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**Study on Homophobia, Transphobia and Discrimination on  
Grounds of Sexual Orientation and Gender Identity**

**Legal Report: Monaco**

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## **A. Executive summary**

1. In general, the principle of non-discrimination is not embodied in Monaco legislation and no specific non-discrimination law exists.
2. There is no mention of 'gender identity' as a discrimination ground anywhere in the law. As for 'sexual orientation', it is mentioned in the recent Law on Freedom of Public Expression of 2005 only.
3. There is no specific complaints body to which discrimination complaints can be directed.
4. The law on Associations includes a clause whereby associations may be dissolved to secure "public order" and "good morals". These wide notions are not defined in the law and have so far not been used to limit freedom of association.
5. In July 2010 the law on Freedom of Public Expression was applied for the first time in a case on homophobic insult. The case is the only of its kind in Monaco.
6. There is no hate crime legislation in Monaco and violence based on sexual orientation is not considered an aggravating factor. A group of parliamentarians are currently looking into elaborating such provisions.
7. LGBT people do not have the right to marry and registered partnership is not legally recognised. Also they do not have the possibility to adopt children as a couple as this is only allowed to married opposite-sex couples or for a single person through "adoption simple" (article 264 and s. of the Civil Code). Fertility treatment is not provided to lesbians.
8. Asylum issues are regulated by French law and not directly applicable in Monaco.
9. LGBT people enjoy the same level of social security and access to care and insurances as other single individuals in Monaco. However, same-sex couples do not enjoy the same legal privileges as married opposite-sex couples in terms of benefits.
10. Monaco law does not distinguish between opposite-sex and same-sex couples in giving priority to state owned apartments as long as the applicant is part of a 'home' ('foyer' in French and interpreted to include couples living together).
11. Monaco school curriculum does not include sexual education at any level of schooling.
12. Employment legislation does not set forth any non-discrimination principles and there is no mention of 'sexual orientation' and 'gender identity'. The same applies for health care issues.
13. There is no legislation pertaining to transgender people. It is possible to change name when approved by the court of first instance. There is no legislation on change of sex and sex marker in official documents and also no practice.

## B. Findings

### B.1. Overall legal framework

14. The Constitution of Monaco of 17 December 1962, which was modified by a statute of 2 April 2002, asserts that Monaco is a sovereign and independent State within the limits of the general principles of international law as well as specific conventions with France.
15. Chapter III of the Constitution of Monaco protects fundamental freedoms. One of the principles stipulated here (Article 17) is that all people in Monaco are equal before the law<sup>1</sup>. Beyond this provision which protects Monaco citizens, Monaco does not have a specific legal framework embodying equality and non-discrimination principles.
16. In general, sexual orientation is not protected from discrimination under Monaco law. However, Article 16<sup>2</sup> of the recent law on Freedom of Public Expression (2005) contains this notion in a provision on hate crime and defamation and article 24 and 25 of the same law punish slander and libel based on sexual orientation.
17. Monaco does not have an Ombudsman institution or other institution specifically dealing with discrimination. It has a Human Rights and Fundamental Freedoms Unit which was established in 2005 in the Department of External Relations. In its 2008 report the UN Human Rights Committee stressed that it did not consider this body to be an actual independent national human rights institution. The Committee therefore recommended that Parliament take further action to establish a fully fledged national human rights institution for promotion and protection of human rights along the Paris Principles and that the government should consult civil society when doing this<sup>3</sup>. The same recommendation was made by the Human Rights Commissioner of the Council of Europe in his 2008 report and by the Committee on the Elimination of Racial Discrimination in 2010 in its review of state reports related to Article 9 of the Convention on Elimination of Racial Discrimination (CERD) <sup>4</sup>. In the annexed Observations of Monaco authorities to the Commissioner's 2008 report, the government states that it does not see the need for the establishment of an independent human rights structure. Nevertheless, some MPs are currently considering to prepare a draft law which would comply with the recommendations<sup>5</sup>.
18. Monaco entered the Council of Europe as its 46th member on 5 October 2004. On 30 November 2005, it ratified the European Convention on Human Rights that became part of the legal framework in Monaco.
19. Monaco has not signed the UN Declaration on Sexual Orientation and Gender Identity, and has also not signed Protocol No. 12 to the European Convention on Human Rights.
20. Monaco has ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the United Nations General Assembly on 16 December 1966 which protect individuals

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1 Constitution of Monaco, article 17: "Les Monégasques sont égaux devant la loi. Il n'y a pas entre eux de privilèges".

2 *Loi n° 1.299 du 15 juillet 2005 sur la liberté d'ex pression publique*, Article 16: "Sont punis de cinq ans d'emprisonnement et de l'amende prévue au chiffre 4 de l'article 26 du code pénal, ou de l'une de ces deux peines seulement (...) Sont punis des mêmes peines ceux qui, par l'un des moyens énoncés à l'article 15, provoquent à la haine ou à la violence à l'égard d'une personne ou d'un groupe de personnes à raison de leur origine, de leur appartenance ou de leur non-appartenance à une ethnique, une nation, une race ou une religion déterminée, ou à raison de leur orientation sexuelle, réelle ou supposée".

3 CCPR/C/MCO/CO/2, 12 December 2008.

4 CommDH, 2009, 10-11 March 2009 and 76th session of the Committee on the Elimination of Racial Discrimination, 15 February – 12 March 2010, final observations of the Committee on Monaco.

5 Meeting with MP Jean-Charles Gardetto, 16 June 2010.

against discrimination based on any situation (including sexual orientation (article 2-1 of the ICCPR and 2-2 of the ICESCR).

## **B.2. Freedom of assembly and association**

21. The right to hold meetings and the freedom of association are guaranteed by the Constitution of Monaco in its Articles 23 and 30.<sup>6</sup> Freedom of association is regulated by the Law on associations.<sup>7</sup> This law allows anyone to form associations without registering. However, this freedom goes hand in hand with a right for the authorities to dissolve organisations whose mandate is contrary to the law, including by countering 'public order' and 'good morals'.<sup>8</sup> No such cases have ever taken place. When asked, the authorities did not point to specific 'public order' or 'good morals' incidents or arguments which could justify closing down of an LGBT association or banning an assembly in a concrete case.

## **B.3. Freedom of expression**

22. Freedom of expression is guaranteed for all citizens under Article 23 of the Constitution.<sup>9</sup> The law on Freedom of Public Expression was adopted in July 2005.<sup>10</sup>
23. The statute of 15 July 2005 on freedom of expression contains a ban on provocations, insults, slander and libel, including those based on sexual orientation. On 6 July 2010, the *Tribunal Correctionnel*<sup>11</sup> of Monaco sentenced the author of insults based upon sexual preferences to five days imprisonment on the basis of Article 16 of this law.<sup>12</sup> The case concerned homophobic insult of the caretaker of a building, who lived together with his partner in one of the flats of the property. It was a visitor in the building who harassed the plaintiff over a period of time. The plaintiff had reported the episodes to the police. The defendant was fined 5000 EUR and was sentenced to five days of imprisonment. The plaintiff has filed new complaints against the defendant following new homophobic expression and thus a new case will start in autumn 2010.

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6 Article 23: "La liberté des cultes, celle de leur exercice public, ainsi que la liberté de manifester ses opinions en toutes matières".

7 Law no. 1.355 of 23 December 2008 on Associations and Federations of associations.

8 Article 6, Loi no. 1355 concernant les associations et les fédérations d'associations.

9 Article 23 reads: "La liberté des cultes, celle de leur exercice public, ainsi que la liberté de manifester ses opinions en toutes matières sont garanties, sauf la répression des délits commis à l'occasion de l'usage de ces libertés. Nul ne peut être contraint de concourir aux actes et aux cérémonies d'un culte ni d'en observer les jours de repos."

10 Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique, Article 16: "Sont punis de cinq ans d'emprisonnement et de l'amende prévue au chiffre 4 de l'article 26 du code pénal, ou de l'une de ces deux peines seulement (...) Sont punis des mêmes peines ceux qui, par l'un des moyens énoncés à l'article 15, provoquent à la haine ou à la violence à l'égard d'une personne ou d'un groupe de personnes à raison de leur origine, de leur appartenance ou de leur non-appartenance à une ethnie, une nation, une race ou une religion déterminée, ou à raison de leur orientation sexuelle, réelle ou supposée".

11 Lowest criminal court in France and Monaco.

12 Article 16 reads: "Sont punis de cinq ans d'emprisonnement et de l'amende prévue au chiffre 4 de l'article 26 du Code pénal, ou de l'une de ces deux peines seulement, ceux qui, par l'un des moyens énoncés à l'article précédent, ont directement provoqué, dans le cas où cette provocation n'aurait pas été suivie d'effet, à commettre l'une des infractions suivantes:

\* 1) les atteintes volontaires à la vie, les atteintes volontaires à l'intégrité de la personne et les agressions sexuelles;

\* 2) les vols, les extorsions et les destructions, dégradations et détériorations volontaires dangereuses pour les personnes;

\* 3) les actes de terrorisme ou l'apologie de tels actes.

Sont punis des mêmes peines ceux qui, par l'un des moyens énoncés à l'article 15, provoquent à la haine ou à la violence à l'égard d'une personne ou d'un groupe de personnes à raison de leur origine, de leur appartenance ou de leur non-appartenance à une ethnie, une nation, une race ou une religion déterminée, ou à raison de leur orientation sexuelle, réelle ou supposée..."

24. As no specific LGBT activities have taken place there are no cases on state or private interference with regards to expression of LGBT belonging or views.

#### **B.4. Hate crime**

25. There is no legislation or provision on hate crime in Monaco and also no Case Law. The Law on Freedom of Public Expression punishes provocation of hatred and violence towards an individual on the ground of sexual orientation, but not gender identity. The provision does not constitute actual hate crime legislation as it only relates to expression. Furthermore it does not recognise homophobic or transphobic motivation of a violent act as an aggravating circumstance.
26. The National Council (parliament) has established a working group which is focusing on the possibility of introducing a provision on hate crime in the Criminal Code (Article 38 of bill no. 198) and thus go beyond the provision in the Law on Public Expression. The need for elaboration of this legislation has been accelerated by the July-case, judged according to the law on Freedom of Public Expression. According to an interview with a member of the working group, the provision would ideally include sexual orientation and gender identity as grounds for such crimes. The intention is to include the provision/s in an overall law on non-discrimination which will, however, not touch the privilege of the population of Monaco in terms of positive discrimination in relation to, for example, housing and employment.<sup>13</sup> Several MPs of both the majority and the opposition have expressed strong reserves to such legislation.
27. About hate speech - see the chapter on *Freedom of expression* in this report.

#### **B.5. Family issues**

28. Monaco law recognises marriage between men and women only. Article 147 § 2 of Monaco Civil Code expressly states that "a marriage between two people of the same sex is void".<sup>14</sup>
29. Registered partnership is not allowed either, neither in relation to opposite-sex nor same-sex couples. In relation to a major debate in Parliament on a law on domestic violence in April 2008 the notion of "concubinage" was discussed as part of the draft law. The then head of the government of Monaco, the former Minister of State, stated that the notion of "concubinage", two people living together, should not be extended to same-sex couples.<sup>15</sup> "It is not cohabitation which bothers me. It is homosexuality in the name of the principles of the government," said the Minister of State who made it a point that he was speaking on behalf of the Prince. The statement was made contrary to the recommendation made by the Committee on Women's Rights and Family<sup>16</sup> which proposed to extend the notion to same-sex couples. The proposition of the Commission was followed by the majority of the National Council. The final version of the law includes the terminology 'couples or individuals living together under the same roof'<sup>17</sup>. The debate in Parliament was commented by the weekly Monaco Hebdo<sup>18</sup> which presented the statements made by the

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13 Meeting with MP participating in the working group, 16 June 2010. Further elaborated on in: "Homophobie: cinq jours de prison ferme", *Nice Matin*, 7 July 2010.

14 Article 147 reads: "Est nul le mariage célébré en violation des articles 116 à 122, 124, 125, 130 et 131. Est également nul le mariage entre personnes du même sexe. L'action en nullité ne peut être exercée que dans les conditions prévues ci-après."

15 E-Ilico, *Monaco: le chef du gouvernement opposé au concubinage homosexuel*, 11 June 2009, <http://v2.e-lico.com/rubrique.htm?rubrique=telex&articleID=17825>, accessed 5 November 2009.

16 La Commission des Droits de la femme et de la famille.

17 *Draft law no. 190 on the fight against domestic violence*, [www.conseilnational.mc](http://www.conseilnational.mc), accessed 23 September 2010.

18 *Monaco Hebdo*, no. 605, 1 May 2008.

government as homophobic. According to an interview with a Member of Parliament, a draft law on registered partnership, including for same-sex couples, could be proposed by some Members of Parliament in the foreseeable future.<sup>19</sup>

30. Only married couples, and thus opposite-sex couples, can adopt children according to the wording of Civil Code Article 242 and only after 5 years of marriage.<sup>20</sup> Same-sex partners cannot jointly adopt a child. Neither can same-sex partners adopt each other's biological child(ren). However "simple" adoption by one individual is possible (article 264 and s. of the civil code). Fertility treatment for lesbians is not legal in Monaco.
31. The law is silent about family issues from a transgender perspective and so are reports from and about everyday life in Monaco.
32. There are no known cases related to family issues.

#### **B.6. Asylum and refugee issues**

33. Asylum claims must go through French administration and thus there is no legislation and Case Law on this matter.

#### **B.7. Social security, social care and insurance**

34. As a consequence of same-sex couple relationships not being legally recognised, there is no possibility for same-sex couples to benefit from legal protection relating to inheritance schemes, benefits from health insurances or from the deceased partner's reversion pension. The same applies to the level of security provided to married couples in terms of social security, social care, insurance and all other social protection measures.
35. LGBT people on an individual basis enjoy the same rights and protection as every other single citizen in Monaco, including the rights relating to private insurances.
36. There is no particular protection of transgender people in terms of health insurances or care or benefits.
37. No cases have been identified in this field.

#### **B.8. Education**

38. Education is mandatory for all children in Monaco aged 6 - 16. The curriculum for this part of the educational system does not include a specific sexual education programme, but rather biology at large.
39. There are no medical schools or faculties in Monaco, and no curriculum including sexual education for university students.

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<sup>19</sup> According to *Proposal 52 of the Programme of the Union Pour Monaco*. The Proposal reads: "Reconnaitre l'union libre, pour ouvrir à ces couples les mêmes droits vis-à-vis de l'Administration, sur le modèle de ce que nous avons obtenu pour les logements domaniaux", [www.unionpourmonaco.com/programme.php](http://www.unionpourmonaco.com/programme.php), accessed 23 September 2010.

<sup>20</sup> Article 242 of the *Civil Code* reads [Alinéa modifié par la loi n° 1.183 du 27 décembre 1995]: "L'adoption légitimante ne peut être demandée que conjointement, après cinq ans de mariage, par deux époux non séparés de corps, dont l'un au moins est âgé de trente ans.

Elle peut cependant être demandée par un seul époux, lorsqu'elle concerne un enfant de son conjoint ; ce dernier doit y consentir. Si le lien de filiation est établi, l'autre auteur de l'enfant ou, en cas de décès, ses ascendants légitimes doivent également y consentir, sous réserve des dispositions de l'article 256."

## **B.9. Employment**

40. Employment legislation in Monaco does not provide for the extensive employment protection which is guaranteed to EU citizens in EU countries as it does not promote equal employment and advancement opportunities in all areas of public service.
41. Monaco legislation does not include the principle of non-discrimination in employment, neither in general nor on the grounds of sexual orientation and gender identity except for Law no. 948 dated 19 April 1974 which provides for equal salary for men and women. In fact, employment legislation does include a principle of discrimination, namely on the basis of citizenship as Monaco citizens with equal qualifications take precedence to other nationalities for employment.
42. Monaco is not a member of the International Labour Organisation and therefore does not adhere to Conventions 111 and 118 on Discrimination in Employment and Occupation and Equity of Treatment in regard to Social Security. When reviewed by the Working Group of the Universal Periodic Review of the United Nations on 4 May 2009, the government stated that this is due to the fact that trade union laws do not permit this.<sup>21</sup>
43. Due to the absence of a general non-discrimination principle in employment there are no particular complaints procedures in this regard. No cases are reported, including from civil society organisations.

## **B.10. Housing**

44. Monaco citizens are positively discriminated in the sense that they have first priority to state owned apartments, the so-called 'apartments domaniaux'. It is a criteria for granting the right to an apartment that the applicant is part of a 'home' ('foyer' in French), and this notion includes couples living together as if they were a married couple ('couple vivant maritalement' in French)<sup>22</sup>. When asked, the Housing Service (Service de l'Habitat) stated that no distinction is made between opposite-sex and same-sex couples in this regard and that apartments have been granted to persons of the same-sex wishing to live together.

## **B.11. Health care**

45. LGBT people enjoy the same rights as all other individuals living in Monaco in terms of right to access to health care. No specific protection is afforded to provide equal rights in terms of, for example, health insurance.
46. Gender reassignment treatments are not available in Monaco. Any person in need of such treatment must go abroad to receive therapy and/or treatment.
47. No cases are reported in which LGBT people have been diagnosed as being sick, either physically or psychologically, because of their sexual orientation or gender identity.
48. Same-sex partners are not considered next of kin and may therefore not automatically be allowed to access information about the partner's health in situations where this may be needed.

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21 International Service for Human Rights, [www.ishr.ch/index.php?option=com\\_content&task=view&id=497&Itemid=511](http://www.ishr.ch/index.php?option=com_content&task=view&id=497&Itemid=511), accessed 23 September 2010.

22 Arrêté Ministériel no. 2009-46 du 29 janvier 2009.



#### **B.12. Access to goods and services**

49. N/A

#### **B.13. Media**

50. Neither the media of Monaco nor the government have elaborated a press council and a set of press ethics and thus there is no obligation to respect specific legal requirements other than the law in general.

51. There are no reports about media harassment of LGBT individuals or groups and also no specific encouragement from the government to the media to convey LGBT issues in a respectful way.

#### **B.14. Transgender issues**

52. Transgender persons enjoy the same rights as all other Monaco citizens; no specific protection is afforded to them.

53. Change of name may take place according to Article 77-11 of the Civil Code when approved by the court of first instance.<sup>23</sup> When changed, the change is automatically registered in official documents.

54. There is no legislation on gender reassignment and gender markers.

55. No practice or case law exists.

#### **B.15. Good practice**

56. N/A

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<sup>23</sup> Article 77-11 reads: "Le prénom est immuable.

Pour de justes motifs, un ou plusieurs prénoms peuvent, à la demande de l'intéressé lui-même, de son représentant légal et, en cas de reconnaissance d'enfant naturel, à la demande de son auteur, être modifiés, ajoutés ou supprimés par jugement du tribunal de première instance, statuant en chambre du conseil.

Le dispositif de la décision est transcrit sur les registres de l'état civil et mentionné en marge des actes concernant l'intéressé."