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

Third Opinion on San Marino,
adopted on 26 June 2009

EXECUTIVE SUMMARY

The authorities of San Marino have continued to demonstrate a constructive approach to issues connected with implementation of the Framework Convention. Important legal measures have been adopted against discrimination as well as initiatives to facilitate immigrants' integration. In order to contribute to the preservation of a climate of mutual understanding in the country, further efforts are needed to increase awareness of the importance to combat racism and to set up an independent institution to monitor racism and discrimination.

TABLE OF CONTENTS

I. MAIN FINDINGS.....	4
Monitoring process.....	4
General overview on the implementation of the Framework Convention after two monitoring cycles.....	4
Tolerance and protection against discrimination	5
II. ARTICLE-BY-ARTICLE FINDINGS	6
Article 6 of the Framework Convention	6
III. CONCLUDING REMARKS	8
Positive developments following two cycles of monitoring	8
Issues of concern following two cycles of monitoring	8
Recommendations	8

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

THIRD OPINION ON SAN MARINO

The Advisory Committee adopted the present Opinion on San Marino 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 State Report (hereinafter the State Report), received on 22 April 2009, and other written sources consulted by the Advisory Committee. On the basis of the information available to it, the Advisory Committee concluded that the preparation of the present Opinion did not require a visit to San Marino.

Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in San Marino. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.

Both sections make extensive reference to the follow-up given to the findings of the monitoring of the Framework Convention, contained in the Advisory Committee's first and second Opinions on San Marino and in the Committee of Ministers' corresponding Resolutions.

The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on San Marino.

The Advisory Committee looks forward to continuing its dialogue with the authorities of San Marino as well as with other actors involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present Opinion public upon its receipt. The Advisory Committee would also like to bring to the attention of State parties that, on 16 April 2009, the Committee of Ministers adopted new rules for the publication of the Advisory Committee's Opinion and other monitoring documents, aiming at allowing increased transparency and sharing the information on the monitoring findings and conclusions with all parties involved at an early stage (see Resolution CM/Res(2009)3 amending Resolution (97) 10 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the Protection of National Minorities).

I. MAIN FINDINGS

Monitoring process

1. The Advisory Committee stresses that the third State Report regarding the implementation of the Framework Convention was transmitted in due time and contains up-to-date information on the measures taken to give follow-up to the recommendations of the previous cycles. It notes that the State Report is more detailed and gives information on the composition of the population and on different initiatives carried out to provide protection against discrimination and intolerance as well as to raise awareness of the population with respect to human rights and diversity.

2. In view of the information provided by the authorities, the Advisory Committee recalls that the potential for applying a number of provisions of the Framework Convention in San Marino is limited.

3. In the light of the above, the Advisory Committee has not considered it necessary to promote follow-up activities between second and third monitoring cycles to the same extent as in other State parties.

4. San Marino has pursued a proactive approach towards the monitoring process. The State Report indicates that information concerning the monitoring of the Framework Convention for the Protection of National Minorities, including the Opinions of the Advisory Committee, is available on the internet web-site of the Ministry for Foreign Affairs. The second opinion of the Advisory Committee has been translated into Italian.

General overview on the implementation of the Framework Convention after two monitoring cycles

5. According to the Government of San Marino, for the purposes of the Framework Convention there are no persons belonging to national minorities in the country's territory. In the authorities' views the foreigners living in the country cannot be considered as persons belonging to national minorities.

6. The Advisory Committee welcomes the support given by San Marino to the aims of the Framework Convention and the spirit of cooperation shown by them in the monitoring process. It is pleased to note that, while adopting the position described above with regard to the scope of application of the Framework Convention, the authorities of San Marino expressed a more open approach in further dialogue with the Advisory Committee, and implicitly recognized the relevance of Article 6 of the Framework Convention in respect of San Marino, in view of the growing cultural diversity of San Marino society resulting from immigration.

7. The Advisory Committee invites the authorities to preserve the possibility for persons belonging to other groups, including non-citizens where appropriate, to be included in the application of the Framework Convention.

Tolerance and protection against discrimination

8. The Advisory Committee takes note with interest of the statistical data provided by the authorities on the composition of the population and the situation of the various groups.

9. It welcomes the fact that San Marino has included information in its State Report on measures taken to improve the integration of foreign nationals and prevent racism and discrimination, even though the Government does not consider these persons belonging to national minorities.

10. The general climate of society in San Marino continues to be one of dialogue and tolerance even if the existence of latent prejudice against non-citizens has been reported by certain sources. Particular attention has been paid by the authorities to preventing and combating discrimination. In this regard, the Advisory Committee welcomes the adoption on 28 April 2008 of the Law n° 66 on “Provisions on racial, ethnic and religious discrimination” which introduces criminal law provisions in this field.

II. ARTICLE-BY-ARTICLE FINDINGS

Article 6 of the Framework Convention

Tolerance and protection against discrimination

Advisory Committee's recommendations following two cycles of monitoring

11. In previous cycles of monitoring, the Advisory Committee welcomed the fact that the general climate of society in San Marino is one of dialogue and tolerance. It has noted at the same time that there was an increased number of non-citizens living and working in San Marino and it invited the authorities to provide more specific information on the composition of the population in their dialogue with the Advisory Committee.

12. Although no overt forms of discrimination or intolerance had been reported, the Advisory Committee, in view of information relating to the existence of latent prejudice within the San Marinese society, expressed the wish that the authorities reinforce existing measures to prevent and provide protection against discrimination and intolerance as well as to raise awareness of the population with respect to human rights and diversity.

Present situation

13. The Advisory Committee notes that, on 31 December 2008, over 16% of the total population of San Marino - 5, 805 persons out of 32,578 - was composed of non-citizens with residence and stay permits. Approximately 82% of these are Italians (4756 persons), while the remainder was made up of citizens of Ukraine (220 persons), Romania (189 persons), Argentina (83 persons), Moldova (50 persons), Albanian (49 persons), Poland (42 persons), Croatia (38 persons) and smaller numbers of citizens from other countries.¹

14. The Advisory Committee notes with interest that a number of initiatives have been carried out both by public institutions and civil society to facilitate immigrants' integration into society. Efforts have been made to establish a closer relationship between people of different cultures and to encourage cultural exchanges for a mutual enrichment.

15. The authorities of San Marino have informed the Advisory Committee that no case of racism or racial discrimination has been recorded. The Advisory Committee welcomes the adoption, on 28 April 2008, of the Law N°66 on "Provisions against Racial, Ethnic, Religious and Sexual Discrimination". The aim is to face adequately the increasing diversity of society and the existence of "latent prejudice" toward persons who are not San Marino citizens. Supplementing the provisions enshrined in the current Criminal Code, this law criminalises racial discrimination and punishes the dissemination, by any means, of racist ideas. Committing an offence for the purpose of discrimination is considered to be an aggravating circumstance. According to the authorities, this Act translates the Government's willingness to implement the principle of non-discrimination embodied in Protocol n°12 to the European Convention on Human Rights and the UN Convention on the Elimination of all Forms of Racial Discrimination ratified by San Marino.

16. The Advisory Committee welcomes these important developments and expects that the authorities of San Marino will give all the attention due to the full and effective implementation of the new Law.

¹ According to the State Report, the "residents" are persons, either San Marino citizens or foreigners, who have their registered residence in the republic, and "staying persons" are foreigners bearing a permit to stay in San Marino".

17. The Advisory Committee notes that ECRI's third report on San Marino² highlights the fact that racial discrimination in San Marino is still understood as encompassing solely the most blatant forms of these phenomena, such as those connected with the activities of extreme-right groups resorting to violence.

18. Even if there is a widely-accepted view that racism and racial discrimination are in general not problems with which San Marino is faced, the Advisory Committee is of the opinion that attention should also be paid to racism in all its forms. It therefore encourages the authorities to continue to give a high priority to this question.

19. The Advisory Committee regrets that there is no independent institution in place to monitor racism and discrimination and to provide assistance to victims of discrimination.

Recommendations

20. The Advisory Committee encourages the authorities to continue to give priority to protection against discrimination and make efforts to facilitate integration of immigrants including by supporting private initiatives in this area.

21. The Advisory Committee encourages the authorities to pay particular attention to the full and effective implementation of the recent Law N°66 on "Provisions against Racial, Ethnic, Religious and Sexual Discrimination".

22. The Advisory Committee calls upon the authorities to set up an independent institution to monitor racism and discrimination. In doing so, they should guarantee that its competences and resources are sufficient to ensure its independence and its capacity to provide adequate assistance to persons who have been victims of discrimination.³

² See the Third Report on San Marino adopted by the European Commission against Racism and Intolerance (ECRI) on 14 December 2007, document CRI(2008)24.

³ See also: Report by the Commissioner for Human Rights on its visit to the Republic of San Marino on 23-25 January 2008, CommDH(2008) 12, and the Concluding Observations of the Human Rights Committee on the Report of San Marino on the application of the International Covenant on Civil and Political Rights, UN, CCPR/C/SMR/CO/2, July 2008.

III. CONCLUDING REMARKS

23. The Advisory Committee considers that the present concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to San Marino.

Positive developments following two cycles of monitoring

24. The work of the authorities in the field of awareness-raising about discrimination and intolerance has been pursued. Measures have been taken to facilitate the integration of immigrants.

25. In the field of protection against discrimination, positive steps have been taken in order to improve the legislative framework to combat discrimination. The Advisory Committee welcomes the adoption of a comprehensive anti-discrimination law.

Issues of concern following two cycles of monitoring

26. The Advisory Committee is of the opinion that there is a need to increase awareness of the importance to combat racism in all its forms and to set up an independent institution to monitor racism and discrimination. In doing so, they should guarantee that its competences and resources are sufficient to ensure its independence and its capacity to provide adequate assistance to persons who have been victims of discrimination.

Recommendations

27. In addition to the measures to be taken to implement the detailed recommendations contained in Sections I and II of the Advisory Committee's opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- continue efforts to heighten public awareness of the importance of tolerance and intercultural dialogue, and pursue measures to promote and facilitate integration of immigrants;
- pay particular attention to the full and effective implementation of the Law N°66 on "Provisions against Racial, Ethnic, Religious and Sexual Discrimination" and set up an independent institution to monitor racism and discrimination.