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# San Marino

## ***Criminal Code (1974), Article 260 - Religious insult***

Whoever desecrates the symbols or the objects of cult or worship of a religion which is not contrary to morals or publicly mocks the acts of cult is liable to first degree imprisonment.

The same penalty is applicable to attacks on the honour or prestige of a priest in or due to the exercise of his functions.

Whoever desecrated the sacred relics of San Marino is liable to second term imprisonment.

## ***Criminal Code, Article 261 - Violation of freedom of religion***

Whoever by violence or threat prevents anyone from practising or promoting their religious beliefs or from taking part in private or public cult is liable to second degree imprisonment.

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# Case Law

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# San Marino

State Secretary for Justice: <http://www.giustizia.sm/on-line/Home.html>

REPUBBLICA DI SAN MARINO  
SEGRETERIA DI STATO PER LA GIUSTIZIA

SEGRETERIA DI STATO PER LA GIUSTIZIA - L'INFORMAZIONE, LA RICERCA ED I RAPPORTI CON LE GIUNTE DI CASTELLO

Segreteria San Marino

**ULTIMA**  
Sviluppo attraverso l'innovazione e la ricerca  
CONFERENZA "SVILUPPO ATTRAVERSO INNOVAZIONE E RICERCA"  
Venerdì 12 febbraio 2010 ore 10.00

**NEWS**  
LEGE QUALIFICATA 8 MARZO 2009 N.1  
PROVVEDIMENTI STRAORDINARI E URGENTI PER LA  
NOMINA DI MAGISTRATI

**NEWS**  
A San Marino, c'è una libertà di stampa?  
domenica 3 maggio 2009 ore 10.00  
Sala Montelupo del Castello di Domagnano

**NEWS**  
Inaugurazione anno giudiziario  
Inaugurazione anno giudiziario per la Repubblica di San  
Marino 2009  
27 marzo 2009 ore 11.00  
Antico Monastero di Santa Chiara

CONSIGLIO GRANDE  
E GENERALE

DELIBERE DEL  
CONGRESSO DI STATO

GIUNTE DI CASTELLO

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Segreteria di Stato per la Giustizia, l'Informazione, la Ricerca ed i Rapporti con le Giunte di Castello  
Via Andrea di Superchio, 16 - 47893 CAILUNGO - BORGO MAGGIORE  
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# Public Policies

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# Third report on San Marino

Adopted on 14 December 2007

Strasbourg, 29 April 2008



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

provisions that regulate the acquisition of citizenship of San Marino through naturalisation appear to ECRI to be excessively restrictive. As a minimum, ECRI considers that those persons who have already waited for exceptionally long periods of time to become eligible for naturalisation should have the possibility to have their applications examined as soon as the relevant criteria are met.

#### **Recommendations:**

17. ECRI recommends that the authorities of San Marino review the provisions that regulate the acquisition of citizenship of San Marino through naturalisation. It recommends that they reduce the length of residence necessary for residents to apply for naturalisation and allow for more flexibility in the holding of double nationality upon acquisition of citizenship of San Marino. ECRI strongly recommends that the authorities of San Marino ensure that applications for naturalisation can be lodged at any point in time and that decisions on naturalisation are subject to an appeal.
18. As regards acquisition of citizenship by descent, in its second report ECRI considered that, by establishing that only male (and not female) citizens of San Marino could transmit citizenship of San Marino to their children at birth, the law on citizenship discriminated against children on the grounds of their parents' nationality. It therefore recommended that such discrimination be removed. ECRI is pleased to note that the authorities of San Marino have followed this recommendation through the adoption of amendments to the law on citizenship in June 2004<sup>10</sup>. Thus, all children with one parent holding San Marino citizenship (irrespective of whether the parent in question is the father or the mother) now acquire San Marino citizenship at birth. These children are required to confirm their willingness to retain San Marino citizenship within one year of their eighteenth birthday.

#### **Criminal law provisions**

19. In its second report, ECRI noted that there were no criminal law provisions in force in San Marino against racist expression (for instance, prohibiting incitement to racial violence, hatred or discrimination and racist insults or threats) or against racist organisations. Similarly, there were no provisions expressly enabling the racist motive of an offender to be taken into account as an aggravating circumstance in sentencing. It therefore recommended that San Marino introduce these provisions. ECRI is very pleased to note that, in order to follow this recommendation, in September 2007 the *Congresso di Stato* (Government) decided to prepare draft legislation which will prohibit both racist expression and the establishment of racist organisations, and provide that these offences can be prosecuted *ex officio*. This draft, which was also announced at a press conference organised by the Ministry of Justice and subsequently forwarded to the competent offices for submission to one of the next sessions of Parliament, also contains provisions that expressly establish the racist motivation of an offence as an aggravating circumstance in sentencing.
20. At the time of writing, however, the situation is still as described in ECRI's second report. As concerns racist expression, certain types of racist conduct can currently be addressed through the application of provisions establishing certain common offences, such as Article 184 of the Criminal Code, which prohibits insults. ECRI notes that there have been at least two cases in which this provision has been used to address racist insults since its second report. In both

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<sup>10</sup> Law No. 84/2004 of 17 June 2004.

cases, the insults were directed to Italian citizens on the basis of their nationality. In the first case, the insult was directed towards a civil servant who was an Italian citizen, and a conviction was recorded. In the second case, no sentence was imposed, as the victim withdrew the complaint before the final hearing.

21. As regards the consideration of the racist motivation of an offence as an aggravating circumstance, Article 90 of the Criminal Code provides for specific aggravating or attenuating circumstances, whereas Article 88 sets out criteria for the assessment of the gravity of an offence. The authorities of San Marino have stated that some of these circumstances and criteria could be used to address racially-motivated offences. However, it appears that these provisions have not been applied since ECRI's second report.
22. As concerns racist organisations, there are currently no specific provisions in force in San Marino against their establishment. In this connection, ECRI notes that in September 2006, some material with xenophobic images and expressions produced by an extreme right-wing group active in Italy was found in a public place in one of San Marino's towns. However, the authorities of San Marino have reported that this was an isolated incident, for which sympathisers of the group mentioned above who came from neighbouring regions in Italy were probably responsible.

#### **Recommendations:**

23. ECRI recommends that the authorities of San Marino introduce criminal law provisions against racist expression (including incitement to racial violence, hatred or discrimination, racist insults or threats and dissemination of racist material) and against racist organisations. It also recommends that they introduce provisions expressly enabling the racist motivation of the offender to be taken into account as an aggravating circumstance in sentencing. To this end, ECRI strongly encourages the authorities of San Marino to pursue their work on drafting legislation in these fields and carry it through to enactment, and in so doing to draw inspiration from ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which provides extensive guidance in this area<sup>11</sup>.

#### **Civil and administrative law provisions**

24. In its second report, ECRI recommended that the authorities of San Marino introduce comprehensive civil and administrative legislation prohibiting racial discrimination in all areas of life, including employment, education, housing, health, access to goods and services intended for the public and public places, and the exercise of economic activities.
25. No such legislation has been adopted since ECRI's second report. At present, the situation is therefore the same as described in ECRI's second report. Thus, the only antidiscrimination clauses are to be found in the field of employment<sup>12</sup>, and cover discrimination on grounds of religious beliefs, political or other opinion and affiliation with a trade union. There are also provisions which reiterate in a very general manner the principle of equal treatment without discrimination on different grounds (including in some cases race and nationality) in certain areas,

<sup>11</sup> See ECRI General Policy Recommendation N°7, paragraphs 18 a), b), c), d), e), f) g), 20, 21, 22 and 23 (and paragraphs 38 - 43 and 46 - 49 of the Explanatory Memorandum).

<sup>12</sup> Article 14 of the Law on Employment, Article 7 of the Law concerning disciplinary sanctions and dismissals and Article 89 of the Organic Law on civil servants.

### **Recommendations:**

85. ECRI strongly recommends that the authorities of San Marino improve their systems for monitoring manifestations of racism and uncovering possible patterns of racial discrimination in San Marino.
86. ECRI recommends that the authorities of San Marino consider collecting relevant information broken down according to categories such as ethnic or national origin, religion, nationality and language. This should be done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. Collection of such information should be elaborated in close co-operation with all the relevant actors, including civil society organisations and should take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.
87. ECRI recommends that the authorities of San Marino generate data concerning manifestations of racism and racial discrimination based on perceptions of potential victims of these phenomena. To this end, it draws the attention of the authorities of San Marino to its General Policy Recommendation No. 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims, which provides detailed guidance on how to carry out these surveys.
88. ECRI encourages the authorities of San Marino in their efforts to monitor racist incidents and racist offences reported to law enforcement institutions. It draws the attention of the authorities to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which provides extensive guidance in this area<sup>38</sup>.

## **II. SPECIFIC ISSUES**

### **The need to improve understanding and promote awareness of racism and racial discrimination in the country**

89. In its second report, ECRI recommended that the authorities of San Marino bring issues relating to racism, racial discrimination and intolerance to the public attention and encourage debate. As mentioned above<sup>39</sup>, the authorities of San Marino have since then taken a number of initiatives in this field. However, ECRI considers that there is a need to improve the understanding of the very notions of racism and racial discrimination in San Marino and promote awareness among the general population of the way in which these phenomena operate in society. ECRI considers that the authorities of San Marino have a central role to play in this process.
90. ECRI notes that by and large, racism and racial discrimination in San Marino are still understood as encompassing solely the most blatant and overt forms of these phenomena, such as those connected with the activities of extreme-right groups resorting to violence, or discriminatory legislation targeting members of minority groups. Since these types of manifestations have not been prevalent in the

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<sup>38</sup> See ECRI General Policy Recommendation N°11, paragraphs 11, 13 and 14 (and paragraphs 65-67 and 72-75 of the Explanatory Memorandum).

<sup>39</sup> Education and awareness raising.



country, there is a widely accepted view that racism and racial discrimination are not problems with which San Marino is faced. However, ECRI considers that this approach results in other more common manifestations of racism and racial discrimination being overlooked or deprived of the level of priority that the authorities of San Marino rightly attribute to the fight against these phenomena.

91. One illustration of this is, in ECRI's opinion, the restrictive interpretation of the notion of discrimination that is currently given by both the authorities and civil society in San Marino. Generally, discrimination is understood as legally-sanctioned differential treatment. The fact that in practice, persons may experience unjustified differential treatment at the hands of individuals in everyday life situations is much less recognised as discrimination. Furthermore, there is a need to improve the understanding of indirect discrimination, as a phenomenon occurring, for instance, when criteria and practices that are apparently neutral and do not discriminate against members of certain groups directly still put them at particular disadvantage in an unjustified manner.
92. Racism and racial discrimination are also predominantly viewed as phenomena targeting people on the basis of their "race" or ethnic origin and, to a certain extent, religion. However, ECRI considers that in Europe today, including San Marino, manifestations of racism and racial discrimination encompass conduct that targets people on other grounds too, such as nationality, national origin or language. In fact, racism and racial discrimination often happen at the nexus between different grounds, including all those mentioned above. Thus for instance, patterns of racial discrimination may exist even in respect of persons who are as a rule not visibly different from the majority, such as citizens of San Marino from Argentina or women from Central and Eastern Europe. Similarly, the racist dimension of insults directed against people on the basis of their Italian nationality<sup>40</sup>, which are generally considered as manifestations of regional animosity between neighbours, should not be overlooked.
93. Partly because racism and racial discrimination often take forms which are subtle and not immediately obvious, ECRI attaches great importance to actively monitoring these phenomena in different ways<sup>41</sup>. In ECRI's view monitoring can help to uncover patterns of disadvantage and discrimination affecting certain persons or groups of persons, measure their extent and, ultimately, serve as a basis to start a debate on the necessary measures to address any problems found. At present, ECRI has registered a rather low level of awareness of the need to actively monitor racism and racial discrimination among the authorities of San Marino, which is mainly linked to the perception that these phenomena are simply not present in the country. However, ECRI considers that there are areas which would benefit from monitoring, including for instance the labour market and the position of citizens from Argentina within it.
94. In ECRI's opinion, shortcomings in the understanding of racism and racial discrimination and in the awareness of the way in which these phenomena operate in society have negatively affected the readiness of the authorities of San Marino to consider legislation specifically aimed at combating these phenomena. As mentioned above<sup>42</sup>, there are promising developments as concerns the legal framework to counter racist expression, racially motivated offences and racist organisations. However, in the field of combating racial discrimination, the

<sup>40</sup> See above, Criminal law provisions.

<sup>41</sup> See above, Monitoring the situation.

<sup>42</sup> Criminal law provisions.

adoption of comprehensive legal provisions accompanied by effective means of redress does not yet appear to have gained the necessary level of priority<sup>43</sup>. In this connection, ECRI underlines that in addition to providing better protection to any victims of discrimination, these provisions would also constitute a powerful tool to raise awareness of racial discrimination among the general public.

95. In its second report, ECRI recommended that the authorities of San Marino draw up a National Action Plan in the framework of the follow-up to the Durban World Conference against Racism. No such plan has been prepared yet. ECRI considers that the elaboration of a National Action Plan against racism would constitute an ideal opportunity to improve the understanding of racism and racial discrimination in San Marino and promote awareness of the way in which these phenomena operate in society.

***Recommendations:***

96. ECRI strongly recommends that the authorities of San Marino promote a better understanding of racism and racial discrimination and raise awareness of the way in which these phenomena operate in society, among the general population. It strongly recommends that the authorities of San Marino draw up a National Action Plan against Racism, in which these issues would feature prominently. ECRI recommends that the authorities of San Marino closely involve all relevant stakeholders, notably persons and groups of persons that may be vulnerable to discrimination on grounds of race, colour, language, religion, nationality and national or ethnic origin in the elaboration of this plan.

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<sup>43</sup> See above, Civil and administrative law provisions.