2023 Annual Report

HIGH COMMISSIONER
FOR THE PROTECTION OF RIGHTS,
LIBERTIES AND FOR MEDIATION
PRINCIPALITY OF MONACO

Foreword

Marina CEYSSAC
High Commissioner

A DECADE OF COMMITMENT TO RIGHTS AND EQUALITY

The year 2023 marked a significant milestone in the history of the High Commissioner's Office, with the celebration of its tenth anniversary. This occasion provided an opportunity not only to showcase the achievements of the past decade, but also to reaffirm the commitments that will continue to guide the Institution's mandate.

Since its establishment, the High Commissioner's Office has become a benchmark in the protection of fundamental rights and the fight against discrimination in the Principality of Monaco. With nearly 800 case assistance requests over ten years, around forty recommendations and close to thirty legislative opinions, the Institution has demonstrated its ability to provide amicable and effective solutions for public service users, while fostering constructive dialogue between citizens and public authorities.

At the anniversary celebration held at the Hôtel Méridien, in the presence of H.S.H. Prince Albert II, eminent personalities and representatives of civil society, the speeches delivered by European partners underlined that the remit of the High Commissioner extends well beyond Monaco's borders. The exchange of experiences with the Slovenian Ombudsman, the European Court of Human Rights (ECHR) and the European Commission against Racism and Intolerance (ECRI) enriched the Institution's vision and reinforced Monaco's commitment to the universal values of human rights.

On this occasion, and throughout the present Report, four fundamental principles at the core of the High Commissioner's work were brought to the fore: transparency, respect for privacy, proportionality, and attention to situations of vulnerability.

In a global environment marked by the resurgence of hate speech and widening inequalities, the High Commissioner's Office, as a close-to-the-public Institution, remains committed to its mission of oversight and mediation. Its role is not confined to resolving disputes, but equally encompasses conflict prevention and the promotion of an inclusive and respectful environment for all.

The persistence of certain unresolved issues, as well as the rising number of discrimination-related case assistance requests, compels the High Commissioner's Office to remain, in the years ahead, a compass for the respect of rights in the Principality — broadening its outlook and adapting its actions to societal developments, with the ultimate aim of helping to build a fairer and more inclusive community.

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10 YEARS

I. 10th Anniversary of the High Commissioner's Office

The celebration was held at the Hôtel Méridien in the presence of H.S.H. Prince Albert II, H.E. the Minister of State, the Archbishop, the President of the National Council, representatives of the Monegasque authorities and civil society, as well as foreign counterparts.

On this occasion, the High Commissioner's Office expressed its profound gratitude to H.S.H. Prince Albert II for the attention and benevolence He has shown since the Institution's creation, and to the Institutions, authorities and all partners for their continued support.

It was recalled that, to date, the High Commissioner's Office has received approximately 800 case assistance requests, issued some forty recommendations, and delivered nearly thirty Legislative Opinions.

The four guiding principles underpinning the work of the High Commissioner in protecting rights and combating discrimination were also reaffirmed:

- **Transparency**

This principle is essential in order to facilitate access to rights and their effective exercise, while ensuring that decisions rest on clearly defined and publicly known criteria.

- **Proportionality**

The consequences of certain decisions must remain proportionate to their objectives, and their long-term effects must be duly justified.

Extract from the Address of H.S.H. Prince Albert II:

"The creation of the High Commissioner's Office reflects the will to promote the Principality's tradition as a State governed by the rule of law and its attachment to the universal values of Human Rights, while respecting its specific characteristics.

The existence of this independent Institution has enabled any person who believes that their rights and freedoms have been disregarded by the authorities, or who considers themselves the victim of unjustified discrimination, to obtain support in seeking an amicable solution to their difficulties.

In today's context, marked by the resurgence of hate speech and violence, the Principality of Monaco stands out as a place preserved in many respects. It is vital that both the authorities and civil society reaffirm the values that underpin our community and translate them into concrete action.

I have no doubt that the High Commissioner's Office will continue to play its full part by persevering in its mission and by contributing fully to the promotion of rights within the Principality".

- **Respect for Privacy**

This right, enshrined in Article 8 of the European Convention on Human Rights and in the Monegasque Constitution under Fundamental Rights and Liberties, lies at the heart of issues relating to access to social rights, the protection of personal data, and e-government. Its respect is therefore crucial at every stage, from the drafting of norms to their implementation and monitoring.

- **Attention to Situation of Vulnerability**

The adaptation of norms and their dissemination among public service users in vulnerable situations should systematically be envisaged from the outset, so that the Principality may become a reference point in terms of inclusiveness.

This anniversary celebration was also an opportunity to broaden perspectives through the speeches of European colleagues and institutional partners, highlighting that the remit of the Ombudsman extends well beyond the local and national framework.

- **Mr Peter SVETINA,** Ombudsman of Slovenia, Vice-President of the Association of Mediterranean Ombudsmen (AOM) and Co-Director for Europe of the International Ombudsman Institute (IOI), referred to the challenges and responsibilities faced by Ombudspersons;

- **Mr Patrice DAVOST,** Expert of the Principality of Monaco to the European Commission against Racism and Intolerance (ECRI), reflected on the fight against discrimination from a European perspective;

- **Ms Stéphanie MOUROU-VIKSTROM,** Judge at the European Court of Human Rights (ECHR), shed light on how the Court perceives the role of Ombudspersons.

HIGH COMMISSIONER FOR THE PROTECTION OF RIGHTS, LIBERTIES AND FOR MEDIATION

Extract from the Address of Ms Stéphanie MOUROU-VIKSTRÖM, Judge at the European Court of Human Rights (ECHR):

"At the domestic level, the role of the High Commissioner is that of a 'barometer', in direct contact with the population and able to identify and resolve issues before they reach the national courts, and ultimately the ECHR. This helps to prevent problems from escalating into litigation. In this way, the Institution contributes to the subsidiarity of the Court's role. Of course, the ECHR is an international jurisdiction operating in a supranational and adversarial framework. Yet the Court consistently encourages the settlement of Human Rights issues within States themselves, through amicable and decentralised solutions. The work carried out by defenders of rights, who often achieve peaceful outcomes through mediation, is therefore strongly encouraged and valued by the Court."

Extract from the Address of Mr Patrice DAVOST, Expert of the Principality of Monaco to the European Commission against Racism and Intolerance (ECRI):

"Allow me, Your Serene Highness, to recall a phrase often quoted by Your father, H.S.H. Prince Rainier III: 'It is not necessary to be great in order to accomplish great things."

The creation of the High Commissioner for the Protection of Rights is one such achievement."

Over the past ten years, its activity has demonstrated this clearly, through the visibility that your predecessor, Ms Anne EASTWOOD, and yourself, Marina CEYSSAC, have conferred upon it — in Monaco and far beyond, in particular within the Council of Europe, which the Principality joined on 5 October 2004, ratifying the European Convention on Human Rights on 30 November 2005.

As a member State of the Council of Europe, the Principality is also a member of ECRI. Together with the High Commissioner's Office, ECRI organised in Monaco, on 25 April 2023, a highly valuable round table on the theme 'Preventing and Combating Racism and Intolerance in Monaco'. This event brought together many institutional stakeholders as well as numerous civil society representatives.

A report of the discussions was presented to the Plenary Assembly of ECRI, which decided to take it as an example for similar initiatives in the other 46 member States of the Council of Europe."

Extract from the Address of Mr Peter SVETINA, Ombudsman of Slovenia:

"Our responsibility extends beyond responding to individual complaints. We must promote systemic change to prevent future injustices. Engaging with vulnerable groups and addressing prejudice and discrimination is essential to fostering an inclusive society. As guardians and spokespersons for public service users, we ensure transparency, accountability and good governance. Our work is guided by integrity and objectivity, and aims both to protect fundamental rights and to strengthen public trust in institutions. Only together can we build a world where everyone's rights are upheld, regardless of origin or belief, and where no one is left behind."

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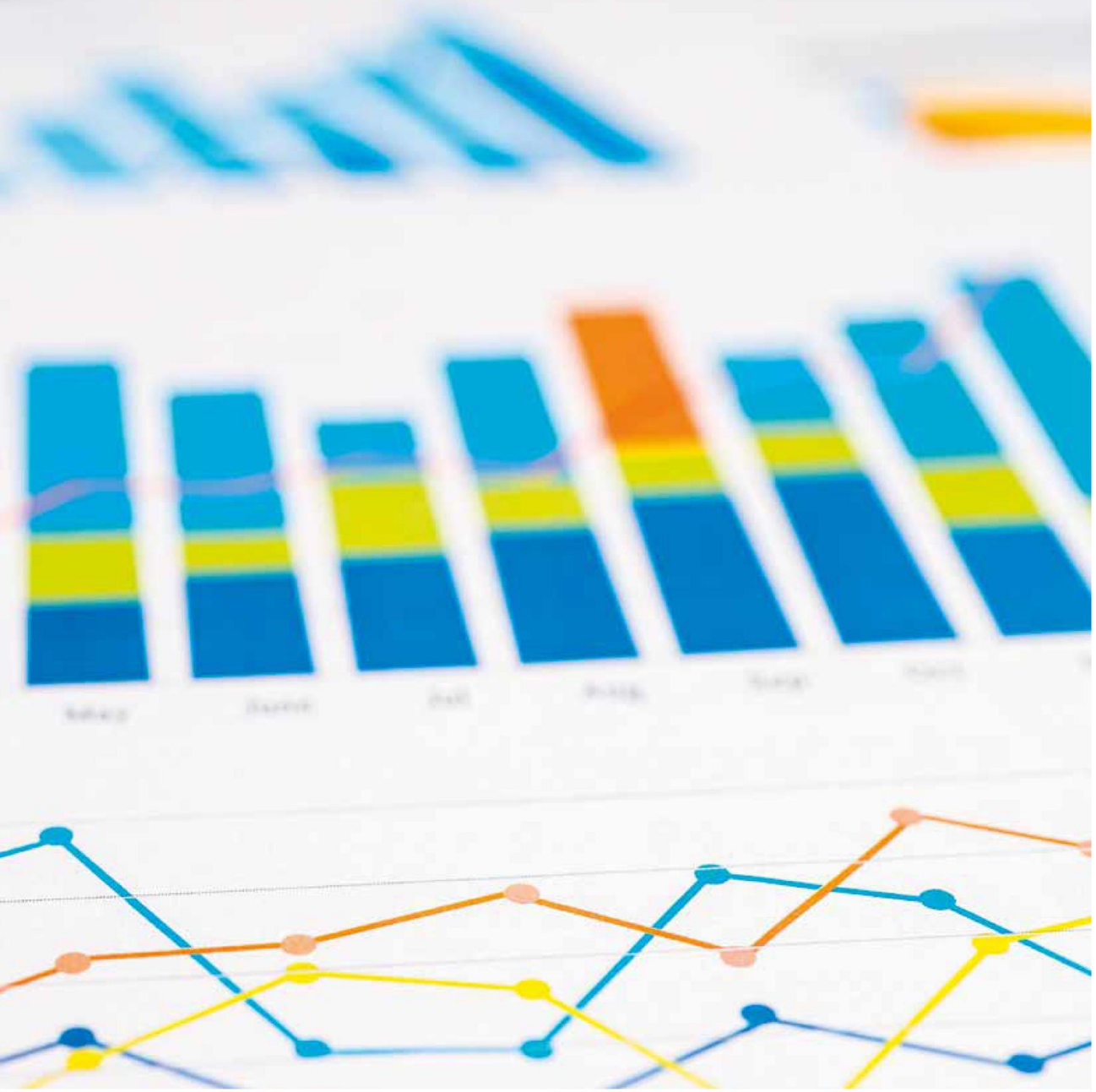


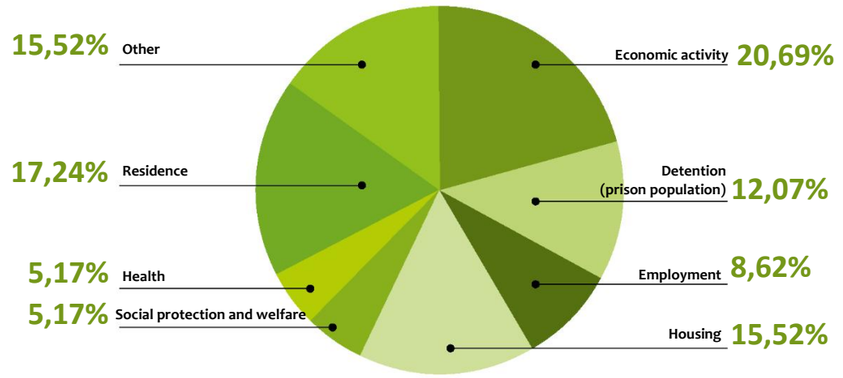
II. Statistics

A. Sectoral Issues

In 2023, the case assistance requests received by the High Commissioner's Office mainly concerned economic activity, residence permits and housing. These trends, already observed in previous years, remained steady and in some cases even intensified.

	2022	2023
Economic activity	9	12
Detention (prison population)	7	7
Employment	13	5
Housing	2	9
Social protection and welfare	10	3
Health	6	3
Residence	6	10
Other	9	9
Total	**62**	**58**

Breakdown of cases by theme



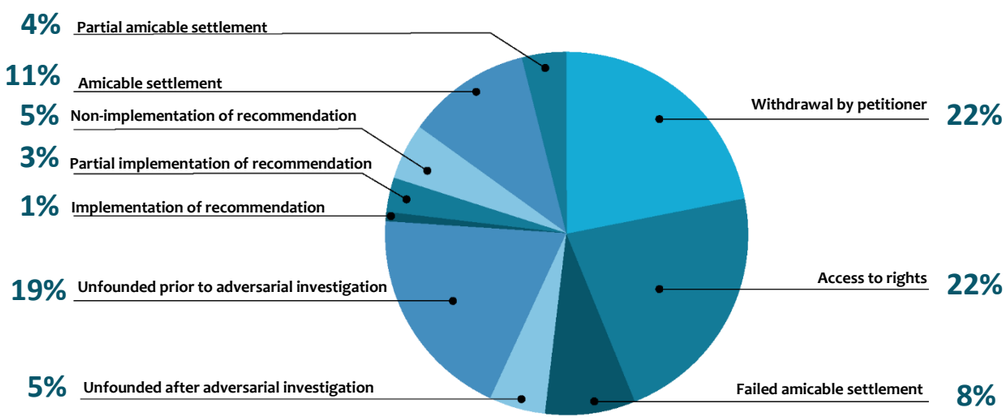
B. Grounds for Closure

As regards grounds for closure, it should be noted that the proportion of amicable settlements remained stable. The overall number of resolved cases decreased, not due to fewer amicable settlements, but rather because fewer recommendations were implemented.

More broadly, it may be observed that half of the cases subject to investigation resulted in a positive outcome.

	2023
Withdrawal by petitioner	17
Access to law	17
Failed mediation	1
Failed amicable settlement	6
Unfounded after adversarial investigation	4
Unfounded prior to adversarial investigation	14
Implementation of recommendation	1
Partial implementation of recommendation	2
Partial non-implementation of recommendation	4
Amicable settlement	8
Amicable settlement without our intervention	5
Partial amicable settlement	3
Redirected	8
Total	**90**

Grounds for closure



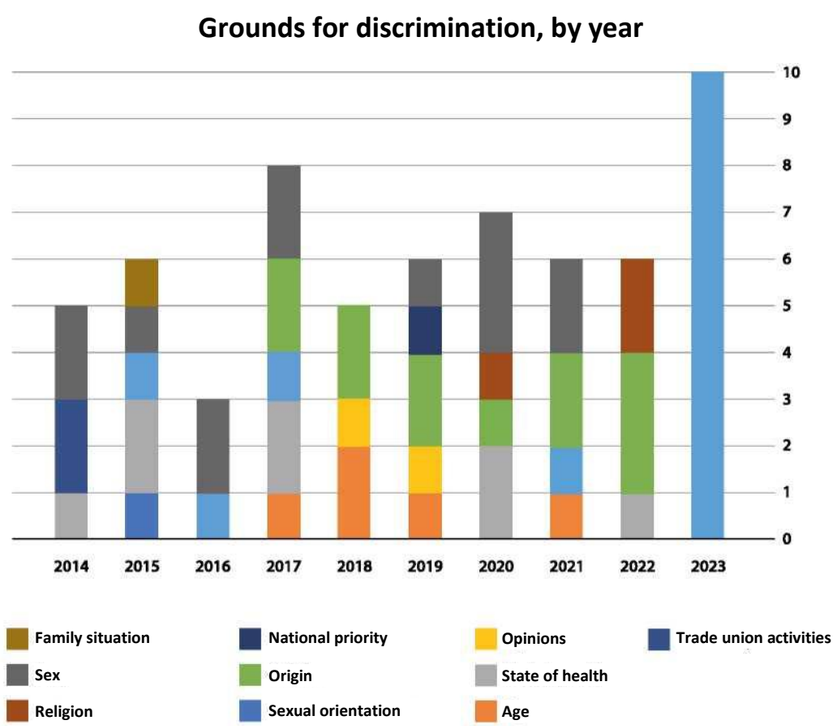
Reasons for closure by administrative authority:

Administrative authority concerned	Total	Unfounded	Resolution found	No resolution found		Access to law	Redirected	Case overtaken by events	Pending
		Including withdrawal by petitioner	Amicable settlement / Recommendation followed	Individual recommendation not followed / Failed mediation or amicable settlement	Investigation suspended / Refusal of mediation				
Palace	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Government									
Ministry of State	**3**	**1**	**1**	**1**	**0**	**0**	**0**	**0**	**0**
Human Resources and Training Department	3	1	1	1					
Not specific to a department	2		1			1			
Ministry of the Interior	**18**	**7**	**4**	**4**	**0**	**3**	**0**	**0**	**0**
Monaco Police Department	15	6	3	3		3			
Fire Brigade Corps	1		1						
Department of Education, Youth and Sports	2	1		1					
Ministry of Finance and Economy	**16**	**6**	**3**	**2**	**0**	**5**	**0**	**0**	**0**
State Property Authority	3		1			2			
Housing Department	5	1	2	2					
Business Development Agency	7	4				3			
Not specific to a department	1	1							
Ministry of Social Affairs and Health	**9**	**1**	**5**	**0**	**0**	**2**	**1**	**0**	
Department of Health and Social Action	3		1			1	1		
Labour Department	3	1	1			1			
Labour Inspectorate	1		1						
State Medical Benefits Office	2		2						
Ministry of Public Works, the Environment and Urban Planning	**4**	**0**	**1**	**3**	**0**	**0**	**0**	**0**	**0**
Driver and Vehicle Licensing Office	4		1	3					
Ministry of Foreign Affairs and Cooperation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Department of Justice	**13**	**3**	**3**	**2**	**0**	**3**	**1**	**0**	**1**
Remand Prison	10	2	3	2		3			
Not specific to a department	3	1					1		1
Public institutions, independent administrative authorities	**2**	**2**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Municipality	**2**	**1**	**1**	**0**	**0**	**0**	**0**	**0**	**0**
Private entities, banks, etc.	**23**	**14**	**0**	**0**	**0**	**3**	**5**	**0**	**1**
Total	**90**	**35**	**18**	**12**	**0**	**16**	**7**	**0**	**2**

C. Discrimination

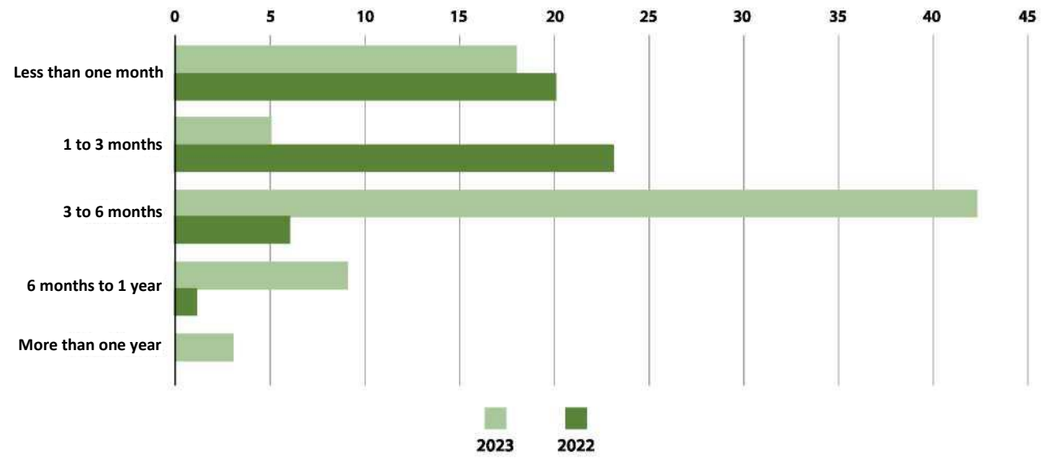
With regard to statistics linked to the High Commissioner's mandate to combat discrimination, cases relating to origin and disability have remained the most frequent over a ten-year period.

However, the overall number of case assistance requests rose significantly in 2023 and concerned exclusively issues of sexual orientation, which gave rise to a recommendation in 2023, supplemented in 2024.



D. Case handling times

It should be noted that the lengthening of certain case handling times can be explained in particular by the grouping together of several discrimination-related case assistance requests, some of which had not yet been completed by the end of 2023.



E. Recommendations

Eight recommendations were issued in 2023, of which two were followed and two partially followed.

Lack of transparency in the criteria for calculating scholarship amounts	**Not followed**
Coverage of medical procedures related to Assisted Reproductive Technology (ART) for same-sex couples	**Not followed**
Lack of response from the administrative authorities to a national trademark application	**Not followed**
Use of a drone for non-professional purposes	**Partially followed**
Reintegration of detainees into civilian life	**Partially followed**
No reassessment of residents' status as a result of the switch to digital residence permits	**Followed**
Dereferencing of personal data contained in a Sovereign Ordinance of dismissal	**Not followed**
Information provided to a public service user concerning the law applicable to a property	**Followed**

F. Legislative Opinions

In 2023, eight legislative opinions were issued, five at the request of the National Council and two at the request of the Government.

III. Thematic areas

On the occasion of its tenth anniversary, the High Commissioner's Office reiterated the principles that should guide public action and underpin efforts to combat discrimination: transparency, proportionality, respect for privacy, and attention to situations of vulnerability. The High Commissioner's activities for 2023 are therefore presented through the implementation of these principles.

A. Transparency

This principle is fundamental in order to facilitate access to rights and their exercise, but also to ensure that decisions are grounded in law, based on criteria that are clearly defined and known to public service users.

Several case assistance requests received during the year led the High Commissioner to note that, despite recommendations issued in the past, a lack of transparency continues to affect a number of administrative procedures, causing public service users to doubt the validity and impartiality of decisions that adversely affect them.

Among these procedures, the following may be cited:

1. Issuing residence certificates:

Under Article 8 of Sovereign Ordinance No. 3,153 of 19 March 1964 on the conditions of entry and residence of foreigners in the Principality, a police inquiry is required at the time of issuing and renewing privileged residence permits. However, neither that Sovereign Ordinance nor Sovereign Ordinance No. 8,566 of 28 March 1986 on residence certificates provides for such an inquiry, conducted in connection with the issuance of a residence certificate, to result in the withdrawal of a valid residence permit.

In one case handled by the High Commissioner, a request for a residence certificate (and not a renewal of a residence permit) resulted in an inquiry that led to the withdrawal of the applicant's residence permit.

This withdrawal therefore appeared manifestly unfounded, as it did not correspond to the application of either Sovereign Ordinance No. 8,566 of 28 March 1986 on residence certificates or the aforementioned Sovereign Ordinance No. 3,153, and moreover, questioning the effectiveness of the applicant's residence was itself highly debatable.

A petitioner also reported difficulties in obtaining a residence certificate for the purpose of applying to the Autonomous Pension Fund for housing. The administrative authorities refused, on the grounds that he held an ordinary residence permit rather than a privileged one, information given orally.

Yet, the administrative authorities had issued an acknowledgment of receipt stating that his application was being processed.

Ultimately, the administrative authorities did issue the requested document, but only after considerable imprecision, leaving the petitioner in a state of tension and confusion.

2. Renewal or transfer of concessions on public property

In a case concerning the renewal of a concession granted by the Municipality, the renewal was limited to just one year. The Municipality reminded the applicant that such concessions were precarious and revocable, granting an exceptional one-year renewal due to potential future urban development works, which at that time remained hypothetical and without any specific timetable.

The High Commissioner nonetheless noted with satisfaction that after renewing the concession for one year, the Municipality added obligations that had not appeared in the previous version. While these additions could at first glance be seen as further constraints, they in fact set out explicitly the criteria applied to concession renewals.

Indeed, Act No. 1,312 on the statement of reasons for administrative decisions, as well as several decisions of the Supreme Court (*SARL FAGIO v. Municipality of Monaco, 19 December 2014; SCS PE & CIE v. State of Monaco, 28 June 2016 and 8 February 2008*) require reasons to be given for decisions not to renew such concessions.

Moreover, case law in full jurisdiction (Court of First Instance and Court of Appeal of Monaco) has established the need to ensure that the administrative authority managing public property has not acted ultra vires by not renewing such concessions or committed a fault in terminating occupancy (*see Court of Appeal, 17 June 2014, SCS PE & CIE v. State of Monaco; Court of First Instance, 22 February 2001, SNC A-G et G. v. Municipality of Monaco).*

In a case concerning access to law in relation to a commercial concession in the Fontvieille Shopping Centre, the High Commissioner noted a lack of clarity in the conditions applied to the resale of a concession, in particular regarding the method of calculation and the uncertainty surrounding the future of such businesses.

The High Commissioner also observed that while publishing calls for tenders for State-owned premises, mentioning a resale price is in line with greater transparency, the legal basis for this practice appears unclear.

3. Implementation of Article 5 of the Neighbourhood Agreement

One case examined by the High Commissioner concerned the application of Article 5 of the Franco-Monegasque Neighbourhood Agreement. This provision allows, under certain conditions, individuals seeking a long-stay visa for Monaco to submit their application via the Embassy of Monaco in France. The Government indicated that the Monegasque authorities reserve their sovereign discretion in matters relating to the admission of foreigners. In its view, recourse to Article 5 does not create an enforceable right but merely a possibility.

The Government further maintained that refusals of residence under Article 5 do not need to be reasoned, since Article 6 of Act No. 1,312 of 29 June 2006 on the statement of reasons for administrative decisions expressly exempts such refusals from the general obligation to provide reasons.

4. Procedures for filing patents and trademarks

The High Commissioner was approached by a company that had applied to register a trademark but received no reply.

After an initial refusal under Article 4-1 of Sovereign Ordinance No. 7,801 of September 1983, the petitioner complied with the eight-day deadline to submit a statement of observations and justifications supporting the validity of the trademark. Despite this, the company received no further response from the administrative authorities, even after repeated requests for clarification.

As no final decision was ever notified, the petitioner suffered a double prejudice: an immediate economic loss, since the trademark could not be used legally, and legal harm, since the silence of the administrative authorities deprived the company of the possibility of filing an administrative appeal.

The High Commissioner deplored this failure, recalling that Article 4 of Act No. 1,312 on the statement of reasons for administrative decisions provides that *"the recipient of an implicit decision may request communication of the reasons for that decision."* In a letter to the authorities, the High Commissioner highlighted the manifest failure to comply with administrative procedures and the serious consequences that may follow, particularly for the stability of the rule of law.

This recommendation was unfortunately not followed. While the High Commissioner is not intended to substitute itself for the administrative authorities, it strongly recommended that the petitioner be given a precise, clear and reasoned reply, enabling adversarial debate and, at the very least, ensuring transparency in procedures relating to economic and commercial activities in the Principality.

5. Authorisation to pilot aircraft for leisure purposes

The High Commissioner was approached following the refusal of an exemption allowing a person with the necessary qualifications, but living with a disability, to pilot aircraft for leisure purposes. The competent administrative authorities ultimately maintained their interpretation of Ministerial Decree No. 2021-532 of 2 August 2021, which they considered to prohibit non-professional drone flights over the Principality, and to restrict exemptions solely to model aircraft. On the merits, the High Commissioner raised no objection to this interpretation.

However, the High Commissioner noted that Article 5 of Ministerial Decree No. 2021-532 of 2 August 2021, which governs this matter, does include an exclusion clause comparable to those in force in France and in most European countries, prohibiting the recreational use of drones in urban areas. Yet the same Article also provides for exemptions to this prohibition, without expressly limiting them to model aircraft.

From a general standpoint, the High Commissioner therefore recommended that, if the Government intended to continue limiting exemptions to model aircraft, this restriction should be explicitly written into the Ministerial Decree so that it is clearly enforceable against petitioners. Unfortunately, this recommendation was not followed.

6. Scholarship scales

The High Commissioner was approached by a student benefiting from the scheme established by Ministerial Decree No. 2023-243 of 2 May 2023 approving the scholarship allocation rules. This Decree specifies that *"the reference amounts for costs and expenses to be taken into account in calculating the scholarship are set on a flat-rate basis in a scale adopted by the Council of Government."*

The student, however, was unable to access the scale referred to in Article 6 of the Decree, as it appears only in an unpublished resolution of the Council of Government. The High Commissioner recommended that the scale be communicated to the student, or at the very least proposed — as had been done in 2016 — to act as an intermediary by reviewing the scale itself, in order to be able to confirm that the amount of the scholarship had been calculated in full compliance with the parents' declared income and with the criteria in force.

More generally, and in line with a recommendation made in 2017, the High Commissioner observed that the fact that public service users cannot access the applicable scale is likely to foster disputes and undermine confidence in the calculation of scholarships. It therefore recommended that the scale be made available on request, allowing petitioners to understand the reference elements applied — in particular geographical distance and cost-of-living criteria — and ensuring their consistent application. An explanatory note could, where necessary, be provided in addition.

Unfortunately, this recommendation was not followed.

7. Disciplinary procedure applicable to taxi drivers

The High Commissioner was approached twice by taxi licence holders who had been formally ordered by the Ministry of Finance and Economy to cease operations immediately, on the grounds of a delay in renewing their taxi driver's professional licence. They were subsequently notified that their request for renewal had been refused on the basis of a lack of good moral character.

The High Commissioner nevertheless noted that these prohibitions in practice amounted to sanctions under Article 41 of Sovereign Ordinance No. 1,720 of 4 July 2008. Such sanctions should have been imposed in accordance with Articles 39 et seq. of the Ordinance, and in particular Article 42, which requires that administrative sanctions be issued by a reasoned decision of the Minister of State, acting on the advice of a special commission.

However, it appeared that the special commission had not ruled on the cases in question, and the emergency suspension procedure provided for under Article 44 had not been invoked either. As a result, the drivers found themselves in an especially uncertain situation, unaware of the exact nature and duration of the sanction imposed, even though they had no other source of income.

Following the High Commissioner's recommendations, the ad hoc commission met within a reasonable timeframe to deliberate on the petitioners' cases.

8. Information provided to a public service user concerning the law applicable to a property

One case concerned a request, pursued for several months, for confirmation of whether a property was subject to Act No. 887 of 25 June 1970. The High Commissioner considered it appropriate to issue a general recommendation on the time taken by administrative authorities to provide such information, noting that greater timeliness could have avoided litigation before the Supreme Court. Beyond the requirements of Act No. 1,312 of 29 June 2006 on the statement of reasons for administrative decisions, the High Commissioner emphasised the importance of transparency whenever a public service user requests information.

More generally, and to prevent misunderstandings of this kind, the High Commissioner recommended that where the classification of a property under a given law is contested, the administrative authorities should promptly communicate to the petitioner the factual elements underlying their decision.

9. Renewal of residence permits

Under Article 5 of Sovereign Ordinance No. 3,153 on the conditions of residence of foreigners in the Principality, a privileged residence permit may be issued for a period of ten years to any foreigner who has resided in Monaco for at least ten years. The High Commissioner was approached by a resident who had lived in Monaco since 2014 and whose circumstances, by 2024, could justify the issuance of a privileged residence permit.

The High Commissioner observed that Article 8 of the above-mentioned Ordinance does not impose any requirement of a minimum income or a specific professional activity, but refers only to an inquiry into the petitioner's "means of subsistence". In this case, the petitioner had no difficulty paying her monthly rent. Her financial situation had improved since she had signed an open-ended employment contract in 2022, and her son was attending school in Monaco, with both mother and child fully integrated into daily life in the Principality.

The High Commissioner therefore recalled — as in past reports — that neither Sovereign Ordinance No. 3,153 nor its implementing ministerial decrees set out precise criteria governing the issuance of privileged residence permits, particularly with regard to petitioners' means of subsistence. For reasons of transparency, the High Commissioner recommended that the grounds for administrative decisions be clarified and made available, specifying the criteria applied in assessing the circumstances of residents who may qualify for this type of residence permit.

The High Commissioner also stressed that if the petitioner did not meet the necessary conditions for a privileged residence permit, the question arose as to the legal basis on which she could have been denied renewal of an ordinary residence permit, given that she appeared to meet the statutory requirements. The interpretation of the term "sufficient resources" in Article 7 of Sovereign Ordinance No. 3,153, as applied by the administrative authorities, could not be upheld without recourse to objective and transparent criteria.

Although the High Commissioner welcomed the fact that the petitioner ultimately obtained satisfaction in her individual case, it noted that the transparency of the criteria used in the renewal of residence permits is still not fully guaranteed.

10. Impact of the transition to digital residence permits

The Government's communication on the digitalisation of residence permits and the promotion of digital identity states clearly that, from now on, Monegasque nationals and residents may use their identity card or residence permit to access online services and sign digital documents. It also specifies that activation of the digital identity is optional and subject to the consent of nationals and residents, who must request it from administrative officers.

In one case, however, the petitioner appeared not to have been given any choice. While acknowledging the Principality's policy of digitalisation and the shift towards fully online services in recent years, the High Commissioner recalled the importance of proper information and the free consent of the individuals concerned. Indeed, Convention 108+ of the Council of Europe on the protection of individuals with regard to automatic processing of personal data establishes the principle of free, specific, informed and explicit (unequivocal) consent for the online processing of personal data. In this case, the petitioner had not understood the implications, reasons or procedures for switching to a digital identity, even though she was not opposed to it in principle and was willing to comply with administrative requirements.

From the High Commissioner's standpoint, and under both Convention 108+ and Article 8 of the European Convention on Human Rights, which enshrines the right to privacy, it was difficult to understand why the switch to a digital residence card had not been left to the petitioner's initiative. This was contrary to Article 3 of Ministerial Decree No. 2021-430 of 17 June 2021 on the conditions for issuing residence permits in Monaco. Instead, she had been summoned by the police, and that summons — intended to convert her residence permit to digital format — ultimately resulted in notice that her card would not be renewed.

The High Commissioner further noted that Ministerial Decree No. 2021-430 of 17 June 2021 contains no provision for reassessing residents' situations when issuing digital residence permits. It therefore questioned the reasons for notifying, in this context, the forthcoming refusal to renew her permit, and whether there was an underlying procedure aimed at anticipating renewal decisions on the grounds of the transition to digital identity — a practice that could deter residents whose permits were close to expiry from opting into the digital format.

The High Commissioner welcomed the Government's confirmation that residents' status regarding residence permits would not be reassessed on account of the transition to digital permits.

B. Proportionality

This principle requires that the consequences of certain decisions remain proportionate to their objectives, and that their effects over time must also be duly justified. The High Commissioner invoked this principle in a number of case assistance requests and Legislative Opinions in the following areas:

1. Right to be forgotten

The High Commissioner welcomed the fact that the right to be forgotten is now formally recognised, and that in one individual case a recommendation it had issued back in 2017 was followed. That recommendation aimed to safeguard the chances of social and professional reintegration for young adults by ensuring that their moral character would not be judged on the basis of offences committed while they were minors.

Nevertheless, the High Commissioner considered that this principle should be applied more systematically by the administrative authorities, and according to clearer and more transparent criteria.

2. Non-renewal of residence permits

The High Commissioner examined a case in which the withdrawal of a residence permit — on grounds that were only weakly substantiated — had disproportionate consequences for the applicant, an *enfant du pays (long-standing resident)* and national of a non-EU State.

The measure had serious effects that risked infringing the applicant's right to privacy, protected by Article 22 of the Constitution of Monaco and Article 8 of the European Convention on Human Rights (ECHR), both of which guarantee respect for private and family life, home and correspondence.

The case was all the more troubling given that, on the evidence available to the High Commissioner, the applicant's presence in the Principality posed no threat to public order.

The High Commissioner recalled the case law of the ECHR, which makes clear that the core purpose of Article 8 is to protect individuals against arbitrary interference by public authorities. Privacy, in the Court's view, is a broad concept that extends well beyond intimacy, encompassing the sphere within which every individual is free to develop their personality and live their life.

Restrictions on residence can therefore amount to a breach of Article 8 when they have disproportionate repercussions on an individual's private or family life (see *Hoti v. Croatia*).

In this case, the petitioner was not covered by EU law and did not hold a French residence permit.

Losing his Monegasque permit would have left him in a precarious position, disrupting every aspect of his life. Under Article 17 of Sovereign Ordinance No. 3,153 of 13 November 1964, he would have been required to leave Monaco, facing either an irregular stay in France or relocation to a country he did not know. As an *enfant du pays (long-standing resident)*, he had been born and raised in Monaco; his entire cultural, family and personal life was rooted there. He was also pursuing studies intended to build on professional experience already acquired in the Principality's social sector.

The withdrawal would also have created major obstacles in his efforts to obtain French nationality.

The High Commissioner therefore concluded that this *enfant du pays (long-standing resident)* did not appear to constitute a threat to public order, and that, pending possible French naturalisation, the withdrawal of his residence permit would have had serious and disproportionate consequences for his right to privacy.

3. Legislative Opinion

a. Bills No. 1077 and 1078 amending legislative provisions on combating money laundering, the financing of terrorism and the proliferation of weapons of mass destruction (Parts I & II)

In reviewing these Bills, the High Commissioner highlighted in particular the need to respect the principle of proportionality when restricting the exercise of the right of association.

In domestic law, Article 30 of the Constitution guarantees freedom of association *"within the framework of the laws that govern it"*. Act No. 1,355 of 23 December 2008 regulates associations and provides in Article 5 that they *"are established freely and without prior authorisation or declaration"*.

The High Commissioner also drew attention to Article 11 of the European Convention on Human Rights, which states *"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The High Commissioner also noted that the European Court of Human Rights (ECHR) has repeatedly underlined the importance of the right to freedom of association in a democratic society, and the direct relationship between democracy, pluralism and freedom of association (see its Guide on Article 11 of the European Convention on Human Rights). According to the Court, the way in which national legislation enshrines this freedom, and the manner in which the authorities apply it in practice, are key indicators of the state of democracy in a given country (*Gorzelik and Others v. Poland*, 2004, §88; *Sidiropoulos and Others v. Greece*, *1998, §40).*

The Court considers that restrictions on freedom of association must therefore be strictly limited and, where applicable, clearly regulated. Article 11 protects associations from unjustified State interference, which usually takes the form of refusal of registration or dissolution, but may also include other measures that prevent an association from carrying out its activities, such as inspections or restrictions on their funding (*see Yordanovi v. Bulgaria, 2020, §§62–63, and Ecodefence and Others v. Russia, 2022, §§81 and 87, for an overview of the different forms of restriction).*

Any interference with the exercise of the right to freedom of association is permissible only if it satisfies the conditions set out in Article 11(2): it must be "prescribed by law", pursue one or more legitimate aims, and be "necessary in a democratic society".

Such interference is permissible only where it serves at least one of the legitimate aims listed in paragraph 2 of Article 11: national security or public safety, defence of order or prevention of crime, protection of health or morals, and protection of the rights and freedoms of others. These exceptions to freedom of association must be interpreted narrowly: the list of grounds is exhaustive, and their scope necessarily restrictive (*Sidiropoulos and Others v. Greece*, *1998).*

The notion of "necessity in a democratic society" also implies two conditions: any interference must respond to a "pressing social need", and it must be proportionate to the legitimate aim pursued.

The word "necessary" does not have the flexibility of terms such as "useful" or "expedient". Exceptions must therefore be construed strictly, and only compelling and overriding reasons can justify restrictions.

In application of Article 17 of the Convention, which prohibits invoking the Convention to destroy or excessively limit the rights it guarantees, the Court has held that associations whose activities run counter to the values of the Convention cannot benefit from the protection of Article 11 (see *Hizb ut-Tahrir and Others v. Germany*, *2012, on the prohibition of an Islamist association advocating violence; W.P. and Others v. Poland, 2004, on the ban on creating an association whose statutes contained anti-Semitic provisions; and Ayoub and Others v. France, 2020, on the dissolution of two far-right associations).*

The State must therefore exercise restraint in using its powers to protect its institutions and citizens from associations that may endanger them (*Magyar Keresztény Mennonita Egyház and Others v. Hungary*, *2014).*

In light of the above principles, the High Commissioner therefore considered certain limitations and measures set out in the draft legislation to be excessive. It further noted that the explanatory memorandum did not provide any justification as to why these provisions were necessary and legitimate in order to combat money laundering in a democratic society.

The restrictions which the High Commissioner regarded as unjustified included the following:

Article 2 of Act No. 1,355 (new wording):

Paragraph 1-4° limited the term of office for association board members to five years. The explanatory memorandum stated that this obligation would strengthen the democratic functioning of associations — a laudable objective in principle. However, the High Commissioner observed that Article 3 of the Act, which provides for the election or co-option of board members, already guarantees democratic governance. It also noted that no such limitation exists in French or Luxembourg law.

Paragraph 2-4° introduced an additional requirement that all association board members demonstrate good moral character. This condition does not exist in current Monegasque law, nor in the French Act of 1901 on associations.

The explanatory memorandum referred to a requirement of “honourability”, which is relevant to the licensing of professional activities — particularly in the financial sector — but has not previously been required in the context of associations.

The High Commissioner considered that, even if such a requirement were to be contemplated (which it did not recommend), it should apply only to associations active in specific high-risk sectors, and the criteria for assessing moral character should be defined in very strict and limited terms.

The European Court of Human Rights confirmed this approach in *Yefimov and Youth Human Rights Group v. Russia* (2021), where it held that domestic provisions enabling investigators to exclude an individual from an association on the grounds of suspicion of extremist activity failed to meet the “quality of law” requirement. They gave investigators unlimited discretion and offered no protection against abuse. Similarly, the dissolution of the petitioner association was found not to be based on a clear and foreseeable legal basis.

Article 15 of Act No. 1,355 (new wording) provided that registration of an association could be refused if another association already existed in the same field, unless the applicant could demonstrate that it offered a “complementary activity” or “added value” compared with the association already registered. In *Koretskyy and Others v. Ukraine* (2008), the Court found that the provisions of domestic law governing the registration of associations were too vague to be sufficiently foreseeable, leaving the authorities excessively wide discretion. The High Commissioner considered that refusal to register an association — even if it does not prevent its existence — must continue to be based, as in the legislation currently in force, on criteria leaving no room for interpretation.

The High Commissioner also failed to see why the possible existence of two registered associations in a similar field should be prohibited, or how such a restriction would improve the fight against the offences targeted by the draft legislation. Should the legislator nevertheless wish to maintain this provision, the burden should lie with the administrative authority to demonstrate why registration would be problematic.

The High Commissioner also considered that, under the new Article 23, the conditions and procedures for the judicial dissolution of an association at the request of the Minister of the Interior should be specified in the law itself, whereas the draft text referred to a ministerial decree.

The European Court of Human Rights has consistently held that the forced dissolution of an association is a severe measure with serious consequences, which may only be applied in the most serious cases (*Association Rhino and Others v. Switzerland*, *2011; Vona v. Hungary, 2013; Les Authentiks and Supras Auteuil 91 v. France, 2016).*

The High Commissioner also raised questions about the practical difficulties that could arise from the new Article 20-2 of Act No. 1,355, which requires identity checks on donors from €200 upwards. It suggested that this threshold, as well as the one introduced for foundations under the new Article 17-1 of Act No. 56, should be raised.

In view of the foregoing, the High Commissioner considered that certain provisions of the draft legislation should be deleted or supplemented so as to restrict limitations on freedom of association to those that are duly justified.

The High Commissioner also noted that the provisions on inspection procedures referred in particular to Article 32 of the Criminal Code and recalled the legal timeframes (new Article 24 of Act No. 721 establishing a trade and industry register).

The new Articles 10 and 11 of Act No. 797 provided for the same measures for inspections carried out in the premises of non-commercial companies, the new Article 31-4 of Act No. 1,355 for inspections in the premises of associations, and the new Article 30 of Act No. 56 for inspections in the premises of foundations.

However, these provisions did not distinguish between the professional and private areas of the premises, which could be problematic depending on the form of the company concerned (particularly non-commercial companies), as well as for associations and foundations.

By way of example, such a distinction is made in Act No. 1,365 on the protection of personal data, Article 18 of which provides that *“for the purposes of carrying out the tasks referred to in the previous Article, the said agents or investigators may, after informing the person responsible for the professional premises or his representative of his right to object, access the places, premises, enclosures, installations or establishments used for the implementation of personal data processing operations and which are for professional use, to the exclusion of those parts used as private dwellings. The operations shall take place in the presence of the person responsible for the premises or his representative”.*

The High Commissioner therefore recommended:

- that private dwellings be excluded when inspections are carried out in the premises of non-commercial companies or associations;

- that the five-year limit on the term of office of board members be removed;

- that the requirement of good moral character for association board members be deleted;

- that the conditions and procedures for the judicial dissolution of an association at the request of the Minister of the Interior be set out clearly in the law;

- and that the €200 threshold for verifying the identity of donors to associations and foundations be revised upwards.

The High Commissioner welcomed the fact that its observations on safeguarding freedom of association were largely taken into account in the final version of the law adopted on 30 September 2023, which amended Act No. 1,362 of 3 August 2009 on combating money laundering, the financing of terrorism, the proliferation of weapons of mass destruction and corruption.

b. Bill No. 1084 amending legislative provisions on combating money laundering, the financing of terrorism and the proliferation of weapons of mass destruction (Part IV)

The provisions concerning the consequences of abusive or dilatory joining of criminal proceedings as injured parties claiming damages drew comments from the High Commissioner.

Article 32 of the Bill amended the Code of Criminal Procedure by introducing Article 215-1, which provided for heavy penalties against injured parties whose participation was considered abusive or dilatory. The maximum fine was set at €50,000 for a natural person and €100,000 for a legal entity, with the decision open to appeal.

The High Commissioner noted that in France similar measures exist under Article 177-2 of the Code of Criminal Procedure. A major difference, however, lies in the maximum fine: in France it is €15,000, which appears less dissuasive for victims wishing to exercise their rights.

The High Commissioner also pointed out that this measure overlapped with other existing provisions.

The offence of false accusation, under Article 307 of the Criminal Code, already allows the authorities to challenge the falsehood of an accusation and severely punish the injured party responsible.

In addition, Article 77 of the Monegasque Code of Criminal Procedure already serves to discourage reckless proceedings, by requiring *"anyone wishing to join proceedings as an injured party without legal aid to pay into the General Court Registry a sum deemed necessary to cover procedural costs. That sum is set by the investigating judge or the trial court, depending on the foreseeable costs and the party's resources, with the judge having discretion to waive it"*.

The High Commissioner therefore suggested either deleting Article 32 altogether, or reducing the maximum fines provided for. The article was ultimately deleted.

As regards Article 62 of the Bill, which amends Act No. 721 of 27 December 1961, Article 76, which amends Article 10 of Act No. 797 of 18 February 1966, Article 93, which amends Article 31-3 of Act No. 1,355 of 23 December 2008, and Article 116, which amends Article 30 of Act No. 56 of 29 January 1992, the High Commissioner regretted that these provisions conferred powers to access premises for inspection on officials of the Business Development Agency and the Ministry of the Interior without sufficiently specifying their nature to ensure that appropriate safeguards would apply.

If the intention was, in this case, to grant only a right of access, it should have been stated that this right merely obliges the person visited to receive the officials, while the latter must remain in the place assigned to them, from which they may make their requests[1]. In such circumstances, the added value compared with an inspection on the papers or during an interview appears limited.

If, however, it was envisaged that, in exercising this right of access, visits and inspections with possible seizure of documents could be carried out, the High Commissioner considered that the Bill should then have been supplemented.

Such visits constitute a form of investigation falling within the remit of the judiciary and must therefore be accompanied by all the safeguards required for the protection of rights and freedoms (remedies, presence of a criminal investigation officer, assistance of counsel, lawful hours for searches).

In this respect, the High Commissioner recalled the Supreme Court decision of 25 October 2013 (Sieur D. C. v. Commission de Contrôle des Informations Nominatives), which struck down Article 18 of Act No. 1,165 of 23 December 1993 as unconstitutional. The Court held that granting investigative powers without safeguards was contrary to Articles 19, 21 and 22 of the Constitution, and in particular that such measures could not be taken without prior judicial authorisation or without the person responsible for the premises being informed and given the opportunity to exercise the right to object".

Moreover, the Bill did not, in all cases, provide persons subject to such investigations with the possibility of objecting to access to premises not open to the public.

In the absence of clearer safeguards, the conditions under which access may be granted to the premises of those subject to such obligations could, in certain situations, prove contrary to Article 8 of the European Convention on Human Rights (ECHR) and Article 21 of the Constitution, which protect privacy and the inviolability of the home. Indeed, the inspection of certain associations or Sociétés Civiles Immobilières (SCIs) could entail entering a private dwelling. Here again, more precise regulation should be provided by law.

The High Commissioner therefore recommended that more detailed provisions be drafted to regulate access to the professional or private premises of those subject to these obligations, drawing, where appropriate, on the provisions set out in Chapter III of Act No. 1,165 of 23 December 1993 on the protection of personal data, which governs inspections of data-processing operations.

These suggestions were not taken up.

1) Cf. the study carried out at the request of the French Prime Minister by the Conseil d'État (French Council of State) on the investigative powers of the administrative authorities, April 2021, p. 132 et seq.

C. Respect for Privacy

This right, enshrined both in Article 8 of the ECHR and in the Constitution of Monaco under Fundamental Rights and Liberties, lies at the heart of issues relating to access to social rights, the protection of personal data and e-government. Respect for privacy is therefore essential at every stage — in drafting, in implementation and in oversight of the relevant norms.

In 2023, the High Commissioner was approached on several occasions in matters concerning privacy protection:

1. Respect for principles relating to the protection of personal data

The High Commissioner followed up on a case in which a civil servant, dismissed six years earlier, was unable to secure dereferencing of an online page so that it would not appear among the top results on search engines.

The High Commissioner again recommended that the authorities, after a reasonable period of time, anonymise, restrict or dereference in search engines certain decisions published online — such as the dismissal of civil servants — where publication may have disproportionate long-term effects on the professional life of those concerned, notably on their ability to find new employment.

This recommendation seems all the more relevant given that recent legislation on anti-money laundering already provides for anonymisation or dereferencing in search engines of certain decisions concerning individuals listed under EU or UN sanctions.

This recommendation has unfortunately still not been followed.

2. Access to social rights for all married couples

The High Commissioner was seized of a case in which a female petitioner, married to a woman, was refused reimbursement by the Monegasque Social Security Funds for medical procedures carried out under Assisted Reproductive Technology (ART). The refusal was based on Ministerial Decree No. 96-209 of 2 May 1996, which — following its amendment in June 2023 — introduced a new provision in the General Nomenclature of laboratory examinations and analyses stipulating that reimbursement applies only to couples composed of a man and a woman, whether married or cohabiting.

However, the conditions set by this regulatory text, and the arbitrary recognition of the petitioner's marital situation, appear contrary to the most recent case law of the European Court of Human Rights (ECHR). The Court now recognises that States are under a positive obligation, pursuant to Article 8 of the Convention on the right to respect for private life, to provide same-sex couples with adequate legal protection, granting them rights and obligations equivalent to those of heterosexual couples in comparable situations, and to avoid discrimination based on sexual orientation (*Fedotova v. Russia and Koilova and Babulkova v. Bulgaria*, *2023).*

The High Commissioner therefore recommended that Article 1 of Chapter 3 of Ministerial Decree No. 96-209 of 2 May 1996 be amended so as not to exclude same-sex couples. The provision could, for example, state that "to qualify for reimbursement by the health insurance scheme, the couple must be alive and either married or cohabiting".

This recommendation was unfortunately not followed.

3. Legislative Opinion

The High Commissioner also advocated respect for the right to privacy in several Opinions on draft legislation.

a. Bill No. 1070 establishing a Monegasque supplementary pension fund (Caisse Monégasque de Retraite Complémentaire – C.M.R.C.)

In its review of this Bill, the High Commissioner recommended adopting gender-neutral terminology to avoid perpetuating gender discrimination, which would be inconsistent with the principle of equality between men and women.

For provisions concerning orphans, the High Commissioner proposed using the term *parent* rather than *father* and *mother*. As regards eligibility for survivors' pensions under Article 10, it recommended that the entitlement should not be tied to the application of Act No. 445 but instead provide for rights to be granted to the *surviving spouse*. This recommendation was followed.

On the substance, the High Commissioner also suggested addressing restrictive consequences concerning entitlement to survivors' pensions for spouses and partners.

Since such pensions were accessible only to married couples, the High Commissioner recommended that the difference in treatment between a surviving partner and a surviving spouse was not justified, and that entitlement should also be extended to partners under a civil partnership (Contrat de Vie Commune – C.V.C.) or to couples married abroad.

In the absence of any statutory basis for denying survivors' pensions in cases of civil partnerships, the High Commissioner advised clarifying this interpretation — or preferably, amending Article 10 to remove additional grounds for extinguishing entitlement which do not exist under the French AGIRC-ARRCO system, and retaining only remarriage as a ground.

The High Commissioner further recommended extending the age limit for orphans to 21, or even 25 in cases of higher education, unemployment or apprenticeships, and abolishing any age limit in cases of disability. This recommendation was followed.

It also drew attention to the need to consider special provisions for workers employed outside the Principality, as well as arrangements to allow the purchase of additional pension points for higher education, incomplete years or pre-trial detention not followed by conviction.

Finally, the High Commissioner proposed including a statement of general principles to guide the future work of the C.M.R.C. and suggested introducing provisions relating to mediation.

b. Bill No. 1083 amending Act No. 1,309 of 29 May 2006 on paternity leave for employees

This Bill sought to extend paternity leave for employees, increasing it from 12 to 21 days, and in exceptional cases from 19 to 28 days.

The High Commissioner welcomed this social progress, which also serves the best interests of the child and represents an important step towards gender equality in the workplace.

It also noted that many countries had adopted similar provisions, with varying lengths of leave. In France, for example, paternity and childcare leave may last up to 25 days for a single birth and 32 days for multiple births. Other European countries, such as Spain and Finland, have gone even further, granting 84 and 54 days respectively. Against this background, the proposal made by the Bill remained coherent given Monaco's close social and economic ties with the neighbouring region.

The new regime introduced in Monaco is thus more favourable than in several other European countries — Switzerland, for example, provides only two weeks' paid leave to be taken within six months of the birth.

The High Commissioner also recalled that EU Directive 2019/1158 of June 2019 on work-life balance established a minimum paternity leave of 10 days, to be transposed by Member States by 2 August 2022. As a result, paternity leave has been introduced in four States which had none (*Germany, Austria, Slovakia and Croatia*) and extended in six others where it was less than eight days (*Malta, the Netherlands, Greece, Romania, Hungary and the Czech Republic).*

The High Commissioner noted with interest that the explanatory memorandum presented the Bill as a response by the Government to the changing needs of society. However, it considered that in order to fully achieve this objective, the Bill should also have taken account of the situation of unmarried partners and same-sex couples, by amending Article 1 of Act No. 1,309 to refer to the "second parent" or to "paternity and childcare leave".

In fact, the High Commissioner stressed that adopting such provisions would have been more consistent with the evolving jurisprudence of the European Court of Human Rights. In particular, in *Fedotova and Others v. Russia (17 January 2023) and Koilova and Babulkova v. Bulgaria (23 September 2023)*, the Court held that, although States retain a margin of appreciation, they are now under a positive obligation to guarantee the right to respect for private and family life for all couples or legally recognised partnerships, irrespective of sex.

The High Commissioner also observed that Monegasque law does not provide for the possibility of postponing or extending paternity leave in the event of a child's hospitalisation. Nor does it allow a father, in the tragic case of the mother's death during maternity leave, to postpone his paternity leave beyond the end of the maternity leave period. The High Commissioner considered this a significant shortcoming that should be remedied, since such circumstances place family stability in jeopardy.

It further noted that Monegasque law does not extend paternity or maternity leave to the self-employed. The High Commissioner viewed this as an important gap, particularly when compared with the provisions in force in neighbouring European States.

These proposals were unfortunately not retained.

c. Bill No. 1087 on the use of video protection and video surveillance in publicly accessible places for the detection, search and identification of wanted or reported persons through remote biometric identification.

At a general level, the High Commissioner considered that striking the right balance between, on the one hand, security and, on the other, the protection of privacy and fundamental rights is essential both to the values underpinning the institutions of the Principality of Monaco and to maintaining its attractiveness, by ensuring that all who come to Monaco enjoy protection of their most fundamental rights.

In this context, the High Commissioner stressed in particular the need for the law to guarantee expressly that the use of systems for real-time remote biometric identification of individuals in public spaces for law enforcement purposes should be limited strictly to what is necessary in order to achieve objectives of general interest whose importance outweighs the risks to rights and freedoms.

The High Commissioner also emphasised that this balance should be assessed in light of the specific context of Monaco, which already guarantees a very high level of security, as reflected in the excellent results published annually by the Police Department. The use of facial recognition technology should therefore be evaluated more precisely, identifying situations where it would address specific difficulties and provide real added value.

It further suggested clarifying the articulation between the Bill and the legislation in force or under preparation at national level on data protection. This could be achieved, for example, by integrating the Bill into Bill No. 1054 (especially since Article 6 of Act No. 1,430 already refers to the law on personal data protection), or by providing a broader text dealing with the implementation of applications using artificial intelligence.

The High Commissioner also recommended taking into account, as early as possible, the provisions contained in the European legislative proposals currently being developed on the regulation of artificial intelligence. This would help to avoid Monaco's legislation becoming misaligned in the short term with European standards.

D. Attention to situations of vulnerability

The High Commissioner's mandate requires particular attention to situations of vulnerability, which entail a heightened risk of violations of rights. It therefore considers that adapting norms and ensuring their dissemination to public service users in vulnerable situations should systematically be planned in advance, so that the Principality may become a genuine reference point for inclusiveness.

1. Situation of detainees

Since 2022, a Latvian detainee has lodged several case assistance requests with the High Commissioner. Kept in solitary confinement for long periods, sometimes at his own request, the detainee suffered from fragile mental health and bouts of violence, particularly against Remand Prison staff. This led to repeated disciplinary sanctions.

The High Commissioner observed that existing mechanisms did not seem to allow the detainee to be cared for effectively, despite the tireless efforts of the Prison Directorate and medical staff, and sought to identify measures that might remedy the situation.

The High Commissioner first recalled that the 2022–2027 action plan of the Department of Health and Social Affairs includes, among other objectives, improving health care for detainees. The plan is intended to meet the challenge of combining prevention with measures to prevent reoffending, so as to guarantee respect for Human Rights in prison settings[2]. While positive in principle, this institutional programme proved insufficient to address the very specific difficulties posed by the care of the detainee concerned.

The detainee persistently refused, despite the sustained efforts of the medical service at the Remand Prison, to undergo a medical assessment which would have enabled him to receive specialised treatment at the Princess Grace Hospital. At the same time, his increasingly frequent episodes of verbal and physical violence made him progressively more difficult to manage. The High Commissioner therefore considered that his continued detention could constitute a danger and might amount to a violation of Article 8 of the ECHR and of other international standards.

2) Mental Health Plan, Department of Health Affairs

The European Court of Human Rights, in its 2006 judgment *Rivière v. France*, found that keeping a person in detention despite an established mental illness amounted to an especially severe ordeal, exceeding the inevitable level of suffering inherent in detention. The Court therefore emphasised the need for adequate care for detainees with mental disorders.

The High Commissioner also recalled the recommendations of the European Committee for the Prevention of Torture (CPT), which in its various reports highlights the responsibility of prison administrations to implement and adopt measures that safeguard the well-being of detainees.

For example, the CPT considers that a psychiatric patient suffering from violent disorders must be placed under supervision and receive nursing support, combined, where necessary, with medication[3]. This reflects the Committee's consistent position[4] that prison administrations must play a key role in the early detection of detainees with psychiatric disorders, so that appropriate adjustments can be made to their environment[5]".

The High Commissioner further noted that, under Rule 21.1 of the Nelson Mandela Rules (United Nations Standard Minimum Rules for the Treatment of Prisoners), *"all prison facilities shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialised treatment or surgery shall be transferred to specialised institutions or to civil hospitals."* In addition, Rule 109.1 provides that *"persons who are not criminally responsible, or who are later diagnosed with a mental disability or other serious illness, and whose condition would be worsened by continued detention, shall not be detained in prison and arrangements shall be made to transfer them as soon as possible to a mental health facility"*.

In the present case, by refusing any assessment or medical treatment at the Remand Prison, the detainee severely limited the administration's ability to provide appropriate care.

The High Commissioner therefore considered that, even without a request from the detainee, his mental health condition should have led either to serving his sentence in a psychiatric facility in the Principality or to considering transfer to a suitable prison in his State of origin. In such a severe case, serving his sentence in his own country, where he spoke the language and had access to his general practitioner, would remain the most effective way of ensuring both medical and social care.

The High Commissioner also noted that the case law of the ECHR supports this approach. In *Avsar and Tekin v. Turkey (17 September 2019)*, the Court held that transferring two detainees who were being held far from their families amounted to a violation of their fundamental right to private and family life, and thus an interference by the State in their private lives. The Court stressed the importance for every detainee of being held close to their family environment.

3) Report of the European Committee for the Prevention of Torture (CPT), 2011, p. 45
4) Report of the European Committee for the Prevention of Torture (CPT), 2003
5) Report of the European Committee for the Prevention of Torture (CPT), 2011, p. 45

The High Commissioner was mindful that, in principle, the place of detention is not a matter of choice for the detainee, and that no bilateral framework applied in this case, since Monaco is bound only by agreements with France and is not a party to the Council of Europe Convention on the Transfer of Sentenced Persons.

It therefore suggested that Monaco consider acceding to this Convention, whose objectives are consistent with the values of the Principality: ensuring sound administration of justice and promoting the reintegration of convicted persons by enabling foreign nationals deprived of their liberty to serve their sentences in their social environment of origin — the best way to achieve this being transfer to their home country.

The High Commissioner also received several complaints underlining the importance of prisoner reintegration. Given that most sentences served at the Remand Prison are for less than ten years, detention must be seen as a period of preparation for reintegration. In line with the principles promoted by the CPT and the ECHR, the High Commissioner issued a general recommendation focusing particularly on access to cultural and sporting activities, as well as to health care, as essential elements of such reintegration policies.

2. Legislative Opinion

a. Bill No. 1088 on sport

Referring, on the one hand, to the Declaration of the Committee of Ministers on the integrity of sport of 27 September 2023, and, on the other, to the European Sports Charter, which stresses the importance of combating harassment in sport and all forms of related intimidation, the High Commissioner drew the legislator's attention to these issues, which could have been addressed more specifically in this Bill.

During the visit to the High Commissioner on 5 October 2023 by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), these matters were highlighted as a focus of ongoing work, as was the need for an accessible and independent body to receive reports of such abuse. The High Commissioner therefore considered that identifying such a body in law, empowered to receive first-instance complaints in the field of sport, would be highly appropriate.

On gender equality, the High Commissioner recalled that Article 8-2 of the European Sports Charter provides that *"policies on sport integrity should, in particular, take into account a gender mainstreaming approach and the youth dimension"*.

It suggested that the Bill could go further in setting out the ways in which equality between women and men would be respected, beyond the wording of Article 1(f) on equal access to sporting activities. Additional provisions could, for example, require:

- the inclusion on the National Sports Committee of representatives from the women's committee and relevant associations;
- conditions on the award of the sport label and funding tied to commitments on equality, not only in access to leadership positions but also in sporting practice;
- gender awareness training for government and association staff;
- systematic collection of data to study and monitor gender issues;
- and stronger visibility for women's sport, especially by promoting elite female athletes.

On doping, the High Commissioner emphasised the need for proper enforcement of regulations, in particular to ensure that gender-related issues are taken into account when testing for prohibited substances - such as the specific situation of individuals with particular hormonal characteristics who may be excluded from competition under suspicion of doping.

On inclusive participation, beyond the male/female dimension, the High Commissioner considered it essential to take a comprehensive and multi-faceted view of the forms of discrimination and underlying violence affecting access to sport, which also conditions the pursuit of ethical sporting practice. The High Commissioner therefore suggested that the Bill's provisions on inclusiveness could be expanded to cover disability in its entirety, as well as older persons.

It noted, for example, that the policy of including persons with disabilities should not be confined to the school setting, as provided for in Article 41 of the Bill, but should extend to all persons with disabilities and to elderly people as well.

On training and awareness-raising, the High Commissioner suggested that the law should provide for the implementation of such measures in the areas of equality, combating violence, discrimination and doping. It therefore recommended developing partnerships between institutional structures - particularly in the fields of education, sport and health - and associations.

b. Bill No. 1073 on the donation of leave in the private sector

The High Commissioner welcomed the legislator's initiative to harmonise the rights of employees in the public and private sectors, suggesting a desire to reduce disparities between them and confirming a commitment to normative consistency.

It also praised the recognition of the health difficulties faced by the relatives of some employees, describing the creation of this legal framework as progress in terms of well-being at work. By drawing inspiration from the French "Mathys Law", the legislator placed itself in a progressive framework which the High Commissioner applauded.

Nevertheless, the High Commissioner noted several points that could raise difficulties in relation to the protection of rights and, more specifically, the right to rest and leisure as guaranteed by the International Covenant on Economic, Social and Cultural Rights. The Bill could also come into conflict with Articles 23, 24 and 25 of the Universal Declaration of Human Rights, which concern the right to work and related conditions.

Although leave donation is based on solidarity and proportionality, the High Commissioner stressed that the international human rights commitments binding on Monaco provide for a framework on working conditions that must not be undermined by excessive solidarity. In other words, while the legislator's approach is commendable in recognising the need for a framework that takes account of difficult family circumstances affecting some employees' rights and well-being, it would be regrettable if it also created breaches of the rights of donor employees. While anonymity and the unpaid nature of such donations are provided for, it remains necessary to take into account the potential risks and abuses that could arise. The High Commissioner therefore pointed to certain aspects that, in its view, required adjustment, independently of those to be addressed in the sovereign ordinance that will specify the implementing arrangements for this law.

The High Commissioner also noted that the example of schemes adopted by other European States indicates that the criteria used to permit a donation of leave would benefit from further clarification.

Thus, and in order to avoid any interpretation that could place the donor employee, the beneficiary and the employer in a difficult position, the High Commissioner considered it more appropriate to specify within the body of the single article itself the age limit up to which childhood is to be understood in this specific context - which has been done, the age of 25 having been specified in the law.

Moreover, and still concerning this hypothesis of leave donation, the High Commissioner drew the legislator's attention to the meaning of the expression "sustained presence and demanding care", suggesting that it be clarified in order to avoid any difficulty of interpretation. Indeed, nothing indicates whether this refers to hospital care, day-to-day arrangements at the child's home, or other forms of treatment.

The High Commissioner indicated that it would also be appropriate to consider including in the implementing Sovereign Ordinance certain arrangements attesting to the state of health of the relative/child to be assisted, such as, for example, providing a medical certificate to one's employer.

Furthermore, the High Commissioner noted that the second case of eligibility for leave donation is "providing assistance to a relative suffering from a particularly serious loss of autonomy or presenting a disability", the Bill providing that the list of relatives concerned would be fixed at a later date by Sovereign Ordinance. However, and in the absence of elements clarifying the legislator's intent, the High Commissioner already underlined the need to establish a precise and inclusive list.

In this respect, and by virtue of its objective to combat discrimination, the High Commissioner recommended that, with regard to couples, all types of union or partnership be taken into account - which has been done. Moreover, and in order to protect the fundamental rights set out in Articles 23 to 25 of the Universal Declaration of Human Rights (UDHR), the High Commissioner recommends limiting the list of persons to be regarded as "close relatives" to spouses/partners, partners, ascendants and descendants in the first degree. Providing assistance to a relative must not, in fact, cause prejudice or even create imbalance between employees. It would be regrettable if, under cover of an obligation of solidarity, and despite conditions of proportionality, the multiplicity of conditions for assisting a relative undermined the balance of relations between employees.

Finally, in response to a possible wish by the legislator to widen the list of relatives on the model of the Mathys Law, the High Commissioner recommended that an adaptive framework, on the Luxembourg model, be adopted instead, allowing an employee in need of additional leave to adjust his or her own leave entitlements and to enjoy greater freedom in terms of exceptional days off. The creation of this hybrid system appears to respond more adequately to the realities of the Principality.

On the modalities of the donation, the High Commissioner indicated that it would therefore be clearer to state more explicitly that it is only the last week of leave that may be donated by each employee. A favourable response was given to this suggestion.

Finally, the High Commissioner raised the issue of hierarchical relationships. No clarification had been provided as to whether a hierarchical link could exist between the donor and the recipient. In light of recent legislative developments in the Principality and the growing importance of preventing harassment, it seemed coherent to establish a more protective normative framework for employees. The High Commissioner therefore recommended that any hierarchical relationship between donor and recipient be expressly excluded and that this be written directly into the law, so as to avoid difficulties of interpretation. Although restrictive, this approach nonetheless appeared fairer, since it in no way prevents other employees from donating leave.

In any event, the High Commissioner recommended that the implementing texts provide for an internal ad hoc mechanism enabling the allocation of extraordinary leave days. Such a mechanism, which in certain cases could take the form of an internal "leave bank" within the company, would meet both the imperative of solidarity and the need to prevent possible abuses or pressure on employees.

Lastly, the High Commissioner considered that the concern for consistency between the public and private sectors should also be taken into account in the drafting of future implementing texts.

c- Bill No. 1074 on compensation for victims of sexual offences, crimes and offences against children, and domestic violence

The High Commissioner welcomed the intention to provide compensation to victims of serious offences involving vulnerable persons, thereby strengthening a legislative framework that has expanded considerably over the past ten years.

It considered that this Bill significantly improved the protection of individual rights and freedoms by introducing, for the first time, provisions stipulating that the State would substitute itself for the perpetrator of the harm where the latter is insolvent.

In addition, these provisions represent progress in the enforcement of criminal judgments.

The Bill also created a complete procedure to ensure that the State substitutes itself for defaulting convicted persons in compensating victims of certain offences, a development which the High Commissioner welcomed.

The High Commissioner nonetheless noted that international standards and the legislation in force in other European countries provide for compensation covering a much wider range of situations and through a more structured procedural mechanism.

It further observed that the Bill created a difference in treatment between different categories of victims of offences. The High Commissioner therefore sought to determine whether other crimes or offences likely to affect particularly vulnerable victims and cause them serious harm should also trigger State intervention for the purposes of compensation.

Accordingly, the High Commissioner suggested extending the scope of beneficiaries to victims of other offences against vulnerable persons and including in the Bill a greater number of very serious offences affecting vulnerable individuals, such as breach of trust committed against an elderly or disabled person, covered by Article 278-1 of the Criminal Code.

The High Commissioner also considered it desirable that, in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings, victims of trafficking should also be entitled to compensation.

The High Commissioner welcomed the fact that the above-mentioned extensions were incorporated into the law as adopted.

However, its suggestions in the following areas were not taken up:

- In order to avoid any discrimination, the High Commissioner proposed that, rather than listing the offences concerned, the law should define criteria relating to the consequences of the offence for the victim (death, incapacity, deterioration of living conditions), combined with the criterion of the victim's vulnerability.

- The High Commissioner also examined the safeguards afforded to victims under the procedure provided for and the practical arrangements for granting such compensation.

- The High Commissioner suggested extending the time limit for submitting a compensation claim, which was set at two years, even though in France it is three years.

- The High Commissioner also proposed improving the compensation procedure through the creation of an ad hoc commission responsible for providing an opinion on claims and on the actual amount of compensation to be awarded in light of all the harm suffered.

- Lastly, the High Commissioner recommended adopting provisions to strengthen victim support, namely systematic information for victims on the compensation options available to them, and the possibility of granting victims interim payments on future compensation during the course of proceedings in order to address urgent situations.

IV. Cooperation

A. Associations

Participation of the High Commissioner in the GIRLBOSS event organised by the Association des Femmes Chefs d'Entreprises de Monaco (A.F.C.E.M.) and the SheCanHeCan Association - 9 March 2023.

On the occasion of International Women's Day, A.F.C.E.M. and SheCanHeCan organised the second edition of the GIRLBOSS event.

This "speed mentoring" session enabled around sixty young female students aged 12 to 18 from the Principality to meet women holding senior management positions in both the private and public sectors of Monaco, among them the High Commissioner, Marina Ceyssac.

The aim was to guide these young women, who are reflecting on their future and on the place of women in positions of influence, particularly in the Principality.

Career orientation for young students begins in secondary school and takes shape in high school, with no distinction between genders. Nevertheless, women remain under-represented in leadership roles, whether in the private or public sectors. Through this initiative, the young women had the opportunity to meet some forty women with diverse and enriching careers and experiences, all of whom share the common feature of holding significant responsibilities. Speaking with them allowed the students to gain a better understanding of the role and importance of women in professional life.

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High Commissioner Marina Ceyssac at the speed mentoring session.

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Second edition of the GIRLBOSS event at Monte-Carlo One.

Marina Ceyssac, High Commissioner; Meryl Thiel, International Relations Officer; Diane Garoscio; Bastien Nardi; Nicolas Chabert; Margaux Girardin; Bérénice Bardonnet.

B. Institutions

On Friday, 10 February 2023, the High Commissioner welcomed the new class of trainee civil servants from the Advanced Administrator Training Programme, who had joined various departments of the Monegasque Government at the start of the year. On this occasion, the High Commissioner presented the Institution's different missions, and an instructive exchange took place on several current legal issues.

C. International

The international activity of the High Commissioner's Office saw major growth in 2023: the project to revise its statutory Sovereign Ordinance prompted the team to pursue its Ombudsman activities while also looking ahead to its future as a National Human Rights Institution (NHRI).

In addition, the Institution co-organised a round table with the European Commission against Racism and Intolerance (ECRI) in April 2023. The review of the year 2023 therefore highlights the High Commissioner's participation in regular events with foreign counterparts, the expansion of exchanges with Council of Europe bodies, and preparations for joining the European Network of National Human Rights Institutions (ENNHRI). Moreover, while the use of videoconferencing has continued in order to enable greater participation in international events, the resumption of in-person meetings has allowed the High Commissioner to re-establish regular direct contact with its counterparts.

The High Commissioner was also pleased to have been invited to engage with numerous Council of Europe committees such as the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and the Group of States against Corruption (GRECO), thereby further affirming its role as a defender of human rights in the Principality and as an institutional mediator.

1. Participation in events with foreign counterparts

a. Association of Mediterranean Ombudsmen (A.O.M.)

a.1. General Assembly and thematic conference by videoconference

In May 2023, the High Commissioner took part in the 12th General Assembly of the A.O.M., held in Kosovo, with the associated conference focusing on the issue of the integrity and independence of Ombudsman institutions.

AOM –General Assembly 2023

During the discussions, participants addressed the new challenges facing Ombudsman institutions and unanimously concluded that independence is one of the essential elements for better functioning and stronger protection of human rights. In the course of the debates, the High Commissioner shared its experience and highlighted the importance of acting as closely as possible to the local population and civil society, in order to maintain a constant and realistic dialogue with the authorities. After two days of thematic exchanges, held alongside the administrative aspects debated in the General Assembly, the members of the A.O.M. adopted the "Pristina Declaration", reaffirming that human rights are universal, indivisible and interdependent, and that Ombudsman institutions and other human rights institutions have a central role in the human rights system. Another key point of the declaration underscored the commitment to promoting cross-border, regional and international cooperation in order to protect human rights and fundamental freedoms effectively.

a.2. Conference of the Association of Mediterranean Ombudsmen (A.O.M.) in Malta

The A.O.M. Conference held in Malta from 31 October to 1 November 2023 was devoted to the theme “The Right to Good Administration: myth, aspiration or reality?”.

In responding to the question framing the conference, the interventions and debates confirmed that far from being a myth, good administration is both an aspiration and a reality for Ombudsmen. It is an aspiration because they carry the heavy responsibility of constantly seeking to improve the functioning of institutions, and a reality because they contribute on a daily basis to the sustainability of the rule of law.

During this conference, the High Commissioner also moderated a round table on *“Good administration, human rights and the protection of privacy”*, which provided an opportunity to explore in greater depth the legal principles and tools available to guarantee these rights, and to share experiences and best practices. On this occasion, particular reference was made to Monaco’s progressive approach to the use of new technologies and the tensions that this may create with the protection of privacy and personal data.

b. Association of Francophone Ombudsmen and Mediators (A.O.M.F.)

b.1. Seminar in Luxembourg

In October 2023, the Board of Directors of the A.O.M.F. met in Luxembourg. The associated thematic seminar focused on “Crisis management: what role for the Ombudsman?” Health, humanitarian and environmental crises were all discussed and gave rise to exchanges.

On this occasion, the High Commissioner moderated a round table on humanitarian crises, with the participation of Ms Fatimata SANOU TOURE, Ombudsman of Burkina Faso, and Ms Esther GIMENEZ-SALINAS I COLOMER, Ombudsperson for Catalonia. From the exchange of their respective experiences, it emerged that the proximity of Ombudsmen to the population, their knowledge of fundamental rights and their impartiality enable them to work towards resolving crises while limiting or avoiding the use of violence and ensuring that the protection of fundamental rights is taken into account.

In addition, a round table on health issues highlighted the importance of strong cooperation between Ombudsman institutions and public authorities. Building public policies that guarantee the fundamental rights of users requires careful listening to their needs, which is unfortunately too often neglected.

As regards environmental issues, a reminder was given of the points raised during the conference organised in Monaco by the High Commissioner in 2021, which led to the adoption of the Monaco Declaration. Sadly, it is already evident that children and their rights are particularly affected by the effects of climate change in southern countries, and that, ultimately, everyone will be concerned.

b.2. First International Conference of Ombudsmen

This conference was organised in September 2023 by the Romanian Ombudsman and brought together nearly 200 Ombudsmen from around the world. Its theme was “The role of the Ombudsman in the world: between reality and possibility”. The aim of the event was to foster dynamic dialogue and comparison between the various experiences and practices of Ombudsmen worldwide. Some counterparts belonging to the networks of the Association of Francophone Ombudsmen and Mediators (A.O.M.F.), the Association of Mediterranean Ombudsmen (A.O.M.) and the International Ombudsman Institute (I.O.I.), of which the High Commissioner is a member, were also present, leading to fruitful exchanges in a new setting.

For its part, the High Commissioner addressed recent issues it has had to consider concerning the use of digital technologies and respect for rights. The High Commissioner recalled the importance of adopting, on these matters — which touch on the right to privacy and intimacy — a normative framework that guarantees the protection of fundamental rights. She also underlined the future role that Ombudsmen could play in contributing to the development of digital tools for detection and analysis, serving the defence of human rights.

The High Commissioner’s increased and active participation in conferences associated with administrative events involving its counterparts thus fostered good relations and led to greater visibility for the Institution on the regional and international stage, whether in the Francophone or Mediterranean context. The High Commissioner therefore welcomed the dynamic balance sheet of the year 2023.

2. Cooperation with the Council of Europe

Since its creation, the High Commissioner has contributed to the work of the European Commission against Racism and Intolerance (ECRI), by participating in annual seminars and in periodic reviews. In 2023, this participation continued, and was complemented by a major event: a meeting in the Principality on the follow-up to ECRI’s recommendations.

ECRI, in cooperation with the High Commissioner, organised a round table in Monaco on 25 April 2023 on the prevention of and fight against racism and intolerance. This event followed the publication of ECRI’s report on Monaco in June 2022.

This round table, co-chaired by the High Commissioner and ECRI, fostered exchanges on the follow-up given or to be given to the recommendations contained in the report. In that report, ECRI expressed concern about issues such as: the need to adopt legislation governing the fight against all forms of discrimination and to strengthen the High Commissioner’s powers, particularly in the field of investigations; the need to enable judicial authorities to combat online hate speech more effectively; the need to remove any unjustified difference in treatment between same-sex and opposite-sex couples; the need to include in domestic law an asylum procedure in line with international law and to establish clear standards governing the right to family reunification and residence permits; the need to ratify the Revised European Social Charter; the need to prohibit dismissals without prior and valid reasons; and the need to take effective measures to guarantee access to housing for foreign residents.

ECRI’s recommendations were heard with great interest, and the specific realities of Monaco — in territorial, economic and cultural terms — were presented. The result was therefore a fruitful exchange, taking into account Monaco’s particular circumstances and characteristics.

b. Annual Seminar of the European Commission against Racism and Intolerance (E.C.R.I.)

In October 2023, the High Commissioner participated online in this event and came away with a critical reflection on the issue of dialogue between equality bodies and public authorities.

The annual seminar focused on ways of "strengthening the independence and effectiveness" of equality bodies. The High Commissioner shared the speakers' critical view of, in particular, the lack of binding powers for human rights institutions, which considerably weakens their action.

c. Visit of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)

Also in October, the High Commissioner was pleased to meet with GREVIO, whose delegation was received at the High Commissioner's Office, where an exchange took place to report on the implementation of the Istanbul Convention in the Principality. The evaluation was entitled "Building trust by providing support, protection and justice" and focused on a limited number of provisions of the Convention in order to assess certain aspects of its implementation in greater depth.

This meeting provided an opportunity for the High Commissioner to reaffirm its commitment to defending women's rights and combating violence against women, while highlighting its ongoing action in this field.

d. Visit of the Council of Europe's Group of States against Corruption (GRECO) for the opening of its 5th Evaluation Round

In November 2023, as part of the launch of GRECO's 5th Evaluation Round on the theme of senior executive functions and the police, a delegation visited the Principality and requested a meeting with the High Commissioner's team.

On this occasion, the Institution's functioning and status were first presented, together with the procedures for referrals, to give a comprehensive overview. The High Commissioner recalled the importance of the Ombudsman's role, as well as the conciliatory and people-centred dimension that it entails.

Particular attention was paid to mediation activities and to the relations that the High Commissioner maintains with administrative authorities. Thematic discussions ensued, notably concerning the issuing of residence permits and authorisations to carry out activities, as well as the handling of possible cases of discrimination in public services.

Members of the delegation also wished to receive clarification on the ways in which civil society operates in the Principality.
Discussions were also opened on the possibility of the Institution participating in training activities within public services, during which the High Commissioner reiterated its wish to see a law adopted.

3/ Preparing for the future: the High Commissioner's steps towards joining the European Network of National Human Rights Institutions (E.N.N.H.R.I.)

In September 2023, the annual meeting of ENNHRI was held in Brussels for National Human Rights Institutions (NHRIs) in the European region. In order to expand its network of counterparts in this field, and building on exchanges with other European Ombudsmen in Rome, the High Commissioner attended the meeting and participated in the conferences and debates, which greatly contributed to advancing its reflection on the modification of its status.

Appendix

JOURNAL DE MONACO

Official Bulletin of the Principality

WEEKLY JOURNAL PUBLISHED ON FRIDAYS

Sovereign Ordinances (Regulations)

Sovereign Ordinance No. 4,524 of 30 October 2013 establishing a High Commissioner for the Protection of Rights, Liberties, and for Mediation

ALBERT II

BY THE GRACE OF GOD
SOVEREIGN PRINCE OF MONACO

Having regard to the Constitution;

Having regard to Sovereign Ordinance No. 2.984 of 16 April 1963 on the organisation and operation of the Supreme Court, as amended;

Having regard to Act No. 841 of 1 March 1968 on the budget laws;

Having regard to Act No. 884 of 29 May 1970 on the entry into force and opposability of sovereign ordinances, ministerial decrees and other administrative decisions;

Having regard to Act No. 975 of 12 July 1975 regarding the status of civil servants, as amended;

Having regard to Act No. 1.165 of 23 December 1993 on protecting personal data, as amended;

Having regard to Act No. 1.312 of 29 June 2006 on the grounds for administrative decisions;

Having regard to Sovereign Ordinance No. 3.191 of 29 May 1964 on the organisation and operation of the Council of State, as amended;

Having regard to Sovereign Ordinance No. 16.605 of 10 January 2005 regarding the organisation of ministries;

Having regard to Sovereign Ordinance No. 158 of 22 August 2005 on the appointment of an Advisor at the Ministry of State responsible for appeals and mediation;

Having regard to Sovereign Ordinance No. 3.413 of 29 August 2011 on various measures relating to the relationship between the Administration and the public service user, as amended;

Having regard to the deliberations of the Council of Government on 15 October 2013 which were communicated to Me by My Minister of State;

I Have Ordered and Order that:

Article One

An Office of High Commissioner for the Protection of Rights and Liberties and for Mediation, hereafter referred to as 'the Office of the High Commissioner' is established, led by a High Commissioner for the Protection of Rights and Liberties and for Mediation, hereafter referred to as 'the High Commissioner'.

CHAPTER 1

APPOINTMENT OF THE HIGH COMMISSIONER

Art. 2.
The High Commissioner is appointed by sovereign ordinance following receipt of advice from:

1. the Minister of State;
2. the President of the National Council;
3. the Secretary of Justice;
4. the Mayor.

Art. 3.
The request for advice from the authorities listed in the previous article shall comprise the curriculum vitae of the person or persons being considered for appointment as well as, where necessary, an account of their aptitude for the role of High Commissioner as defined in this ordinance.

Art. 4.
The High Commissioner is appointed for a duration of four years, renewable once, under the conditions set out in articles 2 and 3, with the agreement of the Crown Council.

The High Commissioner may not be removed from post during this term except by the means and under the conditions described in Section IV.

Art. 5.
Before taking up post, the High Commissioner shall swear the following oath before Me:

"I swear to respect the institutions, Constitution, laws and regulations of the Principality.

I also swear to carry out my role in service of the public interest, acting entirely impartially and independently, with neutrality, diligence, loyalty and discretion, and to uphold the duties that it imposes upon me and to conduct myself under all circumstances with dignity and loyalty".

CHAPTER II

STATUS OF THE HIGH COMMISSIONER

Art. 6.
The High Commissioner carries out the tasks delegated to him or her by this ordinance with neutrality, impartiality and in an independent manner.

In carrying out these tasks, therefore, the High Commissioner does not receive any orders, instructions or directives of any kind whatsoever, notably from the authorities listed in Article 2.

Art. 7.
Appointment as High Commissioner does not seek to nor does it confer the status of civil servant within the meaning of Article 51 of the Constitution.

Art. 8.
Without prejudice to the provisions of the Criminal Code relating to professional confidentiality, the High Commissioner is strictly bound to an obligation of discretion with regard to any information which is confidential in nature, in particular information relating to the private lives of individuals or to the reasons set out in Article 22, and which the High Commissioner becomes aware of through carrying out the tasks delegated to him or her by this ordinance.

Art. 9.
The High Commissioner is entitled, for services provided, to remuneration allocated by the State under the conditions defined by a decision of the Sovereign.

This remuneration can only be altered during the course of the High Commissioner's term in accordance with seniority.

In the event that the High Commissioner, prior to his or her appointment, holds the status of civil servant, he or she is seconded to the Office of the High Commissioner for the duration of his or her term.

In all cases, for the duration of his or her term, the High Commissioner has access to the same social security, pension, family and prenatal allowances as civil servants and State officials.

The High Commissioner cannot exercise his or her functions on a part-time basis.

Art. 10. *(amended by Ordinance No. 7.774 of 18 November 2019)*
The functions of the High Commissioner are incompatible with those of a member of the National Council, a member of the Council of the Commune, a member of the Economic and Social Council, or with any elective office of a political nature in Monaco or abroad.

The exercise of these functions is also incompatible with the exercise, in Monaco or abroad, of any other public function or gainful, professional or salaried activity.

Art. 11.
The High Commissioner cannot have, directly or via an intermediary, in any form or description, interests liable to compromise his or her independence.

The High Commissioner shall abstain from any action, activity or expression which is incompatible with the discretion and restraint implied by the role delegated to him or her by this ordinance, whether on his or her own account or that of any other individual or legal entity.

Art. 12.
Notwithstanding the provisions of the previous article, the High Commissioner may be authorised, by decision of the Sovereign, to deliver instruction, exercise functions or engage in activities which are not liable to harm his or her independence or the dignity of the office.

Art. 13.
In accordance with the instructions issued by decision of the Sovereign, the State warrants that the High Commissioner shall be protected against threats, insults, abuse, defamation or attacks of any sort that he or she may encounter in carrying out the tasks delegated to him by this ordinance.

In the same way, the State guarantees to provide the High Commissioner with the material resources required to fulfil these tasks in accordance with the requirements set out in article 6.

The High Commissioner may conclude contracts with suppliers or service providers as required for the operation of the Office of the High Commissioner.

Art. 14.
Staff called upon to work under the High Commissioner shall, if they are already civil servants, be seconded to the Office of the High Commissioner.

In other cases, such staff shall be employed on the basis of a contract with the State. This public law contract, agreed in accordance with the forms and rules applicable to contractors of the State and pursuant to the provisions of the third paragraph of article 46, shall be signed by the individual concerned and by the High Commissioner, having informed the Prince's Cabinet.

The High Commissioner shall have management authority and responsibility for discipline with respect to all staff at the Office of the High Commissioner, under similar conditions to those applicable to civil servants and State officials.

CHAPTER III

ROLE OF THE HIGH COMMISSIONER

SECTION 1

PROTECTING THE RIGHTS AND LIBERTIES OF PUBLIC SERVICE USERS IN THEIR RELATIONSHIP WITH THE ADMINISTRATION

Art. 15.
Any individual or legal entity who considers that his rights or liberties have been infringed by one of the authorities listed in article 2 or by the operations of an administrative department subordinate to one of these authorities or a public institution, may refer his case to the High Commissioner.

Art. 16.
The High Commissioner may also be called on by the authorities listed in article 2 or by the directors of public institutions for the purposes of mediation.

Mediation is a method of amicably resolving disputes likely to arise between public service users and the administrative authorities in the event of:
- preliminary administrative appeals against decisions of an individual nature under the conditions set out in Articles 3 and 4 of aforementioned Sovereign Ordinance No. 3,413 of 29 August 2011, amended;
- other disputes giving rise to formal case assistance requests.

The provisions of the preceding paragraph are applicable to disputes resulting from agreements concluded between the State, the *Commune*, or a public institution and individuals or legal entities. Nonetheless, where such an agreement stipulates a method of amicable dispute resolution, mediation cannot be used until the contractual mechanism has been implemented to no avail.

Art. 17.
Cases are referred to the High Commissioner in writing.
To be admissible, direct referral to the High Commissioner by a public service user in accordance with Article 15 must include the public service user's surname, first names, address, and the aspects of the law and facts and all other arguments on which his claim is based.
It must indicate the previous steps taken by the public service user with the administrative department, government agency, or public institution concerned in order to assert his rights.
Where the claim relates to the protection of the rights and liberties of a minor or a person who is incapacitated, the claim may be validly filed on behalf of this person by his legal representative.
Art 18.
The High Commissioner is not competent to resolve disputes relating to employment relationships between the Administration and public institutions and their civil servants or officials.
The High Commissioner cannot intervene in proceedings before a court, nor challenge the validity of a court decision.
The initiation of direct contact with the High Commissioner by a public service users in accordance with Article 15 to challenge to an administrative decision, where no formal preliminary administrative appeal has been lodged, does not affect the timeframes and avenues of appeal or the procedures.

Art. 19.
The High Commissioner acknowledges receipt of the referral and informs the public service user involved of the follow-up that he can expect.

The High Commissioner may also communicate to the public service user concerned all relevant information on the subject of mediation and in particular, if appropriate, the deadlines for appeals.

The High Commissioner is not obliged to respond to general or vague claims, nor to those which are excessive, for example due to their number or repetitive nature.

Art. 20.
The High Commissioner reviews the paperwork associated with the case and requests from the relevant departments any documents, information or assistance required to carry out his role.

The High Commissioner makes these requests to departments in writing, addressed in accordance with the relevant hierarchy. The documents and information requested by the High Commissioner shall be sent to him within a timeframe which enables him, if required, to comply with the provisions of the third paragraph of article 23.

The High Commissioner may also verbally request from the public service user and the aforementioned departments any supplementary information likely to shed light on the appeal or dispute.

The High Commissioner ensures compliance with the principle that both parties should have the right to be heard by listening to the explanations, if necessary and unless it is impossible, of the public service user or his representative, as well as the relevant administrative authority.

Art. 21.
When a claim or a dispute relating to the infringement of rights which, in accordance with the law, are subject to the protection of an independent administrative authority, is submitted to the High Commissioner, the High Commissioner shall withdraw from the case in favour of that authority. When transferring the case, the High Commissioner may add his or her notes and request to be kept informed of any follow-up to his observations.

The High Commissioner may, at his or her request and unless otherwise provided by the law, be involved in the work of the authority relating to the claim or dispute described in the preceding paragraph.

Art. 22.
The secret or confidential nature of the information to which the High Commissioner requests access cannot serve as grounds for refusal to provide such information unless there are duly justified grounds to do so, where the information relates to:

a) the confidential deliberations of the Government and the authorities listed in article 2;

b) the conduct of the Principality's foreign policy;

c) the security of the State or the safety of people and property;

d) the conduct of proceedings before the courts or operations preliminary to such proceedings;

e) the investigation or prosecution of acts likely to result in criminal penalties.

The High Commissioner shall be informed of a justified refusal to provide information or a document requested by the High Commissioner by the authority or the director of the public institution concerned. The said authority or said director may also provide the information or document sought, requesting that, for reasons of confidentiality, the High Commissioner not share it with the individual who referred the case or with any third party.

Where secret information is protected by law, this information may not be communicated to the High Commissioner except at the request or with the express consent of the individual or legal entity concerned, or of the individual's legal representative in the case of minors and incapacitated persons.

Art. 23.
Following his review, the High Commissioner may make, to the relevant authority referred to in article 2 or to the director of the relevant public institution, any recommendation which the High Commissioner considers likely to ensure respect for the rights and liberties of the person who submitted the case, and to resolve the difficulties raised or prevent their reoccurrence.

This recommendation shall set out the considerations of fact, law or equity on which it is based. The recommendation may also, if necessary, seek to propose any measures of a general nature which are likely to correct any possible shortcomings noted, or suggest any modifications that could be made to existing legislation and regulations to prevent them from resulting in inequitable consequences.

In the case of a preliminary administrative appeal, this recommendation is addressed to the relevant authority to enable it to provide a response to the public service user before the deadline set out in article 14 of aforementioned Sovereign Ordinance No. 2.984 of 16 April 1963 as amended. This recommendation may relate to the administrative action to be taken in regard to the case, in accordance with the provisions of article 4 of aforementioned Sovereign Ordinance No. 3.413 of 29 August 2011 as amended.

Art. 24.
The High Commissioner may also recommend the amicable settlement of the dispute, through, if appropriate, a settlement agreement reached by means of the High Commissioner's mediation.
The findings reached and statements gathered during the course of the mediation process may not subsequently be produced nor invoked during civil or administrative cases without the consent of the persons involved, unless disclosure of the agreement is necessary to its implementation or required for reasons of public order.

Art. 25.
Where the High Commissioner believes that the facts that have been referred to him or that he has become aware of warrant the launch of criminal or disciplinary proceedings, the High Commissioner shall, as appropriate, refer the case to the Public Prosecutor or to the authority with the power to open disciplinary proceedings.

Art. 26.
The authorities listed in article 2 and the directors of public institutions shall inform the High Commissioner of the actions taken as a result of his recommendations within four months of the date on which the High Commissioner's notification thereof.

Art. 27.
The High Commissioner shall advise the public service user in writing of the outline of his recommendation.
If required, the High Commissioner shall ensure that the decision or agreement reached on the basis of his recommendation is applied.

SECTION II
COMBATING UNJUSTIFIED DISCRIMINATION

Art. 28.
The High Commissioner may receive claims from individuals or legal entities who believe that they have been the victims of unjustified discrimination in the Principality.
The claim shall be formulated under the conditions described in Article 17.
The provisions of Article 19 shall apply.

Art. 29.
Where the entity accused is one of the authorities listed in Article 2 or an administrative department subordinate to one of these authorities or a public institution, the High Commissioner's review of the claim shall be carried out under the conditions set out in section I.
In other cases, the High Commissioner shall hear the claimant and may request any supplementary information required to clarify the facts and the circumstances which motivated the approach.
After reviewing the case, the High Commissioner may transfer the claim to the authorities or to persons in a position to resolve it.
The High Commissioner may also, in accordance with the principle that both parties should be heard, invite the accused entity to present its explanations and observations on the facts of the case of unjustified discrimination which is the subject of the claim.

Art. 30.
Following review of the claim, the High Commissioner may make any recommendation to the accused entity which is likely to correct the discrimination observed, inviting said entity to keep the High Commissioner informed, within a timeframe set by him, of the action taken as a result of his recommendation.
The High Commissioner may also, with the agreement of all interested parties, conduct a mediation process under the conditions set out in article 24.

The High Commissioner may also refer the case to the Public Prosecutor if he considers that the facts he has become aware of justify a criminal prosecution.

Art. 31.
In the absence of any information from the accused entity within the deadline set by the High Commissioner or if the High Commissioner believes that, in light of the information received, his intervention has not resulted in the necessary measures, the High Commissioner may make his recommendations public or draw up a special report addressed to Me.

Where the activity of the entity which the High Commissioner considers responsible for a case of unjustified discrimination is subject to first obtaining an administrative authorisation or approval, the High Commissioner may also refer the case to the legally competent authority to suspend or revoke said authorisation or approval, or to take any appropriate measure.

Art. 32.
In all cases, the High Commissioner shall inform the claimant in writing of the action taken in response to his claim.

SECTION III
OTHER RESPONSIBILITIES OF THE HIGH COMMISSIONER

Art. 33.
The authorities listed in article 2 may contact the High Commissioner to request an opinion or to ask the High Commissioner to study any issue relating to the protection of public service users' rights and liberties in their relationship with the Administration or to combating unjustified discrimination.

The High Commissioner's opinions or studies may be made public by the authority which requested them.

Art. 34.
The High Commissioner may enter into dialogue with associations, groups and other bodies of a non-profit nature with a social or humanitarian objective, whose activity is of interest with respect to the protection of public service users' rights and liberties in their relationship with the Administration or to combating unjustified discrimination.

Art. 35.
The High Commissioner may make contact with foreign institutions which have similar roles to its own, and with their groups, to the extent of the High Commissioner's areas of competence as defined in this ordinance, and in accordance with the Principality's international commitments, subject to informing Me in advance.
Alongside the authorities listed in article 2 and under the same conditions as described in the previous paragraph, the High Commissioner participates in dialogue with human rights bodies attached to the international organisations of which the Principality is a member, or which have been set up as a result of international human rights agreements duly ratified or approved by the Principality.

Art. 36.
public website presenting his or her responsibilities, the legislation he or she is governed by, the reports and public documents he or she produces in accordance with the provisions of this ordinance and, more broadly, any useful information that serves to keep public service users properly informed of the High Commissioner's role and the procedure for involving the High Commissioner in a case.
In order to carry out the responsibilities delegated to him or her by this ordinance, the High Commissioner may create one or more e-administration online services under the conditions set out in Chapter IV of aforementioned Sovereign Ordinance No. 3.413 of 29 August 2011, as amended.

Art. 37.
Article 26 of aforementioned Sovereign Ordinance No. 3.413 of 29 August 2011, as amended, is replaced by the following provisions:
"A refusal to allow access to an administrative document listed in article 21 shall be based on the conditions set out in aforementioned Act No. 1.312 of 29 June 2006.
It may give rise to a preliminary administrative appeal to the Minister of State. In this case, the Minister of State may refer it to the High Commissioner for the Protection of Rights.
Articles 19 and 20 of Sovereign Ordinance No. 4.524 of 30 October 2013 shall then be applicable.
For the purposes of mediation, the High Commissioner may additionally suggest to the petitioner that he carries out commonly agreed verifications of the administrative document and report his findings".

Art. 38.
Article 27 of aforementioned Sovereign Ordinance No. 3.413 of 29 August 201, as amended, is replaced by the following provisions:
"Following review of the case, the High Commissioner for the Protection of Rights shall send the Minister of State a recommendation in accordance with Article 23 of Sovereign Ordinance No. 4.524 of 30 October 2013".

CHAPTER IV
TERMINATION OF THE HIGH COMMISSIONER'S TERM OF OFFICE

Art. 39.
The High Commissioner's term of office shall cease at the end of the term defined in Article 4.

Art. 40.
The High Commissioner's term of office may not be terminated before the end of this term except where the High Commissioner expressly requests it or in the event of duly confirmed incapacity or serious misconduct.
In such cases, termination of the High Commissioner's term of office shall be pronounced by sovereign ordinance, justified in the manner prescribed by aforementioned Act No. 1.312 of 29 June 2006.

Art. 41.
Except in the case of termination at the express request of the High Commissioner, the sovereign ordinance referred to in the previous article shall be issued on the basis of advice from the Council of State, chaired by the Vice-Chairman, who shall nominate a rapporteur.

Art. 42.
The High Commissioner is summoned before the Council of State by a letter from the Council's Vice-Chairman, which shall indicate the subject of the summons and the date of the session.
Should the High Commissioner fail to appear and to provide a legitimate reason for his or her failure to appear, the Council of State shall rule in the absence of the High Commissioner.
The report and, as necessary, the associated file shall, before any debate and observing a minimum period of at least fifteen clear days, be communicated by the Vice-Chairman of the Council of State to the High Commissioner.
From receipt of this communication, the High Commissioner shall have a period of fifteen days to present his or her case in writing.
The High Commissioner may be assisted, in his or her appearance before the Council of State, by a defence lawyer or a lawyer. At the request of the parties or as a matter of course, the Council may hear any witness.

Art. 43.

Depending on the case, the Council of State shall establish the impediment of the High Commissioner or rule on the charges against him or her, their seriousness, their attributability and the appropriate actions to be taken as a result, particularly with regard to early termination of his or her term of office.

The opinion of the Council of State shall be reasoned. It shall be signed by all members who took part in the deliberations.

Art. 44.
In the event of termination of his or her term of office, the High Commissioner, if a civil servant, is reintegrated into an administrative department in accordance with his status.

CHAPTER V
MISCELLANEOUS AND FINAL PROVISIONS

Art. 45.
The High Commissioner shall report to Me on his or her responsibilities.

In accordance with the provisions of Article 8, the High Commissioner shall publish a report on an annual basis. This report may, on the basis of cases handled, conclude with some general proposals.

This report is made public.

Art. 46.
The funding required for the remuneration of the High Commissioner and the staff made available to him or her, as well as, more broadly, for financing the material resources required for the performance of his or her responsibilities, shall be the subject of a specific item in the State budget.

During preparations for the preliminary or amended State budget bill, the High Commissioner shall send the Minister of State proposals regarding the funding referred to in the first paragraph.

Expenditure is authorised by the High Commissioner, without prejudice to the general controls in place regarding State expenditure.

Art. 47.
The provisions of Section II (Articles 5 to 14) of Sovereign Ordinance No. 3.413 of 29 August 2011 are repealed, along with any provisions contrary to this ordinance.

Art. 48.
My Secretary of State, My Secretary of Justice and My Minister of State are responsible, each in those matters that concern them, for the execution of this ordinance.

Issued at the Prince's Palace in Monaco, on the thirtieth of October two thousand and thirteen.

ALBERT.
By the Prince,

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J. BOISSON.

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