

**ADVISORY COMMITTEE ON THE  
FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 21 April 2016

ACFC/OP/IV(2015)007

***Fourth Opinion on San Marino  
adopted on 20 November 2015***

**SUMMARY**

San Marino continues to pay attention to the inclusion of migrants and integration of society. According to the authorities, no case of racism or racial discrimination has been recorded, although isolated cases of latent prejudice towards foreigners prompted legal measures and cultural activities to enhance tolerance, intercultural dialogue and to tackle racism. However, the Advisory Committee regrets that the State Report does not provide an updated overview of these initiatives, which are particularly relevant in view of the growing number of migrants present in the country.

San Marino provides for protection against discrimination. However, some grounds of discrimination are still not covered by the legislation in force, and civil and administrative remedies are lacking. Although there seems to be a general understanding of the notions of racism and racial discrimination, more awareness-raising measures amongst the majority of the population are necessary to avert potential racial discrimination and intolerance. In this context the Advisory Committee is concerned that no follow-up was given to its previous recommendation concerning the establishment of an independent institution to monitor racism and discrimination, empowered with adequate competences and underpinned by the necessary resources.

**Recommendations:**

- **Pursue an open and comprehensive approach towards the integration of society by strengthening legislative, administrative and other measures aimed at the promotion of tolerance and inter-cultural respect among the majority population; increase awareness-raising activities to avert potential racial discrimination and intolerance.**
  
- **Amend the current legislative framework to provide comprehensive protection from all forms of discrimination, as well as civil and administrative remedies; step up awareness-raising among the public at large on the existing legal framework; establish an independent body to monitor racism and discrimination.**

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## **I. KEY FINDINGS**

### **Monitoring process**

1. This fourth cycle Opinion on the implementation of the Framework Convention by San Marino was adopted in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the fourth [State Report](#), received from the authorities on 11 March 2015, and other written sources available to the Advisory Committee. The latter noted nevertheless that the report did not provide any updated information. In view of the absence of recognised national minorities in San Marino, and as no person manifested the intention to be recognised as such, this Opinion – like the previous ones – contains an assessment of measures undertaken by the authorities only with regard to Article 6 of the Framework Convention, which explicitly extends its protection to all persons living on the territory of the member state.

### **General overview of the present situation**

2. San Marino continues, in the spirit of the Framework Convention, to pay attention to the integration of society and the promotion of tolerance and inter-cultural dialogue through a series of initiatives, such as measures to improve the legal situation of women from Central and Eastern Europe who come to San Marino to work as private carers, and to enhance language education in schools and for adults. According to the information provided by the authorities in the State Report, no case of racism or racial discrimination has been recorded, although isolated cases of latent prejudice towards foreigners prompted legal measures and cultural activities to tackle racism and to enhance the level of tolerance and understanding among the population.

3. San Marino legal framework, in particular the Criminal Code (as amended by Law No. 66/2008), provides for protection against discrimination. In addition, Article 3 of Law No.118/2010, as lastly amended in 2015, reformed the provisions on naturalisation by reducing the length of residence, and ‘stay permits’ for work which have been extended from 10 to 12 months, renewable for three consecutive years. It has also introduced additional protection against discrimination to any non-citizens present on the territory of the Republic of San Marino. However, some grounds of discrimination are still not covered by the legislation in force, and civil and administrative anti-discrimination legislation is lacking. According to the State Report, there seems to be a general understanding of the notions of racism and racial discrimination, covering the most blatant and worst forms of this phenomenon. However, more awareness-raising measures on tolerance and discrimination amongst the majority of the population are necessary to avert potential racial discrimination and intolerance.

**Assessment of measures taken to implement the recommendations from the third cycle**

4. The Advisory Committee regrets that the State Report does not provide an updated overview of the initiatives taken to maintain priority on anti-discrimination measures and efforts to facilitate migrants' inclusion.

5. The Advisory Committee observes the absence of information in the report on the implementation of Law No. 66/2008 amending the Criminal Code to include anti-discrimination provisions. Although this may be explained by the lack of recorded cases involving racism or racial discrimination, nonetheless it may also point to a limited awareness among the public of available legal remedies, to the inapplicability of the legal framework to the actual context, or to the need of additional training for those involved with its implementation. The State Report does not indicate an intention to establish an independent human rights institution with a comprehensive mandate to monitor racism and discrimination and with adequate human and financial resources.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 6 of the Framework Convention

#### Promotion of tolerance and inter-cultural dialogue

6. San Marino's cultural diversity is gradually increasing. Its foreign population represents 17.6% or 5,966 persons out of 33,738. Italians continue to be the main group (79.3% or 4,731), while the remainder of the non-citizen population is made up of Ukrainians (324 persons), Romanians (244 persons), Argentinians (67 persons), Russians (56 persons), Moldovans (54), and smaller numbers of citizens of other countries.<sup>1</sup>

7. The authorities reiterated in their report that several legal measures were taken and cultural activities implemented to enhance tolerance, intercultural and interfaith dialogue and to tackle racism. However, the report does not provide an updated overview of these additional steps, which are particularly relevant in view of the growing number of migrants. Although no specific racist episode has been recorded by the authorities, they observed that a sense of latent prejudice towards foreigners persists in the society. Other international monitoring bodies, for example, noted prejudice against non-citizen workers, as well as sporadic episodes of hostilities concerning the Roma population which was depicted pejoratively in the media.<sup>2</sup>

8. The Advisory Committee welcomes the legal, administrative and cultural initiatives in place addressing migrants' specific needs, as well as the improvements concerning the 'stay permits', which also benefit female migrant workers from Central and Eastern European countries who generally find employment as private carers. It observes, nonetheless, that some of these initiatives address cultural integration rather than raise awareness about potential discrimination and remedies available.<sup>3</sup>

9. The authorities indicated in the context of other international monitoring bodies that policies have been adopted to extend language learning both through education at all levels, and through the organisation of evening classes for adults.<sup>4</sup> To this purpose, a Decree promoting multilingualism in schools has been adopted.<sup>5</sup> The Advisory Committee considers the promotion of an open and diverse language environment where a variety of languages, including the first language, and human rights are taught to be particularly relevant towards integration and encourage the authorities to enhance them in school curricula.<sup>6</sup>

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<sup>1</sup> See table annexed to the State Report.

<sup>2</sup> See ECRI Report on San Marino (fourth reporting cycle), July 2013.

<sup>3</sup> See also Council of Europe Human Rights Commissioner Report on San Marino, published 15/10/2015.

<sup>4</sup> Human Rights Council, Universal Periodic Review of San Marino, October – November 2014, Summary prepared by the Office of the UNHCHR, 18/7/2014, para.12.

<sup>5</sup> *Decreto delegato*, 27 novembre 2014 n. 194, *Sperimentazione di Plurilinguismo nelle scuole sanmarinesi*. While priority is given to Italian and English as vehicular languages, other languages can also be covered in reason of educational projects or the presence of individual coming from other countries.

<sup>6</sup> See ACFC Thematic Commentary on Language Rights of Persons Belonging to National Minorities, para. 39.

### *Recommendations*

10. The Advisory Committee encourages the authorities to enhance an open and comprehensive approach towards the inclusion of migrants and integration of society and to strengthen awareness-building measures on tolerance and discrimination amongst the majority population to avert potential racial discrimination and intolerance.

11. The Advisory Committee calls on the authorities to further promote in schools and in other contexts inter-cultural awareness and respect for diversity in society.

### **Protection from discrimination**

12. The Advisory Committee notes that the authorities consider the existing legal framework to combat all forms of discrimination well structured. In their view, protection against discrimination is ensured by the combination of Article 4 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino legal order<sup>7</sup> and of the constitutional value recognised in international instruments, in particular to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The amendment of the Criminal Code in 2008 to include provisions against discrimination based on 'racial, ethnic, religious and sexual orientation grounds and making it an aggravated offence (Law No.66/2008) contributes, in the authorities' view, to guarantee full protection. Accordingly, the calls from international monitoring bodies to substantiate Article 4 with the specific mention of 'colour and language' as additional discrimination grounds appear not to have been followed-up.<sup>8</sup> Nonetheless, the Advisory Committee considers that, alongside ECRI's General Policy Recommendation No. 7,<sup>9</sup> these grounds, which were not covered by Law No. 66/2008, must also be provided by a comprehensive anti-discrimination legislation. Similarly, San Marino's anti-discrimination legislation must be completed with the addition of provisions of civil and administrative remedies.

13. According to the information provided by the authorities in the report, no case of racism or racial discrimination has been recorded, which, in the opinion of the Advisory Committee, would explain why no information on the implementation of Law No. 66/2008 amending the Criminal Code was provided in the report. While acknowledging the measures put in place to promote tolerance and prevent the emergence of any form of racism, the Advisory Committee observes that the absence of complaints related to racial discrimination brought forward to the authorities does not necessarily reflect the absence of any discrimination, but may also point to a limited awareness among the public of available legal remedies, the inapplicability of the legal

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<sup>7</sup> Article 4 of the Declaration reads: "1. All are equal before the law without distinctions relating to gender or personal economic, social, political or religious circumstances... 3. The Republic guarantees equal social dignity and equal protection of rights and freedoms. It promotes the conditions in the economic and social life of the country."

<sup>8</sup> See ECRI Report on San Marino (fourth reporting cycle), July 2013, and the UN Universal Periodic review, October – November 2014; and Commissioner for Human Rights of the Council of Europe Report following his visit to San Marino, published 15 October 2015.

<sup>9</sup> See ECRI General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, adopted on 13 December 2002.

framework to the actual context, or the potential usefulness of training of those involved with its implementation.

14. The Advisory Committee welcomes Law No.118/2010. This law, as last amended in 2015, reformed the provisions on naturalisation by reducing the length of residence, and 'stay permits' for work which have been extended from 10 to 12 months, renewable for three consecutive years. According to Article 3 of this Law, non-citizens present in the territory of the Republic of San Marino 'shall enjoy the fundamental human rights granted by the national legislation, the international conventions in force and the generally recognised principles of international law' and 'shall be treated in the same way as San Marinese citizens with regard to the judicial protection of rights and legitimate interests'. This provision appears to comprehensively prohibit discrimination of non-citizens. The Advisory Committee also observes that the legislation ensures the relevant communications to be made available to foreigners in a language other than Italian that they may understand. Status and employment conditions of non-citizens, however, appear in particular to be possible sources of discrimination due to the different types of working contracts and the nature of the residence and 'stay permits', as also underlined by other monitoring bodies.<sup>10</sup>

15. The Advisory Committee regrets that no follow-up was given to its previous recommendation concerning the establishment of an independent institution to monitor racism and discrimination, empowered with sufficient competences and resources, and making it capable of offering adequate assistance to persons who have been victims of discrimination. In this perspective it further notes that the recommendations from other international monitoring bodies to expand the mandate of the Equal Opportunities Commission, which currently deals only with gender equality, to include racism and racial discrimination, while ensuring its independence and adequate resourcing, were also not satisfied so far.<sup>11</sup>

### *Recommendations*

16. The Advisory Committee calls on the authorities to amend the current legal framework in order to provide comprehensive protection from all forms of discrimination, as well as ensuring administrative and civil remedies.

17. In view of a thorough implementation of Law No. 66/2008 on 'provisions against Racial, Ethnic, Religious and Sexual Discrimination' amending the Criminal Code, as well as other regulatory framework guaranteeing the respect of human rights of non-citizens (Law No. 118/2010), the Advisory Committee recommends the authorities to take appropriate measures, so that the public at large and in particular potential victims of discrimination, are fully informed of rights and remedies provided by the Law, and if needed to provide adequate training to those involved with their implementation.

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<sup>10</sup> See ECRI report, para. 50 and ff. and 93 and ff.

<sup>11</sup> The Equal Opportunities Commission is considered not be very effective. See ECRI Report on San Marino (fourth reporting cycle), July 2013, the UN Universal Periodic review, October – November 2014, and the Commissioner for Human Rights of the Council of Europe Report, 2015.

18. The Advisory Committee reiterates its call to the authorities to establish an independent body, in the most appropriate format and in line with the Paris Principles,<sup>12</sup> with sufficient competences and resources to monitor racism and discrimination, so as to be capable of offering adequate assistance to persons who had been victims of discrimination, including as regards gender equality.

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<sup>12</sup> Principles appended to the Resolution of the United Nations General Assembly on national institutions for the promotion and protection of human rights, A/RES/48/134 of 1993.

### III. CONCLUSIONS

19. The Advisory Committee considers that the present concluding remarks and recommendations could serve as the basis for the resolution to be adopted by the Committee of Ministers with respect to the implementation of the Framework Convention by San Marino.

20. The authorities are invited to take account of the observations and recommendations contained in Sections I and II of the Advisory Committee's Fourth Opinion.<sup>13</sup> In particular, they should take the following measures to improve further the implementation of the Framework Convention:

#### **Recommendations:**<sup>14</sup>

- **Pursue an open and comprehensive approach towards the integration of society by strengthening legislative, administrative and other measures aimed at the promotion of tolerance and inter-cultural respect among the majority population; increase awareness-raising activities to avert potential racial discrimination and intolerance.**
  
- **Amend the current legislative framework to provide comprehensive protection from all forms of discrimination, as well as civil and administrative remedies; step up awareness-raising among the public at large on the existing legal framework; establish an independent body to monitor racism and discrimination.**

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<sup>13</sup> A link to the Opinion is to be inserted in the draft resolution before submission to the GR-H.

<sup>14</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.