

# JOURNAL DE MONACO

## Official Bulletin of the Principality

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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 claims.

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

Art. 18.  
The High Commissioner 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 claims, nor to those which are excessive, for example due to their number or repetitive nature.

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

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

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

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

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

- a) the confidential deliberations of the Government and the authorities listed in article 2;
- b) the conduct of the Principality's foreign policy;
- c) the security of the State or the safety of people and property;
- d) the conduct of proceedings before the courts or operations preliminary to such proceedings;
- e) the investigation or prosecution of acts likely to result in criminal penalties.

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

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

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

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

In the case of a preliminary administrative appeal, this recommendation is addressed to the relevant authority to enable it to provide a response to the 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 claims from individuals or legal entities who believe that they have been the victims of unjustified discrimination in the Principality.

The claim shall be formulated under the conditions described in Article 17.

The provisions of Article 19 shall apply.

Art. 29.  
Where the entity accused is one of the authorities listed in Article 2 or an administrative department subordinate to one of these authorities or a public institution, the High Commissioner's review of the claim shall be carried out under the conditions set out in section I.

In other cases, the High Commissioner shall hear the claimant and may request any supplementary information required to clarify the facts and the circumstances which motivated the approach.

After reviewing the case, the High Commissioner may transfer the claim to the authorities or to persons in a position to resolve it.

The High Commissioner may also, in accordance with the principle that both parties should be heard, invite the accused entity to present its explanations and observations on the facts of the case of unjustified discrimination which is the subject of the claim.

Art. 30.  
Following review of the claim, the High Commissioner may make any recommendation to the accused entity which is likely to correct the discrimination observed, inviting said entity to keep the High Commissioner informed, within a timeframe set by him, of the action taken as a result of his recommendation.

The High Commissioner may also, with the agreement of all interested parties, conduct a mediation process under the conditions set out in article 24.

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

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

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

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

## SECTION III OTHER RESPONSIBILITIES OF THE HIGH COMMISSIONER

Art. 33.  
The authorities listed in article 2 may contact the High Commissioner to request an opinion or to ask the High Commissioner to study any issue relating to the protection of 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 2011, 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

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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

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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

*Free translation from the French. This document does not have a legal value.*