



NGO: EUROPEAN CENTRE FOR LAW AND JUSTICE (ECLJ)

**UNIVERSAL PERIODIC REVIEW
48TH SESSION**

**STATUS OF HUMAN RIGHTS IN THE REPUBLIC OF SAN MARINO
FOR THE 48TH SESSION OF THE
UNIVERSAL PERIODIC REVIEW**

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. This report discusses the status of human rights in the Republic of San Marino (San Marino) for the 48th session of the Universal Periodic Review (UPR).

Background

2. San Marino is a small enclave in Italy with a population of approximately 35,200.¹ The country is predominantly Christian, with approximately 91% of the population identifying as Christian, 7.6% as nonreligious, and .9% as Baha'i.²

3. San Marino's previous review was held on November 6, 2019.³ As a result of the review, San Marino received 109 recommendations, 72 of which it supported.⁴ In particular, it was recommended by France, but only noted by San Marino, that the government:

Continue to work towards respecting sexual and reproductive rights by ensuring the decriminalization of abortion in all situations, and in the meantime authorizing a minimum of abortion services to preserve the physical and mental health of women or in cases of fatal fetal abnormality, rape or incest.⁵

Legal Framework

4. Under Article 5 of the Constitution of San Marino, “[h]uman rights shall be inviolable.”⁶

¹ *San Marino*, BRITANNICA, <https://www.britannica.com/place/San-Marino-republic-Europe> (last visited July 9, 2024).

² *San Marino: Major World Religions (1900-2050) (World Religion Database, 2020)*, THE ASS'N OF RELIGION DATA ARCHIVES, <https://www.thearda.com/world-religion/national-profiles?u=194c> (last visited July 9, 2024).

³ *Universal Periodic Review – San Marino*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/sm-index> (last visited July 9, 2024).

⁴ *San Marino Infographic*, OHCHR, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session34/SM/SanMarino_Infographic.pdf (last visited July 9, 2024).

⁵ OHCHR, UPR of San Marino (3rd Cycle – 34th Session): Thematic List of Recommendations, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session34/SM/UPR34_San_Marino_Thematic_list_of_Recommendations.docx (last visited July 9, 2024).

⁶ DECLARATION OF THE CITIZENS' RIGHTS AND FUNDAMENTAL PRINCIPLES OF SAN MARINO CONSTITUTIONAL ORDER [CONSTITUTION] July 8, 2002, art. 5 (San Marino), <https://policehumanrightsresources.org/content/uploads/2016/08/Declaration-on-Citizens-Rights-and-Fundamental-Freedoms-San-Marino-2002.pdf?x49094>.

5. However, in September 2022, San Marino’s parliament voted to legalize abortion following a September 2021 referendum.⁷ Under San Marino’s new law on abortion, abortion is now legal on demand up until the twelfth week of pregnancy.⁸ Additionally, under Article 6 section 1 of the law:

1. Voluntary termination of pregnancy after the twelfth week shall be requested and performed as long as there is no possibility of autonomous life for the foetus, in the light of the best neonatal resuscitation science. The SSI shall periodically define this time-limit, according to the evolution of scientific progress, taking into account the indications provided by San Marino Bioethics Committee. To this end, it shall develop appropriate health protocols pursuant to the provisions of Article 19. Voluntary termination of pregnancy shall be requested and performed, within seven days of the woman’s request being processed, in the following cases:

a) If there is danger to the woman’s life;

b) If there are established abnormalities and malformations of the foetus, diagnosed by specialists from the SSI or third level facilities, with which the SSI has concluded an agreement, in the event that such abnormalities and malformations entail a serious risk for the woman’s physical or psychological health. The risk to physical health shall be established by the attending physician; the risk to psychological or psychic health shall be established by a psychiatrist from the SSI or with whom the SSI has concluded an agreement;

c) If the pregnancy results from rape or incest and the violence has been reported to the police forces, or from the time when the police forces report the offence to the competent authority for entry in the appropriate register.⁹

6. This law also allows for conscientious objectors to be exempt from “carrying out the procedures and activities specifically aimed at terminating a pregnancy.”¹⁰

7. As a party to the Convention on the Rights of the Child (CRC),¹¹ San Marino is required to protect all human life and recognize that “every child has the inherent right to life” and, as such, is also required to “ensure to the maximum extent possible the survival and development of the child.”¹²

8. Additionally, San Marino is a party to the International Covenant on Civil and Political Rights (ICCPR).¹³ Under Article 6 of the ICCPR, “[e]very human being has the inherent right

⁷ *San Marino Legalises Abortion, One Year After Landmark Referendum*, EURO NEWS (Sept. 1, 2022), <https://www.euronews.com/2022/09/01/san-marino-legalises-abortion-one-year-after-landmark-referendum>.

⁸ *Regulating Voluntary Termination of Pregnancy*, 2022 art. 4 (LAW no. 127 of 7 September 2022) (San Marino), <https://www.consigliograndeegenerale.sm/on-line/documento17134571.html>.

⁹ *Id.* art. 6.

¹⁰ *Id.* art. 15.

¹¹ *Status for San Marino*, OHCHR,

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=150&Lang=EN (last visited July 9, 2024).

¹² *Convention on the Rights of the Child* art. 6, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3,

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

¹³ *Status for San Marino*, *supra* note 11.

to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹⁴ Further, the Convention on the Rights of Persons with Disabilities (CRPD), to which San Marino is also a party,¹⁵ requires that “States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”¹⁶

9. Further, San Marino has a responsibility to uphold pro-life principles enshrined in other international agreements such as the UN Charter, the Universal Declaration of Human Rights (UDHR), and the 1994 Cairo Conference on Population and Development.

Abortion

10. For 150 years, San Marino has upheld protections for preborn babies through banning the harmful practice of abortion. San Marino was justified in enforcing these protections, as abortion involves the killing of an innocent preborn baby, whose right to life should not be diminished. However, since San Marino’s last review, the government has begun reversing its long-held protections for both the preborn baby and the mother.

11. In September 2022, the parliament in San Marino voted to legalize abortion on demand up until the twelfth week of pregnancy.¹⁷ Beyond the twelfth week, abortion is permitted to protect the physical and psychological health of the mother and in cases of rape or incest.¹⁸ This law came just one year after 77% of voters voted to legalize abortion up until the 12th week of pregnancy in a referendum.¹⁹ This law will undoubtedly lead to the deaths of many preborn babies. All we have to do is look to Italy, which surrounds San Marino, to see the destruction that abortion can cause. In 2021 alone, more than 63,000 abortions were carried out in Italy.²⁰

12. Even though the law states that abortion beyond the twelfth week of pregnancy is only permitted in certain situations, the vague wording of this provision opens the door to on demand late-term abortion. This concern was noted by a former San Marino Secretary of State for Foreign Affairs, who shared that abortion “is unacceptable, even in case[s] of fetal anomalies or malformations. And the reference to the ‘psychological’ health of the woman makes the margin of arbitrariness to allow late-term abortion very wide and dangerous.”²¹

¹⁴ International Covenant on Civil and Political Rights art. 6, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [hereinafter ICCPR].

¹⁵ *Ratification Status for San Marino*, *supra* note 11.

¹⁶ Convention on the Rights of Persons with Disabilities art. 10, *adopted* Dec. 12, 2006, 2515 U.N.T.S. 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

¹⁷ Regulating Voluntary Termination of Pregnancy, 2022 art. 4 (LAW no. 127 of 7 September 2022) (San Marino), <https://www.consigliograndeegenerale.sm/on-line/documento17134571.html>.

¹⁸ *Id.*

¹⁹ *San Marino Voters Overwhelmingly Back Legal Abortion*, EURO NEWS (Sept. 26, 2021), <https://www.euronews.com/2021/09/26/san-marino-voters-overwhelmingly-back-legal-abortion>.

²⁰ Wm. Robert Johnston, *Historical Abortion Statistics, Italy*, JOHNSTON’S ARCHIVE, <https://www.johnstonsarchive.net/policy/abortion/ab-italy.html> (Feb. 24, 2024).

²¹ Federico Cenci, *Abortion: Assault on the Pro-Life Stronghold of San Marino*, INT’L FAM. NEWS (Sept. 16, 2021), <https://ifamnews.com/en/abortion-assault-on-the-pro-life-stronghold-of-san-marino>.

13. We are concerned with the provision that allows for abortion beyond the twelfth week in cases of fetal abnormalities if it could impact the psychological health of the mother. We are seeing an increasing trend in Europe, and around the world, where prenatal screenings are being used to detect potential abnormalities. These screenings, which are known to be largely inaccurate,²² are now being used to justify aborting preborn babies.²³ Even in the United States where healthcare is considered to be one of the best in the world, the United States Food and Drug Administration (FDA) has warned people against using prenatal tests to make decisions regarding their pregnancy and that health care providers “should not use the results from these tests alone to diagnose chromosomal (genetic) abnormalities or disorders.”²⁴ If a mother learns that her preborn baby is likely to be born with an abnormality or malformation, it could put the woman’s psychological health at risk, because she is worried about the stress, time, and resources needed to care for such a baby. However, no preborn baby is any less deserving of life simply because they have an abnormality of malformation. Additionally, options exist such as adoption, which allows for both the preborn baby to be born and protects the mental health of the mother.

14. Abortion is also problematic because, in addition to taking the life of a preborn baby, the procedure itself can result in long-lasting and devastating effects on the mother. It has been documented that women can experience, among other things, pelvic infections, blood clots, heavy bleeding, and perforation of the uterus wall.²⁵ Abortion has also been shown to have a negative psychological impact on women.²⁶ Women who have had abortions have reported experiencing guilt, sadness, depression, and drug abuse.²⁷

15. San Marino’s legalization of abortion is contravention to numerous fundamental human rights documents. These documents to provide a right to abortion, rather they repeatedly affirm the most fundamental human right, the right to life. For example, the United Nations Charter states that “the peoples of the United Nations [are] determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person”²⁸ Additionally, the UDHR requires “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world,”²⁹ and provides that “[e]veryone has the right to life”³⁰ Article 6 of the ICCPR also states that “[e]very human being has the inherent right to life. This right shall be protected by law.”³¹ Further, since the 1994 Cairo Conference of Population and Development, U.N. Member States have had an affirmative commitment to “reduce the recourse to abortion”³² and

²² See *Pregnancy: Should I Have Screening Tests for Birth Defects*, UNIV. OF MICH., <https://www.uofmhealth.org/health-library/aa21828> (last visited July 10, 2024); *Genetic Non-Invasive Prenatal Screening Tests May Have False Results: FDA Safety Communication*, FDA (Apr. 19, 2022), <https://www.fda.gov/medical-devices/safety-communications/genetic-non-invasive-prenatal-screening-tests-may-have-false-results-fda-safety-communication>.

²³ *Pregnancy: Should I Have Screening Tests for Birth Defects*, *supra* note 22.

²⁴ *Genetic Non-Invasive Prenatal Screening Tests May Have False Results: FDA Safety Communication*, *supra* note 22.

²⁵ *Abortion Risks*, LA. DEP’T OF HEALTH, <https://ldh.la.gov/page/abortion-risks> (last visited July 10, 2024).

²⁶ *Id.*

²⁷ *Id.*

²⁸ U.N. Charter pmb1.

²⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, pmb1., (Dec. 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

³⁰ *Id.* art. 3.

³¹ ICCPR art. 6, *supra* note 14.

³² International Conference on Population and Development, *Report of the International Conference on Population and Development*, ¶ 8.25, U.N. Doc. A/CONF/F.171/13/Rev. 1,

to “take appropriate steps to help women avoid abortion, *which in no case should be promoted as a method of family planning.*”³³

16. Numerous U.N. Member States have enacted legislation to protect the lives of preborn babies, in line with the rights discussed above. In fact, France’s recommendation to San Marino to legalize and expand abortion is an extreme position when taking into account the abortion laws of U.N. Member States. Out of 193 U.N. Member States, an overwhelming majority of them have strict limits on abortion.³⁴ These U.N. Member States are correct in maintaining strict limitations on abortion. Limiting abortion protects the inherent dignity of human life and ensures that everyone has the right to life. All of these reasons show why San Marino must protect preborn babies and women from the devastation of abortion.

Recommendation

17. San Marino must uphold its obligation to protect all innocent humans from conception to death. All human life has inherent value that cannot be stripped away. San Marino must reform its laws to ban abortion on demand and must protect the life of the mother and the preborn baby, regardless of the so-called risk to the mother’s psychological health. These unjustified positions put innocent lives at total risk and stand in defiance of San Marino’s obligation to protect life.

https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/a_conf.171_13_rev.1.pdf

³³ *Id.* ¶ 7.24 (emphasis added).

³⁴ *The World’s Abortion Laws*, CTR. FOR REPROD. RTS. (June 9, 2023), https://reproductiverights.org/wp-content/uploads/2023/07/CRR_WALM_2023_FINAL-1.pdf.