

SAN MARINO

CCPR A/45/40 (1990)

428. The Committee considered the initial report of San Marino (CCPR/C/45/Add.1) at its 980th and 981th meetings, held on 9 July 1990. (CCPR/C/SR. 980-SR. 981).

429. The report was introduced by the representative of the State party, who noted that since the submission of the report the Republic of San Marino had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had accepted the competence of the European Commission of Human Rights and the European Court of Human Rights. In addition, as a result of a recently concluded agreement with Italy, San Marino had regained its autonomy in the field of information. That would have a favourable impact on the exercise of the right to receive information.

430. Members of the Committee extended a warm welcome to the delegation and noted that San Marino enjoyed a positive reputation in so far as respect for human rights was concerned. Members expressed concern, however, at the brevity of the report, noting that it had not been prepared in accordance with the Committee's guidelines. They hoped that in its next report the State party would include information on all of the articles of the Covenant and provide practical illustrations of the implementation of those provisions.

431. With reference of article 2 of the Covenant, members of the Committee wished to receive clarification as to the existence of a written Constitution or of other fundamental provisions that possessed constitutional status, or of a basic character of human rights. They also wished to know what was the precise status of the Covenant in domestic legislation; whether a hierarchy of the law existed in general; how a conflict between domestic legislation and the Covenant's provisions would be resolved; whether special committees or commissions existed to deal with human rights issues; and whether the text of the Covenant and other information concerning it had been disseminated throughout the country. In addition, members wished to receive clarification of the statement in the report that not all of the Covenant's provisions could be invoked before the courts and requested further information on Law No. 59 of 8 July 1974.

432. With regard to self-determination, members of the Committee asked for clarification of the Republic's relationship with Italy in so far as the external aspects of self-determination were concerned and wished to know whether this aspect had created any problems in the human rights field, particularly in respect of extraditions or claims of extraterritoriality.

433. With regard to article 3 of the Covenant, members of the Committee wished to know what the proportion of women was in public office, particularly in the legislature, the Congress of State, the Civil Service and in the field of education, and whether San Marino had acceded to the Convention on the Elimination of All Forms of Discrimination against Women.

434. Observing that no information on article 4 of the Covenant had been provided in the report, members of the Committee wished to know what legal provisions would be applicable if a state of emergency were to occur in the Republic and whether any controls existed to ensure that in such a

situation there would be no derogation from the provisions of the Covenant.

435. Noting, with reference to article 6 of the Covenant, that the death penalty does not exist in San Marino, members wished to know how serious crimes were defined in San Marino and what the maximum sentence was for such crimes.

436. With reference to article 7 of the Covenant, members welcomed San Marino's accession to the Convention against Torture but wished to receive specific information concerning the existing legal provisions prohibiting cruel, inhuman or degrading treatment or punishment.

437. Concerning article 9 of the Covenant, members of the Committee wished to know how the presumption of innocence was ensured in criminal proceedings; what provisions existed for a person to appeal against his detention, especially in case the police failed to inform the court of an arrest; what was the maximum length of provisional arrest; how long it took, on average, to adjudicate a criminal case; and whether there was a significant backlog of criminal cases awaiting trial. Information was also requested concerning the practice relating to release on bail.

438. Regarding article 10 of the Covenant, members of the Committee requested information concerning legal provisions governing the treatment of prisoners or other detainees and wished to know whether the provisions of paragraph 2 of article 10, concerning the segregation of accused from convicted persons, were being complied with.

439. With reference to article 13 of the Covenant, members of the Committee wished to receive further information on articles 121 and 127 of the Penal Code, regulating the expulsion of foreigners, and wished to know whether administrative authorities as well as judges were empowered to issue expulsion orders.

440. Members of the Committee requested clarification as to whether the requirements of paragraph 3 of article 14 of the Covenant were fulfilled as a matter of law and practice, noting in that regard that the lack of provisions for compensation for a miscarriage of justice was contrary to article 14. They also wished to know whether legislation providing for compensation was being envisaged; whether the requirement that foreigners pay the cautio judicatum solvi was compatible with articles 2, 14 and 26 of the Covenant; what the arrangements were for the training of lawyers and the appointment of judges and ensuring the latter's independence; why only non-citizens could be appointed as judges; whether San Marino had administrative courts in addition to the civil and penal courts; and whether consideration had been given to establishing the institution of Ombudsman.

441. Referring to article 17 and 18 of the Covenant, members wished to know what were the exceptional circumstances that justified violation of the privacy of communications and whether the laws of libel and slander did not provide for excessive restrictions on the right to freedom of expression.

442. With regard to article 22 of the Covenant, members of the Committee wished to receive information on legal provisions governing the establishment of new political parties in the country.

443. In connection with articles 23 and 24 of the Covenant, members wished to know whether there

was a difference in the equality of rights between married and unmarried couples and what protection and assistance was given to mothers by the community. Clarification was also requested of the term used in the report relating to the “moral equality” of spouses.

444. With reference to article 25 of the Covenant, members of the Committee wished to receive information concerning laws relating to the right to vote.

445. With reference to article 27 of the Covenant, members of the Committee wished to know whether there were any national or religious minorities and, if so, whether any problems had occurred in relation to the exercise of rights covered under that article.

446. In response to questions raised under article 2 of the Covenant, the representative said that after the adoption of an international treaty by the Parliament of San Marino, a decree was promulgated that gave the treaty the force of law. The treaty could then be invoked by any citizen. In the case of the Covenant, there had been no specific legislation referring to its provisions except for the decree by which it had entered into force. The Republic of San Marino did not have a written Constitution. However, since its population consisted of only 24,000 inhabitants, fundamental human rights had been guaranteed in practice, under the common law, since the seventeenth century. In 1974, Law No. 59 had been adopted providing for formal legal protection of such rights and freedoms including, in general, those set out in the Covenant. Article 1 of that Law recognized the rules of international law as an integral part of domestic law. The provisions of Law No. 59 could be amended only by a two-thirds majority of Parliament, whereas ordinary laws were adopted by a simple majority.

447. Concerning the question of self-determination, the representative said that there were no constitutional links between San Marino and Italy but only conventional links. The first Convention dated from the mid-nineteenth century and regulated various aspects of inter-community life. There were no customs posts on San Marino’s frontiers and customs arrangements were left entirely in the hands of the Italian authorities. Full reciprocity of the political and civil rights of the citizens of both countries had been established in article 4 of a 1939 Convention which provided, inter alia, that citizens could hold public office in either country and engage in trade and the liberal professions on an equal footing.

448. With reference to questions raised under article 3 of the Covenant, the representative said that despite the fact that recognition of the rights of women had come rather late, the proportion of women who were active in public service was relatively high. Five of the 60-member Great and General Council and 2 of the 10-member Congress of State, the central organ of executive power, were women. Three women had in the past held the position of Captain Regent, which was equivalent to head of state. The majority of posts in the field of education were held by women and they were also well represented in the diplomatic and consular services and at the highest levels of the Civil Service. Despite the desire within the Republic to accede to the Convention for the Elimination of All Forms of Discrimination against Women, this had not yet occurred. The smallness of San Marino’s internal administrative structure influenced the international obligations which it was able to undertake and consequently there was a tendency for the Republic to be late in acceding to international treaties.

449. Responding to questions concerning article 14 of the Covenant, the representative explained that eligibility for appointment to the judiciary had been limited, by statute, to non-citizens since the seventeenth century. Until recently, judges had been appointed to three-year terms which were subject to reconfirmation by the Council. The requirement for reconfirmation every three years had been abolished recently but the possibility of returning to the previous system was again under consideration as a measure to ensure, in a country of such a small population, the impartiality of justice. Administrative tribunals were first established on 1 January 1990.

450. Regarding the establishment of political parties, the representative noted that under article 16 of Law No. 59 of 8 July 1974 all citizens had the right of association and to join trade unions or political parties. Six political parties were currently represented in the 60-member Great and General Council.

451. With reference to article 25 of the Covenant, the representative explained that all citizens 18 years of age and over who had not had their political rights suspended had the right to vote, as were the 18,000 citizens of San Marino who resided abroad. Overseas residents were entitled to repayment of 75 per cent of the costs incurred in their return to the Republic every five years to vote in the elections to the Council. The right to be elected to the Council applied to all citizens of adult age who had not forfeited their political rights, except that members of the same family could not be elected to the Council at the same time. There were no minorities in the Republic of San Marino.

General observations

452. Members of the Committee thanked the representative of the State party for the explanations she had provided, which had clarified the main thrust of San Marino's written legislation. They considered, however, that although the Law No. 59 of 8 July 1974 containing the declaration of rights of citizens appeared to be a statute in some ways providing for the same guarantees as a constitutional provision, many areas of domestic legislation would need to be further clarified in the next report, including the basic questions of whether all the provisions of the Covenant were implemented and whether such provisions could be invoked before the courts. Members also expressed concern about specific provisions, including the lack of a provision for the review of judicial decisions by a higher court; the lack of provisions for compensation in the event of a miscarriage of justice; and the lack of security of tenure for judges.

453. Members expressed the hope that the State party's second periodic report would be prepared in accordance with the Committee's guidelines and would contain more precise information on the legal status of the Covenant and on the implementation of each of its articles, as well as details regarding the practical difficulties that had been encountered. They also hoped that the report would contain responses to the unanswered questions raised during the meeting, and suggested that copies of relevant documents, including the texts of conventions, laws and judicial decisions, be included in the report.

454. In concluding the consideration of the initial report of the Republic of San Marino, the Chairman again thanked the State party's delegation for its full co-operation in a constructive dialogue with the Committee that compensated for the paucity of information in the report. The Committee looked forward to receiving fuller information in San Marino's second periodic report,

which was due in January 1992.