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Report “ Local democracy in San Marino”

Strasbourg, France, 28 March 2018

Dear colleagues,

As the rapporteurs on local democracy in San Marino were unable to attend this session for objective reasons, I will present to you today the report and the draft recommendation on local democracy in San Marino which were approved by the Monitoring Committee at its meeting on 14 February 2018.

But first I would express my gratitude to Mr Guerrino ZANOTTI, Minister of Internal Affairs of San Marino for accepting to participate in our debates today. Thank you, Minister.

The rapporteurs Gunnar Axel AXELSSON and Harald BERGMANN have apologised for their absence as they really wished to present the report and regret not being able to be here today.

They visited San Marino from 13 to 14 June 2017, assisted by Professor Nikolaos-Komninos CHLEPAS as expert. The delegation travelled to the capital of San Marino and the municipalities of Borgo Maggiore and Acquaviva.

It was the first monitoring visit to San Marino since it ratified the Charter in 2013. However, before that date, the situation of local democracy in the Republic of San Marino had already been the focus of Recommendation 63 (1999) adopted by the Congress in June 1999.

During this visit, the delegation met the Mayors of Borgo Maggiore and Acquaviva as well as the National Delegation to the Congress and members of the Conference of the Heads of township councils.

They also met with the Minister of Internal Affairs, who is attending our session today, the Minister of Finances and Budget, the Minister for Territory, Environment, Agriculture, Tourism and Civil Protection and the President of Guarantors' Panel on the Constitutionality of Rules.

On behalf of the rapporteurs, I would like to thank the national delegation of San Marino and the Permanent Representation of San Marino to the Council of Europe, as well as all other interlocutors, who contributed to the organisation and smooth running of the visit.

Let me now say a few words about San Marino.

San Marino joined the Council of Europe in November 1988.

It is a parliamentary democratic republic, where the Captains Regent are the heads of state and heads of government. San Marino has strong elements of direct democracy since its people enjoy the right of referendum and popular initiative.

33 thousand inhabitants of San Marino live on the territory of about 62 square kilometres, divided in 9 administrative districts, called townships (*castelli* in Italian). The governing bodies of townships are township councils called *Giunte di Castello*.

A township council's Head called "*Capitano di castello*" is elected as head of the winning list in municipal elections.

By the way, an interesting fact is that there is no unique constitution in San Marino in the proper sense of this term. The constitutional order of this country derives from a number of legislative instruments, the most significant of which are the Statutes of 1600 and the Declaration of Citizen Rights of 1974 as amended in 2002.

Until today these Statutes form the basis of all laws in effect in San Marino. So they could be considered as the oldest constitution in Europe still in force.

Various changes and reforms, notably at the constitutional level, were introduced after the last Congress Report on the situation of local democracy in the Republic of San Marino in 1999. For instance, following the Congress recommendations, the status of legal person was granted to all nine local entities of self-government in 2013 which can since then be parties to any judicial dispute.

A Conference of the township councils has been established to discuss issues relating to the interests of local authorities. It can submit proposals and legislative initiatives to the government.

San Marino has launched a reform process aimed at bringing local self-government in line with the principles and requirements of the Charter.

Despite all those positive developments, several matters of concern remain with regard to the situation of local democracy in San Marino.

First, nearly all public responsibilities are exercised by the central state authorities, contrary to the principle of subsidiarity. Townships have very limited competences in comparison with local authorities in other European countries and they lack decision-making powers.

Second, in practice the consultation process does not meet the requirements of Articles 4.6. and 9.6 of the Charter.

Third, the report raises serious concerns on the application of Article 9 of the Charter in San Marino. Local authorities lack adequate financial resources that would be commensurate with their responsibilities.

Just to remind you, San Marino has not ratified paragraphs 3 and 8 of Article 9. It also made an interpretative declaration introducing a kind of “general principle of financial autonomy”. In the view of rapporteurs, this declaration is almost a reservation meaning that local authorities are free to dispose only of the resources “given to them”. In practice, the resources given to the municipalities are insignificant: the annual budget for one of the biggest townships does not exceed 14,000 euros.

Local authorities lack their own professional staff (Article 6) since municipal operation is based exclusively on the civic engagement of the elected politicians and the citizens.

An institutionalized association of local authorities in San Marino needs to be established and the legal basis for international co-operation of municipalities needs to be developed.

Finally, there is no explicit recognition of the principle of local self –government at the constitutional level.

The rapporteurs recommend to the Sammarinese authorities, in close consultations with townships, to establish a clear time-table and pursue the reform process of local self-government in line with the principles of the Charter.

The following specific actions are also suggested to bring local self-government in San Marino more in conformity with the Charter:

- to allocate substantial share of public affairs to townships and make sure they have all legal, financial and administrative means to fulfil their competences;

- to ensure proper implementation of consultation procedures and mechanisms in practice;
- to explicitly recognise the principle of local self-government at the constitutional level to strengthen the position of local government in line with the spirit of the Charter;
- to include an explicit provision concerning the precedence of the Charter over domestic legislation in the next constitutional revision.

Further, San Marino is invited to consider signing and ratifying the Additional Protocol to the Charter.

The rapporteurs do hope that you will adopt the draft recommendation.

Thank you for your attention.