative decision whose legality they dispute is unconstitutional. The Supreme Court’s “constitutional” activities are therefore a little more extensive than might be suggested by the low number of direct applications to review the constitutionality of a law.

34. It should also be recalled that to be admissible, claims of unconstitutionality may relate only to alleged violations of the rights and freedoms enshrined in Chapter III of the 1962 Constitution.<sup>11</sup>

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9 See <http://en.gouv.mc/Portail-du-Gouvernement/Government-Institutions/Institutions/Justice/The-foundations-of-Monegasque-justice-and-Monegasque-Law>

10 See P. GAÏA, “Tribunal suprême de la Principauté de Monaco. Décision du 16 janvier 2006 n° 2005-07, 2005-08, 2005-09 et 2005-10. Affaires Maryse Romiti veuve Bellone et autres c/S.E. Monsieur le ministre d’État” (Supreme Court of the Principality of Monaco, Decision of 16 January 2006, Nos. 2005-07, 2005-08, 2005-09 and 2005-10, Maryse Romiti Widow Bellone and Others Versus H.E Minister of State) *Revue française de droit constitutionnel*, 2008/2 (No. 74), pp. 391-418.

11 Conference of European Constitutional Courts, XVIth Congress – Vienna 2014, “The Co-operation of Constitutional Courts in Europe – Current Situation and Perspectives”, Contribution by the Supreme Court of the Principality of Monaco, in French at <http://doczz.fr/doc/3071650/rapport-national---national-report---landesbericht---naci>



35. As in 1911, it was considered expedient to refer in the Constitution to the status of the Municipality of Monaco, which is dealt with in Chapter IX (see below).

36. A major reform was made to the Constitution in 2002. The initiative came from Prince Rainier III, who acted partly of his own accord and partly at the Council of Europe's request.

37. This revision formed part of a bid by Monaco to revitalise its international relations. In 2002 a new Franco-Monegasque Treaty was signed, replacing that of 1918 and enhancing Monaco's independent status. This was followed in 2005 by a new co-operation agreement between the two countries.

38. Although Monaco has been a member of the World Health Organisation since 1948, of UNESCO since 1949, of the International Organisation of La Francophonie since 1950 and of the Organisation for Security and Co-operation in Europe since 1972, it only joined the United Nations in 1993 and did not file its formal application to join the Council of Europe until 1998, opening a long procedure which would be completed only in 2004.

39. Monaco's relations with the European Union are dependent to a large extent on the special relationship between Monaco and France. Monaco is part of the EU's monetary and customs area by virtue of its agreement with France. For the same reason, Monaco's currency is the euro and it is part of the Schengen Area. In December 2014, the Council gave the Commission a mandate to begin negotiations with Andorra, Monaco and San Marino.<sup>12</sup> On 18 March 2015, negotiations between the EU and Andorra, Monaco and San Marino were formally opened with a view to negotiating one or more association agreements so as to enable these countries to take part in the EU's internal market and for them to co-operate with the EU in other areas.<sup>13</sup>

40. Besides the principles concerning the succession to the throne, the amended articles relate to the prince's powers in international relations: in this area, the role of the National Council, whose members increased from 18 to 24, was significantly extended. More generally, it was mainly Chapter VII on the National Council which was amended, bringing about an upgrade in the role of the Council in both legislative procedures (Article 67) and the budgetary field (Article 70).

41. Only two amendments were made to Chapter IX, on the Municipality, one to Article 79 concerning the voting age (which was reduced from 21 to 18) and the other to Article 87, on the municipal budget, which was made less dependent on the National Council through the establishment of a budgetary allocation.

### **2.3. Previous reports and recommendations**

42. This was the first monitoring visit to Monaco since the signature and ratification of the Charter in 2013.

## **3. HONOURING OF OBLIGATIONS AND COMMITMENTS**

43. The Principality of Monaco signed and ratified the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 10 January 2013 and it came into force on 1 May 2013.

44. In accordance with Article 12, paragraph 2, of the Charter, Monaco declared itself bound by Articles 2; 3, paragraph 2; 4, paragraphs 1, 2, 4, 5 and 6; 5; 6, paragraphs 1 and 2; 7, paragraphs 1 and 3; 8, paragraphs 1 and 2; 9, paragraphs 5, 6 and 7; 10, paragraphs 1 and 3; and 11 of the Charter. Consequently, it is not bound by Articles 3.1; 4.3; 7.2; 8.3; 9, paragraphs 1-4 and 8; and 10.2 of the Charter.

45. On ratifying, Monaco adopted a declaration concerning Article 3 of the Charter in which it stated as follows: "The Princely Government recalls that the territory of the Principality, with a surface area of approximately 2 km<sup>2</sup>, constitutes only one municipality which is an autonomous institution established by the Constitution, endowed with legal personality and governed by public law. Therefore, the concept of local self-government as stipulated in Article 3 of this Charter applies there, in Monaco, in

<sup>12</sup> [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/146315.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/146315.pdf)

<sup>13</sup> <http://en.gouv.mc/Portail-du-Gouvernement/Policy-Practice/Monaco-Worldwide/Monaco-and-the-European-Union>

light of the specific institutional and geographical characteristics of the country, within the framework defined by Title IX of the Constitution and by law No. 959 of 24 July 1974”.

46. Monaco has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

### **3.1. Level at which the Charter is incorporated**

47. The position of international treaties among the sources of law is not clear. It should be pointed out that Article 1 of the Constitution states: “The Principality of Monaco is a sovereign and independent state within the framework of the general principles of international law and special agreements with France. The territory of the Principality is unalienable”.

48. Under Article 14 of the Constitution (as amended in 2002), “after consulting the Crown Council, the Prince shall sign and ratify international treaties and agreements. He shall submit them to the National Council through the Minister of State before their ratification.

49. However, the following treaties may only be ratified pursuant to a law:

- international treaties and agreements affecting the organisation of the Constitution;
- international treaties and agreements whose ratification entails amendments to existing legislation;
- international treaties and agreements which result in the accession of the Principality to an international organisation whose functioning entails the involvement of members of the National Council;
- international treaties and agreements whose execution has the effect of creating expenditure in the budget whose nature or destination is not provided for by the budget law.

50. The Principality’s external policy shall be outlined in an annual report prepared by the Government and communicated to the National Council”.

51. Article 68 provides as follows: “The Prince shall issue the orders required for the execution of laws and the application of international treaties or agreements”.

52. It should also be pointed out that while the acts of the executive may in principle be the subject of an application for them to be set aside before the Supreme Court (Article 90-B) and sovereign orders are also subject to this form of review, an exception is made for the orders required for the application of international treaties and agreements, which thus assume the character of an act of state.<sup>14</sup>

53. The declaration made by Monaco on ratifying the ECHR on 30 November 2005 may help with our interpretation. On this occasion Monaco stated as follows: “The Principality of Monaco recognises the principle of hierarchy of norms, essential guarantee of the rule of law. In the Monegasque legal system, the Constitution, freely granted by the Sovereign Prince— who is its source – to His subjects, constitutes the supreme norm of which He is the guardian and the arbitrator, as well as the other norms of a constitutional value constituted by the special conventions with France, the general principles of international law regarding the sovereignty and independence of States, as well as the Statutes of the Sovereign Family. *International treaties and agreements regularly signed and ratified by the Prince are superior in authority to laws. Therefore, the Convention for the protection of Human Rights has an infra-constitutional, yet supra-legislative value*”.<sup>15</sup>

54. Lastly, in its case-law, the Supreme Court has stated that it “only has jurisdiction to rule on applications for annulment at constitutional level if they relate to an infringement of the rights and freedoms enshrined in Chapter III of the Constitution; consequently, when applicants request the annulment of the impugned law, it is not pertinent for them to argue that the law is in breach of Articles 6, 7 or 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

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14 Venice Commission, Opinion No. 695/2012, op cit., paras. 75 and 76.

15 On this subject see A. LEVADE’s commentary on a Supreme Court decision, “Conventionnalité n’est pas constitutionnalité: le Tribunal Suprême de Monaco s’en tient à une conception stricte du contrôle de constitutionnalité: Trib. Sup. de la Principauté de Monaco, n° 2010-01, 4 oct. 2010, Ordre des Avocats Défenseurs et Avocats près la Cour d’appel c/ S.E.M. le Ministre d’État”, *Constitutions*, 2011 p. 63 (in French only).

or legal professional privilege, as these do not figure among the rights and freedoms established by Chapter III of the Constitution".<sup>16</sup>

55. This position was reiterated by the President of the Court at an international conference in 2014: "From all of these provisions it is clear that the Supreme Court is never entitled to declare a law unconstitutional on the ground that it is incompatible with the ECHR, whether the issue is raised by way of an action or a preliminary objection. On the other hand, when ruling on 'administrative matters', it must avoid the application of such laws and apply the ECHR instead, irrespective of whether the law was adopted before or after the ratification of the ECHR by the Principality. This requirement is therefore not applicable to appeals on constitutional matters but only when, in an administrative dispute, it is alleged that the law is incompatible with the ECHR by way of a preliminary objection".<sup>17</sup>

56. When the Vice-President of the Supreme Court met the rapporteurs, he also stressed that the Charter cannot be referred to when reviewing the constitutionality of laws because:

- like the ECHR, the Charter does not have the same legal force as the Constitution;
- as a constitutional court, the Supreme Court can only sanction infringements of rights and freedoms enshrined in Chapter III of the Constitution; it does not have jurisdiction to rule on compliance with Chapter IX, on the Municipality, of laws which affect its organisation or functioning.

57. However, when acting as an administrative court, the Supreme Court has jurisdiction to assess the legality of regulatory or individual administrative decisions. The "body of law" to which it refers when doing so includes international treaties. This is the basis on which it has set aside administrative decisions on several occasions for failure to comply with the ECHR. However, the case law of the Supreme Court makes a distinction between international standards which are directly applicable and those which are not and hence only create rights and obligations for the state. It does not assign itself the authority to set aside an administrative decision which is not directly applicable in the Principality for infringement of an international standard.

58. Consequently, even if the question has not yet been put to it, if a complaint is made to it of a violation of the Charter, the Supreme Court should determine whether the article of the Charter alleged to have been infringed is directly applicable or not.

### **3.2. The Constitution and the basic legislative framework**

59. Despite Monaco's small geographical size, local government is a long-established tradition here and the Municipality's history is tied up with that of the Principality.<sup>18</sup> Representative democracy began in the Principality in 1910 with the election by universal suffrage of the Municipal Council.

60. For this reason, a remarkable amount of space had already been granted to the Municipality in the 1911 Constitution (in Chapter VI, entitled "Municipalities" because, as mentioned above, there were three municipalities at the time). This tradition continued with the 1962 Constitution: Chapter IX is given over entirely to the Municipality and the first article states that "the territory of the Principality forms a single municipality" (Article 78).

61. Subsequent articles deal with the Municipal Council. Article 79 (as amended by Law No. 1.249 of 2 April 2002) provides that "the Municipality shall be administered by a municipal executive made up of a Mayor and his/her deputies, appointed by the Municipal Council from among its members. In accordance with the conditions prescribed by law, voters shall be Monegasque citizens of either gender of at least eighteen years of age with the exception of those deprived of the right to vote for any of the reasons provided for by law. Those eligible to stand shall be men and women aged 21 or over who have been Monegasque nationals for at least five years and are not ineligible for any of the reasons prescribed by law".

<sup>16</sup> Supreme Court of the Principality of Monaco, No. 2010-01, 4 October 2010, *Ordre des Avocats Défenseurs et Avocats près la Cour d'appel v the Minister of State*, cons. 13.

<sup>17</sup> Conference of European Constitutional Courts, XVIth Congress – Vienna 2014, "The Co-operation of Constitutional Courts in Europe – Current Situation and Perspectives", Contribution by the Supreme Court of the Principality of Monaco, op. cit.

<sup>18</sup> See P. COSTANZO, *La Costituzione del Principato di Monaco*, Giappichelli, Turin, 2006, pp. 173 et seq.

62. According to Article 80, “the Municipal Council shall be made up of 15 members elected for four years by direct universal suffrage using a list system. There shall be no incompatibility between the office of Municipal Councillor and that of National Councillor”. Articles 81 and 82 set out the rules on ordinary and extraordinary sessions of the Municipal Council. “The Municipal Council shall be chaired by the Mayor or, in his/her absence, by a replacement deputy or councillor, following the order of a table drawn up for the purpose” (Article 85).

63. Provision for the dissolution of the Municipal Council is made in Article 83: “The Municipal Council may be dissolved by a reasoned ministerial order, after consultation with the Council of State”. In this event or in the event that all the members of the Municipal Council resign, “a special delegation shall be appointed by ministerial order to perform the Council’s functions until a new one is elected. This election shall be held within three months” (Article 84).

64. No provision is made for the Municipal Council’s functions in the Constitution, which simply states, in Article 86, that “the Municipal Council shall deliberate in public on the Municipality’s affairs. Its deliberations shall be binding fifteen days after communication to the Minister of State unless a reasoned objection is issued in the form of a ministerial order”.

65. Lastly, Article 87 (as amended in 2002), refers to the budget and financial resources: “The municipal budget shall be funded using the revenue produced by municipal property, the municipality’s ordinary resources and the budgetary allocation set out in the year’s initial budget law”.<sup>19</sup>

66. As far as ordinary legislation is concerned, the most important law on local government is Law No. 959/1974 of 24 July 1974 on the organisation of the Municipality, as amended by Law No. 1316 of 29 June 2006, which was adopted under the Council of Europe’s influence with the goal of expanding local self-government. It contains important provisions complementing the Constitution, particularly on the subject of the Municipality’s functions and the relations between the state and the Municipality, including financial resources.

67. Mention should be made straight away of Article 1 of Law No. 959/1974, introducing the principle of free administration, which is not referred to in the Constitution. Under this article, “the territory of the Principality shall form a single municipality endowed with legal personality. It shall administer itself freely, via an elected council, in accordance with procedures prescribed by the Constitution and the law”.

68. The election of the Municipal Council is governed by Law No 839 of 23 February 1968 on the national and municipal elections amended by several laws. The rules on municipal finances are contained in Law No. 959/1974, Articles 54-67, and in Law No. 841 of 1 March 1968 on budget laws (as amended by Law No. 1316 of 29 June 2006). All the ordinary law on the Municipality was remodelled in connection with Monaco’s accession to the Council of Europe and before signature of the Charter.

### **3.3. The local government system**

69. Monaco has only one municipality, which covers the entire 2km<sup>2</sup> surface area of the state. As mentioned above, in view of its surface area and population, Monaco could be a “city-state”, in other words an entity that merges state and municipal functions (as with some German *Länder*, Swiss cantons and subjects of the Russian Federation).<sup>20</sup>

70. Yet, despite this, a distinction is made between state and municipality – a distinction which was already provided for in the 1911 Constitution and was reproduced in that of 1962.

#### **3.3.1. Organisation of the Municipality**

71. The Municipality of Monaco is run by a Municipal Council of 15 members, elected for four years through direct universal suffrage. This body appoints a Mayor and his/her deputies from among its members. There is no incompatibility between the office of Municipal Councillor and that of National

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<sup>19</sup> In the 1962 Constitution, before the revision of 2002, Article 87 read as follows: “The municipal budget shall be funded using the revenue produced by municipal property and the municipality’s ordinary resources. In the event of overspending, the National Council shall be called on, every year in the light of the budget presented by the Municipal Council, to deliberate on the funds to be made available to the Municipality”.

<sup>20</sup> Congress of Local and Regional Authorities, *Report on the situation of local democracy in the Principality of Monaco prepared in connection with the application for membership of the Council of Europe*, CG/BUR (5) 98 revised.

Councillor but the rapporteurs learnt during their visit that dual mandates are avoided because there is a tendency to keep the Municipality separate from the National Council, which is more politicised.

72. The rules on the election of the Municipal Council are contained in Law No. 839/1968. "Elections to the Municipal Council shall be by a two-round, plurinomial majority ballot with the possibility of vote-splitting but no preferential voting" (Article 20.5). "A person may not be elected municipal councillor in the first round of voting unless they obtain: (1) an absolute majority of the votes cast; (2) a number of votes equal to a quarter of registered voters. In the second round, a relative majority shall be sufficient, regardless of the number of voters. In the event of an equal number of votes, the oldest candidate shall be elected" (Article 21).

73. During their visit the rapporteurs were told that the lists presented for elections did not correspond to political parties but to something more akin to political platforms and that the voter's choice was heavily influenced by the top candidate on the list,<sup>21</sup> in other words the person who would be elected mayor if the list won. At the last two municipal elections, in 2011 and 2015, all the elected candidates were on the same list, the "Municipal Change" list, as the opposition list failed to gain any seats.

74. It is the task of the Mayor and his/her deputies to govern the Municipality (Article 32, Law No. 959/1974). They are elected for the same duration as the Municipal Council from among its members (Article 7, Law No. 959/1974). "A secret ballot shall always be required for the election of the Mayor and his/her deputies; if, after two rounds of voting, no candidate has reached an absolute majority, a third round shall be held and, in this event, the ballot shall be decided by a relative majority; if the votes are equal, the candidate who gained the most votes in the first round of the election shall be elected" (Article 19, Law No. 959/1974). There is no limit to the number of terms of office. Over the last 70 years, since 1946, there have been only five mayors, whose term of office has averaged 15 years.<sup>22</sup>

75. Once elected, the Mayor and the deputies may only be removed from office by a ministerial order, after consultation with the Council of State (Article 36, Law No. 959/1974). The Municipal Council is not authorised to hold a vote of no confidence in the Mayor or the deputies. The Department of the Interior of the Government of Monaco pointed out during consultation that a vote of no confidence is a concept which does not exist in Monegasque law, and cannot therefore be applied.

76. The Mayor has a dual role of servant and representative of the Municipality, under the supervision of the Municipal Council, and government servant, under the supervision of the Minister of State.

77. As a servant and representative of the Municipality, he/she is charged (under Article 38, Law No. 959/1974) with the following tasks: executing the decisions of the Municipal Council; representing the Municipality in the courts; preserving and managing municipal assets; drawing up and proposing the budget and authorising expenditure; supervising the municipal accounts; procuring works, supplies or services through a public call for tenders or a private contract, under the conditions established by sovereign order; taking measures connected with purchases, sales and exchanges, partitions, leases, acceptance of donations or legacies left on a provisional or protective basis and transactions, where these measures have been authorised in accordance with the relevant laws or regulations; and granting authorisations for private occupation without encroachment on public highways and private occupation by catering establishments and businesses including encroachment on public highways after the prior agreement of the Minister of State.

78. As a government servant, he/she is charged (under Article 39, Law No. 959/1974) with the following tasks: ensuring that laws and regulations are implemented; exercising, under conditions prescribed by the law and regulations, municipal police powers, particularly those relating to traffic on public squares and roads; managing the Monegasque nationality register and establishing the electoral roll in accordance with laws and regulations; and issuing identity cards and administrative documents connected with Monegasque nationality.

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<sup>21</sup> This is an informal designation as Article 39 of Law No. 839/1968 stipulates that candidates are listed on the ballot in alphabetical order.

<sup>22</sup> <http://www.mairie.mc/en/langues-etranangeres/>

79. The Mayor takes the necessary measures in areas falling within his/her remit, through regulatory or individual orders, in accordance with the relevant laws and regulations (Article 46, Law No. 959/1974).

### **3.3.2. Powers of the Municipality**

80. No provision is made for the Municipality's powers in the Constitution, which merely refers to the fact that the "the Municipal Council shall deliberate in public on the Municipality's affairs" (Article 86).

81. Provision is made for them in Article 25 of Law No. 959/1974 as powers of the Municipal Council. Law No. 1316/2006 extended and clarified these powers, as the persons we met pointed out.

82. Article 25 of Law No. 959/1974 provides: "The Municipal Council shall manage the Municipality's affairs through its deliberations. These deliberations shall relate in particular to:

- the budget, the Mayor's administrative accounts and the municipal tax officer's management accounts;
- the rates of fees to be levied or paid under the relevant laws and regulations or as remuneration for services rendered;
- the purchase, the construction, the exchange, the partition and the transfer of immovable municipal property and the establishment of rights *in rem* affecting them or the entry into leases;
- the final acceptance, subject to the donors' intentions, of donations and legacies left to the Municipality;
- the establishment, management or concession and organisation of municipal services and their transfer or withdrawal;
- the establishment or amendment of the organisation chart of municipal services, which shall determine, by category of staff, how staff will be assigned, having regard where appropriate to the provisions in the second paragraph of Article 53;
- the organisation of municipal events and activities;
- social welfare and recreational activities, particularly those intended for pre-school children or to help elderly people remain in their own homes, and senior citizens' activities;
- the distribution of grants in the recreational and cultural sphere;
- the cultural and artistic activities of municipal establishments, particularly the Fine Arts College of the City of Monaco, the Prince Rainier III Academy of Music, the Louis Notari Library, the José Notari Sound Library, the Municipal Video Library and the Regional Archive;
- the naming of streets;
- the terms and conditions of agreements on the private occupation of publicly-owned property;
- the creation, development or removal of promenades, green areas or public gardens;
- the creation, development or transfer of cemeteries or their appurtenances;
- transactions;
- judicial remedies, with the exception of measures to preserve rights or suspend the forfeiture of rights;
- billposting, including in public underpasses.

83. In addition, the Municipal Council may express opinions concerning all matters of municipal interest. It is not entitled to publish statements or addresses or express political views (Article 25 of Law No. 959/1974).

84. It is also stated in Article 25 that "the Municipality of Monaco, after deliberation by the Municipal Council, may contact and enter into agreements with foreign local authorities and their associations within the limits of its powers and in compliance with the Principality's international commitments, on condition that it keeps the Minister of State informed".

### **3.3.3. Relations with the state**

85. Provision is made for the consultation of the Municipal Council by the state in Law No. 959/1974. This was one of the innovations introduced by Law No. 1316/2006.

86. Article 26 describes the cases in which it is a requirement for the Council to be consulted by the Minister of State, particularly in the areas of town and spatial planning, along with the consultation procedure and its consequences: "When it is consulted on one of the projects referred to in the

previous paragraph, the Municipal Council must make its opinion known within ten working days. For this purpose and at the Mayor's request, the administrative services shall describe the features of the project or projects in question to the Municipal Council and provide it with all the relevant details. The Municipal Council shall meet immediately, if necessary in extraordinary session and, where appropriate, under the emergency procedure provided for in Article 10. If the Minister of State wishes to disregard a duly reasoned adverse opinion, he/she shall be required to call for a second deliberation of the Municipal Council. The second opinion shall be drawn up in accordance with the procedure described in the previous paragraph. A further adverse opinion may only be disregarded by means of a reasoned ministerial order".

87. Article 26.1 provides that "it shall be compulsory for the Minister of State to consult the Municipal Council on any changes to its powers and on the provisions on municipal officials' employment regulations set out in particular in Article 53. When it is consulted pursuant to the preceding paragraph, the Municipal Council shall be required to make its opinion known within 30 working days. This time limit may be extended, in agreement with the Minister of State, in cases in which the law requires the Municipal Council to consult specific bodies. If the Minister of State wishes to disregard a duly reasoned adverse opinion, he/she shall be required to call for a second deliberation of the Municipal Council. The second opinion shall be drawn up in accordance with the procedure described in the previous paragraph. A further adverse opinion may only be disregarded by means of a reasoned ministerial order".

88. Under Article 53 the Municipal Council must be consulted on "the regulations governing municipal officials and the applicable provisions, particularly with regard to the hiring, discipline, dismissal or retirement of municipal staff, and on the hierarchical position in grades or jobs of these officials or staff and the establishment of salary scales corresponding to these grades or jobs, under the conditions set out in Article 26.1".

89. As to supervision of the Municipality's activities, no provision is made for this in the Constitution. Law No. 959/1974, which includes provisions on this subject, was significantly amended by Law No. 1316/2006 so as to eliminate full state supervision and confine supervision to a review of the legality of acts.

90. Article 28 contains rules on the supervision of Municipal Council activities: "The deliberations of the Municipal Council shall be subject to a review of their legality by the Minister of State and shall be enforceable 15 days after the date on which they are communicated to the Minister of State, unless a reasoned objection is made in the form of a ministerial order".

91. Under Article 29, "The Municipal Council's deliberations shall be automatically null and void:

- if they relate to an item outside the Council's powers;
- if they take place outside sessions or the town hall, subject in the latter case to the provisions of Article 9.

Such nullity may be confirmed by reasoned ministerial order, either automatically or at the request of any interested person".

92. Under Article 30, "the Municipal Council's deliberations may be voidable where councillors with their own interest or acting as proxies for somebody with an interest in the matter being discussed have participated in the deliberations.

Deliberations may be declared null and void *proprio motu* by reasoned ministerial order within fifteen days of their communication to the Minister of State".

93. Orders of a regulatory nature adopted by the Mayor "shall be published and enforced ten days after the official copy has been communicated to the Minister of State, unless the Minister of State gives special authorisation when requested by the Mayor for urgent cases. After ten days, it shall be legal to publish and enforce these orders unless a reasoned objection is made in the form of a ministerial order if the Minister of State considers them unlawful" (Article 47 of Law No. 959/1974).

### **3.3.4 The Municipality's financial resources**

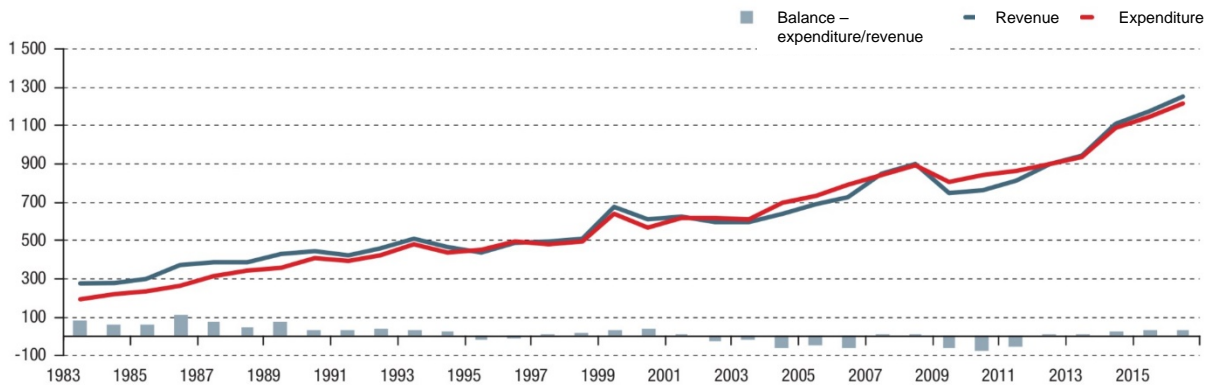
94. To understand the subject of the Municipality's financial resources, it is necessary to take account of the Monegasque state's special tax arrangements. One of the Principality's main features is the lack

of any income tax as a result of an order issued by Prince Charles III in 1869. The only direct taxes in the Principality are those levied on industrial and commercial activities. There is no wealth tax, land tax or residence tax.

95. Per capita GDP in 2015 was €68 383.<sup>23</sup> The state budget shows a surplus.

**Table 1. Growth of the state budget**

➤ Growth of the state budget



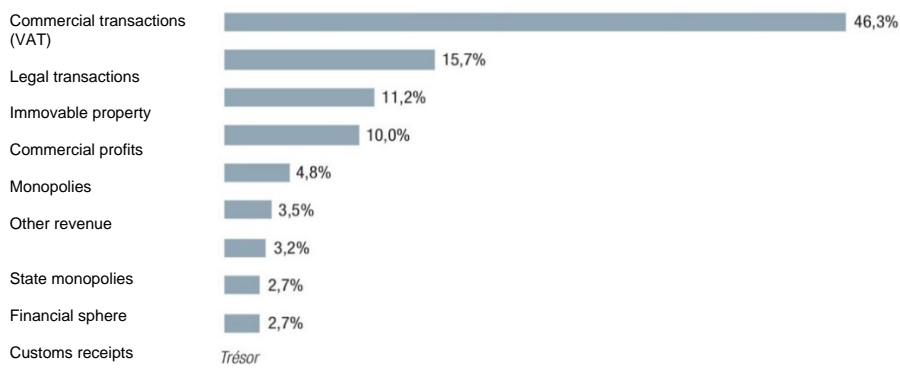
Source: Budget and Treasury Directorate

In millions of euros

96. State revenue derives mostly from the following sources: taxes on commercial transactions (value added tax) and legal transactions (taxes on property transactions, fees for other civil and administrative acts, insurance taxes); revenue from immovable property (rented accommodation and public car parks); profit tax; fees connected with monopolies, the main ones of which are the SBM, Monaco Telecom, the Monegasque Electricity and Gas Company and the Monaco Port Authority; revenue from state monopolies (the State Tobacco Company, the Postage Stamp and Telegraph Office); and, in the financial sphere, revenue from securities and bank interest.

**Table 2. Sources of state revenue in 2016**

➤ Sources of state revenue in 2016



Source: Budget and Treasury Directorate

97. The rules on the municipal budget are set out in Law No. 959/1974, which must be read in conjunction with Law No. 841 of 1 March 1968 on budget laws. Both texts were amended by Law No. 1316/2006. Account should also be taken of Article 87 of the Constitution, which was also amended in 2002 (see above).

<sup>23</sup> <http://en.gouv.mc/Portail-du-Gouvernement/Policy-Practice/The-Economy/Analysis-and-Statistics/Publications/Economic-indicators-of-monaco-en-chiffres>



**Table 3**

	2013		2014		2015	
	Amount	Municipal expenditure as a %	Amount	Municipal expenditure as a %	Amount	Municipal expenditure as a %
In millions of euros						
Real expenditure Monaco Municipality	53		54		59	
State expenditure budget	933	5.66%	1,086	5.02%	1,144	5.17%
GDP	4,936	1.07%	5,321	1.02%	5,640	1.05%
Source: Monaco Municipality, Budget and Treasury Directorate, IMSEE						

Source: Monaco Mayor's office, 2017

98. Municipal expenditure constitutes only a small share of the state budget (about 5%). It is divided into two sections (Article 56, Law No. 959/1974). Section I comprises ordinary expenditure while section II is made up of expenditure on facilities, and activities carried out on behalf of the state. Projected expenditure in section II of the municipal budget is discussed by the Mayor and the Minister of State every year before 1 July so as to determine the amount of the grant for facilities and activities on behalf of the state (Article 58, Law No. 959/1974).

99. Ordinary expenditure consists of: municipal staff expenditure; management costs tied up with the functioning of municipal services, particularly office supplies, water, gas, electricity, telephone and heating bills, insurance premiums, maintenance work on movable and immovable property, representational expenses of members of the Municipality and the Municipal Council, recreational and cultural grants, costs of municipal welfare activities and costs connected with the organisation of municipal events of all sorts.

**Table 4**

	2013		2014		2015	
	Amount	Percentage	Amount	Percentage	Amount	Percentage
SECTION I - OPERATING EXPENDITURE	48,760,388	92%	50,702,888	93%	53,275,734	90%
SECTION II - EXPENDITURE ON FACILITIES, STATE ACTIVITIES	4,003,523	8%	3,793,934	7%	5,828,635	10%
TOTAL	52,763,911	100%	54,496,822	100%	59,104,369	100%

Source: Monaco Mayor's office, 2017

100. Sources of revenue are determined by Article 57 of Law No. 959/1974, according to which "revenue on the municipal budget shall comprise:

- proceeds from municipal property: revenue from public and private property; proceeds from the sale of private property;
- ordinary municipal revenue (fees for billposting, pitches in open or covered markets or on fairgrounds and weighing, measuring and introduction of meat, charges for the private occupation of public spaces, fees for parking permits and temporary installation on public highways, and, in general all charges which the law authorises the Municipality to levy or which constitute payment for a service rendered; fees for the delivery of all documents drawn up in accordance with laws and regulations; fees for burial plots and for the interment, exhumation, reinterment or transfer of bodies; fees for municipal public service concessions; in general, occasional revenue from various sources. Any reduction or elimination of the Municipality's own resources or increase in its expenditure resulting from a decision by the state shall give rise to financial compensation by the state;
- the budgetary allocation made available to the Municipality under Article 87 of the Constitution in accordance with the rules laid down in Article 7 of Law No. 841 of 1 March 1968.<sup>24</sup> The

<sup>24</sup> Article 7 of Law No. 841/1968 provides that "The draft budget shall indicate the amount of funds to be made available to the Municipality in accordance with Article 87 of the Constitution.

municipal budgetary allocation shall be paid in full by 20 January of the year in question, unless the voted services have been implemented, as provided for by Article 73 of the Constitution, in which case the allocation shall be paid to the Municipality 20 days after the publication of the corresponding sovereign order. In this case, the amount of the allocation recorded and paid shall be equal to that of the preceding financial year;

- withdrawals from the Municipal Fund”.<sup>25</sup>

101. Transfers from central government consist therefore of two grants, one a lump sum which accounted for nearly 90% of the total allocation in 2015 and the other (whose budgetary implementation is carried out under state supervision) accounting for about 10%.

102. The ratio of own resources to total resources evolved between 2013 and 2015 because of a major increase in the second grant, the amount of which was increased considerably in negotiations with the state so as to finance exceptional operations.

**Table 5. Ratio of “own resources” to transfers from central government**

In thousands of euros	2013		2014		2015	
	Amount	Percentage	Amount	Percentage	Amount	Percentage
Own resources - Monaco Municipality (1)	13,863	26.04%	14,698	26.16%	15,105	25.04%
Transfers from central government (2)	39,376	73.96%	41,490	73.84%	45,229	74.96%
TOTAL - ACTUAL RECEIPTS	53,239	100%	56,188	100%	60,334	100%
Source: Monaco Municipality						

(1) Sum of SECTION I – MUNICIPAL REVENUE and SECTION II – EXCEPTIONAL REVENUE

(2) Sum of SECTION II – FIXED OPERATING GRANT and SECTION III – GRANT FOR FACILITIES AND ACTIVITIES ON BEHALF OF THE STATE

Source: Monaco Mayor's office, 2017

103. The Municipality no longer receives any significant local taxes. The only such revenues come from taxes on weights and measures and fees for civil status documents and amount to a negligible sum of a few thousand euros. Local taxes therefore account for less than 1% of the Municipality's funding and are in decline. On the other hand, the Municipality does benefit from fees of various kinds, particularly for occupation of public spaces and parking (but not parking fines). The table below shows the main fees and proceeds on which the Council is called to give its view with the exception of the repayment of contributions, VAT, meal vouchers and partnerships.<sup>26</sup>

This amount shall constitute the municipal budgetary allocation to be included in the initial budget for the year. The budgetary allocation shall be made up of a fixed operating grant and a grant for facilities and activities carried out on behalf of the state.

The municipal budget shall set out all the Municipality's revenue and expenditure.

The fixed operating grant shall be calculated by applying the coefficient for the projected change in expenditure given in sections 3 and 4 of the initial state budget for the following year to the grant for the current year. If, at the end of the following year, the actual change in expenditure incurred differs from the original estimation of the percentage, the fixed grant shall be adjusted accordingly.

When the fixed grant is calculated, all transfers of state or municipal duties which may result in an increase or decrease in the sum required shall be taken into account. The costs corresponding to the performance of transferred duties shall be assessed prior to the transfer.

If the balance of the municipal budget is upset by an exceptional external event, the Mayor may ask the Minister of State to reassess the budgetary allocation.

The grant for facilities or activities carried out on behalf of the state shall be decided on by the Government in consultation with the Municipality. It shall be established in accordance with the constraints of the national budget, the state's investment policy and the Municipality's needs. The funds made available to the Municipality shall come under a single heading, to which and from which it shall be prohibited to make any transfer. However, in the event of a particularly serious disaster, an exceptional subsidy may be paid by the state to the Municipality to cover essential emergency spending”.

<sup>25</sup> Under Article 59 of Law No. 959/1974, “A Municipal Fund shall be set up, whose operating rules and management procedures shall be determined by sovereign order.

The fixed operating grant shall accrue to the Municipality. Any surplus receipts recorded when the accounts are closed after the execution of section I shall be paid back into the Municipal Fund.

Any part of the grant for facilities and activities carried out on behalf of the state which is not used by the Municipality after execution of section II shall be paid back to the state after closure of the year's accounts.

Withdrawals to be made from the Municipal Fund shall be decided on by the Municipal Council.

They may not be used for recurring expenditure or cause the fund to have a negative balance. The Municipality may not take out loans”.

<sup>26</sup> This section and the data presented in it were taken from the document submitted to the reporters by the Secretariat of the Monaco Mayor's Office entitled “Memorandum. Statistics and structure of the Monaco municipal budget”.

**Table 6. The Municipality's own resources**

	2013	2014	2015
011112 – PRIVATE OCCUPATION of PUBLIC HIGHWAYS	2,190,607	2,167,696	2,170,110
013334 – HOME-HELP SERVICES	2,066,972	2,140,454	2,305,114
013335 – PRE-SCHOOL SERVICES	1,472,777	1,615,050	1,843,100
011115 – PARKING FEES	1,339,318	1,256,341	1,289,067
013333 – ADMISSIONS & ACTIVITY FEES	1,307,469	1,205,655	1,306,699
011116 – BILLPOSTING CHARGES	1,061,680	1,135,024	1,349,265
011111 – REVENUE FROM BUILDINGS	881,768	946,271	1,034,209
014441 – REPAYMENT OF CONTRIBUTIONS	771,905	688,759	584,352
011113 – OCCUPATION OF PUBLIC PROPERTY	447,639	459,949	524,347
011114 – CONCESSIONS	475,264	410,764	468,115
012221 – BANK INTEREST	271,750	308,209	331,891
014443 – VAT	293,545	283,547	274,656
015551 – MISC. RECEIPTS	283,367	172,313	209,699
014446 – RESTAURANT VOUCHERS	151,725	158,777	177,317
013337 – REGISTRATION FEES	130,964	124,417	124,529
013336 – ROOM RENTAL	77,185	94,491	94,065
013339 – MUNICIPAL SHOWS	82,801	93,675	71,403
013331 – OFFICIAL DOC. FEES	43,005	43,050	43,675
011117 – MISC. FEES	45,037	57,102	18,601
013332 – EQUIPMENT RENTAL	15,731	28,847	30,610
013338 – PARTNERSHIPS	12,000	18,000	12,000
014445 – PHOTOCOPIES & PRINTING	276	390	201
014442 – TEL. BILL REPAYMENTS	-	-	192
014444 – PROCEEDS – CULTURAL EVENTS	-	-	-
SECTION I – MUNICIPAL REVENUE	13,422,783	13,408,782	14,263,215

Source: Monaco Mayor's office, 2017

104. The grant for facilities and activities carried out on behalf of the state funds the entirety of section II of the budget, which contains expenditure incurred on the Government's behalf. The expediency and the legality of expenditure is therefore under the direct supervision of the state services as the Municipal Council merely endorses the amount communicated by the Minister of State when voting on the initial budget. This section varies from one year to the next but in 2015 it made up a little less than 10% of real total expenditure. Funds not spent on this section are returned to the State at the end of the financial year.

105. Section I of the budget, which accounts for 90% of expenditure, is implemented freely as the Municipal Council has complete discretion over its budgetary choices, the only restrictions being that it must present a balanced budget and it cannot take out loans. The Council therefore endorses the fixed operating grant and identifies options for other sources of funding to achieve this balance. The fixed operating grant remains permanently in the Municipality's hands and any outstanding balance is paid into a municipal fund.

**Table 7. Funding for municipal expenditure**

. Fixed Operating Grant	ESTABLISHED USING AUTOMATIC RULE	} SECTION I EXPENDITURE – DISCRETION OF MUNICIPALITY
. Municipal revenue		
. Municipal Fund	FUNDING UNDER MUNICIPAL CONTROL	
. Donations & legacies		
. Grant for facilities and activities on the state’s behalf FUNDING NEGOTIATED IN JUNE - DECIDED ON BY GOVT.		} SECTION II EXPENDITURE – ON GOVT.’S BEHALF

Source: Monaco Mayor’s office, 2017

106. The Monaco Mayor’s office emphasised, in a document given to the rapporteurs during their visit,<sup>27</sup> that the methods used by the Government to calculate the fixed operating grant derive from an interpretation of the law, as the law sets out the principle but not the *modus operandi*. This was clarified some years ago by the member of the Mayor’s office responsible for the National Audit Board during its annual audit. It grows automatically as it is indexed on the expenditure of Sections III and IV (on functioning and staff) of the state budget.

107. The calculation is complex, but it can be summed up in simple terms as follows:

- apply to the grant awarded for the previous year (N-1) a growth rate based on an initial state budget for Sections 3 and 4 for the current year (N), which will never be made public;
- add the upwards or downwards adjustment = the difference between what was granted as N-2 and the actual amounts;
- add the variation in the perimeter of the Municipality’s duties, following the criteria prescribed by law.

108. Provision is made by two separate laws for three possible scenarios in which the fixed operating budget may be adjusted other than through indexation: 1. the transfer of duties;<sup>28</sup> 2. budgetary imbalance;<sup>29</sup> 3. a reduction in or elimination of own resources or an increase in the Municipality’s expenditure resulting from a decision by the state.<sup>30</sup>

109. As to the other grant, this is the result of a negotiation in which the Municipality’s needs are partly assessed, solely on the basis of major public works schemes for the benefit of the Municipality, state duties (census, elections, national day) and indexation scenarios for subsidies, proposed by the Mayor’s office.

110. In conclusion, the Mayor’s office made the following comments: “The balance between the Municipality’s tasks and obligatory functions and its financial resources is still fragile because it was established when calculating the very first allocation in 2007, and no real system for its reassessment was provided for in the long term. The approach adopted in 2007 was to decide on an overall sum enabling the Municipality to cover the expenditure incurred by its activities at that time, then to revalue it at the same rhythm as the state’s expenditure on operations and staff. The law also makes provision

27 Monaco Mayor’s Office Secretariat, “Memorandum. Statistics and structure of the Monaco municipal budget”, 2017, p. 4.  
 28 Extract from Law No. 841 of 01/03/1968 on budget laws, Article 7: “When the fixed grant is calculated, account shall be taken of any transfer of state or municipal duties which may result in an increase or a decrease in the sum required. The costs corresponding to the performance of transferred duties shall be assessed prior to the transfer”.  
 29 Extract from Law No. 841 of 01/03/1968 on budget laws, Article 7: “If the balance of the municipal budget is upset by an exceptional external event, the Mayor may ask the Minister of State to reassess the budgetary allocation”.  
 30 Extract from Law No. 959 of 24/07/1974 on the organisation of the Municipality: “Any reduction or elimination of the Municipality’s own resources or increase in its expenditure resulting from a decision by the state shall give rise to financial compensation by the state”.

for the necessary adjustment mechanisms to take account of changes in duties and transfers of powers. However, the imprecision of the law on the method of calculation, the state's lack of transparency when communicating the bases for the calculation and the annual rhythm, meaning that the figures are communicated only three months before the beginning of each financial year, limit the Council's overview and restrict it in its decision-making with regard to the expenditure on the initial budget. Amended budgets, which are not limited in number, do, however, make it possible to correct initial assumptions".<sup>31</sup>

111. Another problematic aspect is that of the notion of the perimeters of a duty. According to a report by the National Audit Board,<sup>32</sup> there is a lasting difference of opinion on this between the state and the Municipality. One of the duties assigned to the Municipality by the law is "social welfare and recreational activities, particularly those intended for pre-school children or to help elderly people remain in their own homes, and senior citizens' activities". The question is whether the expenditure incurred by the opening of a crèche should give rise to compensation or a change in the perimeter of a duty should not in fact give entitlement to compensation as the law provided for a financial assessment prior to the transfer of the duty and this transfer has taken place. In practice, when the perimeter of a municipal duty changes, a negotiation is opened on the amount of the grant.

112. Notwithstanding these problems, during the visit several of the people we spoke to including the Mayor said that at the moment, the Municipality's grant is entirely adequate and it is able to retain the outstanding balance. In the view of municipal representatives, however, the lack of transparency and foreseeability calls for clearer, more detailed rules on the financial allocation.<sup>33</sup>

### **3.4. Status of the capital city**

113. In view of its specific institutional and geographical characteristics, the rapporteurs consider that Recommendation 219 (2007) on the status of capital cities is not applicable to Monaco.

## **4. ARTICLE-BY-ARTICLE ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY IN THE LIGHT OF THE CHARTER**

### **4.1. Article 2: Foundation of local self-government**

#### **Article 2 – Constitutional and legal foundation for local self-government**

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

114. Despite Monaco's small geographical size, local government is a long-established tradition here and the Municipality's history is tied up with that of the Principality. Representative democracy began in the Principality in 1910 with the election by universal suffrage of the Municipal Council. For this reason, a remarkable amount of space had already been granted to the Municipality in the 1911 Constitution. This tradition continued with the 1962 Constitution: Chapter IX is given over entirely to the Municipality and the first article states that "the territory of the Principality forms a single municipality" (Article 78).

115. However, the Constitution makes no explicit reference to local self-government. It was Article 1 of Law No. 959/1974 on municipal organisation, as amended by Law No. 1.316 of 29 June 2006, which introduced the principle of free administration: "The territory of the Principality shall form a single municipality endowed with legal personality. It shall administer itself freely, via an elected council, in accordance with procedures prescribed by the Constitution and the law".

<sup>31</sup> Monaco Mayor's Office Secretariat, "Memorandum. Statistics and structure of the Monaco municipal budget", 2017, p. 6.

<sup>32</sup> National Audit Board, "Report to His Serene Highness Prince Albert II of Monaco on the accounts and management of the Municipality of Monaco for the financial years 2013 to 2015", 22 March 2017, p. 14.

<sup>33</sup> In the same vein, we can cite the National Audit Board's report on the accounts and management of the Municipality of Monaco, p. 15, which states that "when preparing its initial budgets, the Municipality should receive from the state services a breakdown of the various budget components mentioned by the law or obtained by negotiation (initial fixed grant, adjustment, compensation for temporary loss of resources or a lasting change to the perimeter)".

116. It should also be considered that, in addition to being formally enshrined in the texts, the principle of local self-government is embodied in other provisions, such as those on the powers of the elected Municipal Council, supervision and local finances.

117. Bearing in mind the foregoing, the rapporteurs conclude that Monaco complies with Article 2 of the Charter.

#### **4.2. Article 3: Concept of local self-government**

##### **Article 3 – Concept of local self-government**

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

118. Monaco has not ratified Article 3, paragraph 1, of the Charter.

119. When Monaco ratified the Charter, it adopted an interpretative declaration concerning Article 3, in which it stated as follows: “The Princely Government recalls that the territory of the Principality, with a surface area of approximately 2 km<sup>2</sup>, constitutes only one municipality which is an autonomous institution established by the Constitution, endowed with legal personality and governed by public law. Therefore, the concept of local self-government as stipulated in Article 3 of this Charter applies there, in Monaco, in light of the specific institutional and geographical characteristics of the country, within the framework defined by Chapter IX of the Constitution and by Law No. 959 of 24 July 1974”.

120. The main question posed by paragraph 1 of Article 3 is whether local authorities regulate and manage “a substantial share of public affairs”, which cannot be said for the Municipality of Monaco, whose budget only represents 5% of the Monegasque state budget.

121. Paragraph 2 of Article 3 refers to the presence of assemblies comprising members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them.

122. The Municipality of Monaco is run by a Municipal Council of 15 members, elected for four years through direct universal suffrage. This body appoints a Mayor and his/her deputies from among its members (Articles 79 and 80 of the Constitution).

123. The rules on the election of the Municipal Council are contained in Law No. 839/1968, according to which “elections to the Municipal Council shall be by a two-round, plurinominal majority ballot with the possibility of vote-splitting but no preferential voting” (Article 20.5). “A person may not be elected municipal councillor in the first round of voting unless they obtain: (1) an absolute majority of the votes cast; (2) a number of votes equal to a quarter of registered voters. In the second round, a relative majority shall be sufficient, regardless of the number of voters. In the event of an equal number of votes, the oldest candidate shall be elected” (Article 21).

124. These elections clearly correspond to the expectation of paragraph 2 of Article 3, as also shown in satisfactory voter turnout: 54.68% in 2011 and 60.61% in 2015. However, it must be highlighted that the chosen electoral system may lead to all the seats being allocated to one list, which happened in the 2011 and 2015 elections. This weakened the representative nature of the Municipal Council and the political interplay in its activities.

125. The Mayor and the deputies, comprising the municipal executive, are elected by municipal councillors for the same duration as the Municipal Council (Article 7, Law No. 959/1974). Once elected, the Mayor and the deputies may only be removed from office by a ministerial order, after consultation with the Council of State (Article 36, Law No. 959/1974). The Municipal Council is not authorised to hold a vote of no confidence in the Mayor or his/her deputies.

126. The fact that the Municipal Council is not entitled to hold a vote of no confidence in the Mayor (elected by the Council), or to remove him/her from office by any means, makes it difficult to believe

that the executive body is responsible to the assembly, as required by paragraph 2 of Article 3. The country's specific institutional and geographical characteristics do not seem to justify this form of government, which in this respect, resembles the form of government applied in the Principality, except that at municipal level, one of the aspects of the state political system is missing, namely the fact that executive power is exercised by "the high authority of the Prince" (Article 3 of the Constitution). The Princely Government pointed out during the consultation procedure that "a vote of no confidence is an unknown concept for the Monegasque law and institutions and cannot therefore be applied at the local level". The rapporteurs believe however, that there is no specific characteristic preventing Monaco from steering the Municipal executive body towards the introduction of a vote of no confidence or other means to enforce political responsibility.

127. Consequently, the rapporteurs conclude that Monaco does not comply with Article 3.2 of the Charter.

#### **4.3. Article 4: Scope of local self-government**

##### **Article 4 – Scope of local self-government**

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- 4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- 5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
- 6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

128. The state's small size and the existence of only one municipality whose area is the same as the state leads to a distribution of powers between the state and the municipality that is difficult to compare to the distribution in most other European countries.

129. Consequently, the rapporteurs consider it logical that Monaco has not ratified paragraph 3 of Article 4 on the principle of subsidiarity.

130. No provision is made for the Municipality's powers in the Constitution, which merely states that "the Municipal Council shall deliberate in public on the Municipality's affairs" (Article 86).

131. Provision is made for them in law, particularly in Article 25 of Law No. 959/1974 as powers of the Municipal Council. Law No. 1316/2006 extended and clarified these powers, as the persons we met pointed out. They cover many areas, including social welfare and recreational activities, particularly for pre-school children or to help elderly people remain in their own homes and activities for senior citizens, municipal events and activities, cultural and artistic activities in municipal buildings, etc. These powers can be regarded as full and comprehensive.

132. In addition, the Municipal Council may express opinions concerning all matters of municipal interest. It is not entitled to publish statements or addresses or express political views (Article 25 of Law No. 959/1974).

133. However, there are still powers such as public transport that remain under the Monegasque Government's control, although in most countries they are exercised by local authorities. Monaco's unusual situation should clearly be taken into consideration in this case, as it is transport into France that is at issue, so it is easy to understand that the state would have a say in this regard. The state is responsible for other areas traditionally handled by local authorities, such as town planning, although the Municipality must be consulted. Social assistance is divided between the state and the Municipality (crèches, home help for the elderly, etc.). Our discussion partners emphasised that the organisation of these services is very complex and confusing, but it generally works because the state and the Municipality maintain a good relationship.

134. With regard to the consultation of local authorities, Law No. 959/1974 requires the Minister of State to consult the Municipal Council in the areas of town and spatial planning (Article 26), on changes to their remit and on employment regulations for municipal officials (Articles 26.1 and 53).

135. The same articles contain the rules on the consultation procedure, including the consequences of an adverse opinion by the Municipality. Everyone we met agreed that informal consultations take place regularly between the Mayor and the Minister of State and, when there is a real risk of a stalemate, also with the Prince.

136. Taking into account Monaco's unusual situation and its legislative framework and practices, the rapporteurs conclude that Monaco complies with Article 4 of the Charter.

#### **4.4. Article 5: Protection of local authority boundaries**

##### **Article 5 – Protection of local authority boundaries**

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

137. Monaco has only one municipality, which covers the entire 2 sq. km surface area of the state, as established by the Constitution (Article 78). Due to its unusual situation, the rapporteurs consider that Article 5 does not apply in Monaco's case.

#### **4.5. Article 6: Appropriate administrative structures and resources**

##### **Article 6 – Appropriate administrative structures and resources for the tasks of local authorities**

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

138. Article 6, paragraph 1, of the Charter provides that local authorities should be able to determine themselves what internal administrative structures they wish to be endowed with. The Municipality of Monaco enjoys a certain degree of autonomy in drafting its internal organisation chart, even though it should be remembered that it has no statutory power and that it is the law that gives the detailed rules on the organisation of the municipality.

139. Under Article 17 of Law No. 959/1974 the Municipal Council may set up its own standing committees and special committees for studying specific issues.

140. Under Article 25 of Law No. 959/1974, the Municipal Council's remit includes: "5) the establishment, management or concession and organisation of municipal services and their transfer or withdrawal; 6) the establishment or amendment of the organisation chart of municipal services, which shall determine, by category of staff, how staff will be assigned, having regard where appropriate to the provisions in the second paragraph of Article 53".

141. Chapter IV of Law No. 959/1974 contains provisions on municipal officials and staff.

142. Under Article 52, the status of municipal officials and staff is governed by public law provisions. Unless the laws and regulations state that the appointment for a job must be made through a sovereign order, the Mayor appoints and dismisses municipal officials and staff. If necessary, the Mayor may fill vacancies that have temporarily arisen in these jobs for limited periods, provided that he/she immediately notifies the Minister of State of these appointments. Municipal officials and staff work under the Mayor's authority and are managed by the Secretary General of the Mayor's office.

143. Article 53 of this law provides that "it shall be compulsory to consult the Municipal Council on the regulations governing municipal officials and the applicable provisions, particularly with regard to the hiring, discipline, dismissal or retirement of municipal staff, and on the hierarchical classification of the grades or jobs of these officials or staff and the establishment of salary scales corresponding to these



grades or jobs, under the conditions set out in Article 26.1. The Municipal Council shall present the Minister of State with its proposals on the maximum number of permanent jobs by job category to be allocated by sovereign order to each of the Municipality's departments".

144. Law No. 1096 of 7 August 1986 on the regulations governing municipal officials provides for a municipal employment committee, which is chaired by the Mayor and comprises municipal councillors and union representatives of municipal officials. The Mayor deals with all general questions relating to the organisation of municipal services (Article 25).

145. Under the same law, officials are appointed by municipal order, apart from the Secretary General of the Mayor's office, the municipal tax collector, the Secretary of the Mayor's office and the heads of municipal departments, who are appointed by sovereign order. The Secretary General is appointed on the Mayor's proposal while other officials are appointed after consulting the Mayor (Article 19).

146. With regard to Article 6, paragraph 2, of the Charter on the recruitment of staff, it should be noted that, under Law No. 1096/1986, officials are recruited through competitions. The general organisation of competitions is decided through a sovereign order issued after consultation with the municipal employment committee (Article 20). The composition of the competition panel is established by municipal order (Article 21).

147. According to recent reports sent to the rapporteurs, the Municipality had 673 officials in 2016, representing 14.9% of the Monegasque public sector.<sup>34</sup> No mention was made during the visit of any problems for the Municipality in recruiting high-quality staff.

**Table 8. Municipal officials**

On 31 December	2012	2013	2014	2015
Incumbent staff	134	139	146	144
Non-incumbent staff	507	517	548	530
<b>Total</b>	<b>641</b>	<b>656</b>	<b>694</b>	<b>674</b>

Source: Monaco Mayor's office, 2017

148. Bearing in mind the foregoing, the rapporteurs conclude that Monaco complies with Article 6.

#### **4.6. Article 7: Conditions under which responsibilities at local level are exercised**

##### **Article 7 – Conditions under which responsibilities at local level are exercised**

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- 3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

149. Monaco has not ratified Article 7.2 on financial compensation for local elected representatives. All elected representatives keep their original job and no elected representatives perform their public duties full time. Elected representatives receive emoluments but they do not make pension or social contributions. In the rapporteurs' view, this system does not encourage unemployed persons to get involved in local politics.

150. With regard to Article 7, paragraph 1, of the Charter, which provides that the conditions of office of local elected representatives must provide for free exercise of their functions, the rapporteurs have not been alerted to any objections concerning potential compatibility problems between Monegasque regulations and practices and this paragraph. Once elected, councillors cannot be dismissed. The Municipal Council may be dissolved by a reasoned ministerial order, after consultation with the Council of State (Article 83 of the Constitution and Article 24 of Law No. 959/1974).

<sup>34</sup> Monaco in figures 2017

151. With regard to Article 7, paragraph 3, of the Charter, which provides that functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles, Articles 16 and 17 of Law No. 839/1986 set out the grounds for ineligibility and incompatibility of Municipal Council members. Voters over the age of 21 on voting day who have had Monegasque nationality for at least five years are eligible for the Municipal Council. Persons whose situations are incompatible with the holding of local elective office are those who have a job or manage a department that is under the supervision of, or dependent on, the municipal authority, and the functions listed in Articles 14 and 15 of the same law (Crown counsellors; members of the Supreme Court or the Council of State; voters who, through another nationality, hold public or elected office in another country; members of the royal household, members of the Government Council, diplomatic staff, members of the judiciary; members of the National Audit Board; persons working directly with the Minister of State or a member of the Government Council; General Commissioners; the Secretary General of the Minister of State; the Controller of Public Spending; the General Inspector of Administration; the Territorial Administrator; the Director of Public Works; the Director of the Budget and Treasury; the Director of Labour and Social Affairs; the Secretary General of the Directorate of External Relations; the Treasurer or General Treasurer of Finance; the Head of Public Security and police commissioners; the Secretary General of the Directorate of Judicial Services; the Secretary General of the National Council; the Secretary General of the Mayor's office; officials from state legislative departments; and officers in the Law Enforcement, Public Security and Municipal Police departments).

152. Under Article 18 of the same law, "all national or municipal councillors finding, when elected, that their situation is incompatible shall, in the 30 days after the election or, if their election is challenged, after a final court decision, either resign from the functions that are incompatible with public office, or be placed in the position provided for by their conditions of service if performing a public service job; failing this, they shall be automatically considered to have resigned from office. All national or municipal councillors who, for a reason occurring after their election, find themselves in a situation of ineligibility or incompatibility or deprived of their right to vote, shall be required either to resign from their elected office or resign from the function causing ineligibility or incompatibility within eight days; failing this, they shall be automatically considered to have resigned from office".

153. Bearing in mind the foregoing, the rapporteurs conclude that Monaco complies with Article 7.

#### **4.7. Article 8: Administrative supervision of local authorities' activities**

##### **Article 8 – Administrative supervision of local authorities' activities**

- 1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute
- 2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
- 3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

154. Monaco has not ratified Article 8, paragraph 3, of the Charter on ensuring the proportionality of administrative supervision.

155. Article 8, paragraph 1, according to which any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute, poses no problem and Monaco must be considered to comply fully with this article.

156. Although no provision for the administrative supervision of municipal measures is made in the Constitution, Law No. 959/1974 has established regulations on the matter. None of the persons we met mentioned supervision that is not provided for by law.

157. Article 8, paragraph 2, provides that any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law. Monaco must also be considered to be in conformity with this provision, as Law No. 959/1974 was significantly amended by

Law No. 1316/2006 to eliminate full state supervision and restrict supervision to a review of the legality of measures.

158. Article 28 contains rules on the supervision of Municipal Council activities: “The deliberations of the Municipal Council shall be subject to a review of their legality by the Minister of State and shall be enforceable 15 days after the date on which they are communicated to the Minister of State, unless a reasoned objection is made in the form of a ministerial order”.

159. Orders of a regulatory nature adopted by the Mayor “shall be published and enforced ten days after the official copy has been communicated to the Minister of State, unless the Minister of State gives special authorisation when requested by the Mayor for urgent cases. After ten days, it shall be legal to publish and enforce these orders unless a reasoned objection is made in the form of a ministerial order if the Minister of State considers them unlawful” (Article 47 of Law No. 959/1974).

160. Taking into account the legislative framework and practice, the rapporteurs conclude that Monaco complies with Article 8 and encourage the Monegasque authorities to consider ratifying paragraph 3 of Article 8, with which it already complies fully in practice.

#### **4.8. Article 9: Financial resources**

##### **Article 9 – Financial resources of local authorities**

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
- 5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
- 6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
- 7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
- 8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

161. The question of compliance with Article 9 of the Charter on financial resources appears complicated in the case of Monaco, particularly as it has not ratified paragraphs 1-4 and 8. Here it is important to check whether Monaco does not already comply with these paragraphs in practice.

162. The right of local authorities to have adequate financial resources of their own, stated in paragraph 1, does not seem compatible with the special tax arrangements in the Principality. A similar comment applies to paragraph 3, according to which a part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate, and for paragraph 4, which provides for a diversification of resources to enable them to keep pace with the evolution of costs.

163. Nor may paragraph 8 be ratified, because Article 59 of Law No. 959/1974 explicitly rules out the possibility of the Municipality taking out loans.

164. However, paragraph 2, according to which local authorities' financial resources must be commensurate with the responsibilities provided for by the constitution and the law, does not pose specific problems for Monaco, because financial resources seem to be commensurate with the responsibilities. During the exchange of views with the rapporteurs, the Minister of the Interior said he was ready to re-examine this issue.

165. One of the paragraphs ratified, specifically paragraph 5 of Article 9 on financial equalisation procedures to protect financially weaker local authorities, is not applicable to Monaco, owing to the existence of only one municipality.

166. The other two paragraphs ratified, 6 and 7, both pose some problems, which could partly be overcome on the basis of Monaco's unusual situation.

167. Paragraph 6 provides that local authorities must be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them. Monaco cannot be considered to comply with this provision because of the procedure to determine the fixed grant.

168. Article 7 of Law No. 841/1968 provides that "the fixed operating grant shall be calculated by applying the coefficient for the projected change in expenditure given in sections 3 and 4 of the initial state budget for the following year to the grant for the current year. If, at the end of the following year, the actual change in expenditure incurred differs from the original estimation of the percentage, the fixed grant shall be adjusted accordingly.

169. When the fixed grant is calculated, all transfers of state or municipal duties which may result in an increase or decrease in the sum required shall be taken into account. The costs corresponding to the performance of transferred duties shall be assessed prior to the transfer.

170. If the balance of the municipal budget is upset by an exceptional external event, the Mayor may ask the Minister of State to reassess the budgetary allocation".

171. This procedure has been criticised by the Municipality and the National Audit Board, because the state budget is adopted at nearly the same time as that of the Municipality, so that the coefficient for the projected change in the funds and functioning of the state may vary until adoption. For the municipal budget to be prepared in the appropriate conditions, it is essential for the various budgetary elements on which the calculation is based, to be transmitted to the Municipality in a timely manner. In contrast, the Minister of the Interior believes that the provision does not pose any particular problem, the system generally works very well and adjustments are always possible, with the Municipality's agreement.

172. Although they recognise the complexity and the highly technical nature of the procedure, the rapporteurs consider that the Municipality should be consulted in an appropriate, timely and transparent manner on the way in which the fixed grant is allocated, as provided for by paragraph 6 of Article 9.

173. Paragraph 7 provides that as far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. In this connection, it must be reiterated that expenditure is divided into two sections (Article 56, Law No. 959/1974). Section I comprises ordinary expenditure while section II is made up of expenditure on facilities and activities carried out on behalf of the state. The latter accounts for 10% of the municipal budget. Projected expenditure in section II of the municipal budget is discussed by the Mayor and the Minister of State every year before 1 July so as to determine the amount of the grant for facilities and activities on behalf of the state (Article 58, Law No. 959/1974). Bearing in mind Monaco's unusual situation and that this is only a small part of the municipal budget, the rapporteurs consider that Monaco complies with paragraph 7 of Article 9.

174. The rapporteurs conclude that Monaco does not fully comply with Article 9, paragraph 6. They also invite the Monegasque authorities to ratify paragraph 2 of Article 9, since it complies fully with this provision.

#### **4.9. Article 10: Local authorities' right to associate**

##### **Article 10 – Local authorities' right to associate**

- 1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
- 2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
- 3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

175. Firstly, it should be noted that Monaco has not ratified paragraph 2 of Article 10 of the Charter on the entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities. While membership of a national association of local authorities is not applicable in Monaco because there is only one municipality, membership of an international association of local authorities still applies.

176. The Municipality of Monaco is a member of the Euro-Mediterranean Regional and Local Assembly (ARLEM), which is the assembly representing local and regional elected representatives from the European Union and its Mediterranean partners. The Mayor of Monaco is a member of the International Association of French-speaking Mayors (AIMF).

177. In the rapporteurs' opinion, paragraph 2 of Article 10 of the Charter could easily be ratified by Monaco and they encourage the Monegasque authorities to do so.

178. However, paragraph 1 of Article 10, according to which local authorities are entitled, in exercising their powers, to co-operate and to form consortia with other local authorities in order to carry out tasks of common interest, is not applicable to Monaco, as there is only one municipality.

179. With regard to paragraph 3 of Article 10, according to which local authorities are entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other states, the rapporteurs highlight that Article 25, last paragraph, of Law No. 959/1974, as amended by Law No. 1316 of 2006, provides that "the Municipality of Monaco, after deliberation by the Municipal Council, may contact and enter into agreements with foreign local authorities and their associations within the limits of its powers and in compliance with the Principality's international commitments, on condition that it keeps the Minister of State informed". The government authorisation provided for in the previous text is no longer required. As a result, the Municipality has fostered intensive cross-border co-operation.

180. The rapporteurs conclude that Monaco complies with Article 10 of the Charter and encourage the Monegasque authorities to ratify paragraph 2, with which it also complies.

#### **4.10. Article 11: Legal protection of local self-government**

##### **Article 11 – Legal protection of local self-government**

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

181. Regarding the protection of local self-government, as a legal person the Municipality may contest any act before the courts.

182. Nevertheless, there is a limitation with regard to laws: the task of monitoring the constitutionality of the laws in Monaco is entrusted to the Supreme Court, which is one of the oldest constitutional bodies in the world. Under Article 90-A of the Constitution, however, the review of constitutionality is limited to monitoring compliance with Chapter III of the Constitution, on freedoms and rights.

183. Consequently, the Municipality, in its capacity as a legal person, may appeal to the Supreme Court to contest a law, but only if it infringes freedoms and rights granted by Chapter III of the Constitution, for example with regard to the Municipality's right to property. The local authority has no judicial remedy against a law to secure free exercise of municipal powers and respect for the principles of local self-government enshrined in Chapter IX of the Constitution and the Charter.

184. Of course, when acting as an administrative court, the Supreme Court has jurisdiction to assess all the Municipality's appeals against the state's regulatory or individual decisions. The full Constitution and international treaties form the legal basis in this respect. However, a distinction must be made between international treaties whose standards are directly applicable, in that they establish rights and obligations for natural or legal persons, and those which establish laws and obligations only with regard to the state.

185. As to relations between the state and the Municipality, according to the report which the vice-president of the Supreme Court presented to the rapporteurs,<sup>35</sup> the Municipality has only ever lodged four applications before the Supreme Court concerning alleged abuses of authority by the state.

186. The limited number of applications notwithstanding, it is still possible for the Municipality to appeal against the state's administrative decisions in several fields, examples being the dissolution of the Municipal Council or measures to suspend or dismiss the Mayor or his/her deputies; decisions made by the government concerning the acts of the Municipal Council or Mayor; government decisions made without consulting the Municipal Council when this is required by law; and government decisions in a field legally reserved for the Municipal Council or Mayor.

187. The rapporteurs conclude that the Municipality of Monaco does not have a direct or indirect right of recourse against laws in order to secure free exercise of their municipal powers and respect for such principles of local self-government as are enshrined in the Constitution and in the Charter. The delegation notes that, although the implementation of Article 11 of the Charter is incomplete in law, the jurisdictional protection of local self-government exists *de facto* in Monaco: indeed, the Municipality's recourse to the Supreme Court against decisions to apply laws which affect municipal interests works well.

188. The rapporteurs therefore conclude that there is partial compliance with Article 11 of the Charter.

#### **4.11. The signature of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).**

189. Concerning the possibility of Monaco signing the Additional Protocol to the European Charter of Local Self-Government, it seems that the main concern is linked to paragraph 4.1 of Article 1, which, according to the persons we met, entails the right to vote and stand as a candidate in local elections for persons residing on the territory of the local authority concerned. This provision could apply to non-Monegasque citizens.

190. This concern is perfectly reasonable in a state such as Monaco, where the percentage of non-citizen residents is very high (77.5% compared to 22.5% Monegasques), and which wants to preserve its traditions and culture.

191. Nevertheless, the rapporteurs would like to highlight the text of paragraph 4.1 of Article 1: "Each Party shall recognise by law the right of *nationals* of the party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside".

192. The Explanatory Report to the Additional Protocol<sup>36</sup> expressly states that "the purpose of the current paragraph is to make clear that the Additional Protocol does not oppose the granting of electoral rights by the Party to other persons, such as nationals not resident in the local authority or non-nationals. If the Party chooses to grant such a right, this provision requires it to do so by law. *This paragraph does thus not provide for an individual electoral right of non-nationals of the Party.* Under Council of Europe standards, this matter is the subject of Part C of the Convention on the Participation of Foreigners in Public Life at Local Level."

193. It should be added that paragraph 4.2 of Article 1, which refers to foreign residents, leaves a large margin of discretion to states on the right to participate: "The law shall also recognise the right of other persons *to so participate where the party, in accordance with its own constitutional order, so decides or where this accords with the party's international legal obligations*" (emphasis added).

194. The rapporteurs emphasise that there is a high level of participation by foreign residents in Monegasque public life; they learned of several institutions which contribute to this, such as the CREM (Club for Foreign Residents in Monaco), founded in 2010, and the Economic and Social Council, an advisory body that brings together economic and social stakeholders, in which foreigners are

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35 S.C. 7 Dec. 1976: dispute of a decision by the Minister of State disregarding the adverse opinion of the Municipal Council on a construction project (dismissed: the law only provides for an advisory opinion); S.C. 12 March 2003: dispute of a government decision relating to the grading of municipal staff members (decision set aside); S.C. 11 June 2003: dispute of a government decision relating to the grading of municipal staff members (decision set aside); S.C. 11 June 2003: dispute of a government decision relating to the grading of a municipal staff member (inadmissible).

36 <http://www.conventions.coe.int/Treaty/EN/Reports/Html/207.htm>

represented.<sup>37</sup> Non-citizen residents are also actively involved in several associations, particularly those in the various city neighbourhoods.

195. Consequently, the rapporteurs consider that the concerns raised with them during their visit do not seem founded and, for this reason, they encourage Monaco to sign the Additional Protocol.

## 5. CONCLUSIONS

196. The Principality of Monaco's situation is undoubtedly an unusual one. Its surface area is 2 sq. km, which makes it the second smallest state in the world, after the Vatican City. It has 37 308 residents, including 8378 Monegasques, who are therefore very much in a minority in their own country. The political system, although modern, is that of a Principality, whose origins date back to the Middle Ages. There are close ties between the royal family and the Monegasques. Monaco's monarchy has always been founded on the union between the Prince and the national community.

197. Monaco only has one municipality, whose size is the same as that of the state. As mentioned above, in view of its surface area and population, Monaco could be a "city-state", in other words an entity that merges state and municipal functions (as with some German *Länder*, Swiss cantons and subjects of the Russian Federation). Yet, despite this, a distinction is made between state and municipality.

198. Despite Monaco's small geographical size, local government is a long-established tradition here and the Municipality's history is tied up with that of the Principality. Representative democracy began in the Principality in 1910 with the election by universal suffrage of the Municipal Council. For this reason, a remarkable amount of space had already been granted to the Municipality in the 1911 Constitution. This tradition continued with the 1962 Constitution: Chapter IX is given over entirely to the Municipality and the first article states that "the territory of the Principality forms a single municipality" (Article 78).

199. Important reforms, which led to a modernisation of the institutions, including municipal institutions, took place at the beginning of the 2000s. In the constitutional revision in 2002, only two amendments were made to Chapter IX of the Constitution, on the Municipality, one to Article 79 concerning the voting age (which was reduced from 21 to 18) and the other to Article 87, on the municipal budget, which was made less dependent on the National Council through the establishment of a budgetary allocation. Significant amendments were made to the laws on the Municipality in 2006, when Law No. 1316 of 29 June 2006 amended Law No. 959/1974 of 24 July 1974 on municipal organisation and Law No. 841 of 1 March 1968 on budget laws.

200. Monaco joined the Council of Europe on 5 October 2004. It signed and ratified the European Charter of Local Self-Government on 10 January 2013 and it came into force in respect of Monaco on 1 May 2013. Pursuant to Article 12, paragraph 2 of the Charter, Monaco declared itself bound by Articles 2; 3, paragraph 2; 4, paragraphs 1, 2, 4, 5, and 6; 5; 6, paragraphs 1 and 2; 7, paragraphs 1 and 3; 8, paragraphs 1 and 2; 9, paragraphs 5, 6 and 7; 10, paragraphs 1 and 3; and 11 of the Charter. Monaco adopted an interpretative declaration concerning Article 3, in which it stated as follows: "The Princely Government recalls that the territory of the Principality, with a surface area of approximately 2 km<sup>2</sup>, constitutes only one municipality which is an autonomous institution established by the Constitution, endowed with legal personality and governed by public law. Therefore, the concept of local self-government as stipulated in Article 3 of this Charter applies there, in Monaco, in light of the specific institutional and geographical characteristics of the country, within the framework defined by Chapter IX of the Constitution and by law No. 959 of 24 July 1974."

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<sup>37</sup> Article 3 of Order No. 3136 of 22 December 1945 repealing the Order of 19 June 1920 which had established an advisory chamber of commerce and establishing an Economic and Social Council provides as follows: "the Economic and Social Council shall comprise thirty-six members divided into three subordinate bodies which shall be appointed for three years by sovereign order under the following conditions:

- 1) a government body comprising twelve members selected by the Government for their expertise;
- 2) an employees' body comprising twelve members, eight of whom shall be selected by Monaco's Trade Union Association and four by employee unions not affiliated with this organisation;
- 3) an employers' body comprising twelve members, eight of whom shall be selected by the Monaco Employers' Federation and four by employers' federations not affiliated with this organisation.

Members of the Economic and Social Council shall have worked in the Principality for over five years.

Persons residing outside of Monaco shall not make up more than a third of the members of the Economic and Social Council".

201. Bearing in mind Monaco's unusual situation, the rapporteurs take the view that there is a generally satisfactory level of local self-government in the country. The state's small size and the existence of only one municipality whose area is the same as the state leads to a distribution of powers between the state and the municipality that is difficult to compare to the distribution in most other European countries. The relations between the state and the Municipality are good, facilitated by the country's small size, the law provides for mechanisms to consult the Municipality in several fields, the Municipality receives an adequate grant and has suitable administrative structures and methods, and the review of activities is restricted to ensuring compliance with the law.

202. The rapporteurs note that among the non-ratified articles of the Charter, there are some which pose no problem and which could be ratified. These are: paragraph 3 of Article 8 on administrative supervision respecting proportionality; paragraph 2 of Article 9, according to which the financial resources of local authorities must be commensurate with the responsibilities provided for by the constitution and the law; paragraph 2 of Article 10 on the entitlement of local authorities to belong to an international organisation of local authorities, as there is no legal limitation in this respect and during the visit, the rapporteurs learned that the Municipality of Monaco was a member of several international associations. However, some aspects require particular attention.

203. With regard to Article 3.2 of the Charter, the Mayor and the deputies, who form the municipal executive body, are elected for the same duration as the members of the Municipal Council (Article 7, Law No. 959/1974). Once elected, they may only be dismissed by a ministerial order, after consultation with the Council of State (Article 36, Law No. 959/1974). The Municipal Council may not hold a vote of no confidence in the Mayor or his/her deputies. The fact that the Municipal Council is not entitled to hold a vote of no confidence in the Mayor or his/her deputies (elected by the Council) or to dismiss them makes it difficult to believe that the executive body is responsible to the assembly, as required by Article 3.2. The country's specific institutional and geographical characteristics do not seem to justify this form of government, which in this respect, resembles the form of government applied in the Principality, except that at municipal level, one of the aspects of the state political system is missing, namely the fact that executive power is exercised by "the high authority of the Prince" (Article 3 of the Constitution). In the rapporteurs' opinion, there is no specific characteristic preventing Monaco from steering the Municipal executive body towards the introduction of a vote of no confidence or other means to enforce political responsibility.

204. With regard to Article 9, paragraph 6, which provides that local authorities must be consulted, in an appropriate manner, on the way in which redistributed resources are allocated to them, the rapporteurs believe that Monaco cannot be considered to comply with this provision because of the procedure to determine the grant. This procedure has been criticised by the Municipality and the National Audit Board, because the state budget is adopted at nearly the same time as that of the Municipality, so that the coefficient for the projected change in the funds and functioning of the state may vary until adoption. For the municipal budget to be prepared in the appropriate conditions, it is essential for the various budgetary elements on which the calculation is based to be transmitted to the Municipality in a timely manner.

205. Concerning the legal protection of local self-government (Article 11), the rapporteurs' view is that the Municipality does not have a judicial remedy to contest a law for violating this principle. It is true that the Municipality, as a legal person, may contest any act before the courts. Nevertheless, there is a limitation with regard to laws: the task of monitoring the constitutionality of the laws in Monaco is entrusted to the Supreme Court, which is one of the oldest constitutional bodies in the world. Under Article 90-A of the Constitution, however, the review of constitutionality is limited to monitoring compliance with Chapter III of the Constitution, on freedoms and rights, and may not relate to compliance with Chapter IX of the Constitution, on the Municipality, or with the Charter. However, the recourse to the Supreme Court against acts of application of the laws works well which shows that, although the implementation of Article 11 of the Charter is incomplete in law, it does exist de facto in Monaco.

206. Regarding the possibility of Monaco signing the Additional Protocol to the European Charter of Local Self-Government, the Princely Government stated in its comments to the rapporteurs during the consultation procedure that it did not intend to commit itself to signing the Additional Protocol because, on the one hand, the participation of foreigners in Monaco was well developed and, on the other, due to the institutional and geographical specificities of the country. The rapporteurs believe, nevertheless, that in the light of the text of paragraph 4.1 and the Additional Protocol, the concerns raised by the authorities during the visit are not founded and that in addition, as stated by the Princely Government,



there is a high level of participation by foreign residents in Monegasque public life. Consequently, the rapporteurs warmly encourage Monaco to sign the Additional Protocol.

**APPENDIX – PROGRAMME OF THE MONITORING VISIT TO MONACO**

**Congress Monitoring Visit to Monaco  
(Principality of Monaco)**

**16 and 17 May 2017**

**Programme**

**Congress delegation:**

Rapporteurs:

Mr Michail ANGELOPOULOS

Rapporteur on local democracy  
Chamber of Local Authorities, EPP/CCE<sup>38</sup>  
Mayor of Samos Island (Greece)

Ms Marianne HOLLINGER

Rapporteur on local democracy  
Chamber of Local Authorities, ILDG<sup>39</sup>  
President of the Municipality of Aesch (Switzerland)

Congress secretariat:

Ms Stéphanie POIREL

Secretary to the Monitoring Committee

Expert:

Ms Tania GROPPi

Member of the Group of Independent Experts on the  
European Charter of Local Self-Government  
Italy

The working language during the meetings will be French.

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<sup>38</sup> EPP/CCE: European People's Party of the Congress  
<sup>39</sup> ILDG: Independent and Liberal Democrat Group of the Congress

**Tuesday, 16 May 2017**  
**Monaco**

- **Monaco's delegation to the Congress**  
**(Representatives of the Municipality of Monaco)**

**Mr Georges MARSAN**, Head of Delegation, Mayor of Monaco  
**Ms Marjorie CROVETTO-HARROCH**, Deputy Head of the Delegation, 2nd Deputy to the Mayor  
**Ms Françoise GAMERDINGER**, 3rd Deputy to the Mayor  
**Mr Jacques PASTOR**, 4th Deputy to the Mayor

- **Ministry of the Interior**

**Mr Patrice CELLARIO**, member of the Government Council – Minister of the Interior

**Wednesday, 17 May 2017**  
**Monaco**

- **National Council**

**Mr Jean-Charles ALLAVENA**, External Relations Committee, Chair of Monaco's Delegation to the Parliamentary Assembly of the Council of Europe  
**Ms Elodie KHENG**, Councillor in charge of International Financial Affairs  
**Ms Stéphanie CHOISIT**, Special Advisor for Social Affairs

- **Supreme Court**

**Mr Jean-Michel LEMOYNE DE FORGES**, Vice-President

- **National Audit Board**

**Mr Jean-Pierre GASTINEL**, Chair  
**Mr Julien VEGLIA**, Head of Division, in charge of the Secretariat

- **High Commissioner for the protection of rights, liberties and for mediation (Monaco Ombudsperson)**

**Ms Anne EASTWOOD**, High Commissioner for the protection of rights, liberties and for mediation