



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Consideration of reports submitted by States parties under
article 40 of the Covenant**

San Marino

**Information received from San Marino on the implementation of the
concluding observations of the Human Rights Committee
(CCPR/C/SMR/CO/2)**

[5 November 2010]

Information provided by the Republic of San Marino on the follow-up to the recommendations contained in paragraphs 6 and 7 of the concluding observations of the Human Rights Committee

Response to the recommendation contained in paragraph 6

1. For the time being, the Republic of San Marino does not envisage the establishment of an independent national mechanism in charge of monitoring the implementation of the rights provided for in the Covenant. The Government believes that the establishment of such a mechanism would be a difficult task for our small Republic. Indeed, it would not be easy to identify the members of such a body; choosing foreign personnel would ensure the required independence, but not the knowledge of the local context. Moreover, it would be necessary to allocate financial resources to such a mechanism, which would not be easy in this period of economic crisis.

2. While taking note of the recommendations made by the Human Rights Committee concerning the lack of full compliance with the Paris Principles, we reiterate that some functions normally performed by an Ombudsman have been traditionally conferred upon the Captains Regent of the Republic of San Marino. Indeed, one day a week, the Captains Regent receive San Marino citizens and foreigners residing in San Marino claiming that their rights have been violated by the Public Administration, or wishing to raise the Heads of State's awareness on matters of public interest. The Captains Regent register the petitions and, through the competent offices, process the requests within the Government or directly through the public administration responsible for any infringement claimed by the applicant. With the constitutional amendments introduced by Law No. 185 of 16 December 2005, the traditional recourse to the Captains Regent by the citizens became part of the San Marino legal system.

Response to the recommendation contained in paragraph 7

3. Article 4 of the Declaration of the Citizens' Rights, as amended by Law No. 36 of 26 February 2002 of the constitutional review, states that "All shall be equal before the law, without any distinction based on sex or personal, economic, social, political and religious status". This article highlights the engagement of the Republic of San Marino to positively promote the principle of equality, not only by removing obstacles to its implementation but, as set forth in paragraph 3, by ensuring "equal social dignity and equal protection of rights and freedoms".

4. This provision shall be considered in conjunction with other rules of the Declaration of the Citizens' Rights. Indeed, the rights and freedoms set forth in international conventions are an integral part of the constitutional order of San Marino under article 1 of the Declaration, according to which, international agreements on the protection of human rights and freedoms that have been ratified and are in force shall prevail over domestic legislation in case of conflict.

5. Therefore, San Marino accords constitutional status to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), article 14 of which provides for the prohibition of discrimination as a sine qua non condition to the enjoyment of fundamental rights and freedoms. Any amendment to article 14 would be immediately applicable in the San Marino legal system.

6. Moreover, it is worth mentioning that the Republic of San Marino also ratified Protocol No. 12 to the ECHR which prohibits any discriminatory behaviour based on any status and which has been applied in national case law many times.

7. The expression “personal status” referred to in article 4 of the Declaration of the Citizens’ Rights has been used to recognize the illegitimacy of any discrimination based on the status and characteristics of a person. This is confirmed by Law No. 66 of 28 April 2008, “Provisions against racial, ethnical, religious and sexual discrimination,” which has introduced article 179 bis as a supplement to the provisions of the Criminal Code. Article 179 bis provides for sanction against anyone disseminating, by any means, ideas based on superiority or racial or ethnical hatred, or encouraging someone to commit, or committing discriminatory acts on the grounds of race, ethnicity, nationality, religion or sexual orientation. Such offence can be prosecuted ex officio. Under this law, the perpetration of an offence for purposes related to discrimination based on race, ethnicity, nationality, religion or sexual orientation is an aggravating circumstance. Law No. 66 of 28 April 2008 and the relevant English translation are attached hereto.
