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HUMAN RIGHTS COMMITTEE

Ninety-third session

SUMMARY RECORD OF THE 2548th MEETING*

Held at the Palais Wilson, Geneva,
on Friday, 11 July 2008, at 10 a.m.

Chairperson: Mr. RIVAS POSADA

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* No summary record was issued for the 2547th meeting.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of San Marino (CCPR/C/SMR/2; CCPR/C/SMR/Q/2 and Add.1 and Add.2)

1. At the invitation of the Chairperson, the members of the delegation of San Marino took places at the Committee table.
2. Mr. FERRONI (San Marino), introducing the second periodic report of San Marino (CCPR/C/SMR/2) and responding to questions 1 and 2 on the Committee's list of issues (CCPR/C/SMR/Q/2), said that the Declaration on the Rights of Citizens had been modified to stipulate that San Marino recognized, as part of its legal system, generally accepted international laws on human rights and fundamental freedoms, and that San Marino recognized, guaranteed and applied the fundamental rights and freedoms contained in the European Convention on Human Rights. International agreements on the protection of human rights and freedoms had primacy in the event of a discrepancy with domestic legislation.
3. The adoption of the Declaration on the Rights of Citizens had recognized the role and value of constitutional laws. Examples of case law implementing Covenant provisions were contained in the supplement to the written replies to the list of issues (CCPR/C/SMR/Q/2/Add.2).
4. Mr. PALMUCCI (San Marino), responding to question 3 of the list of issues, said that by tradition the Captains Regent fulfilled the role of ombudsmen. That tradition had been institutionalized through a constitutional law adopted in December 2005. Since the population of San Marino was so small, it was easy to obtain a hearing with the Captains Regent. They would assess the admissibility of claims and ensure that appropriate action was taken to ensure redress. Intervention by the Captains Regent was the most powerful means available to address issues relating to human rights violations.
5. Mr. GASPERONI (San Marino) said that there were two legal provisions in place to address terrorism. Both were aimed at combating financing of terrorism, and did not limit fundamental human rights or the rights set out in the Covenant.
6. Ms. BERNARDI (San Marino) said that the 2000 revision of article 4 of the Declaration on the Rights of Citizens reaffirmed the legal equality of persons irrespective of their individual status. Thus discrimination on grounds of gender or sexual orientation was prohibited. The Criminal Code had also been amended to criminalize incitement to racial or ethnic superiority or hatred, and encouragement of discrimination on the basis of race, ethnicity, nationality, gender or sexual orientation. Recently adopted legislation on violence against women and gender violence provided for equal treatment and prohibition of the dissemination of any type of information that violated human dignity. Article 1 of the Declaration on the Rights of Citizens also prohibited discriminatory behaviour as defined in the European Convention on Human Rights.

7. Mr. GUALTIERI (San Marino), responding to question 9 on the rights of persons with disabilities, said that Parliament had adopted a health plan for 2006-2008. The plan specified a number of targets for the protection of persons with disabilities. San Marino had ratified the United Nations Convention on the Rights of Persons with Disabilities, and was a party to the European Convention on Human Rights and Biomedicine.
8. Mr. FERRONI (San Marino) said that a commission had been established to conduct a review of the Code of Criminal Procedure. A bill on fair trials was awaiting parliamentary approval. If adopted, it would fill certain gaps in existing criminal procedural law by guaranteeing the right to a defence counsel for accused persons and establishing time limits for investigations. All persons in police custody were held in police facilities and were granted immediate access to a lawyer.
9. Ms. BERNARDI (San Marino) emphasized that legal aid and the protection of rights were recognized by law through the institution of free legal defence. That institution was regulated by the Law of 20 December 1984, which was in line with the Declaration and the European Convention on Human Rights, inter alia. Anyone of limited means was eligible for free legal aid. Applications were submitted to the Captains Regent and then verified and decided by the Council of XII. If accepted, an application was duly recorded and the beneficiary could use all the defence instruments recognized by the trial system free of charge, including in the appeal phase if the other party lodged an appeal. At that point, however, the beneficiary would reapply for a free defence. The person who lost the case was liable for the lawyer's fees. Victims of violence against women or gender violence had the right to free legal defence if they were objectively unable to employ a lawyer, even if they did not meet the criteria for a free defence. Notaries public and lawyers had a list of defence lawyers specializing in that specific sector.
10. The free legal defence system had been modified by Law No. 31. Two lawyers appointed for a period of two years by Regents' Decree, based on the opinion of the Ministry of Justice, were responsible for the criminal defence of accused persons if they had not appointed their own lawyer. Their fees were paid by the State, in addition to a sum determined by the judge in the case and charged to the guilty party.
11. With regard to defamation, articles 183 and 185 of the Criminal Code were in conformity with article 19 of the Covenant, which limited the right to freedom of expression when it infringed the recognized rights and reputations of others.
12. Mr. PALMUCCI (San Marino) said, in reply to question 18 on wiretapping and requests for information from such sources, that the Constitution guaranteed the right to confidentiality, as did the Declaration. Laws No. 61 of 2002 and No. 28 of 2004 had been adopted at the suggestion of several international bodies because of the particular need to fight serious crimes such as the sexual exploitation of minors and international terrorism.
13. The legislation on wiretapping needed further development. A draft law had been prepared, the details of which remained to be discussed by stakeholders and political parties. The new legislation should take into account the effectiveness of wiretaps as an investigative tool, and also the need to protect the privacy of citizens in line with article 17 of the Covenant and the European Court of Human Rights decision against the United States of America for conducting wiretaps without having in place any specific legislation to protect the privacy of citizens.

14. The CHAIRPERSON invited questions concerning the list of issues.

15. Mr. O'FLAHERTY recalled the tribute that had been paid to the State party's tradition of tolerance and human rights, and welcomed its return to dialogue with the Committee and other treaty bodies after 17 years. As in 1990, the report before the Committee focused on laws and regulations. Future reports might reflect in greater detail the situation on the ground and possible challenges.

16. With respect to questions 1 and 2, he requested information on instances in which the Covenant had been invoked before the domestic courts and on the consequences of its invocation. He wished to learn how knowledge of the Covenant was disseminated among the legal profession in particular and the public in general, and whether the public was made aware of the entitlement to submit communications to the Committee under the Optional Protocol.

17. With reference to question 3, he welcomed the proposal to establish an ombudsman's office and wished to know the time line for its establishment. He requested the delegation to comment on its commitment to ensuring that the ombudsman's office would be fully compliant with the Paris Principles. While the role of the Captains Regent was a fascinating mechanism of historical significance, petitions to the Head of State were by definition not open to an independent body. Moreover, the entitlement to submit a petition appeared to apply only to citizens and residents, although under the Covenant it should extend to all persons under the jurisdiction of the State party.

18. In relation to question 5, the updated information provided on the legislative developments of April 2008 was useful. However, with respect to article 4 of the Declaration, the categories identified therein were all subsumed under the non-specific category of "personal status". It was difficult to ensure the equal and comparative application of unspecified grounds of discrimination under a generalized term. He wondered whether the State party was considering the adoption of a comprehensive anti-discrimination legal framework which expressly indicated the grounds of discrimination. He also requested information on any particular court cases in which the unspecified grounds had been invoked by the litigant, and requested assurances that the Declaration extended to all persons under its jurisdiction, in line with the Covenant.

19. He sought clarification on the extent of the new anti-discrimination legislation adopted in April 2008, which appeared to be farther-reaching than that of any other State; it appeared to criminalize any discrimination or incitement to discrimination on various grounds, including race, ethnicity, nationality, religion and sexual orientation. He also wished to know how the State party would ensure that the enforcement of the new legislation did not conflict with other rights and freedoms.

20. With respect to question 20, he observed that 16 per cent of persons living in the State party were not nationals and came from a variety of backgrounds; the presence of ethnic minorities appeared to be a matter of fact, if not law. He sought clarification of the definition of a "staying" person. In addition, he wished to know whether there were any Roma in the State party and, if so, whether the State party was considering imposing restrictive control measures on its Roma population.

21. With regard to question 21, he invited the delegation to consider the possibility of introducing a comprehensive public training and information programme on the Covenant and other international instruments; that would have the benefit of generating public debate on its reports to the various treaty bodies and their concluding observations. He wondered whether the State party would consider expanding the national consultation process to include its engagement with the Committee and other treaty bodies, in the context of the forthcoming Universal Periodic Review.

22. In view of the absence of comments from national human rights NGOs, he wondered whether any such organizations existed in the State party and whether their establishment might be encouraged. Finally, he asked whether the State party might consider revising its statutes on conscription to provide for the right to conscientious objection.

23. Mr. SHEARER, noting that San Marino's counter-terrorist legislation concentrated on combating financial support for terrorism, asked whether the country was a significant financial centre or tax haven. The legislation had been enacted in 2004 and expanded in 2008 pursuant to undertakings made to the United Nations Counter-Terrorism Committee in 2001. He asked whether San Marino had since ratified such instruments as the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (known as the "Hijacking Convention") and the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (known as the "Sabotage Convention").

24. According to the State party, no complaints of ill-treatment by law enforcement officials had been filed, a statement that was consistent with the findings of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) covering the period up to 1999. Such a felicitous record was doubtless attributable not only to sound police training practices but also to social factors, such as the small and homogeneous nature of the population. He wondered whether the fact that "everyone knew everyone else" reduced criminality by virtue of the shame that arrest would bring to family members and whether the low crime rate was also due to the absence of poverty and the provision of free health and education services.

25. He noted from the delegation's progress report on the draft Code of Criminal Procedure that the maximum period of pre-charge detention would be 24 hours, which was consistent with Covenant requirements. He asked for more details, however, about the conditions attached to the provision of legal assistance to an arrested person who was unable to afford the services of a lawyer. In particular, he wished to know whether the "reasonable prospects of success" criterion was applied when deciding whether to grant free legal assistance and whether assistance was confined to criminal proceedings or could also be obtained for civil proceedings, for instance where a person sued for injuries arising from an accident or challenged a will.

26. Ms. PALM welcomed the fact that domestic violence had constituted an offence in San Marino since 18 June 2008. Noting that the equivalent crime under the previous legislation was known as "private violence", she requested more information about the substance of the new Law on the Prevention and Repression of Violence against Women and Gender Violence. For instance, how were crimes to be investigated and prosecuted and what kinds of penalties would be imposed? Under the previous legislation, 13 cases involving domestic violence had been tried before the Civil and Criminal Court in 2007 and to date only 2 had resulted in judgements.

27. Research on domestic violence had shown that one in three women throughout the world experienced some form of gender-based violence and that many women were reluctant to report such acts when the perpetrators were close family members. It was therefore of the greatest importance to ensure that they were informed of their rights and had access to support. She asked what measures apart from legislation the State party had taken to combat all forms of gender-based violence. Did services such as shelters exist for women fleeing their homes and were police trained in how to deal with complaints?

28. While Law No. 84 of 17 June 2004 amending Law No. 114 of 30 November 2000 (the Law on Citizenship) had abolished some forms of unequal treatment, differences persisted between, on the one hand, children from families in which both parents had acquired citizenship through naturalization and, on the other, children from families in which only one parent was naturalized. She understood that, in the latter case, the children could not acquire citizenship until they reached the age of 18, which seemed to amount to discrimination.

29. Welcoming the fact that there was no difference in inheritance entitlements between men and women, she asked whether distinctions were made on other grounds mentioned in article 26 of the Covenant, such as birth or nationality.

30. In criminal cases, accused persons without a personal lawyer were provided with a public defender. However, part of the fee was payable by the State and part by the accused. Drawing attention to article 14 (3) (d) of the Covenant, she asked what happened if the accused was destitute. She also requested statistics on the number of criminal cases in which a public defender had been provided. With regard to civil cases, she asked the delegation to comment on the fact that legal aid had been provided in only two cases during the period from 1997 to 2007.

31. She understood that all judges were now appointed by the Judicial Council and that all except the highest judges of appeal, judges of extraordinary remedies and civil-liability judges were appointed on the basis of a written and oral examination. However, while the last three categories were appointed for a five-year term with the possibility of renewal, other judges were appointed for a three-year trial period, after which the Council decided whether to terminate or confirm the appointment. She enquired about the procedure for taking such a decision and asked what proportion of judges were confirmed in office.

32. According to the report, parties to pending judicial proceedings could have recourse to the Guarantors' Panel to have the constitutionality of laws examined. As international treaties had primacy over domestic statutes in San Marino and enjoyed quasi-constitutional status, she asked whether a party could request the Panel to determine whether a domestic law was incompatible with the Covenant.

33. Mr. JOHNSON LÓPEZ welcomed the ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the adoption of the health plan for 2006-2008, which made special provision for persons with disabilities.

34. It was not clear from the written reply to question 10 of the list of issues whether the cautio judicatum solvi in casum succumbentiae, whereby a foreigner was required to present a

guarantor who would ensure the fulfilment of any obligation deriving from the judgement as a precondition for bringing a civil action before the San Marino judicial authorities, had been abolished. The reply merely stated that it was outdated and no longer applicable.

35. Although there were no provisions allowing the judicial authority in San Marino to order wiretapping, Law No. 61 of 30 April 2002 seemed to make an exception in the case of suspected sexual exploitation of children and Law No. 28 of 26 February 2004 in the case of suspected acts of terrorism and financial crime. He asked for details regarding the new bill on the subject prepared by the Secretariat of the State for Justice and for clarification of the scope of existing restrictions on the right to privacy.

36. Ms. WEDGWOOD expressed concern about the impact of articles 183 to 185 of the Criminal Code on the right to freedom of expression. Article 184, for example, punished as a criminal offence the behaviour of anyone who, in a public meeting or communicating with several persons, offended the honour of a person present or absent. She asked whether the provisions, which seemed to be out of place in a modern democracy, had been reviewed.

37. Article 329, which criminalized the disclosure of political secrets, also seemed to be an indefensible restriction on freedom of speech. What kind of secrets were meant?

38. According to paragraph 159 of the report, printers were required to provide the judicial authority with a copy of any printed material. Such a requirement was highly unusual in a modern democracy. She suggested that San Marino might wish to set an example rather than risking the possibility of having such a provision cited by authoritarian regimes.

39. When the State party claimed that there were no ethnic minorities living on its territory, it was doubtless referring to an organized ethnic community seeking autonomous rights and a special relationship with the State. However, many foreigners had been residing in the country for long periods. Those who wished to acquire citizenship had to wait for 30 years to be eligible for naturalization. Compelling people of a different nationality to retain their legal status as aliens for the bulk of their lives might be viewed as inhospitable or as intentional exclusion from the polity.

40. She asked whether protection was provided for foreigners who were employed as domestics. For instance, would they be able to bring legal proceedings without losing their residence permit?

41. Wiretapping was now permitted for the investigation of sexual abuse of children and money laundering. It was to be hoped that appropriate civil-liberty safeguards were provided. For instance, there should be probable cause to believe that a crime might be committed before wiretapping was authorized and court monitoring of the necessity of wiretapping. Another requirement was "minimization", which meant that parts of a conversation pertaining to a person's private life or independent activities should not be recorded. Moreover, there should be penalties for unauthorized dissemination of wiretapping information.

42. Mr. LALLAH, noting the variety of persons permanently residing or staying in San Marino, as was shown by the table in paragraph 20 of the written replies to the list of issues (CCPR/C/SMR/Q/2/Add.1), enquired why a person was required to reside in the country

for 30 years before becoming a citizen. He requested details of the criteria for granting residence permits. He would also like to know the percentage of women who were actively employed. Clarification was needed on whether there were any shelters for women victims of domestic violence or mechanisms for lodging complaints other than the police. He asked whether there were any prisons for women in San Marino and, if so, how many women were held in them. He wished to know the age of majority in the country and recalled that the Convention on the Rights of the Child defined "children" as persons up to the age of 18. Information was needed on whether there had been any arrests or detention of persons under the new national terrorism legislation. If so, it would be useful to have specific details of the cases in order to get an idea of how the law was applied.

43. Ms. MOTOC said that, as a member of the delegation had referred to the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, she would appreciate hearing more about its views on issues relating to biotechnology and the right to life.

44. Ms. CHANET said that, in the absence of reports from NGOs, there was insufficient detail on the actual day-to-day workings of the judicial system. Referring to the report to the San Marino Government on the visit to San Marino carried out by the CPT from 9 to 11 June 1999, she requested an update on steps taken to guarantee the rights of detainees on whom disciplinary measures were imposed, including the right of appeal. She enquired whether persons in police custody had access to a lawyer and a doctor and whether video recordings were used during police questioning. Information was needed on the court which decided on the lawfulness of a person's detention and ordered the person's release if the detention was not lawful, in accordance with article 9 (4) of the Covenant.

45. Citing article 196 of the Code of Criminal Procedure referred to in the report (para. 132), she enquired whether everyone convicted of a crime had the right to his or her conviction and sentence being reviewed by a higher tribunal, in accordance with article 14 (5) of the Covenant. Information was needed on whether there were any offences which a convicted person could not appeal under the law.

46. Referring to a note verbale (S/2004/662) dated 10 August 2004 from the Permanent Mission of San Marino to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, which mentioned a new article of the Criminal Code (art. 337 bis) criminalizing terrorism or subversion of the constitutional order, she sought clarification of paragraph 4 of that article, which provided an exemption for persons acting in favour of a close relative. She failed to understand why a close relative would be exempt from the provision on terrorism.

47. Mr. FERRONI (San Marino), referring to the request for examples of relevant case law where the Covenant had been directly invoked before domestic courts, said that the courts invoked the European Convention on Human Rights as it was more detailed and wide-ranging. He saw no problem with doing so given that the provisions of the Covenant were similar to those of the Convention. Furthermore, the principles of the Covenant were reflected in domestic legislation. Institutions of higher education provided human rights education, which covered the Covenant, the European Convention and other international agreements, and further training in the area was given to lawyers, judges and other members of the legal profession. A conference,

attended inter alia by representatives of the European Court of Human Rights, had recently been organized to raise public awareness of the issue. The absence of NGOs dealing specifically with human rights might be explained by the existing social welfare system in San Marino, which adequately addressed many of the relevant issues.

48. As to the question concerning article 179 bis of the Criminal Code, the law did not suppress freedom of expression but rather punished the dissemination of ideas or material based on racial superiority or inciting racial hatred.

49. The absence of complaints of police abuse could be explained by the fact that San Marino was a relatively small republic where everyone knew everyone else. Even among persons working in the country who were not San Marino residents, no police abuse complaints had been filed. The absence of complaints reflected the high level of civility among police personnel.

50. Concerning inheritance rights, existing legislation did not discriminate in any way on the basis of gender. However, persons who were not San Marino residents, regardless of gender, did not have the right to own property. In the event that non-residents inherited property in San Marino, they could convert it into cash. Given the size of the country, it was deemed necessary to place such a restriction on property ownership.

51. Following the judicial reform of 2003 judges were currently recruited on the basis of competitive examinations. In addition, unlike in the past, San Marino citizens could sit those examinations. The restriction had been imposed on San Marino citizens out of a concern for impartiality.

The meeting rose at 1 p.m.