



Office for Democratic Institutions and Human Rights

# REPUBLIC OF SAN MARINO

## EARLY PARLIAMENTARY ELECTIONS 20 November 2016

### OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

10-12 October 2016



Warsaw  
9 November 2016

## TABLE OF CONTENTS

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>III.FINDINGS.....</b>	<b>3</b>
A. BACKGROUND AND POLITICAL CONTEXT .....	3
B. LEGAL FRAMEWORK.....	3
C. ELECTORAL SYSTEM .....	4
D. ELECTION ADMINISTRATION.....	5
E. VOTER REGISTRATION AND IDENTIFICATION .....	5
F. CANDIDATE REGISTRATION .....	6
G. ELECTION CAMPAIGN .....	7
H. CAMPAIGN FINANCE .....	8
I. MEDIA.....	8
J. COMPLAINTS AND APPEALS .....	9
<b>IV. CONCLUSION AND RECOMMENDATION .....</b>	<b>10</b>
<b>ANNEX: LIST OF MEETINGS.....</b>	<b>11</b>

**REPUBLIC OF SAN MARINO**  
**EARLY PARLIAMENTARY ELECTIONS**  
**20 November 2016**

**OSCE/ODIHR Needs Assessment Mission Report**

**I. INTRODUCTION**

Following an invitation from the Permanent Mission of Republic of San Marino to the OSCE to observe the 20 November 2016 early parliamentary elections, and in accordance with its mandate, the OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to San Marino from 10 to 12 October. The NAM included Dr. Richard Lappin, OSCE/ODIHR Deputy Head of Elections Department, and Mr. Radivoje Grujić, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the elections. Based on this assessment, the NAM recommends whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions and the election administration, as well as representatives of political parties, media, and civil society. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign and Political Affairs for its assistance in organizing the visit. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM and for sharing their views.

**II. EXECUTIVE SUMMARY**

On 20 November, citizens of San Marino will vote to elect the 60 members of the Great and General Council, the unicameral parliament, for a five-year term. Members of the parliament are elected under a two-round proportional system from a nationwide constituency, with a single preferential vote. With a view to ensuring a stable government, the winning list is assigned a minimum of 35 seats through a so-called ‘stability reward’.

The legal framework governing parliamentary elections consists primarily of the constitution and the Electoral Law. The Electoral Law was amended in 2016, reducing the number of preferential votes from three to one and re-introducing the right of voters from abroad to cast a preferential vote.

The three-tiered election administration is headed by the Election Commission. Voting takes place at 50 polling stations across the country, with ballots counted at 17 counting offices. Voters who permanently reside abroad must travel to San Marino to cast their vote in person. All interlocutors met with by the OSCE/ODIHR NAM expressed confidence in the professionalism and impartiality of the election administration and no concerns were raised regarding the technical preparations and conduct of elections.

For the upcoming elections, some 34,000 voters are registered to vote, including some 11,600 who permanently reside abroad. Voter registration is passive and voter lists are updated on a yearly basis. All OSCE/ODIHR interlocutors expressed confidence in the accuracy of voter lists.

The right to register a candidate list is granted to any group, supported by 90 eligible voters. No concerns were raised by OSCE/ODIHR NAM interlocutors regarding the inclusiveness of candidate registration. The legislation, however, does not allow for individual independent candidates, while

broadly defined candidate incompatibilities may unreasonably limit candidacy rights. For the upcoming elections, a total of 11 lists registered, including three coalitions and two single lists.

While women are well represented in the election administration, they are underrepresented in elected office. The impact of the gender quota on candidate lists can be limited due to the system of preferential voting.

The campaign period begins 20 days before the election. The state is in charge of an extensive programme to inform voters of the candidate lists and their platforms, providing a range of campaign opportunities both within San Marino and abroad. While no concerns were expressed about the ability to campaign freely, several OSCE/ODIHR NAM interlocutors voiced concerns about possible vote-buying, especially in respect of incentives offered to out-of-country voters.

Political parties have access to annual public subsidies, doubled in an election year, proportional to their parliamentary representation. There is no ceiling on private contributions to parties but a spending limit of some EUR 630,000 is in place. There is no requirement to disclose campaign income and expenditure prior to election day. Many OSCE/ODIHR NAM interlocutors voiced concerns about a lack of campaign finance transparency and the absence of adequate oversight mechanisms.

The media environment is pluralistic and includes one public broadcaster, several newspapers, and some internet-based news sites. The public broadcaster is obliged to provide equal access and free airtime to all candidate lists. Many OSCE/ODIHR NAM interlocutors expressed concerns regarding the overall independence and effectiveness of media oversight.

Complaints and appeals are regulated by the Electoral Law. While there are no special terms or expedited deadlines for most election-related appeals, the Single Court informed the OSCE/ODIHR NAM that it would give priority to such appeals and resolve them within the shortest period of time.

Almost all OSCE/ODIHR NAM interlocutors expressed full confidence in the professionalism and impartiality of the election administration. No significant concerns were expressed with regard to voter and candidate registration or the ability to campaign freely. While the law does not explicitly provide for international election observation, all OSCE/ODIHR NAM interlocutors welcomed a potential election observation activity, noting the value of OSCE/ODIHR assessments and recommendations in contributing to potential electoral reform. Systemic issues with campaign finance and media oversight were identified.

Based on this, the OSCE/ODIHR NAM recommends deploying an Election Expert Team (EET) for the 20 November early parliamentary elections. The OSCE/ODIHR EET would focus its efforts on the effectiveness of the campaign finance regulation and overall independence and effectiveness of media oversight. Given the number of concurrent election-related activities taking place across the OSCE region in the autumn of 2016, the deployment of an EET to the 2016 early parliamentary elections in San Marino will be contingent upon availability of resources. The OSCE/ODIHR, however, reaffirms its readiness to support the authorities in any future electoral reform efforts, particularly in respect of campaign finance regulation and media oversight.

### III. FINDINGS

#### A. BACKGROUND AND POLITICAL CONTEXT

San Marino is a parliamentary republic with legislative power exercised by the 60-member unicameral parliament, the Great and General Council, which is elected by popular vote for a five-year term. Executive power is vested in the State Congress, a collegial body appointed by the parliament from among its members. The Head of State is a jointly-held office, with two Captains Regent appointed by the parliament for six-month terms. San Marino is divided into nine administrative districts, Castles, and each one elects a local council and Captain every five years.<sup>1</sup>

These elections will be the third consecutive early parliamentary elections in San Marino, with the last held in 2012. The coalition San Marino Common Good formed the outgoing government having obtained 35 of the 60 seats. The coalition was composed of four parties, including the Sammarinese Christian Democratic Party (PDCS), the largest party in the preceding government, and the Party of Socialists and Democrats (PSD), which was previously the largest opposition party.<sup>2</sup> There are five additional parties in the outgoing parliament, as well as several active non-parliamentary parties.<sup>3</sup> Women's political representation is low. Currently, 13 of 60 Members of Parliament (MPs) and 1 of the 9 outgoing ministers are women.<sup>4</sup> In line with the Electoral Law, early elections were called on 31 August, following the Popular Alliance's withdrawal from the government and the loss of the government's majority.

The OSCE/ODIHR previously deployed a Needs Assessment Mission for the 2012 early parliamentary elections, but no election observation activity was recommended.<sup>5</sup>

#### B. LEGAL FRAMEWORK

Parliamentary elections are primarily regulated by the 1974 Declaration on the Citizen's Rights and Fundamental Principles of San Marino Constitutional Order (Constitution, last amended in 2002) and the 1996 Electoral Law (last amended in 2016). Secondary legislation includes laws, decrees and court decisions related to the media, political party funding, and judiciary. San Marino is a party to major international and regional instruments related to the holding of democratic elections.<sup>6</sup> The Constitution affirms that all signed international agreements on the protection of human rights prevail over national legislation.

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<sup>1</sup> The districts are: San Marino City, Acquaviva, Borgo Maggiore, Chiesanuova, Domagnano, Faetano, Fiorentino, Montegiardino, and Serravalle.

<sup>2</sup> The coalition included PDCS and We Sammarinese (21 seats combined), PSD (10 MPs), and the Popular Alliance (4 MPs).

<sup>3</sup> Including 7 MPs from the Socialist Party, 5 from the Union for the Republic, 5 from the United Left-Democratic Lab, 4 from Civic Movement 10, and 4 from Civic Movement R.E.T.E. During the legislature, some MPs changed their affiliation, including three that joined a mixed group of independent MPs. Abbreviations for political party names correspond to the Italian language abbreviations.

<sup>4</sup> See paragraphs 10 and 11 of UN Human Rights Committee (CCPR) "[Concluding observations on the third periodic report of San Marino](#)" (3 December 2015) CCPR/C/SMR/CO/3. Also, see paragraph 38 of the [Council of Europe's Commissioner for Human Rights Report Following His Visit to San Marino](#) (15 October 2015).

<sup>5</sup> See previous [OSCE/ODIHR election-related report on San Marino](#).

<sup>6</sup> Including the 1966 International Covenant on Civil and Political Rights, 1979 Convention for Elimination of All Forms of Discrimination against Women, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 2006 Convention on the Rights of Persons with Disabilities. San Marino is also a member of the Council of Europe's Venice Commission and Group of States against Corruption (GRECO).

The Electoral Law was amended in March 2016 by broad consensus in the parliament.<sup>7</sup> The changes were largely technical, including: establishing access to a special polling station for voters permanently residing in medical facilities or retirement homes; removing compulsory participation as a polling station chairperson if selected by lottery; and easing voter identification procedures at polling stations. Following the results of a legally-binding referendum held on 15 May 2016, the Electoral Law was further revised, by reducing the number of preferential votes from three to one and by re-introducing the right of voters from abroad to cast a preferential vote.<sup>8</sup>

No OSCE/ODIHR NAM interlocutors raised concerns about the process of legal change, emphasizing that San Marino is proud of its use of direct democracy tools, and that public debate about the proposed changes was inclusive and lively. Many OSCE/ODIHR NAM interlocutors, however, expressed dissatisfaction with the lowering of the number of preferential votes, noting that this could decrease the chances for women to be elected, as well as negatively impacting the representativeness of some MPs due to the potentially low number of preferential votes needed to be elected. Most interlocutors supported the right of voters abroad to cast a preferential vote.

The law does not explicitly provide for international or citizen election observation. However, the OSCE/ODIHR has received a timely invitation to observe the upcoming elections and all stakeholders affirmed their willingness to co-operate with a potential OSCE/ODIHR election observation activity.<sup>9</sup> All registered candidate lists have the right to appoint representatives to polling stations.

### C. ELECTORAL SYSTEM

The 60 MPs are elected under a proportional representation system from a single nationwide constituency. A voter may cast a preferential vote for one candidate on the list for which he/she voted. There is a minimum threshold to qualify for seat allocation, which ranges from 0.4 to 3.5 per cent depending on the number of candidate lists. Seats are allocated to lists using the d'Hondt system. Candidates are then awarded seats according to the number of preference votes that they received. In the event of a tie, preference is given to women candidates, followed by length of service as an MP, followed by seniority. Should an MP be appointed to the State Congress, his/her mandate is suspended and they are replaced by the next candidate on the list.

In order for representatives of a list to form a government, the list must obtain more than one half of the valid votes cast or a minimum of 30 seats. If no list meets this requirement, a second round takes place two weeks later between the two lists that obtained the highest number of votes. With a view to ensuring a stable government, the electoral system provides for a 'stability reward'. Under this mechanism, should the winning list obtain less than 35 seats, it is assigned additional seats from the lists that obtained the lowest number of votes until it reaches 35 seats. The remaining seats are proportionally distributed among the other lists.

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<sup>7</sup> The amendments were introduced by Qualified Law 1/2016, passed with 42 present MPs voting in favour, 2 MPs against, and 1 MP abstained.

<sup>8</sup> The referendum was supported by 55 per cent of voters, with a turnout of 48 per cent of the total number of registered voters (resulting from a 70 per cent turnout of voters residing in San Marino, and 5 per cent of voters residing abroad). Section II.2.b of the 2002 Council of Europe's Commission for Democracy through Law (Venice Commission) Code of Good Practice in Electoral Matters recommends that "the fundamental elements of electoral law... should not be open to amendment less than one year before an election".

<sup>9</sup> Paragraph 8 of the 1990 OSCE Copenhagen Document provides that "the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place".

## **D. ELECTION ADMINISTRATION**

The elections will be administered by a three-tiered structure headed by the Election Commission (EC) and including 17 Counting Offices and 50 Polling Station Offices (PSOs). Out of 11 EC members, 5 are women, while 60 per cent of PSO members are women.

The EC is an 11-member body, including 7 members appointed by the parliament, and one representative each from the Civil Registry, Single Court, Ministry of Foreign Affairs, and Ministry of Internal Affairs. The EC, chaired by the Minister of Internal Affairs, serves a five-year term, and is formed anew by each incoming legislature. The EC takes decisions by majority vote and its responsibilities include confirmation of voter lists and candidate lists, appointment of PSOs, , and enforcement of campaign regulations. The State Election Office (SEO), instituted at the Civil Registry, is represented within the EC and assists it to fulfil its administrative and operational duties, including the training of PSO staff and the preparation of ballot papers and election materials.

For election day, the 50 PSOs will be established across the nine districts. PSOs consist of a President and two Scrutineers, randomly selected from a list of eligible voters who have indicated their willingness to fulfil these roles.<sup>10</sup> PSOs are responsible for organizing voting at polling stations and for transferring the ballot boxes to the counting offices. A special polling station is established at the state hospital, which also provides mobile voting for homebound voters and voters with disabilities upon application to the EC at least 15 days before election day. Voters who reside abroad must travel to San Marino to cast their vote in person at one of nine specially designated PSOs. Several OSCE/ODIHR NAM interlocutors suggested that alternative voting mechanisms could be considered to facilitate voting for citizens abroad.

Counting Offices are composed of the Presidents of between two and four PSOs and are formed temporarily, with the only duty to count votes.<sup>11</sup> Initial reconciliation procedures are followed at the PSO and Counting Office. Following this, ballots from each PSO are mixed together and redistributed among members, which will then count the ballots assigned to them. The day after the elections, a Central Election Office, convened by the Minister of Internal Affairs and composed by presidents of PSOs and delegates from candidate lists, tabulates and announces the preliminary results.

All interlocutors met with by the OSCE/ODIHR NAM expressed confidence in the professionalism and impartiality of the election administration and no concerns were raised regarding the technical preparations and conduct of elections.

## **E. VOTER REGISTRATION AND IDENTIFICATION**

All Sammarinese citizens who are at least 18 years old on election day, including those residing abroad permanently, are eligible to vote. The only exceptions are those who have been temporarily deprived of their right due to full mental incapacity or as part of a judicial sentence. The UN CCPR and the Council of Europe's High Commissioner for Human Rights have expressed concerns about

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<sup>10</sup> A number of additional requirements apply. All PSO staff should have a high school diploma, while parliamentary candidates, the judiciary, and several elected public positions are prohibited. Presidents are additionally required to have first served as a Scrutineer in a past election.

<sup>11</sup> With the exception of one PSO that assumes the responsibilities of a counting office.

unreasonable restrictions on voting rights of persons with mental disabilities.<sup>12</sup> The authorities informed the OSCE/ODIHR NAM of various activities to mitigate this restriction, including providing trainings and guidance for legal professionals on how to process such cases.<sup>13</sup>

Voter registration is passive and voter lists are based on information extracted from the permanent electronic population register. Voter lists are updated on a yearly basis by 31 January. Updated lists are displayed for public scrutiny in polling stations and in diplomatic and consular offices abroad until 28 February. During this period, complaints can be lodged with regard to undue inclusion or exclusion of eligible voters, erroneous attribution to a polling station, or incorrect civil status. Complaints are resolved by the Single Court via an expedited process by 15 March. Appeals related to suffrage rights are possible at all times through an ordinary judicial process. Prior to election day, the EC is required to remove from the lists any voters that have since died, lost their citizenship, or been deprived of their voting rights by a court decision.

Following this year's adoption of a new law introducing an automatic process for granting citizenship, an *ad hoc* supplementary revision of the voter lists was made on 22 September to include new citizens.<sup>14</sup> For the upcoming elections there are some 34,000 eligible voters, including some 11,600 citizens who reside outside of San Marino. Fifty-five per cent of eligible voters are women. There are some 4,800 resident non-citizens in San Marino who do not have the right to participate in national or local elections.<sup>15</sup>

In order to vote, a voter must present a voting card and show identification. Voting cards are mailed at least two weeks before election day and should a voter lose their voting card they may apply for a replacement at the SEO, including on election day. Voters can identify themselves with a range of identification documents, including expired ones. If a voter has no identification document they may still be able to vote, provided that two eligible voters residing in the same district attest to their identity. All OSCE/ODIHR interlocutors expressed confidence in the accuracy of voter lists and the integrity of voter identification procedures.

## F. CANDIDATE REGISTRATION

In addition to the requirements for being a voter, the law requires candidates to be at least 21 years old on election day and a resident of San Marino. The law also identifies a broad range of

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<sup>12</sup> See paragraphs 22 and 23 of UN CCPR "[Concluding observations on the third periodic report of San Marino](#)" (3 December 2015) CCPR/C/SMR/CO/3. Also, see paragraph 51 of the 2015 [Report of the Council of Europe's Commissioner for Human Rights](#).

<sup>13</sup> In particular, emerging jurisprudence in San Marino tends to address such cases through legal guardianship instead of full mental incapacitation, which preserves the right to vote. Court decisions on full mental incapacitation are made on case by case basis. According to the Single Court, currently there are some 20 citizens declared fully mentally incapacitated.

<sup>14</sup> Law No 38, 22 March 2016. During the OSCE/ODIHR NAM, a dispute was ongoing over the registration of 12 new citizens, who could not take their oath on time to be included in the voter list as part of the *ad hoc* revision. On 13 October, following discussions among parliamentary parties, all new citizens were finally included in the voter list by decision of the EC. The decision also allowed one new citizen to run as a candidate.

<sup>15</sup> Paragraph 3 of the 1996 UN CCPR General Comment 25 on Article 25 of the ICCPR confirms the existence of an emerging trend to grant voting rights to permanent non-citizens at local elections. In addition, section 1.1.b.ii of the 2002 Venice Commission's Code of Good Practice in Electoral Matters recommends that "it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence".

governmental and non-governmental positions as being incompatible with candidacy.<sup>16</sup> In addition, the Qualified Law 2/2015 requires candidates to declare that they are not and have not been a member of a secret association. While these incompatibilities are clearly defined and intended to prevent conflicts of interest, such broad restrictions may unreasonably limit candidacy rights.<sup>17</sup>

The right to register a candidate list is granted to any group, provided that their list is supported by 90 eligible voters and submitted 40 days before election day. Voters are only allowed to sign in support of one candidate list. With a view to supporting a stable government, each list is required to publish a government manifesto in advance. The legislation does not allow for individual independent candidates, but only for groups of independent candidates, as each list is required to include between 12 and 60 candidates.<sup>18</sup> For these elections, a total of 11 candidate lists registered, including three coalitions and two single lists. Unlike recent elections, no list included the maximum number of candidates. While no concerns were raised about the inclusiveness of the candidate registration process, most political parties met with by the OSCE/ODIHR NAM stated that the lowering of preferential votes had resulted in less people willing to stand as a candidate.<sup>19</sup>

The law provides that a minimum of one-third of candidates on a list must be from each gender. As voters may freely choose their preferred candidate from a list, this does not guarantee women's elected representation. For these elections, about 36 per cent of candidates are women.

## G. ELECTION CAMPAIGN

The official campaign period begins 20 days before the election and ends at midnight on the day prior to election day. Direct campaigning outside of this period is prohibited. During the campaign, the posting of printed materials is limited to spaces designated by the district administrative offices, which is provided free-of-charge on a strictly equal basis. Campaign rallies are permitted on the basis of a prior notification to the authorities. The Ministry of Internal Affairs and the Ministry of Information inform voters of the candidate lists and their platforms via posters, a dedicated website, and pamphlets disseminated by mail. Candidate debates, both within San Marino and at consular offices abroad, are organized and paid for by the Ministry of Internal Affairs and the Ministry of Foreign Affairs. In addition, political parties also intend to make use of social media.

The campaign is expected to be lively and focussed on economic and social issues, as well as recent corruption cases. While no concerns were expressed about the ability to campaign freely, several OSCE/ODIHR NAM interlocutors voiced concerns about possible vote-buying, especially in respect of incentives offered to out-of-country voters.<sup>20</sup>

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<sup>16</sup> Other incompatibilities include magistrates, tax prosecutors, diplomatic or consular agents, members of police, and military corps. In addition, elected MPs cannot be a member of a local council, or hold executive positions in labour unions, trade associations, audit bodies of the Central Bank and of public entities and agencies, governing boards of banking and financial institutions, banking foundations, the Olympic Committee, and sport federations. Relatives by first degree or by marriage, including *de facto* relationships, cannot be MPs at the same time.

<sup>17</sup> See paragraph 16 of the 1996 UN CCPR General Comment 25 to Article 25 of the ICCPR, and paragraph 75 of *Ahmed and Others v. The United Kingdom* (65/1997/849/1056), European Court of Human Rights, 1998.

<sup>18</sup> Paragraph 7.5 of the 1990 OSCE Copenhagen Document commits participating States to “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”.

<sup>19</sup> A total of 257 candidates were registered to run for these parliamentary elections, while in the 2012 elections there were 364 candidates in total.

<sup>20</sup> Several OSCE/ODIHR NAM interlocutors informed about an ongoing criminal inquiry involving former Ministers, MPs and businessmen over allegations of bribery and vote buying (so-called *Conto Mazzini* case).

## H. CAMPAIGN FINANCE

The 2005 Law on Financing Political Parties and Political Movements (LFPPM) provides for both public and private funding of political parties and movements. Political parties rely largely on public funds and receive annual subsidies in proportion to their parliamentary representation.<sup>21</sup> The subsidy is doubled in an election year to provide additional funds for campaigning. In addition, employees hired by a political party have the right to secondment from his/her job and to re-employment in the same position at the end of the secondment. While there is no ceiling on private contributions from individuals or legal entities, most parties met with by the OSCE/ODIHR NAM stated that they will rely mostly on public funds. While anonymous donations are prohibited, there are no rules concerning other sources of campaign finance, including in-kind donations, loans, and media discounts. A spending limit for each list is in place, which should not exceed the public funds given to the largest group in parliament, some EUR 630,000 for these elections.

Political parties must report on their expenses and contributions annually, including those related to election campaigns. However, there is no requirement for candidates or representatives of lists to disclose their campaign income and expenditure prior to election day. When candidates register, they are required to submit a copy of their most recent tax declaration and sources of income, which is made public.

Oversight of political finance is ensured by a three-member audit committee appointed by the parliament each year. Some OSCE/ODIHR NAM interlocutors expressed reservations about the independence and powers of the audit committee. There is no legal requirement for political parties to provide internal audits and no audit of campaign finance is required in an election year. Several OSCE/ODIHR NAM interlocutors voiced concerns about a general lack of transparency in campaign finance reporting and the absence of adequate oversight mechanisms.

For serious violations of the law or for inaccurate reporting, the audit committee can reduce public funding to a party by half for the following year. In case of repeated breaches during the same legislature, the funding shall not be granted for the year. Violations of the ban on anonymous donations are subject to criminal sanctions consisting of imprisonment from 20 to 60 days, and disqualification from suffrage rights, from 2 to 5 years. The current political discourse and concerns about political corruption illustrate a widespread view that provisions for campaign finance should be further addressed.<sup>22</sup>

## I. MEDIA

The media landscape generally provides for diverse access to information, despite the limited size of its population. The public broadcaster, *San Marino RTV*, broadcasts one television channel and two radio stations, and streams news online via its website. Three daily, and one weekly, newspapers are published and online media is widely accessed. Additional broadcast and print media are received from neighbouring Italy, which includes some coverage of political developments in San Marino.

The Constitution guarantees freedom of expression and a 2014 Media Law attempts to provide further regulation of media operators. The law established a Council of Information, open to all journalists and publishers, tasked to adopt a code of conduct for media professionals. While defined as self-regulation, the code is to be approved by the parliament and should include sanctions that

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<sup>21</sup> In 2015, the annual subsidy for political parties totaled some EUR 1 million.

<sup>22</sup> The Council of Europe's GRECO in its [Third Evaluation Round Evaluation report on San Marino](#) from 12 July 2016, concluded that political finance should undergo a reform process.

would be enforced by a separate body, the Guarantee Authority for Information.<sup>23</sup> The Code of Conduct is not yet in force, pending approval by the government, and the Guarantee Authority is currently not operational, as one of its five members will run as a candidate for these elections. Many OSCE/ODIHR NAM interlocutors expressed broad concern regarding the independence and effectiveness of media oversight.<sup>24</sup>

While defamation still remains a criminal offence, Sammarinese jurisprudence has established that the right to freely express political criticism should prevail over the right to protection of the honour of persons with public responsibilities, in line with the case law of the European Court of Human Rights.<sup>25</sup>

During the election campaign, *San Marino RTV* is obliged to provide equal access and free airtime to all candidate lists. Details of coverage are agreed upon in advance with representatives of all candidate lists. *San Marino RTV* is subject to oversight by a dedicated commission appointed by the parliament. Most political groups will utilise the free airtime allocated to them. While paid advertisement is allowed, most contestants met with by OSCE/ODIHR NAM stated they do not plan to use this option for the upcoming elections.

## J. COMPLAINTS AND APPEALS

Complaints and appeals are regulated by the Electoral Law, including provisions related to voter registration, candidate registration, appointment of polling station staff, campaigning, secrecy of the vote, and the announcement of results. Complaints are adjudicated, depending on the matter, by the PSOs, EC, or judicial bodies. Violations of many electoral rights are subject to criminal sanctions, ranging from six months to ten years imprisonment, together with deprivation of suffrage rights. Procedures and deadlines for complaints and appeals are not always clearly defined, which could limit electoral stakeholders' rights to effective remedy.

The Single Court serves as final instance for appeals. While there are no special terms and expedited deadlines for most election-related appeals, the Single Court informed the OSCE/ODIHR NAM that it would give priority to such appeals if submitted and try to resolve them within the shortest period of time.

A five-member Permanent Election Board, appointed by the parliament, is tasked to review the protocols regarding tabulation and preliminary results, hear any complaints filed within five days of the elections by voters, decide upon potential incompatibilities of elected candidates, and propose to the parliament the validation of the results. In case of complaints regarding serious irregularities, legal provisions are in place to annul and repeat elections.

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<sup>23</sup> See [Law 211/2014](#).

<sup>24</sup> The Council of Europe's Commissioner for Human Rights urged the authorities to revise the legislation to bring it in line with the principle of self-regulation, in order to avoid the risk of undue interference with media content. See paragraphs 10-19 of the 2015 [Report of the Council of Europe's Commissioner for Human Rights](#), as well as the [letter from the Commissioner to San Marino Minister of Information](#) (25 August 2016), and the [reply of the Minister](#) (9 September 2016).

<sup>25</sup> See [Annual Report of the Head Magistrate on the State of Justice](#), 2013. The 2015 Report of the Council of Europe's Commissioner for Human Rights, while recognising the measured approach developed by Sammarinese courts, encouraged the authorities to decriminalise defamation.

#### IV. CONCLUSION AND RECOMMENDATION

Almost all OSCE/ODIHR NAM interlocutors expressed full confidence in the professionalism and impartiality of the election administration. No significant concerns were expressed with regard to voter and candidate registration or the ability to campaign freely. Systemic issues with campaign finance and media oversight were identified. All OSCE/ODIHR NAM interlocutors welcomed a potential election observation activity, noting the value of OSCE/ODIHR assessments and recommendations in contributing to potential electoral reform in the future.

Based on this, the OSCE/ODIHR NAM recommends deploying an Election Expert Team (EET) for the 20 November early parliamentary elections. The OSCE/ODIHR EET would focus its efforts on the effectiveness of the campaign finance regulation and overall independence and effectiveness of media oversight. Given the number of concurrent election-related activities taking place across the OSCE region in the autumn of 2016, the deployment of an EET to the 2016 early parliamentary elections in San Marino will be contingent upon availability of resources. The OSCE/ODIHR, however, reaffirms its readiness to support the authorities in any future electoral reform efforts, particularly in respect of campaign finance regulation and media oversight.

## **ANNEX: LIST OF MEETINGS**

### **Ministry of Foreign and Political Affairs**

Pasquale Valentini, Minister of Foreign and Political Affairs

Federica Bigi, Director of Political and Diplomatic Affairs, Foreign Affairs Department

Stefano Stolfi, Officer for Relations with Communities Abroad, Foreign Affairs Department

### **Ministry of Internal Affairs**

Gian Carlo Venturini, Minister of Internal Affairs

Manuel Canti, Director of the Institutional Affairs and Justice Department

Daniela Bizzocchi, Officer of the Internal Affairs Department

Aida Maria Adele Selva, Personal Assistant of the Minister

### **Ministry of Information**

Iro Belluzzi, Minister of Information

Milena Gasperoni, Officer

Caterina Russo, Assistant

### **Institutional Secretariat**

Giovanna Crescentini, Director

Lucia Marfori, Officer

### **Election Commission**

Marcello Carattoni, Member

Gabriella Guidi, Member

Viviana Merlo, Member and Registrar of the Single Court

Sabrina Sarti, Member and Registrar of the Office of Vital Statistics

### **Single Court**

Valeria Pierfelici, Head Magistrate

Alberto Buriani, Law Commissioner

Gilberto Felici, Law Commissioner

Isabella Pasini, Law Commissioner

### **Political Parties and Movements**

Luca Santolini, Civic Movement 10

Andrea Zafferani, Civic Movement 10

Marianna Bucci, Civic Movement R.E.T.E.

Elena Tonnini, Civic Movement R.E.T.E.

Federico Pedini Amati, Independent MP

Daniela Berti, Party of Socialists and Democrats

Valeria Ciavatta, Popular Alliance

Diego Ercolani, Popular Alliance

Mario Lazzaro Venturini, Popular Alliance

Luca Beccari, Sammarinese Christian Democratic Party

Oscar Mina, Sammarinese Christian Democratic Party

Nicoletta Canini, Socialist Party

Paolo Crescentini, Socialist Party

Marco Podeschi, Union for the Republic

Vanessa D'Ambrosio, United Left

Tony Margiotta, United Left

Massimo Cenci, We Sammarinese

### **Media**

Francesco Partisani, Director, *Il Montefeltro*  
Marino Cecchetti, Director, *Libertas.sm*  
Antonio Fabbri, Director, *L'Informazione*  
Alessandro Carli, Director, *San Marino Fixing*  
Carlo Romeo, Managing Director, *San Marino RTV*  
Sergio Barducci, Editor-in-Chief, *San Marino RTV*  
Sonia Tura, Editor-in-Chief, *San Marino RTV*  
Franco Cavalli, Editor-in-Chief, *Sanmarinonews.sm*

### **Civil Society**

Marco Macina, Chamber of Commerce  
Giuliano Tamagnini, Confederation of San Marino Workers  
Matteo Tamagnini, Council of Cultural Associations and Co-operatives  
Otello Pedini, Council of Sammarinese Abroad  
Mirko Battazza, Democratic Confederation of San Marino Workers  
Giovanni Mitaritonna, Sammarinese Banking Association  
Linda Ugolini, Sammarinese Banking Association  
Marta Bossi, San Marino National Industrial Association  
William Vagnini, San Marino National Industrial Association  
Giorgio Chiaruzzi, San Marino Organization of the Self-Employed  
Francesco Biordi, Union of San Marino Workers  
Giorgia Giacomini, Union of San Marino Workers