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SUPREME COURT OF MONACO

**Working Document
for the Circle of Presidents
of the XIVth Conference
of European Constitutional Courts**

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Table of contents

1. DESCRIPTION	7
Introduction	7
I. Legal basis	7
II. Composition and organisation	7
III. Jurisdiction	10
IV. Nature and effects of judgments	10
2. EXTRACTS OF THE CONSTITUTION	11
3. LEGISLATION	12
Order no. 2984 on the organisation and functioning of the Supreme Court.....	12
Law no. 839 on national and municipal elections	23
Order no. 4386 adopted for the application of Article 9 of Law no. 839 of 23 February 1968, on national and municipal elections, relating to an appeal by the Minister of State before the Supreme Court against the list of amendments to the electoral register	23
Order no. 4653 amending Articles 27, 30 and 40 of Order no. 2984 of 18 April 1963 on the organisation and functioning of the Supreme Court	24
Order no. 6820 amending Order no. 2984 of 16 April 1963 on the organisation and functioning of the Supreme Court	25
4. CASE-LAW	25
Identification: MON-2007-1-001.....	25
Identification: MON-2006-3-002.....	26
Identification: MON-2006-1-001.....	28

1. DESCRIPTION

Introduction

The Supreme Court of Monaco was set up under the Constitution of 5 January 1911.

Pursuant to the 1911 Constitution, which was a legacy of Sovereign Prince Albert I, the Principality became a proper constitutional monarchy.

The Constitution was based on democratic organisational principles concerning the public authorities (an elected parliament and government, a municipality and independent courts). Title II established fundamental rights and freedoms.

In order to protect and safeguard these rights and freedoms, the Constitution also made provision for a higher court, the Supreme Court, which is considered to be the oldest constitutional court in the world.

More specifically, Title II of the Constitution, entitled "Public rights", included an Article 14, reading as follows: "A Supreme Court shall be established to rule on appeals concerning the infringement of the rights and freedoms enshrined in this Title."

Under Article 58, the Supreme Court had five members appointed by the Prince on proposals from the Council of State (one seat), the National Council, in other words the Monegasque parliament (one seat), the Court of Appeal (two seats) and the Civil Court of First Instance (one seat). The organisation and operational rules of the court were based on the Order of 21 April 1911, Article 1 of which stated: "The Court shall rule on appeals relating to infringements of the rights and freedoms enshrined in Title II of the Constitution which do not fall within the jurisdiction of the ordinary courts. There shall be no appeal against its judgments." The time limit for appealing against decisions by a lower court was two months "from the date on which the fact on which the appeal [was] based took place or from the date on which the interested party became aware of it". Because of the war, the Monegasque Court was not set up until 1919. It handed down its first decision on 3 April 1925.

The new Monegasque Constitution, adopted in 1962, confirms the existence of fundamental rights and freedoms, adding economic and social rights, including freedom of association (Article 30), the right to take industrial action (Article 28), freedom of employment (Article 25) and the right to strike (Article 28) to the classic rights of the type enshrined in the 1911 Constitution (individual freedom and security, requirement that indictable offences and punishments be defined by law, right to respect for private and family life and confidentiality of correspondence, right of ownership, abolition of the death penalty).

Article 90 confirms the establishment of the Supreme Court. More elaborate organisational and operational rules are laid down in Sovereign Order No. 2,984 of 16 April 1963.

I. Legal basis

1. Constitution of the Principality of Monaco, 17 December 1962 (as amended by Act No. 1249 of 2 April 2002).
2. Order No. 2984 on the organisation and operational rules of the Supreme Court, 16 April 1963 (as amended by Orders Nos. 3612 of 15 July 1966, 4,653 of 9 February 1971 and 6820 of 14 April 1980).

II. Composition and organisation

1. Composition of the Supreme Court

The Supreme Court is composed of five full members and two deputy members, appointed by the Prince for a term of four years on proposals from the National Council, the Council of State, the Crown Council,

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the Court of Appeal and the Court of First Instance. These institutions all put forward a full member; only the National Council and the Council of State also put forward a deputy. For each seat, whether for a full or deputy member, two names must be put forward.

In practice the proposals are sent to the director of judicial services, who forwards them to the Prince. Under Article 89 of the Constitution, the Prince has the option of not accepting the proposals and of requesting new ones.

The appointment of the members of the Supreme Court is pronounced by Sovereign Order. The Order also designates, from among the said members, the President of the Court and the Vice-President, who is responsible for standing in for the President if the latter is absent or unable to attend.

Article 2 of Sovereign Order No. 2,984 of 16 April 1963 states that members must be aged at least 40 and be "chosen among particularly competent jurists". In practice, they are either eminent professors of public law or senior members of the French *Conseil d'Etat* or Court of Cassation.

2. Operation of the Court

The Supreme Court sits in Monaco either in plenary or as a three-member administrative section.

It sits and considers judgments in plenary in the case of constitutional matters, in its capacity as the court ruling on conflicts of jurisdiction, and in the case of administrative matters when these are referred to it by order of the President of the Supreme Court or a decision by the administrative section.

It sits and considers judgments as an administrative section in all other cases.

The plenary court is composed of five full members of the Court. If one of the members is absent or unable to attend, the President calls on one or two deputies, according to their length of service or, failing that, age.

The administrative section is composed of three full members of the Court, nominated each year and for each session by the President. The Court is presided over by the President, or by one of the members nominated, according to length of service or, failing that, age.

3. Proceedings before the Court

Sovereign Order No 2,984 of 16 April 1963 lays down the rules governing proceedings before the Supreme Court. These are similar to those in force in the French administrative courts. The gist of the rules may be summarised as follows.

1 - Commencement of proceedings

Cases may be referred to the Court by any natural person or legal entity with the capacity to bring proceedings and able to prove an interest, in the case of both administrative and constitutional matters. For instance, any law may be repealed on the grounds of unconstitutionality on the initiative of a natural person or legal entity, either Monegasque or foreign. This distinctive feature is particularly worth highlighting as it is fairly unusual in States governed by the rule of law for individuals to have direct access to the constitutional court via legal proceedings or the lodging of an objection.

The time limit for appealing in respect of both constitutional and administrative matters is two months, either from completion of the statutory disclosure formalities (notification, formal service and publication of the law or legal transaction being referred to the court), or from the date on which the fact upon which the proceedings are based became known to the interested party.

Applications for an assessment of validity or for an interpretation referred to the Court must also be lodged within two months of the date on which the relevant court decision became final.

In the case of administrative matters, an appeal on grounds of abuse of authority may be preceded by an administrative appeal either to the authority responsible for the decision or to a higher administrative authority. The administrative appeal must be lodged within the above-mentioned time limit. If it is dismissed or if there is no response from the competent authority within four months, the applicant has a further two months in which to appeal to the Supreme Court.

The cases in which it is possible to appeal on grounds of abuse of authority are the same as in French administrative law, namely:

- defects in respect of external compliance with the law: lack of jurisdiction, procedural errors;
- defects in respect of internal compliance with the law: breach of law, unlawful grounds, misuse of authority.

Appeals to the Supreme Court are not suspensive but may be accompanied by an application for a stay of execution of the contested decision, lodged under the same conditions, especially with regard to the time limit.

A summary application may also be made to the President of the Supreme Court, requesting the latter to take all the necessary measures without prejudice to the case.

The appeal to the Supreme Court must be signed by a counsel for the defence from the Bar of the Principality. It may, however, be drawn up by a foreign lawyer with the assistance of a Monegasque lawyer for the purposes of procedural formalities. It is lodged with the Registry against a receipt.

In the event of an appeal to a court without jurisdiction, the time limit for bringing proceedings is preserved.

2 - The course of proceedings

The authorities have two months in which to lodge a counter-appeal, to which the appellant may give a reply, to which the authorities may, if appropriate, issue a rejoinder. The reply and rejoinder must be lodged within one month. Unless the President of the Court authorises otherwise, a maximum of four documents may be exchanged. This affects the time it takes to judge cases - on average six months.

The President of the Court assigns a reporting judge to each case. As soon as the exchange of written documents has been completed, the President closes the proceedings and sets a date for the hearing.

The applicant may discontinue proceedings either in the course of the proceedings or at the hearing. The relevant decision is taken by order of the President in the first case and by the Court in the second case.

3 - The hearing

The Court sits in the Monegasque Law Courts. Hearings are public. In the case of constitutional matters, it is compulsory for the Court to sit in plenary.

Supreme Court hearings are serviced by one of the Principality's court ushers, while the Chief Registrar is responsible for the registry.

The Attorney General takes on the role of public prosecutor in the Supreme Court and pleads at the hearings.

Once the parties have been called, the President gives the floor to the reporting judge, who sums up the facts, submissions and pleadings, without giving an opinion. Although the proceedings are in writing, it is common practice for lawyers to plead.

After the hearing, the members of the court withdraw to consider the judgment in chambers.

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III. Jurisdiction

The Supreme Court's jurisdiction covers both administrative and constitutional matters and is provided for in Article 90 of the Constitution.

In constitutional matters the Supreme Court rules on applications to have decisions set aside, validity assessed and compensation awarded in connection with infringements of constitutional rights and freedoms resulting primarily from the law reflecting, in accordance with Article 66 of the Constitution, the joint will of the Prince and the National Council

Two distinctive features of Monegasque public law are worthy of mention here.

First, as far as action for damages is concerned, the Constitution introduced this highly specific means of redress as an exception to the rule whereby action for damages against public corporations falls, pursuant to the Organisation of the Courts Act (No. 783 of 15 July 1965), within the jurisdiction of the ordinary courts, in cases concerning damage caused by a law that the Court has declared unconstitutional (as indeed in the case of an unlawful administrative decision). Moreover, as Article 90-A-2 uses the expression "application for compensation in respect of an infringement of the rights and freedoms...", it is not necessary for a law or legal transaction to be the cause. The infringement need only result from a physical decision by a public authority, in other words patently illegal action by an authority. In Monaco, therefore, patently illegal action by an administrative authority does not, as in France, come under the jurisdiction of the ordinary courts but under that of the constitutional court.

Secondly, as far as the determination of validity is concerned, this remedy enables members of the public to lodge an objection on grounds of unconstitutionality, a procedure which no means exists in all states governed by the rule of law. The procedural arrangements are identical to those applying to administrative decisions.

Lastly, it should be noted that the Supreme Court has, secondarily, jurisdiction to rule on the constitutionality and lawfulness of the National Council's rules of procedure. Decisions on the subject were handed down in the period following the 1962 Constitution.

In administrative matters, the Supreme Court rules on applications to have decisions by various administrative authorities and Sovereign Orders implementing laws set aside, and on the award of the resulting compensation. In practice, most of the Court's judgments are handed down following such applications.

Secondarily, it has jurisdiction to hear:

- appeals on points of law against final decisions by the administrative courts;
- applications for an interpretation and assessment of the validity of decisions by the various administrative authorities and of Sovereign Orders implementing laws, and conflicts of jurisdiction.

IV. Nature and effects of judgments

Decisions must be read out at a public hearing by a member of the Court within 15 days of the proceedings; this usually takes place the day after the proceedings.

Decisions must include various compulsory elements and be reasoned.

Should a claim for damages for harm resulting from the unconstitutionality of a law or the unlawfulness of an administrative decision be brought before the Court, the latter, if it sets aside the law or decision, must, in the same ruling, determine the compensation to be awarded.

The Court may also, before ruling, order all the relevant investigations.

Court decisions are sent to the Minister by the President and published in the Monegasque Official Gazette.

They may be appealed against by a third party. The appeal is admissible only if it is lodged by someone whose rights have been disregarded, with the exception of persons called on by the President, in the course of the proceedings, to intervene. No other means of redress is accepted, except for the purposes of rectification of a clerical error.

2. EXTRACTS OF THE CONSTITUTION

TITLE I THE PRINCIPALITY – PUBLIC POWERS

Art. 5. – Judicial power shall be exercised by the courts.

Art. 6. – Separation of the executive, legislative and judicial functions shall be assured.

TITLE X THE JUDICIAL SYSTEM

Art. 88. – Judicial power is vested in the Prince, who hereby delegates full authority to exercise it to the courts. The courts shall administer justice in the Prince's name.

The independence of the judiciary shall be guaranteed.

The organisation, jurisdiction and functioning of the courts, and the status of the judiciary, shall be determined by law.

Art. 89. – The Supreme Court shall have five full members and two substitute members. Members of the Supreme Court shall be appointed by the Prince as follows:

- one full member and one substitute member among candidates put forward by the National Council from outside its own membership;
- one full member and one substitute member among candidates put forward by the Council of State from outside its own membership;
- one full member among candidates put forward by the Crown Council from outside its own membership;
- one full member among candidates put forward by the Court of Appeal from outside its own membership;
- one full member among candidates put forward by the Civil Court of First Instance from outside its own membership.

Each of the bodies named above shall nominate two candidates per seat.

Should the Prince not approve the nominations, he may request new nominations.

The President of the Supreme Court shall be appointed by the Prince.

Art. 90. - A. – In constitutional matters, the Supreme Court shall have unfettered discretion to rule on:

- 1) the conformity of the rules of procedure of the National Council with constitutional and, where appropriate, legislative provisions, as provided for in Article 61;
- 2) applications for annulment, for review of validity and for compensation concerning breaches of the freedoms and rights enshrined in Title III of the Constitution which do not come under paragraph B of this article.

B.- In administrative matters, the Supreme Court shall have unfettered discretion to rule on:

- 1) applications for annulment of administrative authorities' decisions on grounds of abuse of authority and of Sovereign Ordinances issued to bring laws into effect, and on the award of related compensation;
- 2) appeals on points of law against decisions of the administrative courts at last instance;
- 3) applications for interpretation and for review of the validity of administrative authorities' decisions and of Sovereign Ordinances issued to bring laws into effect.

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C.- The Supreme Court shall decide disputes over jurisdiction.

Art. 91. – The Supreme Court shall hear cases either as a full court of five members or as an administrative division of three members.

The full court shall hear cases:

- 1) in constitutional matters;
- 2) concerning disputes over jurisdiction;
- 3) in administrative matters on a referral by the President of the Supreme Court or by the administrative division.

The administrative division shall hear all other cases.

Art. 92. - A Sovereign Ordinance shall determine the organisation and the functioning of the Supreme Court, in particular the capacities required of its members, the incompatibilities affecting them, their status, rotation of members of the administrative division, the procedure to be followed before the Court, the effects of appeals and decisions, procedure concerning disputes over jurisdiction and their effects, and the necessary transitional measures.

3. LEGISLATION

Order no. 2984 on the organisation and functioning of the Supreme Court

(16 April 1963)

amended by Orders

no. 3612 of 15 July 1966,

no. 4563 of 9 February 1971 and

no. 6820 of 14 April 1980

Having regard to Title X of the Constitution of 17 December 1962;

DIVISION I

Organisation and functioning of the Supreme Court

Art. 1. – The full members and deputy members of the Supreme Court shall be appointed according to the forms and conditions provided for in Article 89 of the Constitution for a period of four years. The appointments must be confirmed in the event of alternative nominations.

The President of the Supreme Court shall be designated by the Prince.

(2nd paragraph amended by Order No 6820 of 14 April 1980). – The President and Vice-President of the Supreme Court shall be designated by the Prince. The Vice-President shall be responsible for replacing the President where he is absent or unavailable.

Art. 2. – The Members of the Supreme Court must be aged at least forty. They shall be chosen from among lawyers of particular competence.

Art. 3. – The following may not form part of the Supreme Court:

- national and municipal councillors;
- judges of another court;
- civil servants.

Art. 4. – Before taking office, the Members of the Supreme Court shall take an oath before the Prince, swearing to carry out zealously and impartially the task entrusted to them.

Art. 5. – The Attorney General shall act as legal adviser before the Supreme Court.

Where he is unable to attend, he shall be replaced by a substitute.

Art. 6. – The Chief Registrar shall act as registrar before the Supreme Court.

Where he is unable to attend, he shall be replaced by a Registrar.

Art. 7. – The Bailiffs shall assist in turn at the hearings.

Art. 8. – The Supreme Court shall sit in Monaco, save as provided for in the second paragraph of Article 44 and the second paragraph of Article 48.

Art. 9. – According to the distinction made between cases by Article 91 of the Constitution, the Supreme Court shall sit either in Plenary Assembly or as an Administrative Division.

Art. 10. – The Plenary Assembly shall be composed of the five full Members of the Court. Where one or two full Members are absent or unavailable, the President shall complete the Court by calling upon one or two deputy members, in order of seniority in office or, failing that, age.

Art. 11. – *The Administrative Division shall be composed of three full Members of the Court designated each year and for each session by the President. Where the President of the Supreme Court does not himself form part of the Administrative Division, its presidency shall be determined according to the seniority in office or, failing that, the age of the designated members.*

(1st paragraph amended by Order no. 8820 of 14 April 1980). – The Administrative Division shall be composed of three Full Members of the Supreme Court designated each year by the President. Where the President of the Supreme Court or its Vice-President does not himself form part of the Administrative Division, its presidency shall be determined according to the seniority in office or, failing that, the age of the designated members.

Where a designated member is unavailable, he shall be replaced during his incapacity by a Full Member or Deputy Member designated for that purpose by the President of the Court.

Art. 12. – A case coming within the jurisdiction of the Administrative Division may be referred to the Plenary Assembly by order of the President of the Supreme Court, either of his own motion or at the request of the Attorney General in application of Article 21.

The Administrative Division may also decide to refer the case to the Plenary Assembly after reading the report.

DIVISION II

Procedure before the Supreme Court

Art. 13. – Subject to the provisions of the following paragraph, an appeal to the Supreme Court must be brought within two months of the notification, service or publication, as may be, of the contested act or decision, failing which it will be inadmissible.

In all other circumstances, the appeal must be brought within two months of the date on which the act on which it is based came to the knowledge of the person concerned, failing which it will be inadmissible. In the event of dispute, proof of that knowledge must be adduced by the defendant.

Art. 14. – Silence on the part of the competent authority for more than four months in response to a complaint shall amount to a decision rejecting the complaint. An appeal against that implied decision shall be available as from the expiry of the four-month period referred to above and during the two months following the expiry of that period. Nonetheless, where an explicit decision rejecting the complaint is taken after the four-month period, the two-month period shall begin to run again if the appeal has not already

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been brought. The date on which the complaint was lodged must be established in support of the application.

Art. 15. – An appeal to the administrative authority that adopted the contested decision or to a higher administrative authority shall retain the time-limit of an administrative appeal, on condition that it is brought within the time-limit of the administrative appeal and that the administrative appeal is itself brought within two months of the explicit or implicit rejection of the appeal to the administrative authority or higher administrative authority.

The same shall apply to an appeal to a court which lacks the necessary jurisdiction.

Art. 16. – Applications for assessment of validity and applications for interpretation upon reference must be lodged within two months of the date on which the decision of the court in question became final.

Art. 17. – *The appeal shall be lodged by an application, signed by counsel and containing an account of the facts, the pleas in law and the form of order sought. A receipt shall be issued by the general registry. Upon receipt of the documents, the Chief Registrar shall send a copy of the application to each of the interested parties and to the Attorney General.*

Within two months following the sending of the copy, the defendant shall respond by a counter-application lodged at the general registry against a receipt. The counter-application shall be signed by counsel. It shall be sent to the persons concerned in the same way as the application.

Subject to the application of Article 26, the applicant and the defendant shall each have a further period of one month in which to lodge at the general registry a reply and a rejoinder, respectively, which shall be sent to the persons concerned in same way as the application and the counter-application.

Art. 17 – (Order no 6820 of 14 April 1980). – The appeal shall be lodged by an application signed by counsel, containing an account of the facts, the pleas in law and the form of order sought. It shall be accompanied by the contested decision or by the complaint which has been implicitly rejected. The appeal shall be lodged at the General Registry, against a receipt.

The Chief Registrar shall immediately send a copy of the application to the defendant, the President of the Supreme Court and the Attorney General.

Within two months of the copy being sent to the defendant, the latter shall respond by a counter-application signed by counsel and lodged at the General Registry, against a receipt. The Chief Registrar shall send a copy of the counter-application to the applicant, the President of the Supreme Court and the Attorney General.

Subject to the application of Article 26, the applicant and the defendant shall each have a further period of one month within which to lodge at the General Registry, against receipt, a reply and a rejoinder, which shall be sent to the persons concerned in the same way as the application and the counter-application.

Art. 18. – *The applications and memorials referred to in the preceding article must be accompanied by a list of the evidence and documents produced. They must be lodged at the General Registry in the original and, in addition, in as many copies as there are parties, plus one.*

Communication of the evidence and documents must be made at the General Registry to each of the parties concerned.

Art. 18 (Order no. 6820 of 14 April 1980). – At the request of one of the parties, either in the initial application or by separate application lodged at the General Registry, against a receipt, within eight days of the copy of the initial application being sent to the persons concerned, the President of the Supreme Court may order the Chief Registrar to communicate to proceedings to the person designated by the party as likely to be interested by the appeal.

That person may intervene. Within two months following communication of the proceedings, he shall then lodge at the General Registry, against a receipt, his observations, signed by counsel. These observations shall be sent to the persons concerned as provided for in Article 17.

Subject to the application of Article 26, the parties shall have a period of one month within which to respond to these observations.

The President of the Supreme Court may grant the intervener leave to produce observations in response, within a period not exceeding one month.

Art. 19. – *No new plea in law may be submitted after the expiry of the periods provided for above for the reply, in the applicant's case, and for the rejoinder, in the defendant's case.*

Art. 19 – (Order no. 6820 of 14 April 1980) – The applications and memorials referred to in Articles 17 and 18 must be accompanied by a list of the evidence and documents produced. They must be lodged at the General Registry in the original and, in addition, in as many copies as there are parties, plus three.

Communication of the evidence and documents must be made at the General Registry to each of the parties concerned. The President of the Supreme Court shall receive a copy.

Art. 20. – *Within three days of the lodging of the rejoinder, and no later than three days following the expiry of the time-limits referred to in Article 17, the Chief Registrar shall send the original of the file to the President of the Supreme Court.*

Art. 20 (Order no. 6820 of 14 April 1980). – Within three days of the deposit at the General Registry of the defendant's rejoinder or the intervener's observations in response, and no later than three days following the expiry of the time-limits referred to in Articles 17 and 18, the Chief Registrar shall draw up a report closing the procedure and shall send it to the President and the Attorney General.

Within the same period, the Attorney General may request the President of the Supreme Court to transfer to the Plenary Assembly a case coming within the jurisdiction of the Administrative Division. The transfer shall then take place by operation of law.

Art. 21. – *Within the same period, the Attorney General may request the President of the Supreme Court to transfer to the Plenary Assembly a case coming within the jurisdiction of the Administrative Division. The transfer shall then take place by operation of law.*

Art. 21 (Order no. 6820 of 14 April 1980) – No new plea in law may be submitted after expiry of the time-limits provided for above for the reply, in the applicant's case, for the rejoinder, in the defendant's case, and for the observations in response, in the intervener's case.

Art. 22. – *The President shall designate a Full Member of the Supreme Court to draw up a report and shall communicate the file to him.*

However, at the request of one of the parties, lodged at the General Registry before expiry of the period of three days referred to in Article 20 and communicated as provided for in Article 17, the President may, before designating a reporting judge, grant a final period for the purpose of responding to a new plea in law or on account of the complexity of the case; in that case, the procedure referred to in Articles 18, 20 and 21 shall apply; the memorials and, where appropriate, the new evidence shall then be sent and communicated as provided for in Article 17.

Art. 22 (Order no. 6820 of 14 April 1980). – Immediately upon receiving a copy of the application, the President shall designate a Member of the Supreme Court to draw up a report; he shall order that the copies of the application, the memorials, the evidence and documents referred to in Articles 17, 18 and 19 be communicated to that member forthwith.

At the request of one of the parties, the President may grant a final period for the purpose of responding to a new plea in law or on account of the complexity of the case.

That request shall be lodged at the General Registry before the expiry of the period of three days referred to in Article 20 and shall be communicated according to the rules in Article 17. It shall follow the procedure provided for in Articles 17 and 18.

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Until the procedure is closed, the President may still order such measures of inquiry as he may deem appropriate for the establishment of the truth.

Art. 23. – The President of the Supreme Court, after consulting the Attorney General, shall fix the date and time of the hearing.

Art. 23 (*Order no. 3612 of 15 July 1966*). – *At least three months beforehand, the President of the Supreme Court, after consulting the Attorney General, shall fix the date and time of the hearing.*

Art. 23 (*Order no. 6820 of 14 April 1980*). – The President shall fix the date and time of the hearing after consulting the Attorney General and having regard to the provisions of Article 25.

Art. 24. – The designations made and decisions taken in application of Articles 22 and 23 shall be communicated by the President to the Chief Registrar.

They shall be notified immediately by the Chief Registrar to the parties, the Attorney General and the members of the Administrative Division or, if the case must be examined in Plenary Assembly, to all the Members of the Supreme Court, including the Deputy Members.

The Full Members concerned are required to inform the President promptly whether they will be available on the date set for the hearing, so that any Deputy Members required to sit can be called upon in good time.

Art. 25. – There must be a period of at least sixteen days between the notifications provided for in the second paragraph of the preceding article and the hearing.

Art. 25 (*Order no. 3612 of 15 July 1965*). – *There must be a period of two months between the notifications provided for in the second paragraph of the preceding article and the hearing.*

Art. 25 (*Order no. 6820 of 14 April 1980*). – There must be a period of at least thirty days between the date of the hearing and the date on which the notifications provided for in the second paragraph of the preceding article are made.

Art. 26. – The President of the Supreme Court may, either of his own motion or at the request of the Attorney General, or upon application by one of the parties, decide by reasoned order that, for reasons of urgency, the time-limits prescribed in Article 17 for the lodging of the reply and the rejoinder are to be reduced by one half.

A party who seeks that reduction must submit a special application before expiry of the period allowed for lodging the appeal, in the applicant's case, or for lodging the counter-appeal, in the defendant's case. A copy of this application shall be transmitted immediately by the Chief Registrar to the parties and the Attorney General, who may lodge their observations at the General Registry within three days following receipt of the copy; upon expiry of that period, the Chief Registrar shall transmit the special application and any observations submitted by the parties and by the Attorney General to the President of the Supreme Court; the parties' observations shall be communicated to the party who submitted the special application.

The order of the President shall be communicated to the General Registry and notified as provided for in the first and second paragraphs of Article 24.

Art. 27. – If the applicant discontinues his appeal and if that discontinuance is accepted by all the parties concerned, formal note may be taken in the form of a simple order of the President, who shall make any necessary order as to costs.

Art. 27 (*Order no. 3612 of 15 July 1966*). – *An applicant who intends to discontinue his appeal must, no later than thirty days before the date set for the hearing, lodge at the General Registry an application to discontinue, which shall be dealt with in accordance with the conditions provided for in the second paragraph of Article 26.*

If the discontinuance is accepted by the Attorney General and by all the parties concerned, formal note may be taken in the form of a simple order of the President, who shall make any necessary order as to costs.

Where the discontinuance has not complied with the procedures provided for in the first paragraph of this article, the costs shall be borne solely by the applicant and the Supreme Court shall apply, by operation of law, the maximum fine provided for in Article 36.

Art. 27 (Order no. 4853 of 9 February 1971). – An applicant who intends to discontinue his appeal must lodge at the General Registry, in accordance with the conditions laid down in Article 18, an application to discontinue, a copy of which shall be transmitted promptly by the Chief Registrar to each of the parties and also to the Attorney General; within eight days of being sent a copy, the parties and the Attorney General may respond by means of a concise memorial.

On the day following the expiry of the period provided for in the preceding paragraph, the Chief Registrar shall send the papers to the President of the Supreme Court. The application to discontinue shall be determined by an order of the President or by a decision of the Supreme Court.

An application to discontinue the appeal may also be made at the hearing. In that case the Supreme Court may allow a party who so requests a period in which to submit his observations.

Where the application to discontinue is made less than thirty days before the date set for the hearing, the President or the Supreme Court may order the applicant to pay the fine provided for in Article 36.

Art. 28. – The hearings of the Supreme Court shall be held in public.

However, the Court may, of its own motion or after hearing the submissions of the legal adviser, order that the hearing, after the report, should take place in camera, if it considers that a public hearing may not be in the public interest.

In that case, the applicant shall be entitled to attend the hearing or to designate three adults having their residence in Monaco to attend. The applicant's agents or counsel shall always be entitled to attend the hearing, which shall take place in accordance with Articles 31, second and third paragraphs, 32 and 33.

Art. 29. – The parties shall be represented at the hearing by counsel.

Lawyers practising before the Court of Appeal who are enrolled in the second Division of the table provided for in Article 49 of the order of 9 September 1913, as well as counsel, have a right of audience before the Supreme Court.

Furthermore, the President may, at the request of one of the parties or of his qualified agent, exceptionally authorise a foreign lawyer to appear before the Supreme Court.

The Minister of State may be represented by a member of the Government Council or by any other person expressly delegated for that purpose.

Art. 30. – *At the beginning of the hearing the Bailiff shall call the parties.*

If the applicant does not appear in accordance with the conditions laid down in the preceding article, without having shown valid reason, his appeal shall be declared void and cannot be renewed.

If the opposing party does not appear in accordance with the same conditions, a decision shall be taken on the basis of the form of order sought by the applicant.

If one of the parties shows a valid reason for not appearing, the Supreme Court shall adjourn the case to a different hearing, which it shall set for a date as near as possible. The General Registry shall again notify the persons concerned as provided for in the second paragraph of Article 24.

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Art. 30 (*Order no. 4653 of 9 February 1971*). – At the beginning of the hearing, the Bailiff shall call the parties.

If the applicant does not appear in accordance with the conditions laid down in the preceding article, without having shown valid reason, his appeal shall be declared void and cannot be renewed.

If the opposing party does not appear in accordance with the same conditions, a decision shall be taken on the basis of the form of order sought by the applicant.

If it considers that the proper administration of justice so requires, the Supreme Court may, either of its own motion or at the request of one or other of the parties, adjourn the examination of the case.

Until such time as the Court has assembled, the same power may be exercised by the President, who shall always have the option to place before the Supreme Court any request to adjourn the proceedings.

Adjournment decisions shall be notified promptly by the General Registry to the parties or to their counsel.

Art. 31. – After the parties have been called, the President shall give the floor to the reporting judge, who shall summarise the facts, the pleas in law and the forms of order sought, without giving an opinion.

The parties' agents may then present oral observations in support of the written memorials.

The Attorney General shall make submissions on behalf of the law; after he has made his submissions counsel are no longer able to address the Court.

Art. 32. – Before determining the merits, the Court may order any measures of inquiry which it deems necessary for the establishment of the truth.

Art. 33. – The decision of the Court shall be read in a public sitting, after being deliberated in private, no later than the fifteenth day following the hearing.

The reading may be lawfully made by any of the Members of the Court who sat and deliberated in the case; the other Members are not required to be present.

Art. 34. – The decision of the Court shall contain the names of the parties and the forms of order sought by them, and a memorandum of the documents and texts which it applies.

It shall mention that the parties' agents and the Attorney General have been heard.

It shall state the reasons on which it is based.

The names of the Members who played a part in the decision shall be mentioned in the decision.

The decision shall include an order as to costs.

The original decision shall be signed by the President of the bench which delivered it and by the Chief Registrar.

Art. 35. – Where the action for annulment provided for in paragraph B, letter 1, of Article 90 of the Constitution includes a claim for compensation, the Supreme Court, if it annuls the measure in question, shall decide, in the same decision, on the outcome of that claim, subject to the possibility of ordering any of the appropriate measures of inquiry provided for in Article 32.

Art. 36. – An applicant whose appeal is deemed to be frivolous by a reasoned decision may, upon the submissions of the legal adviser, be ordered to pay a fine of between five hundred and ten thousand francs.

Art. 37. – The decision shall be sent to the Prince by the President of the Supreme Court. An extract of the decision shall be published in the *Journal de Monaco* at the behest of the General Registry.

The decision shall be notified to the parties by the Chief Registrar within five days.

Art. 38. – *An application by a third party to have the decision set aside shall be admissible only where it is presented by a person whose rights have been infringed.*

(1st paragraph amended by Order no. 6820 of 14 April 1980). – An application by a third party to have the decision set aside shall be admissible only where it is presented by a person whose rights have been infringed. However, a person who was called upon to intervene in application of Article 18 cannot apply to have the decision set aside, even where he did not submit observations.

The application to have the decision set aside must be made within two months following the publication of the decision of the Supreme Court provided for in the preceding paragraph, failing which it shall be inadmissible. The application shall be submitted and determined under the same conditions as the appeal itself.

No other remedy shall be allowed, apart from rectification of a manifest error.

DIVISION III

Stay of execution and interim measures

Art. 39. – An appeal before the Supreme Court shall not have suspensory effect, unless an order to that effect is made, exceptionally, in application of Article 40 below.

Art. 40. – *A stay of execution may be requested by the applicant either in the originating application or by separate application lodged at the General Registry within the period prescribed for the lodging of the originating application.*

The request for a stay of execution shall be immediately transmitted by the Chief Registrar to the defendant and the Attorney General, who may lodge their observations at the General Registry within eight days following receipt of the copy.

Upon expiry of that period, the Chief Registrar shall transmit the application for a stay of execution together, where appropriate, with the observations of the defendant and the Attorney General to the President of the Supreme Court.

The President shall adopt his decision by a reasoned order which the Chief Registrar shall immediately notify to the parties and the Attorney General.

Art. 40 (Order no. 4653 of 9 February 1971). – A stay of execution may be requested by the applicant within the period prescribed for the lodging of the originating application; that request must form the subject-matter of a separate, reasoned application, failing which it will be admissible.

The request for a stay of execution shall be notified by the Chief Registrar to the defendant and the Attorney General.

The defendant may lodge a memorial in response at the General Registry within one month of notification; with effect from the expiry of that period, or from the lodging of the defendant's memorial, the Attorney General must present his observations, should he deem it appropriate to do so, within twenty days.

Upon expiry of the latter period, or immediately after the observations of the Attorney General are lodged, the Chief Registrar shall transmit the request for a stay of execution and, where appropriate, the observations presented to the President of the Supreme Court; in addition, the Chief Registrar shall send

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to the President of the Supreme Court, on the day on which they are lodged, a copy of the application and the counter-application referred to in Article 17, together, where appropriate, with the evidence and documents annexed thereto.

If the President considers that he has sufficient information, he shall take his decision by a reasoned order which the Chief Registrar shall notify to the parties and the Attorney General; otherwise he shall order, in the same way, any preliminary measures of inquiry or expert evidence.

Art. 41. – In all urgent cases, the President of the Supreme Court may, upon a simple application, order all appropriate measures without prejudice to the main proceedings.

The President shall determine a time-limit for a response by the defendant, to whom the request and the relevant period shall be notified without delay by the Chief Registrar.

Art. 42. – *The applications and responses referred to in the two preceding articles must be lodged at the General Registry in the original and as many copies as there are parties, plus one.*

Art. 42 (Order no. 6820 of 14 April 1980). – The applications and responses referred to in the two preceding articles must be lodged at the General Registry in the original and as many copies as there are parties, plus three.

Art. 43.—The President of the Supreme Court may delegate the powers which he derives from Articles 40 and 41 to another full Member.

The decision delegating those powers shall specify the case or cases to which it applies, or its duration. The decision shall be communicated to the General Registry and notified as provided for in the first and second paragraphs of Article 24.

Art. 44. – The orders adopted in relation to a stay of execution and interim measures shall be made on the basis of the written evidence.

They may be made in any place fixed by the President of the Supreme Court or by the Member to whom he has delegated his powers.

DIVISION IV

Disputes as to jurisdiction

Art. 45. – Where a matter brought before the ordinary court does not come within the jurisdiction of the judicial authority, the Attorney General, on his own initiative or at the request of the Minister of State, shall apply for it to be transferred to the Supreme Court for a determination of the dispute as to jurisdiction.

Art. 46. – The reasoned submissions to the Attorney General shall entail, by operation of law, at any stage of the proceedings and provided that a final judicial decision has not been made, removal of the case from the court before which the proceedings were brought.

The parties shall have a period of one month, as from the Attorney General's application to transfer the case, in which to lodge their observations at the General Registry, together with any appropriate documents.

Upon expiry of that period, the Chief Registrar shall transmit the memorials and documents lodged to the Attorney General.

The Attorney General shall, within fifteen days, transmit the case-file, as well as the documents capable of shedding light on the matter, to the President of the Supreme Court. He shall attach his written submissions.

Art. 47. – All procedural time-limits before the judicial authority shall be suspended pending the decision of the Supreme Court.

Art. 48. – Within fifteen days of receiving the file, the President shall designate a Full Member of the Supreme Court to draw up a report and shall communicate the file to him.

The President shall also fix the date, time and place at which the Court will meet in Plenary Assembly in order to consider the question of jurisdiction.

Art. 49. – The Supreme Court shall determine the matter on the basis of the written evidence.

If it considers that the proceedings fall within the jurisdiction of a judicial authority, it shall proceed in accordance with Articles 50 and 51 below.

Art. 50. – Where the Supreme Court finds that the judicial authority has jurisdiction in the matter, the case shall revert to that court by operation of law.

The Chief Registrar shall inform the parties at the address elected for service, by registered letter, of the date on which the case will be called before that court.

Art. 51. – Where the Supreme Court finds that it has jurisdiction in the matter, the most diligent party shall, in order to avoid being time-barred, bring the case before it within one month of the notification provided for in the second paragraph of Article 37, and in accordance with the provisions of Article 17; the time-limits for lodging the counter-application, the reply and the rejoinder shall be reduced by half.

The other provisions of Division II shall be applicable.

DIVISION V

Declaration of conformity of the Rules of Procedure of the National Council

Art. 52. – The Rules of Procedure of the National Council and any amendments to those Rules shall be transmitted to the President of the Supreme Court by the President of the National Council within eight days of being adopted.

The Supreme Court shall rule, within one month, on the conformity of those Rules or those amendments with the constitutional or legislative provisions; the declaration of the Supreme Court shall state the reasons on which it is based. The declaration shall be sent to the Prince and to the President of the National Council.

Where the Supreme Court declares that the Rules of Procedure, or the amendments thereto, contain a provision which is contrary to the Constitution or to the law, that provision cannot be applied by the National Council.

DIVISION VI

General provisions

Art. 53. – *All the transmissions and notifications provided for in Divisions II, III and IV shall be made by registered post, with acknowledgment of receipt.*

Art. 53 (*Order no. 6820 of 14 April 1980*). – All the transmissions and notifications provided for in Divisions II, III and IV shall be made by registered post, with acknowledgment of receipt.

However, those intended for the Attorney General shall be made against a receipt.

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Art. 54. – All the documents relating to appeals before the Supreme Court shall be exempt from the requirement for a stamp and registered free of charge, provided that their special destination is indicated thereon.

Art. 55. – The following are repealed:

- the Sovereign Order of 21 April 1911 on the organisation and functioning of the Supreme Court;
- the Sovereign Order of 15 June 1946 amending the Sovereign Order of 21 April 1911;
- Articles 64 and 65 of Our Order no. 84 of 11 October 1949 establishing the statutes of officials and agents of the administrative order and all provisions contrary to those of the present Order.

DIVISION VII

Transitional provision

Art. 56. – Pending the formation of the court provided for in Article 89 of the Constitution, the Supreme Court, as currently composed, shall remain in office, exercise the powers provided for in Article 90 of the Constitution and apply the rules of this Order in all the provisions which are not incompatible with its composition.

Law no. 750 repealing Legislative Orders nos 163 and 702 of 9 July 1932 and 4 January 1981

(25 May 1963)

Single article. – The following are and shall continue to be repealed: Legislative Order no. 163 of 9 July 1932 on the settlement of disputes as to jurisdiction between the administrative authority and the judicial authority, and Legislative Order no. 702 of 4 January 1961 on administrative annulment proceedings.

Order no. 3612 amending Order no. 2984 of 16 April 1963 on the organisation and functioning of the Supreme Court

(15 July 1988)

Having regard to Article 46 of the Constitution of 17 December 1962;

Having regard to Title X of that Constitution;

Having regard to Our Order no. 2984 of 16 April 1963 on the organisation and functioning of the Supreme Court;

Upon hearing the Report of Our Director of Judicial Services;

Articles 23, 25 and 27 of the abovementioned Order are repealed and replaced by the following provisions:

[See Articles 23, 25 and 27 of Order no. 2984 of 16 April 1963].

Law no. 839 on national and municipal elections

(25 February 1968)

Art. 9. – If the list of amendments has not been drawn up in accordance with the requirements of the preceding articles, the Minister of State may, within fifteen days following receipt of that table, refer the operations of the committee to the Supreme Court.

The Court shall deal with the matter according to the special procedures and conditions prescribed by sovereign order.

Order no. 4386 adopted for the application of Article 9 of Law no. 839 of 23 February 1968, on national and municipal elections, relating to an appeal by the Minister of State before the Supreme Court against the list of amendments to the electoral register

(22 December 1969)

Having regard to Title X of the Constitution of 17 December 1962;

Having regard to Our Order no. 2984, of 16 April 1963, amended by Our Order no. 3612 of 15 July 1966, on the organisation and functioning of the Supreme Court,

Having regard to Article 9 of Law no. 839, of 23 February 1968, on national and municipal elections;

Art. 1. – The Supreme Court shall adjudicate under the conditions set out below on appeals brought by the Minister of State under Article 9 of Law no. 839 of 23 February 1968 on national and municipal elections.

Art. 2. – The Supreme Court shall sit and deliberate in an Administrative Division in accordance with Article 91 of the Constitution, in the form provided for by Article 11 of Our Order no. 2984, of 16 April 1963, on the organisation and functioning of that Court and at the place determined by its President or the Member to whom he has delegated his powers

Art. 3. – Where he considers that the provisions of Articles 5 to 8 of the abovementioned Law no. 839 of 23 February 1968 have not been observed, the Minister of State may refer to the Supreme Court the operations of the Committee for the revision of the electoral register established by Article 6 of that law with a view to securing their annulment, by submitting an application on the ground of misuse of powers.

That application must be lodged at the General Registry within fifteen days following receipt by the Minister of State of the copy of the list of amendments to the electoral register sent to him by the mayor, failing which it will be inadmissible; the application shall state the reasons on which it is based and shall be accompanied by the supporting evidence and documents; there is no need to be represented by counsel.

The mayor shall be informed immediately by the Minister of State that the application has been lodged.

Art. 4. – The President of the Administrative Division of the Supreme Court or, if the case is referred to the Plenary Assembly under the conditions laid down in Article 12 of Our Order no. 2984 of 16 April 1963, the President of that Court shall, depending on the case, designate a member of the Division or of the Plenary Assembly to draw up a report and shall communicate the file to that Member.

He shall also determine the place and the date and time of the hearing.

The reporting judge may request the Mayor President of the Committee for the revision of the electoral register to communicate to him the necessary evidence and documents or to submit his observations on certain aspects of the case.

Art. 5. – The designations made and decisions taken in application of the first paragraph of the preceding article shall be communicated by the President to the Chief Registrar; the Chief Registrar shall immediately notify those designations and decisions to the Minister of State, the Attorney General, the Mayor President of the Committee for the revision of the electoral register and also, depending on the

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case, the Full Members and Deputy Members of the Administrative Division or the Plenary Assembly of the Supreme Court.

The Full Members concerned shall be required to inform the President immediately whether they will be available on the date fixed for the hearing so that, if necessary, the Deputy Members can be called upon to sit in good time.

Art. 6. – If the Minister of State discontinues his action, an Order of the President of the bench dealing with the matter may take formal note of that discontinuance.

Art. 7. – The Supreme Court, sitting in Administrative Division or in Plenary Assembly, shall reach its decision on the basis of the written evidence, after the opinion of the Attorney General has previously been obtained by the President of the bench dealing with the matter; the option mentioned in the second paragraph of Article 4 is available to the Court, which, in addition, may order all other measures of inquiry which it deems appropriate.

The Court may, either of its own motion or upon application by the Minister of State, adjourn the case, by reasoned decision, to another hearing to take place within the next fifteen days.

Art. 8. – Subject to the provisions of the second paragraph of the preceding article, the decision of the Supreme Court shall be delivered within one month of the lodging of the application.

The decision shall state the reasons on which it is based; it shall mention the names of the Members who took part; the original decision shall be signed by the President of the bench which delivered the decision and by the Chief Registrar.

The Chief Registrar shall immediately serve on the Minister of State and the Mayor a copy of the decision, which shall be immediately affixed to the door of the Town Hall and published in the *Journal de Monaco* on the date following the date of notification of the decision.

Art. 9. – The decision of the Supreme Court annulling the operations involved in the revision of the electoral register shall entail annulment of the list of amendments to that register; a new list must be drawn up within fifteen days following the affixing of the annulment decision to the door of the Town Hall.

Art. 10. – All the transmissions and notifications made by the Chief Registrar shall be made by registered post, with acknowledgment of receipt.

Order no. 4653 amending Articles 27, 30 and 40 of Order no. 2984 of 18 April 1963 on the organisation and functioning of the Supreme Court
(9 February 1971)

Having regard to Article 46 of the Constitution of 17 December 1962;

Having regard to Title X of the Constitution;

Having regard to Our Order no. 2984 of 16 April 1963, on the organisation and functioning of the Supreme Tribunal;

Having regard to Our Order no. 3612 of 15 July 1966, amending Our abovementioned Order no. 2984, of 16 April 1963, above;

Art. 1. – Article 27 of Our Order no. 2984 of 16 April 1963, as amended by Our abovementioned Order no. 3612 of 15 July 1966, above, shall be replaced by the following provisions:

[See Article 27 of Order no. 2984 of 16 April 1963.]

Art. 2. – The final paragraph of Article 30 shall be replaced by the following provisions:

[See Article 30 of Order no. 2984 of 16 April 1963.]

Art. 3. – Article 40 is amended as follows:

[See Article 40 of Order no. 2984 of 16 April 1963.]

Order no. 6820 amending Order no. 2984 of 16 April 1963 on the organisation and functioning of the Supreme Court

(14 April 1980)

Having regard to Title X of the Constitution of 17 December 1962;

Having regard to Our Order no. 2984 of 16 April 1963 on the organisation and functioning of the Supreme Court;

Art. 1. – The second paragraph of Article 1 of Our Order no. 2984 of 16 April 1963 is amended thus:

[See Article 1 of Order no. 2984 of 16 April 1963.]

Art. 2. – The first paragraph of Article 11 of Our Order no. 2984 of 16 April 1963 is amended thus:

[See Article 11 of Order no. 2984 of 16 April 1963.]

Art. 3. – Articles 17 to 23, 25, 42 and 53 of Our Order no. 2984 of 16 April 1963 shall be replaced by the following provisions:

[See Articles 17 to 23, 25, 42 and 53 of Order no. 2984 of 16 April 1963.]

Art. 4. – The first paragraph of Article 38 of Our Order no. 2984 of 16 April 1963 is amended thus:

[See Article 38 of Order no. 2984 of 16 April 1963.]

4. CASE-LAW

Identification: MON-2007-1-001

a) Monaco / **b)** Supreme Court / **c)** / **d)** 19.03.2007 / **e)** TS n°2005/18 / **f)** Application for annulment of the decision of the Minister of State of 7 March 2005 to refuse leave of stay on Monegasque territory to Mrs G. / **g)** / **h)** CODICES (French).

Keywords of the systematic thesaurus:

1.4.8.7 **Constitutional Justice** – Procedure – Preparation of the case for trial – Evidence.

1.4.9.4 **Constitutional Justice** – Procedure – Parties – Persons or entities authorised to intervene in proceedings.

4.7.4.3.6 **Institutions** – Judicial bodies – Organisation – Prosecutors / State counsel – Status.

5.3.13.17 **Fundamental Rights** – Civil and political rights – Procedural safeguards, rights of the defence and fair trial – Rules of evidence.

Keywords of the alphabetical index:

Prosecutor general, independence / Prosecutor general, declaration, evidence, admissibility.

Headnotes:

Under Article 70 of the law of 15 July 1965 on the organisation of the judiciary, “the prosecutor general is the head of the prosecutor’s office”. Under Article 28 of the above law, the prosecutor general is not subject to the authority of the Minister of State. Article 29 states that the functions of the prosecutor’s office are to be exercised in compliance with the codes, laws and orders in force by the prosecutor general. Article 31.2 of the sovereign order of 16 April 1963 on the organisation and the functioning of the Supreme Court states that “the Prosecutor General shall make submissions in the name of the law” and is consequently not party

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to the litigation, in which case the prosecutor general may not put forward evidence himself.

Summary:

I. The case concerns a measure refusing leave of stay on Monegasque territory to Mrs G. and Mr G. – by parallel decisions identical on the merits. In this case, the Supreme Court did not rule as a constitutional court but as the Supreme Administrative Court. The question was, on the one hand, whether the high court could accept the argument by the Administration that the imperative of secrecy justified the court not being given the material it needed to verify the lawfulness of the decisions it had taken. Also, if the Prosecutor submitted the materials, what was their evidential status?

Mrs G., of Hungarian nationality, applied to the Supreme Court for annulment of the Minister of State's refusal to grant her leave to stay on Monegasque territory. This was taken by the Minister of State on 7 March 2005 and notified to her on 24 March 2005. In its decision of 5 December 2006, the Supreme Court called on the Minister of State to produce the material that would enable the Supreme Court to exercise its supervision of the lawfulness of the decision challenged.

After ordering an initial measure of inquiry, which met with no reply, the Supreme Court issued a second order, this time ordering the Minister of State to provide this material. By way of reply the Minister passed on the letter from the Prosecutor General reporting that requests for investigation had been lodged by foreign judicial authorities "which were covered by secrecy" and mentioning "elements based on serious information" from a money laundering investigation under way in Monaco.

II. In its decision, the Supreme Court noted that the Minister of State had submitted observations on 11 January 2007 which were admissible; in support of those observations, he had submitted a letter dated 9 January 2007 in which the Prosecutor general had stated that "the judicial authorities of Monaco have received requests for investigation from foreign judicial authorities concerning (Mr and Mrs G.)", that "it emerged that Mr and Mrs G. had completed various formalities with a view to taking up residence on the territory of the Principality in suspicious circumstances, in particular by using several aliases (...) while (Mrs G.) was deliberately concealing the name of her husband" and that "these elements obtained on the basis of serious information prompted a money laundering investigation initiated by the Prosecutor General's office".

The Supreme Court held that the information provided by the Prosecutor general, supplementing and confirming the statements by the Minister of State at the earlier stages of this procedure, had been debated within the framework of the adversarial proceedings. Mrs G. had provided no evidence establishing that it was incorrect. Thus, by using that information as a basis for the measure refusing leave of stay to Mrs G., the Minister of State had committed neither a mistake of fact nor a manifest error of appreciation.

Mrs G.'s application for annulment of the decision was therefore rejected. In parallel, a similar decision of rejection was handed down on the same day concerning an identical application by her husband, Mr G.

Languages:

French.

Identification: MON-2006-3-002

a) Monaco / **b)** Supreme Court / **c)** / **d)** 04.12.2006 / **e)** TS n° 2006/5 / **f)** / **g)** / **h)** CODICES (French).

Keywords of the systematic thesaurus:

1.3.1 **Constitutional Justice** – Jurisdiction – Scope of review.

4.7.1 **Institutions** – Judicial bodies – Jurisdiction.

4.7.9 **Institutions** – Judicial bodies – Administrative courts.

5.3.13.3 **Fundamental Rights** – Civil and political rights – Procedural safeguards, rights of the defence and fair trial – Access to courts.

Keywords of the alphabetical index:

Professional association, disciplinary proceedings, appeal, right / Abuse of power.

Headnotes:

A professional association, although it is not a public establishment, contributes to the smooth operation of the public service by virtue of sovereign powers vested in it by law. Accordingly, any decisions it takes in disciplinary matters may be appealed on points of law before the Supreme Court under Article 90.B.2 of the Constitution. The fact that the law provides for the severest sentences to be pronounced by the Minister of State, under judicial supervision, does not alter the fact that the Council of Architects, when issuing a reprimand, is acting as an Administrative Court of last instance. If a professional association's by-laws rule out the possibility of appeal against a reprimand, the aim or effect is not to rule out the possibility, embodied in Article 90.B.2 of the Constitution, of challenging last instance decisions of administrative courts on points of law.

Summary:

I. The Supreme Court was asked to review an application for alleged abuse of authority in an administrative matter. It was asked to set aside a decision by the Council of Architects of the Principality of Monaco on 18 January 2006, issuing a reprimand to Mr Fabrice Notari. In earlier disciplinary proceedings Mr Notari had been issued with an initial reprimand by the Council of Architects on 12 June 2003, on the ground that prior to concluding a contract with a client he should have consulted a colleague who had already worked on the same construction project. On 6 January 2005 the Court of First Instance acknowledged, on appeal, that the Council of Architects was a private-law body, but that this "did not put it outside the jurisdiction of the Supreme Court", as the Council of Architects was vested with "regulatory and disciplinary power under the supervision of the public authorities" and therefore enjoyed "sovereign powers". The Court accordingly refused jurisdiction.

The applicant appealed to the Court of Appeal, which reviewed the 6 January 2005 decision of the Court of First Instance on 21 March 2006 and declared itself competent to rule on the appeal against the disciplinary decision of the Council of Architects: "this decision taken in the framework of the Council's disciplinary powers is not an administrative decision but a quasi-judicial decision and, as such, not subject to appeal for abuse of authority".

It thereby confirmed that the right to appeal was a principle to which there could be no exception unless provided for by law. Mr Notari's appeal should thus not have been made to the Court of First Instance, which lacked jurisdiction in such matters, but rather to the Court of Appeal, which was the natural "second-level" court.

II. This case, for which there was no precedent, raised the question of the Supreme Court's jurisdiction, as the Court of Appeal had examined an objection to jurisdiction and its ruling of 21 March 2006 did not constitute *res judicata*. It was for the Supreme Court, in conformity with the Constitution, to confirm or otherwise its own jurisdiction in respect of a decision taken by a professional body in a disciplinary matter – in the last instance – by virtue of sovereign powers vested in it by law. Under Article 90.B of the Constitution:

"The Supreme Court shall have unfettered discretion to rule on:

1. applications for annulment of administrative authorities' decisions on grounds of abuse of authority (...);
2. applications on points of law against decisions of the administrative courts at last instance;
3. applications for interpretation and for review of the validity of administrative authorities' decisions".

The Supreme Court accordingly considered that under the terms of Legal Order no. 341 of 24 March 1942 regulating the status and profession of the architect and instituting the Council of Architects in the Principality, that although the Council was not a public establishment, it contributed to the functioning of the public service responsible for enforcing the rules and regulations governing the architect's profession. It follows that the decisions it takes by virtue of the sovereign powers vested in it may be appealed before the Supreme Court in conformity with Article 90.B of the Constitution.

There was a further difficulty with the reprimand in question, in terms of the nature and severity of the sanctions imposed, the severest sanctions being pronounced by the Minister of State, under judicial supervision. Under the terms of Article 22 of the aforesaid Legal Order no. 341:

"Architects found guilty of breaches of the duties of their profession shall be subject to the following disciplinary measures:

1. A reprimand pronounced by the Court in chambers;
2. A warning issued by the Council of Architects and recorded on the person's file;
3. Temporary suspension for up to one year;

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4. Being struck off the list and barred from practising the profession.

Decisions to temporarily suspend or to strike off an architect shall be pronounced by the Minister of State, based on a report of the Council of Architects and after the interested parties have been given an opportunity, within a one-month period, to present written observations in their defence”.

The Supreme Court nevertheless considered that when the Council of Architects pronounces disciplinary measures 1 and 2 above it is acting as an Administrative Court of last instance, while the law provides for disciplinary measures 3 and 4 to be pronounced by the Minister of State.

Finally, under Article 1.20 of the Rules of Procedure of the Council of Architects, reprimands are not subject to appeal. However, the Court considered that this provision was not intended to, and did not, rule out the possibility of an appeal on points of law provided for in Article 90.B.2 of the Constitution, and pronounced itself competent to hear the appeal against the decision of 18 January 2006 in which the Council of Architects issued Mr Notari with a reprimand. On the merits, the reprimand the Council of Architects issued against Mr Notari was based largely on a violation of the standard contract determining the amount of architects' fees, whereas this contract had not been approved by the government, in breach of Article 7.2 of the Order mentioned above. Accordingly, in basing Mr Notari's reprimand on a violation of the standard contract, the Council made a mistake of law. The decision of 18 January 2006 was therefore set aside and the matter referred back to the Council of Architects.

Supplementary information:

The Supreme Court, whose jurisdiction is defined by Article 90 of the Constitution, is at once a Constitutional Court, an Administrative Court and the Court responsible for settling disputes over jurisdiction. Founded in 1911, it is the oldest Constitutional Court in Europe and no doubt the only Supreme Court with such a varied role. This important decision was published in the *Bulletin* to illustrate this originality. In fact it has only an indirect bearing on constitutional law, as in this instance the Court heard an administrative case. Its decision did, however, clarify the scope of the jurisdiction embodied in the Constitution in respect of applications against last-instance Administrative Court decisions.

Languages:

French.

Identification: MON-2006-1-001

a) Monaco / **b)** Supreme Court / **c)** / **d)** 16.01.2006 / **e)** TS 2005-07, 08, 09 and 10 / **f)** Application to set aside Law no. 1291 of 21 December 2004 amending Law no. 1235 of 28 December 2000 on rental conditions pertaining to residential premises built prior to 1 September 1947 / **g)** *Journal de Monaco* (Official Gazette), 27.01.2006 / **h)**.

Keywords of the systematic thesaurus:

3.16 **General Principles** – Proportionality.

5.3.39.3 **Fundamental Rights** – Civil and political rights – Right to property – Other limitations.

Keywords of the alphabetical index:

Housing, right to reoccupy, limitation / Penalty, exclusive application to offender, principle.

Headnotes:

The provision of criminal sanctions on account of the conduct of a person on whose behalf a property owner has exercised his or her right to repossess his or her property is contrary to the principle that punishment should be applied to the offender only and not to other persons.

Summary:

The Supreme Court, ruling on a matter referred to it by several consortia of property owners, held that the bulk of the provisions of Law no. 1235 of 28 December 2000 on rental conditions pertaining to residential premises built prior to 1 September 1947 setting up a protected sector, did not violate the rights and freedoms guaranteed by Part III of the Constitution, with regard in particular to the right to property, the principle of equality, the principle that offences and punishments shall be strictly defined by law, the principle of the non-retroactive nature of criminal laws, the right to respect for private and family life.

Nonetheless, the Court held that certain limitations placed on a property owner's right to reoccupy his or her property constituted excessive interference with the right to property and that there was no rule or principle ranking as constitutional law justifying such interference. In addition, it held that the provision of criminal sanctions on account of the conduct of the person on whose behalf the property owner had exercised his or her right to reoccupy his or her property contravened the principle that punishment should be applied solely to the offender and not to other persons.

Languages:

French.