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Advisory Committee on the Framework Convention for the Protection of National Minorities



Opinion on San Marino,
adopted on 30 November 2000

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EXECUTIVE SUMMARY

Following the receipt of the initial Report of San Marino on 3 February 1999 (due 1 February 1999), the Advisory Committee commenced the examination of the Report at its 6th meeting on 22 - 24 November 1999. The Advisory Committee subsequently adopted its opinion on San Marino at its 9th meeting on 30 November 2000.

Given the limited information provided by the Government and obtained from other sources, the Advisory Committee is not in a position to assess the statement of the San Marinense authorities, according to which there are no national minorities in the territory of San Marino. The Advisory Committee is aware that the potential for application of a number of provisions of the Framework Convention for the Protection of National Minorities (hereinafter: the Framework Convention) is rather limited.

The Advisory Committee is of the opinion that specific conclusions and recommendations by the Committee of Ministers could help to improve further the implementation of the Framework Convention in San Marino, and the Advisory Committee, therefore, submits draft conclusions and recommendations for consideration by the Committee of Ministers. The Advisory Committee stands ready to be involved in the monitoring of the follow-up to the conclusions and recommendations adopted by the Committee of Ministers in accordance with Rule 36 of the Committee of Ministers' Resolution (97)10.

I. PREPARATION OF THE PRESENT OPINION

1. The initial Report of San Marino, due 1 February 1999 (hereinafter: the Report) was received on 3 February 1999. The Advisory Committee commenced the examination of the Report at its 6th meeting on 22 - 24 November 1999.

2. In the course of its examination of the Report, the Advisory Committee identified a number of points on which it wanted further information. A questionnaire was therefore sent to the San Marinense authorities on 10 December 1999. The Government's response to this questionnaire was received on 2 February 2000. When preparing the present opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations as well as from NGOs and other independent sources.

3. The Advisory Committee subsequently adopted the present opinion at its 9th meeting on 30 November 2000 and decided to transmit this opinion to the Committee of Ministers.

4. The present opinion is submitted pursuant to Article 26(1) of the Framework Convention, according to which, in evaluating the adequacy of the measures taken by the Parties to give effect to the principles of the Framework Convention, “ the Committee shall be assisted by an advisory committee”, as well as pursuant to Rule 23 of Resolution (97)10 of the Committee of Ministers, according to which the “Advisory Committee shall consider the state reports and shall transmit its opinion to the Committee of Ministers”.

II. GENERAL REMARKS ON THE REPORT

5. The Advisory Committee welcomes the timely submission of the Report. While noting that San Marino has not entered any reservation or declaration, the Advisory Committee takes note of the position expressed in the Report, according to which there are no national minorities in the territory of San Marino. The Advisory Committee returns to the matter of the personal scope of application of the Framework Convention under Article 3 below.

6. The Advisory Committee welcomes the fact that San Marino, as is expressed in the cover letter of the Report, joined the Framework Convention to express its full support to the recognition of rights of persons belonging to national minorities.

7. The Advisory Committee appreciates that the San Marinense authorities provided a prompt reply to the above-mentioned questionnaire. However, it regrets that both the Report and the written reply contain incomplete information, especially as concerns the proportion of foreigners, the religious composition of the population and the legal as well as factual position of foreigners residing in San Marino.

8. In the following part of the opinion it is stated in respect of a number of articles that, on the basis of the information currently at its disposal, the Advisory Committee considers that implementation of the article at issue does not give rise to any specific observations. The Advisory Committee wishes to make clear that this statement should not be understood as signalling that adequate measures have now been taken and that efforts in this respect may be diminished or even halted. Indeed, the Advisory Committee considers that the nature of the obligations of the Framework Convention requires a sustained and continued effort by the authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore, a certain state of affairs may, in the light of the recent entry into force of the Framework Convention, be considered acceptable at this stage but that need not necessarily be so in further cycles of monitoring. Finally, it may be the case that issues that appear at this stage to be of relatively minor concern, prove over time to have been underestimated.

III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1 - 19

Articles 1 - 2

9. Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

Article 3

10. The Advisory Committee stresses that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the San Marinese Government is therefore deemed to be the outcome of this examination.

11. Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

12. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made.

13. As mentioned above, neither the Report nor the written reply provided by the San Marinese authorities were comprehensive. Therefore the Advisory Committee expresses the hope that the San Marinese authorities will provide specific figures on the composition of the population, including non-citizens, as is foreseen in the outline for state reports adopted by the Committee of Ministers on 30 September 1998. It is also hoped that information will be provided on the factual situation of religious groups and on the legal as well as factual position of such groups as foreigners residing in San Marino.

14. In the absence of such information and given the limited information obtained from other sources, the Advisory Committee is not in a position to assess the statement made by the San Marinese authorities, according to which there are no national minorities in the territory of San Marino. The Advisory Committee is of the opinion that, concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It is of the opinion that the San Marinese authorities should consider this issue in consultation with the persons concerned.

Articles 4 - 5

15. Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

Article 6

16. As is mentioned in the Report, San Marino has experienced the phenomenon of immigration in recent years. The Advisory Committee thus attaches importance for the authorities to promote a spirit of tolerance and mutual respect between all persons living on the territory of San Marino.

Articles 7 - 19

17. Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

IV. CONCLUDING REMARKS

18. Given the limited information provided by the Government and obtained from other sources, the Advisory Committee is not in a position to assess the statement of the San Marinese authorities, according to which there are no national minorities in the territory of San Marino. The Advisory Committee is aware that the potential for application of a number of provisions of the Framework Convention is rather limited.

19. The Advisory Committee is of the opinion that specific conclusions and recommendations by the Committee of Ministers could help to improve further the implementation of the Framework Convention in San Marino and the Advisory Committee therefore submits draft conclusions and recommendations for consideration by the Committee of Ministers. The Advisory Committee stands ready to be involved in the monitoring of the follow-up to the conclusions and recommendations adopted by the Committee of Ministers in accordance with Rule 36 of the Committee of Ministers' Resolution (97)10.

V. PROPOSAL FOR CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE OF MINISTERS

With a view to the foregoing, the Advisory Committee is of the opinion that the Committee of Ministers should consider the adoption of the following draft conclusions and recommendations with respect to San Marino:

The Committee of Ministers,

Having regard to the Framework Convention for the Protection of National Minorities and the first report submitted by San Marino, on 3 February 1999, on the implementation of the Framework Convention;

On the basis of the opinion adopted by the Advisory Committee on 30 November 2000;

Welcomes the support given by San Marino to the Framework Convention for the Protection of National Minorities;

Invites San Marino to inform the Advisory Committee, within one year from the adoption of the present decision, how it has followed up the conclusions and recommendations as follows:

In respect of Article 3

The Committee of Ministers *concludes* that, concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It *recommends* that the San Marinese authorities consider this issue in consultation with the persons concerned and provide specific figures on the composition of the population, including non-citizens. It *recommends* that the San Marinese authorities provide information

on the factual situation of religious groups and on the legal as well as factual position of such groups as foreigners residing in San Marino.