Annual Report 2014–2015

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

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First public report

HIGH COMMISSIONER
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LIBERTIES AND FOR MEDIATION
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Editorial

> **A proactive approach based on conciliation and dialogue**

Anne Eastwood
High Commissioner

2014 witnessed the birth in Monaco of an independent public institution tasked with making its services available free of charge to citizens, whether individuals or legal entities, to help them resolve any difficulties they may encounter in their dealings with the Administration and to improve the quality of public services delivered in the Principality for the benefit of all.

Established at the initiative of H.S.H. Prince Albert II, the Office of the High Commissioner for the Protection of Rights, Liberties and for Mediation is intended to serve as a new element of the state apparatus working to ensure modern, consensual governance which treats citizens with respect.

Providing everyone with a flexible and non-confrontational way of asserting their rights, the High Commissioner promotes a proactive approach based on conciliation and dialogue towards the relationship between the public authorities and users. The High Commissioner offers an alternative to deadlock and the involvement of courts to resolve conflicts by seeking equitable and peaceful solutions which maintain social harmony.

A new and fully-fledged stakeholder in the protection of public liberties in Monaco, the High Commissioner, as part of a specific remit to combat discrimination, also offers a new, amicable means of appeal to those who consider themselves victims of unjustified discrimination, not only on the part of the public authorities, but also and more broadly at work or in their private lives.

This is the first annual report to be issued by the institution to H.S. H. Prince Albert II, in accordance with article 45 of Sovereign Ordinance No. 4.524, dated 30 October 2013, which established the Office of the High Commissioner. The aim of the report is to give an account of how this new mechanism for protecting rights and providing mediation services set up by that Ordinance is operating, and to provide a summary of the action taken by the High Commissioner during her first year, which covers the period from March 2014 to March 2015.

With 65 requests received over the course of the year, initial figures for the institution demonstrate the interest shown by the public in this new mechanism. While not all of these requests required an action on the merits, these referrals are a tangible reflection of citizens' need to be heard and supported, and their expectation of a more open and personalised dialogue with administrative departments, enabling situations to be handled as fairly as possible.

Having now taken our rightful place, we are focused on offering a quick and appropriate response to users who, by the time they turn to us, have very often first come up against silence or inertia on the part of the Administration. They feel powerless in the face of decisions that they perceive to be unfair; unable to obtain the expected responses from a public service operating according to its own rhythm and its own rules, without necessarily taking into account the realities citizens are confronted with.

Whatever the specific case, we try to support people as much as possible in the search for a possible way out of their situation, including by simply providing information, by redirecting their case where appropriate, or perhaps by advising them on other approaches. When we encounter a justified complaint, we focus above all on proposing balanced solutions which are tailored to the human and individual circumstances involved, while recognising the public interest requirements that the authorities must abide by. On the other hand, when we believe that the position taken by the authorities complies with the law and equity principles, we seek to explain the rationale to the citizen in such a way that it can be understood and accepted.

Already, it has been possible to reach amicable solutions with regard to a number of cases. At the end of these twelve months, then, the initial outcomes are encouraging.

Nevertheless, while the High Commissioner's role as a mediator and facilitator has, all things considered, been well accepted, the broader remit of protecting rights and offering constructive criticism in this context has, it must be recognised, caused more difficulties.

Our formal recommendations, where they highlight certain shortcomings, are sometimes viewed unfavourably and receive a defensive, even irritated reaction from the administrative authority concerned, which is more inclined to justify its actions than to correct them. Moreover, our desire to expand the scope of thinking initiated on certain issues, or to take a more in-depth approach, where we consider this to be necessary, is too often met with reluctance on the part of the Administration when faced with the need to question its practices and think beyond the boundaries of a specific case.

Such reluctance is in no way surprising; it is the logical consequence of a process which by its nature disrupts administrative procedures and imposes a duty to act in an exemplary manner, causing some practices to be challenged. The High Commissioner is a partner in the relationship between the Administration and users, but the role also holds up a mirror to the system, highlighting its inadequacies and failings. No matter where in the world they are established, the gestation of such institutions is never painless. The Monegasque institution is no exception, particularly during the construction phase, where each stone laid is shaping the structure on which it will, in future, be able to rely in order to accomplish its missions for the benefit of citizens and the rule of law.

At this point I would like, if I may, to stress the importance of providing accurate and full responses, within a reasonable timeframe, to requests for information from the High Commissioner as part of her work to review cases. This is a prerequisite if mediation is to be a genuine alternative available to citizens.

I would also like to see honest and transparent collaboration from public institutions in helping us to accomplish our goals. The High Commissioner is neither the prosecutor of the Administration, nor a lawyer acting on behalf of the citizen. The High Commissioner works in the public interest, within the context of the public service mission which has been conferred on the role, seeking to achieve rebalancing and reconciliation. The Commissioner's primary concern is to resolve situations and, wherever necessary, to propose improvements that would help to make the Administration more accessible and more principled in its relations with users. The independence of the High Commissioner is a measure of impartiality. Under no circumstances should it become a source of mistrust or suspicion on the part of the administrative authorities, who must accept that they also have everything to gain from a process which seeks to legitimise government action and to correct, where required, any possible failings.

Convincing the authorities of this is also part of the High Commissioner's role. We will resolutely continue our efforts in this direction, with confidence that, since the role exists as a result of political will at the highest levels of State, we will succeed in overcoming defensive reflexes and barriers to ensure that the Office of the High Commissioner can fulfil all of its functions without hindrance and serve the interests of the country and its people, and the goals of justice and good governance which were paramount in its creation.

Contents

I. The establishment of the High Commissioner

A. Why do we need a High Commissioner for the Protection of Rights, Liberties and for Mediation in the Principality?

› Historical background

The Office of the High Commissioner is an independent, public, institutional mediation body. Its establishment in October 2013 was the culmination of a long process which began 20 years earlier when, in 1993, the Government decided to appoint a civil servant with specific responsibility for mediation with citizens.

In 2011, Sovereign Ordinance No. 3.413 of 29 August 2011, covering a variety of measures regarding the relationship between the Administration and citizens, formalised this role by officially establishing an Advisor Responsible for Appeals and Mediation within the Ministry of State. The post was granted special status and various guarantees regarding functional autonomy.

The creation, two years later, of the High Commissioner for the Protection of Rights, Liberties and for Mediation (the 'High Commissioner') marked the transition from internal mediation to independent mediation and the broadening of the scope of this mediation to cover all State institutions, including the judiciary, the National Council, City Hall and the Principality's public bodies. It thus sets the relationship between the State and citizens firmly on a path focused on conciliation rather than confrontation, across all areas of public authority activity.

› A new contribution to ensuring citizens benefit from rule of law

The Office of the High Commissioner takes its cue directly from the Ombudsman institutions which have been set up in the majority of European countries to provide mediation and protect the rights of citizens.

Inspired by the example of Scandinavia, these institutions saw strong growth during the second half of the twentieth century as a mechanism for promoting democratic practices, respect for the principles of justice and equality, and consolidation of the rule of law. The role of an ombudsman (the word literally means *"someone who speaks on behalf of another")* is traditionally to investigate complaints made by citizens regarding the work of public authorities. Its role is to encourage, whenever necessary, the informal correction of unlawful situations or poor governance, by issuing recommendations or achieving amicable resolutions.

Acting upstream of the courts and complementing the actions of the administrative authorities themselves, whose role it is to serve the public interest while respecting the rights of users, the High Commissioner thus provides an additional level of guarantee that the principles of legality and good governance will be properly applied by public institutions. In creating the role, the State has provided a new, fully-fledged public service, which is completely free to use and makes it easier for citizens to ensure that their voices are heard, thereby contributing to a permanent improvement in the quality of service delivered to users.

› An independent human rights body

Through its involvement in the international organisations of which it is a member (in particular, the UN, the Council of Europe and the International Organisation of La Francophonie), the Principality has, over the last 20 years, regularly added its voice to various non-binding legal texts highlighting the need to encourage the establishment in member states of independent national institutions for the promotion and protection of human rights.

By confirming the institutional and organisational independence of the mediator, and entrusting the Office with new responsibilities for protecting rights and liberties and combatting discrimination, H.S.H. Prince Albert II sought to give the Office of the High Commissioner a full role as the national institution for the protection of human rights, in line with international recommendations.

The establishment of the High Commissioner thus illustrates the Principality's desire to work tirelessly to increase the consideration given to individual rights within its institutional mechanisms.

B . Steps in establishing the High Commissioner

› Founding instrument

The Office of the High Commissioner was established by Sovereign Ordinance No. 4.524 of 30 October 2013 (see text in the appendix to this report).

The choice of this procedure for establishing the role, in keeping with the specific features of Monaco's constitutional monarchy, reflects the unique institutional position enjoyed by the High Commissioner within Monaco. It is a sui generis body created at the initiative of the Prince with the aim of casting an independent eye over the actions of His Government with respect to citizens. Drawing its legitimacy from the Sovereign, reporting annually to Him through a report which is made public, and operating entirely independently in accordance with the principles of international law, the Office of the High Commissioner is, by its very name, symbolic of a politically active monarchy which de facto gives the Prince the role of primary protector of rights and liberties in Monaco (see Joël-Benoît D'Onorio, Monaco, Monarchie et Démocratie, Presses Universitaires de Provence, 2014, p. 212).

In this respect, it is interesting to note that unlike the legislative approach taken in the majority of other countries, in Monaco, the National Council, as the elected representative assembly, did not play an active role in the process of establishing the country's ombudsman, thereby confirming the consensus which exists in the Principality that this initiative is part of the domain reserved to the Sovereign.

› Appointment of the High Commissioner

Although the Office of the High Commissioner was formally established in legislation in October 2013, its work did not truly begin until the nomination of the first High Commissioner, Ms Anne Eastwood, by Sovereign Ordinance No. 4.732 of 21 February 2014.

The High Commissioner took up post on 3 March 2014, after taking an oath before H.S.H. Prince Albert II. The High Commissioner serves a term of four years, which is renewable once.

› Setting up an independent infrastructure for the High Commissioner

Ensuring that the institution had the right people, equipment and logistical procedures in place has been a priority of the last year. In accordance with existing international standards in this area (United Nations General Assembly Resolution 48/134 of 20 December 1993, known as the 'Paris Principles'), which inspired the mechanism set out in Sovereign Ordinance No. 4.524, independent human rights institutions must, in effect, "*have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*"

International texts calling for the general introduction of mediation and ombudsman institutions

UNITED NATIONS ORGANISATION

Resolution No. 65/207 on "The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights", adopted by the General Assembly on 21 December 2010

" *The General Assembly, (...)*
Recognizing the role of the existing Ombudsman, whether a male or female, mediator and other national human rights institutions in the promotion and protection of human rights and fundamental freedoms, (...)
Considering the role of the Ombudsman, mediator and other national human rights institutions in promoting good governance in public administrations, as well as improving their relations with citizens, and in strengthening the delivery of public services,
Considering also the important role of the existing Ombudsman, mediator and other national human rights institutions in contributing to the effective realization of the rule of law and respect for the principles of justice and equality, (...)
2. Encourages Member States: (a) to consider the creation or the strengthening of independent and autonomous Ombudsman, mediator and other national human rights institutions; (...)

COUNCIL OF EUROPE

Recommendation No. 1615 (2003) of the Council of Europe Parliamentary Assembly on "The institution of Ombudsman", adopted on 8 September 2003

" *1. The Parliamentary Assembly confirms the importance of the institution of ombudsman within national systems for the protection of human rights and the promotion of the rule of law, and of its role in ensuring the proper behaviour of public administration. Ombudsmen have a valuable role to play at all levels of public administration (...)*
10. Accordingly, the Assembly recommends that the governments of Council of Europe member states: i. create at national level (...), where it does not already exist, an institution bearing a title similar to that of "parliamentary (...) ombudsman" (...), iii. give this institution a mandate which clearly encompasses human rights as being fundamental to the concept of good administration (...). "

INTERNATIONAL ORGANISATION OF LA FRANCOPHONIE

Bamako Declaration of 3 November 2000

" *We, Ministers and Heads of Delegation of the States and Governments of Countries using French as a common language (...) :*
4. Undertake the following commitments:
D. *For instilling a democratic culture and full respect for human rights*
23. To create, generalize and strengthen national institutions, advisory or otherwise, for promoting human rights and to support the creation of structures within national administrations devoted specifically to human rights, and to assist the defenders of human rights in their efforts (...) "

Following the law establishing the State's Preliminary Budget for 2014, the legislature took pains to pass the resources required to establish the Office of the High Commissioner, allocating a specific budget to be freely administered (€355,000 in 2014, including €130,000 for operating costs).

Thanks to this budgetary allocation, in mid-2014, the High Commissioner recruited two staff to provide the additional capabilities needed to enable the Commissioner to function autonomously and carry out her role effectively.

Various contracts were also concluded with external suppliers, in compliance with the rules on public procurement, to gradually put in place a working infrastructure entirely independent of the Administration, particularly with regard to the IT system, thereby providing citizens with a full guarantee that their personal data would remain confidential. In parallel, the High Commissioner adopted a distinctive visual identity, with a view to building the role's image and communicating with the general public and government authorities. The image selected depicts two heads in the colours of the Principality. The heads face each other, a symbolic representation of dialogue in confrontational situations. It also features solid diamond shapes in the background, and the text 'Principality of Monaco', underlining the institutional nature of the Office of the High Commissioner.

The establishment of the institution's own identity was completed with the launch of its official website in March 2015, making general information about this new entity more accessible, and facilitating the process of submitting cases using an online form.

www.hautcommissariat.mc

› Official inauguration of the High Commissioner

The High Commissioner moved several times during this first year, until permanent premises were secured.

Once offices had been set up in the Jardins d'Apolline, the High Commissioner received a visit from H.S.H. Prince Albert II who, on 18 March 2015, officially inaugurated the Office of the High Commissioner in the presence of numerous Monegasque personalities and external figures from the world of mediation. By the end of this first full year, therefore, the High Commissioner had achieved full and definitive autonomy for the institution.

Extracts from the speech given by the High Commissioner at the inauguration by H.S.H. Prince Albert II of the Office of the High Commissioner for the Protection of Rights, Liberties and for Mediation, 18 March 2015

"*In 1911, at the behest of Prince Albert I, the Principality was the first country in the world to solemnly proclaim the existence of public rights guaranteed by a constitutional court – the Supreme Court – responsible for ensuring their effectiveness for the benefit of everyone.*

Following in these footsteps, Prince Rainier III enriched our substantive law with new individual and collective liberties, recognised and guaranteed to all by the Constitution of 1962. He was also responsible for our country's accession to the major international organisations working for peace and human rights, including the United Nations in 1993 and the Council of Europe in 2004, and our cooperation within these organisations has continued to intensify ever since.

The setting up by H.S.H. Prince Albert II of a public body for protecting rights, which draws its legitimacy from the Sovereign and operates entirely independently in accordance with the principles of international law, is a natural extension of this commitment to progress and to exemplarity. "

"*And so today, the High Commissioner is able to intervene in every sphere of public authority activity, not only as a force for conciliation, but also as a form of support for individuals, able to inform, advise, provide explanations and ensure, wherever necessary, that the actions of the Government in service of the public interest take proper account of the human aspect and the specific nature of each situation."*

"*Accessibility seems to me to be at the heart of our role. I intend to make it a priority by meeting every claimant, so that I am in a position to gain the best possible understanding of their situation and their requests, and, as often as possible, by meeting directly with departments to openly discuss the cases under review. What might be seen as a luxury, even, frankly, a utopia, in other countries is, in fact, possible here and therefore seems to me to be a very necessary element of our working methods. Mediation is first and foremost a human skill, which it is important to conduct face to face. "*

"*We will need to continue our efforts to make this new body a sustainable feature of our institutional landscape, and to establish the conditions necessary for it to act effectively. These conditions rely less on the letter of the law and rather more on tireless and patient work to build trust and gain respect in the real world. "*

"I am well aware that there are still habits to be changed, resistance to be overcome and much more educating to do, in order to get everyone to fully sign up to the listening and transparency that will guarantee that this new mechanism bears fruit for the benefit of all, both State and citizens. I know that I can count on your constant and benevolent support, Sir, to help me bring together the energy and goodwill to support this objective."

C . The responsibilities of the High Commissioner: two areas of competence and two approaches

Sovereign Ordinance No. 4.524 entrusts the High Commissioner with two key responsibilities: protecting the rights and liberties of citizens in their relationship with the Administration, and combatting unjustified discrimination. These responsibilities, along with the institution's name itself ('High Commissioner for the Protection of Rights, Liberties and for Mediation'), blend, in a single phrase, two areas of competence and two approaches.

› Two areas of competence: the relationship between the Administration and citizens / combatting discrimination

In the relationship between the Administration and citizens, the High Commissioner acts to resolve situations where any individual or legal entity considers that their rights or liberties have been infringed by an administrative decision or by the actions of a Monegasque administrative department.

In particular, the High Commissioner can assess the legality of administrative decisions taken against a citizen. But beyond the law, the High Commissioner also ensures fairness and good practice in all individual actions of the Administration, monitoring the quality of responses provided to citizens in each individual situation which is referred to her.

As part of this role, the High Commissioner can also intervene at the request of the administrative authorities themselves, for the purposes of mediation, in the event of preliminary administrative appeals brought against them. This option, however, which was inherited from the responsibilities of the former Advisor Responsible for Appeals and Mediation within the Ministry of State, and which is a specific feature of the Monegasque ombudsman, was not used during the past year (see Section IV, p. 29, "*cases referred exclusively by citizens*").

With regard to combatting discrimination, the High Commissioner acts to resolve situations where any individual or legal entity considers that they have been the victim of a case of unjustified discrimination in the Principality. Within the context of this remit, the High Commissioner's competence also extends to the private sector.

In the absence of a legal definition of the concept of "*unjustified discrimination*", the High Commissioner assess situations in light of domestic substantive law and general principles drawn from international law, with consideration for issues specific to Monaco in respect of national or regional priority set out in the Constitution, legislation and regulations (see Section VII, p. 55).

› Two approaches: protecting rights and liberties / mediation

The High Commissioner has been entrusted with both protecting rights and liberties and providing mediation.

In carrying out the role of protecting rights and liberties, the High Commissioner brings to light, through a legal analysis, any infringement of the rights and liberties of the claimant, who will then receive institutional support to assert his or her rights outside the context of legal proceedings**.**

In carrying out the role of mediation, the High Commissioner deploys her good offices to try to reach an amiable resolution, in a fair and calm manner, of the difficulties referred to her, by seeking to bridge differences between points of view and to highlight possible solutions which are satisfactory to all parties involved.

Experience shows that reconciling these two approaches, which can sometimes prove to be contradictory, is not always straightforward. As a mechanism, mediation is not necessarily effective in ensuring

that the rights of the user are fully respected. Conversely, when a shortcoming is identified, confining oneself to denouncing it is not always the best way of persuading the Administration, which is now confronted with a direct challenge, to remedy it. In practice, in order to be effective, it would seem necessary to prioritise the use of mediation in accordance with the principle of subsidiarity, in any case where it offers an opportunity to quickly and fairly resolve a situation.

› Other responsibilities of the High Commissioner

In addition to these main responsibilities, the High Commissioner can also intervene in cases of a refusal to grant a **request to consult administrative documents** made in accordance with the provisions of Chapter III, Section I of Sovereign Ordinance No. 3.413 of 29 August 2011, and, if appropriate, to consult the relevant documents on behalf of the citizen.

Moreover, **at the request of the administrative authorities** (Minister of State, President of the National Council, Secretary of Justice, Mayor or director of a public institution), the High Commissioner can **give an opinion** on any issue relating to the protection of citizens' rights and liberties and to combatting discrimination.

D . Conflict resolution methods: a range of tools for action

In accordance with the amicable philosophy which prevails in these types of institution, the High Commissioner has no power of coercion and cannot, therefore, oblige the parties to listen to each other or to implement the High Commissioner's findings. For the purposes of fulfilling her remit, the High Commissioner is, however, able to offer incentives, as set out in the legislation establishing the role or developed through practice. This covers a wide range of measures, from those which are more flexible to those which carry more weight. Depending on the cases referred to her, the High Commissioner selects the conflict resolution method most appropriate to the challenges posed by the case and the interests of each party.

› Informal or amicable settlements

If the situation allows, the High Commissioner will, as a priority, seek to achieve an informal settlement. The simple intervention of the High Commissioner, through the interviews that she conducts and exchanging letters with the administrative authority or body involved, is sometimes sufficient to bridge differences of opinion and resolve disputes.

In such cases, the High Commissioner then proceeds with an amicable settlement, informing each party of the agreement reached.

› Recommendations

Where the situation requires it, the High Commissioner issues a recommendation addressed to the administrative authorities or bodies involved in the individual case which was referred to her. The aim is to highlight an infringement of the rights or liberties of an individual, or to stress the unfairness of a situation and to recommend a change in the situation which will benefit the claimant.

When the issues brought to light and the solutions identified in a case justify improvements to existing procedures which would benefit all citizens,

the High Commissioner may also issue general recommendations. These seek to prevent a reoccurrence of the problems noted during the review of a specific case. They may also seek, in pursuit of the same goal, to propose legislative or regulatory reforms, or modifications to existing administrative practices.

To ensure transparency, the High Commissioner informs, in writing, those citizens who have referred their cases to her of the thrust of her recommendations to the authorities.

The relevant authorities are obliged to inform the High Commissioner, in a reasoned opinion, of the actions taken in response to her recommendations, within a maximum period of four months for government departments, or within the timeframe set by the High Commissioner for private organisations.

› Mediation in person

In her recommendations, the High Commissioner may propose, with a view to encouraging conciliation and maintaining the confidentiality of discussions, carrying out mediation between the parties in person. The aim is to take a flexible and confidential approach to resolving the dispute, by reaching a settlement agreement if appropriate.

In such cases, and in accordance with the procedural rules of mediation, the findings reached and statements gathered may not subsequently be invoked in civil or administrative proceedings without the consent of the individuals involved (Sovereign Ordinance No. 4.524, article 24).

The use of this type of mediation naturally assumes that both parties support the approach and are willing to enter into dialogue with a view to identifying common ground. To date, this proposal has been put forward twice by the High Commissioner, but has not been implemented in practice.

› Making recommendations public or reporting to the Sovereign

As part of her specific authority to combat discrimination, the High Commissioner has the right, where she deems it appropriate, to make her recommendations public, or to draw up a special report for the attention of the Prince, if her recommendation is not acted upon.

› Referring cases to the authorities for criminal or disciplinary proceedings

Finally, when, during review of a case, the High Commissioner becomes aware of criminal offences or acts which warrant disciplinary sanctions, the High Commissioner is authorised to refer the case to the relevant authorities for further action.

E . The principles and values of the High Commissioner

The status of and responsibilities conferred on the High Commissioner call for a level of rigour in her behaviour that will guarantee her independence and impartiality and instil the confidence of the administrative authorities and citizens who deal with her. Sovereign Ordinance No. 4.524 therefore sets out the incompatibilities and duties relating to the role of High Commissioner (integrity, neutrality, fairness, diligence, discretion), which are also included in the wording of the oath sworn by the High Commissioner before the Prince when taking office.

These ethical obligations, formally set out in the legislation establishing the Office of the High Commissioner, go hand in hand with the institution's own values, which the High Commissioner intends to bring to bear in all stages of dealing with cases.

In order to properly establish the pre-eminence of these principles and give them as wide a scope as possible, the High Commissioner is currently developing an Ethical Charter. This Charter will set out all of the rules and duties which should dictate the conduct of the High Commissioner and the staff working under her authority, as well as individuals who work occasionally with the Office of the High Commissioner. Once it has been adopted, the content of the Ethical Charter will be made public on the High Commissioner's website.

- ## Independence
  The High Commissioner does not receive orders, instructions or directives from any authority whatsoever, and reports on her activities directly to the Prince through the publication of an annual report. The High Commissioner therefore acts entirely independently.

- ## Impartiality
  The concept of impartiality lies at the heart of the High Commissioner's approach, which involves adhering, throughout the review of a case, to the principle that both parties should have the right to be heard, by listening to the explanations of all parties involved in the dispute.

- ## Fairness
  Beyond the law, the High Commissioner always seeks to take into account, fairly, the specific circumstances of each situation.

- ## Accessibility
  The High Commissioner meets with all claimants whose cases are deemed admissible. Wherever she judges it necessary, she seeks to meet directly with administrative departments. The High Commissioner is also very easy to contact by telephone or email.

- ## Listening and dialogue
  As a mediation practitioner, the High Commissioner listens to both claimants and respondents. As a link between the citizen and the Administration, the High Commissioner always encourages dialogue.

- ## Confidentiality
  The High Commissioner and her staff are strictly bound by an obligation of discretion with regard to the confidential information that they become aware of through their work.

- ## Transparency
  Publicity is a gauge of the effectiveness of the Office of the High Commissioner, which operates transparently, notably through the publication of its annual report.

II. One year on

The High Commissioner's schedule

During this first full year, the High Commissioner's schedule was punctuated by meetings, at the national and international level, designed to raise awareness of this new body among both institutional stakeholders and the general public, and to establish contacts beyond the country's borders with her counterparts and other mediation practitioners.

A . Raising awareness of the High Commissioner in Monaco

› Establishing the High Commissioner within the institutional landscape

Since taking up post, and with a view to securing the support of administrative authorities for the new mediation mechanism and ensuring that they have a proper understanding of the fact that the intervention of the High Commissioner is a last resort, the High Commissioner has held meetings with representatives from all administrative authorities (the Minister of State, members of the Government, the Secretary of Justice, the Mayor, the President of the National Council and the Director of Princess Grace Hospital).

Similarly, in a bid to educate future civil servants, at the initiative of the Civil Service Human Resources and Training Department, a presentation on the High Commissioner was included as part of the training course provided to trainee civil servants.

Conscious of the unique position of the High Commissioner within the country's legal framework, alongside the administrative and judicial courts, Anne Eastwood also launched, through a number of meetings, a dialogue with the heads of courts and tribunals, as well as the President of the Supreme Court, in order to ensure the necessary coordination of her actions with the judicial authorities. Moreover, at the invitation of the Secretary of Justice, she paid a visit to the Remand Prison in April 2014.

This was followed by an initial meeting in October 2014 between the High Commissioner, Mr Guy Magnan and Mr Rainier Boisson, then newly elected as President and Vice President respectively of the Data Protection Authority of Monaco (CCIN), to improve mutual understanding and develop links between the two institutions.

Finally, as part of the continuous dialogue that the High Commissioner hopes to maintain with civil society, she took advantage of the initial months of her term to meet representatives of the various religious faiths established in Monaco.

› A major public communications campaign

Keen to raise awareness of this new institution so that people feel able to turn to it, since taking up post and throughout the past year, the High Commissioner has given a variety of interviews to daily newspapers and magazines in Monaco, as well as to the local television station.

This first stage of the communications process will be followed, during 2015, by the publication of information leaflets aimed at the general public or

at specific groups. These will be given as wide a circulation as possible and will benefit from being made available at the reception desks or in the waiting rooms of administrative departments which are visited by the public.

› Attendance by the High Commissioner at various events organised in the Principality

During the year, the High Commissioner participated in a number of events organised in Monaco that related to her area of competence.

In April 2014, at the invitation of the management of Princess Grace Hospital, Anne Eastwood attended the first Patients' Rights awareness day, organised at the hospital for the public and health professionals. In December 2014, she also took part in meetings held as part of the 3rd International Day of Persons with Disabilities, organised under the aegis of the Ministry of Health and Social Affairs.

Furthermore, deeply touched by the attacks in France in the beginning of January, the High Commissioner joined the 'Je Suis Charlie' rally held on Place d'Armes on 8 January 2015, as a sign of solidarity with France and support for the defence of freedom of expression.

B . The High Commissioner on the international stage: a year rich in encounters

› Meetings with European bodies

The announcement of the establishment of the High Commissioner in Monaco was received very positively by international bodies. During 2014, the High Commissioner visited Strasbourg twice to present the new institution and to take part in dialogues with her counterparts in European bodies.

In May 2014, Anne Eastwood represented the Principality at an international seminar held by the Council of Europe. Organised under the aegis of the European Commission against Racism and Intolerance (ECRI), this annual seminar brought together national bodies which focus on combatting discrimination from the 47 member states of the Council of Europe to discuss ways to fight racism and intolerance at the local level. Monaco was represented at the session for the first time by the High Commissioner, marking the Principality's real commitment in this essential area of human rights. As part of this visit, discussions were also held with representatives of the Council of Europe's Office of the Commissioner for Human Rights. In May 2015, the High Commissioner took part in the ECRI's annual seminar for the second time.

In October 2014, the High Commissioner was invited to participate as part of the Monegasque delegation in the celebrations organised in Strasbourg by the Ministry of Foreign Affairs and Cooperation to mark the tenth anniversary of Monaco's accession to the Council of Europe. Various meetings were held as part of these celebrations, including with Mr Dean Spielmann, President of the European Court of Human Rights. The visit also provided an opportunity for the High Commissioner to participate in a training session on human rights given by the European Court itself, where there were some fruitful discussions with various judges from European countries.

Finally, in November 2014, the High Commissioner had a private meeting with Mr Jordi Xucla, the Parliamentary Assembly of the Council of Europe Monitoring Committee's rapporteur for Monaco, during a working visit paid by Mr Xucla to the Principality as part of the post-monitoring procedure for Monaco's commitments.

› Requests to join international mediation networks

The High Commissioner is also authorised to participate in international networks of institutional mediators.

To this end, the High Commissioner submitted a request to become a voting member of the Association des Ombudsmans de la Méditerranée (AOM, Association of Mediterranean Ombudsmen) and the Association des Ombudsmans et Médiateurs de la Francophonie (AOMF, Association of Ombudsmen and Mediators of La Francophonie). These requests are currently under review, with decisions expected by the end of 2015.

C . Mediation practitioners: a fruitful exchange on best practices

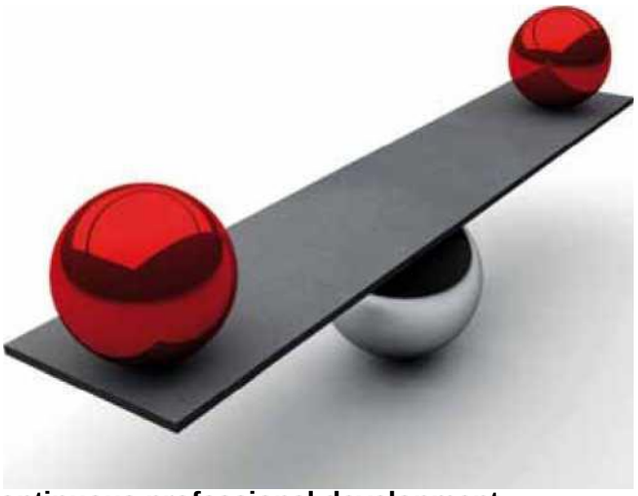
As a young institution which is in the process of establishing its working methods, the High Commissioner is particularly receptive to best practice and, more broadly, to feedback on the experience of her peers to help her fulfil her remit as effectively as possible.

› Meetings with peers

In the margins of a conference organised by the Club français des Médiateurs de Services au Public (French Club of Public Services Mediators) in October 2014 on the topic of 'Practising Equity in Mediation', the High Commissioner was able to establish a number of productive contacts with several institutional mediators operating within major French bodies, including the Mediator for Economic and Financial Ministries, the Mediator for National Education, and the Mediator for Insurance.

A special relationship was also developed with the French Defender of Rights, in the context of the long-standing friendly relations between the French Republic and the Principality of Monaco, not least through the visit to the Principality of Ms Claudine Angeli-Troccaz, Deputy Defender of Rights for Security Ethics, to attend the inauguration of the Office of the High Commissioner. This meeting was a first step towards closer collaboration between the two institutions responsible for protecting rights in France and Monaco.

Finally, as part of her request to be accepted as a voting member of the AOMF, the High Commissioner will travel to Quebec in October 2015 for the ninth congress of the association, which is set to rule on Monaco's bid for accession. This visit will be an opportunity for the High Commissioner to share experience with her counterparts.



› Continuous professional development

In order to ensure that the work of the High Commissioner is as effective as possible, making use of the best available tools for the benefit of claimants and everyone she comes into contact with, the High Commissioner wanted to ensure that everyone in her team was able to undertake specific training on the practice of mediation. An initial session was therefore held over two days in September 2014, led by Mr Jacques Salzer, a distinguished French specialist who is internationally renowned in the field.

Throughout the year, the High Commissioner also received periodic support from a highly experienced practitioner, Mr Michel Astruc, a former mediator with GDF-SUEZ.

D . Prospects for 2015–2016

Meeting and engaging with the public, civil society and our counterparts is a key objective for the High Commissioner's second year, alongside maintaining a dialogue with administrative authorities and dealing with individual cases, which remains at the core of the role of the High Commissioner. The action taken in this area during the past year will naturally be continued and intensified through the implementation of new initiatives.

› Strengthening links with civil society

Dialogue with civil society and the various stakeholders involved in the functioning of our rule-of-law state is a valuable tool for informing the High Commissioner, in parallel with the cases referred to her, of the difficulties encountered by citizens.

With this in mind, the High Commissioner will endeavour to pursue contacts with professionals who have a particular interest in her area of competence (judges, lawyers, notaries, family mediators and independent mediators).

The High Commissioner also intends to strengthen dialogue with associations and groups representing the diverse communities who live in the Principality. There still appears to be a lack of knowledge about the High Commissioner among Monaco's associations, as well as among unions and professional groups operating within the country. And yet, associations and unions have a role to play in raising public awareness of the institution's role and are, moreover, thanks to their excellent knowledge of local circumstances, in a position to raise certain problems or to contribute complementary and contextual views in their areas of competence. Meetings to address this issue are therefore planned for 2015–2016.

› Communications campaigns targeting specific groups

In order to improve understanding of the High Commissioner's remit, in addition to a dialogue with associations, it would now seem important to also focus on selective communications targeting particular audiences, especially vulnerable groups. Therefore, as part of International Day of Persons with Disabilities 2015, a new communications campaign is planned to be launched, specifically aimed at people with disabilities and covering the new framework act on disability adopted at the end of 2014 (see Section VII, p. 59). A specific communication aimed at detainees in the Remand Prison is also under consideration.

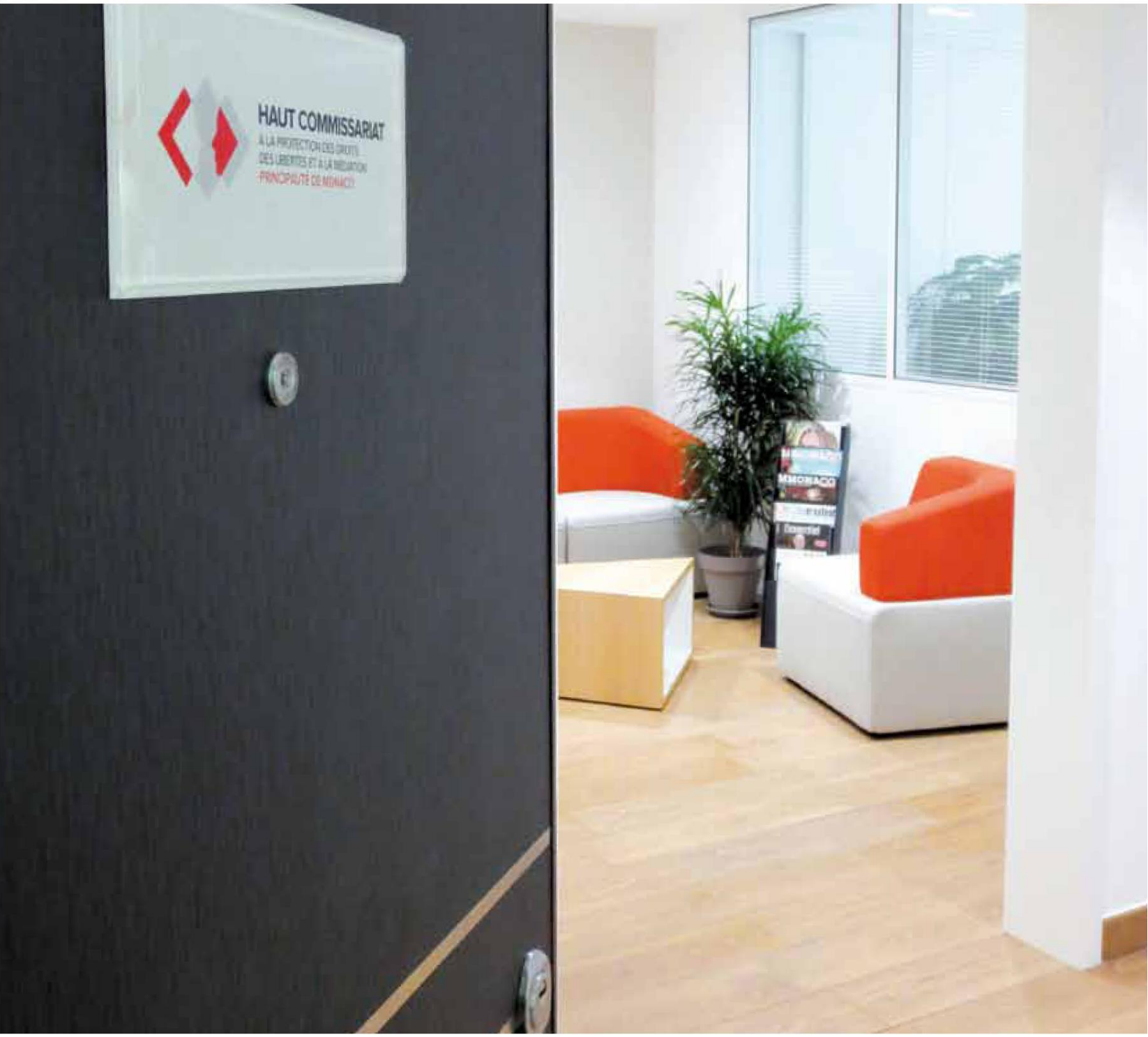
› Expanding discussions with peers

The attendance of the French Defender of Rights at the High Commissioner's inauguration ceremony will be followed up with a meeting between the two institutions in autumn 2015, at the invitation of Mr Jacques Toubon. One of the key objectives of this meeting will be to familiarise the High Commissioner with the practices and methods used by her French counterpart to process cases, with a view to improving her own working methods.

Furthermore, a study visit to Belgium is already scheduled for June 2015, at the invitation of the Ombudsman for Wallonia and the Wallonia-Brussels Federation, where the High Commissioner will spend time with the European Mediator and public institutional mediation bodies in Belgium, again to share knowledge and practice.

Alongside developing bilateral relations with her counterparts, the High Commissioner also intends to enhance her dialogue with professional groups and associations of mediators, by taking part in specialist conferences and symposia to help improve awareness of the new Monegasque mediation mechanism at the international level.

III. The High Commissioner in practice



A . The procedure for referring a case to the High Commissioner

› How to contact the High Commissioner

The Office of the High Commissioner is a flexible and easily accessible institution which works on behalf of citizens. Anyone can get in touch with the High Commissioner by simply telephoning or sending a letter. Case referrals must be made in writing but there are no specific formal requirements, apart from the need to provide a succinct statement outlining the complaint and the grounds on which it is based, and indicating what previous efforts have been made to try and resolve the issue directly with the administrative department or establishment concerned. In practice, with a view to simplifying the procedure as far as possible for citizens, particularly where language or writing problems may be involved, the High Commissioner is also happy to meet claimants before they make their written submission if this helps them to explain their situation more easily. Since March 2015, it has also been possible to refer cases to the High Commissioner via the website, where an online submission form is available.

Referral to the High Commissioner does not affect appeal deadlines

› How the procedure works

1 ***Checking that the complaint falls within the High Commissioner's remit***

On receipt of a written referral from the claimant, the High Commissioner verifies that the case falls within her remit. Checks are carried out to establish that no court proceedings have been launched and that the organisation being challenged is one of those regarding which the High Commissioner is able to hear a petition. The High Commissioner will also check that the appropriate steps to seek a settlement directly with the authority or body concerned have previously been taken.

2 ***Meeting with the claimant***

The High Commissioner seeks to meet each claimant in person to ensure that she is in the best position to understand their situation and their requests. The High Commissioner will ask the claimant for any supporting documentation that is considered necessary to back up the complaint. The High Commissioner will then officially acknowledge receipt of the referral in writing.

3 ***Reviewing the case***

Unless the petition appears from the outset to be unfounded without the need to hear from both parties, the High Commissioner contacts the department or private-sector organisation concerned to seek any explanations or request any documents required to review the case.

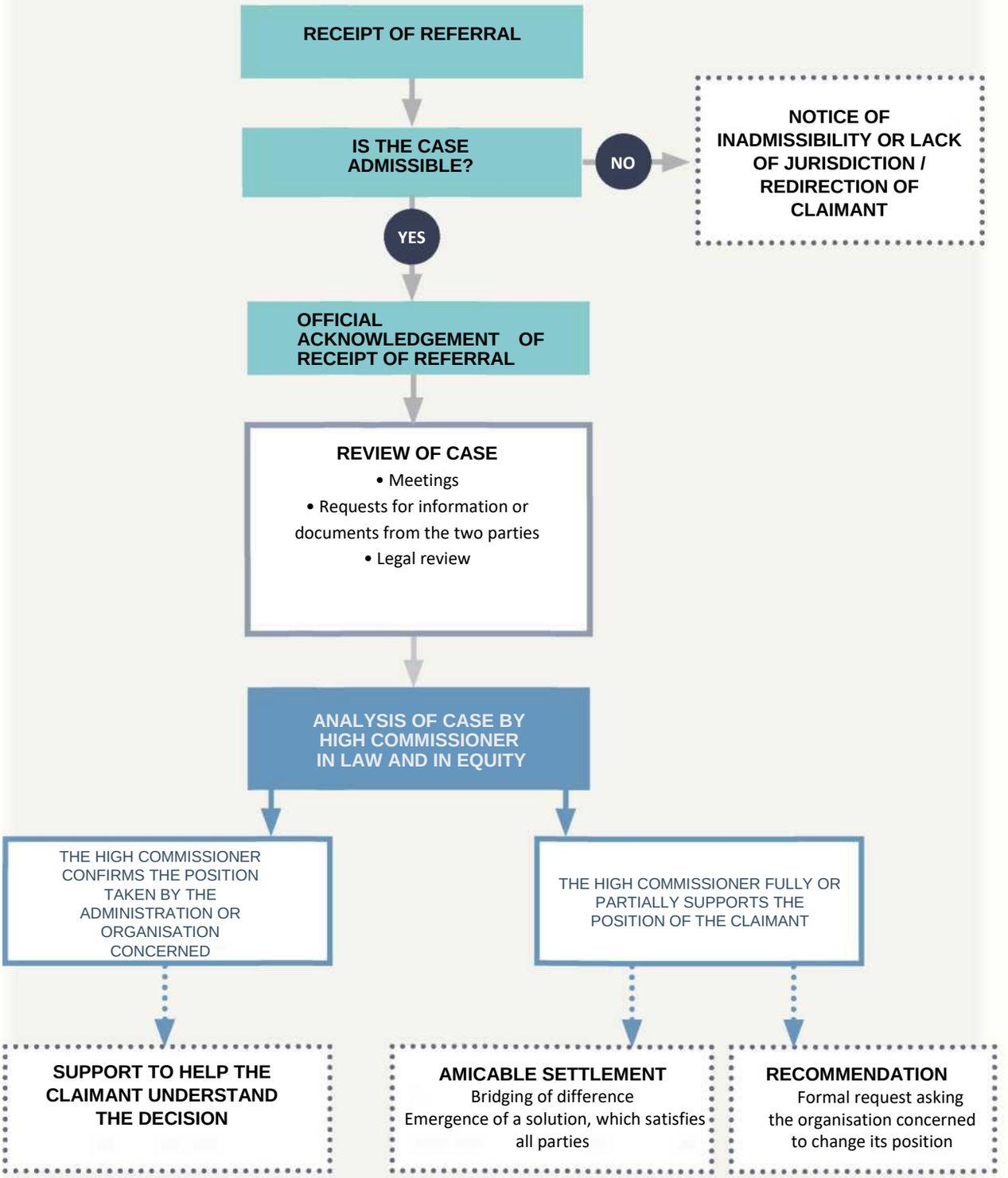
Following this first phase of the review, the High Commissioner hears or rehears the parties to gather any additional information or clarifications required. Face-to-face meetings or telephone calls are the preferred option at this stage.

Once in possession of all aspects relating to the case, the High Commissioner undertakes an impartial analysis of the validity of the positions of each party and decides what action should be taken as a result of the referral.

4 ***Resolving the case***

If, after investigation and analysis, the High Commissioner believes that the petition is unfounded, she will inform the claimant and help him or her to fully understand the reasons for this decision. The High Commissioner will also inform the Administration or the organisation concerned. If, on the other hand, the High Commissioner believes that the complaint is justified and that there are grounds to re-examine the claimant's situation, she will decide to make use of one of the means of action at her disposal (see Section I, C, p. 13) to support the citizen's request and attempt to resolve the dispute.

Stages in the life of a referred case



B . Accessibility: direct contact is key to the High Commissioner's approach

The High Commissioner attaches great importance to being accessible and, as a point of principle, favours direct contact with citizens. The initial interview which is conducted as a matter of course with the claimant provides an opportunity for the latter to explain his or her situation in person, and to express his or her feelings and expectations. The High Commissioner is always careful to keep the claimant regularly informed of the progress of his or her case, and will meet with the claimant again during the review phase, if required.

The High Commissioner's preference is also, wherever possible, to meet the administrative departments or establishments directly involved, in order to discuss cases under review openly and to reach agreed solutions as efficiently as possible. Dialogue between the parties using the High Commissioner as an intermediary can also be used as a conciliation and conflict resolution tool. Indeed, this approach has already proven to be effective in certain cases over the past year (see Section VI, A).

"the High Commissioner reaffirms her position with regard to the need for direct dialogue with administrative departments, as set out in the Sovereign Ordinance, as this enables simple, flexible and pragmatic settlement of cases, an approach which is more in line with the mediation role"

It has, however, met with some resistance from an administrative organisation which is very hierarchical in nature and which values above all a need to control and ensure the security of communications, to the detriment of the effectiveness of the mediation process itself. In this respect, the Government has recently informed the High Commissioner that henceforth, it intends to be the sole point of entry for the institution in its contacts with government departments and to handle all requests for information at the level of the Ministry of State or ministers, whose responsibility it will be to take the necessary action.

While this centralised procedure ensures that the High Commissioner's requests and opinions are properly taken into account at the highest level of Government, at the same time, the High Commissioner reaffirms her position with regard to the need for direct dialogue with administrative departments at the appraisal stage, as set out in the Sovereign Ordinance, as this enables simple, flexible and pragmatic resolution of cases, an approach which is more in line with the mediation role and, where necessary, enables the High Commissioner to intervene within a timeframe that takes into account the urgency of some cases.

Over the coming year, the High Commissioner intends to pursue her dialogue with the Government in this regard, in the interest of ensuring that her action on behalf of claimants is effective.

C . Setting an example

By way of introduction, it is important to stress that the existence of the High Commissioner does not absolve the Administration of the need to respond to citizens' requests, to keep them informed or to provide guidance. Situations have already arisen where individuals who have contacted administrative departments have been referred to the High Commissioner to obtain information relating to their circumstances which could just as easily and more quickly have been provided by the appropriate civil servants. While it may be obvious, it is nevertheless useful to reiterate that informing and guiding citizens is part of the key services that the public authorities are supposed to provide for the benefit of all users. The Office of the High Commissioner offers a new mechanism for amicable appeal in instances where the Administration does not function correctly, but it must under no circumstances become a full part of this apparatus, which would result in slower and poorer quality public services, the opposite of the objective behind establishing the institution.

› Tailored support for claimants

Individuals who submit their cases to the High Commissioner are, by definition, expecting to receive assistance or answers which they have been unable to obtain previously. It is therefore particularly critical that the support and answers which the institution is able to offer them are tailored to their circumstances. Even in situations where it is not within the remit of the High Commissioner to investigate a complaint and she cannot therefore handle the merits of the case, the High Commissioner will seek to redirect the claimant, pointing them in the direction of the competent authorities, or suggesting, where appropriate, other approaches so as not to leave the claimant at a dead end, but instead help them find a possible way out of their situation. Equally, where a complaint proves to be unfounded or where, despite intervention in support of a citizen, the High Commissioner is unable to influence the Administration's position, her guiding principle is always to offer the claimant more than a simple denial. As someone whose role is to listen and explain, the High Commissioner's objective is to help the individual to understand the levers behind the decision taken with regard to them, and to accept it, even if it is not in their favour. This educational role is a key aspect of the personalised approach which prevails in the Office of the High Commissioner, in service of the institution's mediation remit.

› The need for efficiency: the issue of deadlines for handling requests

The High Commissioner seeks to offer a rapid response to users and to reach a prompt and effective resolution of cases. The issue of response time is therefore a very important one for the institution, which aims to handle each case quickly and diligently. As a matter of good practice, in the vast majority of cases citizens who seek assistance from the High Commissioner can expect to have an interview within **10 days** and the action required to set in motion the review of their case to be implemented within a maximum of **15 days** .

> **"the High Commissioner seeks to offer a rapid response to users and to reach a prompt and effective resolution of cases"**

If the complaint appears to be well-founded in principle and appropriate for a review of the merits, the High Commissioner is nonetheless obliged to investigate the case in accordance with the principle that both parties have the right to be heard. This implies that, before the High Commissioner can issue an opinion, she has to gather all necessary information for assessment from both parties. There is no specific timeline for this phase of the review process, which is subject to the time taken to receive responses from the parties, particularly from the respondents (whether in the public or private sector). To the extent possible, the High Commissioner endeavours to keep these response times to a minimum, by issuing regular reminders as required. Once this information has been gathered, the High Commissioner aims to promptly review the case and to undertake any supplementary due diligence as required (communication of additional paperwork, requests for clarifications, hearings) with a view to arriving at an opinion within a short period of time.

Over the past year, admissible cases investigated according to this procedure were dealt with, on average, within a period of **three months,** despite delays in receiving responses from administrative departments to written requests for information from the High Commissioner of around **two and half months** at this point.

Where the issue does not fall within the remit of the High Commissioner or where the case is admissible but it can be judged unfounded without the need to involve the Administration, the High Commissioner's response time is approximately **15 days** only.

Finally, for specific cases which lead to the High Commissioner issuing a recommendation, the average response time is currently **six and a half months,** taking account of the four-month period granted to the administrative authority to inform the High Commissioner of the action taken as a result of the recommendation which is, in practice and in a high number of cases, used as a period for reflection by the Administration.

As things stand, these response times could be further improved to the benefit of citizens, in particular in certain circumstances which could be described as 'urgent', particularly where appeal deadlines are very short (15 days for example), or where claimants are in situations where the passing of time has an adverse impact. It is therefore particularly critical that methods of cooperation and administrative response times are adapted in line with the reality of the challenges posed by cases, in order to enable serious and efficient handling of these situations.

› Continuous improvement of the process

Seeking to continuously improve the way the institution works, the High Commissioner decided to set up a questionnaire to be completed by claimants at the end of the process, allowing them to express their level of satisfaction with the handling of their cases, as well as any suggestions they might want to offer. This questionnaire is sent at the same time as the letter informing claimants that the review of their case has been completed, and is also available on the High Commissioner's website.

The return rate so far is quite high, with more than 50% of questionnaires sent out having been returned, enabling the institution to gain an initial insight into claimants' perceptions of the quality and effectiveness of the High Commissioner's work to fulfil her public service mission.

Overall, feedback has been very positive, including in cases where the High Commissioner's intervention has not resulted in any change in the citizen's situation. The reception, attentiveness and support offered emerged as the main assets of this new institution, showing that there exists, even at the level of the Monegasque Government, a need for greater accessibility and a more human approach to relations. Interest in referring cases to the High Commissioner in order to obtain answers and better access to information was also highlighted.

Among sources of dissatisfaction, delays in handling cases were sometimes cited, as well as the length of time taken by the Administration to follow up, where appropriate, the High Commissioner's recommendations.

FEEDBACK FROM CLAIMANTS

"*The intervention of the High Commissioner helped us a great deal in our efforts. It was all very fair and very clear. The intervention genuinely achieved a result."*

"*The High Commissioner's recommendations enabled me to act in time, that is, before the statutory deadlines, in order to set in motion the required procedure."*

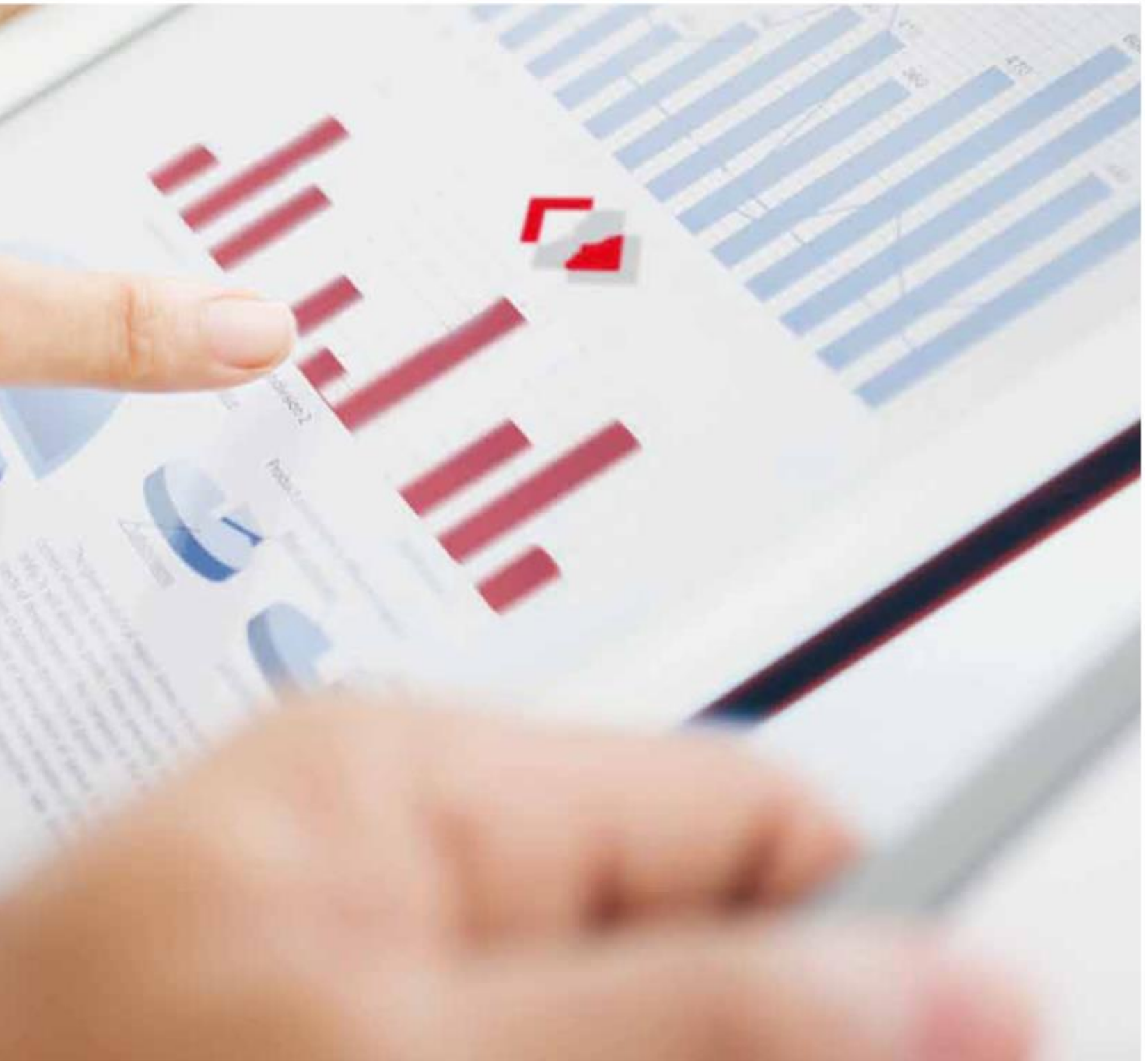
"The most important thing is that you feel that you are being listened to and supported. The people I met were all very kind."

"Your intervention allowed me to get the answers I hadn't been able to obtain previously."

"While I was able to effectively explain my situation, and was listened to and understood by a very competent person, my case itself still got bogged down in administrative procedures."

"My problem was heard attentively and with understanding, and I also came to realise where I was in the wrong myself."

IV. The High Commissioner's year in figures



This section sets out the statistics relating to case referrals recorded by the Office of the High Commissioner during the past year.

› 65 petitions were received during the year 2014–2015

Since the High Commissioner took up post in March 2015, the Office of the High Commissioner has recorded 65 petitions. This number accelerated over the months, with a natural lull during the summer, and a spike in January 2015, when eight cases were submitted to the High Commissioner, compared with an average of five per month over the year.

› Cases referred exclusively by citizens

All of the cases referred during the High Commissioner's first year of operation came from citizens. This trend is a clear break from that observed under the former Advisor Responsible for Appeals and Mediation, who intervened primarily at the request of the Government as part of the review of preliminary administrative appeals.

The change noted in the source of cases referred is a tangible reflection of the difference in nature between the former internal mediator, whose role was to advise the Minister of State on the administrative process of handling appeals and disputes, of which he was an integral link, and the High Commissioner, whose remit is above all focused on citizens.

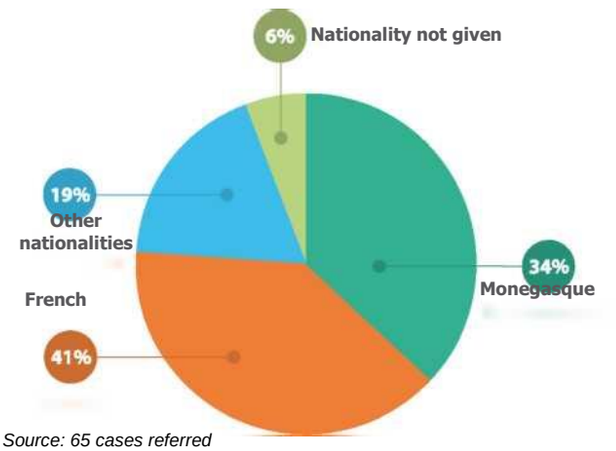
Sovereign Ordinance No. 4.524 (article 16) nevertheless deliberately left in place the ability for administrative authorities to call on the High Commissioner for the purposes of mediation. In some respects, it is perhaps regrettable that this specific provision on institutional mediation in Monaco has not yet been taken advantage of by the institutions of State to deal with certain situations in which the High Commissioner's intervention would be likely to add real value for the Administration (in cases where citizens are reluctant to enter into dialogue, there is a need to obtain additional clarification to back up the Administration's position, or a desire to forestall a subsequent appeal by attempting mediation).

It is important to stress that, in her role as an independent mediator, the High Commissioner is at the service of both the Administration and citizens.

› Nationality of claimants: diverse and representative

It is interesting to note that Monegasques are not alone in referring cases to the High Commissioner, and that the claimants who submit their cases are more generally representative of Monaco's cosmopolitan population, although the proportion of Monegasque claimants is proportionately a little higher than their representation in the country as a whole.

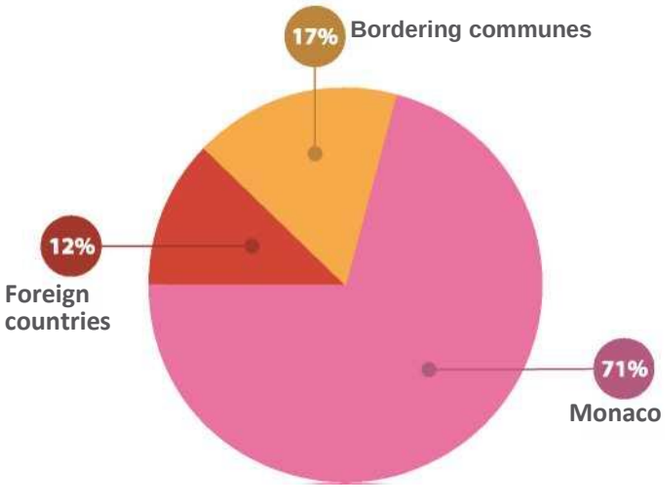
CLAIMANTS BY NATIONALITY



Source: 65 cases referred

Unsurprisingly, the majority of cases referred came from claimants living in Monaco, since residents are naturally more likely to deal with and consequently more likely to experience difficulties with the Monegasque Administration. That said, a third of cases referred came from people living outside Monaco, including some from beyond bordering communes and neighbouring countries, a positive sign that

COMPLAINANTS BY PLACE OF RESIDENCE



Source: 65 cases referred

the High Commissioner has made a good start in terms of visibility, including at the international level. During the year 2014–2015, cases were referred to the High Commissioner from individuals living in the UK, Switzerland, the Czech Republic and Morocco among others.

› Two thirds of petitions are admissible

Out of the 65 cases referred, 22 were judged inadmissible for various reasons: some claimants did not, in the end, follow up their referral; some cases did not fulfil the conditions due to lack of a direct referral or the absence of any previous action taken; other petitions fell outside the scope of the High Commissioner's remit, either because legal proceedings were already under way, or because the High Commissioner's jurisdiction did not extend to the bodies concerned, or indeed due to the private nature of the dispute submitted. The trend in the proportion of inadmissible cases (currently 30%) will need to be monitored over the years to come, given the expected increase in the number of referrals and the work to improve citizens' understanding of the High Commissioner's remit and the conditions for seeking recourse through the institution.

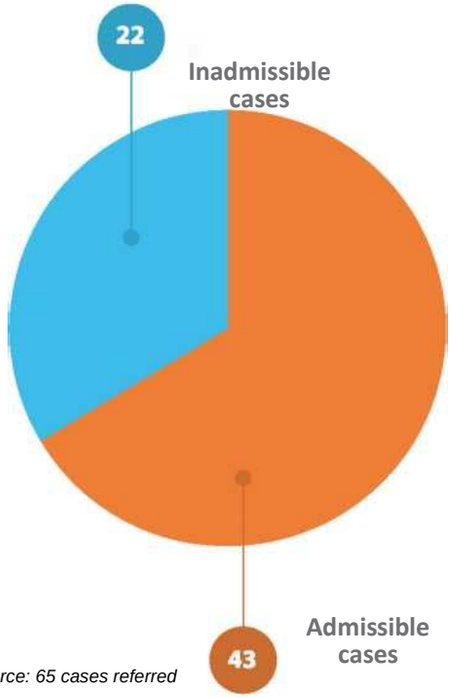
It is worth noting that the line between admissible and inadmissible cases can sometimes be a thin one with regard to the absence of any previous action taken. In effect,

Sovereign Ordinance No. 4.524 (article 17) states that the claimant must indicate, when submitting their case, the previous steps they have taken to assert their rights with administrative departments, but it does not set out any formal requirements in this respect. In practice, these steps are left for the High Commissioner to assess. There may be some merit in future in considering, together with the administrative authorities, how the concept of 'previous steps' might be refined – it does not necessarily imply that an informal appeal has been brought.

While this remains the case, however, the High Commissioner is authorised to intervene at the administrative review stage. In 2014, six cases were thus handled in parallel with an informal appeal.

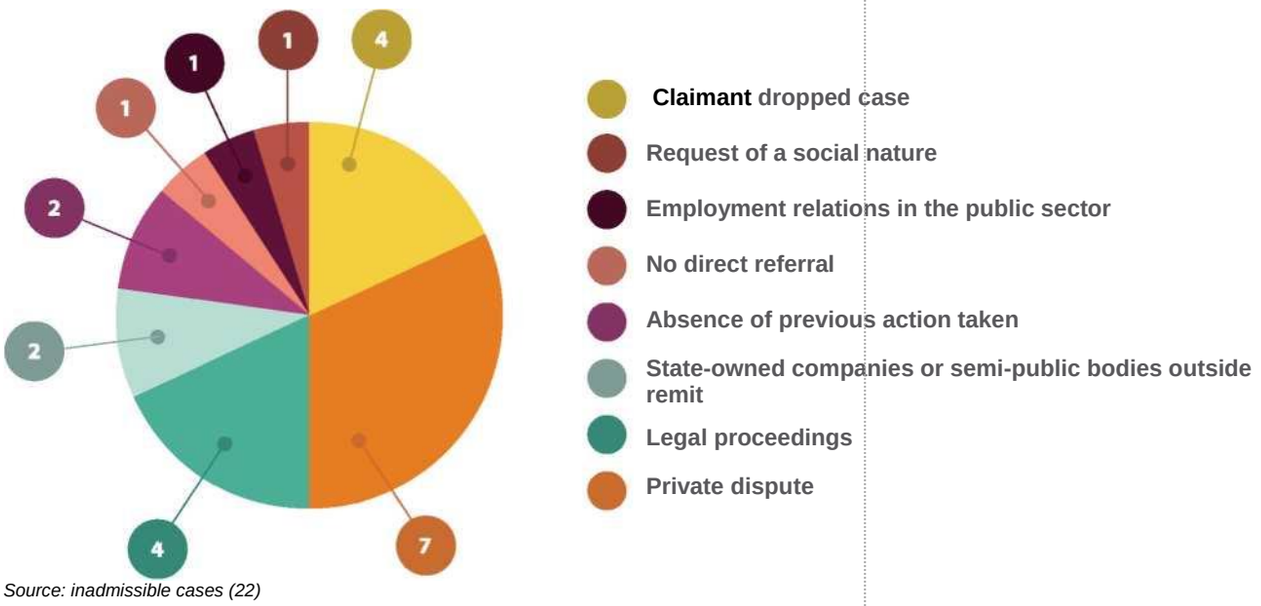
In practice, however, the High Commissioner most often intervenes after or outside the scope of any appeal, thereby confirming that the institution opens up an alternative route via which citizens can resolve situations that have not been satisfactorily settled through traditional appeals.

ADMISSIBILITY OF CASES



Source: 65 cases referred

GROUNDS FOR INADMISSIBILITY



Source: inadmissible cases (22)

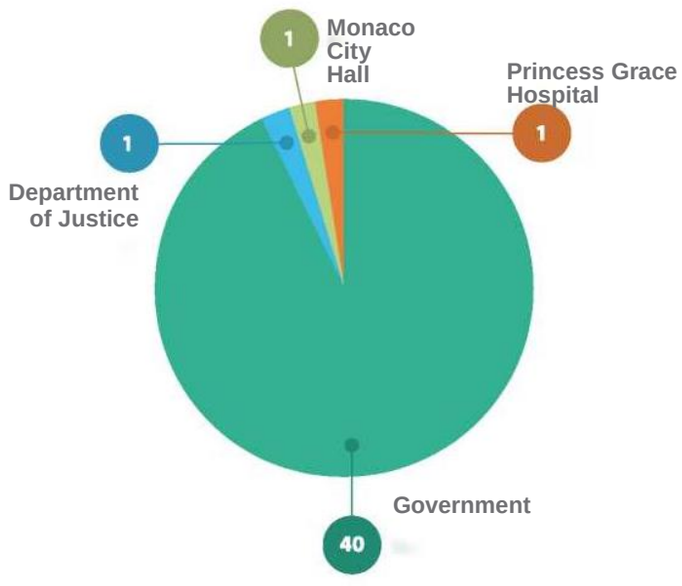
› 60 % of admissible petitions were dealt with during the year

Of the 43 admissible cases, 25 were closed and 18 still under review at the end of the year. Of those under review, 11 were with administrative departments, awaiting receipt of clarifications requested by the High Commissioner, and seven were with the High Commissioner.

› Vast majority of cases concern government departments

Given the large number of cases handled and decisions issued by the various administrative authorities, it is natural and inevitable that the Government and executive departments are the subject of the vast majority of cases referred. It is nevertheless worth noting, to the benefit of the other institutions concerned (the judiciary, the Communal authorities and the hospital), the small number of complaints brought against them.

BREAKDOWN OF CASES BY INSTITUTION



Source: admissible cases (43)

› Thematic breakdown of cases

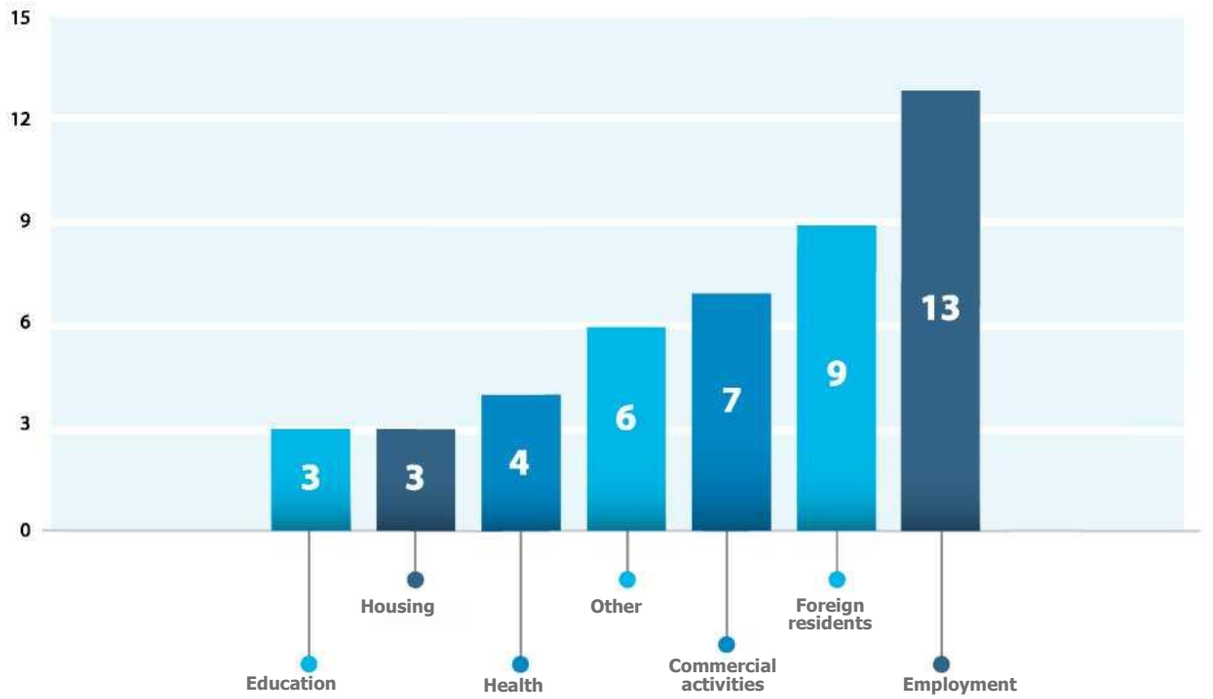
It is important to point out by way of introduction that while the High Commissioner has two key roles, one of which is to combat discrimination, this role is largely under-represented in the cases referred. In fact, out of the 43 cases handled during the year, discrimination was involved in just five of them, two of which were the subject of a recommendation (see Section VII), the other three proving to be unfounded. Moreover, these cases were combined with aspects relating to the High Commissioner's role in protecting the rights of citizens.

It is evidently very difficult, given that the institution is still very young, to draw significant conclusions from the very small number of cases relating to discrimination. Particular vigilance on this issue will be required in future, and there is a need to better communicate this aspect of the High Commissioner's role, which may still be poorly understood at this point.

The thematic breakdown below therefore relates only to requests relating to the protection of citizens' rights and liberties in their relationship with the Administration. Some cases covered several topics. Topics where only a single case was referred have been grouped under the 'Other' category.

It may be stressed that cases relating to employment and to foreign residents were dominant. These were primarily cases of difficulties in obtaining a work permit or the setting in motion of measures to remove individuals from the country, notably due to the criminal records of the citizens concerned.

THEMATIC BREAKDOWN OF CASES



Source: admissible cases (43)
NB: some cases appear under several topics

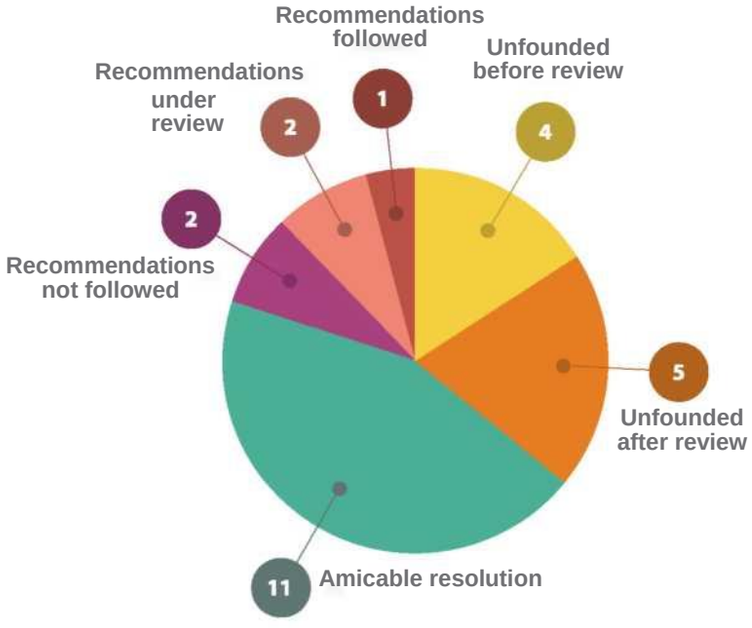
› Outcome of petitions

Amicable resolution was the most common outcome of cases. During 2014–2015, the High Commissioner used this option in **11 cases** (see Section V).

Where required by the situation, the High Commissioner issues a recommendation addressed to the administrative authorities or bodies involved in the individual case which was referred to her. **In 2014–2015,** the High Commissioner issued **five recommendations.** Two general recommendations were agreed in principle by the Government, which will ensure that they are implemented through the legislative or regulatory reforms called for. Two recommendations were not followed. A final recommendation issued by the High Commissioner was followed and implemented in full, both in the aspects relating to the settlement of the individual case concerned and in the general proposals resulting from the review of the case (see Sections VI and VII).

Finally, the High Commissioner may also assess, having analysed the case, that the claimant's request has no foundation in law or in equity, and that there are no grounds for intervening in support of the claimant. This opinion may be issued following a review of the complaint in which both parties are heard (unfounded after review following referral and response from the administrative authority concerned) or without the need to proceed to such a review, the petition appearing clearly unjustified (unfounded before review, without the involvement of the administrative authority concerned). During **2014–2015, nine cases were thus closed due to lack of grounds.** In these cases, the High Commissioner explains her position to the claimant and, where necessary, informs the Administration that the case has been closed.

REASONS FOR CASE CLOSURE



Source: closed admissible cases (25)

V. Amicable settlement

The preferred approach to resolving conflicts

Following the review of cases, where a complaint is judged to be well founded and the process of hearing from both parties has been completed, the High Commissioner selects the conflict resolution method that she believes is most appropriate to the situation.

Where rights have been infringed or a legal reform should be considered, or in cases where there does not appear to be any possibility of an informal reconciliation even though an injustice has been noted, a formal recommendation is brought to the attention of the relevant authority or organisation. In the vast majority of cases, however, for the sake of pragmatism and with a view to conciliation, the High Commissioner gives preference to amicable settlement. Based solely on the cases closed during the year, **around two thirds of petitions judged to be well founded following review resulted in an agreed outcome.**

It should be noted that amicable settlement does not necessarily involve a significant change to the Administration's initial position. It can, in fact, involve the citizen accepting the Administration's position once they have obtained, through the High Commissioner acting as an intermediary, clear responses which adequately clarify their situation, but which they had not been able to obtain directly. In other cases, amicable settlement can take the form of a shift in the Administration's position, allowing a way out of the dispute to be found through a middle-ground solution which is acceptable to all. Finally, in certain cases, the High Commissioner's clarification of the dispute and the specific situation of the citizen will lead to a complete change in the Administration's initial decision, based on considerations of law or equity which the High Commissioner has highlighted.

Overall, these amicable settlements can help to avoid an administrative or possibly legal appeal. They serve the objective of maintaining peace in public life and bringing the Administration and citizens closer together, which is the core role of the High Commissioner.

The examples of amicable settlements given below are the result of circumstances which are very specific to each case. They are in no way intended to serve as precedents. In order to protect the anonymity of the people involved, the initials of the claimants' surnames have been changed in these examples.

A . Foreign residents

Issues relating to foreign nationals' entry to or residence in the Principality form a significant proportion of the cases referred to the High Commissioner.

As part of police inquiries or following international alerts or criminal sentences handed down against them, foreign nationals may be subject to measures to remove them from Monaco, in the form of refoulement, an expulsion order or a withdrawal of or refusal to renew a residence permit. These decisions, taken in accordance with Ordinance No. 3.153 of 19 March 1964 relating to the conditions of entry to and residence in the Principality by foreign nationals are particularly frequent since Monaco's security policy is deliberately very strict.

Since the adoption of Act No. 1.312 of 29 June 2006 relating to the justification of administrative actions, these decisions must be justified, failing which they are considered null and void. This represents significant progress for citizens' rights, allowing them to learn the reasons justifying their removal from the country, and thereby putting them in a better position to discuss these reasons. In this area relating to public order, however, the administrative authorities have, in practice, broad discretionary power, which is exercised, when it comes to decisions which are mostly taken on public order grounds, that is, in the name of prevention, without the general principles governing criminal matters applying (including the principle of punishment necessity, the rights of the defence and the presumption of innocence).

The judicial oversight exercised by the Supreme Court over these measures is therefore restricted, essentially limited, in terms of inherent legality, to verifying the accuracy of the facts and the absence of any obvious misinterpretation. These same limitations apply to the review by the High Commissioner of cases relating to application for review against measures to remove an individual from the country or to requests for a review of these measures, which explains the fact that requests for mediation in this area are rarely settled in favour of the citizen.

In certain cases however, **the High Commissioner may, without substituting her assessment of the appropriateness of the removal order issued or its upholding for that of the administrative authority, question its suitability in a particular case.** Certain arguments sometimes persuade the Administration to review its position, notably where in light of the circumstances of the particular case, this position produces clearly excessive effects.

> Non-renewal of residence permit

A resident of the Principality for more than 20 years, Ms S.'s request for renewal of her residence permit was refused following several eviction proceedings from rental property and two convictions for minor infractions. Obliged to leave the country, her husband and her children, she sought for seven years in vain to have the decision overturned and her right to reside in Monaco reinstated.
The High Commissioner was able to highlight the disproportionate impact on the private and family life of the claimant resulting from the upholding of this removal order, seven years after the incidents concerned. Neither the nature nor the seriousness of these incidents appeared to be grounds for assessing that the individual concerned continued to be likely to pose a genuine threat to public order.
Following this intervention, the Government indicated that it would no longer oppose the issue of a new residence permit to the claimant, provided she was able to satisfy the statutory conditions required to obtain a Monaco residence permit.

As the example above illustrates, removal orders are liable to result in very significant consequences at the level of the individual, for the lives of the people concerned, particularly where they are resident or work in the Principality or are obliged to visit on a regular basis for professional, family or private reasons. Without necessarily intending to dispute the principle of their removal, these individuals may then encounter difficulties of a practical nature in deferring immediately to the measure once they have been notified of it, and this could be taken into account when setting out the precise deadline for such individuals to leave the Principality. Sometimes, simply taking into account the material constraints which citizens must contend with can help to defuse situations and avoid disputes.

› Notification of a deadline for leaving the country

Mr B. was expelled from Monaco due to a very recent criminal sentence. As someone who was living and working in the Principality, he needed time to arrange his departure. He received a letter notifying him of the expulsion order but not setting out the date on which it would take effect, and was worried that he would immediately be in breach of the order by remaining in the country.
The contacts established by the High Commissioner with government departments resulted in the claimant being given a reasonable deadline to arrange his departure, thereby allowing him to settle his affairs under the best conditions.
As a measure of good practice, the Administration also agreed henceforth to clarify the deadline by which such orders must be fulfilled as a matter of course when notifying individuals in writing of such orders.
It is worth noting that following this amicable resolution, the claimant indicated that he would not dispute the expulsion order.

Decisions to remove a person from the country are never, in and of themselves, definitive. Alongside the nature of the allegations or the strength of the person's links with the Principality, the 'time' factor is taken into account and may be considered, alongside other criteria, by the Administration in agreeing to review or eventually lift a removal order.

› Lifting of removal order on a probationary basis

Mr C. was subject to a removal order following a criminal sentence. Over six years, he regularly requested the lifting of this order, including through legal action, but without success.
The High Commissioner was able to demonstrate to the Government that the removal order was having a particularly significant negative impact on the professional life of the claimant, who had rebuilt his life in a neighbouring commune and needed, for work purposes, to be able to travel around the Principality occasionally.
Following this intervention, the removal order was suspended for a probationary period of one year, during which the claimant was asked to demonstrate conduct which is beyond reproach.

B. Employment

Employment was the most frequent area in which cases were referred to the High Commissioner during this year.

Cases relating to refusals to issue work permits were by far the most common, and there is a close link between these cases and the problems discussed above with regard to the rights of foreign nationals.

In fact, according to current legislation, a foreign national wishing to work in the private sector in Monaco must first obtain a work permit, issued by the Department of Employment. This permit is issued for a specific job, in parallel with the authorisation to hire staff which the employer is obliged to request from the Employment Office in line with the implementation of mechanisms governing priority access to employment in the Principality. Any change of employer, profession or career is subject, for the employee concerned, to obtaining a new work permit (Act No. 629 of 17 July 1957 regulating the conditions for hiring and dismissing staff in the Principality).

The issue of this work permit is subject to verification that the jobseeker is not likely pose a threat to public order (Ordinance No. 16.675 of 18 February 2005). As a matter of course, then, the administrative review of requests involves a police inquiry to establish the good character of the individual concerned, who may be refused the requested work permit in the event that the investigations carried out bring to light unfavourable facts.

As with removal orders, the Administration's discretionary power in this area is broad. As part of her remit, **the High Commissioner works to ensure that a refusal is proportionate, in particular where it involves depriving an employee already in post of his or her job.**

› Review of a refusal to renew a work permit

Mr W.'s request to review his work permit was refused at the point at which the establishment which had employed him as a waiter for two years was seeking to rehire him. The refusal was based on an investigation into his character which raised some issues that reflected negatively on him.
The High Commissioner believed that she could highlight, in the case in question, the amount of time that had elapsed since the allegations, their relatively minor and isolated nature, the fact that no action had been taken for more than two years at the administrative level or in the courts, and the voluntary nature of the testimony of the individual concerned, which was obtained incidentally as part of a police inquiry into a case in which the latter had eventually been exonerated, in order to suggest a more balanced approach. In this case, following an administrative error, the Minister of State responded to the appeal without waiting for the High Commissioner's final recommendation. While the claimant was not successful in obtaining a work permit for the requested job, the Administration agreed to temper its initial position by allowing the claimant to seek and take up any job which was not in a nightclub requiring contact with customers.

› Cancellation of a refusal to issue a work permit

Having found a job in the Principality, Mr R. sought a work permit through his employer acting as an intermediary. Sometime later, he received notice that the request to issue the work permit had been refused due to failure to attend a police interview. Not understanding what had happened, since he had never received a summons to attend such an interview, Mr R. submitted his case to the High Commissioner. The High Commissioner's intervention with the Government led to the resolution of a simple problem of mistaken address. The claimant soon received a new summons, was interviewed by the Police Department and obtained his work permit in time to take up his job.

In general terms, it is worth stressing the importance of the 'time' factor in reviewing disputes relating to a refusal to issue a work permit. The employment market is, by its nature, volatile, particularly in the Principality where the demand for employment is high given the appeal of salary levels and the advanced social benefits policy found here. Job offers therefore have a limited life span, and may no longer be current by the time a ruling is made on the citizen's appeal. **It is important, then, that preliminary administrative appeals against the refusal to issue a work permit are processed promptly and within a reasonable timeframe in order to ensure that citizens are guaranteed an effective process.**

Although they dominated, problems linked to work permits were not the only reason for the referral of employment-related cases to the High Commissioner. Other issues can also arise, including those linked to employment relations where the State is the employer. In such cases, the High Commissioner can deploy her good offices to seek an amicable settlement to a dispute.

It should be reiterated that the High Commissioner is not, as a general rule, authorised to intervene in disputes relating to employment relations between the administrative authorities themselves and civil servants or other individuals who are actively employed by them, with the exception of cases which fall under the High Commissioner's remit of combatting discrimination (Sovereign Ordinance No. 4.524, article 18, paragraph one). The High Commissioner cannot, therefore, handle disputes relating to the performance of duties, career development or discipline within the civil service. Exceptionally, however, the High Commissioner intervenes as part of her role in protecting rights where a dispute arises regarding compliance with legal provisions governing priority access to employment when an appointment is made (see Section VII, Recommendation No. 4). The High Commissioner may also be called on to review complaints associated with eligibility for social or family benefits, as well as any aspect of the administrative situation of a civil servant or official once their employment has ceased.

› Obtaining proof of employment

Mr L. worked as a contractor for the State for more than 20 years before being given invalidity status. During his period of employment, he was retained in service, beyond the initial six years of his contract, according to the provisions applicable to contractors with more than six years of seniority in the Administration, pursuant to an implicit permanent contract. He was seeking a job in the private sector, but found it impossible to prove to potential employers the years of service he had completed with the Monegasque Government. Against a background of significant hostility between the claimant and the Administration, the mediation of the High Commissioner resulted in the drawing up of the proof of employment required for the claimant to successfully engage in a bid to return to employment.

C. Commercial activities

During the year, several cases of disputes relating to the issue of administrative authorisations required for business or to the conditions for the exercise of commercial activities were referred to the High Commissioner. In this area, however, the majority of cases handled during the year were judged inadmissible or unfounded. Only one case resulted in an amicable resolution. The High Commissioner intervened in parallel with an appeal filed by the citizen against a refusal to grant advance approval requested in accordance with the provisions of the Ordinance of 5 March 1895 on joint stock companies and limited stock partnerships.

› Possibility of turning a SARL into a SAM

Mr T. is the manager of a SARL which is experiencing substantial growth. He requested permission to turn his company into a SAM, but was refused on the grounds that businesses in his sector were over-represented in the Principality.
In support of the informal appeal submitted by the claimant to the Minister of State, the High Commissioner highlighted the fact that changing the legal form of the company would have no impact on the number of businesses operating in the area concerned.
The Government reviewed the case and eventually decided to grant the requested change in status.

D . Health

The High Commissioner also examined complaints in the area of health, notably from the point of view of the rights granted to patients in accordance with the various laws governing medical practice and healthcare institutions in the Principality.

The institution's recognised competence with regard to public institutions allows it to review disputes between patients and the public hospital service, where these have not been successfully resolved through prior steps taken by the individual or using the hospital's internal conciliation mechanisms, including the Commission on Mediation and Improvement of Patient Care, which handles user grievances.

In this respect, the High Commissioner would like to welcome the various initiatives implemented by Princess Grace Hospital to raise the awareness of healthcare staff and users of the major challenges involved in ensuring respect for individuals and their rights during care provided in the hospital environment, through the adoption of a charter for hospitalised patients and the organisation, for the first time in April 2014, of an open day on patients' rights at the hospital. This event is now set to be repeated on an annual basis.

Among the rights recognised and guaranteed to patients, the right to access one's medical history is key, relating both to users' rights to true and accurate information on his or her state of health and to the principles of transparency and responsibility in the provision of medical care. In the Principality, this right is not governed by a specific legislation on healthcare, but derives from a specific provision of the legislation on the protection of personal data, which sets out the procedures for access to medical information.

In accordance with Act No. 1.353 of 4 December 2008, amending article 15 of Act No. 1.165 of 23 December 1993, and article 29 of Sovereign Ordinance No. 2.230 of 19 June 2009, a patient may have access to medical information relating to themselves and to any children over whom they exercise parental authority. At the choice of the requestor, this access can be provided directly or via a doctor appointed by the requestor for this purpose, and by consultation on site or by having a copy of their history

sent by post or electronically. In exceptional cases, however, a *"medically justified negative opinion"* may be cited to justify a denial of direct access to the patient's file, who may then only access their history via a doctor. This specific feature of Monegasque law with regard to access to a person's medical history may be at the root of difficulties, since the law does not specify what is meant by such a *"medically justified negative opinion."* The fact that the negative opinion comes from a doctor is not sufficient grounds for removing the patient's right of direct access to their medical history, which must remain the norm. To ensure that the spirit of the law is respected, it is important that this negative opinion be based on compelling and proven reasons, which are in the interests of the patient.

› Access to minor children's medical histories

Mr D. requested access to his children's medical histories from Princess Grace Hospital. He was refused direct access based on a negative opinion from the supervising physician, and was asked to appoint a general practitioner who could serve as an intermediary for access to the files. No explanation of the reasons for this negative opinion was provided.
Mr D. submitted his case to the High Commissioner to assert his right to choose the procedure by which he would exercise his right to access the information.
To enable Mr D. to understand the reasons which led to the refusal to allow direct access to the information, a face-to-face meeting with the doctor behind this decision was organised at the joint initiative of the High Commissioner and the Princess Grace Hospital management team. This meeting brought to light the fact that the main reason put forward to justify this refusal lay in the doctor's desire for certain complex medical terms employed to be explained to the claimant. Since the necessary clarifications were able to be given verbally by the doctor himself, Mr D. was granted direct access to the medical files concerned following this meeting.

E . Daily life

Public services are everywhere and have a significant impact on citizens' daily lives. The High Commissioner may therefore be contacted in connection with very specific issues relating to people's daily lives. Such is the case with the amicable settlement described below, which also has the distinction of being a fair settlement in the strict sense of the term. While all amicable settlements take into account the particular circumstances of those involved, a fair settlement is different in that it steps away from applying the relevant rules in order to arrive at a fairer approach to a given situation.

› Allocation of a parking space

Ms N. has been entitled to the use of a reserved space in the public car park at the bottom of her building for 20 years. Following renovation and expansion of the building, she lost the use of this fixed spot. The High Commissioner, having noted the ambiguous nature of the letter sent by the operator announcing the work and future procedures for allocating spaces within the building, was able to highlight both the long-standing use of this parking space by the claimant and the difficulties she encountered in parking or retrieving her vehicle given that the claimant's husband works night shifts, and to request that the claimant's previous rights be restored to her. Although it did not meet the criteria defined in the new parking management procedures, the claimant's request to be reallocated a fixed spot was, as a gesture of goodwill, accepted, on the understanding that such an exemption, based on a recommendation in equity issued by the High Commissioner, was not likely to establish a precedent which could be invoked by other citizens.

VI. Protecting citizens' rights

The High Commissioner's recommendations

In accordance with article 23 of Sovereign Ordinance No. 4.524, the High Commissioner issues recommendations intended to ensure that the rights and liberties of the person whose case was referred to her are respected. These recommendations may also seek to propose any measures of a general nature which are likely to correct any possible shortcomings noted in the course of reviewing a specific case, or to suggest any modifications that could be made to existing legislation and regulations to prevent them from resulting in inequitable consequences.

Thus, during the year, the High Commissioner issued **five recommendations of a general nature following individual cases, three of which relate to protecting the rights of citizens (A).** The two other recommendations relate to discrimination issues and are covered in Section VII below.

Moreover, an analysis of the cases handled by the High Commissioner during her first year has highlighted the benefit that would be derived from developing certain practices, particularly at the stage of informing users and in the procedure for making administrative decisions, with a view to ensuring that citizens properly understand their rights and to improving the quality of service provided, thereby preventing some disputes. Consequently, these observations also lead the High Commissioner, in accordance with article 45 of the Sovereign Ordinance which established the role, to make **general proposals regarding good practice (B)**.

Finally, in a bid to ensure that the new mechanism for protecting rights established through the creation of the High Commissioner is effective, following a productive year, the High Commissioner is compelled to call for **improved cooperation on the part of the Administration** to help her to fulfil her duties **(C).**

A . Recommendations based on individual cases

As the High Commissioner's recommendations are not binding, the Administration is not obliged to follow them, although it is, of course, urged to take them into account. In order to ensure transparency, the paragraphs which follow report both the outline of the High Commissioner's initial recommendation and the action which the relevant administrative authority considered it necessary to take as a result.

The recommendations below have not been prioritised. They are presented in the chronological order in which they were issued.

Recommendation No. 1:

Set up a legal land register in the Principality

During a case which involved a claim of ownership to a plot of land, the public ownership of which was called into question, the High Commissioner highlighted **the uncertain legal situation arising from the absence in the Principality of a legal land register enforceable** in **relation to the State and citizens alike** and likely to supply prima facie evidence of ownership and acquired rights over the land in question.

Since the right of ownership is a basic and fundamental right, to which the Principality has historically been committed, the High Commissioner recommended that consideration been initiated regarding the establishment, through legislation or regulations, of a land register, which would bridge current gaps in Monegasque law and offer citizens a public service which does not currently exist and which would respond to a genuine need.

Action taken as a result of recommendation:

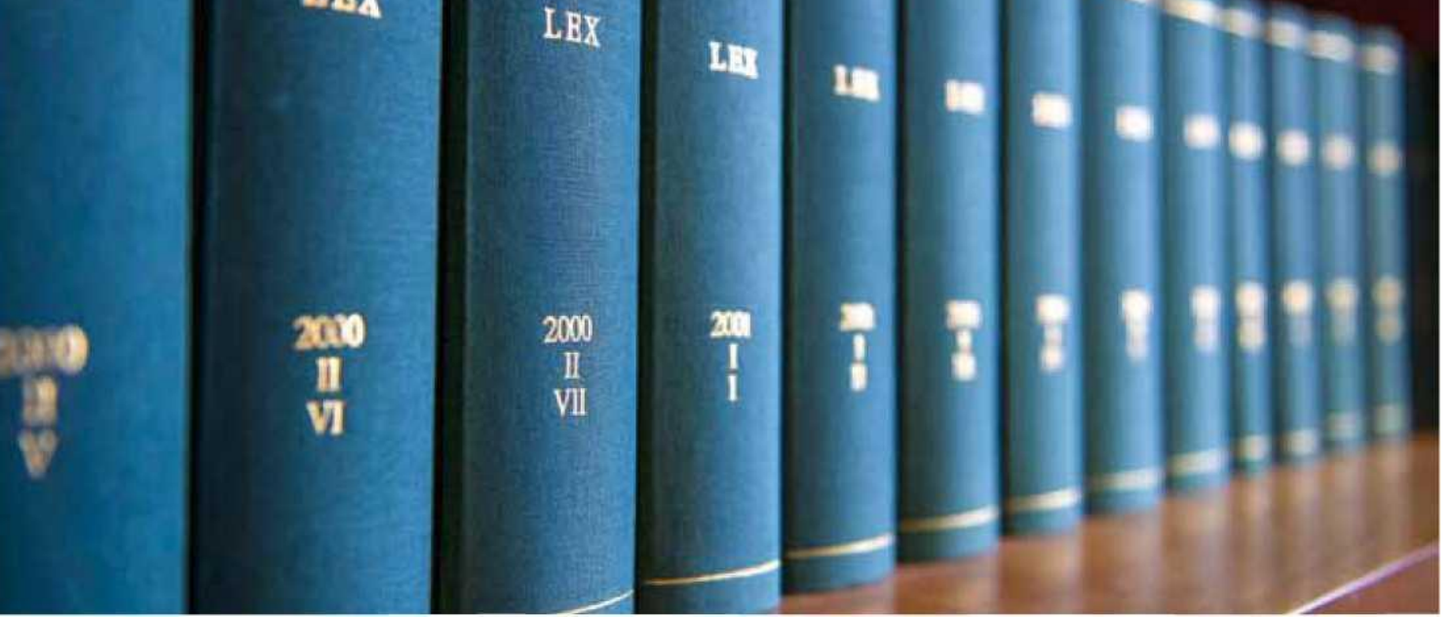
The Government has informed the High Commissioner that this recommendation is currently under review by the relevant departments and should soon lead to proposals, though no indication was given as to a timeframe for implementation.

Recommendation No. 2 (part 1):

Provide citizens with procedural guarantees relating to the signature of settlement agreements with the Administration

A number of disputes relating to the settlement of unpaid rent by citizens living in the state-owned sector were referred to the High Commissioner. In order to settle these situations without resorting to a legal dispute, the Administration has developed a practice of signing settlement agreements with the tenants concerned, recognising, on their part, the debt and accepting a payment moratorium through deduction of a monthly sum from their wages or salary.

The review of complaints brought before the High Commissioner in connection with the execution of these agreements highlighted a lack of understanding among citizens of the scope of the agreements they were signing and a lack of prior information provided at the negotiation stage of these agreements. The High Commissioner recalled that free and informed consent of the parties to a transaction is an essential and determining factor of its validity. In order to guarantee the legal security of these transactions, and to ensure greater transparency for citizens, the Administration was invited to amend its practices by providing citizens in advance with a draft of the agreement, together with supporting documentation and a letter drawing their attention to the definitive and irrevocable nature of their commitments as a result of the proposed agreement. The High Commissioner further recommended that citizens be given a reasonable period to consider the agreement and



the option, during the meeting to sign the agreement or any prior meeting with the Administration, to be accompanied by a person of their choice.

Having noted the often substantial amount of the monthly deductions from the wages and salaries of debtors in accordance with these agreements to settle their rent arrears, **the High Commissioner also reminded the Government of the legal requirement to cap these deductions, comparable to salary withholdings, at a level no higher than the attachable portion of a citizen's earnings.**

Action taken as a result of recommendation:

The State Property Authority is committed to establishing a new modus operandi designed to ensure the informed consent of citizens with regard to any amicable settlement procedure it has initiated, including:

- *sending a copy of the agreement to the citizen fifteen days before the planned date of signature;*
- *providing, alongside the draft protocol, a detailed statement of rent arrears and a provisional repayment schedule;*
- *enabling the option, for any citizen who requests it, for citizens to be accompanied by a person of their choice during the meeting at which the agreement is signed.*

It should be emphasised that following these observations, and during a review of a specific case, the Administration agreed to review, for the purposes of ensuring fairness, the binding terms of the agreement concluded with a citizen, by waiving the right to solidarity between two debtors, thereby partially following the recommendation of the High Commissioner who had highlighted the contestable nature, in legal terms, of some of the sums demanded from the claimant.

Recommendation No. 2 (part 2):

Give consideration to the conditions for enabling people to remain in state-owned accommodation following the death of a lease holder

One case in particular highlighted the difficulties liable to arise from situations where the State grants people temporary permission to remain in a state-owned apartment following the death of the named tenant, in order not to add the cruel loss of housing to the suffering caused by bereavement.

The High Commissioner observed that **the human and social aspect of this practice is sometimes difficult to reconcile with the obligation placed on beneficiaries, regardless of their financial situation, to pay the rent and charges for occupation of the housing, without any support, and specifically without the National Housing Aid** paid, pursuant to Ministerial Decree No. 2008-87 of 15 February 2008, only to those of Monegasque nationality who are the tenant or spouse of the tenant. Where the income of those allowed to remain in housing is not sufficient to meet the rental payment for the flat concerned, this latitude can end up creating debt situations that become difficult to solve.

In order to avoid any possible adverse effects of this measure in the specific case concerned, the High Commissioner recommended that the Administration rethink its practice of maintaining people in the same housing, instead seeking to temporarily rehouse them in an emergency flat that is in keeping with their resources, or to introduce special financial assistance, based on the procedures used to establish National Housing Aid, thereby capping at a fraction of the beneficiaries' income the financial impact of the cost of their tenure for the duration of the authorisation.

Action taken as a result of recommendation:

The Government has informed the High Commissioner that, following this recommendation, a review is under way within the Ministry of Finance to consider allowing Monegasque nationals in such housing to receive National Housing Aid, calculated on the basis of their average needs, throughout the duration of their tenure. In other cases, the option of emergency rehousing, for a maximum of six months, would be the preferred option, after identification of available housing which could be used for this purpose.

Recommendation No. 3:

Take a differentiated approach, depending on the nature of the post concerned, to assessing the guarantees required of an employee when issuing permits

As previously discussed, a person of foreign nationality who wishes to work in Monaco must first obtain a work permit, which is issued following a police inquiry designed to establish that the person does not pose a threat to public order. The character investigation also plays a decisive role in obtaining the administrative approval required in accordance with Act No. 1.103 of 12 June 1987 relating to gambling, for any person seeking employment in one of the Principality's casinos. In this area, the assessment carried out by the administrative authority on the good character of the requestor is all the stricter, given that the industry concerned is demanding and exposed.

While security, a major asset of the Principality, is an overriding objective which justifies the practice of a character investigation for job seekers, **several cases referred to the High Commissioner highlighted the extreme severity of judgement regarding certain incidents in people's lives, which are sometimes liable to follow them for many years,** denying them access to jobs in the Principality.

Thus, in a case relating to the refusal to issue a requested approval in accordance with Act No. 1.103 cited above for a job as a bartender in an establishment with a casino, the High Commissioner recommended consideration of the option of taking a differentiated approach, depending on the nature of the job concerned (*"sensitive"* jobs directly related to casino activity and handling of money or, conversely, *"peripheral"* jobs within the hospitality sector), to assessing the guarantees required of an employee for the issue of such an approval, always adhering to the principle of proportionality in assessing the administrative conclusions to be drawn from any previous behaviours.

In the specific case concerned, the High Commissioner judged it necessary to invite the Administration to review, with goodwill, the requestor's situation, given the time that had passed since the allegations and their relative insignificance (minor infractions committed outside the professional environment and dating back four years previously), the waiving of the fines imposed, the claimant's clean criminal record and the fact that, given the job envisaged, the individual would mainly be working outside the casino.

Action taken as a result of recommendation:

The High Commissioner regrets that the Government has not taken account of this recommendation. The Government has indicated that it does not intend to make any distinction with regard to the rank or type of employment involved in requests for permits. In this specific case, the refusal to grant a permit was upheld given a judgement that the acts committed were irreconcilable with the requirement of good character, which requires that the administrative assessment state that the requestor had never been in conflict with the law.

B . Proposals for best practice in relations between the Administration and citizens

According to article 45 of Sovereign Ordinance No. 4.524 which established the role, 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*."

Through the complaints she receives and her direct contact with citizens, the High Commissioner occupies a unique vantage point from which she is able to identify possible sources of dysfunction or conflict in the operation of public services or their relationships with users, and to suggest, where appropriate, changes to current rules or practices in order to continually improve administrative efficiency and the quality of services provided to citizens.

During her first year, and lacking sufficient time and distance to draw any general lessons from the more specific problems encountered in certain cases, to which she will return in subsequent reports, the High Commissioner sought to focus her proposals on some very concrete issues associated with the relationship with citizens.

A significant number of cases referred to the High Commissioner highlighted the difficulties that can arise for individuals when they contact the Administration, which remains too opaque and impenetrable in its operation.

> **"this acknowledgement of receipt, which would take the form of a holding letter, should also be an opportunity to clarify for citizens the administrative procedure that will be applied to their request and, wherever possible, the department and/or the person who will be responsible for reviewing their case"**

The proposals which follow, and which relate primarily to an effort to communicate with users on receipt and during processing of their requests, are common sense measures that are simple to implement. **They aim to improve the reliability of the information provided to the user and to strengthen the transparency and, consequently, the fairness of administrative processes. These are** both **a fundamental aspect of good governance and a requirement of a public service.** An update on these proposals will be provided in the next annual report.

PROPOSAL

Acknowledge receipt of written requests and complaints from citizens

Somewhat surprisingly, the High Commissioner came to note that the Administration was not in the habit of automatically acknowledging receipt of the requests or complaints it received from citizens, including as part of appeals in accordance with the law. Consequently, and given that administrative deadlines for processing such cases are often long, **individuals can go for several weeks or even months without knowing what has become of their requests, or even whether their letter arrived or was given consideration.** Moreover, it is not clear that even a conscientious citizen would be able to obtain such confirmation by telephone: some claimants who turned to the High Commissioner due to a lack of response from the Administration had not previously been able to obtain information directly, or had discovered through this appeal that their letter had never arrived.

With a view to good governance, it would seem essential that acknowledgements of receipt be sent automatically in response to any written request submitted to the administrative authorities, even where the citizen has taken the precaution of sending his or her letter by registered post with acknowledgement of receipt. This acknowledgement of receipt, which would take the form of a holding letter, should also be an opportunity to clarify for citizens the administrative procedure that will be applied to their request

and, wherever possible, the department and/or the person who will be responsible for reviewing their case. In cases where a preliminary administrative appeal is submitted to the Administration, the acknowledgement of receipt, which may be issued subject to a review of the merits as to the admissibility of the appeal, should also note the consequences should the Administration fail to provide a response within four months since, under current law, this lack of response implies a rejection which can only be contested within a fixed period of two months.

In parallel, for the purpose of providing evidence, the High Commissioner invites citizens to **correspond with the Administration via registered post with acknowledgement of receipt when exercising options for amicable settlement.** In a recent dispute referred to the Supreme Court (TS 2014-17, 2 February 2015, V.B. c/ Minister of State), on which occasion the High Commissioner had been contacted by a citizen in parallel with an appeal for reconsideration brought before the Minister of State by a normal letter, it was the acknowledgement of receipt sent by the High Commissioner in response to the submission of the case that confirmed, before the judge, the actual date of the citizen's prior appeal, the lateness of which was invoked by the State to rule his request legally inadmissible. It should be noted that, as a matter of good practice, automatically sending an acknowledgement of receipt in response to preliminary administrative appeals, will in future guarantee that this type of procedural argument, which the High Commissioner considers to be particularly unfair on the part of a public administration obliged to act in good faith, cannot be used against citizens before the courts.

PROPOSAL

Guarantee that notifications sent to citizens are duly received

Currently, government departments do not follow standardised procedures for sending their requests or notifying citizens of their decisions. Some departments favour normal letters, regardless of the content and including in the case of formal administrative notifications, out of convenience but also born of a desire not to judicialise the relationship or to imbue discussions with a combative tone. Other departments make use of registered letters for certain communications which have specific and immediate consequences for citizens, for example notification by post of measures to remove a person from the country. In general terms, however, the use of registered letters with acknowledgement of receipt remains very rare within the Administration, whether for requests sent to citizens during the process of administrative review (summonses, notifications of steps to take in order to complete a case or request) or for notifying citizens of decisions taken with regard to their requests, and whether they establish rights or, conversely, restrict or abrogate them.

> **"this lack of a formal approach is, on principle, detrimental to citizens, particularly where the notification sent to them requires action on their part, under penalty of dismissal of the request, sanction or foreclosure. Non-receipt of the letter can therefore have very serious consequences for the individual concerned"**

This lack of a formal approach is, on principle, detrimental to citizens, particularly where the notification sent to them requires action on their part, under penalty of dismissal of the request, sanction or foreclosure. Non-receipt of the letter can therefore have very serious consequences for the individual concerned, as illustrated in the example described on page 39 (refusal to issue a work permit due to a police summons which was sent to the wrong address and not received by the individual), which was fortunately resolved amicably through the intervention of the High Commissioner. In the case in question, sending the Police Department summons by registered letter would have enabled the Administration to realise the mistake with the postal address of the claimant and avoid the automatic refusal of the work permit and the loss of the individual's job.

From the Administration's point of view, the absence of a guarantee that citizens have been duly informed may also be problematic where proof of notification is legally required

in order for the relevant action to take effect or to enforce certain deadlines. In the case of individual adverse decisions, for example, the deadline for appeals is calculated from the date of notification of the decision, which implies that the Administration is, where appropriate, able to show proof that the citizen has actually received the notification, in cases where the latter might subsequently contest this as part of a late appeal.

It seems to the High Commissioner **that a shared concern for legal certainty should, as a result, lead the Administration to more systematically make use of registered letters with acknowledgement of receipt** for correspondence relating to administrative steps which the citizen is obliged to take and, in any case, **for notifying citizens of individual negative decisions or of responses, at the pre-contentious stage, to citizens' appeals.**

It should be noted that this proposal is tailored to a context where communication between the Government and citizens is still primarily focused on an exchange of letters. The modernisation effort which should guide changes in administrative practices militates in favour of a broader introduction of new technology into work practices over time. The use of email is now the simplest way to communicate quickly and effectively with a vast majority of citizens. There remains a difficulty, however, associated with the legal standing of email messages: although they are increasingly admitted as evidence in court, this is subject to accurate identification of the sender and that the conditions under which the email was retained guarantee the integrity of the data. One can imagine that, in future, once the required technical conditions are in place, **the more systematic use of registered post with acknowledgement of receipt, currently essential to achieving the objective of legal certainty in correspondence with citizens, could be replaced by wider use of electronic messaging.**

> **"the interviews conducted by the High Commissioner with complainants highlighted a lack of understanding among citizens of the steps they can take and the associated deadlines where they disagree with an administrative decision which adversely affects them"**

PROPOSAL

Inform citizens of the procedures for appealing a negative administrative decision

While ignorance of the law is no defence, the interviews conducted by the High Commissioner with claimants highlighted a lack of understanding among citizens of the steps they can take and the associated deadlines where they disagree with an administrative decision which adversely affects them.

The intervention of the High Commissioner, when a case is referred to her, generally overcomes this lack of information, as she invites the claimant, where necessary, to formalise an appeal, usually an amicable appeal initially, in order to preserve their rights. A desire for equality among citizens should, however, mean that this information is systematically made available beforehand.

The procedures for exercising the means to appeal decisions taken by the administrative authorities derive, in the Principality, from the combined provisions of Ordinance No. 2.984 of 16 April 1963 on the organisation and operation of the Supreme Court (Section II – *Supreme Court Procedure*), which sets out the procedures for contentious and pre-contentious appeals open to citizens, and Ordinance No. 3.413 of 29 July 2011 covering various measures relating to the relationship between the Administration and citizens (Chapter 1, Section I – *Preliminary administrative appeals*), which introduced a number of clarifications regarding preliminary administrative appeals.

In accordance with these provisions, an individual administrative decision can be disputed in court within two months of the decision being notified. Within the same timeframe, the decision may also be subject to a preliminary administrative appeal, either to the authority which took the decision (informal appeal) or to the next level in the administrative hierarchy (hierarchical appeal, mostly to the Minister of State) to request,

amicably, withdrawal or reversal of the decision. In this case, the launch of an administrative appeal extends the deadline for a legal appeal. On the other hand, if there is no amicable or legal appeal during the two months following notification of the administrative decision, the decision is considered to be definitive. With few exceptions, the decision can no longer be challenged. The same applies to a decision by the administrative authority to reject an amicable appeal brought by the citizen, if it is not challenged in court within two months of notification. In cases where the decision to reject an appeal is implicit, that is, where it results from the Administration maintaining its silence for more than four months following the appeal, it is all the more difficult for citizens to understand the options which remain open to them for disputing the rejection since, by definition, there is no written decision in such cases.

Considering the consequences attached to the expiry of appeal deadlines, **the High Commissioner believes that it is necessary, as a matter of good practice, for the Administration to ensure that citizens are able, where required, to usefully exercise their rights, by systematically informing them of the applicable procedures and deadlines when notifying them of an individual negative administrative decision.** Incidentally, it is worth noting that this practice has been mandatory in France since a decree issued in 1983. Failure to comply means that appeal deadlines are not enforceable against the citizen.

Systematic provision of information at the initiative of the administrative authority should include both the conditions for exercising traditional means of appeal, and the new option introduced by Sovereign Ordinance No. 4.524 of referring cases to the High Commissioner, always noting that submitting a case to the High Commissioner has no impact on appeal deadlines.

PROPOSAL

Be diligent in responding to informal or hierarchical appeals brought by citizens

In accordance with article 14 of Ordinance No 2.984 of 16 April 1963, **the Government has four months to respond to informal appeals** or hierarchical appeals brought by citizens. Through the cases that have been referred to her, the High Commissioner has been able to observe that **this response deadline, which, in the spirit of the legislation, is a maximum time period, is very often fully taken advantage of by the Administration to rule on the appeals referred to it, without necessarily seeking to optimise administrative response times in pursuit of fairness and proper administration of justice.**

> **"while the time taken by the Administration to deliberate before adopting a position may sometimes be a measure of the seriousness and depth of the consideration being given to the arguments presented by the citizen, it does not always reflect the time actually required to review the appeal"**

By definition, these preliminary appeals occur during an amicable phase, which may precede legal action, and it is therefore important that when a citizen opts to make use of such an informal procedure, this is not turned against him by excessively prolonging the time required to reach a resolution of his complaint. While the time to taken by the Administration to deliberate before adopting a position may sometimes be a measure of the seriousness and depth of the consideration being given to the arguments presented by the citizen, it does not always reflect the time actually required to review the appeal. Some appeals which do not involve any particular complexity with regard to their substance do not receive a response until the very last minute, while others seem, from the point of view of the citizen, to have been quite simply ignored, since there is no particular incentive for the Government to be diligent in responding due to the rule which states that no response after four months is equivalent to a rejection of the appeal. In this respect, it may be expedient for lawmakers to consider whether it is appropriate to amend this rule, so that a lack of response from the Government *ultimately* benefits the citizen, with a view to removing any temptation to succumb to administrative inertia.

In any case, **it would be desirable for the Government to commit to improving its response times,** within the legal deadline, for cases where time has a particular impact on the circumstances of the citizen involved**.**

Moreover, it would seem important, to ensure that citizens are well informed and, following directly from the previous proposal, to **seek to eliminate as far as possible the practice of resorting to an implicit rejection of an appeal,** which would appear in any case to be excluded in the event of an intervention by the High Commissioner in parallel with a preliminary administrative appeal, giving rise to the issuing of a recommendation directed at the administrative authority on action to take with regard to the relevant appeal (Sovereign Ordinance No. 4.524, article 23 *ultimately).*

> **"enable a proper understanding of the reasons behind the change in the Government's assessment and avoid any sense that it is arbitrary"**

PROPOSAL

Provide justification for reversals of the Administration's position in favour of citizens

In accordance with Act No. 1.312 of 29 June 2006, the Administration is obliged to provide justification for individual administrative decisions which go against citizens, failing which they shall be invalid. When an administrative appeal is launched, however, perhaps in parallel with a referral to the High Commissioner, and the response to the appeal eventually comes out in favour of the citizen, or when a dispute between the parties is resolved amicably, with the intervention of the High Commissioner where required, the considerations which led the Government to agree to revise its position are not necessarily explained.

It nevertheless remains particularly important to communicate these considerations to the citizen, even if the final solution adopted is in his favour, to enable a proper understanding of the reasons behind the change in the administrative assessment and avoid any sense that it is arbitrary which may arise in the perception of the citizen as a result of a sudden, unexplained reversal. On several occasions, the High Commissioner was confronted with perplexity on the part of some claimants who did, in the end, receive a response they were happy with from the Administration, but who were unable to comprehend either the reasons for the initial blockage or the justifications for the change in the Administration's position. The High Commissioner herself was not always able provide an explanation because of a lack of clear reasoning in the feedback she had received from the administrative authority. Such a situation is clearly detrimental, even when it occurs in a context where a case has been satisfactorily resolved, when it ought to also benefit the image of the Monegasque Administration.

C. Working towards an efficient mechanism for protecting rights: the need to improve dialogue between the High Commissioner and the Administration

The assessment of the High Commissioner's activities over the last year illustrate the assistance the institution can provide in resolving problems encountered by citizens as well as, more generally, in improving the quality of service provided to users.

The aim of improving public service, which all State institutions are called on to work towards, requires putting the user back at the heart of the approach. In recent years, the Administration itself has made substantial efforts in this direction, by simplifying procedures and introducing and developing new e-administration tools to make its procedures more flexible for the benefit of the general public. The establishment of the High Commissioner consolidated this trend, focusing on the quality of the link between the public authorities and citizens. The High Commissioner's raison d'être is to contribute, through improving practices, to introducing more flexibility and responsiveness in the way requests are handled, and to obtaining responses which are more appropriate to the specific circumstances of each situation, but also to guaranteeing, from the outset, that better information is provided to the user and that communication with the latter is more efficient.

To successfully fulfil her remit, however, the High Commissioner remains dependent on the quality of dialogue established with administrative departments, and the willingness of the latter to collaborate fully and constructively with this new mechanism.

At the end of this first year of operation, the clear conclusion is that in its working relationship with the Administration, the institution often comes up against the same obstacles encountered by citizens: difficulties in accessing information, terse responses which are partial or incomplete, excessive caution or formality in communications, a failure to listen, slowness and sometimes opaqueness.

"while it is always possible to improve working practices, it is absolutely essential that the administrative authorities approach cooperation with the High Commissioner with the right mind-set"

These difficulties, which primarily concerned dialogue with the Government, meant that the High Commissioner was not always able to conclude her involvement in cases with a feeling of having done everything possible with regard to the problems referred to her, nor with a sense that she had been able to tackle situations with the rigour and diligence that she would have liked to have brought to them. It must, however, be accepted that these difficulties stem from a process of mediation which is still being developed, and that it will take a certain amount of time for it to become a normal part of the Administration's working practice.

While it is always possible to improve working practices, it is absolutely essential that the administrative authorities approach cooperation with the High Commissioner with the right mind-set, and that the institution's prerogatives, within the context of the public service mission with which it has been entrusted on behalf of users, are respected.

It must be noted that, one year on, none of this has yet been achieved. Although numerous consultation meetings have been held with the Government at the initiative of the High Commissioner to work towards improving working processes, paradoxically a significant deterioration in the quality of support offered by the Government to the execution of the High Commissioner's duties is to be lamented, with the number of late or inadequate responses to the institution's requests, obstacles to dialogue with departments and repeated refusals to send information requested for the review of referred cases all having multiplied recently.

The High Commissioner would like to remind readers of the powers of investigation conferred on the institution by article 20 of Sovereign Ordinance No. 4.524 which established it: the High Commissioner requests information from the relevant administrative departments, which are obliged to supply, "*any document or information or assistance required to carry out [her] role.*" While it is envisaged that the High Commissioner's requests should be addressed according to hierarchy, which has led to written correspondence becoming centralised in the hands of the Minister of State, this provision should not preclude the possibility of the institution verbally requesting information from department heads, or from hearing their views where the High Commissioner considers this necessary to the review of the case,

and this is specifically set out in the last two paragraphs of article 20, which state that "***The High Commissioner may also verbally request from the citizen and the [relevant] departments any supplementary information likely to shed light on the appeal or dispute***" and that she "***[listens] to the explanations, if necessary and unless it is impossible, of the citizen or his representative, as well as the relevant administrative authority***".

Incidentally, **this ability to communicate directly with departments is a key gauge of the High Commissioner's access to accurate, exhaustive and transparent information during review of cases, and her capacity to successfully carry out her mediation role.**

Some departments with which the institution has had particular cause to work over the past year have indeed shown themselves to be very receptive and keen to establish a fluid and effective dialogue around the resolution of cases. This illustrates that there also exists within the Administration, on the part of civil servants and officials who are confronted on a daily basis with the realities on the ground, a need to listen and share in order to make progress on certain issues or to resolve deadlocks that they may have been powerless to break themselves.

Furthermore, the secret or confidential nature of information requested should not be used to unduly create obstacles to the High Commissioner's ability to intervene in certain cases. While article 22 of the Sovereign Ordinance cited above allows administrative authorities, in certain limited and defined cases, to refuse to divulge certain information, it is important that these provisions are not misapplied to immediately derail the mediation process. In any case, the High Commissioner notes that in accordance with the second paragraph of the same article, she can be sent such information with instructions not to share it with the claimant or with a third party, for reasons of confidentiality. Generally and with a view to ensuring effective review of cases, it would be helpful if the Administration would make use of this option more often.

VII. Combatting discrimination

Specificities of Monaco

> **Monaco is one of the few countries in the world with a national minority population on its own territory. This specificity means that distinctions on the basis of nationality are viewed in a very different light compared with generally accepted standards**

The Principality has signed up to a large number of international instruments designed to prevent and combat discrimination starting, at the European level, with the Convention for the Protection of Human Rights and Fundamental Freedoms, article 14 of which forbids discrimination in the enjoyment of the rights and freedoms set forth therein. Over the last 20 years, the country has also ratified several UN conventions of a general or more specific nature in this area, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

This proactive approach at the multilateral level is evidence of the Principality's commitment in the important area of human rights. That said, Monaco does not have a framework law on discrimination within its domestic legal arsenal. This state of affairs is the direct result of the existence in the Principality of priority rules established by the Constitution, legislation and regulations, and designed to protect Monegasque nationals, as well as certain categories of foreign national, in the sensitive areas of access to housing, employment and some types of social welfare.

Monaco is one of the few countries in the world with a national minority population on its own territory (of the country's 38,000 inhabitants, around 9,000 are Monegasque nationals). This specificity means that distinctions on the basis of nationality are viewed in a very different light compared with generally accepted standards, since the preferential treatment granted particularly to Monegasque nationals are necessary, given the social and economic realities of Monaco, to ensure the maintenance of this population within the country. It is the reason why Monaco has not so far ratified certain European laws (notably Protocols No.1 and No. 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms or the revised European Social Charter), despite the commitments initially made on accession to the Council of

Europe in 2004 – a desire not to damage the preservation of the country's critical balances. The Parliamentary Assembly of the Council of Europe, which had already recognised the specific characteristics of Monaco during review of the Principality's accession request, has, incidentally, now taken these on board in agreeing to bring to a close the post-monitoring dialogue with Monaco on 23 April 2015.

It is in this very specific context that the High Commissioner carries out her remit of working to combat discrimination. In the absence of any generic criteria for discrimination prohibited by law, the High Commissioner assesses information which may relate to discriminatory practices in Monaco against the principles found in the international conventions to which the Principality is a party, or as part of specific provisions or indeed in equity. With this in mind, Chapter III, Section II of Sovereign Ordinance No. 4.524 establishing the High Commissioner refers specifically to *unjustified* discrimination, so as to reserve application of existing priority schemes. Incidentally, it should be noted that the application of different treatment, which can be objectively and reasonably justified, to different situations is not considered to be discrimination.

The aim of the following sections is to provide an account of the topics which the High Commissioner was most particularly led to consider as part of her remit during the past year, in connection with the cases which were referred to her.

On the one hand, the unique lens through which issues relating to discrimination must be viewed in Monaco justifies the fact that the High Commissioner may be called upon to ensure the proper application, in this respect, of existing preferential rules, particularly in the area of employment (A).

On the other hand, the lack of a framework law on combatting discrimination does not in any way prevent the Principality from making significant progress in terms of domestic law, as evidenced by the establishment of the High Commissioner.

With regard to disability, for example, a recent law passed in December 2014 explicitly introduced, for the first time, a criminal prohibition on discriminating due to disability (B).

The promotion of gender equality has also inspired a large number of legislative reforms since 2003. As a result of one case, the High Commissioner recommended that this course be pursued through the amendment of certain provisions of the law on civil service pensions (C).

A . Priority access to employment

In accordance with article 25 of the Constitution, Monegasque nationals have priority access to public and private sector employment in Monaco. Act No. 188 of 18 July 1934 on the civil service states that, in the public sector, this priority comes into play when the Monegasque candidate fulfils the aptitude requirements. This priority of access to employment is equally applicable in the private sector and also, secondarily, benefits certain categories of non-nationals. In this respect, Act No. 629 of 17 July 1957, which seeks to regulate the conditions for hiring and dismissing employees in the Principality, introduces an order of priority for recruitment and dismissal of employees designed to protect, in addition to Monegasque nationals, the spouses of Monegasque nationals, residents of the Principality, and residents of neighbouring communes.

The aim of these rules is to promote full employment of nationals and, thereafter, of the local population. It should be noted that they do not have the effect of significantly reducing options for non-nationals to work in the Principality, since there are not nearly enough nationals in the employment market to fill all vacant posts. Specifically, based on the latest statistics published by IMSEE, Monegasques make up around 30% of the workforce in the civil service, and just 2% of private-sector employees.

In a case referred by a French contractor, **the High Commissioner was compelled to take a position on the non-discriminatory nature of the practice of the Monegasque State of reserving tenure in civil service jobs for nationals only.**

The High Commissioner determined that this practice in Monaco stemmed from the priority granted to Monegasques in matters of employment and additionally, in the specific area of access to public-sector employment, was also a reflection of the State's free exercise of its national sovereignty. The High Commissioner also noted that this principle of national recruitment did not contravene any higher principle of national or international law and, incidentally, was expressly recognised in the bilateral agreements signed between France and Monaco, which state that "*public-sector jobs in the Principality are given to Monegasque nationals*" (article 3 of the Franco-Monegasque Convention on Administrative Cooperation of 8 November 2005). Finally, the High Commissioner found that the thinking begun, in parallel with the legislative reform under way on the status of civil servants, on the situation of non-tenured officials employed in the civil service is likely to lead to the forthcoming adoption of regulations protecting the situation of such staff, for whom the Monegasque Government in practice already recognises security of employment after six years of service.

Regarding the implementation of priority access to employment for nationals, the High Commissioner had occasion to observe the difficulties which can arise in applying these rules, including during recruitment to the civil service.

Having been contacted by a Monegasque claimant regarding a case where a French national had been given preference for a post that the former had applied for, and for which he fulfilled the al of the requirements (which can be summarised in this case as requirements relating to the level of qualification, linguistic abilities and length of professional experience in the relevant field), the High Commissioner determined that the recruitment had been conducted with a lack of understanding of the rules relating to priority access to employment and recommended that the Administration should re-advertise the post concerned. This recommendation was refused on the basis of the circumstances of the specific case (time passed since the contested recruitment and alleged renunciation of the post by the individual involved).

Guided by the fact that the Supreme Court's rulings on the issue of access to public-sector jobs has been consistent, the High Commissioner notes that the priority access system must result in the Monegasque candidate being automatically selected over the non-Monegasque candidate wherever they satisfy the conditions set out in the recruitment notice. If there is a genuine reason why, particularly in the case

of a higher administrative grade as in this situation, aptitude criteria which are broader than simply qualifications come into play during recruitment, particularly with regard to expertise or behavioural skills related to the tasks to be carried out or possible management role to be assumed, it is up to the Administration to define this criteria precisely beforehand in its recruitment notices.

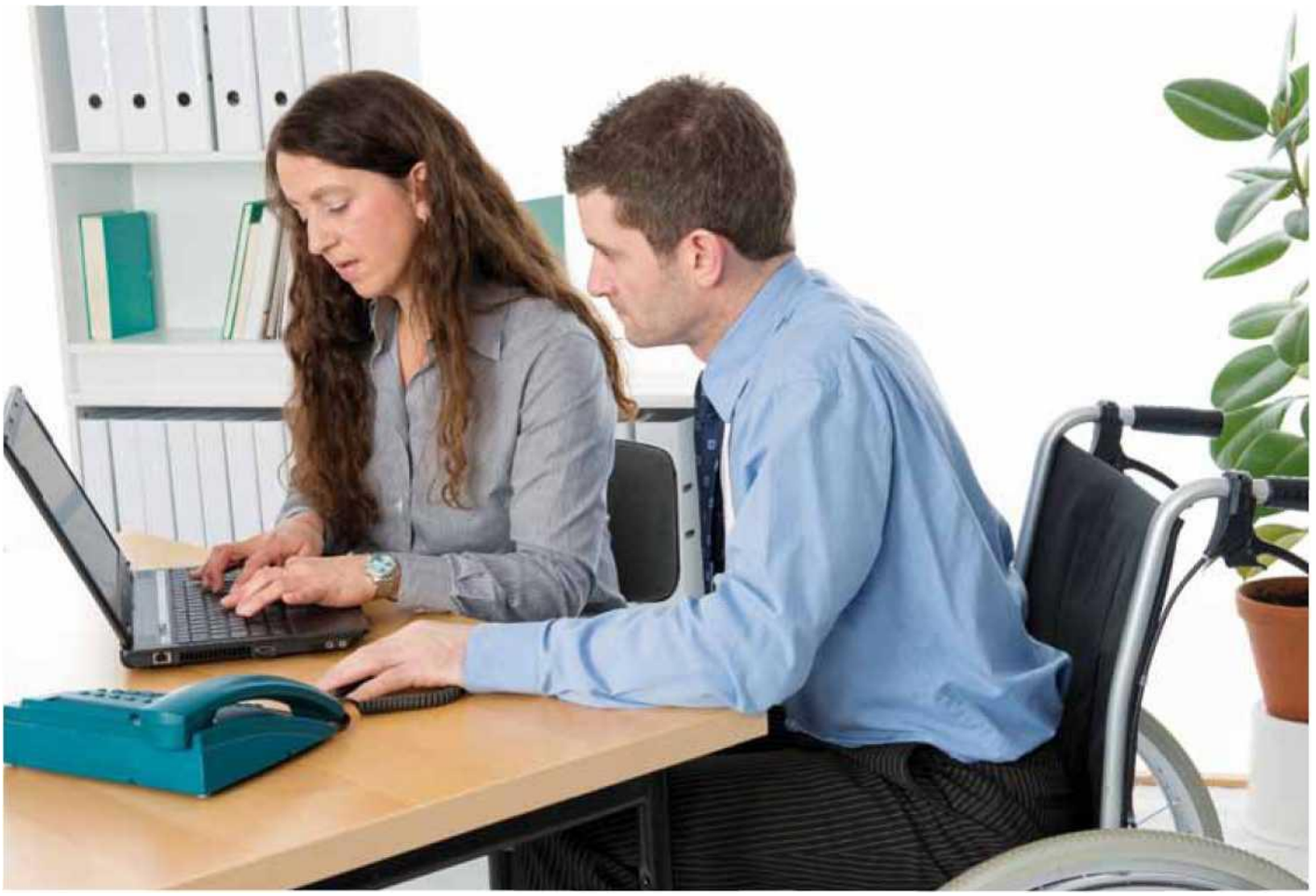
Recommendation No. 4:

Ensure that aptitude requirements in recruitment notices are objective

Following review of this individual case, the High Commissioner recommended that the Administration be particularly vigilant with regard to priority access to employment when recruiting for the civil service and in all cases, to ensure that in addition to the qualifications required, the necessary expertise and interpersonal skills expected of candidates are stated objectively in its job adverts.

Action taken as a result of recommendation:

It is to be regretted that the Government did not consider that it needed to review its decision in this specific case, however it did indicate that it would ensure that recruitment notices would be more carefully drafted in future in order to define more precisely all of the aptitudes candidates are expected to demonstrate.



B . Discrimination on the basis of disability or health

In 2014, a significant framework law on disability was adopted.

Act No. 1.410 of 2 December 2014 on the protection, autonomy and promotion of the rights and liberties of people with disabilities, passed on 26 November 2014, consolidated the existing provisions in the Principality covering this vulnerable group, while also reinforcing, notably in legal terms, the rights of people with disabilities.

In particular, the Act establishes a legal definition of disability which is close to the definition preferred by the World Health Organisation, and is not limited to permanent or long-term disablement but covers disabling health conditions more broadly, thereby encompassing all situations liable to substantially limit activity or participation in society, including short-lived, transient or evolving conditions.

It introduces, on this basis, the status of a person with a disability as well as that of a disabled worker, given various guarantees, notably in terms of social and financial support, which are intended to promote the individual's autonomy with respect for his or her life plans.

Among the provisions of this new law, article 11, which covers health, specifically states that people with disabilities have the same rights and liberties as other patients, including with regard to giving their consent to a medical procedure.

In terms of right to employment, article 34 enshrines the principle that a person may not be subjected to any kind of unjustified difference in treatment as a result of his or her disability, including with regard to recruitment, remuneration, training or career advancement.

In particular, this means that an employer cannot refuse to hire a disabled worker based on his or her disability. On the contrary, the law requires the employer to take appropriate measures to enable the disabled person to take up or retain a job, under the conditions recommended by the commission which considered the granting of this status, making use, if required, of specific financial assistance allocated by the State, and unless the costs or inconveniences associated with implementing these measures still prove to be disproportionate for the employer.

Finally, and to ensure that these rights are properly respected, article 55 of the law enshrines, for the first time, a criminal prohibition on discrimination due to disability. Such action is criminalised where it consists, in the absence of specific circumstances, in refusing to supply a disabled person with a good or service, refusing to hire a disabled person or provide an internship or training, or taking disciplinary action against or dismissing a disabled person because of their disability.

In addition to the progress which it represents for the rights of people with disabilities, this law is a particularly significant step forward for the High Commissioner, who now has a specific law she can rely on in the event of a complaint relating to an allegation of discrimination due to disability or health.

During 2014–2015, one case of an allegation of discrimination on health grounds was referred to the High Commissioner, by a claimant who complained that his applications for vacancies within the civil service were systematically dismissed without a valid reason. Following a review of the case in which both parties were heard, the High Commissioner concluded that the refusal to hire the claimant was not based on discriminatory reasons; the Government had relied on the individual's record of service from his previous administrative positions and on certain derogatory comments made publicly against the State as employer, in immediately refusing to give a positive response to his applications.

C . Gender equality

Over the last decade or so, the promotion of women's rights and gender equality has led to significant progress, designed to bring often old legislation governing civil matters, marriage, authority within a couple's relationship and with regard to children, and the transmission of nationality, into line with changing mind-sets and the principles found in the international conventions to which the Principality has become a party.

A central pillar of these reforms, Act No. 1.278 of 29 December 2003, introduced an essential modernisation of Monegasque family law, by enshrining equality between spouses and by replacing the concept of paternal authority over children with joint parental authority.

In order to allow both men and women who wish to do so to devote more time to the home by striking a more convenient balance between family life and professional life, Act No. 1.275 of 22 December 2003 introduced part-time working in the civil service. In a similar vein, Act No. 1.271 of 3 July 2003 and subsequent acts 1.309, 1.310 and 1.311 of 29 May 2006, introduced paternal leave and adoption leave for employed fathers and those working in the State or communal civil service, to enable men to become more actively involved on the arrival of a new child.

With regard to nationality, acts 1.276 of 22 December 2003 and 1.296 of 12 May 2005 aimed to rectify certain inequalities between men and women resulting from the historical process leading to the law on Monegasque nationality, allowing naturalised women, previously excluded from the provision, to transmit their nationality to their children. This change was completed by the adoption on 19 December 2011 of Act No. 1.387, which introduced gender equality in the rules for transmitting nationality by marriage by opening up the opportunity for women to now transmit their nationality to their husband.

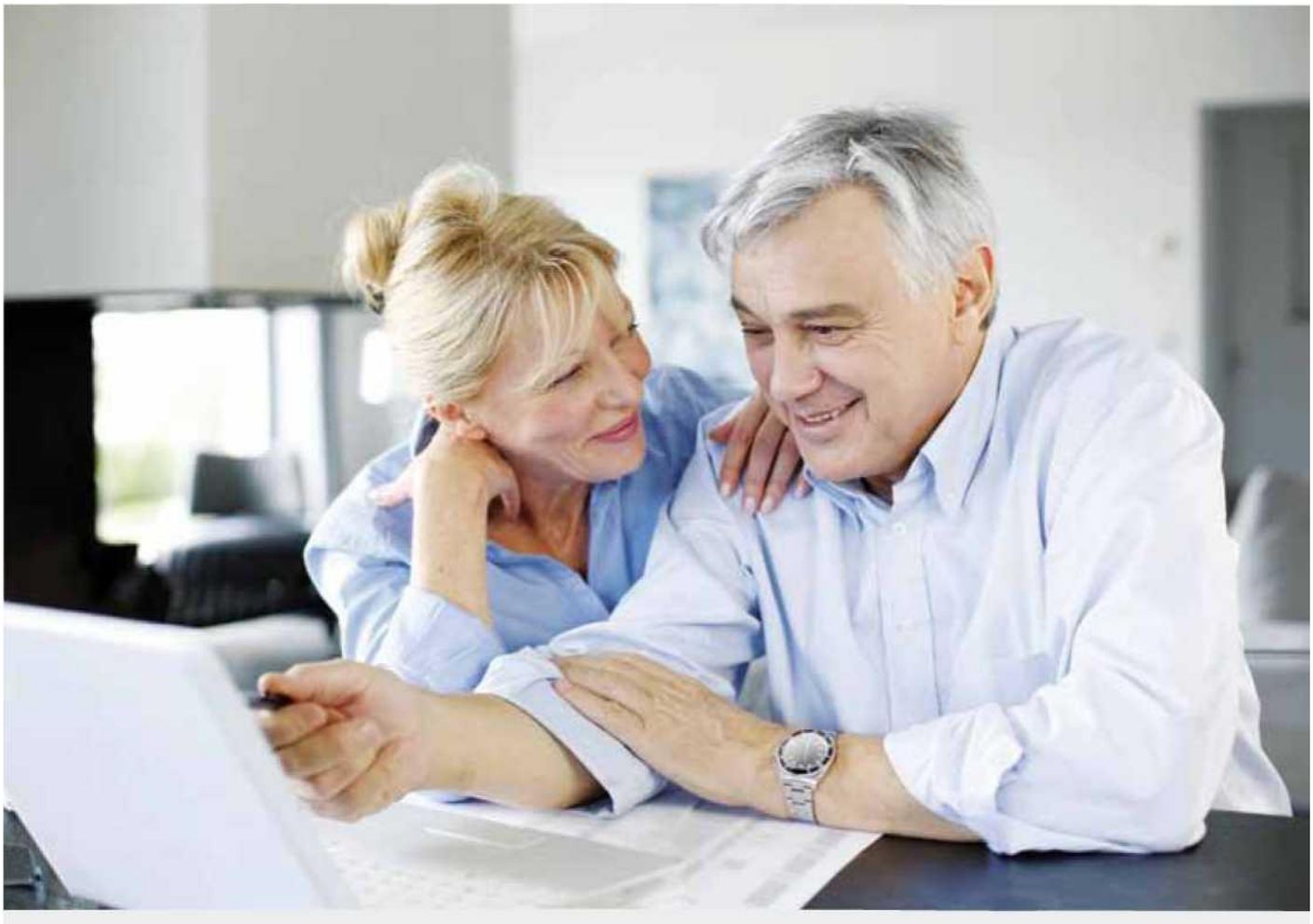
The momentum unleashed over recent years to promote gender equality is a basic shift which is set to continue, as evidenced by a recent parliamentary initiative seeking amendments to the concept of 'head of household'. Currently, this attribute, which is required for entitlement to household social benefits in Monaco, is given as a priority to men. Such a distinction, based on gender, is liable to be seen as discriminatory unless it can be established that it responds to a legitimate aim and is an appropriate and necessary measure to achieve said aim. The High Commissioner was recently asked to take part in this legislative process, being asked to provide an opinion by the National Council in accordance with article 33 of Sovereign Ordinance No. 4.524. A meeting with the Committee on Social Aims and Other Matters, which is currently reviewing this proposed law, is set to take place soon.

For her part, and in continuation of the modernisation efforts undertaken by the authorities, the High Commissioner took the opportunity presented by an individual request to draw the Government's attention to the need to make changes to certain obsolete provisions of the law governing civil service pensions.

Recommendation No. 5:

Amend an article of Act No. 1.049 on civil service pensions

In accordance with article 4 of Act No. 1.049 of 28 July 1982, civil servants may assert their rights to a pension after fifteen years of service with the Administration. This very favourable right to early retirement after fifteen years is open to all civil servants, regardless of gender. Conversely, article 12, point 2 of the law establishes a distinction in the conditions for the commencement of early payment of the retirement pension, by providing for a possible dispensation enabling immediate payment of the pension, theoretically available from the age of 50, to married women or those who have a dependent on the day they finish work. Such a disposition, which can be understood historically as a way of encouraging women who wanted to refocus on their family after a period of employment, today seems doubly discriminatory, by establishing a distinction between married women and unmarried women on the one hand, and between



men and women on the other hand, which is furthermore stripped of a clear direct link with the object of the benefit conferred.

In the case referred to her, the High Commissioner highlighted in particular the unfair consequences of this distinction with regard to single female civil servants who, if they do not have any dependents, find it impossible to obtain immediate access to their pensions. Such women are therefore subject to unequal treatment compared to married female civil servants, with whom they share an identical situation in terms of career, due to the simple fact of choices made in their personal lives. The High Commissioner therefore recommended that this article be amended as part of a broader reflection on other criteria for distinction set out in this act, and relating particularly to the gender of the beneficiary.

Action taken as a result of recommendation:

The Government has indicated to the High Commissioner that this recommendation will be taken into account as part of ongoing deliberations on how to reorganise the pensions system for civil servants.

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 citizen, 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 I

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.
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 I

PROTECTING THE RIGHTS AND LIBERTIES OF CITIZENS 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 citizens 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, as amended;
- other disputes giving rise to formal complaints.

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 resolution of disputes, mediation cannot be used until the contractual mechanism has been implemented to no avail.

Art. 17.
Referral of cases to the High Commissioner shall be made in writing.

To be admissible, direct contact with the High Commissioner by a citizen in accordance with article 15 must include the citizen's surname, first names, address, and the aspects of the law and facts and all other arguments on which his complaint is based.

It must indicate the previous approaches made by the citizen to the administrative department or public institution concerned in order to assert his rights.

Where the complaint relates to the protection of the rights and liberties of a minor or a person who is incapacitated, the complaint may be validly filed on behalf of this person by his legal representative.

Art 18.
The High Commissioner does not have the capacity 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 citizen in accordance with article 15 regarding a dispute of an administrative decision, in the absence of formalisation of a preliminary administrative appeal, 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 citizen involved of the follow-up that he can expect.

The High Commissioner may also communicate to the citizen 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 complaints, 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 citizen 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 citizen or his representative, as well as the relevant administrative authority.

Art. 21.
When a complaint 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 complaint 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 citizen 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 citizen 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 complaints from individuals or legal entities who believe that they have been the victims of unjustified discrimination in the Principality.

The complaint 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 complaint 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 complaint 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 complaint.

Art. 30.
Following review of the complaint, 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 complaint.

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 citizens' 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 citizens' 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.
The High Commissioner publishes and updates a 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 citizens 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 carry 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,

Secretary of State:
J. BOISSON.

From left to right:
Cécile VACARIE-BERNARD, Deputy, Anne EASTWOOD, High Commissioner, Marisa BLANCHY, Assistant

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HIGH COMMISSIONER
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