



**Opinion 250 (2004)<sup>1</sup>**

## **The Principality of Monaco's application for membership of the Council of Europe**

Parliamentary Assembly

1. The Principality of Monaco applied for membership of the Council of Europe on 15 October 1998. In its Resolution (98) 30 of 10 November 1998, the Committee of Ministers asked the Parliamentary Assembly to prepare an opinion on this application, in accordance with Statutory Resolution (51) 30.
2. The Bureau of the Assembly asked two eminent lawyers, Mr Pastor Ridruejo and Mr Röss, judges at the European Court of Human Rights, to assess the conformity of the legal structure in Monaco with Council of Europe fundamental principles. In the course of the examination of Monaco's application for membership, the Parliamentary Assembly has maintained ongoing dialogue with the Monégasque authorities, focusing in particular on the conclusions and recommendations put forward by the eminent lawyers.
3. The Assembly welcomes the major constitutional and legislative changes implemented by Monaco in response to the recommendations of the eminent lawyers and rapporteurs. These are primarily the constitutional amendments adopted on 28 March 2002, concerning, in particular, the enlarged powers of the National Council (the parliament) in respect of introduction of laws, the right to amend legislation, decisions on budgetary matters and the ratification of certain international instruments, as well as matters relating to the acquisition of Monégasque nationality and the enjoyment of civil rights.
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5. The Assembly notes that the amended electoral law was in force for the parliamentary elections held in Monaco on 9 February 2003. In accordance with established practice whereby observation of elections in an applicant country is part of the application examination procedure, these elections were observed by an ad hoc committee of the Bureau of the Assembly. They concluded that, given the specific nature of the situation in Monaco, the organisation and conduct of the elections were broadly in compliance with the standards of the Council of Europe.
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7. With regard to the Franco-Monégasque Convention of 1930, the Assembly is obliged to note that certain provisions in the said convention stipulate that senior Monégasque government and civil service posts are reserved for French public servants on secondment, thereby depriving Monégasque nationals from gaining access to these posts. This runs counter to the principle of non-discrimination and it would seem necessary that the situation be brought into line with European standards. The Assembly notes that on 19 June 2003 the two states began discussions on revising the 1930 convention and sincerely hopes that this will

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1. Assembly debate on 27 April 2004 (10th Sitting) (see [Doc. 10128](#), report of the Political Affairs Committee, rapporteur: Mr Slutsky; and [Doc. 10138](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Manzella).



be an opportunity to secure full enjoyment by the citizens of Monaco of the political and civic rights enshrined in the European Convention on Human Rights. It is aware that this is the wish of the Monégasque authorities, and is confident that France, for its part, will want to take advantage of the discussions currently under way to reach a solution compatible with European standards. The Assembly considers that the final decision on the application for membership by Monaco should not be taken until the Joint Committee has noted that this opportunity has been used for this purpose.

8. Monaco has acceded to the following Council of Europe conventions: the European Cultural Convention (ETS No. 18), the Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104), the European Convention on the Protection of the Archaeological Heritage (ETS No. 66) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141).

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10. The Assembly expects the Monégasque authorities to accept the commitments required by the Organisation for Economic Co-operation and Development (OECD) under its policy against harmful tax practices, as defined in the 2000 progress report and modified in the 2001 progress report, in order for a state to be taken off the OECD's list of unco-operative tax havens.

11. The Assembly recommends the Monégasque authorities to further broaden, within five years of its accession, the powers of the National Council, particularly as regards supervision of government action, the annual presentation of the governmental programme, the right of legislative initiative, and the budgetary debate.

12. The Assembly takes note of the letters from the Monaco authorities and observes that Monaco is committed to honouring the following undertakings:

12.1. in respect of conventions:

- a. to sign, upon accession, the European Convention on Human Rights (ECHR) and Protocols Nos. 1, 4, 6, 7 and 13;
- b. to ratify, at the earliest opportunity and at the latest within one year the ECHR and Protocols Nos. 1, 4, 6, 7 and 13;
- c. to sign Protocol No. 12 to the ECHR within one year of its coming into force, and to ratify it within five years of signing it;
- d. to examine on an ongoing basis the compatibility of all legislation with the ECHR and its relevant protocols;
- e. to sign and ratify, within one year of accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126);
- f. to become party, within one year of accession, to the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2), its additional protocol of 6 November 1952 (ETS No. 10) and its sixth additional protocol (ETS No. 162);
- g. to sign, upon accession, the European Social Charter (revised) (ETS No. 163) and to ratify it within two years;
- h. to sign and ratify, within two years of accession, the following conventions:
  - the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30);*
  - the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and its protocols;*
  - the European Convention on the Suppression of Terrorism (ETS No. 90);*
  - the Criminal Law Convention on Corruption (ETS No. 173);*
- i. to sign and ratify, within five years of accession, the Convention on Cybercrime (ETS No. 185);

12.2. in respect of domestic legislation:

*to pass, within one year of accession where this has not already been done, the following laws in conformity with the standards of the Council of Europe:*

*the law on stating reasons for negative administrative acts and on judicial review;*

*the law on nationality;*

*the law on the freedom of the media;*

*the law on freedom of assembly and freedom of association;*

*amendments to civil law, incorporating the principle of equality between women and men, including as parents or spouses;*

12.3. in respect of the monitoring of commitments: to co-operate fully in the implementation of Assembly Resolution 1115 (1997) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee) and the monitoring procedure set up in accordance with the declaration of the Committee of Ministers of 10 November 1994.

13. In the light of these undertakings, the Assembly believes that Monaco is capable of and is intent on complying with the provisions of Article 3 of the Statute setting forth the required conditions for acceding to the Council of Europe: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I."

14. In order to ensure compliance with these undertakings, the Assembly decides, in application of its Resolution 1115 (1997), to start the monitoring procedure with respect to Monaco six months following the date of accession with a view to assessing Monaco's progress in fulfilling:

*the commitments listed in paragraph 12 above; and*

*the recommendations in paragraphs 10 and 11 above.*

15. In the light of the above commitments, the Assembly recommends that the Committee of Ministers:

15.1. invite Monaco to become a member of the Council of Europe as soon as the Assembly and the Committee of Ministers have noted in their Joint Committee that the consultations between Monaco and France on the revision of the 1930 convention have opened the possibility for implementing, in the near future, the principle of non-discrimination, by allowing Monégasque citizens to be appointed to the senior Monégasque governmental and public posts that are currently reserved for French nationals;

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16. In the meantime, the Assembly asks the Bureau to grant Special Guest status to the National Council of Monaco, allocating them two seats, if the National Council asks for this status.