Human Rights Committee
115th session

Summary record of the 3205th (Chamber B) meeting
Held at the Palais des Nations, Geneva, on Tuesday, 20 October 2015, at 10 a.m.

Chairperson: Ms. Seibert-Fohr (Vice-Chairperson)

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Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Third periodic report of San Marino (continued)
In the absence of Mr. Salvioli, Ms. Seibert-Fohr (Vice-Chairperson), took the Chair.
The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the
Covenant (continued)

Third periodic report of San Marino (continued) (CCPR/C/SMR/3 and
CCPR/C/SMR/Q/3)

1. At the invitation of the Chairperson, the delegation of San Marino took places at
the Committee table.

2. Mr. Palmucci (San Marino) said that he would respond to questions raised by
Mr. de Frouville on the previous day concerning counter-terrorism legislation and the
right to privacy as defined under article 17 of the Covenant. Although no terrorist
events had been experienced in San Marino, the Government had complied with
international legislation, in particular with regard to combating the financing of
terrorism. Laws and regulations on wiretapping were subject to judicial approval and
implemented in partnership with the Italian authorities, since San Marino did not have
a separate telephone system. Any interception of electronic communications would
need to comply with article 17 of the Covenant and with constitutional standards; it
could only be conducted under exceptional circumstances and for the most serious of
reasons that were in the public interest.

3. Concerning the question by Ms. Jelić, electoral standards dictated that, where
two candidates received the same number of votes, a female candidate would take
precedence over a male. Those arrangements were testament to the importance
accorded by the legislature to the involvement of women in public life.

4. Mr. Ferroni (San Marino), responding to questions raised by Mr. de Frouville
concerning decriminalization of the offence of defamation and limits on freedom of
assembly and expression, said that such matters were examined on a case-
by-case basis and that reference to case law on defamation, honour and the right to
information had been provided in the State party report. It was difficult to place a value on the
undermining of a reputation by verbal insults or physical threat, since a civil or
criminal sanction could not repair the damage done.

5. There was no separate juvenile justice system in San Marino since there was
only one court and all judges were authorized to hear the few cases involving minors
that occurred each year. The age of criminal responsibility had been raised from 12 to
14 and a number of safeguards had been introduced for the protection of young people
in the legal system, including a prohibition on publishing images or personal details of
minors involved in court cases, whether as victims or perpetrators, and the right to
appear behind a screen or to have their identity protected in some other way during a
court trial. Minors in the legal system received the assistance of social services and
trained psychologists. Access to justice was assured in San Marino through the
provision of legal assistance.

6. Mr. Canti (San Marino) said that the law according to which military
conscription could take place from the age of 16 was intended to apply under
exceptional circumstances, such as where it was necessary to defend the territorial
integrity of the country, a situation that had not arisen to date. A working group had
been established in July 2015 to examine how best to reform domestic legislation in
order to align the age of conscription with that recommended by various international
bodies.

7. The residency requirement for naturalization had been shortened from 30 to 25
years in 2012 and a bill was currently under consideration in parliament that would
allow the application time to be shortened further under exceptional circumstances. Persons who had been resident from birth could request San Marinese nationality at the age of 18.

8. Corporal punishment had been prohibited since 2014 and family law protected minors from physical and psychological harm; the right of guardianship could be removed from parents in serious cases involving corporal punishment and criminal sanctions could be imposed.

9. Mr. Fiorini (San Marino), speaking on the theme of participation in public life, said that the law allowed voting rights to be removed from persons whose very advanced age or other incapacity would make them vulnerable to undue influence in election campaigns.

10. Ms. Pazartzis asked whether the Government of San Marino had considered the introduction of a more comprehensive anti-discrimination framework, since the gaps in current legislation had been noted by a number of members of the Committee.

11. Mr. Rodriguez-Rescia asked whether it was possible to receive a copy of the draft law that sought to reduce the lengthy period of time taken to apply for naturalization. He noted the lack of a juvenile court to deal with civil and criminal proceedings and asked whether the Government intended to establish a comprehensive public policy framework to provide broad protection for the rights of boys, girls and adolescents. He did not believe that mandatory biopsychic examination of children was necessary.

12. Mr. de Frouville noted that the Covenant had been invoked in a legal case in 2004 but wished to know whether there had been more recent cases concerning domestic legislation. Although some cases involving San Marino had been taken to the European Court of Human Rights, no communications had been received in respect of the Covenant and he asked whether further efforts to promote awareness and understanding of the Covenant could be made among the legal profession in San Marino.

13. With respect to legislation on the termination of pregnancy, he understood the preference to achieve consensus within San Marino, although it should be acknowledged that public opinion was an evolving phenomenon and Governments could play an active role in encouraging democratic decisions that were not necessarily consensual: legislators in his own country had abolished the death penalty despite the fact that more than 60 per cent of the population had wished to retain it for certain crimes.

14. With respect to the financing of terrorism through the banking system while the State party had responded on the issue of wiretapping, other measures, such as the destruction of documents belonging to third parties, could also impinge on the right to privacy. He asked for confirmation that the legal framework governing wiretapping was not yet operational in view of the technical requirement to complete agreements with the Italian authorities.

15. The Committee’s general comment No. 34 (CCPR/C/GC/34) on the freedoms of opinion and expression indicated that States parties should “consider” the decriminalization of defamation — not that they “must” decriminalize it. At the same time, the imposition of a prison sentence seemed, in his own view, to be an excessive punishment. He drew the delegation’s attention to the trend in many countries to reduce the severity of penalties for defamation from prison sentences to fines. Ultimately, what was needed was to strike a balance between the need to preserve freedom of expression, on the one hand, and individual honour, on the other. Although
the value to be attached to honour was important, it did not outweigh freedom of expression, which justified the need to reduce the penalties prescribed for defamation.

16. **Mr. Vardzelashvili** said that the legal consequences imposed by a State for verbal insults had to be proportionate to the effects of a person’s words; while some words could be quite painful, in the end such pain was figurative, whereas imprisonment had very real consequences. He would appreciate it if the delegation would comment on the recent report of the Commissioner for Human Rights of the Council of Europe during his recent visit to San Marino and the concerns expressed by the Commissioner at the State’s recently adopted legislation on the regulation of media outlets.

17. **Mr. Ben Achour** said that he firmly believed that the constructive dialogue between the delegation and the Committee was a two-way discussion in which either party could influence the other and in which the Committee might be led to reconsider some of its established positions. While he acknowledged the Committee’s position on the decriminalization of defamation, he had never entirely agreed with it, and in fact, had strong reservations with regard to promoting it. Those reservations stemmed from the fact that defamation could be used as a tool to repress certain investigative efforts and could cause psychological harm — sometimes with physical consequences. He was of the view that, whereas some human rights were absolute, such as the right to life and the prohibition of torture, other human rights, such as abortion, had to be placed in the particular cultural context of each State, and legislation concerning them should depend, precisely, on the level of consensus achieved on their embodiment in the law.

*The meeting was suspended at 11.05 a.m. and resumed at 11.10 a.m.*

18. **Mr. Canti** (San Marino) said that, although there was no specific anti-discrimination legislation in the San Marinese legal system, protection from discrimination was provided for by the Constitution and the various anti-discrimination provisions of existing legislation. He would transmit to his Government the Committee’s recommendation that it should expand the scope and terms of such legislation so as to ensure broader coverage of all forms of discrimination and to stimulate debate on expanding the functions of existing institutions, in view of the fact that financial constraints did not allow for the establishment of new ones.

19. There appeared to be broad consensus regarding the need for adopting the bill on naturalization, which was currently under review following its first reading. The text of the bill was published online; however, it was still subject to amendment. When finalized, the bill would be transmitted to the Committee.

20. **Mr. Ferroni** (San Marino) said that San Marino had a well-coordinated legal framework for the protection of minors, comprising both criminal and civil law provisions, even though such provisions were not assembled in a single specialized code. Despite the fact that the law clearly stipulated the age of criminal responsibility for youth offenders, judges had discretion to order an expert to perform a biopsychic assessment of their psychological maturity with a view to determining whether or not to hold them criminally responsible in a particular case.

21. Given the size of San Marino, there were very few opportunities for invoking the provisions of the Covenant before the courts. With regard to the issue of abortion, when he had referred to consensus, he had not meant electoral consensus, but rather consensus in adhering to a set of values, on the basis of which legislators could introduce laws without going against prevailing societal norms. Because abortion was looked upon as a termination of life in San Marino, there was currently too much popular resistance to its legalization.
22. He advised treading very carefully when it came to the issue of freedom of expression in contemporary society, given the instantaneous nature of transboundary communication. As a result of the latter, there was, in fact, an increased need to protect people from the abuse of such freedom, given that it was very easy for unscrupulous individuals and media outlets to spread false information about a person.

23. Mr. Palmucci (San Marino) said that the rules concerning wiretapping that had been adopted in 2009 were quite protectionist in nature. Wiretapping was not available to the police or financial institution auditors as an investigative tool, nor, for that matter, was it freely available to prosecutors. The latter had to request authorization for its use from an independent judicial body, which was responsible for monitoring the entire process. Article 15 of the Covenant had been applied in a judicial decision dated 19 July 2010; it related to a case concerning duration of detention in which the offender had requested and had been able to benefit from a lighter penalty that had been prescribed subsequent to the commission of the offence in question.

24. Ms. Bigi (San Marino) said that the Government of San Marino had published a response to paragraph 17 of the report by Nils Muižnieks, Commission for Human Rights of the Council of Europe, following his visit to San Marino from 9 to 10 June 2015. Paragraph 17 dealt with recently adopted legislation in San Marino on media regulation and the Commissioner’s concern that the system established under the new law could not be considered to be self-regulated by the media. She read out in English the comments of the Government of San Marino on that paragraph, which had been published on the Council of Europe website. The comments represented a summary of the Government’s position on the matter; a more complete text, which had been prepared by the Secretary of State for Labour, Co-operation and Information, would be translated and sent to the Committee within the next 48 hours.

25. Mr. Beccari (San Marino) thanked the Committee for its consideration of the report of San Marino and its recommendations, which would be given careful consideration by his Government.

26. The Chairperson thanked the delegation of San Marino for its thorough, informative and useful replies to the questions put by the Committee. She noted with appreciation the steps it had taken since the last reporting period, including its recent declaration under article 41 of the Covenant. Among the areas in which there was still room for improvement, she noted the practical implementation of national laws and the compatibility of the Criminal Code with the Covenant. With regard to freedom of expression, she drew attention to the Committee’s general comment No. 34, which represented the general and consensual position of the Committee on defamation, and strongly emphasized its validity. Among other concerns expressed by Committee members were femicide, the age of mandatory conscription and the need for legislative reforms, including that of the Code of Criminal Procedure. She welcomed the Government’s willingness to consider other legislative amendments in the future, including that of recognizing gender identity as a basis for discrimination and the incorporation of a legal procedure for implementing the views of the Committee regarding individual communications in the proceedings of the national courts, as it currently did with the judgements of the European Court of Human Rights. The Committee would look forward to continuing its dialogue with San Marino in the future.

The meeting rose at 11.45 a.m.