



Office for Democratic Institutions and Human Rights

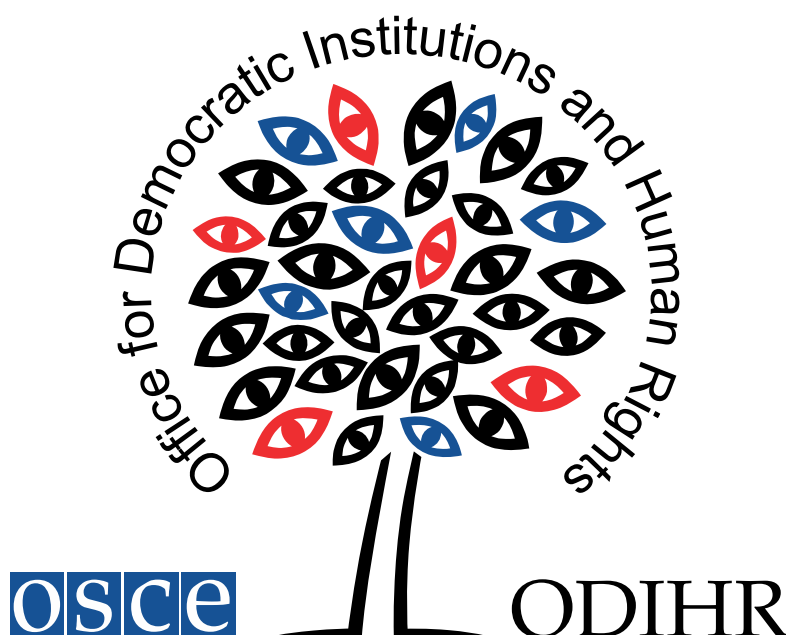
PRINCIPALITY OF MONACO

ELECTIONS OF THE NATIONAL COUNCIL

10 February 2013

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

10-12 December 2012



Warsaw
21 December 2012

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PRINCIPALITY OF MONACO
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10 February 2013

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Permanent Representative of the Principality of Monaco to the OSCE to observe the upcoming elections of the National Council scheduled for 10 February 2013, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) from 10 to 12 December. The NAM included Dr. Robert Krimmer, OSCE/ODIHR Senior Adviser on New Voting Technologies, and Ms. Tamara Otiashvili, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the elections. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions and the election administration, as well as with representatives of political associations and media. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Permanent Representative of the Principality of Monaco to the OSCE and the Ministry of Foreign Affairs for their assistance and co-operation in organizing the NAM. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

On 10 February 2013, the citizens of Monaco will elect the 24 members of the National Council for a five-year term. The 24 members are elected through secret ballot on the basis of a mixed system, combining majoritarian and proportional representation.

The legal framework provides a sound basis for the conduct of democratic elections. It is primarily regulated by the 1962 Constitution of the Principality and the 1968 National Elections Act. The 2002 constitutional reform introduced a mixed majoritarian and proportional system and increased the number of seats from 18 to 24.

Eligible candidates may stand as part of political associations or independently, in line with paragraph 7.5 of the 1990 OSCE Copenhagen Document. A voter who is 25 years of age may stand for election, however, the law imposes a five-year citizenship requirement to be eligible to run, thereby unreasonably restricting candidacy rights.

There are no political parties in Monaco. Political activities are based on political associations, affiliating members who share the same political values. So far two political associations declared their intention to contest these elections. These include the *Union Pour Monaco* (UPM) and the *Rassemblement et Enjeux pour Monaco* - Horizon Monaco (HM).

The election administration is centralized. The entire process is administered by the City Hall of Monaco, with the Mayor acting as Chairperson of the Electoral Committee (EC). Only one polling station will be established for election day.

The voter register is based on passive registration and maintained on a permanent basis. It is regularly reviewed by the City Hall. As of 12 December 2012, some 6,830 voters were eligible to vote in the upcoming elections. This number is expected to increase by approximately 230 voters following changes in the citizenship law, which now allows naturalization by marriage.

The official election campaign period starts 14 days before election day and finishes 24 hours before the opening of polls. The main topics of the campaign are expected to be quality of life and the protection of the country's economic and constitutional system, as well as relations with the European Union. While the pre-election campaign, as established by law, has started on 3 October, the display of election campaign posters, as well as the campaign in the media, is only allowed during the official campaign period. The OSCE/ODIHR NAM was informed that the law is strictly respected.

The new campaign finance regulations are implemented for the first time in these elections. The law now sets a campaign expenditure limit of EUR 400,000 and requires electoral contestants to submit a campaign finance report to the Audit Committee. However, this report does not include donations received in kind. OSCE/ODIHR NAM interlocutors have acknowledged that the requirements are not comprehensive, and that the regulations on campaign finance should be further addressed once experience has been gained with the application of the new law.

The complaints and appeals system is well regulated, ensuring the full and timely legal redress at any stage of the electoral process.

The media environment is limited due to the small number of local outlets, yet pluralism is maintained by media outlets broadcasting from neighbouring countries. The public service broadcaster, *Monaco Info*, the only Monegasque TV channel, has established a schedule of coverage for all candidate lists; this includes six campaign clips of five minutes length each as well as campaign advertisements five times a day during the official campaign period.

The legislation does not include specific provisions for international or domestic observers. However, a potential OSCE/ODIHR election observation activity was welcomed by all OSCE/ODIHR NAM interlocutors, recognizing that electoral processes can always be improved and that an independent, external assessment may contribute to this. In the case of an election observation activity, the OSCE/ODIHR was given assurances of full access to all stages of the electoral process.

All OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality and professionalism of the election administration and their ability to organize elections in an efficient manner. No significant concerns were expressed relating to the respect for fundamental freedoms, the transparency of the electoral process, the campaign environment, and election day proceedings.

The OSCE/ODIHR has not previously observed elections in Monaco. Given that the new campaign finance legislation will be applied for the first time and that OSCE/ODIHR NAM interlocutors indicated that they would welcome an OSCE/ODIHR election-related activity, the OSCE/ODIHR considered that such an activity would bring added value. In these circumstances, and given that no concerns were expressed with regard to election day proceedings, the

OSCE/ODIHR NAM recommends deploying an Election Expert Team of about four persons to look into specific issues outlined in this report, including campaign finance, media coverage, and the general electoral and legal framework.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

The Principality of Monaco is a constitutional monarchy with Prince Albert II as the Head of State. The total population of the Principality is 35,881, of whom only some 8,000 are Monegasque citizens.

Under the previous 1911 Constitution, politics and government affairs were entirely under the autocratic control of the Prince. The 1962 Constitution changed the principality into a constitutional monarchy. Subsequently, some of the powers of the Prince were shifted to different advisory and legislative bodies. Executive power is exercised by the supreme authority of the Prince, and enforced by a Minister of State. Legislative power is exercised jointly by the Prince and the National Council. Only the Prince may formally initiate legislation, but the National Council alone has the power to pass laws. The electoral system allows citizens to change parts of their government through elections, but there is no constitutional provision to allow the citizens to change the monarchical nature of the government.

On 24 July 2012, Mr. Michael Roger, the Minister of State, called elections of the National Council for 10 February 2013. Since 1998, politics in Monaco has been dominated by two political associations – the *Union Pour Monaco* (UPM), and the *Rassemblement et Enjeux pour Monaco* - Horizon Monaco (HM). The last elections of the National Council were held on 3 February 2008 when the UPM won 21 seats, and the HM won 3 seats. A third list of candidates, the *Monaco Ensemble*, which ran at that time, did not win any seats.

The Principality of Monaco became a member of the Council of Europe in October 2004. Since then, it has signed and ratified a number of Council of Europe treaties, including the Convention for the Protection of Human Rights and Fundamental Freedoms. In 1997 Monaco ratified the UN International Covenant on Civil and Political Rights (ICCPR). In 2009 it also signed the UN Convention on the Rights of Persons with Disabilities.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The legal framework governing parliamentary elections consists primarily of the 1962 Constitution of the Principality and the National Elections Act (electoral law), adopted on 23 February 1968. These are supplemented by the Law on Campaign Finance, the Act on Associations and Federations of Associations, and various governmental orders, including Governmental Ordinance No 927 on Proxy Voting and Governmental Ordinance No 494 on Media Campaigning.

The Constitution was last revised in 2002. This reform has increased the level of pluralism by offering a possibility for representation of opposition parties in the National Council. These amendments introduced a mixed majoritarian and proportional system, as well as increased the number of seats from 18 to 24.

The electoral law has undergone a number of substantial changes in the last years. The most recent amendments in 2012 modified campaign regulations, while amendments in 2006 introduced proxy voting. According to the law, voters who are living or studying abroad and unable to exercise their voting rights on election day, are entitled to grant a proxy vote to a specially designated voter. A voter can cast a maximum of two proxy votes. While the aim of the law is to enfranchise voters, it runs contrary to OSCE commitments and other international standards.¹

There are no legal provisions for international or domestic election observation. This is not fully in line with paragraph 8 of the 1990 OSCE Copenhagen Document. However, the OSCE/ODIHR NAM was informed that access would be granted should the OSCE/ODIHR decide to deploy an election-related activity. All registered candidate lists have the right to appoint representatives to the polling station. The counting process is open to observation by any citizen of Monaco.

The National Council consists of 24 members elected by secret ballot every five years on the basis of a mixed electoral system combining majoritarian and proportional representation. The 16 candidates who receive the largest number of votes are elected through a majoritarian system. In case of a tie, the older candidate is elected. The remaining eight seats are filled through a system of proportional representation based on the highest-average rule provided that the candidate lists have received at least five per cent of the valid votes cast. While each list is presented on a separate ballot sheet, voters can only cast one ballot. However, voters can modify a ballot paper by deleting candidates and adding candidates from other lists.

C. ELECTION ADMINISTRATION

The administration of the elections is very centralized. The entire process, including the voting, counting and tabulation process, is administered by the City Hall of Monaco, with the Mayor acting as a Chairperson of the Electoral Committee (EC). There are no established numbers of the members of the EC, rather the tasks are distributed among the City Hall employees.

Only one polling station will be established for election day; traditionally it is located in the *Salle du Canton*. For this day a Secretary of the EC is appointed and is supported by at least three other EC officers throughout the duration of the poll. Representatives of electoral contestants are authorized to be present at the polling station to monitor the process. The OSCE/ODIHR NAM was informed that they generally exercise this right.

Votes are counted and results are established immediately after the voting process ends. Minutes of the counting process, which include the election results as well as any remarks made throughout the process, are posted publicly.

The City Hall informed the OSCE/ODIHR NAM that preparations for the elections are ongoing. Practical information on the elections and election day procedures has already been mailed to all voters. It included information on when to vote, as well as regulations for proxy voting. The format of the ballot paper has been established by the EC. While the City Hall provides envelopes for casting ballots, electoral contestants are financially and logistically responsible for providing

¹ The OSCE commitments and other international standards for democratic elections stipulate the respect for the secrecy and equality of the vote to guarantee the free expression of the will of the voter. See paragraphs 5.3, 7.3 and 7.4 of the 1990 OSCE Copenhagen Document; Article 25 of the ICCPR; General Comment to Article 25, paragraphs 20-22; the 1950 Convention for Protection of Human Rights and Fundamental Freedoms, Protocol 1 of 1952, Article 3.

ballots on election day. In order to deter fraud, the colour of the envelope into which a filled ballot is inserted before casting it into the ballot box, is disclosed by the EC in the morning of election day.

All interlocutors met with by the OSCE/ODIHR NAM expressed confidence in the electoral administration and no particular concerns were raised regarding the technical preparations and conduct of elections.

D. VOTER REGISTRATION

All citizens of Monaco who have reached 18 years of age, including those permanently residing abroad, are eligible to vote. The exceptions are those who have been temporarily deprived of their right to vote due to mental incapacity, as part of a judicial sentence, including for drunkenness, and those who have been pronounced bankrupt by a court decision. Some of these limitations do not take into account the severity of the crime committed and seem disproportionate. This is contrary to international commitments.²

Voter registration is passive. The voter register is permanently maintained and regularly reviewed. The reviewing committee at the City Hall is comprised of the Mayor, a representative of the government, and two representatives of the Municipal Council. This Committee meets annually to review the voter register. In the event that a voter is taken off the voter register for legally grounded reasons, this voter is notified by the Mayor. A voter has the right to appeal this decision. The voter register closes on 31 December of each year. All appeal deadlines are exhausted on that date. As of 12 December 2012, some 6,830 voters were registered to vote in the upcoming elections. This number is expected to increase by approximately 230 voters due to the new citizenship law, which now allows naturalization by marriage.

Electoral contestants are by law entitled to receive a copy of the voter register. In addition, citizens can also receive a copy of the voter register upon request. While one political association expressed concern that information on the names of newly naturalized citizens was delayed, although this information was available to the National Council, OSCE/ODIHR NAM interlocutors in general expressed confidence in the quality of the voter registry.

E. CANDIDATE REGISTRATION

Candidate nomination and registration procedures are clearly defined by law and generally inclusive. The right to register a candidate list is granted to any citizen included in the voter register who has reached 25 years of age. In addition, these citizens must have been naturalized for at least five years. The law identifies a broad range of governmental and non-governmental positions as incompatible with candidacy. This includes Crown and State advisers, members of the Supreme Court, members of the royal family, government advisers, diplomatic or consular officials, judges, as well as voters who by virtue of another nationality hold elective office in other country. While these incompatibilities are clearly defined in law and intended to prevent

² The Venice Commission's Code of Good Practice in Electoral Matters recommends that the deprivation of suffrage rights must be based on a "criminal conviction for a serious offence" and recommends that the "withdrawal of political rights should only be carried out by express decision of a court of law." See also *Hirst vs. the United Kingdom* (Application no 74025/01; judgment of 30 March 2008). Furthermore, in *Alajos Kiss v. Hungary* (Application no. 38832/06; judgment of 20 May 2010), the court concluded that an indiscriminate removal of voting rights, without an individualized judicial evaluation and solely based on a mental disability necessitating partial guardianship, cannot be considered compatible with the legitimate grounds for restricting the right to vote."

conflicts of interest, some broad restrictions of candidacy rights, particularly the length of the citizenship requirement, present unreasonable limitations.³

Eligible candidates may stand as candidates of political associations or independently, in line with paragraph 7.5 of the 1990 OSCE Copenhagen Document. Nominations have to be submitted between 22 and 19 days before election day to the General Secretariat of the City Hall. The General Secretariat then checks candidate eligibility and issues a receipt of the nomination within 24 hours. A refusal of registration can be appealed to the court of first instance within 48 hours. The decision of this court is final.

There are no political parties in Monaco. Political activities are based on political associations, affiliating members who share the same political values. So far two political associations declared their intention to contest these elections. These include the UPM and HM. There are no special conditions ensuring gender equality in the candidate nomination process. However, neither political association met with by the OSCE/ODIHR NAM saw a need to impose quotas. They also opined that it is difficult to motivate female candidates to run.

F. CAMPAIGN AND CAMPAIGN FINANCE

The official campaign period begins 14 days before and ends 24 hours before election day. The law also defines a pre-election period starting 90 days before election day (3 October for these elections). The campaign is expected to focus on social issues, quality of life and the protection of the economic and constitutional system of the country as well as relations with the European Union. Both political associations met with by the OSCE/ODIHR NAM espouse a similar ideology and focus on future developments for all Monegasques.

Electoral contestants use various means of campaigning to reach out to the electorate, including holding informal meetings with a small number of voters, distributing leaflets and newspapers, as well as social media. Campaign activities were launched on 3 October, but the display of election campaign posters, as well as campaign in the media, is only allowed during the official campaign period. The OSCE/ODIHR NAM was informed that the law is strictly respected. Posters can only be displayed in places designated by the City Hall. Each location is assigned on equal conditions for all candidate lists.⁴ Unauthorized posting of campaign posters is prohibited.

The Constitution provides for freedom of assembly without unreasonable restrictions. As per the 2012 amendments to the electoral law, the City Hall now provides a venue for holding campaign meetings. However, in the event that several candidates or candidate lists plan to have a meeting at the same time, the decision is made by drawing lots. While the City Hall provides a venue for such meetings, the organization is the responsibility of each candidate list. No OSCE/ODIHR NAM interlocutor raised any concerns about the ability to campaign freely.

In these elections the new campaign finance rules will be applied for the first time. The Law on Campaign Finance was adopted on 2 July 2012 and reflected a number of recommendations of the Council of Europe's Group of States against Corruption (GRECO). In its 2012 evaluation report GRECO acknowledged the envisaged reforms as a step in the right direction but

³ See paragraph 16 of General Comment No. 25 (1996) to Article 25 of the ICCPR and *Ahmed and Others v. The United Kingdom* (Application no. 65/1997/849/1056) of the European Court of Human Rights, 1998.

⁴ The City Hall has already identified 35 such places.

highlighted that Monaco's proposals do not appear sufficient to satisfy the requirements on 'common rules' against corruption in the funding of political parties and electoral campaigns.⁵

As part of the reform, the new law set the limit for campaign expenditures at EUR 400,000 for each electoral contestant. Representatives of both political associations told OSCE/ODIHR that the decision on the limit was made by consensus. Both deem it sufficient for the conduct of the electoral campaign.⁶ Those candidate lists which surpass the 5 per cent threshold are entitled to 25 per cent reimbursement of campaign expenses. Candidate lists are now obliged to submit the campaign expenditure report to the Audit Committee within two months after election day. There is, however, no obligation to report on these expenditures before election day. The law is also silent on the conditions and reporting of donations received in kind. OSCE/ODIHR NAM interlocutors have acknowledged that the requirements are not comprehensive, and that regulations on campaign finance should be further addressed once experience has been gained with the application of the new law.

G. MEDIA

The media landscape in Monaco is limited, largely due to the small size of the population. There is no daily newspaper in Monaco; however, foreign newspapers and magazines are circulated freely, including French journals that specifically cover news in the Principality. The internet is also increasingly becoming a key source of information.

The Constitution guarantees freedom of expression; however, defamation of the royal family is prohibited by the Penal Code. While there is no specific legislation covering the role of the media during an election, the Governmental Ordinance No 494 on Media Campaign provides guidance for public media coverage of campaign, emphasizing the need for diversity, equality and objectivity. The Ordinance was adopted on 8 August 2012 and is the primary legal instrument to ensure balanced coverage of the election campaign.

Article 3 of this Ordinance establishes the Co-ordinating Committee, which serves as a supervisory body and ensures the smooth and equal conditions for the campaign in the public media. The Committee has already been established and includes three members. It is also assisted by the Director of the Press Centre and the Technical Adviser to the Ministry of State for Communications.

The primary implementer of the Ordinance is *Monaco Info*, the first and only local national TV channel broadcasting in Monaco. It was originally created in 1996 under the name "*Monaco à la Une*". Its news and editorial programs are produced by the Press Centre, which is the governmental service attached to the Ministry of State. *Monaco Info* is tasked to communicate information from the government and promote its events. It also provides information on the Principality, local life, as well as cultural, sporting and economic initiatives. The programmes are composed of a daily news transmission, broadcast at several times during the day. *Monaco Info* also transmits the sessions of the National Council.

Those candidate lists which participate in the elections are entitled to broadcast six campaign clips of five minutes length each during the official campaign period. These clips are produced under the supervision of the Co-ordinating Committee and expenses are covered from the state

⁵ See GRECO Evaluation Report on Monaco, 20-23 March, 2012:
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)5_Monaco_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)5_Monaco_One_EN.pdf).

⁶ Previously there was no campaign expenditure ceiling.

budget.⁷ In addition, electoral contestants are entitled to air additional campaign advertisements five times a day at 08:00, 12:00, 18:00, 20:00 and 22:00. Sequence and timing of the campaign broadcasts is determined by drawing lots. Some prohibitions exist for campaign clips, including a ban on featuring the Royal Palace, the Palace of Justice, the national anthem and flag of the Principality. The Co-ordinating Committee informed the OSCE/ODIHR NAM, that the Committee had to intervene in two cases to ensure clips complied with established requirements.⁸

Privately owned *Radio Monaco* will cover the electoral campaign in its broadcasts. The radio station plans to organize a debate among the electoral contestants but no decision on the format has yet been reached. The private weekly *Gazette de Monaco* will produce and publish election-related articles. Although not prohibited by law, traditionally there are no paid campaign advertisements in any media outlet.

While some OSCE/ODIHR NAM interlocutors criticized the advantage for the governing political association in their media coverage, mainly due to activities in the National Council, the majority of OSCE/ODIHR NAM interlocutors expressed overall satisfaction with the media coverage of elections.

H. COMPLAINTS AND APPEALS

The 1962 Constitution allowed for the delegation of the Prince's judicial authority to courts and tribunals and guaranteed the independence of the judiciary. The highest judicial authority is the Supreme Court, established under the 1962 constitution. It interprets the constitution and sits as the highest court of appeals.

Complaints and appeals are regulated by the electoral law, ensuring full and timely legal redress at any stage of the electoral process, including provisions related to voter registration, candidate registration, campaigning, and the election results. Each voter or electoral contestant has the right to complain. All grievances can be filed with the court of first instance, and decisions of this court appealed to the court of appeals. Several violations of electoral rights are subject to criminal sanctions under the Panel Code.

Deadlines for adjudicating appeals may take up to a month, which could limit electoral stakeholders' rights to effective remedy. However, the electoral law also provides for the consideration of a case as an "urgent matter" to ensure that disputes are settled before election day. The law provides for elections to be annulled and repeated in the event of serious irregularities. In such a case new elections should take place within three months after a final court judgment is rendered.

All OSCE/ODIHR NAM interlocutors expressed trust in the complaints and appeals system. The case law on electoral disputes counts only two cases in 1998. There were no complaints or appeals during 2003 and 2008 electoral cycles.

IV. CONCLUSIONS AND RECOMMENDATIONS

All OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality and professionalism of the election administration and their ability to organize elections in an

⁷ These clips will also be available at the Press Centre website, www.gouv.mc.

⁸ In one case the flag of the Principality was featured, while the other necessitated some technical corrections.

effective manner. No significant concerns were expressed relating to the respect for fundamental freedoms, the transparency of the electoral process, the campaign environment, and election day proceedings. Nevertheless, most interlocutors stated that they would welcome a potential OSCE/ODIHR observation activity for these elections, recognizing that further improvements could be made to the electoral process and that an independent, external assessment may contribute to this. In particular, a number of aspects could be brought further in line with OSCE commitments and international standards, including provisions for candidacy rights, campaign finance, and election observation.

OSCE/ODIHR has not previously observed elections in the Principality of Monaco. Given that the new campaign finance legislation will be applied for the first time and that OSCE/ODIHR NAM interlocutors indicated that they would welcome an OSCE/ODIHR election-related activity, the OSCE/ODIHR considered that such an activity would bring added value. In these circumstances, and given that no concerns were expressed with regard to election day proceedings, the OSCE/ODIHR NAM recommends deploying an Election Expert Team of about four persons to look into specific issues outlined in this report, including campaign finance, media coverage, and the general electoral and legal framework.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

José BADIA, Minister of Foreign Affairs
Claude GIORDAN, Head of the OSCE Delegation of the Principality of Monaco
Marie-Catherine CARUSO-RAVERA, Department of Diplomatic and Consular Relations
Thomas SANMORI, Department of Diplomatic and Consular Relations
Alexandre JAHLAN, Foreign Relations Secretary

Ministry of Interior

Paul MASSERON, Minister of the Interior

City Hall

Camille SVARA (Member of the Municipal Council)
Françoise GAMERDINGER (Member of the Municipal Council)
Marjorie HARROCH (Member of the Municipal Council)
Christian RAIMBERT (Member of the Municipal Council)
Jacques PASTOR (Member of the Municipal Council)
Hélène ZACCABRI (Deputy Secretary General, General Secretariat)
Daniel COTTA (Head of Economics and Finance, General Secretariat)
Bernard LEFRANC (Head of Civil Status, General Secretariat)

Government of Principality

Claude CELLARIO (Director General, Department of Interior)
Christian CEYSSAC, (Secretary, Department of Interior)

Judiciary

Marine COULET CASTOLDI, President of the Court of First Instance
Brigitte GRINDA GAMBARINI, President of the Court of Appeal
Jean Pierre DRENO, Chief Prosecutor

Audit Committee for Campaign

Muriel CHICOURAS (Judge, a member of the Committee)

Political Associations

Jean-François Robillon, President (*Union Pour Monaco*)
Gérard Bertrand (*Union Pour Monaco*)
Claude Cellario (*Union Pour Monaco*)
Laurent NOUVION, President (*Horizon Monaco*)
Jean-Charles ALLAVENA (*Horizon Monaco*)

Media

François CHANTRAIT, Director of the Press Centre
Noel METTEY, Director of the *Gazette de Monaco*
Jean-Christophe DININO, Radio Monaco