

# THE PRINCIPALITY OF MONACO

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*Despite its limited size and population, the Principality of Monaco has all of the characteristics of a full-blown State, both in terms of internal sovereignty, construed as the power to make provision in relation to its own legal order through the adoption of legal norms, and also in terms of external sovereignty as independence from other foreign States. This paper provides a legal and historical background to the constitutional law of Monaco; it also considers the influence on that constitution of the treaty relationships with France and the membership of international organisations.*

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*En dépit de sa taille réduite et de sa population limitée, la Principauté de Monaco réunit toutefois toutes les conditions pour être considérée comme un État souverain à part entière.*

*Pouvant librement légiférer pour organiser son ordre juridique interne, la principauté de Monaco est aussi considérée comme l'égale des autres nations sur le plan international.*

*Cet article offre dans un premier temps aux lecteurs un panorama des fondements juridiques et historiques du droit constitutionnel de la Principauté; puis examine, dans une seconde partie, quelles sont les conséquences des relations conventionnelles particulières qui lient cet État à la France ainsi qu'aux institutions internationales.*

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*Il testo fornisce una panoramica generale dell'ordinamento del Principato di Monaco, prendendo le mosse dalla ricostruzione delle vicende storiche che hanno condotto alla configurazione attuale del Piccolo Stato.*

*Dopo l'exkursus storico, si passa all'analisi della Costituzione del Principato di Monaco, emanata dal Principe Ranieri III nel 1962, ponendone in evidenza le*

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*caratteristiche fondamentali e soffermandosi sui principali diritti e libertà riconosciuti ai monegaschi e agli stranieri.*

*La trattazione prosegue, poi, con l'identificazione delle fonti del diritto monegasco, con riferimento anche alle principali influenze esercitate da Paesi stranieri, in particolar modo dalla Francia, sulla legislazione del Principato.*

*Il passaggio successivo riguarda la descrizione dei tre Poteri.*

*Infine, viene offerta una panoramica sulla collocazione del Principato di Monaco nel contesto internazionale.*

## **I THE HISTORY OF THE PRINCIPALITY OF MONACO**

The historical origins of the Principality of Monaco can be traced back far into the past. In ancient times, the rock of Monaco and its natural harbour offered refuge for primitive peoples.

From the 6th century BC the territory was occupied by the Ligurian Monoikos tribe, from which the current name of the Principality is in all likelihood derived.

According to another theory, the city's name is derived from the temple to Hercules erected by the Phoenicians who lived in the territory comprising the current Principality between the 8th and 6th centuries BC.

Leaving aside the origins of the city's name, it must be noted that its territory has been occupied by various peoples over the course of the centuries, who clashed with one another for control over the rock. In particular, during the 8th century BC the area was occupied by the Greeks, albeit indirectly. It was they who founded the city of Phocaea in modern-day Turkey, the inhabitants of which were particularly resourceful, above all in trade and seafaring, founding numerous colonies throughout the Mediterranean. It was during one of these journeys that, according to Herodotus, the Phocaeans also reached Monaco. Subsequently, in 122 BC, the Monegasque territory was occupied by the Romans, who called the area *Portus Herculis Moneci*.

From 1000 AD, Monaco was inhabited by Saracens, Genoese and pirates, each of which dominated at various points in time, until the ascent of the Genoese Grimaldi family, which has ruled the city almost without interruption until the present day, transforming it into a Principality.

In 1162, Frederick Barbarossa granted dominance of the sea in the area to the Republic of Genoa. From this moment until 1419, the two Genoese factions of Guelphs and Ghibellines fought bitterly to secure control over the rock. It is during these struggles that the true history of the Principality of Monaco started on 8

January 1297.<sup>1</sup> On that date, Francis Grimaldi, a Genoese from the Guelph faction, having entered the rock of Monaco disguised as a Franciscan monk, removed it from the dominance of the Republic of Genoa and secured its possession for the Grimaldi family. From this moment onwards, the fate of the city became intertwined with that of the Genoese noble family. The Grimaldi family have been the undisputed rulers since 1297, except between 1793 and 1814, ie during the French Revolution and Napoleon's Empire.

The ruse followed by Francis Grimaldi, which resulted in his nickname of "le Malice" (ie the crafty one), is still evoked in the Grimaldi emblem,<sup>2</sup> which is comprised of two monks brandishing a sword who hold up the princely coat of arms.

Charles must also be acknowledged for having annexed further territories to the Principality, including most importantly Cagne, Villeneuve-sur-Vence, Menton and Roquebrune. In addition, Charles established the so-called *droit de mer* ie the payment of a tax in order to pass through the sea in front of the rock. However, the hold of the Grimaldi family over Monaco could still not be considered to have been solid. In 1357, during his second term as Doge, Simon Boccanegra reconquered Monaco once again. Monaco was only returned to Grimaldi family control in 1419 thanks to the efforts of Ranier II.

The end of all Genoese claims over Monaco came with Lambert Grimaldi, who in 1489 obtained recognition of the independence of Monaco as a State by King Charles VIII of France and Duke Charles I of Savoy.

Its independence was then reconfirmed with the establishment of the perpetual alliance with France by Letters Patent issued by Louis XII in 1512, in which the French King recognised the full sovereignty of Monaco.

The period of friendly relations between France and Monaco, which started with the Letters Patent in 1512, came to an abrupt end following the change in the international policy of Francis I when forced to confront Charles I of Spain, the future Emperor Charles V.

In 1524, Augustine Grimaldi - Bishop of Grasse and tutor of the heir to the throne Honoré - concluded a treaty on the advice of Pope Clement VII which turned Monaco into an imperial fiefdom, marking the start of the Spanish

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1 R Johannet "Survol historique de Monaco" Revue des deux mondes, 1.8.1963, p 430.

2 In spite of this, historians regard Charles Grimaldi, the son of Ranier (cousin of Francis "the crafty one") as the true founder of the Principality. It was in fact he who reconquered the rock in 1331 after it had been re-occupied by the Republic of Genoa.

protectorate which lasted for 116 years. The Protectorate brought an undisputed period of peace, although it had notable negative ramifications for the state finances due to the failure by the Spanish to respect the clause that required them to bear the cost of maintaining the military forces.

The Principality was able to put an end to the Spanish Protectorate only after Richelieu revived the quarrelling between France and Spain and the latter launched an oppressive policy against Monaco. In view of this fact, Prince Honoré II – before acceding to that title – established a new alliance with France.<sup>3</sup>

The Prince of Monaco was thus granted the Duchy of Valentinois, the County of Carladés and the Marquisate of Baux. From this time, relations between France and Monaco continued to develop.<sup>4</sup>

In fact, the French Protectorate established by the Treaty of Péronne, which recognised the sovereignty and independence of the Principality, lasted for 150 years. The Revolutionary Convention of 14 February 1793 ordered the annexation of the Principality to France, thus transforming it into a simple municipality within the Alpes-Maritimes under the given name Fort d'Hercule. The subjection of Monaco to French domination led to the arrest of the princely family and the loss of the Crown's assets.

The Principality returned to the international scene and regained its independence by the first Treaty of Paris of 1814, which ordered the restoration of the Principality to the status it had on 1 January 1792. Honoré V succeeded to the throne. He ruled from 1819 until 1841, having established a strictly absolutist regime, concentrating in his hands also legislative power which task was facilitated by the absence of a representative assembly. This is a clear indication of the influence that France had over the Principality, including in relation to its constitutional structure.

Subsequently, by the second Treaty of Paris of 20 November 1815, the Principality was placed under the protection of Victor Emmanuel I, King of Sardinia. On 8 November 1817 the Treaty of Stupinigi was concluded between the Principality of Monaco and the King of Sardinia with the aim of regulating relations between them, above all in economic terms. That treaty remained in force until 1860.

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3 Treaty of Péronne of 14 September 1641 signed by Prince Honoré II and Louis XIII.

4 R Johannet, above n 1, at 434.

Starting from 1848, the Principality of Monaco fell under the sway of the liberal movements that were starting to spread throughout Europe, which led Prince Florestan I to grant certain constitutional concessions to his subjects.

On 25 February 1848 a Constitution was adopted, which was inspired by provisions that would shortly afterwards be incorporated into the Albertine Statute. In particular, that embryonic constitutional framework, which was somewhat liberal in tone as regards individual freedoms, religious freedom, freedom of thought and freedom of the press, established a bicameral Parliament comprised of an upper house and an elected assembly. The Parliament exercised legislative power alongside the Prince and also had the power of initiative.

During 1848 the Principality suffered the loss of two important territories: Menton and Roquebrune decided to leave the Principality, first establishing themselves as free cities and subsequently subjecting themselves to the King of Sardinia.

Following a period during which sovereignty over the two cities was contested by various powers, Prince Charles III signed a treaty in 1861 under which he renounced all rights over the cities in favour of France in exchange for a payment of 4 million francs and recognition by France of the independence of the Principality. This treaty contains the first formal recognition of the independence of the Principality, which became finally free of any protectorate relationship with other foreign States. That treaty however laid the basis for a variety of relationships between the Principality of Monaco and France; they continue to this day and amount to an arrangement that is not dissimilar to a protectorate.

With the departure of Menton and Roquebrune, Monaco lost 80% of its territory, along with its richest areas. It was precisely in order to address this situation that tourism developed within the Principality promoted by Prince Charles III. Amongst other things he founded the famous casino, the success of which was secured due to the fact that gambling was illegal in France. The gambling industry was managed by the Société des Bains de Mer et du Cercle des Etrangers de Monaco, which, in exchange for exclusive rights over the management and organisation of the industry, guaranteed a massive annual cash payment to the Principality as well as various public services, such as lighting, water supply, road construction, the operation of a hotel and the publication of the *Journal de Monaco*.

The establishment of the casino had the benefit of resolving many of the problems that had arisen in the Principality following the loss of the rich territories of Menton and Roquebrune, but on the other hand it led to the creation of an upper middle class within the Principality comprised of businessmen and other notables

who harshly criticised the Prince's dirigiste approach and the predominant role reserved to Monegasques. The Monegasques were fewer in number than the foreigners with financial interests in the Principality.

In fact in constitutional terms during that period the Principality lacked any representative institutions and power was concentrated entirely in the hands of the Prince who had full sovereign authority. The Prince was assisted in the business of government by a Governor-General.

These absolutist tendencies were held in check by the establishment in 1857 of the Council of State, which was granted the right to be consulted concerning legislation and framework Ordinances, although these were subsequently to be approved by the Prince. However, the creation of the Council of State was not sufficient to calm the protests that were causing upheaval within Monegasque society. A more tangible solution to the problem came with the adoption in 1910 of a number of Ordinances introducing universal suffrage for elections to the Communal Council which however remained a purely consultative body.

Even that concession was considered to be inadequate in order to counter the dirigiste powers of the Prince. A true turning-point came with the promulgation, by Prince Albert I, of the Constitution of 5 January 1911 which was based on a draft prepared by a group of French lawyers.<sup>5</sup>

In an attempt to find a compromise solution, although full powers were still vested in the Prince, the National Council was established, as a kind of Parliament that would share legislative authority with the Sovereign.

In addition, a number of local elected representative bodies were created, which were charged with the task of upholding the interests of the three municipalities of the Principality: Monaco, La Condamine and Monte Carlo.

In 1917 the Constitution was amended to reflect changes brought about by the First World War. The text adopted provided for a constitutional monarchy within which the absolute sovereignty of the Prince was reasserted, subject to certain constraints. In particular, though the Prince remained the head of the executive branch, he was assisted in the business of government by a Council of Government comprised of a Minister of State who was to work closely with the Prince, and three other councillors. The Constitution made no provision as regards the procedures for appointing the Minister of State and the councillors. Decisions within the Council were taken by majority vote, with the Minister of State holding a casting vote. However all decisions ultimately remained a matter for the Prince.

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5 Renault, Weiss and Roche.

The legislative power was exercised jointly by the Prince and the National Council. The National Council lacked any power of legislative initiative; that power was reserved to the Prince. At most, the National Council could request the sovereign to exercise his power of initiative. The National Council was comprised of 12 elected members, and one special college which was in turn elected - albeit in part (21 members out of 30) - by universal suffrage.

A genuine shift towards the rule of law came with the provision for a series of individual rights and freedoms, starting from the recognition of the equality of all citizens before the law (art 5), along with the related prohibition on any discrimination. The rights recognised to citizens included individual freedom (art 6), the inviolability of the home (art 8), the inviolability of private property (art 9), religious freedom (art 10) and freedom of assembly (art 12). Significantly it stipulated that criminal offences and punishment could only be provided for by law (art 7). The task of protecting and upholding those rights and freedoms was vested in the Supreme Court.

Finally, the Communal Council (a single body for the entire Principality) was established on a decidedly more democratic basis; it was comprised of 15 members elected by universal suffrage and headed by a Mayor who remained in office for three-year terms. The Communal Council was charged with specific powers concerning, in particular, public services and construction.

Although the new Constitution made concessions to liberal tendencies, the following years were characterised by social upheaval and institutional battles, with the National Council calling for the establishment of a form of parliamentary government. These problems became more acute with the outbreak of the Second World War.

In the wake of the conflict, Prince Ranier III - who was inspired by a strong reformist spirit - was confronted by the need to modernise the Principality. Moreover, the Second World War had done nothing to change the stance of the National Council. The pressures exerted by and statements of position adopted by the legislative body evoked a tough response from Ranier III who eventually suspended the Constitution and dissolved both the National Council and the Communal Council. The solution to the stand-off between the institutions was found on 17 December 1962 with the promulgation of a new Constitution by Ranier III. That Constitution is still in force. The text of this Constitution maintains the constitutional monarchy intact, but it appears to be inspired by more strictly liberal principles. For example, it extended the right to vote to women, expanded the catalogue of rights and provided for a clear separation between the public finances and the resources allocated to the royal household.

## II THE CONSTITUTION OF THE PRINCIPALITY OF MONACO

### A Characteristics and Constitutional Review

Although the Constitution contains significant concessions to liberal positions, above all in terms of the recognition of rights and freedoms, it maintains intact the basic structure of the constitutional monarchy, with a strong centralisation of powers in the hands of the Prince.

The Constitution adopted by Ranier III in 1962 falls squarely within the 19th century category of constitutions that are ultimately granted by virtue of the sole will of the sovereign. According to some commentators however, the fact that the National Council was also involved in the adoption of the Constitution, as the representative body of the people, has the effect of mitigating the unilateral nature of the Constitution, so that it is possible to classify it as a "consensual constitution". This aspect is claimed to be confirmed by the inclusion within the Constitution of a prohibition on its unilateral suspension by the Prince as well as by the vesting of the power to amend the Constitution not only in the Prince but also in the National Council.<sup>6</sup> As regards this aspect, it is important to stress that the Monegasque Constitution may be classified as a flexible constitution, as no provision is made for a more stringent legislative procedure for the approval of constitutional amendments.

The task of overseeing respect for the Constitution falls to the Supreme Court, the internal rules of which are entirely comprised of Ordinances adopted by the Prince. The Court has the following functions:

- prior review of the constitutionality of the internal regulations of the National Council;
- review of acts with the status of law, albeit limited to respect for Title III of the Constitution, which is dedicated to rights and freedoms. This is a centralised form of review, which may be exercised directly, either on a mandatory *ex ante* basis or on a contingent *ex post* basis.

However, the power of review vested in the Supreme Court features some critical aspects, with the result that it cannot be regarded as being comparable *tout court* with modern constitutional courts. In particular, the restriction of the power of constitutional review only to violations of Title III of the Constitution gives rise to an inevitable gap in the protection of rights that - whilst not falling under Title III - are equally deserving of protection and guarantees.

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6 P Costanzo *La Costituzione del Principato di Monaco* (3rd ed, Giappichelli, Torino, 2006) 90.



## ***B Constitutional Freedoms***

On the issue of constitutional freedoms, it is clear from the wording of the Constitution that Monegasque citizenship is a prerequisite both for the exercise of political rights as well as for eligibility for certain social and civil rights, including freedom of assembly.

The system is based on a distinction between citizens and non-citizens, as is apparent from the opening provision of Title III which is dedicated to fundamental rights and freedoms. Article 17 of the Constitution provides that "All Monegasques are equal before the law. There is no privilege among them".

Also art 32 must be construed in the light of the distinction between citizens and non-citizens, which provides that "Foreigners enjoy all public and private rights in the Principality that are formally reserved to nationals". It is possible from this differentiation to understand why freedom of assembly is guaranteed only to citizens: it is a freedom right with a significant political element, given that it performs a complementary function to the exercise of political rights. The case law of the Supreme Court is also informed by this distinction, albeit with slightly less rigour, due to its recognition of the need to justify any difference in treatment by differences in circumstances.

The rights and freedoms recognised without distinction to Monegasques and foreign nationals include the inviolability of the home (art 21), freedom and confidentiality of correspondence (art 22), freedom of speech (art 23), religious freedom (art 23), freedom of association (art 30), the right to respect for private and family life (art 22), the inviolability of private property (art 24), freedom of work (art 25) along with trade union freedom and the right to strike (art 28).

Regarding other aspects, the Monegasque Constitution also incorporates many principles inherent in the rule of law, such as no punishment without law, the prohibition on the death penalty and on degrading penalties, the prohibition on retroactive criminal law and the guarantee of an independent and impartial tribunal established by law (art 20).

## ***C Constitutional Bodies***

In order to better understand the framework within which it operates, it is important to consider briefly some of the bodies provided for under the Constitution that assist the Prince in the government of the State, in most cases through the issue of non-binding opinions.

The first of these bodies is the Council of State, which performs a general consultative role in the formulation of opinions concerning Bills or proposed regulations of any type and concerning any act originating from the Government,

as well as any spending from the provisional state budget and the dissolution of the Communal Council. In the last two situations opinions must be obtained, but opinions are never binding. An opinion concerning governmental acts is given on request by the Prince or the Minister of State.

The Council of State is comprised of no more than 12 members, who are appointed for life by the Prince after hearing the opinion of the Minister of State and the Director of Judicial Services, who chairs the body. The Council meets on the initiative of its President or, in serious and urgent cases, on the initiative of two members.

Resolutions are adopted by a majority of the votes cast, and in the event of a tie the President has a casting vote. The Council of State is, with other bodies, involved in the appointment of members of the Supreme Court.

The second significant constitutional body is the Crown Council (arts 75 to 77). The Crown Council is comprised of seven members of whom four, including the President, are appointed directly by the Prince; the remaining three are appointed pursuant to a proposal by the National Council. The Crown Council performs a consultative function for the Prince in situations involving the "higher interests" of the State.

Whilst it is mandatory to obtain an opinion from the Council, the opinion is not binding in matters relating to the conclusion of international treaties, the dissolution of the National Council, measures relating to requests for naturalisation and the restoration of citizenship as well as the grant of amnesties and pardons. The Crown Council is convened by the Prince.

Finally, the Constitution makes provision concerning the Supreme Court, which is a kind of constitutional court.

The Supreme Court is comprised of five full members and two substitute members, all of whom are appointed by the Prince, although on the recommendation of different bodies. Specifically, two members are appointed on the recommendation of the National Council, two on the recommendation of the Council of State and the remaining three on the recommendation respectively of the Crown Council, the Court of Appeal and the Civil Court of First Instance. The President of the Supreme Court is appointed directly by the Prince. The Court sits as a plenary body when exercising its powers of constitutional review and resolving jurisdictional disputes. In administrative matters, it decides in administrative sections of three members. The administrative jurisdiction covers proceedings for annulment of sovereign Ordinances to enforce laws and all *ultra vires* decisions taken by various administrative authorities. In addition, it may

quash decisions of last resort taken by administrative courts and hear appeals for interpretation and petitions to review the validity of administrative decisions and sovereign Ordinances to enforce laws.

### ***D The Systems of State and Government***

Article 2 of the Constitution defines the Principality of Monaco as a hereditary constitutional monarchy. The Head of State is the Prince, who is succeeded by his direct legitimate descendants in order of age, affording priority to male descendants over female descendants at the same level.

The Sovereign is vested with significant powers which, in contrast to the position for other modern monarchies, are not merely formal. The Prince is assisted by elective assemblies, which in the main perform merely consultative functions, and in relation to particular issues.

Due to the significant powers vested in the sovereign, there is a clear contradiction between the State system and the governmental system inherent within the Monegasque legal order. Whilst in fact arts 2 to 6 of the Constitution establish the State as a liberal State governed by the rule of law based on the separation of the three traditional powers, the governmental system does not charge representative bodies with upholding the system of rights and interests that are ordinarily inherent within that type of state.<sup>7</sup>

A factor of primary importance in this regard is the supremacy of the Prince, who the Constitution identifies as the ultimate and definitive source of each branch of State. The opening provisions to the Constitution provide that:

The Principality of Monaco is a sovereign and independent State within the framework of the general principles of international law and the particular conventions with France. The territory of the Principality is unalienable (art 1).

Article 2 goes on to define the Principality as a hereditary and constitutional monarchy and as a State under the rule of law committed to fundamental freedoms and rights.

The supremacy guaranteed to the Prince is clearly apparent from the opening provisions to the Constitution. Article 3 in fact provides that "The Prince's persona is inviolable" and places him at the head of the executive, which is directly dependent on his "highest authority". The Prince is also acknowledged as performing a central role in the exercise of legislative power. Specifically,

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<sup>7</sup> P Costanzo above n 6, at 110.

according to art 4, "The legislative power is jointly exercised by the Prince and the National Council".

These provisions indicate a contamination between powers which, despite the declaration of intent made in art 2, places the Principality at a distance from the typical state governed by the rule of law. This appears to contradict, as mentioned above, the provisions of art 6: "The separation of the administrative, legislative and judiciary functions is guaranteed". Finally, relations with foreign powers are entirely concentrated in the hands of the Prince (arts 13 and 14).

These aspects set the Principality of Monaco apart from other existing monarchies, where the functions vested in the sovereign are structured as merely formal powers without any substantive substrate.

A final peculiar aspect of the Monegasque State system is the express recognition of the confessional nature of the legal order. Article 9 of the Constitution provides that "The Catholic, Apostolic and Roman religion is the religion of the State". Relations between the State and the Holy See are regulated, as is the case for other States such as for example Italy, by concordats.

Despite there being a State religion, the teaching of which is mandatory within schools of every type and at every level, art 23 of the Constitution protects freedom of religion in all of its manifestations, including negative freedom, prohibiting any compulsion to participate in the rites or the observance of the holy days of the Catholic faith.

### ***E The Sources of Law***

It is necessary to consider the system regulating the sources of law to provide a better understanding of the distribution of powers within the Principality of Monaco.

The pinnacle of the sources is occupied by acts and practices of constitutional significance. The practices are made up of customs relating to the monarchical form of the State and the position of the Prince, along with general principles derived from international law as provided for under art 1 of the Constitution: "The Principality of Monaco is a sovereign and independent State within the framework of the general principles of international law". This reference must be deemed to apply in particular to the rules of international law that guarantee the sovereignty and equal formal dignity of the Principality on the international scene.

The highest position in the hierarchy of acts of constitutional status is occupied by the Constitution along with laws amending the Constitution.

The special Conventions concluded with France, which are expressly cited by art 1 of the Constitution alongside the general principles of international law, occupy the same status as the Constitution and laws amending the Constitution. It therefore follows from this that sub-constitutional laws cannot contain provisions at odds with the agreements entered into with France – to do so would result not only in the invalidity of such a law but also potentially in liability at the international level.

Some commentators argue that whilst the Conventions concluded with France are considered to have constitutional status, they are situated one rank lower than the Constitution, which may therefore incorporate provisions at odds with those agreements. If that were not the case, the very notion of the Constitution would be hollowed out, and the status of the legal order as a State legal order undermined.<sup>8</sup>

The concordats concluded between the Principality and the Holy See to regulate reciprocal relations also have constitutional status, but subordinate to the Constitution.

The category of primary legislation comprised of formal laws and sovereign Ordinances is located below constitutional level. As a rule, sovereign Ordinances are approved by the Government and presented to the Prince, who promulgates them by signature (art 45 of the Constitution). However, art 46 of the Constitution reserves to the Prince the power to adopt sovereign Ordinances in relation to particular matters. An example of such a sovereign Ordinance is that provided for under art 68 of the Constitution, which allows the Prince to issue "when necessary, ordinances to ensure the enforcement of laws and the implementation of international treaties or conventions". These amount to primary sources of law only where they are aimed at enabling the application of international agreements; they must be classified as secondary sources where they are issued in order to implement legislation.<sup>9</sup>

Secondary sources include the internal regulations of the National Council and sovereign Ordinances issued in order to implement laws, which have the status of executive regulations intended to render operational general legislative provisions.

Below sovereign Ordinances are governmental Ordinances; they are strictly administrative in nature and are in most cases issued in order to implement sovereign Ordinances.

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8 P Costanzo above n 6, at 126.

9 P Costanzo above n 6, at 127.

Governmental Ordinances are an expression of the wishes of the Government. They are signed by the Minister of State and must be submitted to the Prince within forty-eight hours; the Prince may object to them within ten days. The Ordinances become enforceable, if they are not objected to.

### ***F Influences on the Legislation of the Principality of Monaco***

Monegasque law is, considered overall, strongly influenced by French law above all due to the long-standing and close bonds between the two States.

From 1793 until 1816 the French codes promulgated by the First Empire were also applied in Monaco. However, 5 new codes, including the Commercial Code, were subsequently adopted in order to adapt the French codes to the specific circumstances of the Principality of Monaco.

A French jurist, Baron de Rolland, was charged with the task of drafting the codes of civil and criminal procedure which were adopted in 1896 and 1904 respectively.

These codes, which lay at the heart of Monegasque positive law until the 1960s, were significantly affected by French influences both in terms of the framework and structure as well as on a substantive level.

In May 1945 the Prince ordered the creation of a Commission which was charged with the task of revising the codes, with the aim of bringing them more into line with the new requirements of the Principality. The work of the Commission resulted in the promulgation of a new Code of Criminal Procedure in 1963, followed by a new Criminal Code in 1967. These depart more significantly from the French model, although French law continues to exert a strong influence in the area of private law.

In any case, despite the undoubted French influence, many areas of Monegasque law feature highly specific aspects. These include criminal law, family law, company law, citizenship law and administrative law.

### ***G The Executive Branch***

The exercise of governmental authority is governed by arts 43-51 of the Constitution.

Executive power is exercised by the Minister of State (who is appointed directly by the Prince) with the assistance of the Council of Government. A predominant role within government is recognised to the Prince who is the head of the executive. According to the express wording of art 43 of the Constitution, "Government is exercised, under the gracious authority of the Prince".

The Minister of State and the members of the Council of Government are responsible to the Prince for their actions (art 50 of the Constitution).

The Minister of State remains in office for 5 years and is the second-highest office bearer after the Prince to whom he or she is bound by a fiduciary relationship. The Minister, who has a casting vote within the Council in the event of a tie, attends to foreign relations (although the Prince represents the Principality at the international level), directs executive services and oversees the implementation of Ordinances, coordinates the law enforcement authorities and directs all officials with the exception of those belonging to the judiciary.

The Council of Government adopts sovereign Ordinances (other than those in areas reserved to the Prince) and ministerial Ordinances.

Sovereign Ordinances are first approved by the Council, after which they are signed by the Minister of State and presented to the Prince, who may promulgate them by his signature. Signature by the Sovereign represents the end point in the approval process, and is indispensable to give it effect. The acts of the Prince do not need to be countersigned by a minister in order to be effective and valid.

Ministerial Ordinances on the other hand are approved by the Council of Government and signed by the Minister of State. They must be submitted to the Prince within twenty-four hours of their approval, who may object to their issue. The Ordinance comes into force if it is not objected to by the Prince within ten days of his receipt of the Ordinance. However, the Prince may also inform the Minister of State prior to expiry of the ten-day time limit that he does not intend to object to the ministerial order which then comes into force on the day on which it is signed by the Minister of State.

To complete the framework of acts pertaining to the exercise of executive power, it is necessary to mention a particular category of sovereign Ordinance which, due to the matters covered, is the exclusive prerogative of the Prince. These are, as mentioned above, the sovereign Ordinances provided for under art 46 of the Constitution:

Sovereign Ordinances, which are excluded from debate in the Government Council and presentation to the Minister of State, pertain to:

- the Sovereign Family's House Laws and laws relating to its members;
- affairs of the Direction of the Judicial Department;
- appointment of members of the Sovereign Household, the diplomatic and consular corps, the Minister of State, the Government Councillors and associated civil servants, magistrates in the judiciary;
- issue of exequatur to consuls;

- the dissolution of the National Council;
- the granting of titles.

According to some, the division of powers set out above has been structured so as to leave the most important decision-making powers always with the Prince along with exclusive authority over matters pertaining to everyday government policy.<sup>10</sup>

### ***H Local Government***

The Communal Council has jurisdiction at the local level. This body is charged with the management of the Commune, which by art 78 of the Constitution coincides with the entire territory of the Principality.

A unitary entity in administrative terms, the Commune is divided into four districts: La Condamine, Monaco-Ville, Monte-Charles and Fontville.

According to art 87 of the Constitution, the Commune is financed by the proceeds of Commune assets, its ordinary resources and appropriations in the budget of the Principality. The Commune is administered by a council comprised of a Mayor and several Deputy Mayors appointed by the Communal Council from amongst its members. The Communal Council is in turn comprised of fifteen members elected by universal suffrage. Members are elected for four-year terms.

The Communal Council meets every three months in ordinary session. However, extraordinary sessions may be held to consider particular matters if requested or approved by the Minister of State. As a general matter, the Constitution charges the Communal Council with dealing with the business of the Commune. In particular, according to Law no 959 of 1974, decisions relating to budgetary matters, the organisational structure of the Commune, tariffs and duties, communal services, public holidays and the provision of social services are reserved to the local body.

A particular feature of the Principality of Monaco is that many matters traditionally attributed to local government bodies including town planning are reserved to the State. This is unlike the position in almost all other contemporary legal systems.

The resolutions adopted by the Council in the specific exercise of governmental powers in the areas reserved to the Commune must be notified to the Minister of State, who may object by decree supported by reasons. Resolutions take effect and become binding unless they are objected to within fifteen days of such notification.

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10 P Costanzo above n 6, at 118.



## ***I The Legislative Branch***

Legislative powers are exercised jointly by the Prince and the National Council, although also in this area the sovereign's will prevails. The Council's subordination to the Prince is also demonstrated by the broad power to dissolve the assembly vested by art 74 of the Constitution in the sovereign. The power may be exercised without any requirement to State reasons and is subject only to a duty to consult with the Crown Council in advance.

According to art 66(1) of the Constitution, the enactment of a law requires agreement between the Prince and the National Council. Whilst this provision might at first sight appear to place the sovereign on the same level as the parliamentary assembly as regards the exercise of legislative powers, that view is immediately excluded by the following paragraph, which reserves the right of legislative initiative solely to the Prince. In reality, as will be pointed out below, a form of legislative initiative - albeit limited - is also vested in the National Council. The Prince communicates with the National Council through messages delivered by the Minister of State.

The National Council is comprised of 24 members elected by universal suffrage from multi-candidate lists by a single round of voting, with the option of *panachage* (ie casting votes for different lists) and without any preference voting. The electoral system is governed by Law no 1250 of 2002. Lists must include a number of candidates at least equal to a majority of the seats to be allocated. Two-thirds of the seats are allocated on a majority basis and the remaining one-third on a proportional basis.

The Monegasque legal system provides for ordinary parliamentary prerogatives, such as criminal and civil immunity in respect of votes cast and opinions stated when exercising parliamentary functions, and immunity from arrest for the duration of the mandate unless authorised by the Council or apprehended *in flagrante delicto*.

Despite these aspects, the Council cannot be regarded as the equivalent to the parliamentary assemblies of other legal systems as it does not in actual fact represent a counterweight to the power of the Prince and the Government. As confirmation of this, it is sufficient to consider that it may also be dissolved without any requirement to State reasons, and even without any request to that effect by the Government, subject only to the requirement to obtain the prior opinion of the Crown Council.<sup>11</sup>

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11 P Costanzo above n 6, at 155.

According to art 61 of the Constitution, the organisation and operation of the Council are determined by internal regulations, which must however be reviewed in advance by the Supreme Court in order to ensure that they are compatible with the Constitution and, as the case may be, with ordinary legislation.

As regards the specific functioning of the Council, the Constitution provides for two annual ordinary sessions, along with the ability to convene extraordinary sessions (arts 58 and 59). The agenda must be provided at least three days in advance to the Minister of State. In addition, if so requested by the Government, at least one session out of every two must be dedicated to an examination of Bills introduced by the Prince (art 62). In addition to the power of constitutional amendment, the Council's most important function is the legislative function even though it is shared with the Prince. However, the constitutional amendment adopted in 2002 sought to mitigate the Council's subordination to the Prince under the original text of the Constitution.

The right of legislative initiative, as mentioned above, remains a prerogative of the Prince. Bills are presented by the Minister of State, following approval by the Council of Government, after which they are signed by the Prince and presented to the National Council. However, the 2002 reform provided that after receiving a Bill, the National Council might itself formulate proposals the fate of which depends upon the position adopted by the Government. In particular, the executive may decide within six months of receiving a proposal to transform it into a Bill, which then follows the procedure applicable to Bills proposed on the initiative of the sovereign. If the Government does not take any initiative within the six-month period, the Council's proposal is automatically transformed into a Bill.

Secondly, the Government may block a parliamentary initiative by a formal declaration, which must be placed on the agenda of the next ordinary session. In any case, when examining, a Bill the Council may add, remove or alter provisions contained within it, provided that there is a direct link with the provisions of the bill.

The Government can withdraw the Bill at any time before the final vote. The Constitution expressly excludes the ability to amend Bills authorising or approving the budget.

Once a law has been approved, it is promulgated by the Prince and takes effect on the day after publication in the *Journal de Monaco*.

## ***J The Judicial Branch***

The judiciary too is controlled at least theoretically by the Prince. However, by express provision of the Constitution its exercise is delegated by the sovereign to

the courts and tribunals. Specifically, art 88 of the Constitution provides that "Judicial power vests in the Prince, who, by the present Constitution, delegates its full exercise to the courts and tribunals". Justice is administered in the name of the Prince.

As is the case under other modern constitutions, the Monegasque Constitution also incorporates a guarantee of the independence of the judiciary, providing that the organisation of the judiciary is to be regulated by law.

The Constitution makes express provision only for the Supreme Court which, as noted above, may to some extent be regarded as equivalent to the constitutional courts in other legal systems.

As regards the administration of justice, the principle of two instances of judicial proceedings prevails. In particular, the following courts have jurisdiction in civil and commercial matters:

- Justice of the Peace: a single judge with limited competence *ratione materiae* and *ratione valoris*;
- Court of First Instance: comprised of a bench of judges, which also hears administrative cases, has competence to rule on any matters that do not fall within the competence of the Justice of the Peace, from which it also hears appeals;
- Court of Appeal: comprised of a bench of judges which hears appeals against the decisions of the Court of First Instance;
- Court of Revision: comprised of a bench of judges with the function of a supreme court, which may only hear appeals on points of law against a judgment of last resort.

The legal system also incorporates special courts, such as the Employment Tribunal.

Criminal trials follow the adversarial model.

The criminal courts include:

- the Police Court, corresponding to the Justice of the Peace in civil matters; its competence is limited to minor misdemeanours;
- the Correctional Court, which has competence over more serious misdemeanours and those committed by minors;
- the Court of Appeal, comprised of a bench of judges, hears appeals on the decisions of the Police Court and the Correctional Court;
- the Criminal Court, comprised of one member of the Court of Appeal, one member of the Court of First Instance and three members chosen by lot from a list of 30 candidates. The Criminal Court has competence to rule on

- criminal offences – the most serious – committed by adults or by minors in concert with adults;
- the Court of Revision, which acts as a supreme court - in the same manner as for civil cases - for any decision of last resort.

According to a 1963 Convention custodial sentences are served in French prisons. The power to grant pardons and amnesties lies with the Prince.

### ***III THE PRINCIPALITY OF MONACO AT THE INTERNATIONAL LEVEL***

For the sake of completeness, it is appropriate to conclude this account with a consideration of the position of the Principality of Monaco within the international panorama.

#### ***A Relations with France***

The Principality of Monaco and the French Republic are united by a close bond, which has its roots in very distant times. As noted above, the treaties concluded with France have the status of primary sources of Monegasque law, according to the express provision art 1 of the Constitution. Relations between the two States have been governed down the centuries by a series of conventions and treaties under the first of which (the Treaty of Péronne from 1643) France was elevated to the status of protector of the small Principality, whilst recognising its independence and sovereignty. That Treaty also established a currency union between the two States, granting the Principality the right to mint coins which also had the status of legal tender in France. Later treaties regulated various aspects of relations between the Principality and France, largely on an economic level. For example, in 1865 a customs treaty was concluded which had the effect of creating a full-blown customs union between the two States. Subsequent treaties made provision in relation to tax and social security matters.

As a general matter, the provisions governing relations between the Principality and France have always granted the latter some degree of supremacy over the small State along with a power to interfere with the domestic and foreign policy of the former. For example, art 1 of the Treaty concluded on 7 July 1918 imposed an obligation on the small State to exercise its rights "in perfect conformity with the political, military, naval and economic interests of France", in return for the commitment by France to guarantee its independence and sovereignty and to ensure the integrity of its territory "as if this territory were an integral part of its own".

Ultimately, whilst the conventions in question granted undoubted benefits to the Principality, they reserved to France the power to interfere with the political affairs

of the Principality. Broad powers were granted to France in this respect to steer foreign policy under art 2 of the 1918 Treaty, which stipulated that any decision taken by the Principality in the area of international relations had to be adopted with the agreement of France.

These powers of interference were only reined in by the revision of the 1918 Treaty in 2002. Under the amended agreement, the French Republic continues to guarantee the integrity of the Monegasque territory, although no longer "as if this territory were an integral part of its own", but rather "under the same conditions as its own".<sup>12</sup>

The removal of the need for prior agreement concerning the conduct of international relations, along with the obligation to respect French interests when exercising sovereign powers have been even more incisive in removing the Principality from French interference, but in truth it is still necessary to strike a harmonious balance between the internal and foreign policy of the Principality and the fundamental interests of France.

Despite these changes, France continues to loom large over the small State. This is confirmed for example by the active role played by France in the appointment of the highest officials within the Principality, as well as its continuing military protection with its troops enjoying freedom of access to Monegasque territory.

### ***B The International Context***

Despite its strong ties to France, the independence and sovereignty of the Principality of Monaco has been underscored by the presence for some time of the small State in many international organisations. In particular, Monaco has been a member of the WHO since 1948, of UNESCO since 1957, of the OECD since 1972 and of the UN since 1993. In addition, the Principality of Monaco has also adhered to a number of important international conventions. For example, by two sovereign Ordinances of 13 December 2005 (no 332 and no 333), the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963 were implemented.

### ***C Relations with Europe***

The Principality of Monaco has a unique position within the European Union, which is dictated above all by its close relations with France. As a result of this

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12 P Costanzo above n 6, at 67.

certain EU laws apply to the Principality even though it is not a member of the European Union.<sup>13</sup>

This situation gives rise to significant imbalances, above all financial, for the Principality which is treated as a member of the EU only in terms of its obligations.<sup>14</sup>

The situation that emerged following the introduction of the single currency is striking. By the Convention of 14 January 2002 concluded with France, the Principality of Monaco also adopted the euro, even though it was not a member of the EU; thereby it entered the monetary union. However, according to one line of thought, the fact that the procedure that led to the adoption of the euro by the small State was launched by France amounted to a mere "courtesy", which was provided having regard to the ancient relations between the two States, because as of 1 January 1999 monetary competence had been ceded in full by the individual States to the Union, and so the real interlocutor of the Principality in those negotiations was the EU. Moreover, as confirmation of this, it is also of note that the European Council authorised the Principality to use the euro by a resolution dated 31 December 1998, at the same time charging France with the task of launching and conducting the relevant negotiations.<sup>15</sup>

Finally, it should be pointed out that, in 2004, the Principality of Monaco joined the Council of Europe. Although the membership application had been submitted in 1998, the Council of Europe had taken the view that it could not be accepted, raising a variety of critical issues within the Monegasque legal system, which rendered it incompatible with the mission of the Council. In particular, it was objected that the small State still operated a clearly absolutist form of government, and that its parliamentary representatives lacked incisive powers, in addition to the significant interference by a foreign State in its internal politics. Accordingly, as a condition for accepting the application, the Council of Europe made a series of requests all of which sought to remedy the critical issues mentioned above, in addition to working on the system of guarantees for rights and freedoms with the aim of rendering it more effective. The 2002 constitutional amendment addressed a large number of the critical aspects of the system as was noted by the Council of Europe.

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13 Eg the Union Customs Code and the provisions on the free movement of goods.

14 P Costanzo above n 6, at 72.

15 P Costanzo above n 6, at 73.

On 27 April 2004, the Parliamentary Assembly of the Council of Europe approved the acceptance of the Principality as a new member and invited the Committee of Ministers to present an official invitation to it to join the organisation. The Principality officially joined the Council of Europe on 5 October 2004.

#### ***IV CONCLUSION***

Two main points must be made in concluding this brief historical and constitutional discussion.

First, it is evident that the Principality of Monaco has encountered difficulty over the centuries in carving out a space for its own independence and sovereignty, having for long periods been contended over by foreign powers and treated as a protectorate of other States.

Despite the recent changes to the ancient conventions, the Principality is still in a position of "subordination" towards the French Republic. The fact that art 1 of the Monegasque Constitution guarantees respect for the agreements concluded with France, elevating them to the status of a primary source of law, is emblematic.

Secondly, the Principality is still a monarchy with vaguely absolutist overtones, Even though this aspect has been reined in significantly in recent years, this makes it unique on the international scene. In fact, the Prince holds both executive and legislative power, though when exercising the latter is assisted by a representative assembly.

It is ultimately a hybrid system which, alongside the concessions made towards the rule of law, still features several traits typical of an absolutist monarchy. Nevertheless, these aspects have been mitigated due above all to the incorporation of the Principality into the international context and specifically to its membership of international organisations.

