

Associazione Culturale Don Chisciotte (established in February 2004) – UPR joint response – Republic of San Marino – February 2010

Associazione Culturale Don Chisciotte; Associazione LGBT San Marino; Associazione Oasiverde; and Associazione Probimbi

Introduction:

The above organisations would like to thank the United Nation for giving the right to the Civil Society to be included in this consultation to comment about the respect of the Universal Declaration of Human Rights in our country. We felt appropriate to point out only the areas where our country is not meeting even the basics requirements of the Declaration because the Government of San Marino continues restrict access to this information for us to be able to comment fully and have a wider view of the issues here concerned. All the above organisations are in fact concerned with the appalling administration of the legislative and judicial system around both the individual and collective welfare of citizens and their human rights due to the excessive power exercised by politicians and their lack of understanding of equality, diversity, and human rights matters. This is an unfortunate fundamental characteristic of the Government of our country, which is extremely important to consider as it jeopardises our democratic rights and the opportunities to realise the potential of ALL our citizens.

There is not enough clarity and transparency in nominations or public engagements and amongst those working within the public administration. The public bodies and politicians often lack detachment from religious institutions and views, so much that “catholic morals” are very often accepted without any criticism by the political class to the point of public discrimination as seen in a recent case in which a diplomatic appointment was revoked from an openly gay citizen because of declarations he made in defence of human rights to counteract homophobic messages that the current Pope released to the press. There appears to be a gap between the action of the political and financial “elite” and the rest of the country, whether these action are actually easy for the common citizen to recognise or not. Often, the decisions taken by policy-makers seem to answer the “needs” or interest of a particular group rather than those of the wider public. What seems to be obvious is that the political and economic elite of the country looks after its own interest at the expense of the rest of the citizens. On the other end, the wealth created within the Republic by their actions also results in a higher standard of living for most citizens which in turn results in the apathy of most citizens to speak up about breaches of their rights for fear of upsetting the status quo and potentially loose out.

RESPONSE

Methodology

Every paragraph in the following section refers to a different article of the Universal Declaration on Human Rights of 1948 and for each article the above organisations have highlighted the issue that the Republic of San Marino fails to address.

1) The right to universal enjoyment of Human Rights

Since 2008, San Marino has introduced the Legislation No. 66 “Directives in regards to racial, ethnic, religious and sexual discrimination” of 28th April 2008 (Appendix A). This law also punishes discrimination based on sexual orientation, but does not make any reference to gender identity in regards to transgender or intergender issues. Furthermore, in another piece of law “Declaration on Human Rights” (Law of 8th July 1974 No. 59, which is the equivalent to the Constitution of the

Republic of San Marino), Article No. 4 establishes that “everyone is equal in front of the law, without any distinction amongst personal, economic, social, political, or religious conditions”, which regardless its very broad remit once again does not make any specific reference to sexual orientation or gender identity, therefore opens the door to interpretations that might not include the protection of rights based on these. San Marino should amend any legislation, including criminal law, to ensure its consistency with the universal enjoyment of all human rights and undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, whilst integrating within State policy and decision-making a pluralistic approach that recognises and affirms the interrelatedness and indivisibility of all aspects of human identity including sexual orientation and gender identity.

2) Right to a fair trial

Even though San Marino subscribed the Recommendation R(2000)2 (Appendix B) of the European Council (19/01/2000), on 24th February 2000 San Marino introduced Law No. 20 (Appendix C) that prohibits the revision of the processes declared partial by the European Court on Human Rights. On 27th June 2003, San Marino then introduced Law No. 89 (Appendix D) that prohibits the revision of the violations that took place in the meantime (then abolished by law of 2005 No. 172, Appendix E). In a striking case, the San Marino tribunal recognised the judicial mistake made 17 years previously, but it is yet to make provisions to rectify such mistake. It is noted that there is an obvious reluctance to comply with Conventions, Protocols, Recommendations, and Resolutions subscribed by the Republic of San Marino that the United Nations should not ignore or accept. San Marino should ensure that no one’s credibility or character as a party, witness, advocate or decision-maker is impugned by reason of any equality or human rights issues.

3) Right to Security of the person

Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group. Unfortunately, the needs of LGBT people in San Marino are often ignored and misunderstood and therefore people are afraid of disclosing their gender identity and sexual orientation, making themselves vulnerable to inequalities and discrimination. Many petitions have already been proposed to and rejected by the government and this is often perpetuated by the the views of the catholic church that seem to rule the hand of the government as well as the public opinion. San Marino should prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity and take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family. San Marino should also undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.

4) Freedom of movement and to reside in any country

It is not possible to reside in San Marino unless through the acquisition of a temporary visa to visit or work within the Republic (10 months maximum), right which is currently given by decision of a specific political commission. Although this permit can be renewed, there is a requirement for the individual to leave the Republic for at least 2 months, therefore making it impossible to meet the criteria to apply for citizenship based on continuous stay within the territory of the Republic. This creates a barrier to those people from Italy or other countries that have found employment in San

Marino (more than 6,500 people) and have to find accommodation outside of the Republic in order to be able to work there. Furthermore, Article No. 8 of the Law No. 111 of 7th October 1997 (Appendix F), states that cohabitants or unmarried couples cannot access the same permit based on their relationship to the temporary resident. Although this is a breach of the human rights to a family for all people in these circumstances, people who marry can get around this provision. However, this situation would still be unresolved and has particular discriminatory impact on same sex couples who cannot marry nor register their relationship or those who choose not to marry for whatever reason. There are further issues for those San Marino citizens who want to reside or work abroad since San Marino has not got enough agreements with other states to facilitate the movement of its citizens.

5) Right to found a family

Non-conventional family models such as unmarried partners, cohabitants and same-sex civil partners are not recognised. Therefore, these people do not have the same rights when it comes to inheritance or residency as explained above. The recent piece of Law No.101 of 22nd July 2009 (Appendix G), makes a provision for the international diplomatic passports (such as for Secretary of State, Ambassadors, Consuls, etc) to be also given only to the partners of those who are regularly married, therefore making this discriminatory and problematic for those not married, children born outside of marriage, or those who might need to meet the criteria to prove their relationship status in front of authorities abroad for those countries that have not got agreements with San Marino (most countries of the world including Europe). San Marino should ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures†to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration.

6) Right to search and receive information

It is not currently possible for citizens to understand the reasons behind decision-makers when it comes to many decisions, but in particular around how politicians spend public resources, therefore making it impossible to have a say or control public spending. If anyone wants to access information detailing the expenditure for an event or an initiative in order to check whether the spending is actually justified, the relevant departments in charge of these activities tend to respond that they “are not authorised to release to divulge that data”. Furthermore it is not possible for a citizen, without access to the relevant information, to find out the outcome of tribunal and court sentences as the authorities often do not even release the case number. A particularly interesting example of the lack of transparency in decision making is around the “Istanze d’Arengo” (a twice-a-year petition-like process where any citizen can present a formal request to the government which has to be heard and responded to), which although is a great opportunity for democracy to really have an opportunity to flourish it has become more of a tradition since the government often rejects most of the proposals and does not communication and reasons behind their decision nor information about decisions made.

7) Equality of rights in accessing public office

There is no transparency in the allocation of points to individuals who enrol on the public appointments or civil servants candidature lists, which in fact could even allow bad practice and favouritisms. In 2008, an “Istanza d’Arengo” (formal request – Appendix H) was put to the Government where it was requested for the Government to publish these lists online, including the evaluation criteria and relevant scores against each criterion for each person on the list. The request was turned down by bringing in arguments around the right to privacy; however there appears to still be issues of transparency in the running of the public administration. There are further issues around transparency for the recruitment

and selection of personnel in the public administration. Firstly, the “private” contract, which was born with the intention to assist the access to public appointments for those citizens with difficulties (such as disability or other forms of disadvantage), has become the favourite route to be able to recruit personnel into the public administration bypassing the priority of the employment lists mentioned above. Furthermore, law No. 41 of 22nd December 1972 (Appendix I) required that after 6 months of absence from a public appointment, the vacancy needed to be advertised publicly. However, this law has been ignored by decades and vacancies are filled by internal promotion and are usually allocated to people based on length of service rather than ability, skill, qualification, and experience to do the job. Equally, this process does not consider the needs of people from disadvantaged backgrounds and does not give an equal opportunity to them for career progression and personal development. The parliament is currently undertaking a review of the public administration and has taken into consideration the re-introduction of the open application process (which is the only way to select and recruit personnel that considers marital status, qualifications, length of service, etc). However, this proposed “Legislative Proposal on Recruitment and other Selection Processes”, in the last paragraph of Article 3 gives the possibility for the public administration to employ temporary consultants, therefore increasing the disparities amongst remuneration levels and jeopardising the rights of employees as detailed later on in this document. Furthermore, this proposal also foresees the possibility to establish criteria for applying for a replacement position for each vacant post which differ from those provided by existing law, therefore diminishing objectivity in the same way as seen above and possibly leaving this process open to abuses such as changing the criteria to suit a certain favourite candidate. In order to resolve this matter, it would be sufficient for the public administration to enforce the existing Law No. 41 of 1972 that prescribes a public promotion of the vacancies within 6 months of absence from a position and a selection process that provides protection from any abuse of the system.

8) Transparent election process that reflects the citizens’ vote

In 2006, during the political elections, some citizens of San Marino documented on camera (<http://www.youtube.com/watch?v=SNDoTw3gmXY>) some other San Marino citizens residing abroad being accommodated by different political parties in hotels along the Adriatic coast and driven but convoys of busses on rental directly to the electoral booths in San Marino. One of these citizens residing abroad even disclosed the name of the politicians responsible for the organisation of their all-inclusive “trip” back to the Republic. Two different complaints were filed, one of which was even filed by a renown lawyer who now is also a member of parliament, however neither of which were investigated to the extent that not even the witnesses were called to give a statement. The foreign vote, that in San Marino counts for 40% of the total votes has even pushed the government to introduce a law that only allows citizens living abroad to vote for a political party rather than a specific candidate (Law No. 1 of 2008, art. 12 – Appendix K). There should be a more transparent and accurate process that also involves international and foreign institutions to safeguard the sovereignty of the vote abroad.

9) Right to Social Security and protection from medical abuses

Social services tailored to the needs of the citizens are appalling,

especially when it comes to the needs of people from disadvantaged groups. This is majorly due to the lack of understanding of many realities around equality of people and poor researched into how to address their needs. Some alarming figures show that the prescription of anti-depressant drugs to alleviate the symptoms of emotional distress and mental illnesses such as stress and depression are on the increase. In 2007, ECOSOC (Economic and Social Council) has requested clarifications in regards to these figures (Appendix L), which highlights the lack of care for social welfare, health and well-being of ill, disabled, and disadvantaged citizens. Furthermore there are further concerns in regards to

the recruitment and selection of qualified and experienced members of staff within the “Hospital of the State”. San Marino should also ensure that any medical or psychological treatment or counselling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed.

10) Protection from unemployment

The only assistance given to those who become unemployed is linked to employment rather than citizen. This means that citizens who become unemployed can be entitled to 6-9 months on full pay and a further 12 months on a reduced rate; however there is no further support or protection after 21 months. As highlighted by the attached ECOSOC’s report, there is a high number of migrant workers (“sitters” for the elderly) who often originate from Eastern European countries and who are not covered by employment rights around unemployment also because to be registered with the employment register the person has to be a “resident” regardless of whether they have a permit to stay and work in the Republic whilst the older person is in need of their service.

11) Equal pay

As already highlighted by the attached ECOSOC report, the introduction of temporary or fixed-term contracts is “worrying” as it increases disparity amongst the reward for similar jobs. When jobs are allocated to partners or subcontractors, there aren’t clear remunerative schemes or calculations. In the public administration, art.3 of Law No. 151 of 1991 (Appendix N) prescribes a reduction of 20% during the first year and 15% during the second year of employment from the salary attached to a newly recruited post. Furthermore, the public administration has also developed a bonus system attached to certain duties that has created even further differences between the retribution of jobs at a similar level. The retribution system could disadvantage people with disabilities and from other disadvantaged backgrounds who might not be able to access the same opportunities for career development and/or take on further duties to increase their bonuses for example.

12) The right to rest and leisure

Art. 18 of Law no. 131 of 2005 (Appendix O), stipulates that fixed-term contracts of employment connected to a particular work project do not have any rights to paid leave. Further to this, the total amount of leave to which a public administration employee is entitled to (equal to 26 days a year) is reduced to 12 days per year during the first year of employment, 15 during the second, and 20 during the third. This provision breaches the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Further to this, it is already common practice for employers to force employees to take their leave when convenient to the employers and not leaving any option to the employee to choose. This can be particularly inconvenient to those people who might have caring responsibilities, those with families, and those from other disadvantaged backgrounds who might need to take leave as dictated by their needs or responsibilities rather than by their own pleasure.

13) The right to social security and to other social protection measures

As highlighted above, fixed-term contracts do not give any rights to pension contributions, leave, social security, maternity or paternity rights, unemployment rights, etc. Further attacks to the dignity and respect of people with illnesses and disabilities on behalf of the financial authorities are subjecting people on long or short term sick leave from work to two daily home checks and a ban from leaving the territory of the Republic. When taking in exam chronic and long term illnesses, this makes the person obliged to stay at home and restricts his/her freedom of movement and is a serious breach of dignity and respect.

14) Social protection of children and parenthood

There are no guarantees in regards to the qualifications that a doctor might have to treat a child as the recruitment and selection process within the health system in San Marino is not clear or transparent. There have been many reports of lack of care within the paediatric departments that have jeopardised the health and wellbeing of many children. Further to this, there are limited rights for mothers to enjoy maternity leave as this is equal to only 5 months of allowance when compared to 20 months in the neighbouring Italy (from first month of pregnancy to first birthday of the child). In order for a mother to have more time with the child, the mother has to take a period of leave at a reduced salary (equal to only 30% of the normal salary).

15) Right to Education

Whereas San Marino has undertaken some activities in regards to raising awareness around issues concerning racism and older age, there continues to be a lot of reluctance to deal with and resolve issues of homophobic and transphobic bullying in education as well as around educating young people and adults around wider equality, diversity and human rights issues. As also reported in the attached report from ECOSOC, San Marino clearly lacks education and training programmes that could promote integration of gay, lesbian, bisexual, and transgender people into the San Marino society. This is reinforced by the government rejection of petitions in favour of the development of activities in this area. San Marino should ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination and ensure that education is directed to the development of respect for human rights, and of respect for each child's parents and family members, cultural identity, language and values, in a spirit of understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities.

16) Right to the freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion (regardless of sexual orientation or gender identity) as well as the right to non-religious belief. These rights may not be invoked by the State to justify laws, policies or practices which deny equal protection of the law, or discriminate, on the basis of sexual orientation or gender identity or any other non-religious status. San Marino should ensure the right of persons to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or the imposition of beliefs and ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights.

17) Responsibility to guarantee the rights of third parties

There are still issues around illegal working in San Marino which is very often not investigated or controlled by the government, even in the case of the Minister for Employment employing someone illegally for 10 days without penalties nor a thorough investigation. The attached "Istanza d'Arengo" (Appendix P) in which the citizens of San Marino were asking for better controls in this area was rejected in 2007. This request was of particular concern to the citizens as very often the illegal workers (or employees without a contract) do not have employment rights or the benefits and protection attached to a contract, therefore jeopardising their rights.

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