



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the third periodic report of San Marino**

1. The Committee considered the third periodic report of San Marino (CCPR/C/SMR/3) at its 3203rd and 3205th meetings (see CCPR/C/SR.3203 and 3205), held on 19 and 20 October 2015. At its 3225th meeting, held on 3 November 2015, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee is grateful to the State party for having accepted the new optional procedure for submission of reports and for submitting its third periodic report in response to the list of issues prior to consideration of reports (CCPR/C/SMR/Q/3), under that procedure. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party concerning the steps taken by San Marino during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the replies provided orally by the delegation, and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the legislative steps taken by the State party to protect human rights, including:

(a) The adoption of the Framework Law (No. 28) of 10 March 2015 on assistance, social inclusion and the rights of persons with disabilities;

(b) The adoption of Law No. 140 of 4 September 2014, which provides that children are entitled to protection and security and shall not be subject to corporal punishment or other treatment damaging their physical and psychological integrity;

(c) The adoption of Law (No. 41) of 31 March 2014 on Extradition Provisions, which, inter alia, limits extradition if there is a reason to believe that the extradited person will be subjected to persecution or discrimination, or cruel, inhuman or degrading treatment, or if the offence for which extradition is requested is punishable by death penalty in the requesting country;

* Reissued for technical reasons on 9 December 2015.

** Adopted by the Committee at its 115th session (19 October-6 November 2015).



(d) The adoption of Law (No. 35) of 30 March 2012 on extraordinary provisions on naturalization, to the extent that it changes the conditions for the acquisition of nationality for children, in accordance with the Committee's previous recommendation (see CCPR/C/SMR/CO/2, para. 9).

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 4 August 2015;

(b) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, on 26 September 2011.

5. The Committee welcomes the State party's declaration made on 4 August 2015, under article 41 of the Covenant, recognizing the competence of the Committee to receive and consider inter-State communications.

C. Principal matters of concern and recommendations

National human rights institution

6. While acknowledging the existence of institutional structures that monitor the implementation of human rights, such as the Equal Opportunities Commission, the Committee is concerned that the State party has not yet established a consolidated national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

7. Recalling its previous recommendation (see CCPR/C/SMR/CO/2, para. 6), the Committee recommends that the State party establish an effective and independent national human rights institution with broad competence in the field of human rights, in accordance with the Paris Principles.

Anti-discrimination legislation

8. While taking note of the existing legal provisions against discrimination, the Committee is concerned that the State party has not yet adopted comprehensive anti-discrimination legislation and that articles 90 and 179 bis of the Criminal Code relating to discrimination only refer to discrimination based on racial, ethnic, national, religious and sexual orientation grounds and not other grounds for discrimination, such as gender identity (arts. 2 and 26).

9. The State party should take the measures necessary to strengthen its legal framework against discrimination, in particular by enacting comprehensive anti-discrimination legislation covering all grounds for discrimination, including gender identity. In addition, it should make vigorous efforts to raise awareness among the general public and train judges and lawyers on the existing criminal provisions against discrimination.

Non-discrimination and gender equality

10. The Committee notes that the representation of women in political life remains weak, despite measures taken by the State party to remedy the situation, such as the adoption of Qualified Law No. 1/2008, which provides that each party list of candidates running for general elections shall not include more than two thirds of candidates of the same gender. In that respect, the Committee notes with concern that only 10 of the 60 members of the

Great and General Council and one of the nine Secretaries of State are women (arts. 3 and 26).

11. The State party should strengthen its efforts to increase the representation of women in political life, particularly in the Great and General Council and at the highest levels of the Government, if necessary, through the adoption of appropriate temporary special measures to give effect to the provisions of the Covenant. It should also intensify its efforts to eliminate gender stereotypes on the role and responsibilities of men and women in the family and society.

Women's rights

12. While welcoming the adoption of Law (No. 97) of 20 June 2008 on the prevention and elimination of violence against women and gender violence and the establishment of the Authority for Equal Opportunities, the Committee is concerned about the reportedly limited resources of the Authority (arts. 3 and 7).

13. The State party should continue making efforts to prevent and combat all forms of gender-based violence, in particular violence against women, namely by ensuring that sufficient resources are allocated to the competent institutions.

Voluntary termination of pregnancy

14. The Committee notes with concern that the voluntary termination of pregnancy is an offence under the Criminal Code, reportedly leading women to seek abortions abroad, which could put their life and health at risk. While noting the information from the State party that a "state of necessity" is provided for in article 42 of the Criminal Code as a justification exempting from punishment anyone forced to commit an offence in order to protect himself or herself or others from the risk of serious personal harm, the Committee is concerned that no exceptions to the general legal ban on abortion are explicitly recognized in the Criminal Code (arts. 3, 6, 7 and 17).

15. The State party should amend its legislation with a view to explicitly providing for exceptions to the general legal ban on abortion, including for therapeutic purposes and when the pregnancy is the result of rape or incest. It should also ensure access to education and awareness-raising programmes that focus on the importance of contraception and of sexual and reproductive health rights.

Right to a fair trial

16. While taking note of decision No. 20/2013 of the Congress of State setting up a working group to draft the new code of criminal procedure, the Committee notes that the working group has not yet completed its mandate (arts. 9 and 14).

17. Recalling its previous recommendation (see CCPR/C/SMR/CO/2, para. 11), the Committee recommends that the State party speed up the adoption of a new comprehensive code of criminal procedure and ensure that it is in full compliance with the Covenant.

Freedom of expression

18. The Committee takes note of the information provided by the State party on case law relating to defamation and honour, in particular of the ruling by the Judge of Appeal of 3 November 2009 that criticism of the public activities of politicians, even if offensive, can never constitute an offence to the principle or the honour of the individual. Nevertheless, the Committee regrets that articles 183 to 185, 342 and 344 of the Criminal Code still

criminalize defamation and other offences against honour, including the honour of the Captains Regent and other public officials (art. 19).

19. **In the light of article 19 of the Covenant and the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, the State party should consider decriminalizing the conduct provided for in articles 183 to 185, 342 and 344 of the Criminal Code and, in any case, restrict the application of criminal law to the most serious cases, bearing in mind that imprisonment is never an appropriate punishment in such cases.**

Children's rights

20. While noting that mandatory recruitment to the military has never occurred and that a working group was recently set up to review legislation relating to the military corps, the Committee remains concerned that, while only applicable in the exceptional circumstance of general mobilization, article 3 of Law No. 15/1990, which provides for mandatory military service including for minors from the age of 16 years, remains in force (art. 24).

21. **Recalling its previous recommendation (see CCPR/C/SMR/CO/2, para. 15), the Committee recommends that the State party speed up the revision of its legislation relating to the military corps and ensure that it is in full conformity with the Covenant and relevant international human rights standards, including by raising the minimum age for military service in all circumstances to 18 years.**

Participation in public life

22. The Committee notes with concern that article 2 of the Electoral Law (No. 6/1996), as amended in 2007, excludes "persons interdicted for mental infirmity" from voting (arts. 25 and 26).

23. **The State party should revise its legislation to ensure that it does not discriminate against persons with mental, intellectual or psychosocial disabilities by denying them the right to vote on bases that have no reasonable and objective relationship to their ability to vote.**

D. Dissemination of information relating to the Covenant

24. **The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, its third periodic report and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into its official language.**

25. **Pursuant to rule 71, paragraph 5, of the rules of procedure of the Committee, the State party should provide, within one year, relevant information on the implementation of the recommendations made by the Committee in paragraphs 7 (national human rights institution) and 9 (anti-discrimination legislation) above.**

26. **The Committee requests the State party to include in its next periodic report, which should be submitted by 6 November 2022, specific up-to-date information on the implementation of all its recommendations and of the Covenant as a whole. The Committee furthermore requests that the State party, in preparing the report, broadly consult civil society and that it encourage civil society representatives to engage with the Committee before the dialogue.**

27. **Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course, and its replies to it will constitute the fourth periodic report of the State party. The word limit for the report is 21,200 words, in accordance with General Assembly resolution 68/268.**
