



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

REPUBLIC OF SAN MARINO

1. The Committee considered the second periodic report of San Marino (CCPR/C/SMR/2) at its 2548th and 2549th meetings on 11 July 2008 (CCPR/C/SR.2548 and 2549). It adopted the following concluding observations at its 2562nd meeting (CCPR/C/SR.2562) on 22 July 2008.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of San Marino and the opportunity it presents to resume the dialogue with the State party after 18 years. It is grateful to the State party for the written replies (CCPR/C/SMR/Q/2/Add.1 and Add.2) provided in advance to the list of issues and for the additional information provided during the consideration of the report. It regrets, however, the lack of sufficient information in the written materials on the practical implementation of the Covenant.

B. Positive aspects

3. The Committee welcomes the legislative and policy developments on various issues concerning disability, which enabled the State party to ratify on 29 January 2008 the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

4. The Committee observes that the State party has resumed dialogue with a number of treaty-bodies and notes its efforts to submit its overdue reports.

C. Principal subjects of concern and recommendations

5. While by virtue of Law No. 36 of 26 February 2002, “Regularly signed and implemented international agreements on the protection of human rights and freedoms shall prevail over domestic legislation in case of conflict” (article 1, paragraph 1, Declaration of the Citizens’ Rights), the exact status of the Covenant and the Optional Protocol in domestic law remains unclear, in particular in contrast to the status of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Furthermore, the relationship between the Covenant and the Declaration of the Citizens’ Rights and other parts of the constitutional order remains unclear (article 2).

The State party should clarify the exact status of the Covenant and the Optional Protocol in domestic law, as well as the relationship between the Covenant and the Declaration of the Citizens’ Rights and other parts of the constitutional order, so as to ensure full implementation of all Covenant rights in all circumstances. In particular, the State party should clarify whether a party to pending judicial proceedings may turn to the Guarantors’ Panel on the constitutionality of rules and claim that a national law is in conflict with the Covenant.

6. The Committee is concerned about the lack of independent mechanisms in San Marino for monitoring the implementation of rights, despite the State party’s commitment to the establishment of an Ombudsman made in the “Government agenda for the XXVI Legislature”, of 17 July 2006. While acknowledging that some form of Ombudsperson function has traditionally been conferred upon the Captains Regents (Head of State), the Committee notes that such a mechanism is not in accordance with the principles relating to the status of national institutions (Paris Principles), adopted by the General Assembly in resolution 48/134 (article 2).

The State party should establish an effective independent monitoring mechanism for implementation of Covenant rights which is fully in accordance with the Paris Principles.

7. The Committee is concerned that such non-discrimination grounds as sexual orientation, race, colour, language, nationality and national or ethnic origin are subsumed under the notion of ‘personal status’ in article 4 of the Declaration of the Citizens’ Rights. It observes that such subsuming of grounds makes it difficult to ensure their equal and comprehensive application (articles 2 and 26).

The State party should adopt a comprehensive anti-discrimination legal framework which expressly indicates all those grounds of discrimination that are presently subsumed under the notion of ‘personal status’.

8. The Committee notes that Law No. 97 of 20 June 2008 entitled “Prevention and Repression of Violence against Women and Gender Violence” defines the proscribed acts and establishes a framework for State protection and assistance to the victims and their families in all civil, criminal or administrative proceedings, including through legal assistance free of charge. The Committee considers that legal developments should be accompanied by programmes of education and training (article 2 and 26).

The State party should adopt programmes and practical measures to combat all forms of gender-based violence, including training of police to receive complaints of domestic violence, to provide material and psychological relief to the victims and to make women aware of their rights.

9. The Committee, while noting the adoption of Law No. 84 of 17 June 2004, which allows all children born to San Marino citizens, male or female, to acquire San Marino citizenship at birth, remains concerned that differences still exist between children whose parents are naturalized and who may acquire citizenship immediately, and the children of a couple where one of the parents has been naturalized and the other parent has kept his/her foreign nationality, who can acquire citizenship only when they become 18 (articles 2 and 24).

The State party should amend the law so as to ensure that children are not discriminated against on the ground of the nationality of any one parent and in particular ensure equal right to acquisition of citizenship, irrespective of whether both or only one of the parents are naturalized San Marino citizens.

10. The Committee, albeit noting that the rule whereby a foreigner is required to present a guarantor as a condition enabling him/her to start a civil action before the courts has become obsolete in practice, remains concerned that this discriminatory requirement still exists in San Marino law (articles 2 and 26).

The State party should formally abolish this rule.

11. The Committee, while noting the adoption of Law No. 93 of 17 June 2008 on fair trial guarantees, is concerned about the delay by the State party to adopt a new comprehensive Code of Criminal Procedure (articles 9 and 14).

The State party should further prioritize its work to draft and adopt a new comprehensive Code of Criminal Procedure that will be in compliance with the Covenant.

12. The Committee notes with concern that immediate access to a lawyer by an arrested person who is unable to pay for the services of a lawyer might be impeded by the way the free legal assistance scheme is currently framed in San Marino (article 14, paragraph 3(d)).

The State party should review its free legal aid scheme to guarantee the right to have free legal assistance in any case where the interests of justice so require.

13. The Committee is concerned that the scope of the limitations on the right to privacy in Law No. 28 of 26 February 2004 entitled “provisions to combat terrorism, laundering of illegal proceeds and insider trading” remain unclear (article 17).

The State party should apply Law No. 28 of 26 February 2004 in a manner compatible with article 17 and ensure that any future law on wire and phone tapping for investigation purposes is compatible with the Covenant. In addition, the State party should ensure that its counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the Covenant and in particular that the legislation adopted in this context is limited to crimes that would justify being characterised as terrorist.

14. The Committee is concerned about the potentially far-reaching scope of application of articles 183, 184 and 185 of the Criminal Code (protection of the right to reputation), such as criminalisation of ‘ascribing a fact which injures honour’, and the compatibility of such provisions with the Covenant (article 19).

The State party should review its Criminal Code in view to bring the provisions criminalizing various forms of expression and communication affecting one’s honour, decency and esteem into compliance with article 19 of the Covenant.

15. While noting the exceptional circumstance of possible general military mobilization under article 4 of Law No. 15 of 26 January 1990, and welcoming the information provided by the State party on current efforts to adopt the Comprehensive Regulations of the Military Corps, the Committee remains concerned about article 3 of the Law, according to which San Marino citizens may be obliged to serve in the military from 16 to 60 years of age (article 24).

The State party should amend the law in order to provide that the entitlement to conscientious objection is expressly recognized and that the minimum age for service is raised.

16. The Committee notes the State party’s assertion that there are no ethnic, linguistic and/or religious national minorities in San Marino, and observes that the identification of the presence in the territory of any country of such minorities is not so much a matter of policy or law as it is one of fact (see general comment No. 23 (1994) on article 27).

The State party should consider whether, in particular in view of immigration trends in recent years, ethnic minorities exist in its territory, even if in very small numbers, and take necessary steps to protect their rights under article 27.

17. The Committee, noting that 16 per cent of the inhabitants of San Marino are of foreign origin, is concerned that acquiring citizenship in the State party is effectively precluded even for long-term inhabitants, first requiring a presence of 5 years on a staying permit, then followed by 30 years of continuous presence on a residence permit, and finally, a decision of the parliament that is taken only once every 10 years (article 26).

The State party should re-examine the extraordinary length and practical difficulties of acquiring citizenship for long-term residents.

18. The Committee requests the State party to make its second report and the written answers it has provided in response to the list of issues drawn up by the Committee as well as the present concluding observations widely available in the State party at all levels of society, and especially to the judicial, legislative and administrative authorities, and to inform the Committee of all steps taken to implement them in its next periodic report. Furthermore, it also encourages the State party to involve non-governmental organizations operating in the country and other members of civil society in discussions at the national level before it submits its third periodic report.

19. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on the assessment of the situation and the implementation of the Committee's recommendations in paragraphs 6 and 7.

20. The Committee requests the State party to provide in its next report, due to be submitted by 31 July 2013, information on the remaining recommendations made and on the Covenant as a whole.
