

Monaco

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The Principality of Monaco (*la Principauté de Monaco*) is a sovereign and independent state. The relations of Monaco with France are governed by a certain number of agreements: the Treaty of 2 Feb. 1861 (51 B.F.S.P. 673) settles the territorial questions between the two countries, fixing the frontier and setting forth the principle of customs union. The Treaty of 17 July 1918 (111 B.F.S.P. 727) regulates mainly political questions on the basis of the close relationship which exists between the Principality of Monaco and France by reason of the geographical situation. It confirms the independence and sovereignty of Monaco and arranges the relations of the two countries in order to safeguard the "political, economic and naval interests of France". In the event of there being no heir to the throne, a solution in favour of France is provided. According to art. 5 the French Government will use its good offices on the behalf of the Government of the Principality to facilitate its access to international institutions. The Agreements of 14 April 1945 are all of an

economic nature and relate to exchange control, illicit profits, fixing and control of prices, fiscal frauds and mutual administrative assistance. By an exchange of letters of the same date, the two states created a joint consultative commission to deal with difficulties which could arise between them.

The six Agreements of 18 May 1963, signed just after the Franco-Monacan crisis of 1962-1963, replace an Agreement of 23 Dec. 1951. They are respectively entitled: Fiscal Agreement¹, Customs Agreement², Frontier and Boundaries Agreement³, Drugs Control Agreement⁴, Insurance Control Agreement⁵ and Postal Telegraphic and Telephonic Relations Agreement⁶. Five additional exchanges of letters relate to banking control in the Principality, road transport, town planning, territorial water limits and, finally, the status of previous administrative acts. An Agreement on Road Transports has been concluded on 9 July 1968⁷.

I. CONSTITUTIONAL SYSTEM

The first Constitution of 5 Jan. 1911, marking the transition from the paternalistic government of on family to constitutional government, subsequently revised several times, was recently replaced by a new Constitution promulgated on 17 Dec. 1962.

1. Nationality

Several modifications have been made to the original Royal Ordinance of 1822 relating to nationality and naturalization and to the relevant provisions of the Civil Code (art. 8 to 21). All children of a Monacan father, whether born in Monaco or abroad, are citizens of Monaco (CC art. 8). By a Regulation of 13 April 1911,

Monacan nationality has been granted to those born in Monaco of unknown parentage or whose nationality is unknown. Law no. 582 of 28 Dec. 1953 makes it possible under certain conditions to acquire Monacan nationality through birth in Monaco, if one of the parents has been (but is no longer) a national or if also he himself and one of his parents had been born in the Principality. This statute has undergone successive amendments in 1959, 1961 and 1969. In addition to conferring nationality on a child of a Monacan father and on one born in Monaco of unknown parents, the present version of CC art. 8 confers nationality upon a child born of an unknown father and a mother who, being a Monacan by birth, continued to enjoy Monacan nationality at the time

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¹ Additional clauses of 25 June and 8 Aug. 1969: Codes et lois de la Principauté de Monaco (Toulouse 1958 ss., loose-leaf). *Traité internationaux* 091 fasc. 7 p. 1-7.

² *Ibidem* p. 7-10.

³ *Ibidem* p. 10-12.

⁴ *Ibidem* fasc. 8 p. 1.

⁵ *Ibidem* p. 1-2.

⁶ *Ibidem* p. 2-3.

⁷ *Ibidem* fasc. 9 p. 2-3.

of the child's birth.

CC art. 9, 10, 12, 17 to 20 deal with conditions for naturalization.

2. Territorial Division

Law no. 30 of 3 May 1920, modified in 1923 and 1949, fixes the municipal structure, providing for an elected municipal body and a council of the parish to administer it.

3. State Organs

a. *The Crown.* – The succession to the throne operates through the direct legitimate descent of the Prince on his death or abdication, in order of primogeniture with priority being given to male descendants in the same degree of relationship. The Prince exercises his sovereign authority in conformity with the provisions of the Constitution and the law. He holds the right of pardon and amnesty, he confers orders, titles, distinctions and Monacan nationality. He represents the Principality in its relations with foreign powers. After consulting the Crown Council, he signs and ratifies treaties, then introduces them to the National Council, except those bearing on constitutional organization which can only be ratified by virtue of a law. The Prince promulgates the necessary regulations for the execution of laws and the application of treaties.

Two consultative bodies assist the Prince; (1) the State Council, composed of 12 members presided over by the Director of Judicial Services, gives advice on projected laws and regulations; (2) the Crown Council, composed of seven members of Monacan nationality, nominated for three years by the Prince, which he consults on matters concerning international treaties, the dissolution of the National Council, demands for naturalization and reintegration, pardons and amnesties.

b. *Legislative power.* – It is exercised by a single chamber, the National Council. It is composed of 18 members, elected for five years by universal direct suffrage, by the citizens of both sexes, aged at least 21 and having held Monacan nationality for at least 5 years. Members of the National Council have the right of immunity and parliamentary privilege. The National Council is convened for sessions – ordinary sessions, at least two annually, not exceeding two months duration and extraordinary sessions, convoked by the

⁸ It is governed by the Law of 15 July 1965: Codes et lois de la Principauté de Monaco (*supra* n. 1). Lois,

Prince or the President of the Council on the demand of two-thirds of its members.

The Prince initiates laws and sanctions them. The National Council deliberates on his draft laws and votes on them. It votes the budget. Promulgation of the laws by the Prince gives them the binding force.

c. *Executive power.* – It is exercised under the ultimate authority of the Prince by a Minister of State, assisted by a Cabinet. The Minister of State is chosen by the Prince from a list of three names given to him by France. The Minister of State is, by delegation of the Prince, the Chief of the Executive. He directs the police force.

The Cabinet is composed of three members: (1) a Minister for Home Affairs, (2) a Minister of Finance and Economic Affairs and (3) a Minister of Public Works and Social Affairs. The Cabinet is presided over by the Minister of State. It deliberates on royal ordinances and ministerial decrees. However, certain ordinances and decrees are not subject to its deliberations (Const. art. 46) and the Prince has the right of veto with respect to ministerial decrees.

4. The Judiciary

The judicial power belongs to the Prince who delegates its exercise to the courts and tribunals. The independence of judges is guaranteed by the terms of the Constitution. The organization, jurisdiction and functioning of the courts, as well as the status of the judges, are fixed by law. The judiciary⁸ is composed of: (1) *the justices of the peace*, judges in civil and criminal matters with exclusive jurisdiction in some matters, but in others appeal to a higher court is open; (2) *the court of first instance*, court of first instance in more qualified civil and criminal matters or hearing appeals from the justices of the peace; (3) *the Court of Appeal*, hears appeals against judgments given in civil or criminal cases by the court of first instance; (4) *the Criminal Court*, hears serious offences and crimes; (5) *the Court of Review*, hears appeals for review against decisions in civil matters given by a court of last resort. And in criminal cases rules on appeals for review as well as on appeals for retrial; (6) *the Supreme Court* is instituted by the Constitution of 1911; it is composed of five permanent members and substitutes appointed by the Prince upon nomination by different Monacan bodies. Its role was extended in 1962. It has competence in constitutional ordinances, arrêtés no. 52.

III
 matters, in administrative matters and in matters of conflict of jurisdiction. It is in the Principality of Monaco what the *Conseil Constitutionnel*, the *Conseil d'Etat* and the *Tribunal des Conflits* are in France. Its organization and work are settled by

the Ordinance of 16 April 1963, amended in 1966 and 1971.⁹

The Principality of Monaco has no commercial courts, these are replaced by the ordinary courts.

II. SOURCES OF LAW

The Principality is endowed with its own law, consisting of various codes, statutes, ordinances and decrees. This law is profoundly marked by French law by very reason of the geographical situation of the two countries and the nature of the relations of Monaco with France.

The Civil Code was promulgated in three stages. The first, by a Decree of 21 Dec. 1880, fixes the status of individuals and the family. On 15 Nov. 1881 another Decree was issued dealing with property. A Decree of 25 Oct. 1884 established the different ways by which property may be acquired, *i.e.*, contracts and successions.

The Code of Civil Procedure was promulgated on 5 Sept. 1896 and completed by a Law of 22 Jan. 1930 on Civil and Commercial Arbitration; the Criminal Code on 28 Sept. 1967; the Code of Criminal Procedure on 2 April 1963; the Commercial Code on 5 Nov. 1887.

Various laws, ordinances and decrees elaborate and define the rights of individuals, labour law, the armed forces, the economy and finance. They are published in *Le Journal de Monaco*, the official bulletin of the Principality. The decisions of the Supreme Court as well as certain decisions of the other courts are also published in this journal.

III. SELECTIVE BIBLIOGRAPHY

I. Books and Articles

General: Cercler, *La Principauté de Monaco. Etude politique et juridique* (Paris 1929); Rousseau, *La Principauté de Monaco: Cours de droit international public*, Faculté de Droit de Paris (Paris 1960-1961) 268-281; Passeron, *Statut politique, économique et financier de la Principauté de Monaco: Rev.S.L.F.* 1952, 391-407; Bertin, *Les conventions franco-monégasque* (1946); Prat, *La Principauté de Monaco et le traité du 17 juillet 1918* (Nice 1920); Rousseau, *France et Monaco. Conclusion des conventions du 18 mai 1963: Rev.gén.dr. int.* 1963, 907-911; Sanita, *Les répercussions de la politique économique et fiscale française sur l'union douanière franco-monégasque* (1953); Gallois, *Le régime international de la Principauté de Monaco* (Paris 1964).

Specific: Aureglia, *Contribution à l'histoire constitutionnelle de Monaco* (Chambéry 1961); *idem*, *La nationalité en droit monégasque: Clunet* 1958, 75-121; Crovetto, *Le tribunal suprême de la Principauté de Monaco. Le contrôle de la constitutionnalité des actes et mesures de la puissance publique* (Paris 1935); Médecin, *L'Organisation judiciaire de la Principauté de Monaco* (1938); Rey, *Les sociétés dans la Principauté de Monaco* (1943); Rheinstrom, *Die Holding-Gesellschaft nach dem Recht des Fürstentums Monaco* (ed. 2 Zurich 1938); Nolan and Blair, *Business in Monaco under the New Treaty with France: 1964 Bus.Lawyer*

661-672; *Torem and du Vivier, Corporation and Tax Law of Monaco: 1961 Bus.Lawyer* 1053-1065; Farnet, *Les relations douanières entre la France et la Principauté de Monaco* (Paris 1917); *White and Ravenscroft* (ed.), *Trade Marks [Monaco]; Manual Industrial Property II [Monaco]; Gaudeffroy, De l'exécution des jugements rendus par les tribunaux français dans la Principauté de Monaco et des jugements monégasques en France: Clunet* 1954, 910-953.

2. Legislative Texts and Translations

Codes et lois de la Principauté de Monaco (4 vol.) (Paris, periodically brought up to date); *Constitution of 17 Dec. 1962: Peaslee, Constitutions III* 637-648; *Ordonnances et lois concernant la nationalité de 1877 jusqu' à 1952: Nationality Laws* 314-319; *A Note on Monaco: Aufrecht, Central Banking II* 919-920; *Ordonnance du 15 octobre 1915 sur la naturalisation monégasque des navires* [excerpts]: *Nationality of Ships* 109-111; *Law on the Protection of Literary and Artistic Works of 24 Nov. 1948 as amended up to 17 Nov. 1949; Copyright Laws [Monaco] Item 1; Patent Law no. 606 of 20 June 1955: 56 Pat. & T.M.Rev.* 28-38 (1957); *Law no. 607 of 20 June 1955 concerning designs as amended up to 5 Nov. 1956: Bogsch* (ed.), *Design Laws [Monaco] Item 1.*

(Completed in June 1973)

⁹ *Ibidem* no. 41.23 p. 5-7.