Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2497 (2023)[1]

The honouring of membership obligations to the Council of Europe by San Marino

Parliamentary Assembly

1. San Marino, a micro-State, the world's oldest extant sovereign State, as well as the world's oldest constitutional republic, joined the Council of Europe in 1988. The Assembly pays tribute to its unique and well-developed system of democratic and rule-of-law institutions that are well adapted to its historical democratic heritage as well as to its particularities as a micro-State. While these structures have been constantly adapted to the needs of a changing society, its main tenets, collegiate governing structures which are shared among the citizens for limited terms, have remained in place. The Parliamentary Assembly notes that this has resulted in a very close proximity between the citizens and their political and governing structures, and an equally close distance between the different branches of power, which are often intertwined.

2. The Assembly recognises that these unique governing structures, combined with the particularities of San Marino as a micro-State, have generated concerns about the effectiveness of the system of checks and balances in the country and the potential vulnerability of its democratic institutions and office holders to corruption and conflicts of interest. The Assembly therefore welcomes the clearly present political will, and the numerous reforms implemented, to strengthen the functioning and resilience of its democratic and rule-of-law institutions. While these reforms have given these institutions a solid basis for their democratic functioning, the Assembly considers that continuing vigilance and openness to reform should remain a priority for the authorities.

3. In order to retain its independence as a sovereign State in an increasingly interconnected and interdependent world, San Marino has become an active member of the international community and has harmonised its institutions and legal framework with international norms and standards. The Assembly welcomes the continuous efforts by San Marino to ensure that its democratic institutions and legal framework adhere to international norms and standards, including its obligations as a member State of the Council of Europe.

4. San Marino is a parliamentary republic with a well-developed and pluralist multiparty political environment. The Great and General Council (Consiglio Grande e Generale), the San Marinese Parliament, in which the sovereignty of its people is vested, is at the centre of the country's democratic institutions and system of checks and balances. The Great and General Council is formally a part-time parliament whose members do not receive a salary for their parliamentary work and who are therefore dependent on secondary employment. However, the workload of a member of the Great and General Council is far from being part-time. The Assembly is concerned that there are no specific legal provisions for employers in the private sector to provide members of the Great and General Council with the necessary time off to pursue their parliamentary work, with maintenance of their salary and compensation to those employers for lost working time. In order to ensure the possibility for members working in the public and private sectors to participate on an equal footing in the work of the Great and General Council, the Assembly recommends that such legal provisions be adopted.

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1. *Assembly debate* on 28 April 2023 (14th sitting) (see Doc. 15737, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Andrej Hunko and Mr Joseph O'Reilly). *Text adopted by the Assembly* on 28 April 2023 (14th sitting).

5. The Assembly is concerned about the imbalance in the equality of arms between the legislative and executive powers in San Marino, which has resulted in an executive that is too powerful and that in practice rules by decree, instead of waiting for the Great and General Council to guide policies and take legislative action. While the recommended improvement in the working conditions for members of the Great and General Council would go some way to alleviating this problem, addressing this issue on a more systemic level should be considered in the context of future institutional reforms.

6. The Assembly recognises and welcomes the democratic benefits of the close proximity and strong human links between the executive, elected representatives and the citizens of San Marino. At the same time, it is concerned about the impact of this proximity on the functioning of the system of checks and balances and the vulnerability of the democratic institutions and their office holders to corruption and potential conflicts of interest. The Assembly therefore welcomes the reforms that have been implemented with a view to addressing these vulnerabilities in respect of the legislative and judicial fields, in line with the recommendations of the Group of States against Corruption (GRECO). In this context, the Assembly:

6.1. welcomes the adoption by the Great and General Council of a code of ethics for its members and urges the Great and General Council to ensure that the code is regularly updated and adapted to new developments;

6.2. recommends that the authorities adopt the necessary legislation that would allow for San Marinese citizens to notify formally the authorities of discrepancies in the declarations of interest of members of the Great and General Council that are posted on the latter's website;

6.3. recommends the introduction of sanctions by the Great and General Council for more serious violations of the code of ethics or deliberate omissions and discrepancies in the declarations of interest by its members;

6.4. recommends that GRECO consider initiating, as soon as possible, its evaluation in respect of San Marino in the framework of its fifth evaluation round on preventing corruption and promoting integrity in central governments (top executive functions) and law-enforcement agencies, and calls upon the San Marinese authorities to address fully and promptly any possible recommendations and concerns that may stem from this evaluation.

7. The Assembly welcomes the recent implementation of far-reaching reforms of the judiciary with a view to strengthening its independence and resilience against external interference. It welcomes the conclusions by GRECO in its compliance report that these reforms address practically all of the recommendations made in its evaluation report in respect of San Marino in the framework of its fourth evaluation round on prevention of corruption in respect of members of parliament, judges and prosecutors. The Assembly calls upon the authorities to monitor consistently the independence and efficiency of the judiciary and to adopt further reforms, if necessary, to fully ensure this. In order to further improve judicial efficiency and impartiality, the Assembly suggests that the authorities explore the possibility of establishing the office of prosecutor general.

8. Historically, San Marino has a well-developed institutional and legal system for the protection of fundamental human rights. However, this should not be a reason for complacency, especially as in a number of cases the legal framework for the protection of human rights lags behind the current developments and acceptance of rights in San Marinese society. In this context, the Assembly:

8.1. calls upon the Great and General Council to adopt the relevant legislation to allow all religious denominations to register, with equal rights, as religious organisations in San Marino;

8.2. calls upon the Great and General Council to lower to five years the residency requirement for foreign residents to participate in local elections, in line with European standards;

8.3. recommends that the authorities establish an independent specialised body to combat racism and discrimination, in line with the 1993 Paris Principles, and provide this body with sufficient resources to execute adequately its tasks;

8.4. recommends that the authorities ensure the adequate collection of statistical data with regard to important social matters such as minorities, discrimination and intolerance, as well as women's rights, in order to guide the drafting of policies in these areas;

8.5. given the dependence of the authorities on civil society organisations and citizens' initiatives to implement human rights and social policies, invites the authorities to ensure that these organisations have adequate access to funding and resources in order to carry out their tasks.

9. The Assembly welcomes the diverse and pluralistic media environment in San Marino. At the same time, it is concerned that strict privacy laws and the continuing criminalisation of defamation hinder access to public information and could lead to self-censorship by journalists. The Assembly therefore calls upon the authorities to:

9.1. decriminalise defamation in line with European standards;

9.2. amend the applicable legislation to ensure the genuine independence of the media authority;

9.3. ensure, in law and in practice, unhindered access to public information by journalists and San Marinese citizens.

10. The Assembly lauds San Marino for its wide and impressive range of institutional consultation mechanisms and instruments of direct democracy. At the same time, it expresses concern about the numerous reports that indicate that these consultation mechanisms are not always used as foreseen by law, or that their results are ignored or not implemented. Given the importance of these instruments for the functioning of democratic institutions in San Marino, the Assembly urges the authorities to continue to ensure, and where necessary strengthen, the effectiveness of the various consultation mechanisms and instruments of direct democracy.