

National security bill

At the end of November 2015, the Prince's Government submitted to the National Council a bill covering various national security measures. This bill is currently under review by Council members, and a number of discussions have been taking place between the National Council and the Government, with a view to a vote on the bill being held before the end of June 2016.

More than ever before, the role of the Police Department with regard to administrative policing in Monaco is fundamental. Unlike the Criminal Investigation Division, which intervenes only after an offence has been committed, the role of the Administrative Police Division is preventive in nature and seeks to ensure that offences are not committed in the first place.

To retain its effectiveness, administrative policing resources must be adequately maintained in line with the changing nature of the risks and of criminality. Today, while the Principality is not facing any specific threat, it would be irresponsible not to take account of the threats linked to terrorism and radicalisation on the one hand, and changes in society on the other hand.

This bill is therefore a response to two concerns.

The first relates to modernising the various legislative and regulatory measures which define and regulate the role of the Administrative Police Division. Some of these laws are extremely old, such as the ordinance on general policing dating back to 1867. This overhaul is necessary to ensure that Monaco has a legal framework which is in step with a changing society.

The second aim being pursued through this bill is to enhance the options available to the Police Department with regard to administrative policing, to enable it to respond to the emergence of new threats such as terrorism. This is about giving the police the resources to better identify risks and prevent this type of offence from being committed, in other words, to enable them to intervene in advance. The objective is prevention. In concrete terms, it means allowing the police to make use of surveillance capabilities similar to those employed in all European countries. The Principality cannot remain at a disadvantage in this area.

Through a modernised legislative framework, the introduction of these measures will also make it possible to develop a foundation for cooperation enabling more operational discussions with foreign countries.

Some of the technological capabilities contemplated in this bill are already being employed by the Police Department, particularly in the field of urban CCTV coverage and automatic number plate recognition. The bill is not seeking to change the philosophy underpinning the use of these tools, some of which have been in place for a number of years, or to unduly increase the powers of the police in this area, but rather to clarify and update the legislative and regulatory framework governing their implementation.

The other capabilities which the bill would authorise as part of administrative policing take account of recent technological developments. This relates primarily to allowing the

interception of electronic communications and connection data, while establishing a strict framework governing the use of such techniques.

It is worth recalling that the criminal procedure code already allows such measures to be employed as part of a criminal investigation, that is, after an offence has been committed. Bill No. 944 strictly defines the conditions under which such measures might also be authorised as part of an administrative police action, that is, as a preventive measure to stop a crime from being committed.

To achieve this, the Prince's Government has sought to strike a fair and justified balance between, on the one hand, the violation of privacy caused by the use of techniques which are intrusive and therefore inevitably undermine personal freedoms and, on the other hand, the essential search for information to guarantee everyone's security.

The proposed law therefore establishes a very balanced framework in which the implementation of surveillance capabilities is strictly regulated, requiring both prior justification on two counts and monitoring, thereby ensuring the essential reconciliation between protecting the right to privacy and the need to confront these new threats, which it would be irresponsible to ignore.

The police have not been given any disproportionate powers of surveillance, and their activities will be strictly regulated. First and foremost, the Police Commissioner must request authorisation to employ these techniques, justifying his or her request in accordance with the framework defined by the law, within which they may be implemented. The authorisation issued by the Minister of State must also be justified and must precisely define the conditions for the use of the techniques concerned, as well as the length of time they may be employed for, with the maximum duration fixed by the law.

In addition, a fully independent committee will be immediately informed by the Minister of State of each authorisation issued, and will provide a view on the lawfulness of operations. In the event that the committee recommends the suspension or termination of these operations, they will be immediately halted.

If he wishes to resume the operations, the Minister of State then has the ability to ask the President of the Supreme Court to issue a ruling. This mechanism and the composition of the committee provided for in the bill, which includes the judge responsible for liberties, are designed to fully guarantee individual freedoms.

Another important aspect of this bill is the introduction of a national security secret. This is the equivalent of the "*secret défense*" [Secret] concept used in other countries. The sharing of such a classification standard is essential to enable the exchange of information at the international level. Information exchanged between different countries must be accorded an equivalent level of protection in each country.

This measure is an essential precondition for the development of cooperation between the

Police Department and its foreign counterparts. In terms of logistical organisation, the act outlines the principles underpinning activities, the options available, techniques which are prohibited and safeguards, as well as the framework within which the measures are implemented. The implementing legislation, sovereign ordinances and ministerial decrees seek to clarify the technical modalities for implementing the procedures and principles authorised by the act.

These texts are, naturally, dependent on the relevant organisations and the technical measures implemented. The specific organisational procedures and associated technical details are, of course, a matter for regulation.