



# General Assembly

Distr.: General  
30 November 2009  
English  
Original: English/French

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**Human Rights Council**  
**Working Group on the Universal Periodic Review**  
**Seventh session**  
Geneva, 8–19 February 2010

## **Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1**

### **San Marino\***

The present report is a summary of 3 stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

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\* The present document was not edited before being sent to the United Nations translation services.

## **I. Background and framework**

### **A. Scope of international obligations**

1. In 2008, the Commissioner for Human Rights of the Council of Europe (CoE Commissioner) recommended that San Marino ratify the European Social Charter (revised) as well as the Optional Protocol to the Convention Against Torture.<sup>2</sup> In 2007, the European Commission Against Racism and Intolerance (CoE ECRI) recommended that San Marino ratify the UNESCO Convention against Discrimination in Education; the Geneva Convention Relating to the Status of Refugees; the European Convention on Nationality; the European Charter for Regional or Minority Languages; the European Convention on the Legal Status of Migrant Workers; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>3</sup>

### **B. Institutional and human rights infrastructure**

2. CoE Commissioner reported that the Captains Regent play the role of the Ombudsman in San Marino. He stated that entrusting the heads of State with the functions of an Ombudsman may entail a conflict of interest. In addition, due to their short term in office (6 months) and the functions they must carry out, the long term identification of human rights concerns may be difficult. CoE Commissioner thus deemed that another form of Ombudsmanship should be considered.<sup>4</sup> In 2007, CoE ECRI encouraged San Marino to continue with their plans to establish an Ombudsman and to ensure that the Equal Opportunities Commission address issues covered by CoE ECRI's mandate.<sup>5</sup>

3. CoE Commissioner noted in 2008 that there was no special entity in the Government in charge of ensuring the rights of women. He stressed the importance of having a platform at a high level to monitor the situation of women comprehensively, to advise on the impact of policies on women and to help formulate new policies with a view to mainstreaming a gender-based approach.<sup>6</sup>

4. CoE Commissioner also recommended that San Marino consider setting up a complaint mechanism for children who feel that their rights have been abused.<sup>7</sup>

### **C. Policy measures**

5. In 2007, CoE ECRI stated that no National Action Plan in the framework of the follow-up to the Durban World Conference against Racism had yet been prepared. It considered that the elaboration of a National Action Plan against racism would constitute an ideal opportunity to improve the understanding of racism and racial discrimination in San Marino and promote awareness of the way in which these phenomena operate in society. CoE ECRI recommended that the authorities of San Marino closely involve all relevant stakeholders, notably persons and groups of persons that may be vulnerable to discrimination, in the elaboration of this plan.<sup>8</sup>

6. In 2009, Joint submission 1 (JS1) reported that San Marino clearly lacks education and training programmes to promote the integration of gay, lesbian, bisexual, and transgender people.<sup>9</sup>

## II. Promotion and protection of human rights on the ground

### A. Cooperation with human rights mechanisms

7. In 2008, CoE Commissioner indicated that San Marino may encounter difficulties in reporting to the various international bodies due to its size and thus the limited number of people available to work on such matters.<sup>10</sup>

### B. Implementation of international human rights obligations

#### 1. Equality and non-discrimination

8. CoE ECRI was concerned that Article 4 (equality before the law) of the Declaration on the Citizens' Rights did not explicitly include non-discrimination grounds such as race, colour, language, nationality and national or ethnic origin. It recommended that San Marino consider amending the Declaration to expressly include these grounds.<sup>11</sup> JS1 highlighted that Article 4 of the Declaration did not make any reference to sexual orientation or gender identity.<sup>12</sup>

9. In 2008, CoE Commissioner reported that there was no general domestic provision against all forms of discrimination and that incitement to hatred and racism was not punished under national criminal law. He was informed that a law on anti-discrimination was in the pipeline, and that a commission had been entrusted with the task of reviewing domestic law in order to ascertain which areas lack effective protection against discrimination. CoE Commissioner encouraged this undertaking and recommended that San Marino adopt legislation steered at the protection of all individuals against all forms of discrimination.<sup>13</sup> In 2007, CoE ECRI also made recommendations in this regard.<sup>14</sup>

10. In 2009, JS1 indicated that San Marino adopted Law N° 66 of 28 April 2008, entitled "Directives in regards to racial, ethnic, religious and sexual discrimination". According to JS1, the law punishes discrimination based on sexual orientation, but does not make any reference to gender identity with regard to transgender or intergender issues.<sup>15</sup>

11. CoE Commissioner highlighted the positive steps taken by San Marino in relation to people with disabilities, including laws concerning the integration of children in schools and the introduction of adults in the labour market.<sup>16</sup>

#### 2. Right to life, liberty and security of the person

12. CoE Commissioner observed in 2008 that living conditions in the *Capuccini* prison were satisfactory. He stressed that despite the fact that San Marino has not received complaints alleging the use of torture, it is important to have a national mechanism in place for the prevention of torture and the inspection of detention centres, as foreseen in the Optional Protocol to the Convention Against Torture.<sup>17</sup>

13. In 2008, CoE Commissioner recommended that San Marino establish procedural rules for involuntary confinement of persons with mental disabilities.<sup>18</sup> He observed that San Marino does not provide a legal framework for involuntary confinement and stressed that legal provisions regulating such cases should be shaped to avoid the risk of arbitrariness.<sup>19</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CoE CPT) expressed similar concerns in 2005.<sup>20</sup>

14. In 2009, JS1 recommended that San Marino take legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on sexual orientation or gender identity.<sup>21</sup>

15. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) and CoE Commissioner expressed concerns at the lack of a criminal domestic law prohibiting corporal punishment in all environments.<sup>22</sup> According to GIEACPC, corporal punishment is still lawful in the home and not explicitly prohibited in alternative care settings.<sup>23</sup> CoE Commissioner noted that the Criminal Code only referred to the "abuse of power of correction". He added that this criminal provision was couched in terms that were too vague to encompass all the situations in which a child can be subject to physical violence.<sup>24</sup>

16. During its visit in 2005 the CoE CPT delegation heard no allegations, nor did it collect any other evidence, of deliberate ill-treatment of patients by the staff of the General Hospital<sup>25</sup> or at the two homes for the elderly visited by the delegation.<sup>26</sup>

### **3. Administration of justice and the rule of law**

17. CoE Commissioner noted that the Criminal Procedure Code dates back to the nineteenth century and is thus somewhat outdated. One of the lacunas in the law concerns the lack of rules for the tapping of telephone lines.<sup>27</sup> In 2008, he recommended that San Marino proceed with the reform of the Criminal Procedure Code to ensure that there are adequate rules for the gathering of evidence.<sup>28</sup>

18. CoE Commissioner reported that there were sporadic complaints with regard to the length of proceedings in the past, but that this issue seems to have been resolved thanks to the increase in the number of professionals working in the judicial sector.<sup>29</sup>

19. In 2005 CoE CPT recommended that every person arrested by law enforcement agencies should be brought before a judge before he or she was remanded in custody.<sup>30</sup> CoE CPT also recommended inter alia that all persons deprived of their liberty should be granted the right to notify a close relative or a third party of their choice that they were in detention and to have access to a lawyer and a doctor from the outset of their deprivation of liberty.<sup>31</sup> CoE CPT recommended that San Marino reconsider setting up a unit for patients subject to TSO (*trattamento sanitario obbligatorio*, or compulsory treatment) and that it consider setting up a child psychiatry unit.<sup>32</sup> San Marino replied to all these recommendations.<sup>33</sup>

20. In 2008, CoE Commissioner stressed that San Marino lacked a separate justice system for minors. The Commissioner added that this could represent a concrete problem as, according to Government statistics, youth crimes have been on the increase in the past few years. He encouraged San Marino to continue with its plans to adopt a law which would raise the age of criminal liability for minors from 12 to 14 and offer separate procedures for minors above the age of 14. The Commissioner noted with approval the existing practice of using alternatives to deprivation of liberty for young offenders.<sup>34</sup>

### **4. Right to privacy, marriage and family life**

21. In 2009, JS1 reported that non-conventional family models such as unmarried partners, cohabitants and same-sex civil partners are not recognised and therefore do not have the same rights when it comes to inheritance or residency. JS1 stressed that San Marino should take all necessary legislative, administrative and other measures to ensure that no family maybe subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment and immigration.<sup>35</sup>

### **5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

22. In 2007, CoE ECRI encouraged San Marino to ensure that pupils are given a religious instruction which complies with the scientific neutrality essential in any educational approach.<sup>36</sup>

23. CoE Commissioner reported in 2008 that a draft law which was due to come before Parliament contained provisions whereby a journalist could be imprisoned for disclosing information regarding pre-trial investigations. CoE Commissioner was informed that the punishment for such behavior would be limited to a fine. He stressed that even if this represents progress compared to the previous bill, the sanction should not consist in unreasonably large sums of money, which could also hinder freedom of expression.<sup>37</sup>

24. In 2007, CoE ECRI recommended that San Marino grant eligibility and voting rights in local elections to non-citizens who reside in San Marino.<sup>38</sup>

25. JS1 noted that citizens face difficulties in accessing information about public spending as well as about tribunal and court sentences.<sup>39</sup> It also reported on alleged irregularities in the 2006 elections. Although two different complaints were filed, it was alleged that neither were investigated and that witnesses were not called to give a statement.<sup>40</sup>

## **6. Right to work and to just and favourable conditions of work**

26. In 2009, JS1 stressed that the introduction of temporary or fixed-term contracts is worrying as it increases disparity in payment for similar jobs. It added that fixed term contracts do not give any rights to pension contributions, leave, social security, and maternity and unemployment rights.<sup>41</sup>

27. In 2007, CoE ECRI indicated that cross-border workers represented approximately 39 per cent of San Marino's private sector employees.<sup>42</sup> It added that cross-border workers are reported to include increasing numbers of persons employed on project-based contracts or recruited through employment agencies. CoE ECRI received information that workers employed through outsourcing enjoy considerably less advantageous conditions in terms of pay, holidays, career advancement etc than their colleagues although they reportedly work alongside regular employees and often carry out the same functions.<sup>43</sup> It encouraged the authorities of San Marino to monitor practices of hiring workers on project-based contracts, through outsourcing as well as illegally, and to address any unjustified disproportionate impact of these practices on noncitizens that may be found.<sup>44</sup> It also encouraged San Marino in its efforts to address discrimination against cross-border workers, notably through a process of stabilization of their employment situation.<sup>45</sup>

28. In 2007, CoE ECRI was concerned that women who come to San Marino to work as private carers remained exposed to a risk of exploitation due to the precarious nature of their employment and the situation of isolation in which they sometimes find themselves. It also noted that the carers were only allowed to work in San Marino for ten consecutive months per calendar year and were not entitled to family reunification.<sup>46</sup> CoE ECRI encouraged San Marino to review the legislation on stay and work permits so as to reduce the precariousness of employment for these women and ensure respect for their private and family life.<sup>47</sup> It also recommended that San Marino review the situation of seasonal workers and ensure that the permits granted to these persons reflect the nature of the work carried out by them in practice.<sup>48</sup> In 2009, JS1 highlighted that migrant workers who are not resident in San Marino cannot benefit from unemployment benefits.<sup>49</sup>

29. JS1 reported that there is a lack of transparency when it comes to public appointments and civil servants candidature lists.<sup>50</sup>

## **7. Right to social security and to an adequate standard of living**

30. In 2008, CoE Commissioner noted that under the Criminal Code, abortion is criminalised except if performed to save the life of the mother. Thus, women who want to terminate an unwanted pregnancy for any other reason (including, for instance, if the foetus has a severe anomaly or if the pregnancy is the result of a rape) have to go abroad for such

treatment. The fact that such a step is regarded as criminal can place individual women in difficult circumstances, not least if there is any medical complication after the abortion is performed.<sup>51</sup>

#### **8. Right to education and to participate in the cultural life of the community**

31. In 2007, CoE ECRI strongly recommended that San Marino strengthen its efforts to provide teaching of Italian as a second language to non-Italian mother tongue adults living in the country.<sup>52</sup> CoE ECRI noted the efforts made by San Marino to give additional Italian language support in schools at all levels to non-Italian mother tongue children and encouraged San Marino in these efforts.<sup>53</sup>

32. CoE ECRI also encouraged San Marino in its efforts to ensure that intercultural education is concretely reflected in everyday teaching practice. It added that the authorities should consider making human rights a compulsory subject at both primary and secondary levels.<sup>54</sup>

#### **9. Migrants, refugees and asylum-seekers**

33. CoE ECRI indicated that around 16 per cent of the total population of San Marino is composed of non-citizens with residence and stay permits.<sup>55</sup>

34. According to CoE ECRI, the provisions that regulate the acquisition of citizenship of San Marino through naturalization appear to be excessively restrictive.<sup>56</sup> It noted that applicants for naturalization need to have resided continuously in San Marino for thirty years, or fifteen years if they are married to a citizen of San Marino. They must also relinquish any other citizenship that they possess unless they are citizens of a country whose legislation does not permit relinquishing one's citizenship. In addition, the naturalization can only be granted by the *Consiglio Grande e Generale* (Parliament) by means of special naturalization laws which must be passed at least once every ten years. Concretely, these special laws require residents to file their applications within a certain time-limit.<sup>57</sup>

35. In 2007, CoE ECRI recommended that San Marino reduce the length of residence necessary for residents to apply for naturalization and allow for more flexibility in the holding of double nationality upon acquisition of citizenship of San Marino. Furthermore, it strongly recommended that the authorities ensure that applications for naturalization can be lodged at any point in time and that decisions on naturalization be subject to an appeal.<sup>58</sup>

36. Although San Marino expressed the view that the establishment of a refugee-determination procedure is ill-suited to the lack of border controls between Italy and San Marino, CoE ECRI recommended that San Marino establish such a procedure.<sup>59</sup>

### **III. Achievements, best practices, challenges and constraints**

37. In 2008, CoE Commissioner highlighted that San Marino has been held up as a model in the framework of the Council of Europe's campaign to stop violence against women.<sup>60</sup> He also highlighted measures taken by San Marino, which have helped to overcome the social stigma attached to people with disabilities, as well as the importance attached to the care provided to these people.<sup>61</sup>

### **IV. Key national priorities, initiatives and commitments**

N/A

## V. Capacity-building and technical assistance

N/A

### Notes

<sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org). (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.)

#### *Civil society*

- GIEACPC Global Initiative to End All Corporal Punishment of Children, London, United Kingdom;
- Joint Submission 1 Associazione Culturale Don Chisciotte; Associazione LGBT San Marino; Associazione Oasiverde; and Associazione Probimbi; San Marino, joint submission;

#### *Regional intergovernmental organization*

- CoE Council of Europe, Strasbourg, France
- Rapport au Gouvernement de San Marin relatif à la visite effectuée à San Marin par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 8 au 11 février 2005, CPT/Inf (2008) 9;
  - Response of the Government of San Marino to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to San Marino from 8 to 11 February 2005, CPT/Inf (2008) 10;
  - European Commission against Racism and Intolerance (ECRI); Report on San Marino (third monitoring cycle) Adopted on 14 December 2007, Published on 29 April 2008; CRI (2008) 24;
  - Report by the Commissioner for Human Rights of the Council of Europe, 30 April 2008, CommDH (2008) 12.

<sup>2</sup> CoE Commissioner, p. 8.

<sup>3</sup> CoE ECRI, paras. 6–7.

<sup>4</sup> CoE Commissioner, paras. 15–17.

<sup>5</sup> CoE ECRI, paras. 29–35.

<sup>6</sup> CoE Commissioner, para. 23.

<sup>7</sup> CoE Commissioner, p. 8.

<sup>8</sup> CoE ECRI, paras. 95–96.

<sup>9</sup> Joint Submission 1, p. 5.

<sup>10</sup> CoE Commissioner, para. 6.

<sup>11</sup> CoE ECRI, paras. 10–12.

<sup>12</sup> Joint Submission 1, p. 1.

<sup>13</sup> CoE Commissioner, paras. 21–22; see also CoE ECRI, paras. 19–23.

<sup>14</sup> CoE ECRI, paras. 23 and 28.

<sup>15</sup> Joint Submission 1, p. 1.

<sup>16</sup> CoE Commissioner, paras. 31–33.

<sup>17</sup> CoE Commissioner, p. 4.

<sup>18</sup> CoE Commissioner, p. 8.

<sup>19</sup> CoE Commissioner, p. 33.

<sup>20</sup> CoE CPT, paras. 43 and 53.

<sup>21</sup> Joint Submission 1, p. 2.

<sup>22</sup> GIEACPC, pp. 1–2; CoE Commissioner, para. 29.

<sup>23</sup> GIEACPC, p. 2.

<sup>24</sup> CoE Commissioner, para. 29.

<sup>25</sup> CoE CPT, para. 38.

- <sup>26</sup> CoE CPT, para. 51.
  - <sup>27</sup> CoE Commissioner, para. 12.
  - <sup>28</sup> CoE Commissioner, p. 8.
  - <sup>29</sup> CoE Commissioner, para. 14.
  - <sup>30</sup> CoE CPT, para. 8.
  - <sup>31</sup> CoE CPT, paras. 16, 18 and 20.
  - <sup>32</sup> CoE CPT, paras. 41–42.
  - <sup>33</sup> Response of the Government of San Marino to the CPT report, pp. 3–5 and 9.
  - <sup>34</sup> CoE Commissioner, para. 13; see also CoE CPT, para. 35.
  - <sup>35</sup> Joint Submission 1, pp. 2–3.
  - <sup>36</sup> CoE ECRI, paras. 66 and 68.
  - <sup>37</sup> CoE Commissioner, para. 18.
  - <sup>38</sup> CoE ECRI, para. 61.
  - <sup>39</sup> Joint Submission 1, p. 3.
  - <sup>40</sup> Joint Submission 1, pp. 3–4.
  - <sup>41</sup> Joint Submission 1, p. 4.
  - <sup>42</sup> CoE ECRI, para. 52.
  - <sup>43</sup> CoE ECRI, para. 53; see also Joint Submission 1, p. 4.
  - <sup>44</sup> CoE ECRI, para. 58.
  - <sup>45</sup> CoE ECRI, para. 57.
  - <sup>46</sup> CoE ECRI, para. 74.
  - <sup>47</sup> CoE ECRI, para. 76.
  - <sup>48</sup> CoE ECRI, paras. 54 and 59.
  - <sup>49</sup> Joint submission 1, p. 4.
  - <sup>50</sup> Joint submission 1, p. 3.
  - <sup>51</sup> CoE Commissioner, para. 27.
  - <sup>52</sup> CoE ECRI, para. 60.
  - <sup>53</sup> CoE ECRI, paras. 65 and 67.
  - <sup>54</sup> CoE ECRI, paras. 47–48.
  - <sup>55</sup> CoE ECRI, para. 51.
  - <sup>56</sup> CoE ECRI, para. 16.
  - <sup>57</sup> CoE ECRI, paras. 14–15.
  - <sup>58</sup> CoE ECRI, para. 17.
  - <sup>59</sup> CoE ECRI, paras. 62–63.
  - <sup>60</sup> CoE Commissioner, para. 24.
  - <sup>61</sup> CoE Commissioner, paras. 31–32.
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