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Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

San Marino*

The present report is a summary of 3 stakeholders' submissions¹ to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. 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. As provided for in Human Rights Council resolution 16/21, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

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



Information provided by stakeholders

A. Background and framework

1. Scope of international obligations

1. The European Commission against Racism and Intolerance of the Council of Europe (CoE-ECRI) noted that no significant progress had been made towards the signature and ratification of a number of international human rights instruments and recommended that San Marino complete the process towards their signatures and ratifications as soon as possible in order to steer legislative reform in key areas for combating racism and racial discrimination.²

2. CoE-ECRI recommended that San Marino complete the process of ratification of the 1951 Convention relating to the Status of Refugees. It also reiterated its recommendation that San Marino sign and ratify the UNESCO Convention against Discrimination in Education, the European Convention on Nationality, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³

3. The Council of Europe (CoE) stated that San Marino had signed the Revised European Social Charter on 18 October 2001 but had not yet ratified it.⁴ CoE-ECRI recommended that San Marino complete as soon as possible the process towards its ratification.⁵

4. CoE stated that San Marino had not yet signed or ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence and the European Charter for Regional or Minority Languages.⁶

5. CoE indicated that San Marino had not yet ratified any of the Council of Europe anticorruption standards: the Criminal Law Convention on Corruption, its Additional Protocol or the Civil Law Convention on Corruption.⁷

6. CoE-ECRI recommended that San Marino sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level. CoE-ECRI also strongly encouraged San Marino to sign and ratify the Convention on Cybercrime and its Additional Protocol.⁸

2. Constitutional and legislative framework

7. CoE-ECRI reiterated its previous recommendation that San Marino consider amending Article 4 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order, which served as a constitutional text, to include explicit grounds such as "race", colour, language, nationality and national ethnic origin, in light of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.⁹

8. CoE-ECRI noted that a law amending the Criminal Code with new provisions against discrimination based on racial, ethnic, religious and sexual orientation grounds had been passed, however, stated that San Marino still lacked comprehensive civil and administrative legislation against discrimination on grounds of ethnic origin, citizenship, colour, religion and language (racial discrimination). CoE-ECRI recommended that San Marino enact such legislation.¹⁰

3. Institutional and human rights infrastructure and policy measures

9. In resolution CM/Res/CMN/(2010)2 on the implementation of the Framework Convention for the Protection of National Minorities, the CoE Committee of Ministers (CoE-CM) was concerned that there was a need to increase awareness of the importance to combat racism in all its forms and to set up an independent institution to monitor racism and discrimination. In doing so, the authorities should guarantee that its competences and resources are sufficient to ensure its independence and its capacity to provide adequate assistance to persons who had been victims of discrimination.¹¹ CoE-CM recommended that San Marino pay particular attention to the full and effective implementation of the Law No. 66 on “Provisions against Racial, Ethnic, and Sexual Discrimination” and set up an independent institution to monitor racism and discrimination.¹²

10. CoE-ECRI also recommended that the Equal Opportunities Commission be expressly provided with competence to combat racism and racial discrimination, made independent from the Government and given sufficient means to fulfil its tasks effectively.¹³

11. CoE-ECRI reiterated its view that San Marino should consider possible ways of making human rights a compulsory subject in school at both primary and secondary level and recommended San Marino introduce mandatory initial and on-going training for teachers at all levels in human rights and issues of racism and intolerance.¹⁴

12. CoE-ECRI recommended that San Marino offer judges and lawyers training on the criminal legislation relating to racism and racial discrimination and encouraged San Marino to raise awareness of the new criminal law provisions relating to racism and racial discrimination, particularly among potential victims of this type of crime. These efforts should be an integral part of a general National Action Plan against Racism.¹⁵

B. Implementation of international human rights obligations

1. Equality and non-discrimination

13. CoE-ECRI stated that, despite the increasing complexity of the social phenomena that characterised San Marinense society, the majority population understood the notion of racism and racial discrimination to cover only the most blatant and overt forms of these phenomena, thus overlooking other more common manifestations of intolerance experienced in everyday life. CoE-ECRI recommended that San Marino draw up an action plan to promote among the general population a better understanding of discrimination (for example on grounds of citizenship) and intolerance, and raise awareness of the way in which these phenomena operate in society.¹⁶

14. CoE-ECRI also underlined the need for constant monitoring of social developments in order to review the results of policies and compliance with the laws and reiterated its previous recommendation that San Marino improve their systems for monitoring manifestations of xenophobia and intolerance and generate data based on perceptions of potential victims in accordance with its General Policy Recommendation No. 4, which provided detailed guidance on how to carry out these surveys.¹⁷

15. CoE-ECRI indicated that, despite the absence of a Roma community permanently settled, the local press, on a few occasions, had commented facts involving Roma by typecasting members of this community as people with a tendency to steal. The Roma origin of criminal suspects was often underlined with the adjective “*Nomadi*” in big letters in the title of news reports, sometimes without any mention of their names or citizenship. CoE-ECRI recommended that San Marino impress on the media, without encroaching on their editorial independence, the need to ensure that the material they publish does not

contribute to convey a negative image of Roma and encourage them not to mention the ethnic origin of a person named in articles or reports when it is not essential for a good understanding of events.¹⁸

16. CoE-ECRI noted that the San Marinese constitutional order ensured respect for members belonging to groups of concern to CoE-ECRI and that any victims of discrimination could institute proceedings before the competent judicial authorities. Moreover, San Marino had chosen to refrain from subjecting mass media to strict regulations, since mass media could interpret this as interference or undue pressure on them. CoE-ECRI appreciated San Marino's commitment to freedom of expression and independence of media. Nevertheless, CoE-ECRI considered it important that members of the public have access also to a non-judicial mechanism to complain about possible breaches of the rules on journalistic ethics. CoE-ECRI recommended that San Marino encourage, in full compliance with the principle of media independence, the setting up by the media of a non-judicial mechanism to deal with complaints against the media concerning, inter alia, cases of discrimination.¹⁹

17. CoE-ECRI recommended that San Marino conduct a survey into the possible existence, extent and manifestations of discrimination against foreigners within the labour market, possibly as part of a wider survey into perceptions among potential victims.²⁰

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

18. CoE stated that a delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CoE-CPT) had carried out a visit to San Marino from 29 January to 1 February 2013. During the visit, the delegation followed up the recommendations made by CoE-CPT after previous visits. In this context, a particular attention had been paid to conditions of detention at San Marino Prison, safeguards offered to persons detained by law enforcement agencies as well as to psychiatric patients subject to "obligatory medical treatment". San Marino had not yet authorised the publication of the report on the CoE-CPT's visit in 2013.²¹

19. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted with concern that, despite the government's commitment in accepting the recommendations of the first cycle of the Universal Periodic Review in 2010 to prohibit corporal punishment in all settings, and accepting recommendations from the Committee on the Rights of the Child, there had been no change in the legality of corporal punishment of children. Corporal punishment was unlawful in schools and the penal system but it remained lawful in the home, alternative care settings and day care. GIEACPC was not aware of any move towards amending the Criminal Code to prohibit corporal punishment.²²

20. According to GIEACPC, article 234 of the Criminal Code confirmed the concept of "powers of correction or discipline" ("poteri di correzione o disciplina") and made its abuse an offence, punishing "anyone who abuses such power in a way that harms the body or mind of a person under his/her authority, or in such a way as to cause a disease". GIEACPC indicated that this protected children from corporal punishment of some severity, but not from all forms of corporal punishment.²³ As for alternative care settings and day care, there was no explicit prohibition of corporal punishment.²⁴

21. GIEACPC recommended that legislation be enacted to explicitly prohibit all corporal punishment in the home and all settings and that the "power of correction or discipline" be explicitly repealed from the Criminal Code.²⁵

3. Administration of justice and the rule of law

22. The Council of Europe Group of States against Corruption (CoE-GRECO) indicated that San Marino was still at an early stage in the fight against corruption and needed to pay

greater attention to integrity and transparency in the public sector. Furthermore, while substantial steps had been taken in recent years to combat money laundering and terrorist financing, San Marino, which joined CoE-GRECO in 2010, had yet to strengthen its anticorruption instruments.²⁶

23. CoE-GRECO advised San Marino to increase the specialisation of law enforcement authorities in the investigation of corruption offences²⁷; to develop tools to prevent conflicts of interest²⁸; to provide for whistle blower protection²⁹; and to strengthen control mechanisms in public administration³⁰. In the private sector, accountants, auditors and legal professionals should become more actively involved in detecting and revealing this type of crime.³¹

4. Freedom of expression and right to participate in public and political life

24. The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) raised concerns that defamation remained a criminal offence in San Marino.³²

25. CoE-GRECO noted that San Marino did not have a law on access to information and recommended that San Marino adopt appropriate freedom of information legislation and introduce adequate measures for its implementation.³³

26. OSCE/ODIHR stated that the electoral system provided for a 'stability reward', which aimed to ensure that the Government has at least 35 parliamentary seats. As such, if the winning list did not obtain 35 seats, it was assigned the required number of seats from the lists that had obtained the lowest percentage of votes. OSCE/ODIHR indicated that, while such a provision was intended to encourage government stability, it challenged paragraphs 6³⁴ and 7.9³⁵ of the 1990 OSCE Copenhagen Document.³⁶

27. OSCE/ODIHR reported that candidate registration procedures were clearly defined and generally inclusive. However, contrary to paragraph 7.5³⁷ of the 1990 OSCE Copenhagen Document, the law did not permit individuals to independently stand, but only in groups of independent candidates. A number of incompatibilities with candidacy existed and were intended to prevent conflicts of interest. However, OSCE/ODIHR stated that such broad restrictions might unreasonably limit candidacy rights.³⁸

28. OSCE/ODIHR stated that complaints and appeals were regulated by the Electoral Law, including provisions related to voter registration, candidate registration, campaigning, secrecy of the vote, and the announcement of results. Violations of many electoral rights were subject to criminal sanctions. However, procedures and deadlines were not always clearly defined, which could limit electoral stakeholders' rights to effective remedy.³⁹

29. OSCE/ODIHR indicated that there were no legal provisions for international or domestic election observation. This was not fully in line with paragraph 8⁴⁰ of the 1990 OSCE Copenhagen Document.⁴¹

30. CoE-ECRI regretted that its recommendation to promote foreigners' participation in political life by granting them eligibility and voting rights in local elections had not been taken into consideration when Law No. 36 of 23 March 2009, amending the 1994 legislation on town councils, was drafted. CoE-ECRI reiterated its previous recommendation that San Marino grant eligibility and voting rights in local elections to non-nationals who reside in San Marino, in accordance with the principles enshrined in the Convention on the Participation of Foreigners in Public Life at Local Level.⁴²

5. Right to work and to just and favourable conditions of work

31. CoE-ECRI recommended that San Marino conduct an awareness-raising campaign to inform properly foreign workers about their rights and existing mechanisms for

challenging any failure of their employers to respect them. In addition, CoE-ECRI recommended that the authorities monitor the application of the relevant rules in order to protect this category of workers from any forms of reprisals or harassment which could create an intimidating or hostile working environment as a consequence of the denunciation by these persons of poor working conditions. CoE-ECRI drew the attention of the San Marinese authorities to relevant guidelines contained in its General Policy Recommendation No. 14 on combatting racism and racial discrimination in employment.⁴³

32. CoE-ECRI noted that the fact of compulsorily interrupting one month per year the work contract of private carers was particularly disadvantageous for this category of foreign workers, who were mainly women from Central and Eastern Europe, and put them in a more precarious situation than other categories of foreign workers. CoE-ECRI recommended that San Marino revise the legislation on stay and work permits for foreigners who come to work as private carers and in particular to allow them to work for 12 consecutive months per year so as to reduce their precariousness of employment.⁴⁴

33. OSCE/ODIHR warned that while women were strongly represented in the election administration, they remained under-represented in elected office. The impact of a gender quota on candidate lists could be limited due to the system of preferential voting.⁴⁵

34. OSCE/ODIHR also noted that women's political representation remained low and, at the time of the reporting (November 2012), of the 60 members of parliament, nine were women, while two out of ten government ministers were women.⁴⁶

6. Right to social security and to an adequate standard of living

35. CoE-ECRI welcomed that the new regulations with quotas limiting the use of workers on "project-based cooperation" contracts had been introduced. In addition, the social-security reform had created an obligation for the employer to pay contributions also for employees on "project-based collaboration" contracts.⁴⁷

7. Right to health

36. CoE-ECRI was concerned that there were some 100 persons in possession of "stay permits", who were not entitled to health assistance since they did not perform any working activity nor were they dependant family members of individuals who had health assistance.⁴⁸ These persons were required to pay a monthly fee to cover part of the cost of their health assistance, despite the fact that Law No. 42 of 22 December 1955 had established a free compulsory social-security system in San Marino. CoE-ECRI recommended that San Marino pursue efforts in order to guarantee equal treatment in the field of health assistance between San Marino citizens and foreigners with residence or "stay permits".⁴⁹

8. Right to education

37. CoE-ECRI noted that State schools provided Roman Catholic religious instruction and that pupils may choose to be exempted from it. However, there were no alternative courses for children exempted from religious instruction. CoE-ECRI stated that, in order not to discriminate against pupils exempted from Catholic religious instruction, they should be given the possibility of improving their overall mark, through the attendance of alternative classes of their choice. CoE-ECRI recommended that San Marino ensure that alternative courses to Catholic instruction are provided in response to all requests made in accordance with the applicable rules so as to ensure that no pupil suffers indirect discrimination, particularly with regard to award of credits.⁵⁰

9. Migrants, refugees and asylum seekers

38 CoE-CM recommended that San Marino continue efforts to heighten public awareness of the importance of tolerance and intercultural dialogue, and pursue measures to promote and facilitate integration of immigrants.⁵¹

39. CoE-ECRI noted that San Marino had adopted a new law on naturalisation which made acquiring citizenship less difficult than previously, however, stated that citizenship continued to be granted only by means of extraordinary laws, which each time might provide for different requirements to fulfil, procedure to follow, and deadline to respect, and regretted the lack of legal certainty in this approach. CoE-ECRI recommended that the acquisition of citizenship through naturalisation should be regulated by ordinary law and that the length of residence necessary for residents to apply for naturalisation should be further reduced, in line with the standards of the Council of Europe Convention on Nationality.⁵²

40. CoE-ECRI also indicated that, according to Article 4 of the new law (Law No. 35 of 30 March 2012), the decision to naturalise was automatically extended to minor descendants living with the parents at the time of the request, even if only one parent was naturalised. Therefore, contrary to the previous law, minors with only one parent naturalised were treated in the same manner as those having both parents naturalised, in accordance with the Council of Europe Convention on Nationality.⁵³

41. CoE-ECRI recommended San Marino establish a procedure for processing asylum applications and adjudicating asylum cases.⁵⁴

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org:

Civil society:

Individual submissions:

GIEACPC Global Initiative to End all Corporal Punishment of Children, London, United Kingdom of Great Britain and Northern Ireland.

Regional intergovernmental organizations:

CoE Council of Europe, Strasbourg, France;
Committee of Ministers (CoE-CM), Resolution CM/ResCMN(2010)2, on the Implementation of the Framework Convention for the Protection of National Minorities by San Marino, Adopted on 14 April 2010;
European Commission against Racism and Intolerance (CoE-ECRI), ECRI Report on San Marino (fourth reporting cycle), July 2013; and Group of States against Corruption (CoE-GRECO), Evaluation Report on San Marino, Adopted in December 2011;

OSCE/ODIHR Organisation for Security and Cooperation in Europe / Office for Democratic Institutions and Human Rights, Warsaw, Poland.

² CoE-ECRI, pp. 7-8.

³ CoE-ECRI, para. 9.

⁴ CoE, p. 4.

⁵ CoE-ECRI, para. 2.

⁶ CoE, p. 3.

⁷ CoE, p. 1.

⁸ CoE-ECRI, para. 13.

⁹ CoE-ECRI, para. 19.

¹⁰ CoE-ECRI, pp. 7-8.

¹¹ CoE-CM, Resolution CM/RecCMN(2010)2, para. 1. b).

¹² CoE-CM, Resolution CM/RecCMN(2010)2, para. 2.

¹³ CoE-ECRI, p. 8.

¹⁴ CoE-ECRI, paras. 128-129.

¹⁵ CoE-ECRI, para. 40.

¹⁶ CoE-ECRI, pp. 7-8.

¹⁷ CoE-ECRI, paras. 123-124.

¹⁸ CoE-ECRI, paras. 84 and 87.

¹⁹ CoE-ECRI, paras. 85, 86 and 99.

²⁰ CoE-ECRI, p. 8.

²¹ CoE, p. 1.

²² GIEACPC, paras. 1.1- 1.2.

²³ GIEACPC, para. 2.2.

²⁴ GIEACPC, paras. 2.3 – 2.4.

²⁵ GIEACPC, p. 1.

²⁶ CoE, p. 1.

²⁷ CoE-GRECO, para. 230 ii).

²⁸ CoE-GRECO, para. ix).

²⁹ CoE-GRECO, para. x).

³⁰ CoE-GRECO, para. ix).

³¹ CoE-GRECO, para. xv).

³² OSCE/ODIHR, Annex I, pp. 2 and 8.

³³ CoE-GRECO, paras. 153 and 156.

³⁴ *“The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral*

processes. They recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.”

³⁵ *“To ensure that the will of the people serves as the basis of the authority of government, the participating States will ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.”*

³⁶ OSCE/ODIHR, Annex I, pp. 2 and 4.

³⁷ *“To ensure that the will of the people serves as the basis of the authority of government, the participating States will respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”*

³⁸ OSCE/ODIHR, Annex I, p. 3.

³⁹ OSCE/ODIHR, Annex I, pp. 3 and 6.

⁴⁰ *“The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.”*

⁴¹ OSCE/ODIHR, Annex I, p.

⁴² CoE-ECRI, paras. 104 and 106.

⁴³ CoE-ECRI, para. 59.

⁴⁴ CoE-ECRI, pp. 7-8.

⁴⁵ OSCE/ODIHR, Annex I, p. 2.

⁴⁶ OSCE/ODIHR, Annex I, p. 6.

⁴⁷ CoE-ECRI, p. 7.

⁴⁸ CoE-ECRI, paras. 74-75.

⁴⁹ CoE-ECRI, paras. 73, 75, and 76.

⁵⁰ CoE-ECRI, paras. 66, 68 and 69.

⁵¹ CoE-CM, Resolution CM/RecCMN(2010)2, para. 2.

⁵² CoE-ECRI, pp. 7-8.

⁵³ CoE-ECRI, para. 23.

⁵⁴ CoE-ECRI, para 117.