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# Human Dignity in Monaco

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## Abstract

Monaco is the second smallest independent city-state. It is also a rich one. These specificities could be relevant to explain the peculiar position of human dignity in Monaco. Indeed, it does not appear to play a key role within the legal system despite its presence in the Constitution and in a myriad of legislations. What is probably the most striking fact is that courts rarely make use of the concept so that it is extremely difficult to speculate about its meaning.

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## Keywords

City-state · Expressive function · Constitutional provision · Human dignity

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## 1 Introduction

Located on the French Riviera, between Nice and the French Italian border, the city-state of Monaco is the second smallest independent state in the world with a territory of less than 2 km<sup>2</sup> and a population of approximately 37,308 people (including 8378 Monegasques).<sup>1</sup> It is also the richest when considering the growth national income per capita: no less than \$183,150 for 2010 according to the World Bank.<sup>2</sup> The figures provided by the Government of Monaco for the growth domestic product per capita are 69,383€ for 2017.<sup>3</sup> It also has a very low unemployment rate (around 2%) and the lowest poverty rate in the world. Banking, gambling and tourism are the main sources of income of the city-state. The real estate sector is the major provider of employment in the state. Monaco also has a prison which was renovated in 1988 and 2000. In its ‘general information’ brochure, Monaco presents itself as a state that enjoys ‘a peaceful society and stable institutions, offering unparalleled quality of life through the safety of its people and possessions’ (p. 8).

These figures do not necessarily imply that the respect for human dignity is directly associated with the GDP per capita or any other measure of income<sup>4</sup> but that, due to the peculiar situation of the city-state, the violations of human dignity (and human rights) that could be expected – both in their type and magnitude – are not exactly the same as those of a ‘big’ state. The likelihood of an overcrowded and not well-maintained prison, which is a major source of claims involving violation of human dignity are, for example, expected to be lower than in France or Italy. The situation of the poor, which could also generate disputes involving human dignity, is also anticipated to be relatively infrequent. Besides, due to the small size of the population (and the likelihood of settling cases before they reach courts), case law is likely to be less developed than in any non-city-state.

The purpose of this chapter is to reflect upon the concept of human dignity in Monaco from a strictly national as well as a strictly legal point of view. The fact that Monaco ratified the European Convention of Human Rights (in 2005) will not be considered; it suffices to say at this point that in 2016 the European Court of Human Rights (ECtHR) dealt with five legal suits concerning Monaco, all of them were dismissed. Since 2005 very few judgements involving Monaco were passed, none of which involved human dignity.<sup>5</sup> I will not consider non-legal claims regarding violation of human dignity since these claims cannot be helpful to understand the

<sup>1</sup>The figures are available on <http://www.imsee.mc/Publications/monaco-statistics-pocket>.

<sup>2</sup>World Development Indicators database, World Bank, 15 December 2011. The surveys of the World Bank are not providing figures after 2011.

<sup>3</sup>The figures are available on <http://www.imsee.mc/Actualites/monaco-en-chiffres-edition-2017>. This difference could be explained by the fact that the GDP is taking into account people who are working in Monaco but living outside.

<sup>4</sup>It seems that there is a correlation between GDP per capita and democracy (which includes human rights) (Barro 1996).

<sup>5</sup>See [http://www.echr.coe.int/Documents/CP\\_Monaco\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Monaco_ENG.pdf).

legal meaning of human dignity:<sup>6</sup> if a newspaper or an official (but not a judge) uses the words ‘human dignity’ and asserts that it was violated or needs protection, this use is not legal; it merely states a value judgement regarding a behaviour or a situation. When Prince Albert stated that Nelson Mandela is ‘an example, a symbol of reconciliation, a great man who, through his courage, selflessness and generosity, was able to change the course of history and make his life a fight for justice and respect for human dignity’;<sup>7</sup> this could not be considered to be the statement of a legal opinion. Likewise, when he affirmed in his statement relative to the ratification of the ECHR that Monaco cherishes the values of ‘reason, justice and respect for human dignity’ (Council of Europe: Parliamentary Assembly 2004: p. 983), it is also not a reference to human dignity in its legal meaning.

I will then only consider positive national law which offers both opportunities to use the argument of human dignity – because legal sources explicitly mention the term (2) – and give some insights about its meaning through the interpretation of judges in case law (3). This applies all the more so since the literature specifically targeting human dignity in Monaco, or even mentioning Monaco, is relatively scarce.

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## 2 Human Dignity in Legal Sources

If the concept of human dignity is present in many legal sources in Monaco, some specificities can be noted when compared to other European states. Considering that Monaco’s official language is French, a few comparisons will be made to the French legal system.

### 2.1 In the Constitution

In comparison with the French Constitution, the Constitution of Monaco explicitly mentions the concept of human dignity in its Chap. III. Indeed, the second paragraph of Article 20 of the 1962 Constitution of Monaco reads: ‘Criminal law must ensure respect for individual personality and dignity. No one may be subjected to cruel, inhuman or degrading treatment.’ This provision cannot be viewed as an all-encompassing norm when one considers that Article 20 only deals with criminal matters. This explains why some authors believe that Monaco’s Constitution does not expressly refer to human dignity (Barak 2015: p. 59).

By just reading the first sentence of the Article, it is unclear whether the provision can be invoked by criminals as well as defendants or plaintiffs. Indeed, the respect of individual dignity seems to be addressed to the legislator when passing criminal law. However, the second sentence creates rights through the specification of the first

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<sup>6</sup>Despite the fact that the everyday language is providing some bases for interpretation.

<sup>7</sup><http://www.palais.mc/en/news/h-s-h-prince-albert-ii/event/2013/december/press-release-3098.html>.

sentence: ‘cruel, inhuman or degrading’ is used to define what respect of individual personality and dignity means. They are also the traditional words used to qualify the violation of human dignity. Criminals, defendants and plaintiffs should then have remedies when this occurs. Unlike the other Chapter of the Constitution of Monaco, the Supreme Tribunal of Monaco ‘rules in sovereign fashion over [...] appeals on petitions for annulment, petitions to review validity and actions for damages arising from violations of these rights and freedoms prescribed in Chap. III of the Constitution’ (Article 90-A-2).

No Supreme Tribunal decision (as of July 2017) has led to the recognition of the principle of human dignity applicable to all Monegasques. Nevertheless, the content of the freedoms and rights mentioned in Chap. III only leaves this possibility for cases involving bioethics (which also happened in France) or purely ethical questions (providing the respect of the procedural constraints), in other words in cases in which human dignity should not be considered as an individual right (invoked by the victim of the violation) but as a community standard which can restrict the individuals’ freedom. Indeed, Article 17 recognizes the principle of equality before the law which is often considered as the cornerstone of human dignity, Article 19 guarantees individual freedom and security, Article 20 states that the ‘death penalty is abolished’, Article 22 grants a ‘right for respect of private and family life and confidentiality of correspondence’ and Article 23 protects freedom of religion and expression. Of course, it is required to distinguish between the law in books and law in action, these rights being purely formal when considered out of context, but it does not seem that these rights offer a lot of space for the emergence of a general principle of human dignity. Of course, it would be easy to interpret these articles together as a whole in order to derive a general principle of human dignity (either in its individualistic or collectivist meaning), but, in that case, the principle of human dignity will mostly be used in a purely expressive way or considered to be the ‘inspiration’ for the list of freedom and rights without any real autonomy.

## 2.2 In Legislation

In his statement regarding the ratification of the European Charter on Human Rights (ECHR), Prince Albert said that ‘we are already consistently defending these values within the international community, at the United Nations, in the various United Nations organs, in the Organization for Security and Co-operation in Europe and at the different international conferences’ (Council of Europe: Parliamentary Assembly 2004: p. 983). And indeed a ‘*legimetric*’ approach of enacted law and ordinances in Monaco shows that most sub-constitutional legal texts mentioning and protecting human dignity and its different aspects are the result of enacting international conventions: of course the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Ordonnance* n. 10.542 of 14/05/1992), the Optional Protocol of the International Covenant on Civil and Political Rights (*Ordonnance* n. 14.529 of 17/07/2000), New York Convention on the Elimination of All Forms of Discrimination Against Women (*Ordonnance* n. 96 of 16/06/2005) and its Optional Protocol (*Ordonnance* n. 6.212 of 23/12/2016), Hague Protection of

Adults Convention (*Ordonnance* n. 6.009 of 28/07/2016) or the 13th Protocol of the ECHR (*Ordonnance* n. 412 of 15/02/2006). Of course, the integration of these conventions does not, per se, ensure their effectiveness, but they allow a potential plaintiff or accused to use the concepts present in these conventions and pacts.

Apart from another ordinance dealing with the administration of prisons (*Ordonnance* n. 3.782 of 16/05/2012) stating that prisoners are protected against the violation of their dignity and fundamental rights (Article 2), only two non-codified laws and three codified articles make reference to human dignity (mostly as echoes to the constitutional provision). Many mentions to the dignity of the public office could also be found in Monaco's legislation.

The first non-codified law covers extradition (*Loi* n. 1.222 of 28/12/1999). In its Article 4, it states that 'Extradition shall be refused where the offense is considered a political offense'<sup>8</sup> and adds that 'The offense is also considered to be a political offense where there is reason to believe that the extradition request for an offense under ordinary law has been made for the purpose of prosecuting or punishing an individual for reasons of race, ethnic origin, religion, nationality, political opinion and, more generally, considerations which undermine the dignity of that individual, or that the situation of that individual may be aggravated for one or other of these reasons.'<sup>9</sup> Human dignity appears as an 'umbrella' word which allows for some flexibility when considering extradition. It is not defined and, in the way the law is framed, it encompasses all the previous terms stated. As we are going to see, no case has made any use of the human dignity provision of that law.

The second law regulates digital economy (*Loi* n. 1.383 of 02/08/2011) as amended by the Law on National Security (*Loi* n° 1.430 of 13 July 2016). In Article 3, it mentions that 'Where the fundamental interests of the Principality, as defined in Article 1 of Law No. 1.430 of 13 July 2016, are violated, the respect and dignity of persons, the protection of minors or when the necessity of combating provocation to the preparation or commission of acts of terrorism or the apology of such acts falling within the scope of Articles 15 and 16 of Law No. 1.299 of 15 July 2005 on freedom of expression, the Minister of State may request the persons referred to in Sections 29 and 33 to withdraw the content that would infringe it.'<sup>10</sup> Once again, the

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<sup>8</sup>*L'extradition est refusée lorsque l'infraction est considérée comme une infraction politique.'*

<sup>9</sup>*L'infraction est aussi considérée comme politique lorsqu'il y a des raisons de croire que la demande d'extradition motivée par une infraction de droit commun a été présentée aux fins de poursuivre ou de punir un individu pour des considérations de race ou d'origine ethnique, de religion, de nationalité, d'opinions politiques, et plus généralement de considérations portant atteinte à la dignité de cet individu, ou que la situation de cet individu risque d'être aggravée pour l'une ou l'autre de ces raisons.'*

<sup>10</sup>*Lorsqu'il est porté atteinte aux intérêts fondamentaux de la Principauté, tels que définis à l'article premier de la loi n° 1.430 du 13 juillet 2016, au respect et à la dignité des personnes, à la protection des mineurs ou lorsque les nécessités de la lutte contre la provocation à la préparation ou à la commission d'actes de terrorisme ou l'apologie de tels actes relevant des articles 15 et 16 de la loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique le justifient, le Ministre d'État peut demander aux personnes mentionnées aux articles 29 et 33 de retirer les contenus qui y porteraient atteinte.'*

provision does not define the meaning of human dignity, and this concept appears to offer a margin of appreciation to the minister or judges rather than being perfectly clear in its understanding.

The three articles all refer to penal law and penal procedure and echo the constitutional provision. In the Penal Procedure Code, Article 60-4 states that ‘Police custody must be carried out in conditions ensuring respect for the dignity of the person.’ In the Penal Code, Article 294-7 reads ‘The act of making, producing, transporting, disseminating by any means and in any medium whatsoever a message of a violent or pornographic nature or of a nature that is likely to seriously undermine human dignity, trade in such a message shall be punished by imprisonment from six months to two years and by the fine provided for in Article 26, Paragraph 3, when this message is addressed to minors. The attempt is punished with the same penalties.’<sup>11</sup> What is surprising here is that the problem is not the violation of human dignity but the fact that it is likely to seriously undermine. Of course, it could be considered that if it is violating, it is likely to seriously undermine, but the subjectivity of the violation is not something to be considered here. It should then be considered that the concept of human dignity is used here as a ‘community standard’ which goes beyond what parties could agree to. However, used as a ‘community standard’, the violation of human dignity should be considered as sufficiently qualified. The last article is also issued from the Penal Code and has a specific connotation in the case of Monaco. Article 249-2 states ‘Submitting a person whose vulnerability or state of dependence is apparent or known to the perpetrator to conditions of work or accommodation incompatible with human dignity shall be punished by five years imprisonment and double the fine provided for in Paragraph 4 of Article 26.’<sup>12</sup> It is difficult not to think about cases regarding ‘modern slaves’ working in big mansions and villas. However, none of these articles have led to a decision by a court.

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### 3 Human Dignity in Case Law

Only 18 cases, amongst all the decisions rendered by the courts in Monaco, include the word ‘dignity’, and most of the time these cases deal with the dignity of the public office and not human dignity as such. This infrequent use of human dignity in

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<sup>11</sup>‘*Le fait soit de fabriquer, de produire, de transporter, de diffuser par quelque moyen que ce soit et quel qu’en soit le support un message à caractère violent ou pornographique ou de nature à porter gravement atteinte à la dignité humaine, soit de faire commerce d’un tel message, est puni d’un emprisonnement de six mois à deux ans et de l’amende prévue au chiffre 3 de l’article 26 lorsque ce message est adressé à des mineurs. La tentative est punie des mêmes peines.*’

<sup>12</sup>‘*Le fait de soumettre une personne dont la vulnérabilité ou l’état de dépendance sont apparents ou connus de l’auteur, à des conditions de travail ou d’hébergement incompatibles avec la dignité humaine est puni de cinq ans d’emprisonnement et du double de l’amende prévue au chiffre 4 de l’article 26.*’

case law (Sect. 3.1) is in itself something noteworthy. Some ideas as to why this may be (Sect. 3.2) will be submitted in order to which function ‘human dignity’ serves in case law.

### 3.1 The Infrequent Use of Human Dignity in Case Law

Amongst the cases which make references to human dignity, some use human dignity as an argument in order to convince a judge; this type of argument is not necessarily considered by judges. However, the arguments are a rather unique interpretation of human dignity if not a completely twisted approach of the concept.

For example, in 1997, a plaintiff tried to convince a judge that since he was ‘assigned to a job unrelated to his qualifications, he suffered an intolerable interference with his honour and dignity’ (G against State of Monaco, Court of Appeal of Monaco, 8 April 1997). The plaintiff had been employed as a police officer in Monaco but the French and Monegasque Authorities terminated his contract by common agreement. The plaintiff claimed that due to the nature of his termination, the State held responsibility. However, the Court denied State responsibility and did not enter into the human dignity argument. The Court merely stated that ‘no abnormal and irreparable violation of equality before the public spending [*charges publiques*] appears to be so marked in the circumstances of the present case.’

In 2001, a tenant association of Monaco sued in order to obtain the cancellation of an ordinance regarding the renting conditions of certain properties. In their complaint, the association alleged that the ordinance was illegal because it allowed the ‘directorate of housing’ to carry out investigations which were considered as ‘prejudicial to human dignity and the inviolability of the home’ (Supreme Tribunal of Monaco, 6 November 2001). This argument was not entered into by the judges.

Another example can be seen in the 2006 case, related to pedo-pornographic pictures and video downloading and sharing (J. against *Ministère Public*, Court of Appeal of Monaco, 6 March 2006). While the Penal Code already provided the means to sanction such acts, the expert noted that ‘the investigations carried out in the sealed central unit revealed elements likely to be of interest to the investigation in progress, namely correspondence and notes concerning a morality case involving VJ, 284 child pornography and 5 images offending human dignity, 11 extracts of pedophilic videos, downloaded with KaZaA software and 1252 faces of adolescent saved in the folder “portraits”’.<sup>13</sup> The judge did not take into account the ‘human dignity’ argument provided by the expert when sanctioning Mr. J.

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<sup>13</sup> ‘*les investigations réalisées dans l’unité centrale mise sous scellés ont révélé des éléments susceptibles d’intéresser l’instruction en cours, soit des correspondances et notes concernant une affaire de mœurs impliquant V. J., 284 images à caractère pédophile et 5 images portant atteinte à la dignité humaine, 11 extraits de vidéos à caractère pédophile, téléchargées avec le logiciel KaZaA et 1252 visages d’adolescent mémorisés dans le dossier portraits.*’

In only two cases, the qualification of a violation of human dignity was recognized by the judges.

The first one concerns the dignity of a patient in a hospital (Tribunal of First Instance of Monaco, *Consorts P. against CHPG, D., H., A.*, 12 March 2009). A patient was transferred from one department of a hospital to another. However, the doctor in charge did not ensure that the patient's medical record was transmitted to this department or that the nurses were fully aware of the risks associated with the recent surgery that the patient had undergone. Even worse, one doctor under the supervision of the senior doctor in charge did nothing when he was informed of pain felt by the patient. Eventually, the patient died. According to the Court, this series of wrongful acts led to a violation of the dignity of the patient. In this case, the concept of dignity is used not for the application of a special legal disposition but for the qualification as a wrongful act of the behaviour of the doctor in charge which led to compensating the moral prejudice suffered, by ricochet, by the legal successors of the patient. If the court concluded that indeed a violation happened, it did not specifically explain why such qualification was made since the problem was merely to identify a personal wrongful act which could be attributed to the doctor in charge. In other words, not respecting human dignity is sufficient to qualify an action as a wrongful act.

The second case appeared in the field of labour law and is linked to the freedom of expression (Tribunal of First Instance of Monaco, *SBM SAM against N.*, 9 June 2005). After receiving a message from management saying that on 11 September 2002, the company had decided to participate in a minute of silence of the Principality of Monaco scheduled at 3 pm, a worker answered: 'I do not have time to stop especially for the American and Jewish people.' The email was forwarded to all the employees of the company. The company fired the worker for serious misconduct. The judges considered that such behaviour characterized a violation of the 'universal dignity of persons' so that the layoff was justified. However, the company should have respected the period of notice stated in the employment contract. Indeed, the Tribunal considered that 'the immediate termination of the employment contract by the SBM does not appear to be legitimate since the fault committed was not so serious that the presence of the employee on the premises of the undertaking was rendered impossible during the relatively short notice period.'<sup>14</sup> Once again, human dignity was used to qualify a 'fault.' Using human dignity was not even required considering other provisions in Monaco's laws. Of course, it is difficult to identify what the judges are including within the concept of human dignity or universal dignity of persons. However, such a violation is not considered as sufficiently serious for immediately terminating an employment contract.

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<sup>14</sup> *Attendu en revanche que la rupture immédiate du contrat de travail par la SBM n'apparaît pas légitime, la faute commise ne présentant pas un degré de gravité tel que la présence du salarié dans les locaux de l'entreprise ait été rendue impossible pendant la durée limitée du préavis.'*



### 3.2 Speculation

Considering the number of cases involving the concept of human dignity, it is only possible to speculate (briefly) on the use, meaning, function and infrequent use of the concept by Monegasque jurisdiction.

Regarding the infrequent use, only few explanations can be provided. It could be that human dignity is rarely violated in Monaco either because the people living in Monaco are 'virtuous' or because the public enforcement of regulation is so powerful that it is sufficient to deter individuals to commit such violations. Another explanation could be that most disputes are settled before going to court so that plaintiffs rarely press charges. The fact that Monegasque laws provide plenty of means to protect equality and liberty could also mean that the concept of dignity is not useful to achieve certain results (human dignity being considered here in its individualistic understanding). The absence of cases regarding human dignity conceptualized as a community standard to forbid certain actions could be explained either by the homogeneity in preferences of the people living in Monaco so that nothing that could be considered as a violation is even thought of or by hypothesizing some powerful social norms which do not require any public enforcement to be effective.

Regarding the use, meaning and function of human dignity in Monaco, as already stated, it is not certain that a specific protection of human dignity is required considering the rights and freedom already protected by Monegasque law and the liberal tradition of this city-state (which favours an individualistic concept of dignity rather than a community standard which should be enforced). Of course, human dignity could be considered as the fundamental principle from which all the rights and freedom are derived, but from the point of view of positive law, such a hypothesis would not add much, except by 'expressing' the reason why such rights and freedom should be granted. It is even possible to consider that this 'expressivity' of the concept of human dignity could explain why it is infrequently used by courts: empty shell, the courts prefer to use less fuzzy concepts to justify their decisions. What is certain considering its use by parties in a dispute is that the concept of human dignity enjoys, at least, some rhetorical strength for their lawyers.

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## 4 Conclusion

It appears for what was previously said that human dignity does not seem to have a significant role within the Monegasque legal system. This does not mean that the concept is not recognized or that Monaco does not pay attention to human dignity, it merely states that, as a legal tool, it is infrequently invoked by jurisdiction and that its introduction did not lead to a radical modification of the legal system of the city-state. As Prince Albert said during his statement relative to the ratification of the ECHR, this late ratification does not mean that Monaco was not already protecting human rights and human dignity.

Of course, the fact that Monaco is a ‘rich’ city-state could also have an influence in this infrequent use, but there are no data verifying this hypothesis.

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## 5 Cross-References

- ▶ [Human Dignity in Europe: Introduction](#)
- ▶ [Human Dignity in France](#)
- ▶ [Human Dignity in the EU](#)

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## Positive Law

### Mentioned Legislations (By Date)

- Ordonnance n. 10.542 du 14/05/1992 rendant exécutoire la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants
- Loi n. 1.222 du 28/12/1999 relative à l’extradition
- Ordonnance n. 14.529 du 17/07/2000 rendant exécutoire le deuxième protocole facultatif se rapportant au pacte international relatif aux droits civils et politiques visant à abolir la peine de mort
- Ordonnance n. 96 du 16/06/2005 rendant exécutoire la Convention sur l’élimination de toutes les formes de discrimination à l’égard des femmes, adoptée à New York le 18 décembre 1979
- Ordonnance n. 412 du 15/02/2006 rendant exécutoire le Protocole n° 13 à la Convention Européenne de sauvegarde des Droits de l’Homme et des Libertés fondamentales, relatif à l’abolition de la peine de mort en toutes circonstances ouvert à la signature le 3 mai 2002
- Loi n. 1.383 du 02/08/2011 sur l’Économie Numérique
- Ordonnance n. 3.782 du 16/05/2012 portant organisation de l’administration pénitentiaire et de la détention
- Loi n° 1.430 du 13 juillet 2016 portant diverses mesures relatives à la préservation de la sécurité nationale
- Ordonnance n. 6.009 du 28/07/2016 rendant exécutoire la Convention sur la protection internationale des adultes, conclue à La Haye le 13 janvier 2000 et entrée en vigueur le 1er janvier 2009
- Ordonnance n. 6.212 du 23/12/2016 rendant exécutoire le Protocole facultatif à la Convention sur l’élimination de toutes les formes de discrimination à l’égard des femmes adopté le 6 octobre 1999 et entré en vigueur le 22 décembre 2000

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**Mentioned Cases (By Date)**

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Tribunal de première instance de Monaco, 09 June 2005 SBM SAM c/N

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