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Group of Experts on Action
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Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by San Marino

First evaluation round

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Secretariat of the Council of Europe Convention
on Action against Trafficking in Human Beings
(GRETA and Committee of the Parties)
Directorate General II – Democracy
Council of Europe
F- 67075 Strasbourg Cedex
France
+ 33 (0)3 90 21 52 54

trafficking@coe.int

<http://www.coe.int/trafficking>

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Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims’ rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on States to take appropriate measures, in partnership with civil society and in co-operation with other States.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of 15 independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist States in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

Executive summary

No victims of trafficking in human beings have been identified in San Marino. Trafficking in human beings was criminalised following the adoption of Law No. 97 of 20 June 2008 on prevention and criminalisation of violence against women and gender-based violence. There is no co-ordination structure dealing specifically with human trafficking in San Marino, but the Authority for Equal Opportunities, which is responsible for all matters covered by Law No. 97/2008, is in principle in charge of the co-ordination of anti-trafficking action as well as organising the training for relevant professionals. GRETA considers that the San Marinense authorities should establish a framework for co-ordinating the actions of different actors in the event of a trafficking case being identified, including law enforcement agencies, inspection agencies, social services and civil society.

Concerning prevention of trafficking, no specific awareness-raising activity or measures to discourage demand have been carried out in San Marino so far. A number of interlocutors have referred to the possible vulnerability to trafficking of domestic workers and private carers for elderly and disabled persons, who live in the households where they work. GRETA considers that the San Marinense authorities should raise awareness of trafficking and the different forms of exploitation involved, both among the general public and among professionals likely to come into contact with victims of trafficking. Further, the authorities should ensure that foreign persons employed as domestic workers or private carers are systematically informed in a language they understand about their rights and the danger of trafficking. Similar measures should also be introduced for foreign workers employed in San Marino, in particular on the basis of seasonal work permits in the sectors of tourism, domestic work and construction.

GRETA urges the San Marinense authorities to adopt such legislative or other measures as may be necessary to proactively identify victims of THB and refer them to assistance, involving different actors who may come into contact with victims and providing them with indicators for detecting possible victims.

Law No. 97/2008 provides for a number of assistance measures for women victims of violence and other victims of gender-based violence, which could be adapted to victims of trafficking. GRETA stresses that while there are links between trafficking and violence against women, men can also fall victim to trafficking and it can involve forms of exploitation other than sexual, such as forced labour. GRETA urges the San Marinense authorities to adopt such legislative or other measures as may be necessary to provide assistance to all victims of trafficking (women, men and children) and help them with their physical, psychological and social recovery, in particular suitable safe accommodation, emergency medical treatment, counselling and information on their rights in a language that they can understand, in accordance with Article 12 of the Convention.

San Marinense law does not provide for a recovery and reflection period for victims of trafficking and consequently GRETA urges the authorities to provide in law for such a period, in conformity with Article 13 of the Convention, and to ensure that all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention are provided during this period. Moreover, GRETA considers that the San Marinense authorities should provide in law for the issue of a renewable residence permit to victims on trafficking in cases where the competent authority considers that their stay is necessary owing to their personal situation and/or for the purpose of their co-operation in connection with an investigation or criminal proceedings.

GRETA also urges the San Marinense authorities to adopt legislative or other measures necessary to guarantee compensation for victims of human trafficking, including compensation from the State when compensation cannot be secured from the perpetrator.

I. Introduction

1. San Marino deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 29 November 2010. The Convention entered into force for San Marino on 1 March 2011.¹

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. For the first evaluation round, GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, San Marino being in the fourth group of Parties to be evaluated.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by San Marino to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to San Marino on 1 February 2013. The deadline for replying to the questionnaire was 1 June 2013. San Marino submitted its reply on 3 July 2013.

4. In preparation of the present report, GRETA used the reply to the questionnaire by San Marino, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to San Marino took place from 4 to 6 December 2013, carried out by the following delegation:

- Mr Mihai Șerban, member of GRETA;
- Ms Gulnara Shahinian, member of GRETA;
- Ms Claudia Lam, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation met with the Minister of Foreign Affairs, Mr Pasquale Valentini. It also held meetings with representatives of the Ministry of Labour, the Ministry of Industry and Agriculture, the Health Authority, the Minors’ Service, law enforcement officials and judges. Further, the GRETA delegation held consultations with the Authority for Equal Opportunities, the Commission for Equal Opportunities and members of the San Marinese Parliament (*Consiglio Grande e Generale*). These meetings (see Appendix II) took place in a spirit of close co-operation.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs), trade unions and the Bar Association. GRETA is grateful for the information provided by them.

7. Further, in the context of the evaluation visit to San Marino, the GRETA delegation visited a state-run counselling centre for women victims of violence.

8. GRETA is grateful for the assistance provided by the contact person appointed by the San Marinese authorities, Ms Sylvie Bollini, First Secretary at the Department of Foreign Affairs.

9. The draft version of the present report was adopted by GRETA at its 19th meeting (18-20 March 2014) and was submitted to the San Marinese authorities for comments on 31 March 2014. The authorities’ comments were received on 16 June 2014 and were taken into account by GRETA when drawing up the final evaluation report, which was adopted at its 20th meeting (30 June - 4 July 2014).

¹

The Convention as such entered into force on 1 February 2008, following its 10th ratification.

II. National framework in the field of action against trafficking in human beings in San Marino

1. Overview of the current situation in the area of trafficking in human beings in San Marino

10. No victims of trafficking in human beings (THB) have been identified in San Marino and there are no reports suggesting that there have been any instances of THB. The San Marinense authorities have referred to the smallness of the country's territory (61 km²) and population (some 32 000 inhabitants), which according to them would make it difficult to conceal human trafficking cases. However, some groups could potentially be vulnerable to THB, such as domestic workers and private carers for elderly and disabled persons who live in the households where they work (see paragraph 67).

2. Overview of the legal and policy framework in the field of action against trafficking in human beings

a. Legal framework

11. At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, San Marino is Party to the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both of which it ratified in 2000). San Marino is also Party to the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified in 1991 and 2000, respectively), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 2003), as well as conventions elaborated under the International Labour Organisation (ILO).² Further, San Marino is Party to a number of Council of Europe conventions in the criminal field which are relevant to action against THB³.

12. As regards domestic legislation, Article 168 criminalising trafficking in human beings was introduced into the Criminal Code (CC) through Law No. 97 of 20 June 2008 on prevention and criminalisation of violence against women and gender-based violence. Law No. 97/2008 also provides for the setting up of institutions and measures in the field of combating violence against women and gender-based violence, which could apply to victims of THB in certain cases. The implementation of Law No. 97/2008 was specified by Decree-Law No. 60 of 31 March 2012. Further, Law No. 118 of 28 June 2010 on the entry and stay of foreigners in San Marino (with subsequent amendments in 2011 and 2012) provides for the issuing of work and residence permits for foreigners.

b. National Strategies or Action Plans

13. There is no national strategy or action plan dealing specifically with THB in San Marino and the authorities do not envisage adopting such a document at this stage. However, GRETA was informed that they were prepared to consider issuing guidelines on THB for police officers and other relevant officials.

² Convention concerning Forced or Compulsory Labour (No.29), Convention concerning the Abolition of Forced Labour (No.105), both ratified in 1995, and Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182), ratified in 2000.

³ In particular the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Extradition, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

3. Overview of the institutional framework for action against trafficking in human beings

a. Authority for Equal Opportunities

14. Law No. 97/2008 provides for the setting up of the Authority for Equal Opportunities (AEO), which became operational in January 2009. The tasks of the AEO are listed partly in the law itself and partly in Decree-Law No. 60/2012 implementing it. The AEO is an autonomous institution and consists of three members appointed by Parliament chosen from among legal experts, representatives of NGOs active in the field of gender equality, and experts in communication and psychology.

15. The AEO is competent for all matters covered by Law No. 97/2008, including THB. It has been given the task of promoting and upholding initiatives aimed at preventing violence against women and gender-based violence, by granting support to victims and through the conclusion of operational protocols with relevant stakeholders. It supports and monitors the activity of NGOs, provides information on assistance services and works on prevention projects. Its role is also to ensure the conclusion, on an annual basis, of an agreement between the Directorate General of the Social Security Institute and a shelter for women victims of violence. Further, it is responsible for organising the training for relevant professionals (see paragraph 51).

16. Law No. 97/2008 also stipulates that the AEO has the role of a watchdog which can prevent the circulation of images or information with a content that is discriminatory or contrary to the dignity of a person. Under the law, the AEO is responsible for collecting statistical data, in co-ordination with the Health Authority, and for publishing an annual report on violence against women and related issues.

17. The AEO co-ordinates an institutional panel entrusted with implementing the objective set forth in Law No. 97/2008 which is composed of the heads of the following institutions:

- Authority for Equal Opportunities
- Gendarmerie
- Civil Police
- *Guardia di Rocca* ("Fortress Guards", which is a law enforcement agency)
- Directorate General of the Social Security Service (ISS)
- Bar Association
- Association of Psychologists
- Schools
- Single Court.

18. In addition to the above-mentioned institutional panel, the AEO has created a technical panel, composed of representatives of the same institutions, who work at a more operational level and deal with individual cases of violence against women and gender-based violence. This panel plays the role of a national referral mechanism for victims of violence. It meets approximately every month-and-a-half. Its role is also to identify gaps in the legal and institutional framework and to make suggestions to the institutional group about possible measures to be taken to improve the situation.

19. The Commission for Equal Opportunities was established in 2004. Its members are elected by Parliament and deal with all issues related to equality, except for gender-based violence. The Commission for Equal Opportunities deals mainly with disabilities, combating racism, homophobia and other forms of intolerance and discrimination. The Commission's role is consultative and it can make proposals concerning the adoption of new laws and the implementation of existing laws. The Commission co-operates closely with the AEO and participates in campaigns for the promotion of equal opportunities as well as awareness-raising measures organised by the AEO on THB. The Commission can contribute to identifying individuals or groups vulnerable to THB.

20. GRETA was informed that in the eventuality of a THB case, identification of victims would be performed by the Gendarmerie or another law enforcement agency (Civil Police or *Guardia di Rocca*) and inspection authorities, and the issuing of a residence permit would be handled by the Gendarmerie. In case of child victims of THB, the health and social services as well as the Minors' Service would be responsible.

b. NGOs and other civil society actors

21. There are no NGOs active in the field of combating THB which are based in San Marino. The authorities have co-operated with an Italian NGO to organise events in San Marino on 25 November 2013 on the occasion of the International Day for the Elimination of Violence against Women. Until recently, counselling activities for foreign women working in San Marino were organised on an *ad hoc* basis by volunteers, but such activities do not take place anymore. At present, people finding themselves in a difficult situation, including foreign nationals, can turn to a counselling centre run by Caritas San Marino. According to the authorities, foreign women who work in San Marino as domestic workers or carers can also receive assistance from the United Trade Union Confederation.

22. There are three trade unions and a Bar Association in San Marino.

III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by San Marino

1. Integration of the core concepts and definitions contained in the Convention in the internal law

a. Human rights-based approach to action against trafficking in human beings

23. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”.⁴

24. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights⁵ (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.⁶

25. The Convention on action against trafficking in human beings requires States to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

26. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments.⁷

⁴ Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

⁵ *Rantsev v. Cyprus and Russia*, no. 25965/04, paragraph 282, ECHR 2010.

⁶ See: *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005, ECHR 2005 VII; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012, and *C.N. v. United Kingdom*, application No. 4239/08, judgment of 13 November 2012.

⁷ Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

27. The San Marinense authorities have indicated that, under Article 1 of the Declaration on the Citizens' Rights, generally recognised rules of international law are an integral part of San Marino's constitutional order. Pursuant to the same Article, San Marino's constitutional order "recognises, guarantees and enforces the rights and fundamental freedoms set forth by the European Convention for the Protection of Human Rights and Freedoms" and "regularly signed and implemented international agreements on the protection of human rights and freedoms, which shall prevail over domestic legislation in case of conflict". Further, the authorities have indicated that domestic courts can invoke the Convention on Action against Trafficking in Human Beings to assert victims' rights and interests.

28. The human rights-based approach to action against THB entails transparency and accountability on the part of the State through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the San Marinense authorities in these fields.

b. Definitions of "trafficking in human beings" and "victim of THB" in San Marinense law

i. *Definition of "trafficking in human beings"*

29. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"); the use of certain means ("threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"); and the purpose of exploitation ("at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"). In the case of children, pursuant to Article 4(c) of the Convention, it is irrelevant whether the means referred to above have been used.

30. Article 168 of the Criminal Code (CC) of San Marino, entitled "Trafficking in human beings", criminalises "trafficking or otherwise selling human beings who are in the conditions referred to in Article 167." Article 167 of the CC, entitled "Reducing or holding in slavery or servitude", prohibits "the exercise over a person of powers corresponding to property rights or enslavement or keeping a person under continuous subjugation, forcing such a person to work or to have sexual intercourse or to beg or subjecting this person to any other form of exploitation". Article 167 provides that "the reduction into or holding in slavery takes place when it is carried out with the use of violence, threat, deceit, abuse of authority or abuse of physical or psychological inferiority, or through the promise or the actual delivery of money or other benefit to those who have authority over the person."

31. Article 168 of the CC also punishes "whoever, for the purpose of reducing or holding a person in slavery or servitude, induces such person with the use of deceit, or forces such person with the use of violence, threat, abuse of authority, or abuse of physical or psychological inferiority or of a situation of need, or with the promise or delivery of money or other benefit to the person who has authority over him/her, to enter or stay on or leave the territory of the State or to move within such territory."

32. Article 168 of the CC provides for more severe sanctions in two cases: when the victim is a child and/or when of one of the two following specific forms of exploitation is at stake: exploitation of the prostitution of others and exploitation for the removal of organs.

33. Article 168 of the CC has never been applied since its entry into force in 2008 and there is no case law related to it. The same goes for Article 167 of the CC.

34. Article 168 of the CC does not refer expressly to the actions provided for in Article 4(a) of the Convention (recruitment, transportation, transfer, harbouring or receipt of persons), but rather to trafficking or otherwise selling a person, inducing or forcing a person to enter or stay on or leave the territory of the State, or to move within its territory. These actions seem to correspond largely to the ones set forth in the Convention. In their comments on the draft GRETA report, the San Marinese authorities have indicated that Article 167 of the CC on slavery and servitude, Article 168 of the CC on THB and Article 34 of Law No. 118/2010 on illegal migration and smuggling (see paragraph 39) provide a legal framework that would cover all types of action referred to in the Convention.

35. Article 168 of the CC refers to a list of means (use of deceit, or use of violence, threat, abuse of authority, or abuse of physical or psychological inferiority or of a situation of need, or with the promise or delivery of money or other benefit to the person who has authority over him/her), which, although not identical, is very close to the list of means provided for in Article 4(a) of the Convention.

36. All forms of exploitation mentioned in Article 4(a) of the Convention are expressly covered by Article 168 of the CC, read in conjunction with Article 167 of the CC. The CC also prohibits specifically TBH for the purpose of forced begging. The list of forms of exploitation is open-ended (“any other form of exploitation”).

37. Article 168 of the CC does not specify that in the case of children it is irrelevant whether the means it refers to have been used. The San Marinese authorities have indicated that Article 168 of the CC could easily be interpreted in a way that would exclude the condition of means for children. One of the means mentioned in this provision is the abuse of physical or psychological inferiority. According to the authorities, this means could apply to the vulnerable situation of children, notably in the light of the fact that THB against a child is considered as an aggravated offence. Nevertheless, GRETA stresses the importance of stating explicitly the irrelevance of the use of means in the case of trafficking in children.

38. As concerns the question of the consent of the victim, the San Marinese authorities have referred to Article 39 of the CC, pursuant to which: “(1) Anyone damaging or endangering a property with the validly expressed consent of the person entitled to dispose thereof shall not be punished. (2) The consent is not valid if extorted by violence or given by an easily recognisable mistake, obtained by deception or expressed by a minor aged less than 18 or by an incapable person.” In their comments on the draft GRETA report, the San Marinese authorities have indicated that paragraph 2 has never been applied. **GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions and provide victims with greater confidence in self-reporting to NGOs and public authorities.**

39. Article 34 of Law No. 118/2010 on the entry and stay of foreigners in San Marino prohibits the smuggling of migrants. GRETA notes that paragraph 3 of this article provides for aggravating circumstances when the offence is committed in order to recruit persons for the purpose of prostitution or other forms of sexual exploitation, or when it concerns the smuggling of minors with a view to involving them in illicit activities. This provision appears to cover situations which could correspond to the definition of THB in the Convention (in particular THB for the purpose of sexual exploitation). The San Marinese authorities have indicated that Article 34, paragraph 3, of Law No. 118/2010 is a supplementary rule targeting sexual exploitation in cases where adults who perform sexual acts have given their consent, in the absence of the use of means stipulated in Article 168 of the CC. The authorities have underlined that judges would apply Article 168 of the CC in trafficking cases.

40. The San Marinese authorities have indicated that pursuant to Article 1 of the Declaration of Rights, the definition of THB contained in the Anti-Trafficking Convention is part of San Marinese law.

41. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 104-111.

ii. *Definition of “victim of THB”*

42. The Convention defines “victim of THB” as “any natural person who is subjected to THB as defined in Article 4 of the Convention”. Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

43. The expression “victim of THB” is not defined in San Marinese law. The San Marinese authorities have stressed that a victim of THB could fall under the scope of Article 4 of Law No. 97/2008, which provides for a wide range of assistance measures to “victims of domestic or sexual violence”. However, GRETA stresses that THB is not always linked to these forms of violence (see paragraph 47).

44. The question of the definition of victim of THB will be further discussed in the sections of this report dealing with the identification of victims and the assistance measures provided to them, along with the related proposals made by GRETA (see paragraphs 82 and 90).

- c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation

i. *Comprehensive approach and co-ordination*

45. One of the aims of the Convention is to design a comprehensive framework for the protection of and assistance to victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and take on board the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnership with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

46. The criminalisation of THB in the CC of San Marino covers both transnational and national THB for the purpose of all forms of exploitation and targeting all victims, men, women and children. As no case of THB has been identified in San Marino so far, there is no co-ordination structure dealing specifically with THB. However, the San Marinese authorities have stressed that the Authority for Equal Opportunities (AEO) would in principle be in charge of ensuring co-ordination of action against THB.

47. The offence of THB was introduced in San Marinese law through Law No. 97/2008 which deals mainly with violence against women and provides for a range of assistance measures for victims of domestic or gender-based violence. GRETA notes that while there can be links between THB and violence against women, men can also fall victim to THB and trafficking can involve forms of exploitation other than sexual, such as forced labour. In their comments on the draft GRETA report, the San Marinese authorities have indicated that Article 4 of Law No. 97/2008 does not distinguish between victims according to gender and that both sexual and labour exploitation are criminalised by the provisions on slavery and servitude, which were also introduced into the CC through Law No. 97/2008.

48. As noted in paragraph 10, a number of interlocutors during the visit to San Marino referred to the possible vulnerability to trafficking of domestic workers and private carers for elderly and disabled persons, who live in the households where they work (see paragraph 67).

49. **GRETA considers that the San Marinese authorities should ensure that all victims of THB can benefit from the assistance measures envisaged in the Convention, regardless of the form of exploitation and the gender of the victim.**

50. GRETA notes that the technical panel co-ordinated by the AEO and dealing with violence against women (see paragraph 18) plays the role of a national referral mechanism for victims of violence. According to the San Marinense authorities, it would be possible to entrust this panel with THB cases or create a subgroup within it for that purpose. **GRETA considers that the San Marinense authorities should establish a framework for co-ordinating the actions of different actors in the event of a trafficking case being identified, for instance as part of the existing technical panel, which includes law enforcement agencies, inspection agencies, social services and civil society.**

ii. Training of relevant professionals

51. Pursuant to Law No. 97/2008, compulsory training courses are to be organised on a yearly basis with the objective of providing specialised training to judges, law enforcement officials, social and health services, educational staff, and the family mediator. The organisation of such courses is entrusted to the Department of Education of the University of San Marino. Such courses started in 2012 and aimed to raise awareness about violence against women and gender-based violence. However, the issue of THB has not been addressed so far. The AEO intends to organise more in-depth training courses that would be tailored to the needs of specific target groups. The San Marinense authorities have also indicated that they could envisage organising training courses for relevant officials dealing specifically with THB.

52. The Ministry of Education regularly organises training on human rights for teachers. In primary and secondary schools, teachers can create interdisciplinary projects on human rights, which could also cover the issue of THB.

53. **GRETA urges the San Marinense authorities to ensure that training on THB (in particular on the definition and indicators of THB, distinguishing THB from smuggling of migrants, detection of vulnerable individuals and groups, identification, assistance and compensation of victims) is provided to relevant professionals, such as law enforcement officials, prosecutors, judges, labour inspectors, lawyers, social workers, child care professionals, medical and educational staff. NGOs and trade unions should also be involved in such training.**

iii. Data collection and research

54. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of the main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

55. The AEO is tasked with the collection of data on all matters covered by Law No. 97/2008, which would include THB. Decree-Law No. 60/2012 specifies that the AEO collaborates with the Health Authority in order to collect data. The two authorities are under the obligation to respect the privacy and personal data protection rules. All institutions that are members of the technical panel co-ordinated by the AEO (see paragraph 18) have an obligation to convey data to the AEO. For instance, the law enforcement authorities are required to transmit to the AEO data on their interventions following requests for assistance by victims of violence. The Minors' Service is also under the duty to convey relevant information to the AEO.

56. GRETA is not aware of any research having been undertaken on THB in San Marino.

57. **GRETA encourages the San Marinense authorities to:**

- **consider how data on victims of trafficking in human beings (disaggregated by sex, age, type of exploitation, country of origin and/or destination) would be collected, having due regard to their right to personal data protection;**
- **support research into THB-related issues.**

iv. International co-operation

58. The Convention requires Parties to co-operate with each other “to the widest extent possible” in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

59. San Marino has ratified a number of international agreements in the field of mutual legal assistance. As far as bilateral agreements are concerned, on 18 July 2012 San Marino concluded an agreement with the USA on enhancing the exchange of information to prevent crime, which provides for collaboration to prevent, detect and investigate serious criminal offences. San Marino has also concluded bilateral agreements with Italy and France on legal co-operation in criminal matters.

60. Furthermore, on 29 February 2012 San Marino signed a co-operation agreement for preventing and combating crime with Italy. Under Article 2(c) of this Agreement, the two states are to co-operate to prevent, combat and investigate crimes, including THB, in particular of women and children. The agreement provides for the exchange of information as well as joint training and capacity building of law enforcement officials. However, the agreement has not yet entered into force. In the meantime, the authorities of the two states co-operate on criminal matters on a more informal basis through a technical agreement between the Ministries of the Interior, informal co-operation between the police forces and joint police operations.

61. San Marino has been a member of Interpol since 2006 and there is an Interpol focal point in San Marino, but it has not yet been contacted about THB cases.

62. **GRETA encourages the San Marinense authorities to continue their efforts in the area of international co-operation and to develop partnerships with Italy and other countries in the field of training on THB of relevant professionals (such as law enforcement officials, prosecutors, judges, labour inspectors, lawyers, social workers, child care professionals, medical and educational staff and other relevant groups).**

2. Implementation by San Marino of measures aimed to prevent trafficking in human beings

63. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society, as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

64. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.⁸

⁸ Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

- a. Measures to raise awareness and discourage demand and initiatives for persons vulnerable to THB

65. No specific awareness-raising activity on THB has been carried out in San Marino so far. A leaflet on Law No. 97/2008 was widely disseminated in San Marino when the law was adopted, explaining the role of the AEO, the different forms of violence covered by the law and whom to contact in case of need. The leaflet refers briefly to THB, in particular the penalties applicable to this offence. The leaflet contains the text of the law in an appendix.

66. No specific measures to discourage demand have been taken or are being envisaged by the San Marinense authorities. Several awareness-raising activities have been organised by the AEO to promote gender equality. The Commission of Equal Opportunities complements this action by raising awareness on equal opportunities in general. Further, the Ministry of Education is under the duty to promote gender equality in schools.

67. Women from Romania, Ukraine, the Republic of Moldova and other Eastern European countries to work as private carers (*badanti*) for elderly or disabled people and living in the households where they work are considered to be potentially vulnerable to THB and exploitation. These women often arrive first in Italy on the basis of Schengen visas delivered by the Italian authorities. They then meet in San Marino the family who requires their services. The family and the prospective carer apply together for a work permit at the labour office. Once the work permit has been granted, they can obtain a residence permit for the duration of the work permit. This period is of a maximum duration of 11 months within a given year. Private carers are obliged to leave San Marino after the expiry of 11 months even if they can come back a month later on the basis of a new work permit. This situation which has been criticised by the European Commission against Racism and Intolerance (ECRI) as being too precarious.⁹ If the work contract is interrupted for a reason beyond their control, the private carers can stay for a period of three months in the country to find another employer.

68. The San Marinense authorities have indicated that families wishing to employ private carers are visited by the Social Security Service (ISS) to check the working and living conditions of the person to be recruited. In their comments on the draft report, the San Marinense authorities have also indicated that private carers can contact the labour office, trade unions and the police in case of problems with their employers.

69. A non-compulsory training course for private carers is organised every year by the Vocational Training Centre, under the supervision of the ISS). This course includes Italian language classes and the teaching of San Marinense culture and traditions to promote the private carers' integration in society. In 2012, 19 persons attended the course. In addition, trade unions and civil society organisations, in co-operation with the authorities, have been running a service for private carers and their employers providing information on employment conditions, pension and social security contributions and residence permits. Information on the legal status of private carers is available in the main languages spoken by them (Russian, Romanian and Ukrainian).

⁹ In its fourth report on San Marino, ECRI noted that there was "nothing indicating that these women always need to return to their country after 11 months; as a result, for the majority of these women, interrupting their stay for one month is particularly disadvantageous and puts them in a more precarious situation than other categories of foreign workers." ECRI therefore recommended that the San Marinense authorities review the legislation on residence and work permits for foreigners who come to San Marino to work as private carers and in particular to allow them to work for 12 consecutive months per year so as to reduce their precariousness of employment. See ECRI's fourth report on San Marino, 9 July 2013, paragraph 113.

70. San Marino is a tourist destination attracting foreign tourists and employing a number of seasonal foreign workers in shops, restaurants and hotels. The country experienced an economic boom some years ago, particularly notable in the construction sector. This attracted foreign companies employing foreign workers. At that time, serious infringements of the labour legislation were reported, although they did not amount to THB or forced labour. Since then, with the impact of the global economic crisis on San Marino, the construction sector has entered into a phase of recession and the number of labour legislation infringements has reportedly significantly decreased, which is also attributed to the reinforcement of the labour legislation.

71. GRETA considers that the San Marinese authorities should raise awareness of THB and the different forms of exploitation involved, both among the general public (including through school and university education) and among professionals likely to come into contact with victims of THB.

72. Further, GRETA considers that the San Marinese authorities should ensure that foreign persons employed as domestic workers or private carers are systematically informed in a language they understand about their rights and the danger of THB. Such persons should be given the possibility to contact, in a language they understand, an office or a person who can assist them in case of problems with their employers. Similar measures should also be introduced for foreign workers employed in San Marino, in particular on the basis of seasonal work permits in the sectors of tourism, domestic work and construction.

b. Border measures to prevent THB and measures to enable legal migration

73. As indicated in paragraph 10, San Marino is an enclave landlocked by Italian territory. It does not have an airport. The Convention on Friendship and Good Neighbourhood between San Marino and Italy of 1939 (with subsequent amendments) establishes, *inter alia*, the free movement of nationals between the two States. In addition, San Marino has a customs union regime with the European Union.

74. The controls performed at San Marino's border and on its territory are mainly focused on checking travel documents, means of transport and luggage of foreign nationals travelling through the country. Such controls are not systematic and can be performed by all law enforcement authorities.

75. San Marino does not issue entry visas. Pursuant to Law no. 118/2010 on the entry and stay of foreigners in San Marino, citizens of countries belonging to the Schengen area do not need a visa to enter San Marino and all other foreigners can enter San Marino if they have a valid Schengen visa obtained from one of the Member States of the Schengen Agreement.

76. Some information on the legal entry and stay of foreigners in San Marino, as regulated by Law No. 118/2010, is available in Italian on the website of the Ministry of Foreign Affairs.¹⁰ San Marinese embassies and consulates abroad are used to provide information on entry and stay in San Marino to those who enquire about it.

c. Measures to ensure the quality, security and integrity of travel and identity documents

77. The San Marinese authorities have indicated that passports are issued in compliance with the International Civil Aviation Organisation (ICAO) rules and identity cards are made of materials preventing alteration. Law enforcement officials are trained in the detection of false travel and identity documents.

3. Implementation by San Marino of measures to protect and promote the rights of victims of trafficking in human beings

a. Identification of victims of trafficking in human beings

78. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time, and therefore the Convention provides for the rights of potential victims by establishing that when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, he/she must not be removed from the country until the identification process is completed and must receive the assistance required by the Convention.

79. The San Marinese authorities have indicated that the Gendarmerie would be in principle the authority responsible for the identification of victims of THB, but NGOs or individuals could signal a suspicion that a person is a victim of THB. The Gendarmerie would then start an investigation and inform the judicial authority accordingly within 48 hours. They would also contact the social services to request social assistance (including psychological support) for the presumed victim.

80. GRETA notes the existence of a procedure for identifying and assisting victims of violence, in particular women and children, pursuant to Law No. 97/2008. As noted in paragraph 18, the AEO has set up a technical panel and a network of relevant professionals who act collectively to assist victims of violence. The existing procedure is based on an obligation for all professionals to report to the Law Commissioner (judicial authority) or the juvenile judge, in the case of child victims, any case of violence, while respecting the privacy of the victim. A form has been created for the purpose of reporting such cases, including information on the type of violence, the sex, age and nationality of the victim, and her/his relationship with the perpetrator. While in principle the same procedure could be applied in THB cases, the relevant actors have not been received training on identifying victims of THB.

81. Several entities in San Marino are tasked with checking companies and other business activities: labour inspectors, tax inspectors, the Civil Police Fraud Unit, the Health Authority, and licensing authorities such as the Office for the Industry, Craftwork and Business and the Office for Agriculture. While these entities could participate in the detection of cases of THB, in particular of labour exploitation, their staff has not been trained on THB. GRETA notes that labour inspectors are not entitled to enter private households to check the working conditions of domestic workers or private carers, only the Gendarmerie having the authority to do that.

82. GRETA urges the San Marinese authorities to adopt such legislative or other measures as may be necessary to proactively identify victims of THB and refer them to assistance, involving different actors who may come into contact with victims (law enforcement officers, inspectorates, social workers, medical staff, NGOs, trade unions) and providing them with indicators for detecting possible victims.

b. Assistance to victims

83. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of children victims of trafficking (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

84. Law No. 97/2008 provides for a number of assistance measures for women victims of violence and other victims of gender-based violence, which could be adapted to victims of THB. A counselling centre for women victims of violence was opened in July 2013 within the Centre for women's health at the public hospital of Dogana. It runs a free hotline and can provide psychological support and advice to victims of violence. The centre works in close co-operation with law enforcement officials and social workers, including the Minors' Service.

85. Victims of violence are provided by the centre's staff with a list of lawyers available for legal counselling. Victims of crime can receive free legal aid if they do not have the means to pay for it.

86. Any official who has been informed of a case of gender-based violence has an obligation to report it to the relevant judicial authority, which can decide to issue a protection order in favour of the victim.

87. Given the small territory of San Marino, the ISS has concluded an agreement with an Italian public body that provides secure accommodation to women victims of violence. Similar agreements exist between the Minors' Service of San Marino and several Italian structures which provide accommodation to minors when this is considered by the judicial authority to be in their best interests. The Minors' Service is entrusted with checking regularly that the centres concerned provide adequate conditions. According to the San Marinense authorities, women and children victims of THB could benefit from the same agreements if necessary. Similar solutions could be found with the Italian authorities to protect male victims of THB, in the context of the protection foreseen for victims of crime.

88. As concerns access to health care, foreigners working in San Marino, including seasonal workers, are under the obligation to pay for public health insurance and would therefore be covered for all types of health assistance. Foreigners in an irregular situation have access to emergency health assistance.

89. A child victim of THB would be referred to the Minors' Service and, in the case of non-accompanied foreign minors, a legal guardian would be designated by the judge for minors.

90. **GRETA urges the San Marinense authorities to adopt such legislative or other measures as may be necessary to provide assistance to all victims of human trafficking (women, men and children, regardless of the form of exploitation) and help them with their physical, psychological and social recovery, in particular suitable safe accommodation, emergency medical treatment, counselling and information on their rights in a language that they can understand, in accordance with Article 12 of the Convention.**

c. Recovery and reflection period

91. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not to be confused with the issue of a residence permit under Article 14(1) of the Convention. Pursuant to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

92. San Marinese law does not provide for a recovery and reflection period for victims of THB. The Gendarmerie has the power to remove irregular migrants when authorised by a judge's decision. Removal decisions can be appealed against within 10 days of their notification. The San Marinese authorities have indicated that in case of doubt, in particular when necessary to identify a victim, the competent judge can decide that an investigation be launched and the person would not be removed.

93. GRETA urges the San Marinese authorities to provide in law for a recovery and reflection period for victims of THB, in conformity with Article 13 of the Convention, and to ensure that all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention are provided during this period.

d. Residence permits

94. Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

95. There is no specific legal provision on residence permits for victims of THB in San Marino. The authorities have indicated that Article 14 of Law No. 118/2010 on the entry and stay of foreigners in San Marino, which provides for an extraordinary residence permit for humanitarian reasons of social protection, could apply to victims of THB. This permit is issued for one year and can be renewed as long as social protection is needed. The permit gives access to health assistance and temporary economic support as well as to the right to work.

96. GRETA considers that the San Marinese authorities should provide in law for the issue of a renewable residence permit to victims on THB in cases where the competent authority considers that their stay is necessary owing to their personal situation and/or for the purpose of their co-operation in connection with an investigation or criminal proceedings, in accordance with Article 14 of the Convention.

e. Compensation and legal redress

97. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. A human rights-based approach to action against THB entails the effective prosecution of traffickers, putting the emphasis on the right to effective remedy for the victim. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language that they can understand.

98. Victims of crime are informed at the outset of the criminal proceedings about their rights, including the rights to claim compensation before criminal or civil courts. Confiscation of the assets of the perpetrator has often been used in criminal proceedings to compensate the victim and could also be used in case of THB. There is no State compensation fund for victims of any crimes in San Marino.

99. As indicated in paragraph 85, victims of trafficking would have access to free legal aid if they do not have the means to pay for it. The Bar Association is tasked with providing such assistance.

100. GRETA urges the San Marinese authorities to adopt legislative or other measures necessary to guarantee compensation for victims of human trafficking, including compensation from the State when compensation cannot be secured from the perpetrator.

f. Repatriation and return of victims

101. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB. Furthermore a victim may not be returned where such action would be in contravention of the State's obligation of international protection, recognised in Article 40(4) of the Convention.

102. There is no specific procedure envisaged to repatriate victims of THB from San Marino. The authorities have indicated that, if the case arises, they would get in contact with the authorities of the country of return of the victim and also with the Italian authorities to make sure that the person travels back to the relevant country in a safe way.

103. GRETA considers that the San Marinese authorities should provide for a specific procedure for the return of victims of THB to their country of origin, which should preferably be voluntary and needs to be carried out with due regard for the victims' rights, safety and dignity. The return of victims should be preceded by an assessment of the risks they might face in the country of return and with due respect for the *non-refoulement* principle, in accordance with Article 40(4) of the Convention.

4. Implementation by San Marino of measures concerning substantive criminal law, investigation, prosecution and procedural law

a. Substantive criminal law

104. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must also be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

105. Under Article 168 of the CC, a person who commits the offence of THB shall be punished by a prison sentence of 10 to 20 years (sixth degree in San Marinese law) and a prohibition to exercise civic rights for a term of two to five years (fourth degree interdiction). The prison sentence shall be increased by one degree (which corresponds to 14 to 24 years) if the offence of THB is committed against a minor, is aimed at exploiting prostitution or is committed for the purpose of organ removal.

106. According to Article 147 of the CC, the confiscation of criminal assets is amongst the sanctions incurred in trafficking cases. If the person is sentenced, the assets which were used and were intended to be used to commit the offence must be confiscated.

107. The San Marinese authorities have specified that an offence committed by a public official is considered a generic aggravating circumstance and the penalty is increased by one degree (Articles 90 to 92 of the CC). An offence committed in the framework of a criminal organisation does not constitute an aggravating circumstance given the concurrent offence of “criminal association” (Article 287 of the CC), which is punished by third-degree imprisonment, as well as Article 287bis of the CC, applying to mafia-type criminal association. If the life of the victim is endangered, even though this is not considered as an aggravating circumstance, the penalty is determined on the basis of concurrent offences, such as attempted bodily injury or attempted murder.

108. The use of services of a victim of THB with the knowledge that the person is a victim is not criminalised in San Marinese law. **GRETA invites the San Marinese authorities to consider criminalising the use of services which are the object of exploitation resulting from THB, with the knowledge that the person is a victim of THB.**

109. Article 34 of Law No. 118/2010 punishes the counterfeiting or forging of travel or identity documents or purchasing, receiving, holding, transferring or using a counterfeit document with a view to committing the offence of smuggling of migrants or enabling another person to commit such a crime, by a prison sentence from two to six years.

110. Under San Marinese law a legal person can be held criminally liable for the offence of THB as provided in Law No. 99/2013 on the liability of legal persons. The penalties envisaged include a fine ranging from 2 000 to 100 000 euros, confiscation of the assets of the legal person, suspension of its activities, and dissolution of the legal person.

111. San Marinese law provides that when determining the penalty for offences of THB, the judge must take into account the “former life of the perpetrator”, which could include previous convictions in another country for similar offences. However, this remains a discretionary power of the judge who is not obliged to enquire about previous convictions before determining the penalty.

b. Non-punishment of victims of trafficking in human beings

112. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so.

113. There is no specific provision in San Marinese law which would provide for such a possibility. However, the San Marinese authorities have stressed that Article 33 of the CC, which provides for exemption of criminal liability for those who have been coerced to commit an offence, would apply to victims of THB. Further, they have referred to Article 35 of the CC, which excludes responsibility if a person was tricked by another person into committing an offence, Article 41 of the CC, which provides for legitimate defence, and Article 42 of the CC, which provides that exemption shall apply to anyone forced to commit an offence to protect him/herself from the risk of serious personal harm or a threat.

114. **GRETA invites the San Marinese authorities to verify if the existing provisions of the Criminal Code would be sufficient to provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so, and to raise the awareness of the law enforcement and judicial authorities concerning this principle.**

c. Investigation, prosecution and procedural law

115. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b)). In this context, Parties are required to co-operate with each other regarding investigations and/or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation or prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

116. In San Marino, there is an office within the Gendarmerie for the prevention of violence against women and children and gender-based violence, which could be competent in cases of THB involving sexual violence.

117. Law No. 118/2010 provides that the AEO is entitled to bring a civil action before the Criminal Court in case of offences involving violence, which could also apply to THB offences.

118. Law No. 98/2009 on wire-tapping provides for the possibility of using this special investigative technique for several offences, including THB. The San Marinense authorities sometimes have recourse to a request for mutual legal assistance and ask the Italian authorities to use their own special investigative techniques where necessary.

d. Protection of victims and witnesses

119. By virtue of Article 28 the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical, relocation, identity change) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

120. Law No. 97/2008 provides for the possibility of issuing protection orders in favour of victims of gender-based violence. The victim or witness of violence has the right to receive psychological support during the trial and during confrontation with the accused person. Legal and medical examination of the victim should preferably be conducted by a professional of the same sex. Video recording can be used to avoid unnecessary re-traumatisation of the victim. When the victim is a minor, it is possible to protect his/her identity through a system of one-way mirror or other devices. A child psychologist would always be present during the procedure. However, it is not clear whether all victims of trafficking, in particular for labour exploitation, would benefit from the protection measures provided for by this law. In their comments on the draft GRETA report, the San Marinense authorities have indicated that Articles 22, 23 and 24 of Law No. 97/2008 make reference to the protection of all victims of offences against personal liberty and ill-treatment, without further specification. Moreover, the provisions of the CC punishing these offences, i.e. under Articles 167 and 168, are in the chapter on offences against personal liberty which, according to the authorities, would mean that victims of labour exploitation would be covered.

121. Other means of protection for victims of violence are available in law, such as extraordinary stay permits, patrols and fixed surveillance. Where necessary for the protection of the victim, the San Marinense authorities can co-operate with Italy to ensure the security of the victim, for instance in the context of a change of identity.

122. **GRETA considers that the San Marinese authorities should ensure that all measures to protect victims of trafficking from potential retaliation or intimidation, in particular during and after investigation, as envisaged in Articles 28 and 30 of the Convention, are effectively available for victims of trafficking of all types of exploitation, including labour exploitation.**

5. Concluding remarks

123. GRETA welcomes the steps taken by the San Marinese authorities to criminalise trafficking in human beings and to set up structures and measures for combating violence against women and gender-based violence, which could apply to victims of trafficking.

124. In order to meet the requirements of the human rights-based and victim-centred approach followed by the Convention, GRETA calls on the San Marinese authorities to adopt legislative and practical measures which enable them to proactively identify victims of trafficking and to provide them with the necessary protection and assistance, regardless of whether they co-operate with the investigation. Furthermore, it is incumbent on the authorities to provide in law for a recovery and reflection period for victims of trafficking.

125. All professionals who may come into contact with victims of human trafficking, including law enforcement officials, prosecutors, judges, labour inspectors, social workers and medical staff, must be continuously informed and trained about the need to apply a human rights-based approach to action against human trafficking on the basis of the Convention and the case law of the European Court of Human Rights.

126. GRETA invites the San Marinese authorities to keep it informed on a regular basis of developments in the implementation of the Convention and looks forward to continuing the good co-operation in further efforts in achieving the purposes of the Convention.

Appendix I: List of GRETA's proposals

Definition of trafficking in human beings

1. GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions and provide victims with greater confidence in self-reporting to NGOs and public authorities.

Comprehensive approach and co-ordination

2. GRETA considers that the San Marinese authorities should ensure that all victims of THB can benefit from the assistance measures envisaged in the Convention regardless of the form of exploitation and the gender of the victim.

3. GRETA considers that the San Marinese authorities should establish a framework for co-ordinating the actions of different actors in the event of a trafficking case being identified, for instance as part of the existing technical panel, which includes law enforcement agencies, inspection agencies, social services and civil society.

Training of relevant professionals

4. GRETA urges the San Marinese authorities to ensure that training on THB (in particular on the definition and indicators of THB, distinguishing THB from smuggling of migrants, detection of vulnerable individuals and groups, identification, assistance and compensation of victims) is provided to relevant professionals, such as law enforcement officials, prosecutors, judges, labour inspectors, lawyers, social workers, child care professionals, medical and educational staff. NGOs and trade unions should also be involved in such training.

Data collection and research

5. GRETA encourages the San Marinese authorities to:

- consider how data on victims of trafficking in human beings (disaggregated by sex, age, type of exploitation, country of origin and/or destination) would be collected, having due regard to their right to personal data protection;
- support research into THB-related issues.

International co-operation

6. GRETA encourages the San Marinese authorities to continue their efforts in the area of international co-operation and to develop partnerships with Italy and other countries in the field of training on THB of relevant professionals (such as law enforcement officials, prosecutors, judges, labour inspectors, lawyers, social workers, child care professionals, medical and educational staff and other relevant groups).

Measures to raise awareness and discourage demand and initiatives for persons vulnerable to THB

7. GRETA considers that the San Marinese authorities should raise awareness of THB and the different forms of exploitation involved, both among the general public (including through school and university education) and among professionals likely to come into contact with victims of THB.

8. Further, GRETA considers that the San Marinense authorities should ensure that foreign persons employed as domestic workers and private carers are systematically informed in a language they understand about their rights and the danger of THB. Such persons should be given the possibility to contact, in a language they understand, an office or a person who can assist them in case of problems with their employers. Similar measures should also be introduced for foreign workers employed in San Marino, in particular on the basis of seasonal work permits in the sectors of tourism, domestic work and construction.

Identification of victims of trafficking in human beings

9. GRETA urges the San Marinense authorities to adopt such legislative or other measures as may be necessary to proactively identify victims of THB and refer them to assistance, involving different actors who may come into contact with victims (law enforcement officers, inspectorates, social workers, medical staff, NGOs, trade unions) and providing them with indicators for detecting possible victims.

Assistance to victims

10. GRETA urges the San Marinense authorities to adopt such legislative or other measures as may be necessary to provide assistance to victims of human trafficking (women, men and children, regardless of the form of exploitation) and help them with their physical, psychological and social recovery, in particular suitable safe accommodation, emergency medical treatment, counselling and information on their rights in a language that they can understand, in accordance with Article 12 of the Convention.

Recovery and reflection period

11. GRETA urges the San Marinense authorities to provide in law for a recovery and reflection period for victims of THB, in conformity with Article 13 of the Convention, and to ensure that all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention are provided during this period.

Residence permits

12. GRETA considers that the San Marinense authorities should provide in law for the issue of a renewable residence permit to victims on THB in cases where the competent authority considers that their stay is necessary owing to their personal situation and/or for the purpose of their co-operation in connection with an investigation or criminal proceedings, in accordance with Article 14 of the Convention.

Compensation and legal redress

13. GRETA urges the San Marinense authorities to adopt legislative or other measures necessary to guarantee compensation for victims of human trafficking, including compensation from the State when compensation cannot be secured from the perpetrator.

Repatriation and return of victims

14. GRETA considers that the San Marinense authorities should provide for a specific procedure for the return of victims of THB to their country of origin, which should preferably be voluntary and needs to be carried out with due regard for the victims' rights, safety and dignity. The return of victims should be preceded by an assessment of the risks they might face in the country of return and with due respect for the *non-refoulement* principle, in accordance with Article 40(4) of the Convention.

Substantive criminal law

15. GRETA invites the San Marinese authorities to consider criminalising the use of services which are the object of exploitation resulting from THB, with the knowledge that the person is a victim of THB.

Non-punishment of victims of trafficking in human beings

16. GRETA invites the San Marinese authorities to verify if the existing provisions of the Criminal Code would be sufficient to provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so, and to raise the awareness of the law enforcement and judicial authorities concerning this principle.

Protection of victims and witnesses

17. GRETA considers that the San Marinese authorities should ensure that all measures to protect victims of trafficking from potential retaliation or intimidation, in particular during and after investigation, as envisaged in Articles 28 and 30 of the Convention, are effectively available for victims of trafficking of all types of exploitation, including labour exploitation.

Appendix II: List of public bodies and non-governmental organisations with which GRETA held consultations

Public bodies

- Ministry of Foreign Affairs
- Ministry of the Interior (Police, Gendarmerie, Foreigners Office)
- Ministry of Labour (Labour Office, Labour Inspectorate)
- Ministry of Industry
- Ministry of Agriculture
- Ministry of Education (Department of Instruction)
- Authority for Equal Opportunities
- Commission for Equal Opportunities
- Health Authority
- Minors' Service
- Judges
- San Marinese Parliament (*Consiglio Grande e Generale*)

Non-governmental organisations

- Caritas San Marino
- Confederazione Democratica dei Lavoratori Sammarinesi Trade Union (CDLS)
- Confederazione Sammarinese del Lavoro Trade Union (CSDL)
- Unione Sammarinese dei Lavoratori Trade Union
- San Marino Bar Association

Letter from the authorities of San Marino sent in response to GRETA's report



DIPARTIMENTO
AFFARI ESTERI

Prot. n. 97908/2014

San Marino, 5 september 2014

Dear Executive Secretary,

The Republic of San Marino has received GRETA's Final Report.

I have the honour to inform you that San Marino Authorities don't intend to make any comments to GRETA's Final Report.

Sincerely yours,

Sylvie Bollini
First Secretary
Contact Person

**Ms. Petya
Nestorova**
Executive Secretary
GRETA
Council of Europe
=STRASBOURG=
SB

REPUBLICA DI SAN MARINO

Palazzo Begni – Contrada Omerelli, 31 – 47890 San Marino
T +378 (0549) 882 144 - F +378 (0549) 882 422 – dipartimentoaffariesteri@pa.sm
www.esteri.sm