

UNITED
NATIONS

CCPR



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/C/SMR/Q/2/Add.2
10 July 2008

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

**REPLIES TO THE LIST OF ISSUES (CCPR/C/SMR/Q/2)
TO BETAKEN UP IN CONNECTION WITH THE CONSIDERATION
OF THE SECOND PERIODIC REPORT OF THE GOVERNMENT OF THE
REPUBLIC OF SAN MARINO
(CCPR/C/SMR/2)**

[9 July 2008]

GE.08-42941

**APPLICATION OF THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

**Answers of San Marino in relation to the list of issues to be taken up in connection with the
consideration of its second periodic report**

**Question 1. Please provide information on the exact status of the Covenant and
the Optional Protocol in the San Marino's law, in particular, vis-à-vis the status of the
European Convention for the Protection of Human Rights and Fundamental Freedoms**

1. Granted that "the exact status of the Covenant and the Optional Protocol in the San Marino's law [...] vis-à-vis the status of the European Convention for the Protection of Human Rights and Fundamental Freedoms" also emerges in general from the answers to the subsequent questions, it is worth making some general comments and observations on the measures adopted by the Republic of San Marino to ensure that the provisions enshrined in the "Convention" are fully implemented at the national level.

2. In this regard, it should be noted that the Republic of San Marino fully adopts, through Law No. 36 of 2002, "generally recognized rules of international law as an integral part of its constitutional order, to which it shall conform its acts and conduct" (art. 1, para. 1, Declaration of the Citizens' Rights) in order to better protect human rights (which were already largely protected in the original draft of the Declaration of the Citizens' Rights of 1974) and especially to adjust the forms and techniques of protection to the new needs related to the new expressions of these rights. These new expressions are influenced by the radical and sudden changes affecting social, cultural and economic conditions due to the globalisation of markets and free movement of people.

3. Besides the general reference to the "[...] the provisions set forth in the international declarations on human rights and fundamental freedoms" (art. 1, para. 1, second part of the Declaration of the Citizens' Rights), there is an explicit and specific reference to the rights and fundamental freedoms set forth "[...] by the European Convention for the Protection of Human Rights and Fundamental Freedoms" (art. 1, para. 3, Declaration of the Citizens' Rights). Subsequently, the Declaration states that "Regularly signed and implemented international agreements on the protection of human rights and freedoms shall prevail over domestic legislation in case of conflict" (art. 1, para. 4, Declaration of the Citizens' Rights).

4. These provisions have had a significant impact on the hierarchy of laws in San Marino constitutional order, which has been revised by introducing the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms into San Marino legislation. On the one hand, these provisions are recognized as constitutional rules and therefore they have a higher status than the other laws or regulations; on the other hand, they are legal provisions applying (not only to the legislator, for a merely programmatic purpose, but also) to operators and interpreters (judges in particular) with an immediate perceptive and inter-individual value.

5. This means that they are recognized not only as interpretative criteria of domestic legislation or criteria used to adopt legislative provisions, but they have also a direct applicability

even in the absence of a specific domestic implementing law. As specified in the answer to question No. 2, indeed, there have been sentences directly based on rules and provisions set forth in the Convention.

Question 2. Have there been any developments in legislation or case law implementing Covenant provisions in San Marino's law since the consideration of its initial report? Please provide examples of relevant case law where the Covenant has been directly invoked before domestic courts.

6. As far as the developments in legislation or case law implementing Covenant provisions in San Marino's law" are concerned, please see the information provided in the answers to questions . 4, 5, 6 and 7.

7. With reference to the most recent developments in legislation, is Law No. 97 of 20 June 2008 on violence against women (entitled "Prevention and Repression of Violence against Women and Gender Violence") is worth mentioning. This Law is particularly important and deals with a current problem. It provides for a definition of violence including: (a) any act or behaviour causing damage or sufferings of physical, sexual or psychological nature to the person affected; (b) the simple threat to perform these behaviours; (c) coercion, arbitrary deprivation of liberty in public and private life.

8. Moreover, it is established that the State shall ensure protection and assistance to the victims of family or sexual violence in all civil, criminal or administrative proceedings, including through legal assistance free of charge; the Equal Opportunity Authority supervises so that images or expressions affecting human dignity and the identity of the individual are not used; The introduction of article 181 bis in the Criminal Code, defining mobbing and stalking as persecutory acts, that is to say repeated harassment causing serious moral suffering and affecting human dignity. Performing these damaging acts in the workplace may constitute an aggravating circumstance and be punished with a more serious penalty. Furthermore, the investigating Judge is vested with the power to order the defendant to leave the family house or to prohibit him/her from visiting the places which are usually frequented by the victim.

9. It is worth recalling the recent Law on the "fair trial" (Law No. 93 of 17 June 2008), which has radically changed the previous regime, especially as far as criminal proceedings are concerned. This reform aims at ensuring and respecting the principles of "cross-examination", "defence" and "promptness" from the beginning of the proceedings and therefore, also during preliminary investigations.

10. As far as the case law implementing Covenant provisions is concerned, we refer to some sentences passed by the judicial authority to confirm what has been stated in paragraph 1 above. (Sentence of the Law Commissioner, 12 April 2008, civil case No. 45 of 2008; sentence of the Law Commissioner, 1 April 2008, civil case No. 378 of 2007). In these proceedings, article 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right") was invoked and directly applied in order to ensure to non-San Marino citizens the right to marry San Marino citizens, even in the absence of the authorization provided for by the domestic legislation (in both cases, the Judge decided that

the enclosure of other documents, clearly showing that there were no obstacles to the marriage of the foreigner, was sufficient).

11. In another sentence (sentence of the Law Commissioner, 12 February 2005, civil case involving labour No. 3 of 2004), there was a direct and explicit reference to the principle of presumed innocence stipulated in article 6, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”).

12. Finally, five orders (see Order of the Law Commissioner, 7 June 2007, civil case No. 242 of 2006) were issued in which the Judge directly referred to article 3 of the first Additional Protocol to reject the issue of constitutional legitimacy of article 6 of Law No. 6 of 1996 (amended by article 7 of Law No. 114 of 2000 and article 4 of Law No. 84 of 2004), concerning the right to vote of children of San Marino citizens born and resident abroad. On that occasion, the Judge also took account of the judgements of the European Court of Human Rights No. 31981/1996 of 7 September 1999, No. 35385/1997 of 21 May 1997 and No. 8987/1980 of 6 May 1981.

Question 13. Please provide information on :

- (a) The number of complaints alleging ill-treatment by law enforcement officials registered in the last five years?

13. In the last five years no complaints have been submitted alleging ill-treatment by law enforcement officials .

Question 14. According to the State party report, abortion continues to be subject to criminal penalties under articles 153 and 154 of the Criminal Code. Moreover, harsher penalties may be imposed when an abortion is performed by a person working in the health-care system. Please provide information on the existence of exceptions to this general prohibition. Please comment on the compatibility of the criminalization of all abortion with article 6 of the Covenant

14. San Marino is a State party to the Council of Europe Convention on Human Rights and Biomedicine (the Oviedo Convention), whose article 8 establishes that in case of emergency situations any medically necessary intervention may be carried out immediately for the benefit of the health of the individual concerned.

15. This provision, which is also contained in article 1, paragraph 2 of Law no. 43 of 28 April 1989, Charter of Patients’ Rights and Obligations, establishes that in particular emergency situations where the life of the mother is in danger, even abortion is permitted if necessary to protect her health.

16. In the above-mentioned circumstances of emergency and particular needs, abortion cannot be regarded as a crime according to article 42 of the Criminal Code stating that the person who performs an action to save his or someone else’s life from the actual danger of a serious

damage, where this danger is not caused by his will or is however unavoidable, is not punishable, provided that the event is proportionate to the danger.

Question 15. Please provide information on further developments related to the work of the ad hoc Parliamentary Commission in charge of drafting a new Code of Criminal Procedure. In particular, how would a new Code affect the role of the *Procuratore del Fisco*? How long may a person be held in detention before being brought before a judge? Is such detention in police premises? At what point is there access to the outside world, in particular, to a lawyer?

17. With reference to the three points included in the second part of this question (a). how long may a person be held in detention before being brought before a judge? (b). is such detention in police premises? (c). at what point is there access to the outside world, in particular, to a lawyer?) the answers are the following:

- (a) As soon as possible and, however, within 24 hours:
- (b) At present, detention is in the premises of the prison; however, an ad-hoc structure is being built for this purpose;
- (c) Immediately.

18. As regards the drafting of a new Code of Criminal Procedure and the new role of the *Procuratore del Fisco*, recently a new Commission has been formed (chaired by Prof. Glauco Giostra, Full Professor of Criminal Procedure Law at the University of Rome “La Sapienza”). In the short-term, this Commission shall prepare a concrete reform project. The future role assigned to the *Procuratore del Fisco* will depend on the decisions taken at political level as far as the trial model to be adopted is concerned (whether accusatorial or inquisitorial, etc.).
