



**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 pursuant
to the optional reporting procedure**

Third periodic report of States parties due in 2013

San Marino*


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I. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

New developments in the legal and institutional framework within which human rights are promoted and protected at the national level

1. Since 10 January 2007, when the previous national report to the Human Rights Committee was submitted, the Republic of San Marino has adopted several legislative provisions regarding the protection and promotion of human rights and the protection of the rights contained in the International Covenant on Civil and Political Rights. Major legislative measures include:

(a) Law No. 1 of 7 January 2008 that adopted the “Charter of old age people’s rights: safeguard and improvement of their role in the society”. The Charter aims at protecting and promoting the old age people’s rights, recognising their value and increasingly integrating them in the society. The text includes measures referring to the residential housing, aimed at making elderly-friendly dwellings available for the ageing population and their families. These measures recognize the positive value of the family context and avoid removing old people from their environment.

(b) Law No. 65 of 28 April 2008 on “Implementing provisions of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction” provides protection measures and safeguards to grant children international protection against the harmful effects of their wrongful removal or retention. It also establishes procedures to ensure their prompt return to the State of their habitual residence, in compliance with the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction joined by the Republic of San Marino on 24 November 2006. This law also secures protection for child custody and visiting rights.

(c) Law No. 66 of 28 April 2008 on “Provisions against racial, ethnic, religious and sexual discrimination” introduced in San Marino Criminal Code, Article 179 *bis*, thus implementing the fundamental principle of equality referred to in Article 4 of the Declaration on the Citizens’ Rights. The article punishes all dissemination of ideas based on racial or ethnic superiority or hatred and public incitement to discrimination based on racial, ethnic, national, religious or sexual orientation, providing for such an offence the prosecution *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. This Law represents an important provision confirming the commitment of San Marino Government and Parliament to promoting the principle of non-discrimination. It also implements the international commitments undertaken by San Marino by adopting the main international legal instruments in this regard, such as Protocol No. 12 to the European Convention on Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

(d) Law No. 93 of 17 June 2008 on “Rules on the criminal procedure and secrecy of investigations in criminal proceedings” significantly renewed the previous regime, especially with regard to the criminal proceeding, by ensuring the greatest respect for the principles of adversarial proceedings, defence and rapidity from the initiation of the proceeding and during preliminary investigations.

(e) Law No. 97 of 20 June 2008 on “Prevention and elimination of violence against women and gender violence” provides for a definition of violence, that refers to any act or behaviour resulting in physical, sexual or psychological harm or suffering for the

victim, including threats of such acts, coercion or arbitrary deprivation of liberty, both in public and private life:

- This Law also provides for State protection and rescue to victims of domestic and sexual violence, in all civil, criminal or administrative proceedings, including through legal aid. The Authority for Equal Opportunities monitors that no images and conducts violating human dignity and identity are used. This Law introduced in San Marino Criminal Code Article 181*bis*, which defines *mobbing* and *stalking* as persecution, that is repeated harassment resulting in serious moral suffering and damages to dignity. The Law considers such acts committed in the workplace as aggravating circumstances, resulting in an increase in the quantum of the penalty incurred. Moreover, the Law assigns the investigating Judge the power to order the defendant to stay away from the family home or from places usually frequented by the victim;
- It also introduced new measures concerning the protection of child victims of violence, such as the offence for child abduction and detention abroad, protection orders against domestic abuse and reporting obligations of any act of violence against women and minors for social services, police forces and health professionals, with no violation of official secrecy;
- In compliance with the relevant international conventions, the concept of servitude has been equated to that of slavery and the behaviours producing slavery and the offence of slavery have been described in details. The offence of human trafficking has also been expanded and detailed, in compliance with the latest international conventions. The offence of “enticement into prostitution” was included among the crimes against the person, highlighting the will to protect individual freedom, rather than public morality;
- The Delegated Decree No. 60 of 31 May 2012 successively enacted the forms of assistance provided to the victims of violence.

(f) Law No. 57 of 27 April 2009 on “Rules on health treatment for people with mental disorders” regulated health interventions for people with mental disorders, the so-called compulsory health treatments. In compliance with the Oviedo Convention of the Council of Europe (1997), this Law provides for several guarantees for compulsory medical examinations and treatments and establishes a Commission for the protection of mental health, responsible for the supervision of all procedures ruled by law.

(g) Law No. 57 of 29 May 2013 on “Family mediation”, introduced into San Marino legal system the institution of family mediation, providing an alternative solution to judicial proceedings for domestic disputes, with the purpose of better protecting children involved in separation cases and mitigating traumatic and painful separations. By Delegated Decree No. 120 of 2 September 2013, a register of family mediators was set up and the relevant ethics rules, the tariff schedule and the institutions of supervision were established.

(h) Law No. 99 of 29 July 2013 on “Liability of legal persons” accords legal liability to entities, companies, associations (recognized or not), public bodies performing economic activity within the limits set by the law, for intentional offences committed on their behalf or in their interest by a person having the power to act on behalf of the legal person. The Law also refers to offences committed while carrying out the activity of the legal person, if such offences were facilitated by an organisational failure attributable to the legal person, to lack of supervision or control or if they were committed upon indication of the managers or leaders of the legal person.

(i) Law No. 41 of 31 March 2014 on “Extradition provisions” regulates extradition, stating that the provisions of international conventions in force for the Republic

of San Marino shall prevail over its legal system, thus extending and integrating in San Marino Criminal Code the latest principles and trends. In particular, the principle of “dual criminality” was introduced, ruling that extradition is allowed only if the alleged conduct is considered as a crime by San Marino law and by the legislation of the requesting State. Extradited persons benefit from fundamental rights, which can limit the granting of extradition: for example, extradition may be denied if it was requested for a political offence, if there is reason to believe that the extradited will be subjected to persecution or discrimination, to cruel, inhuman or degrading treatments, or if the offence for which extradition is requested is punished by death penalty in the requesting country.

2. San Marino case-law complies with the principles established by the Covenant, which San Marino applies and respects. Indeed, the Covenant and other provisions were applied several times; for example, in the Decision of 30 September 2008, in the non-contentious jurisdiction No. 8 of 2008 (Article 22, paragraph 1, regarding freedom of association, in particular freedom of trade union association), in the judgement of 2 October 2009, in the civil case No. 191 of 2006 (Article 23, concerning the adoption and protection of the institution of family), in the judgement of 12 February 2005, in the civil work case No. 3 of 2004 (Article 14, paragraph 2, concerning the presumption of innocence), in the judgement of 12 April 2008, in the civil case No. 378 of 2007 (Article 23, paragraph 2, on the right to marry).

Measures to make the Covenant known to judges, lawyers and prosecutors

3. With regard to the measures taken to make the Covenant known to judges, lawyers and prosecutors, on the 21 and 22 October 2009, the Ministry of Foreign and Political Affairs, in collaboration with the Sant’Anna School of Advanced Studies of Pisa (Italy), organised some training courses for Magistrates, Lawyers and Police Forces on the protection of human rights and their monitoring. The courses also dealt with the issues of respect of civil and political rights and with the international instruments to protect them.

4. Moreover, the Italian School of the Judiciary has allowed the participation of San Marino magistrates in refresh and training activities. The School also offers courses dealing with the protection of civil and political rights in compliance with international conventions. An agreement allowing the participation of San Marino magistrates in such courses is currently under study.

5. Furthermore, courses for the Police Forces are being organized by the University of San Marino.

Political or administrative measures taken to promote and protect human rights

6. Law No. 97/2008 established the Authority for Equal Opportunities, a body appointed by the Parliament, with the mandate to promote and uphold any initiative aimed at preventing violence, by granting support to victims, also through the conclusion of operational protocols. The Authority favours and monitors the activity of the associations, raising awareness of the services granting assistance and launching prevention projects. It fosters from year to year the conclusion of a Convention, through the Directorate General of the Social Security Institute, with a “Shelter Centre” nearby San Marino. The Authority promotes every year compulsory vocational training courses in order to provide adequate instruments and specialised training to Magistrates, Police Force, Professional Associations, Social and Health Services, School Operators, Family Mediators. The organisation of such courses is entrusted to the Department of Education of the University of San Marino. Moreover, the Authority for Equal Opportunities acts in coordination with the Health Authority to guarantee the collection of data on violence against women and gender violence.

7. The Authority for Equal Opportunities is composed of three members appointed by the Parliament, who remain in charge for 4 years, chosen among legal experts, representatives of NGOs active in the field of equal opportunities and experts in communication and psychology.

8. Under Article 6 of Delegated Decree No. 60/2012, the Authority is the national body coordinating a technical and institutional panel composed of one member for each of the following institutions: Authority for Equal Opportunities, Gendarmerie, Civil Police, Directorate General of the Social Security Institute, Lawyers' Association, Psychologists' Association, Schools and Single Court.

9. This technical and institutional panel is entrusted with the implementation of the objectives included in the above-mentioned Delegated Decree and in Law No. 97/2008. At present, its coordination functions are performed only at a national level.

10. The Congress of State (San Marino Government), with Decision No. 44 of 30 October 2006, joined the campaign of the Council of Europe "All different, all equal" and appointed a special committee responsible for the implementation of actions and projects under this campaign. This Committee carried out its functions effectively for one year and presented its final report on 5 November 2007.

New measures to disseminate and implement the recommendations in the Committee's previous concluding observations (CCPR/C/SMR/CO/2)

11. Following the presentation of the second report of San Marino on the Covenant, which took place before the Committee on 11 July 2008, the Ministry of Foreign Affairs issued a statement sent to all organs of the press, still published on its site <http://www.esteri.sm/on-line/home/news/articolo1000293.html>. The page contains the link to the Italian texts of the second report and the concluding observations of the Committee.

II. Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to the Committee's previous recommendations

A. Constitutional and legal framework within which the Covenant is implemented (art. 2)

12. Under article 1 of the Declaration on Citizens' Rights, the Republic of San Marino shall commit itself to conforming to the provisions set forth in the international declarations on human rights and fundamental freedoms, as well as to adhering in its international policy to the principles enshrined in the Charter of the United Nations.

13. San Marino constitutional order "recognises, guarantees and enforces the rights and fundamental freedoms set forth by the European Convention for the Protection of Human Rights and Fundamental Freedoms" and "regularly signed and implemented international agreements on the protection of human rights and freedoms shall prevail over domestic legislation in case of conflict". Therefore, the Declaration ensures, in case of conflict with the domestic law, the primacy of international agreements on the protection of human rights and freedoms to which the Republic is a party, including the Covenant. The rules contained therein are considered as guiding principles of the domestic law and they are immediately applied if San Marino system contains non-compliant or contrasting rules. Moreover there is also the possibility to submit questions of constitutionality concerning contravening laws before the Guarantors' Panel.

14. The rules of the Covenant had been considered as a constitutional benchmark already before the establishment of the Guarantors' Panel. In the past, indeed, the Great and General Council (San Marino Parliament) was responsible for reviewing constitutionality according to the opinion of an expert, appointed by the Council.

15. In 1999, after the submission of a question of constitutionality concerning some articles of the Code of Criminal Procedure, the Great and General Council ruled on the conformity of domestic regulations with international norms.¹

16. In 2004, an appeal for constitutionality was rejected with regard to some articles of the Code of Criminal Procedure and of the judicial system in relation to San Marino Declaration on the Citizens' Rights and to the Convention for the protection of human rights and fundamental freedoms.²

B. Equal rights of men and women and prohibition of discrimination (arts. 2, 3 and 26)

17. The Authority for Equal Opportunities is a body appointed by the Parliament, established by Law No. 97/2008 with specific tasks concerning the prevention and repression of violence against women and gender violence, including domestic violence, and the support to Equal Opportunities Commission (established by Law No. 26/2004).

18. The Authority is composed of three members appointed by Parliament, who remain in charge for 4 years, chosen among legal experts, representatives of NGOs active in the field of equal opportunities and experts in communication and psychology.

19. The Delegated Decree No. 60/2012 pursuant to article 4 of Law No. 97/2008 lays down the tasks of the Authority for Equal Opportunities, namely:

- Promoting any initiative aimed at the prevention of violence, providing support to victims, including through the signing of specific operational protocols;
- Fostering and monitoring the activities of the Associations aimed at raising awareness of the services granting assistance and starting prevention projects;
- Fostering from year to year the conclusion of a Convention, through the Directorate General of the Social Security Institute, with a "Shelter Centre" nearby San Marino;
- Promoting every year compulsory vocational training courses in order to provide adequate instruments and specialised training to Magistrates, Police Forces,

¹ With Decision No. 4 of the sitting of 18 January 1999 the Council welcomed the opinion of expert Prof. Severino Caprioli on the constitutionality of articles 13, 14, 19, 175 and 186 of the Code of Criminal Procedure and of articles 2, 10, 17 and 24 of Law No. 83 of 28 October 1992 (Judicial system) in relation to article 3, paragraph 4, and article 15, paragraphs 2 and 3, of Law No. 59 of 8 July 1974 and article 14, paragraph 1 of the Covenant and article 6, paragraph 6, of the European Convention on Human Rights.

² With the judgement No. 13/2004, the Guarantors' Panel rejected the question of constitutionality raised *ex officio* with regard to articles 2, 13, 15, 19, 20, 186 of the Code of Criminal Procedure and article 1, paragraph 1, of Qualified Law No. 145 of 30 October 2003 (Provisions on the judicial system) in relation to article 3, paragraph 16, article 4, paragraph 1, article 15, paragraphs 1, 2 and 3, of the Declaration on the Citizens' Rights and the fundamental principles of San Marino judicial system, to the combined provisions of article 1, paragraph 3, of Law No. 59 of 8 July 1974 and of article 6, paragraph 1, of the Convention for the protection of human rights and fundamental freedoms — implemented by Decree No. 22 of 9 March 1989 — as well as in relation to article 10, paragraph 1, of the Covenant.

Professionals Associations, Social and Health Services, School Operators, Family Mediator. The organisation of such courses shall be entrusted to the Department of Education of the University of San Marino;

- Coordinating with the Health Authority in order to ensure the collection of data on violence against women and gender violence and drawing up an annual report to be published for San Marino people.

20. Since the appointment of its members in January 2009, the Authority has been organizing actions aimed at fully implementing the Law, with particular attention and commitment to raising awareness of the Law, the services and the measures envisaged to support and help the victims of violence. Attention was also focused on the creation of a network of public services, which became operational with Delegated Decree No. 60/2012.

21. With regard to the promotion of women's representation in politics, no precise actions or special projects have already been drawn up, since in this first phase the Authority is just flanking the Equal Opportunities Commission. However, in cooperation with the Public Education Coordinating Unit, the Authority promoted the launch of a professional training course for teachers and the strengthening of school curricula in order to achieve gender equality de jure and de facto as a key element to prevent violence against women.

22. For this purpose, the Department of Education of the University of San Marino promotes refresh and training courses for school staff and for citizens in order to raise awareness and promote prevention.

23. The recent electoral reform (Qualified Law No. 1 of 5 August 2008) provides that each party list running for general elections in the country shall not include more than two thirds of candidates of the same gender (the so-called "obligatory quotas for women").

24. Law No. 35 of 30 March 2012 "Extraordinary provisions on naturalisation" changed the conditions for the acquisition of nationality for children. Under Article 4, the children who have only a parent naturalised are treated equal to those having both parents naturalised. Paragraph 2 of the same Article is based on the principle of equality, because it provides for the case of a child whose parent died before applying for naturalisation for him/herself and his/her children, as he/she met the relevant requirements. The text of Article 4 states as follows:

"1. The effects of naturalization shall be extended immediately to the children of a naturalized parent applying for it, provided that they are established on the territory on the date of the application.

2. The previous paragraph shall also apply to children whose parent, who would have been entitled to naturalization in compliance with the relevant requirements as on the 1 April 2012, died before the expiry of the deadline for the submission of the application.

3. The application for naturalization for children shall be submitted by the persons having parental care over them, or by the guardian or special representative appointed by the Law Commissioner acting as Guardianship Judge. They shall take the oath on behalf of the children, as referred to in article 9, and shall declare to renounce other citizenships held under this Law.

4. Children naturalized pursuant to paragraph 1 or paragraph 2 maintain the acquired citizenship of San Marino if, within twelve months after reaching the age of majority, they fulfil the provisions referred to in article 9 concerning the renunciation of other citizenships."

C. Violence against women (arts. 3 and 7)

25. Among the information, communication and awareness-raising programmes promoted by the Authority, worth mentioning is the free distribution to all citizens, at all facilities, schools and services, of a vade mecum which provides information on the types of offences and related criminal penalties, as well as on the protection and support granted when a case of violence is reported.

26. The Authority has also brought civil actions in criminal proceedings and has reported to the Judiciary the use of images undermining women's dignity in an advertisement, in compliance with Articles 20 and 3 respectively of the above-mentioned Law.

27. Bearing in mind its purposes, the recent Law on family mediation (Law No. 57/2013) is relevant in this context.

28. The introduction of specific training and awareness-raising programs, considering the short period of application of the Law, does not allow an objective assessment of the reduction of the phenomenon, although it provides positive results in terms of a qualitative analysis. However, one of the positive effects of the measures taken (information and operation of services) is the increased reporting of such phenomenon.

29. During the four years of application of the Law, 20-23 cases of violence have been reported every year. Some 15 to 17 complaints are submitted annually, of which 3 or 4 brought to judgement. The phenomenon affects almost exclusively women. It takes place in the domestic sphere and within emotional relationships. Almost always the household includes children. The victims of violence reside in the territory. The number of foreign citizens is slightly higher than that of San Marino citizens.

30. In numerical order, reports/interventions are made by: the Gendarmerie, the Mental Health Unit, the Single Court and the Emergency Unit. 99% of the reports transmitted to the Minors' Protection Service are translated into action/support/guidance programmes that are effectively carried out by the Service. In terms of number, the reports received by the Minors' Protection Service are the following: 3 cases in 2008 (before the entry into force of the law), 16 cases in 2010 and 13 cases in 2012.

31. Among the measures taken to help girls and women with disabilities, worth mentioning is the integrated work among the Minors' Protection Service, the Obstetrics and Gynaecology Unit, the Women's Health Unit, the Paediatrics Unit, the Pathological Addictions Unit, the Primary Care and Territorial Health Unit, the Emergency and Short-Term Hospital Stay Unit. This work is aimed in particular at preventing child abuse and promoting positive parenting, which is also the subject of a specific training course.

32. Though not specifically included in protocols, prevention projects targeted at teenagers, with activities conducted by experts (doctors, gynaecologists and psychologists), at school and in collaboration with it, may be included among the measures adopted.

D. Prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 7, 2, 10 and 26)

33. Article 1.2 of Law No. 43 of 28 April 1989 "Charter of the Rights and Duties of Patients" establishes that citizens have the right "to express their prior consent to treatment or other medical procedures. In certain cases of necessity and urgency, the health care staff shall consider to deliver the treatment without obtaining the consent, if possible by giving prior notification to a representative or close relative".

34. In addition, the Republic of San Marino, by means of Decree No. 45 of 26 February 1998, ratified the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine – the Oviedo Convention, which has become part of the San Marino legal system.

35. Law No. 34 of 29 January 2010 established the San Marino Bioethics Committee and the Ethics Committee on Research and Testing. Delegated Decree No. 2 of 17 January 2011 regulates the functioning of the Committees. As regards testing, great emphasis is given to the issue of informed consent, also with respect to individuals “incapable of giving personal consent” (Annex A-A.7 of Decree No. 2/2011).

36. Law No. 69 of 25 May 2004, later supplemented by Decree No. 70 of 5 May 2005 and by Law No. 136 of 28 December 2007, regulates the functioning of health and social-health facilities. The principles of this Law are the following: “Through authorisation procedures for the establishment and operation, as well as for institutional accreditation of public and private facilities, the State shall guarantee to citizens and users safe and effective services, the continuous improvement of the quality of health and social health facilities, as well as the systematic and planned development of public health and social-health services”.

37. The Annex to Decree No. 70/2005 “General requirements for social health facilities” (au.SS.RG 8.7) provides that the facilities for people with disabilities shall adopt specific procedures regarding consent.

38. Particularly noteworthy is Law No. 57 of 27 April 2009 “Regulation of health interventions for people with mental disorders”. Article 1 (Principles) reads as follows:

“Interventions for diagnostic tests, treatment and rehabilitation of mental disorders shall be usually voluntary. Valid and informed consent from the person concerned shall be required also for such interventions.”

39. Compulsory health interventions shall be regulated by this Law. These interventions shall be exclusively aimed at the medical treatment of serious mental disorders.

40. Any compulsory health intervention referred to in the preceding paragraph shall require legal protection, being intended to affect non-negotiable rights.”

41. The subsequent articles of the Law, in accordance with the Oviedo Convention, ensure respect for the rights of the patient undergoing a Compulsory Health Treatment; see, as an example, Article 6, paragraph 8: “During a compulsory health treatment, health professionals shall, in any case, try to obtain consent to treatment from the patient”.

E. Expulsion of aliens (art. 13)

42. San Marino legal system does not provide for the granting of asylum or refugee status in accordance with the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol, to which San Marino is not a State party. Establishing a procedure for determining refugee status would be problematic for San Marino authorities, especially due to the lack of border control between Italy and San Marino.

43. However, Law No. 118/2010 (Art. 14) and Decree No. 186/2010 (Art. 15) expressly provide for the delivery of an extraordinary “stay permit” for humanitarian and social protection reasons. This permit, issued by the Congress of State, may be granted in case of special humanitarian needs and entitles the holder to receive health assistance and temporary economic benefits from the Social Security Institute.

F. Right to liberty and security of the person and right to a fair trial and equality before the law (arts. 9 and 14)

44. By Congress of State Decision No. 20 of 12 February 2013, a working group has been set up, consisting of officials from the Ministry of Internal Affairs and the State Lawyers' Office, as well as of Law Commissioners (judges) of the Single Court and representatives of San Marino Association of Lawyers and Notaries. This group has been entrusted with the drafting of a new Code of Criminal Procedure respecting constitutional guarantees and aimed at speeding up proceedings. The group is at work and has not yet completed its mandate..

45. Legal assistance in criminal matters is ensured to anyone: when a person prosecuted does not have a lawyer of his/her choice, legal assistance is provided by an officially appointed lawyer under Law No. 131 of 30 October 1996 "Reform of the tasks entrusted to officially appointed lawyers".

46. At least two officially appointed lawyers shall be designated for a period of one year by Regency Decree, after having heard the opinion of the Ministry of Justice. In addition to the remuneration paid by the State and expressly provided for by law, officially appointed lawyers shall receive an allowance for any proceeding in which they work as defence lawyers. The allowance shall be set by the Judge in the judgement passed on the persons benefiting from such service.

47. In carrying out their task, officially appointed lawyers shall assist defendants, stopped or arrested persons who do not have a lawyer of their choice. Until the latter has been designated, officially appointed lawyers shall attend hearings and provide their legal assistance in any other case where this is provided for by law.

48. Officially appointed lawyers shall be permanently available in both day and night time and, if unable to attend, they shall communicate the name of another lawyer replacing them.

49. In civil proceedings, legal defence and, therefore, the ability to carry out procedural actions shall be generally entrusted to a lawyer legally registered in the Professional Register established by Regency Decree No. 11 of 1 February 1995 and freely chosen by the party concerned. However, where the party cannot afford to pay legal costs, the right of defence is recognized and guaranteed through legal aid, as established by Law of 20 December 1884. Under Article 1, which must be interpreted in the light of the constitutional provision contained in Article 15 of the Declaration on the Citizens' Rights and in Article 6 of the European Convention on Human Rights, anyone meeting the conditions provided for by law may be granted legal aid.

50. In order to be eligible for the above-mentioned benefit, the following conditions must be satisfied: to live in a state of poverty, which shall be proved through an attested affidavit filed by the Registrar; and to have sufficient reasons to participate in the proceedings for which legal aid is sought. This latter condition, i.e. the likely success in the proceedings, shall be verified by the Council of the Twelve, which expresses its opinion after having considered a specific report drawn up by an expert, in accordance with Law No. 13 of 5 June 1923. The Council of the Twelve may decide on a case-by-case basis on the granting of legal aid, taking into account the applicant's state of poverty and whether he/she has sufficient reasons to participate in the proceedings for which legal aid is requested.

51. The application for legal aid, which must be supported by documents proving the existence of the requirements mentioned above, shall be signed by a legal adviser and

addressed to the Captains Regent. The lack of these requirements entails the rejection of the application.

52. The above-mentioned application, duly registered in accordance with Article 7, suspends the deadlines for all legal purposes from the day of its submission.

53. The person granted legal aid enjoys the above-mentioned benefit also in case of appeal, if it is promoted by the other party, while he/she must obtain a new authorisation if he/she intends to promote the appeal. According to consistent case-law, legal aid granted for proceedings on the merits also applies to subsequent enforcement proceedings.

54. The documents of the proceedings prepared by the lawyer of the person benefiting from legal aid shall be on ordinary paper and, therefore, the plaintiff granted legal aid shall not pay any judicial tax.

55. Fees and commissions shall be refunded only by unsuccessful parties who do not benefit from legal aid. If the judgement establishes the compensation of charges, in whole or in part, such charges shall be taken, in whole or in part, from the amount allocated by the judicial authority to the party receiving legal aid.

56. In the period 1997-2007, the applications for judicial assistance in civil matters (legal aid) submitted to the Council of the Twelve were four, of which two were accepted and two rejected.

57. Article 17 of Law No. 97/2008 provides that in all proceedings, whether civil, criminal or administrative, the victims of crimes of violence shall be granted judicial assistance when they are not objectively able to arrange for their defence, even if the conditions for legal aid are not met.

G. Right to privacy (art. 17)

58. San Marino has acceded to numerous international conventions on terrorism, while strengthening domestic measures also aimed at preventing and suppressing this phenomenon. Law No. 28 of 26 February 2004, approved and subsequently amended and supplemented by Law No. 92 of 17 June 2008, introduced criminal provisions to counter activities relating to the preparation and/or execution of terrorist acts.

59. Finally, in 2014, in order to take part in the international counter-terrorism cooperation, San Marino completed the process of accession to 13 Conventions adopted at the initiative of the United Nations and of other international organizations and, at the same time, it transposed the content of such Conventions in Decree-Law No. 83 of 15 July 2013.

60. On the one hand, the aforesaid rules provide adequate measures to check and combat subversive acts of terrorist nature and, on the other hand, they ensure an extensive protection of the right to confidentiality of every individual.

61. The right to privacy is translated into the prohibition of any interference and indiscretion by third parties within the scope of private life of the individual and for this reason specific measures have been envisaged to ensure that investigative techniques are not detrimental to the individual's privacy. In that regard, said techniques must always be authorised by the Law Commissioner, who must be given immediate and timely notice of the activities carried out by the Police. Moreover, Police Forces are forbidden to copy or duplicate documents unless prior consent thereto is given by the judicial authority. In addition, the documentation related to third parties or to persons unconnected with the facts investigated shall be destroyed as soon as their non-involvement is demonstrated. The violation of these provisions is punished with imprisonment and second-degree disqualification (from public offices and political rights).

62. Finally, wiretapping is governed by Law No. 98 of 21 July 2009, “Law on wiretapping”, and Delegated Decree No. 178 of 29 December 2009, “Regulations on the confidential archive of wire-taps referred to in Art. 13, paragraph 2, of Law No. 98 of 21 July 2009”.

H. Freedom of expression and opinion (art. 19)

63. Overcoming the potential conflict between legal protection of two equally important rights guaranteed by both the Constitution and international treaties and conventions, such as the right to freedom of thought, on the one hand, and the protection of the public order or of morals, as well as of the reputation and rights of others, on the other hand, has been the subject of San Marino case-law. In recent years, this has contributed to a better scope definition and to a modern and relevant interpretation of the provisions.

64. Common law is still in force in the Republic of San Marino; therefore, case-law is often a subsidiary source for the correct interpretation and application of provisions.

65. The right of freedom of thought and freedom of expression are protected both by Article 6 of the Declaration on the Citizens’ Rights and Fundamental Principles of San Marino Constitutional Order, and by Articles 9 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The said Declaration stipulates that the limits on freedom of thought can be exclusively established by law and only for serious reasons relating to public order or public interest.

66. As regards defamation, judgement No. 23 of 4 March 1988 confirmed that defamation does not occur if awareness and intent to commit acts damaging the reputation of others are lacking. For example, the statements contained in a letter are not defamatory by their nature. Instead, criminal liability shall apply to anyone who has taken the responsibility to disseminate the content damaging the honour of a person without previously consulting the sender.

67. Regarding press freedom, judgement No. 66 of 1993 established that the right and duty of journalists to inform is exercised freely, without fear of committing the offence of defamation, when the objective truth of the news and its relevance to public and general interests are demonstrated. Moreover, if a journalist is in error, but he/she acted with care, attention and diligence, the error will be used as justification. Therefore, the right to report and to information has no other limitations except that concerning the truth of the news and the existence of a general interest. All forms of insult and denigration undermining someone else’s dignity and reputation must be avoided.

68. A recent judgement on appeal has made it clear that as regards political criticism, comments, including those offensive, are not relevant to criminal purposes. In the judgement delivered on 3 November 2009, the Judge of Appeal ruled as follows: “improper language, rude tone revealing contempt for a [political] interlocutor or for his/her work, or ideas, can never constitute an offence to the principle or the honour of the individual. [...] Politicians, from the moment they decide to carry out a public activity, are exposed more than others to criticism, even specious and devious, to unfairness and impolite remarks; however, this does not involve their honour as long as criticism concerns their public activity.”

69. In consideration of this last judgement, delivered at the highest level of criminal jurisdiction, freedom of thought generally prevails over the right to the protection of persons whose activity or conduct can legitimately be subject to criticism, even offensive, by reason of their role or position.

I. Children's rights (arts. 24, 9, 10 and 14)

70. Unfortunately, the amendment of the Comprehensive Regulations of the Military Corps is still being studied. However, please note that the Republic of San Marino is a neutral state: it does not have any army and a compulsory military service.

71. Article 3 of Law No. 15 of 26 January 1990, according to which "military service is mandatory for all San Marino citizens from the age of 16 to the age of 60", must be read in conjunction with the provisions of subsequent Article 4, which governs the exceptional circumstance of general mobilisation.

72. Indeed, in San Marino the recruitment of personnel in the military corps has always been voluntary, from the age of 18 under the Special Regulations of the individual Corps. The establishment of the age of 16 for recruitment in case of general mobilisation is the legacy of previous regulations, which San Marino has already undertaken to change.

73. It should be noted that mandatory recruitment and general mobilisation of all citizens never occurred, not even in the most critical moments in the history of San Marino.

74. Law No. 140/2014 provides that children are entitled to protection and security, and shall not be subject to corporal punishment or other treatment damaging their physical and psychological integrity.

75. Therefore, by amending Article 234 of the Criminal Code, said Law introduced the prohibition of corporal punishment. Imprisonment or first-degree disqualification from parental authority, office, profession or art, shall apply to anyone who, by using powers of correction or discipline, inflicts corporal punishment or uses other coercive or repressive means, whenever the application of such punishment or means endangers the body or mind or causes an illness in a person under their authority or entrusted to them. The term of imprisonment is increased to third degree if the conduct leads to any of the events specified in Article 156 ("abortion, life-threat, disease healed in more than sixty days or incurable disease, permanent disfigurement of the face, loss or substantial weakening of a sense, of an organ or of its functioning or the loss of the ability to procreate, or genital mutilation") or to fifth degree if the conduct leads to death..

76. To date a Juvenile Court has not been established.

77. Law No. 140/2014 raised the age for children's liability from 12 to 14 years, as provided for in the Criminal Code, and established a lower punishment with a decrease from one to two degrees for children aged over 14 years but under 18 years. It also provided for the possibility for judges to apply a lower punishment to those who were not older than 21 years at the time of the facts.

78. This legislative amendment reconfirmed Article 1 of Law No. 86/1974, which provides for a mandatory biopsychic examination of children: liability must always be effectively verified by a judge.

J. Participation in public life (art. 25)

79. Qualified Law No. 1 of 11 May 2007 on "Measures for the enhancement of citizens' will and for equality in elections and election campaigns" amended Article 2 of Law No. 6 of 31 January 1996, "Electoral Law", excluding from voting only persons interdicted for mental infirmity and no longer incapacitated persons due to mental infirmity.

K. Equality before the law (art. 26)

80. Law No. 35 of 30 March 2012 on “Extraordinary provisions on naturalization” reconfirmed that San Marino citizenship by naturalization is granted by the Great and General Council on an exceptional basis.

81. The new law provides that San Marino citizenship can be applied for after 25 years of continuous residence in San Marino (rather than after 30 years under the previous Law) and after 18 years for those living in the territory since birth, recognizing the particular condition of those who have lived exclusively in San Marino and have not established direct and stronger relations with another State.

82. For spouses of San Marino citizens, the Law reconfirms the continuous period of residence of 15 years required to apply for San Marino citizenship. Paragraph 3 of Article 2 envisaged the case of widowhood, thus filling a gap (so defined for equity reasons).

83. The Law has introduced important provisions also with regard to children: indeed, Article 4 establishes that children who have only a parent naturalised shall be treated equal to those having both parents naturalised, while providing that the effects of naturalization shall be extended immediately to the children of a naturalized parent applying for it, provided that they are established on the territory on the date of the application. The different condition of parents envisaged by the Law of 2000 had such an adverse impact on children that it created a discriminatory legal situation. Also paragraph 2 of the same Article is based on equality, because it provides for the case of a child whose parent died before applying for naturalisation for him/herself and his/her children, as he/she met the relevant requirements.

84. By virtue of this Law 222 adult citizens have been naturalized..

85. The concluding observation in paragraph 10 refers to a “guarantor” required in our system so that a foreigner may start a civil action, while the ancient common law rule to which it relates, i.e. *cautio judicatum solvi in casum succumbentiae*, represents a guarantee and not a guarantor.

86. Such guarantee consisted in the requirements for foreigners to lodge a security when they started a civil action for the payment of any expenses in case of unsuccessful action. This is a common law rule that has no longer been applied from over a century and, thus, is repealed because of its disuse.

87. In support of the above, *cautio judicatum solvi in casum succumbentiae* would also conflict with Article 15 of the Declaration on Citizens’ Rights, which reads as follows:

“Everyone is entitled to jurisdictional protection of subjective rights and legitimate interests before the competent ordinary and administrative courts and before the Panel responsible for guaranteeing the constitutionality of rules.

Everyone is entitled to defend him/herself at any stage of the judicial proceedings. All judgements must be pronounced by independent courts within a reasonable time and must not be subject to undue financial burden. Such judgements must be made public.

Humane and rehabilitation punishments may be inflicted only by judges authorised by law to exercise judicial power and according to non-retroactive rules. Their retro-active application is possible only if more favourable.

Everyone charged with an offence is presumed innocent until convicted. Any form of limitation of personal freedom, also as precautionary measure, shall be admitted only in conformity with the law.”

L. Rights of persons belonging to minorities (art. 27)

88. As repeatedly mentioned, San Marino Government believes that there are no groups of persons who constitute national minorities, whether ethnic or religious, on the territory, since foreign citizens immigrating to the country for work or other reasons cannot be considered as such.

89. Moreover, neither individuals nor groups have claimed recognition of their status as members of a national minority.
