Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2052 (2015)[1]

Post-monitoring dialogue with Monaco

Parliamentary Assembly

1. The Principality of Monaco joined the Council of Europe in 2004. In 2009, the Parliamentary Assembly decided to close the monitoring procedure and to engage in a dialogue with the Monégasque authorities, which were invited to honour their final six commitments, namely:

– ratification of Protocols Nos. 1 and 12 to the European Convention on Human Rights (ETS Nos. 9 and 177);

– ratification of the European Social Charter (revised) (ETS No. 163);

– ratification of the Convention on Cybercrime (ETS No. 185);

– expeditious enactment of a new law on the functioning and organisation of the National Council, to take account of the constitutional amendments of 2002;

– reform of the Code of Criminal Procedure and finalisation of the reform of the Criminal Code;

– review of the issue of the international conventions and treaties for which the National Council must adopt a law on ratification.

2. The Principality of Monaco has a population of 36 000, of 121 nationalities, living in an area of barely 2.2 km². Only 8 000 residents, namely 21.5% of the population, are of Monégasque nationality. The Monégasques are thus in a minority in their own country. In view of the small size of the territory and pressures in the real estate and employment markets in Monaco, into which 50 000 workers commute across the border every day, the principality gives preferential treatment to its own citizens in respect of housing, employment and social benefits, a factor which is crucial and essential to perpetuate the presence of Monégasques on their own territory. As far as access to employment is concerned, compliance with "national priority" is safeguarded by the constitution.

3. The Assembly, together with the European Commission for Democracy through Law (Venice Commission), points out that Monaco has adopted a political system which is the only one of its kind: in this limited constitutional monarchy, the law stems from the joint will of the sovereign Prince and the National Council. The government is not accountable to the National Council. A network of advisory bodies nevertheless mitigates the Prince's extensive powers as compared to the limited powers of the National Council. Several mechanisms encourage dialogue. The functioning of institutions is, by necessity, consensual. The current political regime enjoys a broad consensus within the population, and political leaders from both the majority and the opposition are attached to this regime.

4. The situation of the principality is also singular because of its privileged historical relationship with France, enshrined in the treaty between France and Monaco revised in 2005 at the time of the signature of the convention on adapting and extending administrative co-operation between the French Republic and the Principality of Monaco, ratified by France in 2008.

1. *Assembly debate* on 23 April 2015 (17th Sitting) (see Doc. 13739, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Jordi Xuclà). *Text adopted by the Assembly* on 23 April 2015 (17th Sitting).

5. The Assembly also notes the presence of Italian and French communities which have long been established in the principality and have contributed to the country's history: these people, known as "enfants du pays" (the nation's children), whose numbers are declining as a result of the ageing of this population, real estate pressure and naturalisations, now wish for better recognition of their specific status within the principality.

6. The Assembly points out that, when it joined the Council of Europe, the Principality of Monaco undertook to develop its institutions and to comply with the commitments entered into by its authorities. In this respect, the Assembly points to the revision of the constitution in 2002, which enabled the powers of the National Council to be extended, and to the revision of the treaty between France and Monaco in 2005 (ratified by France in 2008), which now enables Monégasques to hold the post of minister of state.

7. The Assembly welcomes the efforts made in recent months by the Monégasque authorities to honour their final commitments and comply with the Council of Europe's standards, taking account of the limits imposed by the special treatment reserved for Monégasque citizens. The impetus given by HSH Sovereign Prince Albert II has been an essential contribution to the continuation of the country's development process. The Assembly also notes that Monaco's accession to the Organisation has had a significant impact on the development of its institutions, their practices and on legislation, as well as on bringing these into conformity with the standards and norms of the Council of Europe. In this context, the Assembly notes:

7.1. the ratification of 45 Council of Europe treaties since 2004 and the signature of a further five treaties;

7.2. Monaco's active contribution to the work of the Council of Europe, particularly its campaign on children's rights;

7.3. the ratification of the Criminal Law Convention on Corruption (ETS No. 173) in 2007, and Monaco's participation in the Group of States against Corruption (GRECO), which regularly monitors the situation in the country;

7.4. the setting up of the office of High Commissioner for the Protection of Rights, Liberties and for Mediation, following the recommendations made by the European Commission against Racism and Intolerance (ECRI);

7.5. the ratification, on the occasion of the 10th anniversary of the Principality of Monaco's membership of the Council of Europe, of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, "Lanzarote Convention") and of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention");

7.6. the starting of the reform process for the funding of election campaigns, particularly the imposition of a maximum threshold for election incomes, following the recommendations made by GRECO.

8. In the light of recent developments in the Principality of Monaco and the information submitted by the national authorities:

8.1. in respect of the ratification of Protocols Nos. 1 and 12 to the European Convention on Human Rights:

8.1.1. the Assembly notes that Protocol No. 1 has been ratified by all Council of Europe member States, with the exception of Monaco and Switzerland. It notes that the ratification of this instrument, which covers the right to the protection of property, but also the right to free elections and the right to education, does not give rise to objections in principle from the Monégasque authorities, other than to the scope of Article 1 thereof, relating to the protection of property. It welcomes the co-operation established with the Council of Europe's legal services with a view to identifying the appropriate legal formula enabling full compliance with the provisions of the protocol to be ensured while, at the same time, safeguarding the provisions of the constitution and administrative practices establishing national preference;

8.1.2. the Assembly welcomes the work carried out by the Monégasque authorities, in co-operation with the Council of Europe, to explore the possible reservation(s) that could be drafted to open the way to ratification of Protocol No. 1 in the near future. The Assembly notes, however, that so far no suitable mechanism has been found and that, at the present time, none of the reservations explored by the Monégasque authorities and the Council of Europe experts

would fully safeguard the particularities of Monaco. The Assembly therefore welcomes the will expressed by the authorities to set up a working group to look into new technical aspects which might make it possible to consider ratification;

8.1.3. as far as Protocol No. 12 is concerned, the Assembly notes that to date only 18 member States have ratified it, and a further 19 have signed it. It affirms that the question of the ratification of Protocol No. 12 should, in future, be the subject of a thorough, ongoing examination by the Monégasque authorities;

8.2. in respect of the ratification of the European Social Charter (revised):

8.2.1. the Assembly points out that Monaco signed the European Social Charter (revised) in 2004. The Assembly itself had encouraged the Organisation to take account of the preferential treatment from which Monégasque nationals benefit in respect of housing and employment, at the same time emphasising that the European Social Charter (revised) offers the requisite flexibility for taking account of parties' specific characteristics. It notes that social standards are considered high in Monaco. It nevertheless notes that, if it were possible to rely directly on the Charter, this would undermine the "social covenant" established in Monaco, as well as the application of "national preference" and certain social benefits reserved for its citizens;

8.2.2. the Assembly welcomes the positive will expressed by the Government of Monaco to consider the formulation of a legal text in order to ratify the European Social Charter (revised). However, regarding this specific point, the government is still looking for an appropriate solution, at both political and technical levels. The Assembly expresses its confidence in the process, which has already begun, and urges all the parties concerned to find the appropriate mechanisms and initiate legislative steps to bring this process to an end as soon as possible, in co-operation with Council of Europe experts;

8.3. in respect of ratification of the Convention on Cybercrime, the Assembly notes with satisfaction the adoption, on 5 December 2013, of Law No. 1402 approving ratification of the Council of Europe Convention on Cybercrime, which confirms the wish expressed by the authorities – the government and National Council – to honour this commitment. It welcomes the fact that the government submitted to the National Council, on 27 February 2015, a draft law on the fight against high-tech crime, which aims to bring Monaco's legislation into line with the Convention on Cybercrime. The Assembly also welcomes the fact that the vote for the adoption of this law is scheduled for 16 and 17 June 2015, which will enable the Monégasque authorities to deposit their instruments of ratification;

8.4. in respect of the expeditious enactment of a new law on the functioning and organisation of the National Council, enabling account to be taken of the constitutional amendments of 2002, the Assembly recalls that in December 2009 the government tabled in the National Council a draft law amending Law No. 771 of 25 July 1964 on the organisation and functioning of the National Council. The Assembly took a positive view of the setting up, in 2013, of a "Special Committee in charge of the amendment of electoral law and the law on the organisation and functioning of the National Council" and welcomes its achievements. The Assembly welcomes the preparation of the expected draft law, which was forwarded to the government on 14 December 2014. The Assembly takes note of the government's readiness to accept the broad lines of the draft law, and welcomes the fact that the vote for the adoption of this law is scheduled for 16 and 17 June 2015, together with the revised Rules of Procedure;

8.5. in respect of the reform of the Code of Criminal Procedure and the finalisation of the reform of the Criminal Code:

8.5.1. the Assembly welcomes the pragmatism of the judicial bodies which already rely on the case law of the European Court on Human Rights, even though the requisite legislation has not yet been adopted. It notes the successive reforms of the Code of Criminal Procedure and Criminal Code, as requested in 2009, and of other legal provisions in order to harmonise Monégasque legislation with the Council of Europe's standards in the fields of fundamental rights and the fight against corruption. It takes note, with satisfaction, of the adoption of Law No. 1398 of 24 June 2013 on the administration and organisation of the judicial system, of Law No. 1399 of 25 June 2013 reforming the Code of Criminal Procedure as regards police custody, and of Law No. 1394 of 9 October 2014 reforming the Criminal Code and Code of Criminal Procedure as regards corruption and special investigation techniques;

8.5.2. it notes that Law No. 1364 of 16 November 2009 on the status of members of the judiciary allowed for the setting up of a Judicial Service Commission, chaired by the Director of Judicial Services, and for progress in the training and appraisal of members of the judiciary, including the seconded members of the French judiciary, as well as the setting up of a trade union for members of the judiciary in 2011;

8.5.3. furthermore, a draft law comprising various measures in the field of State liability and remedies was submitted to the National Council in December 2012. The Assembly also notes with satisfaction the preparation of a sovereign order designed to specifically incorporate fair-trial principles derived from the European Convention on Human Rights into the Supreme Court's own organisational and procedural rules;

8.5.4. the Assembly also notes the progress made in respect of the combating of money laundering, including the adoption of Law No. 1362 of 23 July 2009 strengthening the money-laundering detection system and the resources of the Financial Information and Monitoring Department (SICCFIN), and of Sovereign Order No. 3561 of December 2011 amending the 2002 legislation against the financing of terrorism, in accordance with the recommendations made by MONEYVAL;

8.6. in respect of reviewing the issue of the international conventions and treaties for which the National Council must adopt a law on ratification:

8.6.1. the Assembly takes due note that Article 13 of the Monégasque Constitution reserves for the Prince, who "represents the principality in its relations with foreign powers", the authority to sign and ratify international conventions and treaties. The constitution makes no provision for the involvement of the National Council for the adoption of a law authorising ratification except in certain specific cases set out in Article 14, namely those cases in which the treaties: 1. affect the organisation of the constitution; 2. entail the amendment of existing legal provisions; 3. entail participation by members of the National Council in an international organisation; or 4. result in budgetary expenditure of a new kind or for a new purpose. The Assembly notes that, since this provision of the constitution came into force in 2002, Article 14 of the constitution has been applied only seven times;

8.6.2. the Assembly is nevertheless convinced that greater interaction between the government and the National Council can only help to create a broad consensus and to more firmly establish higher international standards. The Assembly welcomes the spirit of dialogue and pragmatism shown in recent months by all the parties concerned to ensure that the National Council is involved in the examination of international conventions and treaties, in compliance with the provisions of the constitution;

8.6.3. the Assembly therefore welcomes the agreement concluded in February 2015, through an exchange of letters between the minister of state and the president of the national council, which provides a modus operandi involving regular updating of, and non-binding consultations with, the National Council whenever Monaco intends to ratify a convention or treaty.

9. The Assembly expresses its confidence in the capacity of the Principality of Monaco to adapt to the new democratic challenges and to the changes necessitated by globalisation. It would like Monaco, while preserving the unique nature of its regime, to continue to reform its institutions. It is in this context that Monaco is engaging in important negotiations with the European Union. The Assembly consequently encourages the Monégasque authorities to continue their consideration of the future development of their institutions, drawing, inter alia, on the recommendations of the Council of Europe's monitoring mechanisms and on the work of the Venice Commission, and to:

9.1. specify the sharing of powers between the National Council and the Prince for those subjects which are not, according to the constitution, a matter for the law or a matter for regulations (sovereign orders and ministerial decrees);

9.2. ensure that any ratification of an international treaty entailing new criminal offences and penalties is the subject of a law approving ratification adopted by the National Council, in pursuance of Article 20 of the constitution, according to which no penalty may be introduced or applied except by law, and in conformity with the case law of the European Court of Human Rights;

9.3. in the context of a discussion of a future revision of the constitution, examine the possibility of a right for the National Council to amend the budget, which would help to improve public policies and the quality of democratic debate within the National Council;

9.4. continue the work on the modernisation of the electoral law begun by the "Special Committee in charge of the amendment of electoral law and the law on the organisation and functioning of the National Council", as well as the extension of the provisions of the law on the funding of election campaigns and political groups, following the recommendations made by GRECO;

9.5. increase the independence of the office of the High Commissioner for the Protection of Rights, Liberties and for Mediation, in accordance with the recommendations made by ECRI.

10. To conclude, the Assembly welcomes the significant progress made by Monaco, which has fulfilled, or is about to fulfil, four of its 2004 accession commitments, namely:

10.1. the ratification of the Convention on Cybercrime;

10.2. the enactment of a new law on the functioning and organisation of the National Council, to take account of the constitutional amendments of 2002;

10.3. the reform of the Code of Criminal Procedure and finalisation of the reform of the Criminal Code;

10.4. the review of the issue of international conventions and treaties for which the National Council must adopt a law on ratification.

11. Concerning the ratification of Protocols Nos. 1 and 12 to the European Convention on Human Rights and of the European Social Charter (revised), the Assembly notes that, despite the fact that no suitable legal solution has yet been found to honour these commitments, the Monégasque authorities remain open to further exploring all possibilities, especially for the European Social Charter, that could pave the way to the ratification of these instruments. The Assembly reiterates its confidence in the ability of Monaco to further co-operate with the Council of Europe, especially through the setting up of a working group proposed by the authorities, and to address these remaining challenges.

12. In the light of the progress achieved since 2009 and the efforts made by Monaco to honour its obligations, the Assembly decides to end the post-monitoring dialogue with Monaco. It will continue to follow legislative and institutional developments, particularly through the periodic reports drawn up by its Monitoring Committee, in accordance with Resolution 2018 (2014) on the progress of the Assembly's monitoring procedure (October 2013-September 2014). The Assembly reiterates the Council of Europe's readiness to assist the Principality of Monaco with its future reforms.