2020–2021 Activity Report

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

2020–2021 Activity Report

Fourth public report

The examples of amicable resolutions given in this report are the result of circumstances which are specific to each case. They are in no way intended to serve as precedents.

Editorial

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Marina CEYSSAC
High Commissioner

The period covered by this publication, my first annual report as High Commissioner for the Protection of Rights, Liberties and for Mediation, took place under the leadership of Ms Anne EASTWOOD, who led the work of our institution with unfailing commitment from its creation, and whom I succeeded in early 2022.

During these two very unusual years, significantly affected by the effects of the Covid-19 pandemic, the High Commissioner amply demonstrated its ability to continue to assist case assistance applicants and to cooperate with other institutions.

In this unprecedented context, the High Commissioner maintained its support for public service users, helping them to assert their rights using all of the resources at its disposal: recommendations, mediation, and access to the law.

This perseverance paid off and the High Commissioner is, first and foremost, delighted to see that the authorities took up several of its recommendations relating to measures taken in response to the pandemic, whilst keeping in mind the need to continue to monitor the issues highlighted with close attention.

The areas in which the High Commissioner for the Protection of Rights, Liberties and for Mediation was called upon to intervene remained extremely varied, ranging from health, employment, and housing, to economic activity, residency for foreign nationals, prison conditions, and respect for the right to effective remedies.

The High Commissioner's commitment to fight discrimination was made clear in the opinion issued regarding Government bill No. 1,027 reforming provisions for the prosecution of sexual assault offences, and also its intervention on behalf of individuals who believed they had been discriminated against on grounds of age, gender, or sexual orientation. It remains the case that, although they make up a minority of case assistance requests received, those made in the area of discrimination are always sensitive and complex to deal with, given the lack of a general legislative framework for which the High Commissioner has been calling for some time.

While, on balance, the High Commissioner sees it as an encouraging sign that seven of the thirteen recommendations it made over these two years were taken up by the authorities concerned, it is nonetheless true that some regulations or practices require improvement, to ensure that the rights of citizens are properly and fully respected, by applying the principles of good administration or by adopting certain laws and regulations.

As regards changes to legislation, the High Commissioner notes with satisfaction that the National Council sought its opinion on an increasing number of Government bills in 2020 and 2021, in areas such as housing, education, and mandatory vaccination in response to the Covid-19 pandemic. The debate stimulated by these opinions and their publication shows the value of considering proposed legislation's implications for the safeguarding of rights from the earliest stage.

Finally, despite the restrictions on travel and the limited possibilities for discussion, the High Commissioner was able to continue its international work, the highlight of which saw a meeting held in the Principality in July 2021, on the special role of ombudsmen in the fields of the environment, and the protection of the rights of future generations more generally. The meeting was held under the aegis of the Association of Ombudsmen and Mediateurs of La Francophonie, and the opening was attended by H.S.H. Prince Art II. It concluded with the adoption of the Monaco Declaration, which summarised the outcome of the discussions held and proposed possible solutions, which it is clear are more urgent than ever.

[signature]

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Roles and means of intervention

The High Commissioner’s roles

> What is the High Commissioner?

The High Commissioner for the Protection of Rights, Liberties and for Mediation is an independent public institution, created at the instigation of H.S.H. Prince Albert II with the aim of offering people, free of charge, a flexible and peaceful way to assert their rights in the Principality.

Like the ombudsmen (literally “those who speak for others”) established in most European countries as mechanisms for public mediation and defence of citizens’ rights, its main role is to investigate case assistance requests made by members of the public, and to encourage the amicable resolution of disputes and the spontaneous correction of errors and injustice, while ensuring that the law has been applied correctly and fairly.

> What is the High Commissioner’s remit?

According to Sovereign Ordinance No. 4,524 of 30 October 2013, the High Commissioner’s remit covers two areas:

• Protection of citizens’ rights

The High Commissioner works to resolve situations affecting individuals who believe their rights or freedoms have been infringed by the administrative decisions or actions of an administrative authority (Ministry of State, National Council, Department of Justice, City Hall), an administrative department of one of those authorities, or a public institution.

The High Commissioner may also be called on by the administrative authorities themselves, or by the directors of public institutions, to act as a mediator or to provide a formal opinion.

• Anti-discrimination

The High Commissioner acts to resolve situations where individuals consider themselves to have been the victims of adverse treatment by a public or private organisation in the Principality based on discriminatory grounds (gender, age, origin, health condition, etc.).

In such cases, the High Commissioner’s intervention always reflects the rules of priority specifically applicable in Monaco.

THE INSTITUTION IS NOT ABLE TO INTERVENE:

- In private disputes.
- In employment disputes between the Government agencies and its civil servants or agents, except in cases involving discrimination.
- Where the public service concerned by the grievance is run by a private sector organisation (e.g. SMEG, SMA, Monaco Telecom, Caisses Sociales de Monaco, etc.), except in cases involving discrimination.
- Where the petitioner has already brought legal proceedings before the courts.

Asking the High Commissioner for help

> Who can submit a case assistance request to the High Commissioner?

Any individual or legal entity, **regardless of nationality or residency status**, may submit a case assistance request to the High Commissioner if their situation falls within the institution's remit.

> When to submit a case assistance request to the High Commissioner

Before submitting a case assistant request to the High Commissioner, the applicant must attempt to resolve the problem themselves, by speaking directly to the person or organisation concerned.

These preliminary steps are essential, and without them the High Commissioner will be unable to address the grievance.

They may take the form of an exchange of correspondence or emails, phone calls with the department concerned, or inquiries that have gone unanswered.

Exceptionally, these preliminary steps are not required where a case assistance request is made to the High Commissioner at the same time a preliminary administrative appeal has been made to the relevant administrative authority, seeking a change in its position in non-contentious proceedings.

In this case, the High Commissioner will look directly at the administrative handling of the appeal, and provide the citizen with an assurance that the administrative authority concerned has received independent and impartial information before deciding how to respond to the appeal.

> How to contact the High Commissioner

*Using the **online case assistance request form** at: www.hautcommissariat.mc*

*By **post** at the address:*
Les Jardins d'Apolline - Bloc A
1, Promenade Honoré II
MC 98000 MONACO

All case assistance requests must be brought to the High Commissioner in writing. In their brief, the assistance applicant must set out their situation clearly and provide any supporting documents and explanations.

The High Commissioner systematically and rapidly issues acknowledgement of receipt of applications. The acknowledgement is proof that the institution has received and made a record of the case assistance request, and that it will take such steps as may be necessary.

The High Commissioner provides a **free, amicable and confidential** service.

Applications to the High Commissioner do not affect appeal deadlines

Submitting an application for amicable settlement to the High Commissioner has no impact on the time legally allotted to individuals to exercise the remedies that may be open to them to challenge the decision or situation which is causing them harm. If necessary, the High Commissioner will invite the individual asking for help, in addition to their case assistance request, to bring legal proceedings or to appeal directly to the authority or organisation concerned, in order to safeguard their rights in the event that an amicable resolution cannot be reached.

What the High Commissioner can do

> Dialogue central to the investigation process

The High Commissioner makes every effort to listen to both sides, and encourages direct dialogue wherever possible. At every stage in the investigation of an application, the High Commissioner is careful to ensure that the **adversarial principle** is applied, giving each side in the dispute the opportunity to put forward their case in order to find solutions that are fair and acceptable to all, in total impartiality.

Aware that the people who contact the institution have often come up against "closed doors", the High Commissioner systematically meets with applicants, or at the very least speaks to them directly by telephone. By doing so, it is able to offer better guidance, even in cases where it is not able to look into the underlying grounds of their application.

Some stages in the mediation process are documented. In particular, once the matter has been investigated, the case assistance applicant is sent a letter or email informing them of how their case assistance request has been addressed. The letter or email will indicate what recommendations have been made to the organisation concerned by the grievance in order to resolve the dispute. Alternatively, it will set out the reasons why the High Commissioner is unable to intervene in support of the case assistance request, where it was found to be groundless. The applicant is also systematically informed of the action taken by the organisation concerned in response to the recommendations made to it.

> Seeking a non-conflictual resolution

The High Commissioner has a graduated range of powers to resolve disputes consensually.

- **Amicable settlement: a peaceful and pragmatic means of dispute resolution**

As a mediation body, wherever possible the High Commissioner seeks to resolve disputes by helping the parties to reach an **amicable settlement**.

If the situation allows, the High Commissioner will, as a priority, seek to achieve an informal resolution. Its mere intervention, through discussions and dialogue with the administrative authority or organisation against which the grievance is made, is often sufficient to bring both sides together and elicit outcomes that are satisfactory to all concerned, with each party agreeing to implement the solution identified and accepted in good faith.

- **Recommendations: a formal prescription to preserve rights**

Where the grievance appears to be justified but the situation cannot be resolved amicably, the High Commissioner will issue a recommendation to the administrative authority or organisation against whom the grievance was made. An **individual recommendation** is intended to highlight an infringement of an individual's rights and freedoms, or the unfairness of a situation, and to bring about a change in the individual's favour.

Where a specific case assistance request reveals deficiencies or shortcomings of a more systemic nature, the High Commissioner may issue a **general recommendation**, regardless of the method chosen to resolve the dispute (amicable resolution or specific recommendation). This recommendation serves to learn lessons from the issues raised by a case assistance request, and to put forward legislative or regulatory reforms, or changes to administrative practices, for the benefit of all.

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

- **In-person mediation: a tool to be used more widely**

In its recommendations, the High Commissioner may propose carrying out mediation between the parties in person, with a view to encouraging conciliation. 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 made and statements gathered may not subsequently be invoked in civil or administrative proceedings without the consent of the parties involved (Sovereign Ordinance No. 4,524, Article 24).

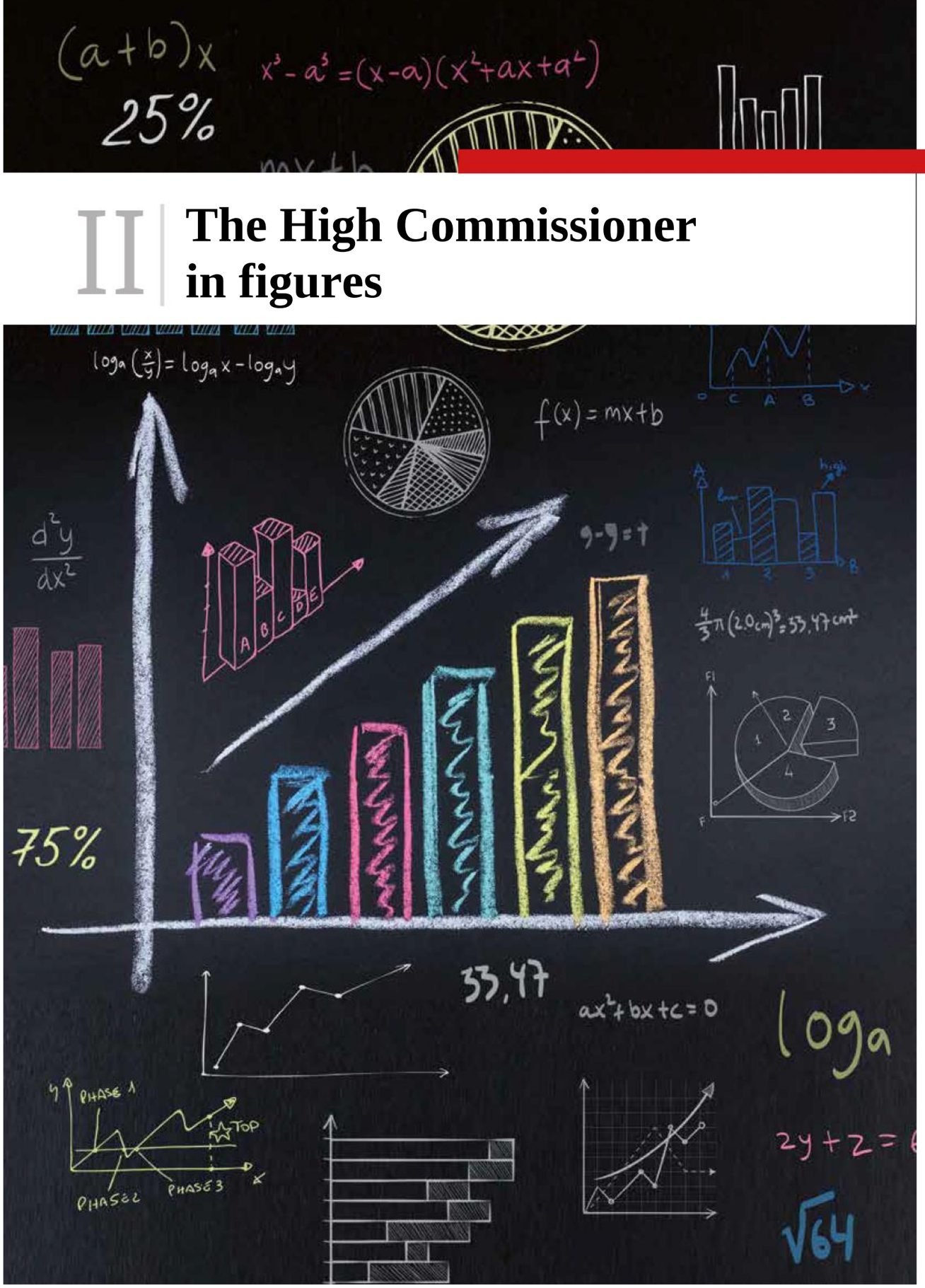
The use of this type of mediation naturally assumes that both parties support the approach and are willing to enter into dialogue with a view to identifying common ground. Thus far, very few of the High Commissioner's proposals in this area have been taken up, this particular modus operandi having been used on only a single occasion.

- **Publication or a special report to the Sovereign: a means of accelerating change**

As part of its specific anti-discrimination powers, the High Commissioner has the right, where it deems appropriate, to make its recommendations public, or to draw up a special report for the attention of the Prince, if its recommendation is not acted upon. Until now, this mechanism has never been used, as the High Commissioner has had few occasions to make individual recommendations in the area of discrimination.

- **Referral to the criminal or disciplinary authorities: an option to be exercised with caution**

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



II The High Commissioner in figures

Statistical trends

A General figures

The number of case assistance requests has risen steadily since the High Commissioner was created, and this trend continued over the last two years, despite the health crisis. In fact, the crisis added to the overall number of grievances, which totalled 82 in 2020 and 97 in 2021 (compared with 79 in 2018 and 2019).

There was a fall in the number of total cases pending (which includes new case assistance requests received during the year and those still pending from the previous year) at the end of 2020 and 2021 (18% in 2021, 23% in 2020, 27% in 2019), showing that case assistance requests continue to be dealt with diligently and efficiently.

Finally, between 2019 and 2021, the proportion of admissible case assistance requests received that the High Commissioner was able to look into rose from 61%, to 64% and finally to 73%, suggesting that its efforts to communicate and explain its roles to the public continue to bear fruit. This process continued in 2022 with a new website going online.

In terms of the High Commissioner's institutional roles, there has been a steady increase in the number of occasions its opinion has been sought on proposed legislation, rising to five in 2020 and six in 2021 (compared with just one in 2018 and three in 2019).

The High Commissioner's international activities were scaled back considerably owing to the pandemic in 2020, but resumed briskly in 2021 with seven meetings and visits, compared with two in 2020.

98 cases handled in 2020 and 111 in 2021

B | Handling of admissible case assistance requests

1. DETAILED STATISTICS ON THE PUBLIC SERVICE ROLE

> Breakdown by topic

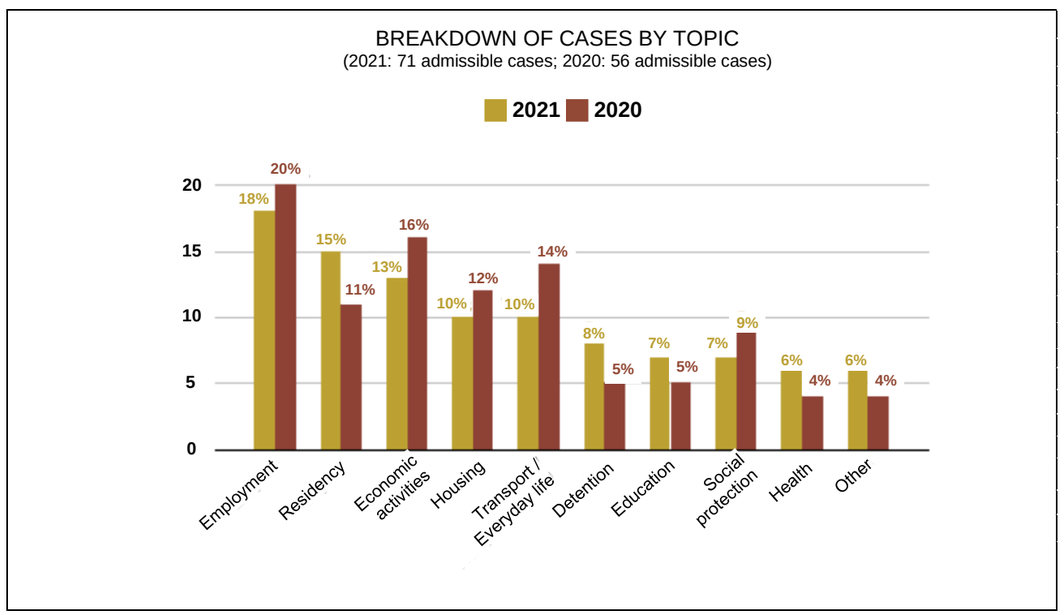
In 2020 and 2021, most of the case assistance requests received concerned the protection of citizens' rights, as was previously the case.

The three topics most frequently represented were, again, employment, residency, and economic activities. Since 2018, employment-related queries have risen steadily as a proportion of the overall number of case assistance requests received. The same can be said of residency-related cases, albeit to a lesser extent, while health and education accounted for a much larger share of cases than previously.

The number of case assistance requests relating to detention fluctuated, but without exceeding the total of six recorded in 2018. The lowest number received was three, in 2020.

	2021	2020
Employment	13	11
Residency	11	6
Economic activities	9	9
Housing	7	7
Social protection	5	5
Detention	6	3
Transport / Everyday life	7	8
Health	4	2
Education	5	3
Other	4	2
Total	**71**	**56**

Residency and employment account for over a third of cases handled



> Breakdown by administrative authority

In 2021, the proportion of case assistance requests concerning the State's executive departments fell sharply to 78%, down from 86% in 2020.

The rise in the number of detention-related case assistance requests reflects the fact not only that prisoners are better informed about the possibility of submitting grievances to the High Commission, but that they are now more able to take advantage of that possibility.

The breakdown of case assistance requests between State departments and agencies remains unchanged, with a large number of cases relating to the Ministry of Finance and Economy and the Ministry of Interior, and in particular the Police Department. As in previous years, this is due to a significant proportion of case assistance requests being made by individuals who have been denied residence or other permits, largely on public policy grounds.

	2021					2020				
ADMINISTRATIVE AUTHORITIES	**TOTAL**	Closed	Pending	Resulted in referral to the authority concerned	Did not result in referral to the authority concerned	**TOTAL**	Closed	Pending	Resulted in referral to the authority concerned	Did not result in referral to the authority concerned
GOVERNMENT	**60**	52	8	19	41	**55**	**44**	11	25	30
Ministry of State	**7**	4	3	2	5	**8**	6	2	4	4
HR & Training Department	**2**	2		1	1	**2**		2	1	1
Not specific to a department	**5**	2	3	1	4	**6**	6		3	3
Ministry of Finance and Economy	18	17	1	4	14	**18**	14	4	10	8
State Property Authority	**7**	7		1	6	**8**	8		2	6
Business Development Agency	**3**	3		1	2	**5**	3	2	4	1
Housing Department	**1**	1		1		**2**	1	1	2	
Not specific to a department	**7**	6	1	1	6	**3**	2	1	2	1
Min. of Interior	**19**	15	4	8	11	**13**	10	3	6	7
Department of Education	**4**	4	0	1	3	**2**	2			2
Police Department	**14**	10	4	7	7	**11**	8	3	6	5
Not specific to a department	**1**	1			1					
Minis. of Public Works, Environment & Urban Development	**4**	4	0	0	4	**7**	7	0	2	5
Dept. of Forward Studies, Urban Planning & Mobility						**1**	1			1
Driver and Vehicle Licensing Office	**2**	2			2	**5**	5		1	4
Department of Urban Amenities	**1**	1			1					
Public Car Parks Office	**1**	1			1					
Not specific to a department						**1**	1		1	
Ministry of Health and Social Affairs	**12**	12	0	5	7	**9**	7	2	3	6
State Medical Benefits Office	**5**	5		1	4	**6**	4	2	1	5
Dept. of Social Welfare and Social Services	**2**	2		2		**1**	1			1
Occupational medicine	**1**	1			1					
Medical Psychology Centre (CMP)						**1**	1		1	
Not specific to a department	**4**	4		2	2	**1**	1		1	
PUBLIC INSTITUTIONS	**3**	1	2		2	**1**	1	0	1	
CITY HALL	**4**	3	1		4	**2**	1	1		2
DEPARTMENT OF JUSTICE	**10**	8	2	8	2	**6**	3	3	4	2
Remand Prison	**6**	4	2	6		**3**	1	2	2	1
Not specific to a department	**4**	4		2	2	**3**	2	1	2	1
TOTAL	**77***	64	13	28	49	**64***	49	15	30	34

Source: 71 admissible cases (Public Service)
** 6 cases attributed to 2 subjects of complaints*

Source: 56 admissible cases (Public Service)
** 8 cases attributed to 2 subjects of complaints*

> How grievances are resolved

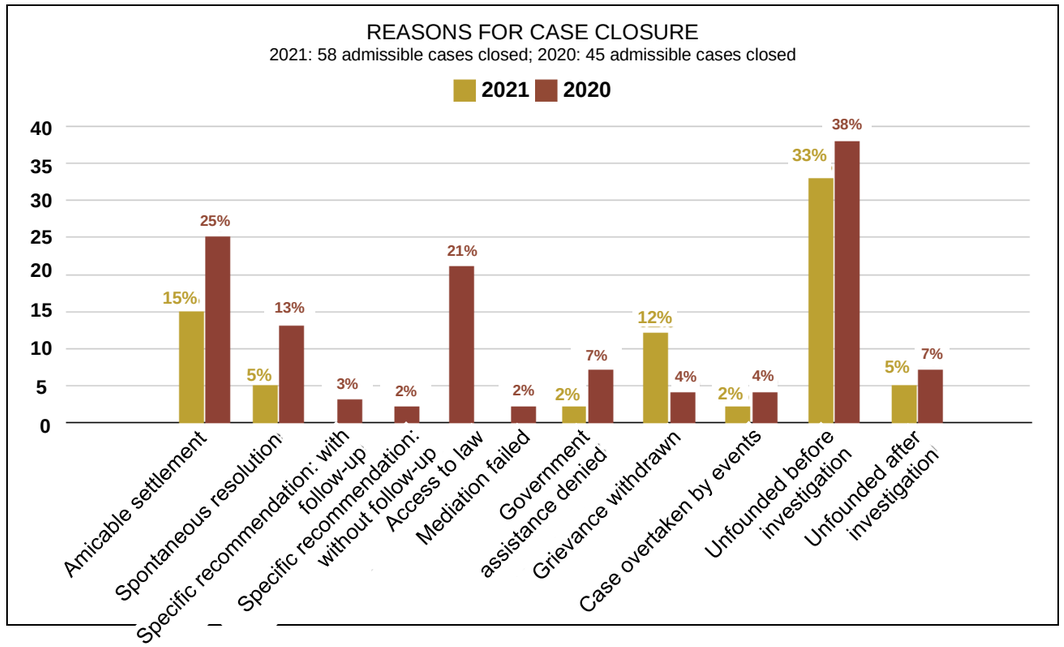
	2021	2020
Amicable settlement	9	11
Spontaneous resolution	3	6
Specific recommendation: with follow-up	2	
Specific recommendation: without follow-up	1	
Access to law	12	
Mediation failed		1
Government assistance denied	1	3
Grievance withdrawn	7	2
Case overtaken by events	1	2
Unfounded before adversarial investigation	19	17
Unfounded after adversarial investigation	3	3
Total	**58**	**45**

For the first time since 2019, two specific recommendations were taken up in 2021 to the High Commissioner's satisfaction.

The proportion of complaints found to be unfounded before an adversarial investigation was carried out remained steady at around 38% in 2020 and 33% in 2021. The outcome of these case assistance requests should nonetheless not be seen in a negative light, as the citizens concerned are informed and guided by the High Commissioner, and the Government is relieved of the need to look into groundless complaints.

The number of grievances deemed be unfounded after investigation remained low, confirming that the High Commissioner's initial analyses were correct in those cases.

A total of 12 cases were resolved by access to law (a category that has only been recorded since 2021), confirming its relevance. This relatively high number, which represents 20% of the admissible case assistance requests closed or resolved in 2021, is spread fairly evenly between the different agencies and departments, and reflects the lack of information for citizens or the lack of clarity affecting certain administrative procedures or formalities.

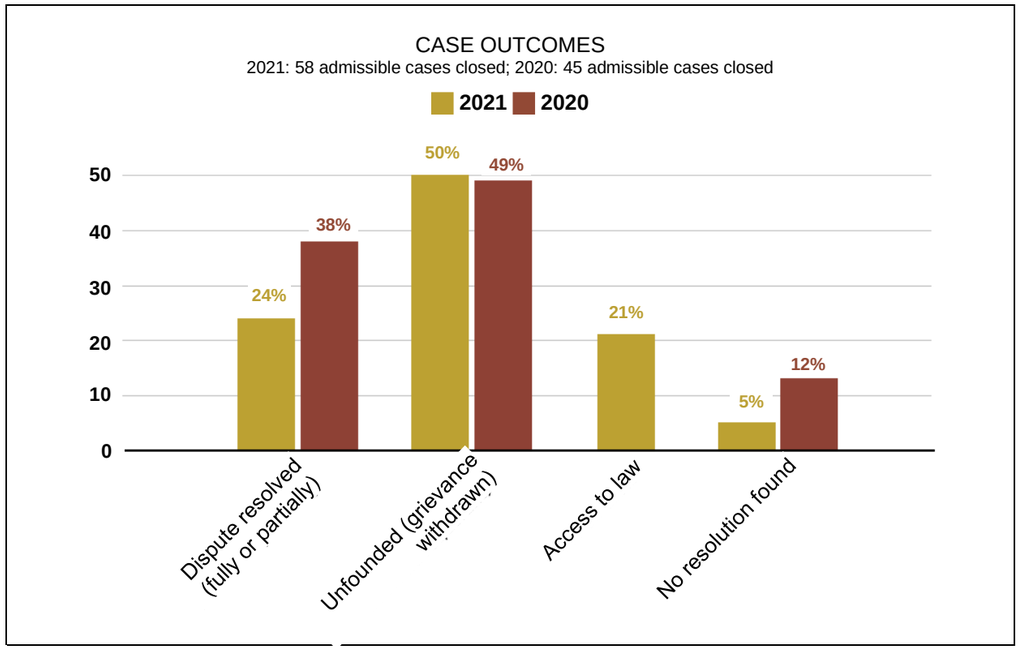


	2021	2020
Dispute resolved (fully or partially)	14	17
Unfounded (case assistance request withdrawn)	29	22
Access to law	12	
No resolution found	3	6
Total	**58**	**45**

12 cases closed for access to law in 2021

For the two years, at least half of the grievances received were unfounded. This may reflect a significant lack of information or understanding on the part of applicants, an assumption further supported by the high number of cases closed owing to the assistance applicants gaining access to law.

These data show the educational and explanatory nature of the High Commissioner's work, which serves the interests of both for citizens and the Government by bringing a peaceful end to grievances and claims that would have had no chance of succeeding.



> Reasons for closure by administrative authorities concerned by complaints

	2021							2020				
	TOTAL	Unfounded	Resolution found		No resolution found		Access to law	TOTAL	Unfounded	Resolution found	No resolution found	
ADMINISTRATIVE AUTHORITIES CONCERNED BY COMPLAINTS		Including where complaint withdrawn	Amicable settlement	Specific recommendation: with follow-up	Specific recommendation: without follow-up & mediation failed	Investigation suspended			Including where complaint withdrawn	Amicable settlement	Mediation failed	Investigation suspended
GOVERNMENT	**51**	26	12	2	1	3	7	**46**	20	18	1	7
Ministry of State	**5**			1		1	2	**6**	1	2		3
HR & Training Department	**2**		1			1						
Not specific to a department	**3**			1			2	**6**	1	2		3
Ministry of Finance and Economy	**16**	10	4				2	**14**	7	5		2
State Property Authority	**7**	5	2					**8**	6	2		
Business Development Agency	**3**	2	1					**3**	1	2		
Housing Department	**1**		1					**1**		1		
Not specific to a department	**5**	3						**2**	2			2
Min. of Interior	**15**	7	5		1	1	1	**12**	6	3	1	2
Department of Education	**4**	2	2					**3**	1	2		
Police Department	**10**	4	3		1	1	1	**9**	5	1	1	2
Not specific to a department	**1**	1										
Minis. of Public Works, Environment & Urban Development	**4**	4						**7**	2	5		
Dept. of Forward Studies, Urban Planning & Mobility								**1**	1			
Driver and Vehicle Licensing Office	**2**	2						**5**		5		
Department of Urban Amenities	**1**	1						**1**	1			
Public Car Parks Office	**1**	1										
Not specific to a department												
Ministry of Health and Social Affairs	**11**	5	2	1		1	2	**7**	4	3		
State Medical Benefits Office	**4**	2	1			1		**4**	4			
Dept. of Social Welfare and Social Services	**1**	1						**1**		1		
Occupational medicine	**1**						1					
Medical Psychology Centre (CMP)								**1**		1		
Not specific to a department	**4**	2	1	1				**1**		1		
PUBLIC INSTITUTIONS	**1**						**1**	**1**		**1**		
CITY HALL	**3**	**1**					**2**	**1**	**1**			**1**
DEPARTMENT OF JUSTICE	**7**	**3**	**2**				**2**	**2**				
Remand Prison	4	2	2					**1**	1			
Not specific to a department	3	1					2	**1**				1
TOTAL	**62***	30	14	2	1	3	12	**50***	22	19	1	8

Source: 58 admissible cases closed (Public Service)
** 4 cases attributed to 2 subjects of complaints*

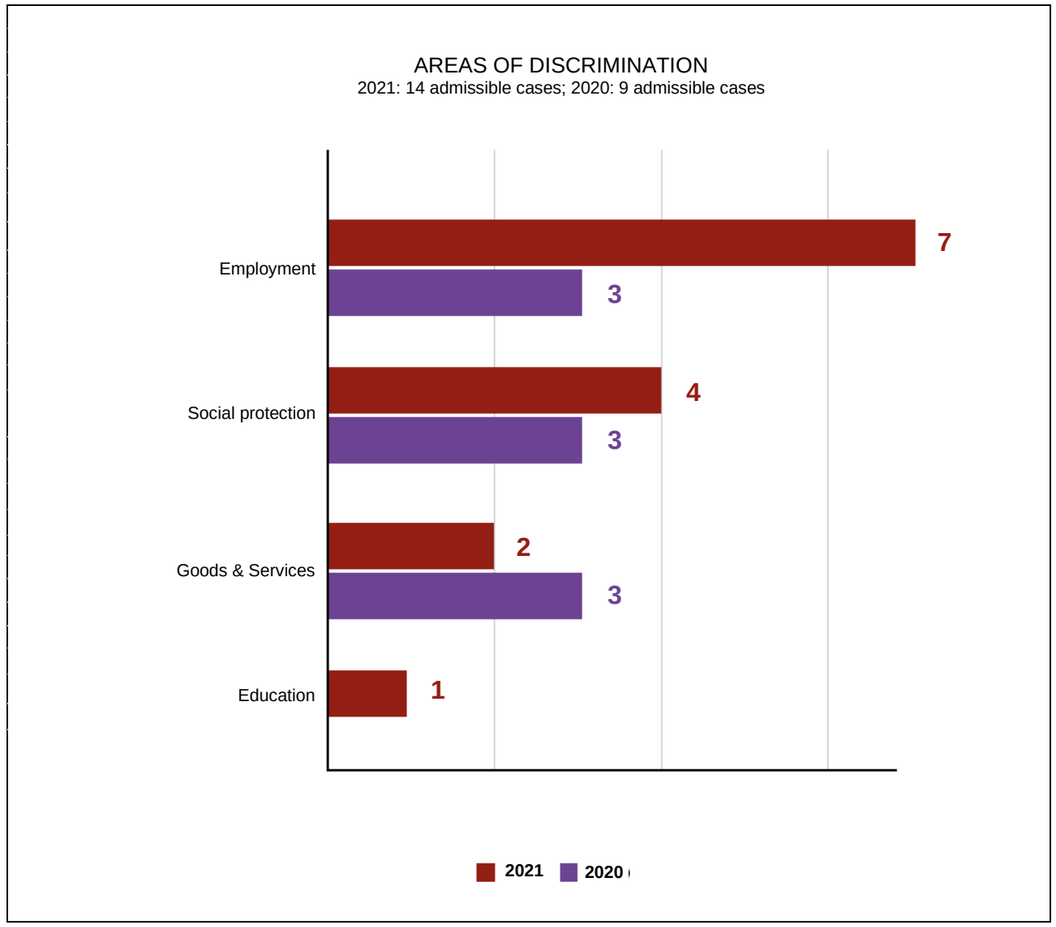
Source: 45 admissible cases closed (Public Service)
** 5 cases attributed to 2 subjects of complaints*

2. DETAILED STATISTICS ON THE HIGH COMMISSION'S ANTI-DISCRIMINATORY ROLE

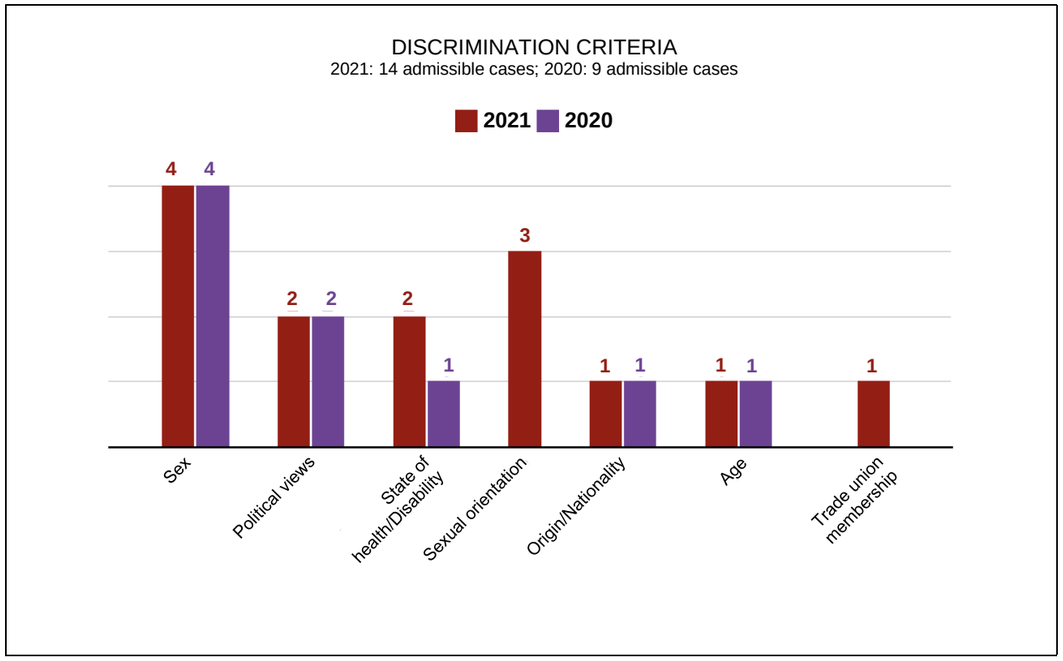
The number of cases handled by the High Commissioner in the area of anti-discrimination, although slightly higher as a proportion of overall cases (16% in 2021 and 14% in 2020), nonetheless remains much smaller than the number of cases handled as part of the institution's role to protect citizens' rights.

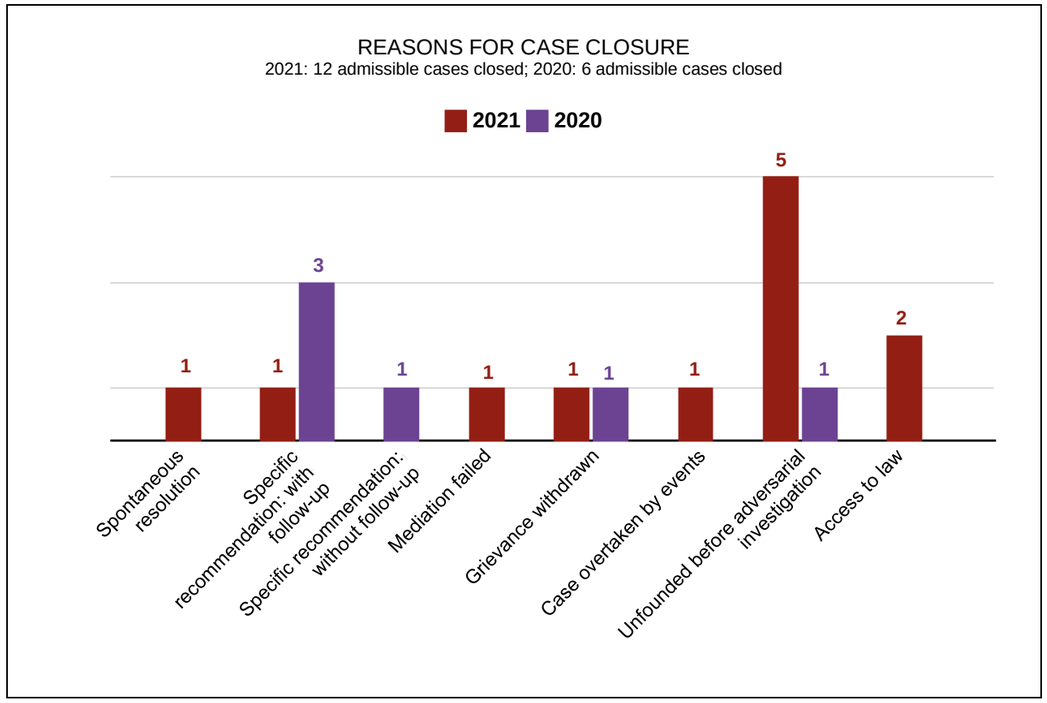
This may be justified by the continuing existence of legislative shortcomings, and by the need to strengthen the High Commissioner's means of intervention in this field, in line with European and international standards.

18 new discrimination-related cases submitted in 2020/2021



Employment became the leading area for discrimination in 2021





✔ *Sex remains the most common criterion for discrimination*

Public sector organisations (public sector employer, public body, and the State Medical Benefits Office) account for the majority of discrimination claims (10 cases in 2020-2021), indicating that there is a need for education about discrimination issues in this area.

This trend could, however, also be the result of continuing reluctance by employees in the private sector to raise grievances.

BREAKDOWN OF CASES BY ORGANISATION CONCERNED BY COMPLAINT

	2021	2020
Caisses sociales (social security funds)	4	2
State Medical Benefits Office		2
Public sector employer	2	2
Private sector employer	5	1
Private company		1
Public body	3	1
Total	**14**	**9**

III Protection of rights and liberties

Helping users to ensure their rights are respected

A Focus: The Covid-19 pandemic

The years 2020 and 2021 were, of course, affected by Covid-19 and the ensuing problems, with Government measures taken in response to the pandemic infringing citizens' fundamental rights.

Throughout the crisis, the High Commissioner was fully aware of the difficult decisions that the Prince's Government, like the authorities in other States, was forced to take in line with its obligation to protect public health, while ensuring that the national economy and the country as a whole continued to function, in unprecedented, fast-changing, and often unpredictable circumstances.

Nonetheless, the High Commissioner took the view that during that period it had a special duty to keep guard over fundamental rights, by questioning, where required, whether the measures adopted were indeed necessary and proportionate to the Government's stated public health objectives, given the heavy restrictions placed on the population.

When proposals were made to extend the requirement to show a health pass in the workplace, and to require certain categories of workers to be vaccinated, the High Commissioner reminded the authorities that while the pandemic clearly justified exceptional measures to protect public health, respect for civil liberties must remain the rule and restrictions the exception, even in these special circumstances.

1. THE HEALTH PASS

Following the introduction of the European health pass, designed to enable people to move freely between EU Member States during the pandemic, and the French health pass regulating access to certain public spaces, the Prince's Government adopted a Ministerial Decision on 1 July 2021 introducing the Monegasque health pass. Initially intended to restrict access to auditoriums and restaurants, it was soon expanded to cover numerous public spaces, before also becoming a requirement for access to places of work in certain sectors.

The High Commissioner's intervention was requested by two workers' collectives, challenging the decision to extend the requirement to show a valid health pass to include certain employees of public services and/or companies considered as "performing essential public services", in order to access their place of work and carry out their job[2].

Among other grievances, they believed that the measure presented a risk of arbitrary treatment and would lead to inequality between employees working in the same department or at the same company, since the measure was not a general one and the individuals required to show a health pass were to be selected unilaterally by the employer, with no sufficiently objective criteria stipulated to govern this selection process and prevent potential abuses.

1. *Ministerial Decision of 1 July 2021 on the health pass, implementing Article 65 of Sovereign Ordinance No. 6,387 of 9 May 2017 on the application of the International Health Regulations (2005) to prevent the international spread of disease.*

2. *This measure was promulgated by the Ministerial Decision of 28 January 2022 amending the Ministerial Decision of 1 July 2021 on the health pass. The obligation to show a health pass in order to access one's workplace was then introduced for certain specific professions: auditorium staff in contact with artists and personnel working at professional trade shows and conference venues (from 24 September 2021), hotel, bar, and restaurant workers, staff working at gymnasiums and sports associations (from 15 December 2021), and personnel working on construction sites, at hair and beauty salons and tattoo parlours (from 10 January 2022).*

They also believed the measure would force them to disclose their medical records to persons at their department or company who were not bound by medical secrecy.

RECOMMENDATION

End the measure extending the health pass requirement to include certain workers essential for the continuity of essential public services

The High Commissioner observed that the new measure extending the health pass requirement was intrinsically different from previous measures, since its purpose was not to protect public health but to ensure the continuity of public services. In view of this, the High Commissioner questioned the ability of the executive to order such a measure under Article 65 of Sovereign Ordinance No. 6,387 of 09 May 2017 on the application of the International Health Regulations (2005), which authorise the Minister of State alone "*in the interests of public health, [to order] any appropriate measure to prevent and limit the consequences of possible threats to public health*".

Other considerations also led the High Commissioner to draw the Government's attention to what it considered the unsuitability of the legal mechanism chosen (regulatory, rather than legislative) to introduce this new obligation, given its implications for the rights of the workers concerned (after taking all of their leave, being denied access to the workplace and therefore being prevented from performing their duties and simultaneously being deprived of their salary).

The High Commissioner therefore invited the Government to pass legislation rectifying the health pass arrangement introduced for the workplace, if it deemed it necessary to maintain and/or pursue that arrangement.

However, the High Commissioner also took the view that there were substantive questions to be answered as to the ability of the measure to achieve the objective sought (continuity of essential public services for the protection of specific workers from the virus), and the way it would interact with teleworking, which had become a common practice.

Finally, the High Commissioner sought to draw attention to the existing risks, depending on how the measure was implemented in practice, that medical secrecy could potentially be breached and that employees could be treated unequally.

While taking the view that, given the evolving pandemic situation, it was clearly legitimate for the Government to seek to strengthen ways of guaranteeing the continuity of essential public services, the High Commissioner recommended that this measure not be renewed in its current form, beyond the expiry date initially fixed and liable to be extended.

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

The Government informed the High Commissioner that, based on its recommendations and taking into account the positive developments in the health situation, it had decided not to extend the measure.

2. VACCINATION

To prevent the spread of the virus, the health pass was also used, in Monaco as elsewhere, as a means of encouraging people to get vaccinated, since those concerned, if not fully vaccinated (and unable to show a certificate indicating that they had recovered from the virus) were required to present a negative PCR or antigen test taken within the last 24 hours.

From June 2021 onwards, vaccinations were offered to young people aged between 12 and 17, marking a notable milestone in the vaccination campaign but raising specific issues owing to the fact that the persons targeted by the measure were minors.

> Vaccination of children and teens

The High Commissioner was contacted by parents complaining that their child had been vaccinated at the Covid Vaccination Centre without their knowledge, at the sole request of the child's other parent. The parental consent form required by the Covid Vaccination Centre only needed to be signed by one holder of parental authority.

The High Commissioner highlighted the difficulties this caused for separated couples. In the event of disagreement, this policy, on an issue which is sensitive for many families, was likely to encourage a lack of understanding around the rights of one parent compared with the other, giving the parent who was in favour of vaccination the false impression that they were authorised to act alone.

Yet in principle, parents - the child's natural legal representatives - exercise parental authority jointly (Art.301(1) of the Civil Code), including where they are separated (Art.302-1(1)). All decisions concerning the child should in principle be taken with the agreement of both parents, and this rule applies both to the parents themselves (who may not deviate from it) and to third parties, who would otherwise be held liable.

This rule is often qualified by the simple presumption described in Article 301(4) of the Civil Code, which provides that "*where one of the parents performs alone an usual act of parental authority concerning the person of the child, he or she shall be considered to be acting with the consent of the other with regard to third parties in good faith*".

These provisions, combined with Article 2 of Act No. 1,454 of 30 October 2017 on medical information and consent, which in principle requires the minor's legal representatives to give their free and informed consent, would therefore allow a minor to receive medical treatment with the permission of just one of their parents if, and only if, that treatment falls into the category of routine acts (and provided the healthcare provider administering the treatment is not aware of any objection from the other parent).

Whilst it is obviously not possible to anticipate what stance the Monegasque courts would take on this issue with respect to Covid-19, it seems clear from the ethical considerations and the question of the risk / benefit balance of Covid vaccinations for teenagers, that it would be legally somewhat risky for the State and healthcare practitioners concerned automatically to assume that vaccination constituted a "routine act".

RECOMMENDATION

Respect parental rights with regard to COVID-19 vaccination for teenagers

The High Commissioner called on the Government to look again at the controversial practice, pointing out that, whilst it was indeed generally accepted in France, having been adopted in order to facilitate the vaccination of young people, it was in that country based on special statutory provisions that deviated from the principle requiring parental authority to be exercised jointly, and that these provisions had not been introduced in Monaco.

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

Following the recommendation made by the High Commissioner, the Prince's Government amended the conditions for obtaining parental consent for vaccination of a minor against Covid-19. From now on, each of the minor's legal representatives are required to complete a consent form, except where only one of them exercises parental authority.

> Mandatory vaccination for certain categories of workers

In July 2021, faced with a surge in Covid-19 cases and hospitalisations following the rapid spread of the Delta variant, the Prince's Government announced that, like France, Monaco was to strengthen measures to combat the epidemic. This included tabling an urgent bill that would make Covid-19 vaccination compulsory for individuals working in Monegasque healthcare establishments, care homes, and more generally anyone in contact with fragile or vulnerable people[3].

As part of the wide-ranging consultation conducted urgently by the National Council on this bill, the High Commissioner was invited to present its observations. It highlighted the importance of seeking a fair balance between the need to protect public health, and the need to preserve individual rights and freedoms.

THE HIGH COMMISSIONER'S OPINION ON THE DRAFT BILL

On the principle of mandatory vaccination, the High Commissioner noted the special considerations in the health and care sector, where those workers most exposed are already subject to certain additional vaccination obligations.

While emphasising the unprecedented circumstances in which this new obligation would be introduced, and the delicate ethical and moral questions it raised, the High Commissioner insisted on the need for the measure and its implementation to be weighed carefully. It called on the legislator to ensure that this obligation was solidly justified on health grounds, and that the expected benefits outweighed both the infringement of personal freedoms and the foreseeable human and social costs.

As regards the details of the arrangements being considered, the High Commissioner made various observations[4], including a call for the law to identify specifically which categories of jobs and professions would be concerned by this new vaccine obligation. It also called for the law to be applied in a way that protected medical secrecy, and for greater legal clarity on the implications for persons suspended for refusing to be vaccinated, along with a guarantee that individuals unable to be vaccinated for medical reasons were not penalised. Since the legal requirement for Covid-19 vaccination was intended to be a temporary measure, the High Commissioner also called for the introduction of a review clause, under which the necessity of the measure would be re-evaluated at regular intervals based on developments in the epidemiological and health situation in the Principality.

The High Commissioner was pleased to observe that the legislator accepted most of its remarks, notably by ensuring that the law ultimately passed[5] specified which categories of workers were concerned, by placing a time limit on the vaccination obligation, and by clarifying the conditions under which individuals who refused to comply with the new provisions would be suspended and dismissed.

3. Draft bill on compulsory Covid-19 vaccination for certain categories of individuals, No. 1043, 28/07/2021.
4. The full text of the High Commissioner's opinion can be found on its website, or on the official website of the National Council.
5. Act No. 1,509 of 20/09/2021 on compulsory Covid-19 vaccination for certain categories of individuals.

3. Masks

The High Commissioner was asked to intervene by two hearing-impaired persons about the everyday difficulties they encountered as a result of being obliged to wear a mask in all enclosed public spaces, as this prevented them from lip-reading.

The High Commissioner took the view that the Government should be called upon to take measures to adapt the health directives issued to combat the spread of the coronavirus, so that they might better take account of the specific needs of persons affected by hearing impairment, who include a large number of elderly people.

RECOMMENDATION

Use transparent inclusive masks to take into account the specific needs of hearing-impaired persons in the context of the Covid-19 health crisis

To this end, the High Commissioner specifically recommended equipping government staff who have contact with the public with inclusive transparent masks that enable lips to be read.

Given the requirement to wear masks from the age of six in schools, the High Commissioner also encouraged the Monegasque authorities to extend this measure to the school environment in order to facilitate learning for the youngest students, and to better meet the specific needs of pupils who are hard of hearing or have difficulties with communication, while offering more effective protection against the virus than the protective face shields used by some teachers.

Finally, the High Commissioner urged the Government to work with the AMPS (Monegasque association for the hearing-impaired) to produce a document (like an information leaflet), raising awareness about the implications of mask-wearing for the persons concerned, and suggesting strategies or behaviours for overcoming these difficulties.

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

In the wake of these recommendations, the Government had confirmed that it was to purchase a large stock of transparent inclusive masks, which would be distributed to pre-school teachers, specifically those responsible for disabled pupils, and to language teachers. It had also informed the High Commissioner that an information campaign would be carried out under the aegis of the Social Inclusion and Disability Office, part of the Department of Social Welfare and Social Services, to ensure that, given the compulsory wearing of masks, facilities for disabled persons would be improved at all institutions open to the public across the Principality.

B | Employment

Since its creation, the High Commissioner has received a large number of case assistance requests from individuals prevented from accessing employment in the Principality due to the assessment of their “good moral standing”.

The institution has on several occasions raised the issue of the “administrative right to be forgotten”, and emphasised that the results of background character checks carried out in the course of administrative employment-related formalities (hiring authorisation request, work permits, etc.) must in all cases be analysed to ensure they are proportionate. In particular, this means taking into consideration the time that has passed since the candidate committed the offences.

The offences must be balanced against the nature of the position for which the candidate is applying - and experience shows that the Government agencies very rarely do this, whether in the area of employment or in the other areas where they conduct administrative background checks. In addition to this, however, during the last two years another question has become more acute, and concerns the way in which the law regulates preventive police checks carried out as part of employment procedures.

Whilst Act No. 1,430 of 13 July 2016 on national security did introduce a framework, notably by legalising background character checks, the High Commissioner noted that the authorities tend to interpret the provisions currently in force in a very wide manner. This has led it to recommend a better legal framework to govern the checks carried out, on the understanding that the individuals concerned must be able to appeal against the resulting decisions.

RECOMMENDATION

Introduce legal rules to govern police checks carried out when employing Monegasque nationals

A Monegasque national made a complaint on the grounds that he was prevented from securing a job after the Ministry of Interior issued a negative opinion on his hiring, owing to his criminal record. The High Commissioner was surprised that the case assistance applicant had been denied a work permit, since as a Monegasque national, he did not need any such document in order to work in the private sector in Monaco. Under Article 1 of Act No. 629 of 17 July 1957 setting the conditions for hiring and dismissal in the Principality, this formality only applies to foreign nationals.

Under Article 4 of that same Act, an employer wishing to hire a worker of Monegasque nationality is not required to submit a request for prior authorisation, but merely to make a simple declaration “*as soon as the person concerned starts work*”. This means that the Government cannot, in principle, prevent the person concerned from taking up their position of employment.

It transpires that in practice, however, the procedures applied to Monegasques and foreign nationals are identical (the employer completes a request for authorisation to hire and sends it to the Employment Office, which then refers it to the Police Department for a background character check on the job applicant). The only difference is that the administrative document issued to the worker concerned at the end of the process is slightly different.

Since this document is, in practice, required in order to work, a negative verdict from the Police Department following the background character check can, based on the current state of these procedures, prevent a Monegasque national from accessing salaried employment, including in non-regulated professions.

This means that the Government is requiring both employers and employees who are Monegasque nationals to abide by constraints that exceed the legal and regulatory framework applicable.

The police checks carried out under Ministerial Decree No. 2016-622 of 17 October 2016 implementing Article 3 of Act No. 1,430 of 13 July 2016 on national security only apply to “*the issue and renewal of work permits and hiring authorisations” - these categories of documents do not exist for national workers - or “authorisations to practise professions, occupations, activities, and functions regulated by laws and regulations”.*

Similarly, the requirement for the Employment Office to consult the Police Department, laid down by Article 2 of Ordinance No. 16,675 of 18 February 2005 creating an Employment Office, intended to "*ensure that the job applicant is not likely to disturb public order*", again only applies to "*the issue of work permits and employment authorisations*" and therefore foreign workers.

Whilst there may well be grounds for such checks, regardless of the worker's nationality and in particular where the job concerned is a sensitive role, they cannot be carried out without a proper legal basis, given the invasion of privacy that they represent and the potential implications for the worker concerned (denial of access to employment).

The High Commissioner therefore recommended that legislation be passed urgently to regulate this administrative practice, observing that given the freedom of employment guaranteed to Monegasques by the Constitution (Article 25), Monegasque workers should only be required to seek authorisation to take employment, where the nature of the job concerned is such that preliminary police background checks are legitimate.

RECOMMENDATION

Introduce legal rules to govern formal cautions held on police records

On two occasions, the High Commissioner received complaints from individuals who, following a background character check carried out as part of a recruitment process, were given a formal caution by the Police Department. These cautions took the form of a reprimand accompanied by an injunction to act beyond reproach.

One of the individuals concerned was informed of the caution by simple postal letter, the other by a formal statement. The High Commissioner was unable to discern why there should have been any difference in the way these cautions were issued. However, it noted that there was complete lack of any legislative or regulatory framework governing this procedure.

Yet these formal cautions can have a significant impact on the subsequent career of the individual concerned.

The High Commissioner found that being issued with a formal caution artificially created a recent incident in the police files, even where it concerned facts that had taken place a long time earlier.

Though it would not have any immediate impact, this caution may well be taken into account in any subsequent appraisal of the individual's character carried out in the event that they should they make applications of any kind.

The High Commissioner therefore stressed the need to make proper legal provision for these formal cautions, as regards both their nature and their effects.

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

The Government informed the High Commissioner that it planned a process of reflection to look at means of improving the legal framework governing formal cautions. The High Commissioner is awaiting more details on the progress of this process.

RECOMMENDATION

Create a legal framework to guarantee that checks by the authorities on accreditations issued to journalists by private organisations are foreseeable and transparent

After receiving a grievance from a photographer, who had been denied accreditation to cover events in the Principality on behalf of his press agency, the High Commissioner looked into the accreditation arrangements for journalists wanting to cover events taking place in the country and in particular the specific role played by the Ministry of Interior.

The High Commissioner's investigation found that the Police Department did indeed carry out checks on journalists' accreditations for private events held in the Principality, although such checks are not done systematically. The High Commissioner was unable to ascertain who was responsible for triggering these checks (whether at the request of the organisers themselves or in accordance with a procedure imposed by the authorities).

Regardless of this, there were questions to be answered regarding what legal basis there might be for conducting such background character checks, and how the individuals concerned were given the possibility of appealing against the outcome.

The Government took the view that the police checks carried out fell within the legal framework created by Article 3 of Act No. 1,430 of 13 July 2016 implementing various measures relating to the protection of national security[6], particularly in light of Article 1, point 8° of Ministerial Decree No. 2016-622 of 17 October 2016 providing for such background checks prior to administrative decisions or acts relating to "*policing of public gatherings and events presenting a risk to public order or the safety or persons or property*".

Nonetheless, the High Commissioner noted that, contrary to the provisions of Article 3 of the aforementioned Act, the background character checks likely to be carried out on candidates applying for accreditation for certain events do not seem to be qualifiable as preliminary to an administrative decision or act concerning those individuals. Decisions refusing accreditation on the basis of a negative Police report are received by the private organisers themselves, and do not lead to any administrative measures being notified to the individual concerned (such as refusal to issue a work permit, or a police-ordered stadium ban). This would immediately seem to preclude the investigations concerned from being conducted on this basis, even where they are ordered by the Minister of State or the Minister of Interior.

Substantively, however, when large-scale events or gatherings are to take place, it does not appear entirely illegitimate for the authorities, acting preventively in the interests of public order, to exercise a right to look into individuals who may find themselves in close proximity to personalities, owing to their duties or special access.

Nonetheless, insofar as this process entails background character checks that are by nature intrusive and an invasion of the privacy of journalists who may subsequently be denied access on this basis to an event and prevented from covering it professionally, this administrative right to inspect cannot be exercised on a discretionary basis, including with the organisers' assent, without the individuals concerned being informed and able to challenge the grounds for the decision to refuse them access.

The High Commissioner therefore recommended establishing a relevant legal framework, both to guarantee that the procedure is foreseeable and transparent, and to prevent the system from being abused or diverted in any way that might infringe the freedom of journalists to do their job.

The High Commissioner also emphasised that respect for the fundamental right of freedom of expression, from which the principle of press freedom derives directly, should necessarily lead the authorities to exercise fine judgement of the individual situations brought before them, and to issue a refusal only where legitimate, necessary, and proportionate, based on the real risk to public order posed by the professional concerned and the measure's intended purpose of preserving security.

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

The Government maintained its stance that it is entirely legal to carry out checks preventively in the interests of public order, on requests for accreditation made to the private organisers of events held in the Principality, and consequently did not intend to follow the High Commissioner's recommendation.

6. *"Acting upon the instructions of the Minister of State or the Minister of Interior, as a preliminary measure to administrative decisions or acts by the competent authorities, a list of which is id down by Ministerial Decree, the Police Commissioner conducts investigations to verify that the natural or legal persons concerned by those decisions or acts present suitable guarantees and that their behaviour is not compatible with them". Art. 3 of Act No. 1,430 of 13 July 2016.*

C | Foreign residents

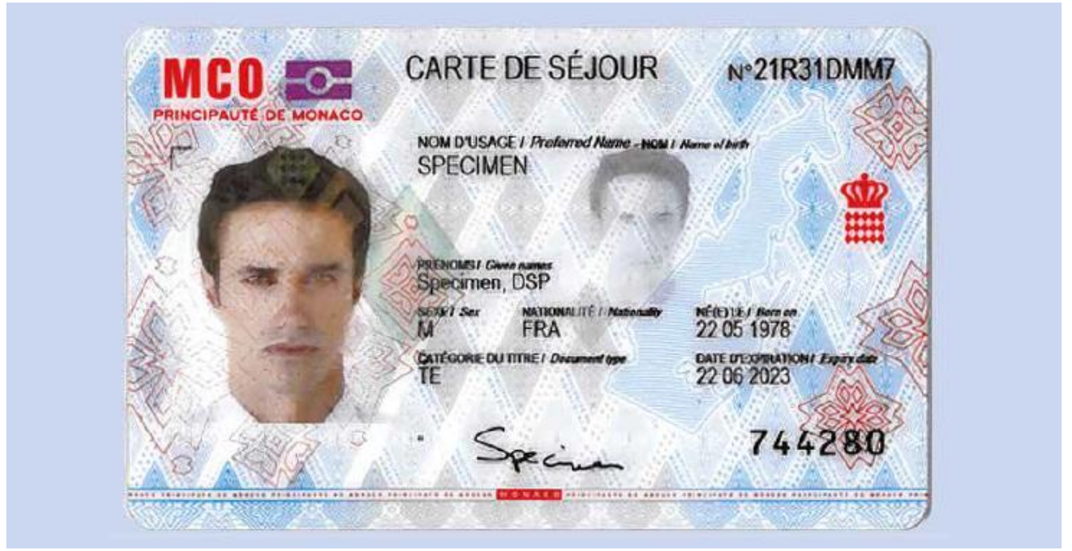
Case assistance requests relating to residency for foreign nationals, which continue to be very numerous (16 in 2020-2021), this year revealed a particular problem. The issue lay with the way in which the authorities, when processing applications to renew residence permits, failed to do enough to take account of the right to private and family life.

While the Principality is free to exercise control over the conditions under which foreign nationals are able to enter and remain in its territory, it is nonetheless required to apply its own domestic rules in this area, in line with its international commitments, and particularly the obligations imposed by its adherence to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8) and the Convention on the Rights of the Child (Article 9).

< Refusal to renew a residence permit due to lack of financial resources >

A French national with a temporary one-year residence permit saw their application to renew the permit denied on the grounds that they showed insufficient financial resources. The applicant's first permit was issued on the basis of their partner's income, and was accompanied by an order requiring the applicant to find stable employment by the renewal date. In the interim period, the couple had had a child, and the applicant wanted to stay at home to raise their child, while their partner returned to work at the end of her maternity leave. The decision to turn down the renewal application was taken in strict accordance with domestic rules governing the settlement of foreign nationals on Monegasque soil, which require the applicant to show that they have sufficient means of livelihood if they do not intend to work. However, the High Commissioner found that the authorities could not merely ignore the implications of the decision taken, which would have forced the individual concerned to be separated from his partner and their child. By basing their assessment solely on the family's financial circumstances - and despite the income of the applicant's partner ostensibly being sufficient to meet the family's needs - the authorities had failed to examine the case fully in the light of the fundamental rights guaranteed in the Principality, specifically the right to private and family life and the best interests of the child. Despite the High Commissioner's recommendation that the decision to turn down the renewal application be overturned, the Government refused to reconsider its stance.

It appears especially important to take proper account of applicants' right to private and family life when processing applications made in relation to permits classed in the "privilege" category. By definition, individuals eligible for this type of permit necessarily have long-standing ties to the Principality, since they must have been residents for a minimum of ten years and will therefore have established close family, friendship, or professional connections. Special questions may thus arise as to the way in which the authorities assess the conditions for granting and maintaining residence permits, in particular with regard to the requirement for sufficient financial resources and actual residence.



> Request for a duplicate of a "privilege" residence permit and the requirement to demonstrate sufficient financial resources

The High Commissioner's assistance was sought regarding the withdrawal of a "privilege" category residence permit on the grounds that the applicant had failed to show sufficient financial resources, when requesting a duplicate of a damaged permit.

This new situation confirmed a long-standing observation made by the High Commissioner, namely that the Police Department investigates applications for duplicates in exactly the same way as first-time and renewal applications, despite the fact that police investigations conducted for this purpose are not based on any legal foundation and there is no formal provision for them (except in order to establish that a permit has been lost or stolen before issuing a duplicate for one of those two reasons) in either Sovereign Ordinance No. 3,153 of 19 March 1964, or in Act No. 1,430 of 13 July 2016.

The High Commissioner therefore concluded that the State was not entitled to retract an initial permit based on information obtained in the course of an administrative investigation that would not have been conducted if the individual concerned had not undertaken a voluntary formality. The High Commissioner had previously issued a formal recommendation regarding this situation, and it is regrettable that it has still not been taken into account[7]. As indicated in the recommendation cited above, whilst the Supreme Court has in the past ruled that a residence permit should be neutralised when the individual concerned requested a duplicate, that decision was made on the grounds that the applicant posed a threat to public order, having previously been sentenced to a lengthy term of imprisonment by the criminal courts.

If there is no threat to public order, and given that only "temporary"[9] residence permits may be withdrawn on the grounds that the holder no longer meets one of the conditions required for their issue, the High Commissioner concludes that the decision to withdraw a "privilege" residence permit purely due to the applicant's insufficient financial resources is incompatible with the principle of legal certainty and protection of the citizen's established rights.

It is important to take account of the time element involved, since the "privilege" residence permit is valid for ten years. It is therefore likely that holders of this particular category of permit - as with any other, incidentally - will experience certain negative events in that time, such as periods of unemployment, but the authorities need not immediately draw conclusions from these 'bumps in the road'.

7 Cf. 2017-2019 Activity Report, p. 64.
8. Supreme Court, Judgment 2013-21, 16 June 2014.
9. Art. 6 (4) of Sovereign Ordinance No. 3,153 of 19 March 1964 on conditions for entry and residence of foreign nationals in the Principality.

The Police Department adopted an opportunistic approach, taking advantage of a voluntary request from the citizen for a duplicate permit to collect information about their resources, and then using that information as a basis for suddenly ordering the individual concerned to stop using their permit and to leave the country within two months. This appears directly to contradict the very nature of the residence permit initially granted to the resident.

Indeed, the individual concerned must necessarily have been in the country for a long period of time, implying strong ties with Monaco that we believe the local authorities cannot ignore without infringing the individual's right to private and family.

> Issue of a "privilege" residence permit and the condition of actual residence

A number of cases revealed that the authorities were in the habit of issuing short-term residence permits even where the applicants were eligible for "privilege" permits, where the authorities harboured doubts as to whether the applicant was actually resident in the Principality and believed the situations warranted special vigilance, which is possible with shorter permits.

Although this practice may be legitimate, the decision to issue a "privilege" permit to individuals who meet the requisite conditions for one, and instead to issue a short-term permit, must be based on solid evidence.

By way of illustration, in a judgment dated 6 April 2021, the Supreme Court overturned a decision refusing to issue a duplicate of a "privilege" residence permit on the grounds that the applicant was not actually resident. This decision, which revoked the applicant's existing permit de facto, was based on an investigation report that failed to take into consideration either the bills produced or the sworn statements of neighbours, which the State believed to have been given "complicitly". The Supreme Court ruled that the decision constituted a "manifest error" since it was for the State to prove the lack of actual residence, which cannot be merely assumed. At any rate, the mere fact of owning and being free to use a property in a nearby municipality is, in isolation, insufficient proof that someone is not actually resident.

< Implicit refusal to issue a "privilege" residence permit >

Two foreign nationals, living as a couple and settled in the Principality for some time, were both issued with three-year residence permits on second renewal, despite being eligible for ten-year permits. They were not given to understand the reasons for this decision. The High Commissioner's investigation found that the Police Department harboured doubts as to whether they were actually resident in the Principality, given that several years earlier they had moved to a smaller home and that they owned a villa in a neighbouring municipality. Based on evidence indicating that the couple did habitually occupy their apartment, and taking into account previous judgments by the Supreme Court in such matters, the couple were ultimately issued with "privilege" residence permits.

D | Economic activities

When dealing with grievance about the conduct of economic activity in the Principality, which remained numerous in 2020 and 2021, the High Commissioner once again observed that certain rules and procedures in this area are not always applied correctly. More specifically, it looked at the issue of the grounds, both in law and in fact, on which negative administrative decisions were based.

> Grounds for refusing to issue a business permit

The shareholders of a French company with a substantial customer base in Monaco wished to set up a subsidiary in the Principality and had applied for a business permit in accordance with Article 7 of Act No. 1,144 of 26 July 1991 on the conduct of certain economic and legal activities.

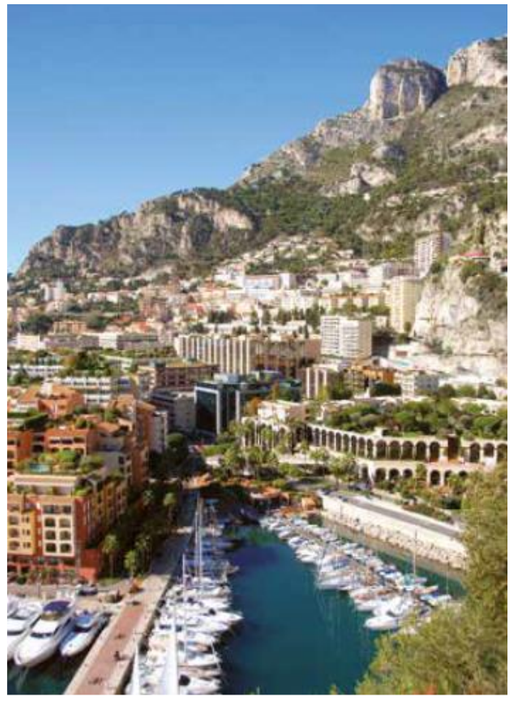
Their application was initially turned down on the grounds that their project was not of economic interest, before the administrative authorities ultimately reversed their position and issued the permit sought.

This situation had led the High Commissioner to question the criteria on which the authorities based their appraisal of "economic interest" when dealing with applications for business permits.

Applicants whose requests for business permits are denied on the basis solely of "absence of economic interest" are not given to know the exact reasons for the authorities' unfavourable decision. Moreover, they are unable to develop their business projects accordingly.

Following discussions with the Government on this issue, the High Commissioner gained a better understanding of the criteria used to determine whether a permit should be issued for a new business in Monaco. These include the human and material resources that the future entity intends to use in support of a genuine activity in the Principality, and also the fiscal benefit to the country.

The High Commissioner took the view that it was beneficial for applicants to be properly informed about the reasons for such decisions. In addition, however, it drew the Government's attention to the importance of giving reasons in fact when refusing business permit applications, since this is an obligation under Article 2 of Act No. 1,312 of 26 June 2006 on the justification of administrative acts, and failure to do so may cause the decision concerned to be null and void.



> Grounds for refusal to issue a professional licence

The High Commissioner received grievances from a number of taxi drivers who were denied a professional licence, on the specific grounds that points had been deducted from their driving licence and not yet reinstated. On examining Article 1(6) of Ministerial Decree No. 2008-451 of 8 August 2008 on the conditions for issuance and renewal of professional licences[10], it transpired that this practice was the result of an incorrect interpretation of this provision by the State agencies.

RECOMMENDATION

Abandon the practice of requiring professional licence applicants resident in France to hold a full, clean driving licence in order to be issued with a professional licence in Monaco

The aforementioned Ministerial Decree does indeed require the holders of foreign driving licences to produce, in addition to a copy of their valid driving licence, a "full driving points statement" - which in practice means the document known as a "*Relevé d'Information Intégral*" or full points statement, a driving record issued by the prefectural authorities in France. However, this document is required only in order to prove that the licence holder's entitlement to drive has not been "suspended or cancelled", and a certificate from the country which issued the driving licence can be produced as an alternative for the same purpose.

In European countries which use points-based driving licences, points may be deducted for driving offences, in addition to the imposition of fines. Such points deductions have no immediate impact on the licence holder's entitlement to drive, as only the loss of all points causes the licence to become invalid, requiring the holder to retake their driving test[11]. Logically, the checks required by Article 1 of Ministerial Decree No. 2008-451 concerning the applicant's entitlement to drive should therefore focus solely on verifying that there are points remaining on the applicant's driving licence (indicating that it is administratively valid), and that the licence has not been suspended or cancelled by the administrative or judicial authorities, rather than on whether the licence holder has a full set of points with no deductions (translator's note: this applies specifically to licences which begin with a given total number of points from which deductions are made for driving offences, as opposed to those where licences start with no points but penalty points or 'endorsements' are added for offences).

This appraisal is intended to ascertain the overall driving behaviour of professional licence applicants and their adherence to the Highway Code. It cannot be based on different criteria for different individuals, by requiring holders of foreign driving licences to satisfy a condition that Monegasque residents are spared - since the Principality has not adopted a points-based system. Such a requirement would by definition by unfair and discriminatory.

For this reason, the High Commissioner believes that this appraisal should be based on equivalent "guarantees" required of all applicants, who should be judged on their driving record and on their good character (as provided by Article 2(6) of the aforementioned Ministerial Decree). In addition, where an application for a professional licence is rejected, sufficient grounds must be given, in law and in fact under Act No. 1,312 of 28 June 2006. This does not seem to have been the case where, in the past, professional licence applications have been turned down on the grounds that the applicant did not hold 12 points on their driving licence.

10. *"The application for a professional licence, provided for by Article 3 of Sovereign Ordinance No. 1,720 of 4 July 2008, amended, aforementioned, must be accompanied by a file comprising: [....] 6° - for foreign driving licences, a full points statement or certificate from the country of issue, dated within the last three months, showing that the entitlement to drive has been neither suspended nor cancelled".*

11. *Cf. for the French driving licence, Article L. 223-1 of the French "Code de la route" (highway code).*

In addition, given that drivers' points are restored automatically after a certain period of time and that they are also able to "buy back" points by taking an awareness course, the points balance shown on the *Relevé d'Information Intégral* merely gives a snapshot of a driver's situation at a given point in time. It is the other information shown on this record, and in particular the details of all driving offences committed, that may, depending on their nature and seriousness, serve as the basis for a legitimate and comprehensive appraisal of the applicant's previous driving behaviour, and whether it is compatible with the occupation of taxi driver.

As a result, the High Commissioner concluded that the current practice, whereby applications for professional licences are refused if the applicant does not have a full points total on their driving licence, was neither well-founded in light of current legislation, nor likely to be truly relevant in practice. It therefore invited the authorities to abandon its use in future.

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

Acknowledging that the applicable legal provisions may in the past have been interpreted incorrectly when processing applications for professional licences, the Government confirmed to the High Commissioner that going forward, the Police Department had been instructed to provide reasons in cases where it issued a negative opinion on the basis of offences committed, and where these offences justified rejecting the professional licence application.

E | Housing

Housing remains a major issue for Monegasque residents, and this area is based on a very specific rationale in the Principality, based on the different legal regimes that exist. Nonetheless, the majority of complaints continue to concern the State-owned property and the rent-controlled sector, accounting for most of the housing-related cases investigated by the High Commissioner in 2020 and 2021.

> State-owned housing

In 2021, the State-owned sector was particularly impacted by the passing of Act No. 1,514 of 10 December 2021, which introduced far-reaching changes to the "*habitation-capitalisation*" contract (also referred to as a "CHC", a means of acquiring life tenancy of a state-owned apartment on repayment of a loan from the Monegasque State). Not only did the new Act increase the number of apartments eligible for these contracts, it provided clarification by enshrining in law the ability to renew the CHC free of charge after 75 years. It also introduced greater flexibility into the repayment terms during the contract period, and clarified what happens to a CHC in the event that the apartment concerned is destroyed.

Given the success of the CHC since the contracts were rolled out in 2009, issues have arisen with the application of this Act, owing to situations that are still not yet sufficiently understood as a result of loopholes and vagueness in the initial text of the legislation.

These led Monegasque families to ask the High Commissioner to intervene in an attempt to find solutions, before the legislative reform had been completed.

For example, the High Commissioner received an assistance request from an individual who was forced to pay to have the apartment of his deceased brother cleared (the brother owned his apartment under a CHC), but found that he was not entitled to a share of the capital generated by the contract. As a sibling, the individual concerned could not, under the previous law, be considered as a named beneficiary of the contract, since the capital was automatically returned to the State.

It should be noted that Act No. 1,357 of 19 February 2009, amended, now allows the contract holder to name up to three natural persons of their choosing, who may then claim a specific percentage of the outstanding capital[12].

In 2021, the High Commissioner was asked to look at the specific issue of the conditions in which the State was able to refuse to grant a CHC at the request of the occupant of a State-owned apartment.

< Conditions for issuing a CHC offer >

A couple approached the High Commissioner to complain that the State had not taken sufficient steps to comply with an order of the Supreme Court [13] relating to them. The order concerned the State Property Authority's refusal to grant their application for a CHC offer for the apartment they occupied, on the grounds that in principle the building was to be demolished under the National Housing Plan. Without calling into question the grounds on which the Government relied when deciding whether or not to enter into a CHC, the Supreme Court had found that there was no provision for such a criterion (i.e. planned demolition) in the Act of 19 February 2009 governing CHCs, and that consequently the refusal should be set aside. Following this ruling, the applicants were unable to obtain a satisfactory CHC offer. The High Commissioner therefore intervened to emphasise that the financial terms of the new offer needed to reflect the fact that it was a response to an earlier application, both in terms of the price and the rent paid in the interim period. A solution acceptable to all parties was ultimately found.

In a press release concerning the aforementioned case[14], the Supreme Court stressed that it was for legislators to make changes to the law, if they deemed necessary, in order to expand the criteria on which a CHC may legitimately be refused.

Government bill No. 1,034 amending Act No. 1,357, tabled before the National Council immediately afterwards, had provided for the possibility that housing due to be demolished under the three-year public infrastructure plan or the Monegasque National Housing Plan could be made ineligible for CHCs[15].

Ultimately, however, this measure was not included in the Act, as a CHC can now be contracted for housing already scheduled to be demolished, albeit on less favourable terms than those available to contract holders for properties whose planned demolition was not known at the time they took out the CHC.

On this point, as on other changes under consideration, the High Commissioner had had occasion to give her input prior to the vote on the proposed legislation, having been invited by the National Council to express its opinion on Government Bill No. 1,034.

THE HIGH COMMISSIONER'S OPINION ON THE GOVERNMENT BILL

In her opinion, the High Commissioner welcomed the fact that the planned reform aimed to give substance to one of her recommendations, intended to promote mobility within the State-owned housing sector by allowing people who wish to exchange their apartment to do so without losing the benefit of occupation under a CHC, an option that was already available to them if they were allocated a new apartment. The High Commissioner noted with satisfaction that this option was included in the bill that passed into law[16].

The High Commissioner had invited the legislator to consider what happens to a CHC on the death of a holder in families with several children. It called for greater flexibility in the conditions under which the profit from the CHC is passed onto them, by allowing the share of the capital due to them to be fully reimbursed to designated beneficiaries who do not wish to occupy the apartment or keep it in joint ownership, while authorising the continuation of the CHC (for which the capital due at the end of the contract would be reduced by the same amount) for one or more of the others. The High Commissioner regrets that this suggestion was not taken up.

> Rent-controlled housing

One of the grievances received by the High Commissioner led it to call for the authorities to launch a general process of reflection - which has thus far gone unheeded - to consider the treatment reserved for Enfants du pays (Denizens) who are no longer physically resident in Monaco for a very short period (under six months), but for whom Monaco remains their place of work and the centre of their economic and family interests. This may be as a result of housing difficulties which temporarily prevent them from being able to provide proof an official address in the Principality.

When the authorities officially note a period of non-residence, this can have damaging and often permanent consequences for the individuals concerned, even where their ties to Monaco have at no point actually been loosened. The result is that it is more difficult to keep this population stable in the Principality, notably as they are prevented from accessing rent-controlled housing.

< Registration of an Enfant du pays on the register of protected persons >

A young foreign national, who was born in Monaco and had always resided in the Principality with his parents, wished to live independently in separate accommodation. As an "Enfant du pays", having been born in Monaco, he therefore asked to be designated as a "protected person", but this request was denied on the grounds that, according to the residency certificate issued by the Police Department, he had not resided continuously in Monaco. The certificate showed him as having not had a home in the Principality for a period of two months, which happened to be a transitional period between two homes, during which the family had been forced to seek accommodation in a hotel in a neighbouring commune. In light of the provisions of Article 3 of Act No. 1,235 of 28 December 2000 defining categories of protected persons, and Ordinance No. 8,566 of 26 March 1986 on residency certificates, which lays down the conditions for obtaining a certificate of residency in the Principality, the High Commissioner argued that the period of absence in this case, being less than six months, could not be treated as an "interruption of residence" that would constitute grounds for rejecting an application to be entered on the register of protected persons. The applicant was ultimately granted special dispensation to be registered as a protected person, and was thus able to apply for rent-controlled housing.

12. *Act No. 1,357 of 19 February 2009 defining the "habitation-capitalisation" contract in the State-owned property sector, new Art. 30-1.*
13. *Supreme Court, judgment 2020-02, 6 April 2021.*
14. *Cf. Supreme Court press release, 8 April 2021.*
15. *Draft Bill No. 1,034 amending certain provisions of Act No. 1,357 of 19 February 2009 defining the "habitation-capitalisation" contract in the State-owned property sector, Art. 2.*
16. *Act No. 1,357 of 19 February 2009 defining the "habitation-capitalisation" contract in the State-owned property sector, new Art. 36.*

F | Education

Education-related issues account for only a very small proportion of the case assistance requests received by the High Commissioner, and in 2020-2021 most of these were concerned with the pandemic and the health protocols introduced in schools (see the “Covid” section of this report).

However, the High Commissioner did usefully intervene in the education field through its contribution to the legislative process that eventually resulted in the passing of Act No. 1,513 of 3 December 2021 on the fight against bullying and violence in schools. This new law represented a formal acknowledgement of how importantly the Principality views this problem, and reflected its determination to remedy the deleterious effects of bullying and violence in schools, recognising that for children, school is not only a place where they spend a great deal of their time over many years, but also the main environment in which they mix with others in a social setting and where their mental development takes place.

The Act introduced changes to existing education legislation[17] by creating a section entirely dedicated to bullying and violence in schools, and also by creating a series of new criminal offences designed to better address the phenomenon of bullying itself[18] and the specific nature of certain acts of violence committed in a school setting (hazing, incitement to suicide, revenge porn, etc.).

In civil law terms, the Act establishes a wider definition of bullying in schools[19] and enshrines the principle that the State bears a responsibility, and must guarantee students “*a safe school environment*[20]”.

Among the measures introduced to achieve this, the Act provides for the collection of statistical data, actions to raise awareness in the educational community, and training for teachers and supervisory staff.

A bullying and violence prevention officer is appointed at each school, and helps to draft and implement a prevention plan. An official responsible for this issue has also been appointed at the Department of Education. Finally, a procedure for reporting and managing situations has also been introduced. In addition to sanctions, this procedure also allows measures to be taken aimed at improving the social skills of individuals who commit bullying or violence[21].

The High Commissioner was particularly satisfied with this last point, which is entirely in line with the recommendations made in its formal opinion on the draft bill[22], issued at the request of the President of the National Council[23].

17. *Act No. 1,334 of 12 July 2007 on education.*
18. *“Bullying in school is the act of submitting a student, in the direct or indirect school environment, knowingly and by any means whatsoever, including by electronic means of communication, to repeated actions or omissions, the intention or effect of which is to cause a deterioration in the student’s learning conditions or school life, resulting in a violation of their dignity or an alteration of their physical or mental health”, Criminal Code, new Article 236-1-1.*
19. *“Bullying in school is the act of submitting a student, in the direct or indirect school environment, knowingly and by any means whatsoever, including by electronic means of communication, to repeated actions or omissions, the intention or effect of which is to cause a deterioration in the student’s learning conditions or school life, resulting in a violation of their dignity, integrity, causing feelings of fear, insecurity, distress, exclusion, or a decline in self-esteem or the sense of belonging to an educational institution, or an alteration of their physical or mental health”, new Art. 50-2 of Act No. 1,334, aforementioned.*
20. *New Art. 50-1 of Act No. 1,334, aforementioned.*
21. *“Pursuant to the first paragraph, in addition to the sanctions provided by Article 52, the head of the institution may take educational measures in respect of the individuals who cause or witness situations of bullying or violence in the school environment, to allow improvement in their social and emotional skills, and notably self-esteem and confidence, empathy, kindness, resilience, emotional control, conflict resolution, and stress management.” new Art. 50-13(3) of Act No. 1,334, aforementioned.*
22. *Draft bill No. 1,036 on violence and bullying in schools.*
23. *The opinion of the High Commissioner for the Protection of Rights, Liberties and for Mediation can be consulted on the official websites of the High Commissioner and the National Council.*

THE HIGH COMMISSIONER’S OPINION ON THE GOVERNMENT BILL

Besides its remarks on the legal construction of the bill - most of which were adopted - the High Commissioner sought to alert legislators to the notable discrepancy in the Government bill, between the stated intention of combating bullying, with “education [taking] precedence over punishment[24]”, and the resulting law, which essentially amounted to modifying and strengthening the existing arsenal of repressive measures.

The High Commissioner urged lawmakers to return to the fundamentals of the proposed legislation, which reflected the desire to effect a paradigm shift in education inspired by models that had proven their worth elsewhere in Europe. This would have meant moving away from the binary “education / punishment” model already in use, towards a more prevention-based approach, understood as a long-term project aimed at developing students’ social and emotional skills and the way situations are dealt with based on dialogue and reparation.

G | Effective remedies

In two very different areas of Government intervention (the administration of justice and medical-administrative decisions), the High Commissioner observed that the administrative procedures followed were deficient, insofar as they failed to enable the individuals concerned to exercise the legal remedies available to them. In one case, they were asked to complete additional formalities in order to obtain documents to which they were already fully entitled (specifically a copy of their complaint), thus hindering the subsequent formalities they might need to undertake in order to assert their rights. In another case, the law itself (time for appeal too short) effectively ensured that the individuals concerned were not able to appeal successfully.

For the sake of good administration, the High Commissioner recommended that changes be made both to the law and to the procedures followed in practice.

RECOMMENDATION

Update police practice regarding the issue of certificates for complaints and full copies of complaints

The High Commissioner was contacted regarding problems encountered by a victim when following-up a criminal complaint filed with the Police Department. The victim had been forcibly evicted from their home, outside any legal process. After several weeks, the individual concerned wanted to find out what action had been taken regarding their complaint, but was initially surprised to be told that no trace of their complaint could be found. Following the High Commissioner’s intervention, the complaint was eventually found, but the victim was unable to obtain a copy from the police, despite expressly requesting one. Only a certificate confirming that their complaint had been recorded was issued.

The High Commissioner conducted an adversarial investigation to look into the matter, and was informed by the Government that a copy of a criminal complaint could only be obtained with the consent of the Public Prosecutor, despite the fact that Article 71 of the Code of Criminal Procedure states: “*the complainant or the person reporting the offence may, at their own expense, be issued with a copy of the report or the complaint*”.

In other cases examined by the High Commissioner, it was found that, when complainants request a copy of their complaint from the police officer at the Police Department, either they were met with a simple refusal with no explanation, or were invited to send their request to the Public Prosecutor in writing.

24. *Cf. Draft bill No. 1,036 on violence and bullying in schools, explanatory memorandum, p.12: “The approach planned is at any rate based upon the consideration that education takes precedence over punishment, with an emphasis on listening, openness, and finding ways of avoiding these various situations, by focusing on the educational aspect and by promoting the skills that may be lacking. ”*

In all cases, the person who came to the Police Station to file a complaint left without any official document that might prove they had done so or facilitate subsequent formalities.

The High Commissioner concluded that by obstructing the complainant's ability to keep a trace of their complaint and obtaining a copy of it if needed, without any apparent justification, the police were likely to generate mistrust in themselves and maintain a damagingly opaque relationship, at a time where victims are often fragile and in fact expect assistance and protection as they seek to assert their rights. In view of this, the High Commissioner recommended that for the sake of good administration, and to make matters easier for victims, police practices should be updated to:

- Allow the officer who logs a complaint to immediately and systematically issue a confirmatory receipt or certificate. This document should indicate the date of the complaint, the nature of the facts alleged, and the identity of the person or persons accused, along with the registration number assigned to the complaint in the Police Department's files;

- Allow the officer or the Police Department to issue a copy of the complaint directly on request, without requiring the victim to contact the Public Prosecutor.

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

The Secretary of Justice informed the High Commissioner that they believed it was appropriate for the complainant to be issued with a certificate confirming receipt of their complaint, immediately and systematically, by the Police Officer who logged it, and instructed the Public Prosecutor and the Police Commissioner to ensure that this procedure was implemented in practice. The Secretary also indicated that they would like to see a discussion on possible legislative changes, to allow complainants to obtain a copy of their complaint from the Police Department free of charge, upon request.

RECOMMENDATION

Extend the deadline for appealing against medical administrative decisions

The High Commissioner received a complaint from a former civil servant who disagreed with the decision to declare them unfit for work, and wished to challenge it.

The institution identified a problem with the special limited time allowed for individuals to appeal against decisions declaring them unfit for work, taken in reliance on a formal opinion by the medical commission. Under Articles 40 of Ordinance No. 6,365 of 17 August 1978 and 78 and 82 of Ordinance No. 8,011 of 12 March 2020, any claim against such decisions, as against all medical administrative decisions concerning civil servants, must be brought within 15 days of the individual concerned being given notice of the decision.

Firstly, this period is very short, given the time it may take a person to understand the ins and outs of the decision taken and to find the help they need to file an appeal. In addition to this, the High Commissioner found that this period was identical to that in which the Government was required to send a civil servant their medical file, if so requested (Article 12 of Act No. 1,454 of 30 October 2017 on medical consent and disclosure).

However, according to the provisions referred to above, any challenge to a decision declaring a civil servant unfit for work must clearly state the reasons for the decision, which are usually medical in nature. This means that the individual concerned needs to know the detailed considerations that led the Commission to declare them unfit. To do this, the civil servants concerned must have access - before making their appeal - to the content of their medical file held by the Government, and in particular the medical administrative report produced in order to convene the Commission, and the minutes of the Commission meeting at which the decision was officially adopted. Failing this, any appeal made against decisions declaring an individual unfit for work cannot be considered to be truly effective.

On the basis of these findings, the High Commissioner recommended that the aforementioned regulatory instruments be amended to extend the period permitted for appealing decisions on an employee's fitness for work, and more generally any medical administrative decisions, in order to guarantee that the individuals concerned are able to obtain a copy of their medical file before bringing any claim.

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

The Government opted not to follow the High Commissioner's recommendation, considering not only that the insured party had been verbally informed that they were to be declared unfit for work before being sent official notice of the decision, but also that there could be a period of one month between the decision itself and the meeting of the Higher Medical Commission in the event of an appeal, which allowed the insured party sufficient time to request access to their medical file in the meantime.
It should also be noted that the Government, unlike the High Commissioner, took the view that the file held by the Medical Officer is not a medical file, and that the deadline for sending this file is in fact that stipulated by Article 15 of Act No. 1,165 of 23 December 1993 on the protection of personal data.

H | Prison conditions

While there were fewer grievances from inmates held at the Remand Prison in the last two years (9 in 2020-2021, compared with 13 in 2018-2019), they nonetheless continued to account for a not-insignificant proportion of the High Commissioner's activity. Prison is a place where the need to reconcile contradictory principles is particularly acute. For example, the principle of personal autonomy is necessarily undermined by an inmate's absolute dependent on the prison officers. This explains why the issues raised by these grievances all concern potential infringements of fundamental rights and accordingly deserve particularly close attention. It is important to note that, when investigating them, the High Commissioner has the unfailing cooperation of the Remand Prison authorities.

> Night patrols

The issue of night-time patrols is a long-standing and recurrent one. Numerous prisoners complain that their sleep is disturbed by the beams of light thrown by the flashlights carried by the prison officers, as they patrol at night to ensure that the prisoners are present in their cell and in good health. Following a recommendation by the High Commissioner, improvements have been made with the purchase of flashlights with colour filters, which have been in use since March 2020, while staff were instructed not to shine light into the faces of inmates. Despite these precautions, the problem remains and is particularly acute for those prisoners identified as posing a suicide risk, for whom the frequency of night patrols is increased with up to 24 checks being made on them each night.

< Evaluation of the need to maintain additional night patrols >

In response to concerns raised by the Remand Prison authorities about the potential suicide risk posed by an inmate who had received a long custodial sentence, an intensive night patrol regime was introduced. The Remand Prison's own medical department believed that the patient's psychiatric condition did not warrant additional patrols, which excessively affected the inmate's sleep quality.

The matter was referred to the High Commissioner, who recommended an independent evaluation of the inmate's psychiatric condition to assess whether or not there was a proven suicide risk. Following the evaluation, which found no suicide risk, the heightened surveillance measures could be suspended.

More frequent night patrols are also carried out for prisoners classed as being under "special close surveillance". The only way for these inmates to be subject to less frequent night-time checks is to be moved out of this category. Yet a high proportion of prisoners are automatically placed in this category on the basis of the offences they have committed or of which they are accused, and they remain in it without their situation being reviewed. The High Commissioner can only repeat its earlier recommendation, made in 2019[25], regarding the importance of establishing a legal framework to govern this "special close surveillance" regime. In this respect, it is worth noting that the same recommendation was made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), following its most recent inspection in the Principality[26].

> Prisoners on hunger strike

One prisoner complained that, on announcing their intention to begin a hunger strike, they were immediately placed in isolation, before being transferred and immediately hospitalised on a secure psychiatric ward at Princess Grace Hospital (CHPG), for a suicide risk assessment which the prisoner claims was unwarranted.

The High Commissioner was keen to look more closely into the general treatment of prisoners on hunger strike, since this case assistance request echoed other similar cases brought to its attention. Those cases had left the impression that forced hospitalisation of an inmate who had begun a hunger strike may in some cases have been a hasty and/or systematic response and, despite there being no stated desire to block the inmate's protest, might indirectly have had that effect, given the distress caused by being detained in a secure psychiatric unit at the CHPG.

This principle implies that a person, including a prisoner, remains free to decide what happens to their own body, and may therefore decide, for example, to stop eating. Even if their choice is potentially dangerous to them, it must be respected by the institution which has custody of them, subject to the State's positive obligation to protect the individual's life and physical integrity when the hunger strike has reached a stage that puts their survival at risk.

As such, forced hospitalisation[28] may only be justified by considerations of a medical nature relating to the patient's physical condition of the hunger strike is prolonged, or to their mental state, suggesting a particular fragility confirmed by factors other than the decision to start a hunger strike. Placing a prisoner in administrative isolation on the grounds that they are on hunger strike is in principle unlawful, unless justified by the proven need for "*protection or safety*" (Article 41 of Sovereign Ordinance No. 3,782 of 16 May 2012 on the organisation of prison administration and detention).

RECOMMENDATION

Respect the principle of personal autonomy in the treatment of prisoners on hunger strike

Consequently, the High Commissioner drew the attention of the Remand Prison administration and medical department to the importance of respect for the principle of personal autonomy, which is protected by the European Court of Human Rights (ECHR) on the grounds of the right to private life, when dealing with a prisoner on hunger strike[27].

25. *Cf 2017-2019 Activity Report, p. 55*
26. *Report to the Government of the Principality of Monaco concerning the inspection carried out in Monaco by the CPT from 15 to 18 September 2020, p. 18*
27. *Cf. inter alia ECHR, 29 April 2022, Pretty v. United Kingdom, § 61 and 62; ECHR, 5 April 2005, Nevmerjitski v. Ukraine, § 93 and 94; ECHR, 6 March 2007, Ozgul v. Turkey; ECHR, 17 January 2013, Karabet et al. v. Ukraine*
28. *In France, the Comité Consultatif National d'Ethique (National Ethics Consultation Committee) states that "a physician faced with a hunger strike had a duty immediately to inform the person about the risks they are incurring without influencing their determination or weighing on the causes that may have led to the hunger strike. Their attitude must be entirely neutral. It is important for this medical information to be repeated several times in the course of a dialogue that respects the person's reasons for going on hunger strike" (CCNE Opinion No. 94 of 26 October 2006, Health and Medicine in a Prison Setting). Similarly, the doctrine of the Conseil National de l'Ordre des Médecins (National Medical Council) states that a physician may not compel an incarcerated individual to be hospitalised if they are conscious and not suffering from mental disorder, if hospitalisation has not been agreed to through negotiation (cf. inter alia, p. 9 of the report concerning on-site checks by the French Controller-General of Prisons at Raymond-Poincaré de Garches Hospital, on the situation of a person on hunger strike for 69 days, September-October 2017).*

> Conditions of detention in secure psychiatric units

Once transferred to the psychiatry department at CHPG, prisoners are placed in the secure room provided for this purpose, which is located in a secure unit. It should be pointed out that prisoners receive exactly the same medical treatment as any other patient, without any distinction.

It is rather the conditions of their detention that drew the attention of the High Commissioner, which was able to inspect the dedicated room. It was found that the room itself is equipped with entirely adequate material conditions. However, the difficulty likes in the ability of prisoners to access an outdoor space.

The High Commissioner observed that this installation, in its current design, was not fit for purpose. It is true that this secure room is used infrequently over the course of a year, and, furthermore, the outdoor courtyard may need to be kept for other patients where possible. However, taking into account the fact that prisoners may spend long periods of time hospitalised in the psychiatric unit, the High Commissioner recommended that the various parties concerned come together once more to review the design of this space, or alternatively to look at other solutions more appropriate for the physical exercise of hospitalised prisoners.

RECOMMENDATION

Allow prisoners undergoing psychiatric treatment regular access to an outdoor space

While the CHPG's management has clearly made efforts to meet the requirements of the CPT[29], while complying with the significant security restrictions imposed by the Police Department, it must nonetheless be noted that the resulting facility is unsatisfactory. The dedicated area (which measures around 15 m^2 according to the plans, but feels much smaller owing to its confined and oppressive nature) is in reality more like an extension of the room itself, than an outdoor space.

This space, which is taken from the Department's courtyard, is completely isolated from the rest of the courtyard by metal screens, surrounded by opaque plexiglass which allows only the barest amount of light and very little or no air to pass through. Since this area is also enclosed from above, it ultimately allows no regeneration or recuperation by access to natural light and fresh air, and given its size no physical exercise is possible either.

Following its most recent inspection in the Principality, the CPT made an identical observation and issued a recommendation to the authorities along similar lines to that given by the High Commissioner[30].

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

While it received no direct reply itself, the High Commissioner notes that, in their response to the CPT on this point in March 2021, the Monegasque authorities expressed no intention of reviewing access to an outdoor space for hospitalised prisoners.

> Improved ventilation conditions at the Remand Prison

The High Commissioner was pleased to learn that one of the recommendations it made in 2018, on the need to improve ventilation at the Remand Prison, particularly in the area reserved for minors, had finally been addressed and that practical measures were to be taken shortly.

In a more general recommendation on the configuration of the Remand Prison, the High Commissioner had pointed to the absence of ventilation which led to a very strong smell of cigarettes including in cells occupied by non-smokers, and stressed that these conditions were unsuitable for all prisoners but especially minors.

The CPT made the same remark in its most recent report, having noted the inadequate nature of the ventilation in the living areas[31].

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

The High Commissioner is therefore pleased to note that plans to install a controlled mechanical ventilation system have been included in the schedule of works to be carried out at the Remand Prison, aimed at creating two new corridors.

29. *As early as 2006, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended measures to enable hospitalised prisoners to benefit from a minimum of one hour per day of outdoor exercise. This recommendation was repeated in 2013.*
30. *Report to the Government of the Principality of Monaco concerning the inspection carried out in Monaco by the CPT from 15 to 18 September 2020, p. 31*
31. *Idem, p. 14*

IV Anti-discrimination

Maintaining efforts to bring about legislative change

Though they represent only a minority of all cases handled by the High Commissioner, discrimination matters remain complex, very involving in human terms, and always difficult to deal with, owing to the lack of a pertinent legislative framework in this area.

The High Commissioner Office obviously continues its efforts to bring about changes in anti-discrimination law, by suggesting legislative or regulatory reforms when asked to look into individual cases or in the opinions it issues on draft bills.

In this respect, the High Commissioner is particularly pleased to note that recently adopted reforms to the status of civil servants[1] provided an opportunity to enshrine non-discrimination in public sector employment as a general principle, though it is nonetheless regrettable that the High Commissioner's remarks calling for legislators to expand the scope of this principle were not taken into consideration.

In 2020 and 2021, the High Commissioner continued to examine the inegalitarian effects of rules determining who is entitled to claim benefits for children of individuals affiliated with the Monegasque social protection schemes (for both social security and family allowance payments). It observed that eligibility for these benefits was still based on the discriminatory concept of "head of household" (A), particularly in the case of the regime applicable to private sector employees.

Also in the area of social rights, the High Commissioner looked into a very delicate issue, specifically the way in which the notion of the "Monegasque public policy" interacts with the recognition in the Principality of the effects of duly contracted same-sex marriage and legally established adoption overseas (B).

Finally, when investigating an unusual situation, the High Commissioner recalled the principles to be followed in recruitment procedures with regard to the age of candidates (C).

1. Act No. 1,527 of 7 July 2022 amending Act No. 975 of 12 July 1975 on the status of civil servants

A | Discrimination on the basis of sex

1. The notion of "head of household"

In its previous report, the High Commissioner discussed at length the issues posed by the discriminatory nature of the rules determining who qualifies for benefits entitlements under Monaco's social protection regimes, depending on the sex of the claimant. It also highlighted the positive changes that had been made since 2019 to ensure greater sexual equality in the regimes applicable to civil servants and self-employed people.

However, the case assistance requests submitted to the High Commissioner in 2020 and 2021 show that the legislative and regulatory changes introduced have not yet eliminated all discriminatory situations, including for the beneficiaries of those regimes. Only by completely removing the obsolete notion of "head of household" from Monegasque law - a step which has thus far only been taken by the CAMTI social protection scheme - would effectively end the unjustified difference in the way men and woman are still treated, when determining who is entitled to and who receives child benefits.

> The case of reconstituted families (mother is a private sector employee / father is a civil servant)

On numerous occasions in 2020 and 2021, the High Commissioner received assistance requests from reconstituted families, in which the wife was affiliated to the CCSS scheme and her new husband with the SPME. These families were no longer able to claim sickness and family benefits for the child living in their household, who was born from the mother's previous relationship. This type of situation arose following the adoption of Sovereign Ordinance No. 7,155 of 10 October 2018 on the award of family benefits to civil servants, which from January 2019 onwards introduced changes to the conditions to be met in order to be classed as the "head of household", notably by limiting this status exclusively to a child's father and mother.

It must be noted that, in line with the new rules, children born of the mother's previous relationship are no longer automatically covered by her new husband's social protection scheme, to the detriment of that of their parents, and this is highly positive and fairer for many households. However, it is not without its own difficulties.

The rule determining who exactly has the status of "head of household" was not updated to reflect changes to the social protection scheme for private sector employees, and it remains the case that where a separated or divorced woman marries (or remarries), her new husband becomes the head of household (Art. 5b(A)(2)(b) of Sovereign Ordinance No. 1,447 of 28 December 1956). As a result, in the cases examined by the High Commissioner, the mothers concerned were unable to qualify their child for benefits from the CCSS regime, despite being affiliated to this scheme through their own jobs.

The lack of harmonisation and coordinated changes to the two sets of rules led to these couples now being denied benefits for the children living under their roof and born of the mother's previous relationship. Instead, they were referred to the French Caisse Primaire d'Assurance Maladie (CPAM) and the Caisse d'Allocations Familliales (CAF), on the grounds that they resided in France, despite the fact that the two people with full-time care of the child (i.e. the mother and stepfather) both pay contributions to the Monegasque social protection schemes.

In the case of the social protection regime for private sector employees, at least, such a move will require a renegotiation of the coordination mechanism enshrined by the Franco-Monegasque Convention on Social Welfare. This can only be done through bilateral discussions, which have, alas, been delayed for two years by the Covid crisis, but the High Commissioner hopes that they will be resumed as soon as possible so that this discriminatory situation can be permanently abolished, as it has been advocating for some time.

It should be noted that households living in Monaco were also likely to find themselves in this situation, and would therefore no longer have access to any form of social welfare benefits. And whilst in some cases, the children concerned could theoretically have still been covered by the CPAM via their attachment to the father in France (even if he did not have custody), were he to be affiliated to a French scheme, this could at any rate not always be the case, since the child's father - as in the cases examined by the High Commissioner - might be himself affiliated to a Monegasque regime (but without entitling his child to benefits since he did not have custody), or might no longer have any relationship with the child at all.

RECOMMENDATION

Resolve the situation of reconstituted families with regard to social protection (father with SPME/ mother with CCSS), owing to the dual exclusion in law

Pending a global reform of Monaco's social protection schemes, the High Commissioner concluded that a solution needed to be found for these families, allowing benefits to be provided fairly for the children concerned.

While the Government at one point considered making changes to Sovereign Ordinance No. 1,447 to allow wives affiliated to the CCSS, in these circumstances, to be able to cover their children, the High Commissioner stressed that this solution would have raised equality issues between married women depending on their family situation, i.e. between those in a couple with the children's father and those living with a new partner. It would also have caused unequal treatment of children living in the household, with those from the mother's previous relationship and dependent on their mother's social security cover being treated differently from those born of the new relationship and covered by the father.

The High Commissioner had recommended that, pending the reform envisaged, a special measure be taken to maintain these households' entitlements under the SPME scheme, both for sickness and family benefits, until these CCSS-affiliated mothers are themselves able to qualify their children for entitlements.

The High Commissioner also recommended that a principle of subsidiarity be reintroduced into Ordinance No. 1,447, stipulating an exemption from the condition that only the father and mother may be considered as the "head of household", so that in certain specific circumstances, a new partner is able to qualify their stepchildren for entitlement to benefits. In the situation where a parent of children living in a household in Monaco chooses to be a stay-at-home father or mother, because their new partner's affiliation to the SPME makes this possible, the children might not be covered at all as a result (neither through their parent's job, nor through their place of residence).

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

On this latter point, it is pleasing to note that the High Commissioner was heard, since the rules were quickly changed to this effect[2]. For households where the stepfather is affiliated to the SPME and the mother to the CCSS, the *Comité de contrôle des caisses sociales* (the supervisory body with oversight of social security schemes) ultimately chose not to adopt the Government's proposed amendment to Sovereign Ordinance No. 1,447, preferring to focus on a wider reform of current regulations, abolishing the "head of household" concept entirely, rather than making marginal changes that would resolve one problem while creating others. Despite this, a pragmatic social solution was found to ensure that the households concerned were not left without any entitlements, with the CCSS agreeing to provide both sickness and family benefits for the children, and the State retroactively paying family benefits for the transitional period between the date on which their SPME entitlements ended and their cover by the CCSS began.

2. Sovereign Ordinance No. 8,309 of 23 October 2020 amended Article 6 of Ordinance No. 7,155 of 10/10/2018 on the award of family benefits to civil servants.

> The case of couples not separated but living apart

The High Commissioner was approached after Caisses Sociales de Monaco (CSM, the Monegasque social security authority) refused to grant the son of a Monegasque resident affiliated to CAMTI (the social security scheme for self-employed people) sickness and family benefits, despite her son living with her. CSM had argued that the father of the child, with whom she was in a relationship as a couple but not married or co-habiting, was resident in France and was therefore entitled to claim benefits for their shared child in that country.

It should be noted that the reform made to the CAMTI scheme in July 2020 [3], in addition to introducing family benefits for self-employed workers which had not previously existed, essentially replaced the old discriminatory "head of household" criterion with new, neutral criteria for qualifying children for entitlements, based on the household's place of residence, and the workplace of the parent or parents.

Now, individuals affiliated to the scheme can qualify for entitlements for children in their custody if they are the named recipient for any benefits received by those children, provided they are habitually resident in the Principality, Switzerland, or a Member States of the European Economic Area (EEA), and do not qualify personally, by virtue of any other professional or similar activity, for the same benefits from another statutory family benefits scheme (Articles 1 and 6 of Act No. 1,493).

In the case referred to the High Commissioner, the question raised was how the new provisions setting out the conditions under which the status of benefits recipient[4] is attributed, should be applied to an unmarried couple who do not live together but have a shared child, given that the provisions make a distinction between children living with both of their parents (i.e. children of married or cohabiting couples and children in shared custody) and those living exclusively with one of their parents (e.g. after the death of one parent, divorce or separation).

CSM took the view that since, in these circumstances, there was a community of emotional and material interests, both in respect of the child and the other parent, they could be treated as forming a single household for the purposes of family benefits, and that as a couple non-cohabiting but morally forming a "family" around a child, they should be treated in the same way as married or cohabiting couples. This meant that the CAMTI-affiliated parent could not be qualified as the benefits recipient, since the other parent resided and worked in a different country.

RECOMMENDATION

For the family benefits service in the CAMTI social security scheme, not to treat parents who are in a couple but living apart in the same way as married or cohabiting couples

After conducting an in-depth legal analysis of the concepts of households and the child's place of residence in European and Monegasque law, the High Commissioner concluded that the circumstances of a couple who have chosen to live apart could not, for the purposes of determining their entitlements under the CAMTI regime, be treated in the same way as a married or co-habiting couple, since it supposes that the parties concerned live under the same roof.

These cases, which are admittedly uncommon but reflect the reality of changing social norms that should not be dismissed, involve a type of relationship that, as with marriage or marital life, is in principle the free expression of the persons' choice regarding their private life arrangements. In view of this, the High Commissioner recommended that benefits entitlements should be determined on the basis of the child's place of residence, with the parent who habitually has care of them.

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATION

The High Commissioner is pleased to see that CSM finally intends to adopt its recommendation, despite some reservations. Chief among these is the concern that this interpretation of the applicable provisions could give the impression that married couples are treated less favourably than unmarried couples - which we do not believe to be true since, on the contrary, taking the child's place of residence with the parent who habitually has care of them as the household's principal place of residence will actually ensure fairness among all types of couples where one of the parents is not living at the family home.

3. Act No. 1,493 of 8 July 2020 establishing a family benefits system for self-employed workers.
4. Cf. Article 1 of Sovereign Ordinance No. 8,200 of 24 July 2020, implementing Act No. 1,493.

2. SEXUAL HARASSMENT AND SEXUAL VIOLENCE

The High Commissioner received several complaints from women alleging sexual harassment in the workplace. Harassment carried out on discriminatory grounds can be classed as discrimination[5] and therefore falls within the High Commissioner's remit.

Although very shocked by the behaviour to which one of the complainants in particular was subjected (her line manager made vulgar remarks with sexual connotations to all of their team at work), the High Commissioner concluded that under domestic law the alleged acts could not be considered as harassment or bullying, since the offending remarks were addressed to a group of people.

Both the definition of workplace bullying[6] and the broader definition of moral harassment, as laid down by the Criminal Code[7], required a specific person to be the target of "repeated actions or omissions". It made no mention of a "sexual harassment environment" (specifically "*harcèlement sexuel d'ambiance et d'environnement*", referring to the notion of a generally hostile and degrading atmosphere), which would appear to correspond more closely to what the claimants experienced in reality.

In its formal opinion on the draft bill on workplace harassment and violence[8], the High Commissioner had previously pointed out that, based on the definition of moral harassment contained in the bill (and which was adopted unchanged), it would be difficult to prove an infringement of someone's dignity by means of degrading behaviour or remarks with a sexual connotation, which is the key aspect of sexual harassment.

The terms "repeated actions or omissions" also seemed unsuited to reflecting the reality of sexual harassment, which in practice consists more usually of remarks, attitudes, inappropriate gestures of a sexual nature, the displaying of degrading images, and so on. At the time, legislators opted not to amend the law to take account of the High Commissioner's recommendations.

Later, however, in Government bill No. 1,027 reforming provisions relating to the criminalisation of sexual assault, lawmakers ultimately inserted a specific provision prohibiting sexual harassment[9]. In its opinion on this draft bill[10] - which became Act No. 1,517 of 23 December 2021 reforming the provisions on the criminalisation of sexual assault - the High Commissioner was naturally pleased not merely that the definition included in the law specifically recognised actions with sexual connotations, but also that it covered the notion of a "sexual harassment environment", which is a frequent component of sexual harassment.

THE HIGH COMMISSIONER'S OPINION ON THE DRAFT BILL

It should be noted, however, that this draft bill went well beyond the offence of sexual harassment and had a wider aim, namely to reform the criminalisation and punishment of sexual violence in general.

In its opinion, the High Commissioner had welcomed the fact that the draft bill put consent at the heart of the definition of rape and sexual assault, so that it would not be necessary to prove force, violence, threat or surprise in order to establish the absence of consent. This was fully in line with the recommendations made by CEDAW (Committee on the Elimination of Discrimination against Women) at UN level, and by GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence) in Europe.

It had noted that this new legal position, along with moves to introduce greater flexibility into the standard of proof required to show lack of consent for young victims, by including evidential criteria that would make it easier to demonstrate moral coercion or surprise, broadly served to improve overall protection for the victims of sexual violence and particularly children, as compared with the criminal law provisions in force previously.

However, the High Commissioner emphasised that absolutely no thought had been given to the specific issue of intra-familial sexual abuse, and insisted that lawmakers needed to consider criminalising incest in view of the scale of the phenomenon. The High Commissioner was therefore pleased to note that the law ultimately passed criminalised incestuous rape and sexual assault, with specific penalties for these offences introduced into the Criminal Code.

5. *In French law, since Act No. 2008-496 of 27 May 2008 implementing various provisions adapting community law in the area of anti-discrimination, sexual harassment is treated as a form of discrimination. For the ECHR also, "harassment and instruction to discriminate can be seen as particular manifestations of direct discrimination". Guide on Article 14 of the European Convention on Human Rights and on*

   Article 1 of Protocol No. 12 to the Convention, 31/12/2019, 1st edition, p. 11.

6. *"Workplace harassment is the act of subjecting an individual, knowingly and by any means whatsoever in the course of a professional relationship, to repeated actions or omissions with the intention or effect of degrading that individual's working conditions, harming their dignity or resulting in an alteration of their physical or mental health," Art. 2 of Act No. 1,457 of 12 December 2017 in its version prior to Act No. 1,517 of 23 December 2021.*

7. *"The act of subjecting any person, knowingly and by any means whatsoever, to repeated actions or omissions with the intention or effect of degrading their living conditions resulting in an alteration of their physical or mental health, is punished by the following sanctions:*
   - *Between three months' and one year's imprisonment and the fine provided by Article 26(3), where the offence did not cause any illness or total incapacity for work;*
   - *Between six months' and two years' imprisonment and the fine provided by Article 26(4), where the offence caused an illness or total incapacity for work not exceeding eight days;*
   - *Between one and three years' and double the fine provided by Article 26(4), where the offence caused an illness or total incapacity for work exceeding eight days." , Art. 236-1 of the Criminal Code, in its version prior to Act No. 1,517 of 23 December 2021.*

8. *Now Act No. 1,457 of 12 December 2017 on harassment and violence in the workplace.*

9. *"Sexual harassment is the act of subjecting a person, repeatedly, to speech or behaviour of a sexual or sexist connotation which either cause injury to their dignity by reason of their degrading or humiliating nature, or create a situation that is intimidating, hostile, or offensive to them", Art. 260-1 of the Criminal Code proposed and since adopted.*

10. *Draft bill No. 1,027 reforming the provisions on the criminalisation of sexual assault. Opinion of the High Commissioner for the Protection of Rights, Liberties and for Mediation available on the official websites of the National Council and the High Commissioner.*

11. *Cf Article 261-2 of the Criminal Code.*

B | Discrimination on the basis of sexual orientation: social welfare entitlements and Monegasque international public policy

The High Commissioner's assistance was sought by an individual affiliated to the CCSS social security scheme, who was in a same-sex relationship and was also a parent, having fully adopted a child born via a surrogacy arrangement. The claimant indicated that they did not enjoy the same entitlement to family benefits and survivor's pension as a heterosexual affiliate. The High Commissioner looked into the legally delicate question of Monegasque public policy and its interaction with the recognition of the effects of same-sex marriage duly contracted abroad, and also adoption legally established abroad.

> Same-sex marriage and survivor's pension

In Monaco, the entitlement to a survivor's pension is provided for and organised, in the private sector employees' scheme, by Article 3 of Act No. 455 of 27 June 1947. This entitlement is only for married or previously married couples, provided the affiliated employee's surviving spouse or ex-spouse has not remarried or is not known to be cohabiting with a new partner.

But the Civil Code of Monaco does not allow same-sex marriage (cf. Art. 147) and the Code of Private International Law provides that "*marriage duly contracted abroad in accordance with the law of the State where it is celebrated is recognised as such in the Principality, unless it is contrary to Monegasque public policy, or has been celebrated abroad with the clear intention of circumventing Monegasque law*". Consequently, the Principality does not allow same-sex marriages lawfully contracted in other countries to produce their full effects in Monaco.

However, the adoption of Act No. 1,481 of 17 December 2019 introduced into Monegasque law the concept of civil partnerships, an arrangement open to cohabiting couples regardless of their sexual orientation. Since this Act was adopted, partnerships entered into abroad (including marriages) are eligible for the same rights as those enjoyed by the Monegasque civil partnership (new Art. 1278 of the Civil Code, introduced by the aforementioned Act). But while an amendment proposed by the National Council's Committee on Women's and Family Rights was intended to grant civil partners the right to a survivor's pension, this provision was ultimately not included in the Act adopted.

As a result, in Monaco, and regardless of the pension scheme concerned (civil servants, private sector employees, or self-employer workers), the right to a survivor's pension is still attached to marriage, which can only be heterosexual[12].

In a substantive ruling on this matter[13], the European Court of Human Rights (ECHR) found that it was not discriminatory for the entitlement to a survivor's pension to be attached solely to marriage, even where, at the time of the facts (early 2000, in Spain), marriage was reserved exclusively for heterosexual couples (Spain did not allow same-sex marriage until 2005). It thus affirmed that States are free not to recognise the same effects for every legal relationship status, and that they have room for manoeuvre in terms of the speed at which they introduce legislative reforms to recognise same-sex couples and their status (although they are nonetheless obligated to establish such a status). Consequently, it appears that presently, Monaco, which only recently introduced the civil partnership as a legal arrangement notably open to homosexual people, is not guilty of infringing the fundamental right to private and family life in a discriminatory way by failing to grant civil partners all of the same social welfare entitlements as married couples.

12. *It should be noted that the aforementioned Act No. 1,481 does, however, for the civil servants' scheme, entitle a surviving civil partner to receive a death benefit (cf. Art. 48 of Act No. 1,049 of 28/07/1982 on retirement pensions of civil servants, judges, and certain public officials).*
13. *ECHR, Aldeguer Tomas v. Spain, 14 June 2016, App. No. 35214/09.*

> Adoption of a child born via surrogacy to a same-sex family and entitlement to family benefits

In the area of adoption, there is a similar difficulty concerning the recognition in the Principality of the parental link between a child and their two same-sex parents (even where the child's parentage is legally established in the neighbouring country), since this is in direct opposition with the fact that in Monegasque law, a child cannot have two fathers or two mothers.

In principle, the Civil Code of Monaco only recognises the parentage of a father and a mother (cf. Art. 226-1 and 227 notably), while full adoption is only open to couples - who must by definition be heterosexual - who have been married for at least five years, meaning that a single person can never adopt, unless they are adopting their spouse's child (cf. Art. 245).

These provisions are a matter of public policy in the Principality, and so same-sex parents simply do not exist in Monegasque law. They are therefore not covered by social security rules. Under the social protection scheme for private sector employees, for parental couples living with their children, it is firstly the father (as the "head of household"), as opposed to the mother, who determines the family's entitlement to benefits (Ordinance No. 1,447 of 28 December 1956, Article 5b(A)(1)).

Incidentally, there can be doubt that this criterion, based solely on the sex of the social security affiliated member, is in itself discriminatory towards women - something that the High Commissioner has criticised on several occasions. It is presently, however, the only criterion applied in order to determine eligibility under social protection schemes.

In some cases, public policy is not applied fully and situations that arose in a foreign jurisdiction are allowed to produce some of their effects locally[14]. If such "mitigation" were applied to this case, it might allow an adoption ruling, which led the partner of a biological parent of a child born via surrogacy to be recognised as the child's legal parent, to produce some of its effects in Monaco. However, even were this to be the case, this criterion could not, at any rate, apply to same-sex parent families.

To decide otherwise would actually mean that same-sex parents of children, where both members of the couple are men, would be systematically treated more favourably than heterosexual couples with children (who would only be entitled to benefits if the father is affiliated to the relevant social protection scheme), and significantly more favourably than same-sex parents of children where both members of the couple are women (who would never be entitled to benefits). This would necessarily lead to unequal access to benefits for the children, not just between parental couples owing to their sexual orientation, but also between foreign and national affiliates, since the former would be entitled to rights for which the latter could never qualify, as same-sex couples in Monaco are unable to get married or to adopt and thus become co-parents through this method.

14. *The High Commissioner for the Protection of Rights obviously cannot prejudge the way in which the Monegasque courts would rule on this point. It can only observe that, in the past, they have found that if a situation was created lawfully abroad, the fact that it would have been illegal in Monaco does not necessarily prevent it from producing some of its effects in the Principality. Such rulings concerned a divorce petition in the case of a bigamous marriage (cf. Court of First Instance, 12 October 1996, D. v. D), and the award of alimony to a child born of an adulterous relationship whose paternal parentage could not have been established in Monaco at the time (cf. Court of First Instance, 6 June 1991, L. v. B). However, these rulings were made before the promulgation of Act No. 1,148 of 28 June 2017 on private international law, which introduced express provisions concerning Monegasque public policy with regard to marriage lawfully contracted abroad and adoption lawfully pronounced abroad.*

These Monegasque social norms, which are very different from the prevailing attitude to marriage and the family in France and a number of other European countries, are closely linked in Monaco to tradition and Roman Catholicism, which is established by the Constitution as the “State religion” (Article 9). It is clearly the case that these norms presently cause homosexual people to be denied some of the rights enjoyed by heterosexuals. However, case law based on the Convention for the Protection of Human Rights and Fundamental Freedoms (CPHRFF) does not, for now, allow these restrictions to be considered as excessive and discriminatory interference with the right to private and family life guaranteed by the Convention.

The ECHR has ruled that the right to marriage enshrined in Article 2 of the Convention does not compel States to grant access to marriage to same-sex couples[15]. It has also ruled that a country’s policy of restricting co-parental adoption exclusively to married couples, where marriage is not possible for same-sex couples, is not discriminatory with regard to the right to family life[16].

The ECHR also allows States a wide margin of discretion when it comes to surrogacy and recognition within their territory of surrogate births which have lawfully taken place in other countries, given the sensitive ethical considerations raised by this practice and the lack of a European consensus.

The only obligation imposed by the Court concerns recognition at the civil registry office of the parental relationship between the child and the biological parent. Failure to recognise parentage on the grounds that surrogacy contravenes domestic law would infringe the child’s right to private life, and harm their identity within society.

As regards the second intended parent, recognition of their parentage must be made possible, but this does not necessarily need to be done by recording a birth certificate lawfully established abroad on the domestic civil status register. Instead, it can be done by other means, such as the procedure for adopting the child of a spouse[17].

Thus far, European case law has only established these principles for situations involving heterosexual couples, and it is not certain that the Court would adopt an identical reasoning when it comes to recognising the parentage of a second intended parent of the same sex. In two recent cases (which were nonetheless particular in that the children born through surrogacy abroad had no genetic links with either of the two intended parents), the ECHR upheld the national authorities’ refusal to recognise the parentage of the children concerns with the same-sex couples who had used this procedure[18].

It seems that, for now, none of the Principality’s international commitments require it to undertake reforms that are not in line with the foundations of Monegasque society and its prevailing social mores.

Only a later move towards a European consensus on the issue of same-sex marriage (currently permitted in 15 out of 47 countries) and adoption by same-sex couples could, should it occur, lead to a review of Monaco’s stance on these matters, based on the principle of non-discrimination.

C | Discrimination on the basis of age

Though few in number, the High Commissioner has examined a handful of cases involving allegations of age-based discrimination. It was particularly struck by the very absence of a “culture” of non-discriminatory principles, with the various parties it spoke to being unaware that taking into account age in certain processes could be discriminatory. The High Commissioner even encountered individuals who, in good faith, had thought it was less problematic to use age as grounds for rejecting a candidate’s job application, than admitting the true reason, namely the candidate’s professional skills. In view of this, the High Commissioner concluded that there was a need to restate the principles applicable in such cases.

< Candidate’s age as a factor in the recruitment process >

Ms Z, 58, applied for a job in a managerial role. She learned that she had been ranked in first place following the recruitment interviews, but her application was ultimately rejected. Believing her age to have been the reason for the rejection, she took the matter to the High Commissioner. Upon further investigation, the High Commissioner found that while Ms Z’s age had indeed - and wrongly - been considered, it was not the deciding factor in the final decision. In fact, the candidate had been led to understand that her application had been rejected on account of her age, but this was done in order to avoid disclosing the true reason for the decision, namely that her interpersonal skills were judged to be insufficient for the position. The High Commissioner thus concluded that the recruitment process and its outcome should be considered as objectively justified. However, the High Commissioner did find that it was important to acknowledge the very strong sense of injustice felt by the applicant upon being informed that her application had been rejected, as a result of various missteps in the recruitment process and which led to her application being ranked incorrectly. Incidentally, the High Commissioner’s investigation revealed an error with the applicant’s positioning in terms of her remuneration. This allowed a retroactive repositioning to be applied by way of compensation.

15. *Cf. inter alia, ECHR, 24 June 2010, Schalk and Kopf v. Austria, App. No. 30141/04; ECHR, 9 June 2016, Chapin and Charpentier v. France, App. No. 40183/07; and ECHR, Orlandi and Others. v. Italy, 14 December 2017, App. No. 26431/12, in which the Court found that while the stable relationship between a same-sex couple fell under the notion of family life within the meaning of Article 8 of the Convention, and should therefore be protected in the same way as that of a heterosexual couple, this did not obligate States to allow same-sex marriage but merely to provide a specific legal arrangement (such as a partnership) to recognise and protect these couples’ union, where they choose to restrict marriage to same-sex couples. In these rulings, the Court found that the national authorities are best placed to appreciate and address society’s needs in this area, marriage having deep-rooted social and cultural connotations which vary considerably between societies.*

16. *Cf. inter alia, ECHR, Grand Chamber, 19 February 2013, X and Others v. Austria, App. No. 19010/07, concerning two women in a stable cohabiting relationship who challenged the Austrian courts’ refusal to grant the request by one of them to adopt the son of the other without severing the child’s relationship with his mother (second-parent adoption). In this case, the Court found that there had been a breach of Article 14 (Prohibition of discrimination) combined with Article 8 (Right to respect for private and family life) of the Convention insofar as second-parent adoption was then open to unmarried heterosexual couples in Austria, but that there was no breach of those same Articles when comparing the applicants’ situation with that of a married couple, one of whom wanted to adopt the other’s child. In this respect, it noted that the Convention does not obligate States to extend second-parent adoption to unmarried couples, confirming an earlier ruling, ECHR, 26 February 2022, Fretté v. France, App. No. 36515/97. In that case, the Court had found that, given the persistent and marked divisions on the eventual consequences of adoption by one or more same-sex parents, States had a wide “margin of appreciation” in view of the need to protect the child’s best interests, with adoption meaning “providing a child with a family, not a family with a child”, and requiring States to “see to it that the persons chosen to adopt are those who can offer the child the most suitable home in every respect.”*

17. *Cf. ECHR, 26 June 2014, Mennesson and Others v. France, and Labassee v. France, App. Nos. 65192/11 and 65941/11; ECHR, 16 July 2020, D v. France, App. No. 11288/18 and ECHR advisory opinion of 10 April 2019 to the French Cour de Cassation concerning the recognition under domestic law of the parent-child relationship between a child born through a surrogacy arrangement and the intended mother.*

18. *Cf. ECHR, Grand Chamber, 24 January 2017, Paradiso and Campanelli v. Italy, App. No. 25358/12 and ECHR, 18 May 2021, Vladis Fjolnisdottir and Others v. Iceland, App. No. 71552/17. In the first case, where the infant was removed from the couple and placed in the care of the Italian social services, the ECHR in particular acknowledged that surrogacy could be likened to prohibited “private adoption”, insofar as IT circumvented the protective mechanisms introduced by Italy for adoption. In the second case, the Court upheld the decision to leave the child with the couple on the same grounds, in order to facilitate the child’s subsequent adoption. The different solutions found in these cases were determined by the Court’s appreciation of the existence of a family life and the serious and irreparable harm that would have been caused by separating the child from the couple.*

D | Dialogue with ECRI

Over the period 2020-2021, the High Commissioner took part in the work of the European Commission against Racism and Intolerance (ECRI) on three occasions, at annual seminars held for equality bodies and anti-discrimination bodies from the 47 Member States of the Council of Europe. It also helped prepare the report on the 6th monitoring cycle for the Principality.

> The High Commissioner attends ECRI seminars

In 2020, the annual seminar was organised as a webinar, on the theme “Joining Forces to Communicate the Equality and Diversity Message”. During the event, the speakers, among whom were a number of European experts, particularly emphasised the importance of supporting communications policies using strategic tools to enable broader awareness-raising targeting a variety of audiences, including young people, through special links with traditional media outlets as well as positive use of the internet and social media.

In 2021, the seminar was again held online, this time on the theme “Joining Forces to Promote and Protect the Human Rights of LGBTI Persons”. The seminar heard accounts from refugees whose human rights had been infringed on the grounds of their sexual orientation or gender identity, along with analyses by experts in European law. The result was a highly productive dialogue on the significant discrimination risks that continue to be faced by members of the LGBTI community, including from threats made on social media.

To move forward towards the full promotion of LGTBI rights, ECRI stressed that there was a shared responsibility to fight the inequalities experienced by LGBTI people, and that it was important to work together on joint actions at the international and local levels.

> The High Commissioner takes part in ECRI’s monitoring process

On 31 May 2021, the High Commissioner hosted an ECRI delegation as part of preparations for the upcoming monitoring report on the Principality. The High Commissioner reported the recommendations it has issued as part of its antidiscrimination role.

Following its visit to Monaco, the delegation noted that progress had been made since the previous assessment in 2015, and also that measures were still needed in some areas, including moves to strengthen the role of the High Commissioner[19].

19. The ECRI report on Monaco (6th monitoring cycle) was adopted on 29 March 2022 and published on 9 June 2022. It can be downloaded at the following address: https://rm.coe.int/quatrieme-rapport-de-l-ecri-sur-monaco/1680a6d5e8

V | International

Maintaining the High Commissioner’s presence on the international stage during the pandemic

The health crisis considerably complicated the process of maintaining international relations, with the various health and travel restrictions introduced in almost every country of the world obviously having a major impact on the agendas of regional and international organisations.

Yet these organisations, like the High Commissioner, were able to adapt to the difficult circumstances by holding meetings and discussions online or in hybrid formats. To ensure it remained present on the international stage and continued contributing to debates on good governance, the High Commissioner quickly became proficient in the use of these new communication media and developed its capabilities in the area of new technologies, something that represented a real challenge for the institution, given its small workforce.

The Monegasque ombudsman was thus able to take part in meetings, whether through the specialist networks of which it is a member (the Association of Ombudsmen and Mediators of La Francophonie - AOMF, and the Association of Mediterranean Ombudsmen - AOM), or by joining human rights research groups, on a more occasional basis.

Finally, the AOMF Meeting held in Monaco in July 2021, on the role of ombudsmen in protecting the rights of future generations, was the highlight of the High Commissioner’s international agenda in 2020-2021.

A | Peer-to-peer cooperation

> AOMF: the Monaco Meeting

Sensitive to the growing social and environmental crises that threaten to impact the lives of young people and future generations irreversibly, the High Commissioner suggested that the AOMF should consider the particular role that independent human rights bodies could have to play in defending environmental rights and the rights of future generations more generally.

This proposal reflected the plethora of international news stories about unprecedented legal rulings in Germany, Belgium and France in particular, in response to claims brought by citizens’ groups aiming to force States to speed up the adoption of measures to fight climate change.

The theme was taken up by the board of the Francophone network, of which the High Commissioner has been a member since 2018, and the AOMF organised a meeting in Monaco on 12 and 13 July 2021, in partnership with the High Commissioner. The event was held in a hybrid format, with some delegates attending in person and others by video-conference, due to the health crisis.

Opened by H.S.H. Prince Albert II, whose commitment to preserving ecosystems and biodiversity is well known, the event brought together 34 independent rights protection bodies from 25 French-speaking countries, alongside representatives of the international organisations invited (the OIF and the Council of Europe’s Venice Commission), and a panel of experts comprising scientists, academics, and specialist practitioners.

A Declaration was voted on at the end of the meeting, to take stock of the reflections undertaken and to propose possible solutions aimed at a further consideration and at the protection of future generations.

In particular, the rights protection bodies which signed the Declaration committed to developing their expertise with the legal tools already available in order to establish a cross-generational approach to certain rights (right to life, dignity, physical integrity, health, precautionary principle, etc.), with the aim of taking better account of long-term social justice when analysing the claims referred to them.

They also called for the network's members to look at ways of overcoming the conflicts that may exist between the defence of the common good (imposing restrictions on individual freedoms) and the protection of fundamental rights (which implies ensuring the safeguarding of these same freedoms), in order to promote harmonious action to protect the environment and human rights, which form an indivisible whole.

They invited States and Governments to consider creating an effective and ambitious legal framework to better acknowledge and protect the rights of future generations, and to look at granting mediators and ombudsmen special supervisory powers, to ensure that the interests of future generations are properly considered and protected, or alternatively, to set up specialist mediators or ombudsmen with these powers.

The Monaco Declaration represented a legal and political innovation, which was highlighted at a side event at the Meeting of the Parties to the Aarhus Convention held in Geneva in October 2021.

MONACO DECLARATION

We, Mediators and Ombudsmen, members of the Association of Ombudsmen and Mediators of La Francophonie (AOMF), gathered in Monaco on 12 and 13 July 2021 to explore the role that our institutions may be called upon to play in the protection of the rights of future generations, in the face of the acceleration on a global scale of crises, in particular relating to the environment, migration and society, threatening to irreversibly jeopardise the prospects, rights and future of the generations of tomorrow;

RECALLING, WITH REGARD TO THE PRINCIPLES GOVERNING OUR INSTITUTIONS:

- The Bamako Declaration, adopted in 2000 by the Heads of State and Government where French is an official language, specifically on the commitments made with regard to the promotion of an internalised democratic culture and full respect for human rights;

- The principles on the protection and promotion of the institution of the Ombudsman (*Venice Principles*), adopted by the Venice Commission at its 118th plenary session on 15 and 16 March 2019 and endorsed by the Committee of Ministers of the Council of Europe at the 1345th meeting of Ministers' delegates on 2 May 2019 and by the Parliamentary Assembly in its PACE Resolution No. 2301 (2019) of 2 October 2019, and, jointly, Resolution 75/186 (16 December 2020) adopted by the United Nations General Assembly, entitled *The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law*, setting out the international benchmark for ombudsman and mediator institutions and calling on States and governments to strengthen their role and independence;

- The Namur Declaration adopted on 9 November 2018 by the AOMF General Assembly, calling specifically for the *"promotion and achievement of an inclusive society, where every person, regardless of their origin, circumstances or orientation, benefits from the protection of the State, from interpersonal solidarity and from respect for their fundamental rights"*;

RECALLING, WITH REGARD TO THE IMPERATIVE FOR THE PROTECTION OF FUTURE GENERATIONS:

- The Stockholm Declaration on the Environment adopted on 16 June 1972 by the United Nations Conference on the Human Environment, proclaiming the solemn duty of Man to protect and improve the environment for the present and future generations (principle 1), and to preserve natural resources for the benefit of the present and future generations (principle 2);

- The Rio Declaration on Environment and Development adopted on 12 August 1992 by the United Nations Conference on Environment and Development, proclaiming that the right to development must be realised in a manner that equitably meets the development and environmental needs of the present and future generations (principle 3);

- The 2013 report of the Secretary-General of the United Nations on *Intergenerational solidarity and the needs of future generations*, drawn up in accordance with §86 of Resolution 66/288 (11 September 2012) adopted by the General Assembly of the United Nations, entitled *The future we want, highlighting the need to promote intergenerational solidarity for the purposes of sustainable development, taking into account the needs of future generations*;

- The Sustainable Development Goals (SDGs), collated in the 2030 Agenda adopted in September 2015 by all UN Member States at the UN Summit on Sustainable Development in New York City;

- The Declaration on the Responsibility of the Present Generations Towards Future Generations, adopted on 12 November 1997 by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO);

- General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, adopted on 30 October 2018 by the UN Human Rights Committee, specifically §62 thereof, affirming that: "Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life" and recalling that "obligations of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law";

ATTENTIVE TO:

- The concerns of citizens, expressed in particular by the youngest, who, fearing for the future, are denouncing all over the world the inertia of government authorities in the face of the climate and environmental emergency and the lack of effective measures to repair and prevent ecological damage, by questioning decision-makers on their responsibilities towards future generations;

- Alarming unanimous findings by both the Intergovernmental Panel on Climate Change (IPCC) and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) on the acceleration of climate and biodiversity degradation endangering in the short term the habitability of many regions of the world;

- Populations more particularly affected by the consequences of climate change and especially those suffering from uprooting and exile and those who are in the front line to welcome the migratory flows resulting therefrom;

AWARE:

- Of the urgent need to act to limit as far as possible the irreversible nature of the damage currently being caused to the environment and ecosystems, to preserve the conditions of habitability of the planet, which is the essential prerequisite for the protection and maintenance of the effective exercise of fundamental rights, in respect of which in particular the right to life and health;

STRESSING:

- The specific difficulties raised by the issue of the representation of future generations, who are by definition not yet legal entities and therefore do not have an interest in acting as currently commonly understood in our legal systems, and the need to rapidly find the best way to make their voices heard and to take into account their interests and needs;

- The essentially moral scope of the principle of the responsibility of the present generations towards those to come and the need to define the very concept of future generations, and to anchor it legally to ensure it can be better taken into account;

- The applicability of most of our current instruments to all present generations, including the youngest, ensuring we can commit henceforth to a truly intergenerational defence of rights, oriented towards the future;

- The multidimensional nature of the right of future generations under construction, at the junction of environmental protection, the protection of children and young people and, more broadly, respect for and preservation of the fundamental rights of individuals;

CONSIDERING:

- That ombudsmen constitute a natural link between citizens and government authorities in that they embody a grassroots vision facilitated by their proximity to citizens and have institutionalised access to political decision-makers;

- That ombudsmen play an essential role in their countries in the promotion of the rule of law and the protection of fundamental rights and freedoms;

- That the principles of neutrality and independence underlying their operation are major assets to take effective action in a field where the economic and political stakes are such that the risks of conflicts of interest are very marked;

- That, given the experience gained in their mission to handle complaints amicably, the Ombudsmen are specifically able to find a balance in complex situations where individual interests and the general interest are weighed up;

- That, as part of their mission to promote rights, Ombudsmen can act proactively and prospectively by making proposals for reform and by raising awareness among decision-makers of the importance of certain issues;

NOTING HOWEVER:

- That while many of the countries represented in the AOMF already guarantee the right of their citizens to a healthy environment at a constitutional or legislative level, very few have yet enshrined in their legal order a principle of responsibility towards future generations;

- That while some Ombudsmen have specific missions to protect children's rights, very few yet have special remits to protect the environment and/or the rights of future generations;

- That the limitations that may result from the mandates of our institutions – which differ according to the legal systems and the Member institutions, with specific regard to their ability to act on their own initiative, to enter into dialogue with private entities, to exercise a right of follow-up on the recommendations made or even to request or impose sanction – may constitute hindrances to effective action to protect the rights of future generations;

- That tensions are likely to arise between the mission of defending the individual rights of citizens in their relations with the administration conventionally assigned to the Ombudsman and the objective of preserving a healthy environment for future generations;

WE COMMIT TO:

1. Training ourselves in the challenges and specificities of protecting future generations, in particular by:
    - an increase in expertise in the legal tools that can already be mobilised in the context of a transgenerational interpretation of certain rights (right to life, dignity, physical integrity, right to health, precautionary principle, etc.) so as to better integrate a long-term dimension in the analysis of the complaints referred to us or the issues we deal with and in the recommendations we formulate,
    - the development of a reflection aimed at overcoming the conflicts that may exist between the defence of the common good (imposing restrictions on individual freedoms) and the protection of fundamental rights (involving ensuring the safeguarding of these same freedoms), in order to promote harmonious action to protect the environment and human rights, which form an indivisible whole,
    - sustained dialogue and cooperation between institutions within the MF in this field, specifically taking into account the trans-state dimension of the subject;
2. Participating, alongside the other stakeholders, in raising the awareness among the authorities of the need to intensify the effort to preserve the common heritage of humanity in order to guarantee a healthy environment for future generations without compromising their freedoms and taking into consideration the social justice issues related thereto;
3. Stimulating debate and making proposals on the concrete role that independent institutions such as Ombudsmen and Mediators could play in this context, and the institutional changes that should result therefrom;

WE INVITE THE ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (O.I.F.) AND THE PARLIAMENTARY ASSEMBLY OF LA FRANCOPHONIE (A.P.F.) TO:

1. Assign priority in their work to the protection of the rights of future generations;

WE INVITE STATES AND GOVERNMENTS TO:

1. Reflect on the establishment of a salient and ambitious legal framework to better take into account and protect the rights of future generations;
2. Consider granting a specific remit to broad-based Mediators and Ombudsmen to ensure that the interests of future generations are taken into account and defended, or alternatively to establish specialist Mediators or Ombudsmen with the said remit;
3. Realise the reflections initiated at the Earth Summits in Rio in 1992 and Rio+20 in 2012 and set up at UN level a High Commissioner for future generations with officers at a regional level.

> AOM General Assembly in Nafplio

The 11th Meeting of the Association of Mediterranean Ombudsmen (AOM) was held in Nafplio (Greece) on 4 and 5 October 2021. The High Commissioner for the Protection of Rights, which has been a member of the AOM since 2016, took part in this event organised around a thematic conference in advance of the General Assembly.

The aim of the meeting was to share the national experiences of members on the issues of regulating human movement and climate disruption, the two challenges that are today driving discussions on how shared governance might work in the Mediterranean.

> Discussions on best practices in Eurasia

The Russian ombudsman, as a new member of the AOM, had invited the members present at the Association's 11th Congress to attend the 5th International Scientific and Practical Conference entitled "Human rights protection in Eurasia: exchange of best practices of ombudsmen", by video-conference.

The Covid crisis was a central theme in the presentations, with the speakers agreeing that it was now a priority to promote access to an efficient healthcare system. The particularly critical situation of vulnerable persons in a pandemic was highlighted, and issues relating to the treatment of the elderly and disabled were identified as increasingly important priorities in the day to day work of ombudsmen.

B | Relations with international organisations

> Council of Europe: meeting with the delegation from the Committee for the Prevention of Torture (CPT)

Made up of independent, impartial experts, the CPT is a prevention mechanism which seeks to assess how people deprived of their liberty are treated in the Council of Europe's member States and, where necessary, to strengthen their protection against torture and inhuman or degrading treatment.

As part of the CPT's third periodic visit to Monaco, which took place in September 2020, a meeting was held with the High Commissioner, to review the positive steps that had been taken in the prison environment in the wake of the High Commissioner's recommendations in response to complaints made by prisoners, and the areas of concern that remained.

The Office of the High Commissioner has received nearly 20 complaints from prisoners jailed at Monaco Remand Prison since 2017.

In its capacity as an independent human rights institution, the Office has worked with the prison authorities to investigate these complaints, since Monaco does not currently have a specific national mechanism for preventing ill-treatment.

Despite both the High Commissioner and the CPT calling for the Principality to ratify the Optional Protocol to the Convention against Torture (OPCAT), which invites Member States to adopt independent mechanisms to monitor all places in which people are deprived of their liberty, the Monegasque Department of Justice has yet to approve such a move, although it has indicated that it is looking at the possibility.

> UN: Resolution 75/186 establishes the Venice Principles as a new global benchmark for mediators

The High Commissioner took part in an international online seminar held on 7 April, to discuss the recent adoption by the United Nations General Assembly of Resolution 75/186 on “the role of ombudsmen and mediator institutions in the promotion and protection of human rights, good governance and the rule of law”.

The event, which was organised by the Mediator of the Kingdom of Morocco in cooperation with the Venice Commission, was attended by more than 180 participants on five continents, including ombudsmen, mediators, and representatives of the UN, the Council of Europe, and the Venice Commission.

The Resolution saw the United Nations endorse the “Venice Principles” on the protection and promotion of the mediator/ombudsman institution, established by the Venice Commission and adopted by the Council of Europe in 2019. As a result, these principles are now the new global standard, setting out the legal framework and conditions in which ombudsmen and other institutions concerned with the rule of law work for the benefit of citizens.

The High Commissioner believes it is particularly important to expand the current process of reflection on changes to the Sovereign Ordinance that created it, to take account of the Venice Principles and their impact on the way the Monegasque institution functions, with the aim of anticipating calls for Monaco to bring its practices into line notably with Principle 5, which requires States to “adopt models that fully comply with these Principles”.

Appendix 1

Summary of Recommendations

Summary of Recommendations

2021

General recommendations	(Article 23(2) of Sovereign Ordinance No. 4,524 of 30 October 2013)	Outcome
Economic Activity	Abandon the practice of requiring professional licence applicants resident in France to hold a full, clean driving licence in order to be issued with a professional licence in Monaco	**Adopted**
Covid	End the measure extending the health pass requirement to include certain workers essential for the continuity of vital public services	**Adopted**
	Respect parental rights with regard to COVID-19 vaccination for teenagers	**Adopted**
	Use transparent inclusive masks to take into account the specific needs of hearing-impaired persons in the context of the Covid-19 health crisis	**Adopted**
Prison conditions	Allow prisoners undergoing psychiatric treatment regular access to an outdoor space	**No response**
	Respect the principle of personal autonomy in the treatment of prisoners on hunger strike	**No response**

2020

General recommendations	(Article 23(2) of Sovereign Ordinance No. 4,524 of 30 October 2013)	Outcome
Employment	Introduce legal rules to govern police checks carried out when employing Monegasque nationals	**Not adopted**
	Establish a legal framework governing the nature and effects of formal cautions placed on police records	**Not adopted**
	Create a legal framework to guarantee that checks by the authorities on accreditations issued to journalists by private organisations are foreseeable and transparent	**Not adopted**
Social protection	Resolve the situation of reconstituted families with regard to social protection (father with SPME/ mother with CCSS), owing to the dual exclusion in law	**Adopted**
	For the family benefits service in the CAMTI social security scheme, do not treat parents who are in a couple but living apart in the same way as married or cohabiting couples	**Adopted**
Effective remedies	Update police practice regarding the issue of certificates for complaints and full copies of complaints	**Adopted**
	Extend the deadline for appealing against medical administrative decisions	**Not adopted**

Appendix 2

Ethics Charter

CHARTER OF ETHICS AND GOOD CONDUCT OF THE HIGH COMMISSIONER FOR THE PROTECTION OF RIGHTS

Adopted on publication of the Annual Report 2017-2019

PREAMBLE

Having regard to the "Principles on the Protection and Promotion of the Ombudsman Institution" adopted by the Venice Commission at its 118th plenary session on 15 and 16 March 2019;

Having regard to the Guide to the Deontological Principles and Values of the Mediator/Ombudsman and its Staff, laid down and adopted by the members of the Association des Ombudsmans et Médiateurs de la Francophonie (AOMF) on 7 November 2018;

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

Whereas pursuant to this Ordinance, the High Commissioner is appointed by H.S.H. the Sovereign Prince before whom he or she swears an oath, and in carrying out his or her tasks, receives no orders, instructions or directives of any kind whatsoever;

Whereas this Ordinance guarantees the High Commissioner the neutrality, independence, and impartiality required to carry out his or her duties;

Whereas the High Commissioner places his or her expertise at the service of the wider public interest and respect for the fair and equal treatment of individual and legal entities;

Whereas, owing to the Principality's small size and specific features, the risks of prejudice and conflicts of interest are particularly significant;

Whereas the role entrusted to the High Commissioner implies that he or she must in all circumstances demonstrate exemplary behaviour to particularly high values and ethical standards;

Whereas individuals who contribute to the High Commissioner's work, under the authority of the High Commissioner, must be required to demonstrate the same exemplary behaviour, in order to ensure public confidence in the institution;

The High Commissioner has adopted this Charter of Ethics and Good Conduct.

PURPOSE

In light of the obligations imposed by Sovereign Ordinance no. 4,524 of 30 October 2013, this Charter sets out the values and principles that must guide the conduct of the High Commissioner and his or her staff in all circumstances.

DEFINITIONS

Ethics refers to the moral standards identified by the ombudsman in its professional practices, taking into consideration the values of transparency, justice, fairness, impartiality, independence, integrity, confidentiality, rigour, and respect that govern its activities.

Good conduct refers to the behaviour resulting from the adoption of ethical principles.

The expression "High Commissioner's personnel" encompasses both the High Commissioner and his or her members of staff. "*Staff*" refers to any personnel working under the authority of and reporting to the High Commissioner, regardless of the nature of their employment (temporary, permanent, trainee).

GUIDING PRINCIPLES AND VALUES

Upon taking up their roles, as required by Article 6 of Sovereign Ordinance no. 4,524, the High Commissioner's personnel undertake to abide by the values and principles described below.

INDEPENDENCE

The High Commissioner's personnel carry out their tasks in an entirely independent manner at the direction of the High Commissioner. They neither receive nor accept any external instructions or orders of any kind, from anyone whatsoever.
They handle cases without being subject to any form of influence, whether political, economic, social, or media-related.

IMPARTIALITY

The High Commissioner's personnel strive to prevent any real or perceived conflicts of interest. If the High Commissioner believes that personal interests or current or past links might actually influence their judgment, or give the appearance of influencing their judgment, the member of staff concerned must hand the case on to one of the colleagues. If a staff member is affected by a real or perceived conflict of interest, he or she must immediately inform the High Commissioner, who will take appropriate steps to ensure that the case is handled in a properly impartial manner.

NEUTRALITY

The High Commissioner's personnel must ensure that all parties are treated fairly, without prejudice or preconceptions. They must act responsibly and with due discernment in looking for balanced and lasting solutions, taking into account the rights and interests of all parties.

PUBLIC SERVICE

In carrying out their duties, the High Commissioner's personnel must always keep in mind that they are acting in the wider public interest, and that their role is to seek to resolve conflicts in a peaceful manner.

The High Commissioner and his or her staff must show empathy and kindness, and always treat others with respect and courtesy.

They must be prepared to listen to all those with whom they come into contact, and demonstrated thoroughness, open-mindedness and creativity in looking for solutions that respect the rights of individuals and the wider public interest.

They must strive to process the cases submitted to them within a reasonable period of time.

COMPETENCE

The High Commissioner's personnel have a duty to develop and update their knowledge and skills, for example through courses of training appropriate for their needs and the for the requirements of their work.

They must keep abreast of social and cultural developments.

DUTY OF RESTRAINT

Notwithstanding their guaranteed freedom of conscience, the High Commissioner's personnel have a duty not to show their philosophical, political or religious beliefs in the course of their functions.

The High Commissioner's personnel enjoy freedom of association. However, they must exercise discernment before accepting any office or responsibility within an organised group, and if they do accept such roles, they must perform them with proper restraint and conscience, while refraining from adopting any position that might compromise their neutrality.

DISCRETION

The High Commissioner's personnel have a duty to treat all confidential information that comes into their possession in the course of their functions with the strictest discretion. This duty, which particularly concerns the privacy of individuals who call upon the institution, continues to apply to personnel even after they have left the service of the High Commissioner.

DIGNITY

In the course of their activities, including away from the workplace, the High Commissioner's personnel must at all times behave in an appropriate manner in public, and avoid any situations which could harm the institution's image.

INTEGRITY

In the course of their functions, the High Commissioner's personnel may not seek or accept any advantage, whether directly or through an intermediary, with the exception of purely symbolic gifts of low value, given as a courtesy.

The High Commissioner keeps a special register containing details of all gifts given or received - including from suppliers - and indicating the names of the recipient and the donor, the circumstances in which the gift was given, and how it was used or disposed of.

WORKING PRINCIPLES

CONFIDENTIALITY

Procedures before the High Commissioner are confidential. Persons who refer claims to the Institution receive a guarantee that the only information which will be used and disclosed is that needed to obtain explanations from the party against the whom the grievance is raised. Information will be shared or used only where strictly necessary in order to investigate their grievance, in consultation with both parties, and only with their prior consent.

The High Commissioner never discloses written information received from either party in the course of mediation. He or she may broadly indicate the content and meaning of such information, in an objective manner, but only in order to ensure that each party clearly understands the other's viewpoint, and the considerations that form the basis for the opinion issued by the High Commissioner at the end of the mediation procedure.

PUBLICATIONS

The High Commissioner provides the public with general information about its activities, in the form of an annual report and via the Institution's own official website.

The High Commissioner also or she takes part in public debate by appearing and speaking publicly, and issuing opinions to authorities which request them under Article 33 of Sovereign Ordinance no. 4,524 of 30 October 2013.

ACCESSIBILITY

The High Commissioner is committed to ensuring that it can be approached and contacted easily by parties involved in mediation cases, and by members of the general public. Where users have specific requirements in the course of their dealings with the High Commissioner, the Institution makes every effort to provide them with adequate resources.

The High Commissioner's personnel take care to ensure that they communicate in a clear and intelligible manner appropriate for the audience concerned.

Appendix 3

Sovereign Ordinance No. 4,524 of 30 October 2013

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 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 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 High Commissioner; Marina CEYSSAC, High Commissioner; Méryl THIEL, Legal Expert responsible for International Relations; Marisa BLANCHY, Assistant.

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

1, promenade Honoré II
98000 MONACO
Tel.: +377 97 77 39 20
Email: contact@hautcommissariat.mc
www.hautcommissariat.mc