

# **ECRI REPORT ON SAN MARINO**

**(fourth monitoring cycle)**

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. Except where expressly indicated, it covers the situation up to 5 December 2012 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**



## SUMMARY

**Since the publication of ECRI's third report on San Marino published on 29 April 2008, progress has been made in a number of fields covered by that report.**

San Marino has adopted a new law on naturalisation which makes acquiring citizenship less difficult than previously.

A law amending the Criminal Code with new provisions against discrimination based on racial, ethnic, religious and sexual orientation grounds has been passed.

New regulations with quotas limiting the use of workers on "project-based cooperation" contracts have been introduced. In addition, the social-security reform has created an obligation for the employer to pay contributions also for employees on "project-based collaboration" contracts.

The system of residence and "stay permits" has been reviewed extending the maximum length of "stay permits" for work from 10 to 11 months per year; expressly providing for the delivery of a "stay permit" for extraordinary humanitarian and social protection; and containing clear standards in the matter of inheritance by a foreigner of immovable goods in San Marino.

A series of legislative and regulatory measures have been adopted to improve the situation of women from Central and Eastern Europe who come to San Marino to work as private carers.

**ECRI welcomes these positive developments in San Marino. However, despite the progress achieved, some issues continue to give rise to concern.**

No significant progress has been made towards the signature and ratification of a number of human rights international instruments.

Citizenship in San Marino continues to be granted only by means of extraordinary laws, which each time may provide for different requirements to fulfil, procedure to follow and deadline to respect. ECRI regrets, above all, the lack of legal certainty in this approach.

San Marino still lacks comprehensive civil and administrative legislation against discrimination on grounds of ethnic origin, citizenship, colour, religion and language (racial discrimination), as well as an independent body to combat racism, xenophobia, antisemitism and intolerance at national level.

Transfrontier workers are confronted with problems of double taxation and, despite the fact that the general climate of society in San Marino continues to be one of dialogue and tolerance, they face a latent feeling of resentment.

The fact of compulsorily interrupting one month per year the work contract of private carers is particularly disadvantageous for this category of foreign workers and puts them in a more precarious situation than other categories of foreign workers.

Despite the increasing complexity of the social phenomena that characterise San Marinese society, the majority population understands the notion of racism and racial discrimination to cover only the most blatant and overt forms of these phenomena, thus overlooking other more common manifestations of intolerance experienced in everyday life.

**In this report, ECRI requests that the San Marinense authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.**

The process towards the signature and ratification of a number of human rights international instruments should be completed as soon as possible. This can steer legislative reform in key areas for combating racism and racial discrimination.

The acquisition of citizenship through naturalisation should be regulated by ordinary law. In addition, the length of residence necessary for residents to apply for naturalisation should be further reduced, in line with the standards of the Council of Europe Convention on Nationality.

Comprehensive civil and administrative legislation against racial discrimination should be enacted. In addition the Equal Opportunities Commission should be expressly provided with competence to combat racism and racial discrimination, should be made independent from the Government and given sufficient means to fulfil its tasks effectively\*.

A survey into the possible existence, extent and manifestations of discrimination against foreigners within the labour market should be conducted, possibly as part of a wider survey into perceptions among potential victims.

The legislation on stay and work permits for foreigners who come to San Marino to work as private carers should be reviewed to allow them to work for 12 consecutive months per year so as to reduce their precariousness of employment\*.

Authorities should draw up an action plan to promote among the general population a better understanding of discrimination (for example on grounds of citizenship) and intolerance, and raise awareness of the way in which these phenomena operate in society.

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\* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.



## FINDINGS AND RECOMMENDATIONS

### I. Existence and Application of Legal Provisions

#### International legal instruments

1. In its third report, ECRI recommended that San Marino ratify the European Social Charter (Revised). ECRI is pleased to note that the possibility of ratifying the European Social Charter is under serious consideration by the San Marinese authorities. An ad hoc inter-ministerial working group has been set up to examine the adjustments that need to be made to existing domestic law. The authorities assured ECRI of their determination to complete this examination as soon as possible.
2. ECRI recommends that the San Marinese authorities complete as soon as possible the process towards the signature and ratification of the European Social Charter (Revised).
3. In its third report, ECRI also recommended that San Marino sign and ratify the UNESCO Convention against Discrimination in Education; the Geneva Convention Relating to the Status of Refugees; the European Convention on Nationality; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
4. As to these instruments, ECRI regrets that no significant progress has been made towards their signature and ratification. In their dialogue with ECRI the authorities have emphasised that, although San Marino attaches considerable importance to international human rights instruments, there are no immediate plans for the signature and ratification of the treaties mentioned above. In particular, some of them have not been ratified because the authorities consider that they lack sufficient human resources in order to study and examine systematically their compatibility with the domestic legal order or, as in the case for example of the UNESCO Convention, simply meet the reporting obligations that their ratification would entail.
5. The authorities have stated that completing the process of ratification of the Geneva Convention Relating to the Status of Refugees<sup>1</sup> would require a thorough study of domestic legislation, especially in light of the recent law No.118 of 28 June 2010 concerning the entry and stay of foreigners, which for the moment does not seem feasible because of the limited staff available in the competent government departments.
6. With regard to the Convention on Nationality, the authorities have stated that this treaty is not in line with San Marinese citizenship legislation, especially as regards the number of years of residence required to obtain citizenship.
7. With regard to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, according to the authorities its provisions seem to be difficult to apply in San Marino given the specific features and legal order of the country. The obligation to allow for the reunification of immigrant workers with their family and other related norms are considered particularly problematic.

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<sup>1</sup> San Marino's Parliament (*Consiglio Grande e Generale*) has ratified the Refugee Convention but the instrument of ratification has never been deposited. Decree No. 24 of 4 June 1970, signed by the *Capitani Reggenti* and approved by Parliament, provides that the Convention should be applied "in conformity with the legislation governing the entry and residence in San Marino". According to information received by ECRI, it would seem that it is because of this reservation that the authorities decided not to deposit the instrument of ratification for fear of difficulties in applying the Convention in practice.

8. ECRI's considers that, in view of the considerable importance given by the San Marinese legal order to human rights treaties, which enjoy constitutional status once ratified, signature and ratification of the above-mentioned conventions should not be seen by the authorities purely as an extra burden. On the contrary, their ratification should steer legislative reform in a number of key areas to combat racism and racial discrimination<sup>2</sup> (in particular concerning employment and non-nationals). It is essential, therefore, that the process of review of domestic legislation be conducted not only with care but also swiftly.
9. ECRI recommends the authorities to complete the process of ratification of the Geneva Convention relating to the Status of Refugees. ECRI also reiterates its recommendation to the authorities to sign and ratify the UNESCO Convention against Discrimination in Education, the European Convention on Nationality, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
10. In its third report, ECRI also recommended that the San Marinese authorities sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level, and the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems as soon as possible.
11. In relation to the Convention on the Participation of Foreigners in Public Life at Local Level, the authorities have stated that the domestic law is not in conformity with some of the treaty's core provisions related to the creation of consultative bodies to represent foreign residents at local level and the right of foreign residents to vote in local authority elections. The right of long-term residents to take part in local elections was discussed in connection with the law amending the legislation on town councils. ECRI refers to its comment on the participation of foreigners in public life in paragraphs 102-103. It feels that the principle enshrined in the Convention could usefully strengthen relations between the authorities and the foreign population residing in San Marino, which represents 18% of the total population.
12. With regard to the Convention on Cybercrime, ECRI has been informed that San Marino has started to examine the treaty with a view to its possible ratification. ECRI has also been informed that the new package law on organised crime and financial crime has brought domestic law closer to the requirements of the Cybercrime Convention. However, the ratification of this instrument would require further important amendments to relevant domestic legislation.
13. ECRI recommends that San Marino sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level. ECRI also strongly encourages San Marino to sign and ratify the Convention on Cybercrime and its Additional Protocol.
14. In its third report, ECRI further recommended that San Marino sign and ratify the European Charter for Regional or Minority Languages. The authorities have stated that they do not consider that this convention is relevant for San Marino which has no minority or regional language spoken on its territory. ECRI takes note of the opinion expressed by the authorities in the light of the current features of San Marino's population.

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<sup>2</sup> "Racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. "Racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification"; paragraph 1 a) and b) of ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

15. As from February 2008, in accordance with Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, San Marino recognises the competence of the Committee on the Elimination of Racial Discrimination (CERD) to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by the Republic of San Marino of any of the rights set forth in the Convention. For the moment, CERD has not dealt or received any communication from individuals or groups of individuals claiming to be victims of a violation by San Marino.

### **Constitutional and other fundamental provisions**

16. In its third report, ECRI recommended that the San Marinense authorities amend Article 4 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order<sup>3</sup> to include explicit grounds such as "race", colour, language, nationality and national or ethnic origin.
17. No amendments have been made to the Declaration in response to the above-mentioned recommendation. The authorities have pointed out that such grounds come under the concept of "personal circumstances"<sup>4</sup> in Article 4 of the Declaration and that international law provisions such as the prohibition of discrimination in Article 14 of the ECHR and its Protocol No. 12 have been directly applied many times in domestic case law<sup>5</sup>; both these instruments have constitutional status and prevail over domestic-law provisions. According to the authorities, the choice made by the San Marinense legislator has been against a closed list of fundamental rights and in favour of an open, flexible and progressive constitution, the contents of which can adjust to the evolution of relevant international treaty law. As a consequence, the absence of an explicit prohibition of all forms of discrimination does not affect the protection against racism and intolerance in San Marino.
18. ECRI remains of the opinion that an explicit mention of all the discrimination grounds listed in its General Policy Recommendation (GPR) No. 7 would further improve the protection against discrimination in the fields covered by its mandate. In light of the above and the principle of legal certainty, ECRI feels that a review of Article 4 of the Declaration is called for.
19. ECRI reiterates its recommendation that the authorities consider amending Article 4 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order in light of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

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<sup>3</sup> The Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order is a law that serves as a constitutional text, since San Marino does not have a proper Constitution; sources of law comprise customary law (*antiche consuetudini*), the ancient Statutes of 1600 AD (*Leges Statutae Republicae Sancti Marini*) and subsequent legislation (*Reformationes*), including the above-mentioned Declaration on the Rights, which has the status of constitutional law.

<sup>4</sup> Article 4 of the Declaration provides the following: "1. All are equal before the law without distinctions relating to gender or personal economic, social, political or religious circumstances. 2. All citizens are eligible to hold positions in the public sector and elected office according to the modalities prescribed by law. 3. The Republic guarantees equal social dignity and equal protection of rights and freedoms. It promotes the conditions in the economic and social life of the country".

<sup>5</sup> See judgments No 21/07 of 7 June 2009 on discrimination in the workplace; No. 153/06 of 2 July 2008, No. 197/01 of 20 July 2008 and No. 187/06 of 11 December 2010 on citizenship issues; No. 141/10 and No. 318/09 of 15 July 2010 on registration of religious marriages in the civil register; No. 378/07 of 1 April 2008 on pre-marriage publication requirements; and a judgment of 30 September 2008 on trade union rights of transfrontier workers.

## Citizenship legislation

20. In its previous report ECRI recommended that the San Marinense authorities review the provisions that regulate the acquisition of citizenship through naturalisation. In particular, it recommended them to reduce the length of residence required for applying for naturalisation and allow for more flexibility in the holding of double nationality upon acquisition of San Marinense citizenship. In addition, ECRI recommended them to ensure that applications for naturalisation could be lodged at any point in time and that decisions on naturalisation are subject to appeal.
21. On 21 March 2012 the law on extraordinary provisions on naturalisation<sup>6</sup> was approved by the Consiglio Grande e Generale, the legislative assembly. ECRI notes with satisfaction that some of its recommendations have been taken into consideration by the legislator thus making acquiring citizenship through naturalisation slightly less restrictive than in previous extraordinary laws.
22. In sum, the new law reduces from 30 to 25 years the period of continued residence required for acquiring citizenship. It reduces this period to 18 years for those who have lived continuously in the territory since birth and to 10 years for those who are stateless. The requirement for the spouses of citizens of San Marino of a minimum period of 15 years of residence remains as in the previous law. However, paragraph 3 of Article 2 now also covers the case of widowhood, thus filling a gap.
23. Most importantly, according to Article 4 of the law, the decision to naturalise is now automatically extended to minor descendants living with the parents at the time of the request, even if only one parent is naturalised. Therefore, contrary to the previous law, minors with only one parent naturalised are now treated in the same manner as those having both parents naturalised, in accordance with the Council of Europe Convention on Nationality<sup>7</sup>.
24. Paragraph 2 of the same article provides for the possibility of acquiring citizenship for a minor whose parent died before having the possibility to apply for naturalisation for him/herself and his/her minor children (in cases where the deceased parent met the requirement established by this law).
25. ECRI notes that unfortunately the requirement to renounce any other nationality, within one year from the day of the San Marino citizenship oath ceremony, is maintained in this law. However, an exception to this requirement is provided for in cases where renunciation of one's nationality is not allowed or where it is virtually impossible to comply with the relevant administrative procedures.
26. Although the law on extraordinary provisions on naturalisation does not provide expressly that decisions on naturalisation are subject to an appeal, ECRI notes that an appeal is always possible under ordinary law.
27. ECRI recalls that citizenship in San Marino continues to be granted only by means of extraordinary laws, which each time may provide for different requirements to fulfil, procedure to follow and deadline to respect. ECRI regrets, above all, the lack of legal certainty in this approach. As a consequence, those who will meet all the requirements for naturalisation after the deadline prescribed by the current law (i.e. 31 January 2013) has expired will not only have to wait

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<sup>6</sup> Law No. 35 of 30 March 2012.

<sup>7</sup> Article 4 of this Convention lists among the persons for whom a State Party "shall facilitate in internal law the acquisition of its nationality" "children one of whose parents acquires or has acquired its nationality".

until the opportunity to file an application is given by another extraordinary naturalisation law<sup>8</sup>, but could also be required to fulfil different requirements.

28. ECRI has been informed by the authorities that, prior to the adoption of the last law on citizenship, there was a vivid political and social debate on whether naturalisation should be an extraordinary or ordinary measure. During the drafting of the law both options were considered. However, at the end the opinion prevailed that an extraordinary law should be enacted. This would give the authorities each time the power to decide the requirements, procedures and timeframe for granting citizenship.
29. In ECRI's view, this debate shows that there is, to a certain degree, political support for making it possible to acquire citizenship through an ordinary law. Easing the naturalisation requirements would greatly facilitate the integration of long-term residents into San Marinese society; above all, it would ensure that political rights are not only enjoyed by part of the current population of San Marino. ECRI recalls that most countries in Europe require between five and 10 years of residence for naturalisation purposes, as provided for by the European Convention on Nationality.
30. ECRI reiterates its recommendation that the San Marinese authorities review the provisions that regulate the acquisition of citizenship through naturalisation. In particular, it recommends that they ensure that its acquisition is regulated by ordinary law, which should provide that applications can be lodged at any point in time. In addition, it recommends that they further reduce the length of residence necessary for residents to apply for naturalisation, in line with the standards of the European Convention on Nationality.

### **Criminal law provisions**

31. In its third report, ECRI recommended that the San Marinese authorities introduce criminal law provisions against racist expression and racist organisations. It also recommended that they introduce provisions expressly enabling the racist motivation of the offender to be taken into account as an aggravating circumstance in sentencing.
32. ECRI notes with approval that a law amending the Criminal Code with new provisions against discrimination based on racial, ethnic, religious and sexual orientation grounds was passed in San Marino on 28 April 2008<sup>9</sup>. The San Marinese authorities have declared that it conforms with ECRI's GPR No. 7 and translates the Government's willingness to implement the principle of non-discrimination embodied in Protocol No. 12 to the European Convention on Human Rights and the International Convention on the Elimination of all Forms of Racial Discrimination ratified by San Marino.
33. The law introduces in the Criminal Code Article 179 bis which provides for the offence of racial discrimination. This Article punishes, in particular, the divulgence, by any means, of ideas based on superiority or racial or ethnic hatred, as well as the incitement to perpetrate or the perpetration of acts of discrimination on racial, ethnic, religious grounds or related to sexual orientation<sup>10</sup>.

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<sup>8</sup> San Marino has so far had six extraordinary naturalisation laws in 1907, 1914, 1945, 1984, 2000 and 2012.

<sup>9</sup> Law No. 66 of 28 April 2008.

<sup>10</sup> Text of the law in Italian available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_128030.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_128030.pdf).

34. Furthermore, the same law amends Article 90, paragraph 1, subparagraph 1 of the Criminal Code rendering the motivation for committing a crime for the purpose of racial, ethnic, national, religious discrimination or discrimination related to sexual orientation an aggravating factor in sentencing. In this case the offence is prosecuted *ex officio*.
35. ECRI appreciates the efforts made by the San Marinese authorities to follow ECRI's recommendations in this field. However, it notes that the two above-mentioned articles do not contain colour and language as grounds for discrimination, as per ECRI's GPR No. 7.
36. ECRI recommends that the authorities strengthen the criminal legislation in place relating to racism and intolerance and introduce in the Criminal Code the provisions outlined in the preceding paragraph, including a provision prohibiting discrimination on grounds of colour and language.
37. ECRI was informed that in the last four years, no criminal proceedings have been instituted for breach of Article 179 bis of the Criminal Code, introduced by law No. 66/2008. Moreover, the aggravating circumstance of racist motivation in sentencing, introduced with the amendment of Article 90 of the Criminal Code by the above-mentioned law, has never been applied.
38. ECRI considers that the risk of hate crime cannot be completely ruled out in San Marino. ECRI is therefore of the opinion that training should be offered to the judiciary on the importance of applying the new provisions of the Criminal Code when required (in addition to the training already offered on the general principles of human rights).
39. ECRI also considers that for the same reasons, an information campaign should be conducted on the provisions in place. Its aim should be racism and racial discrimination prevention and punishment. It should target potential victims encouraging them to come forward.
40. ECRI recommends that the authorities offer judges and lawyers training on the criminal legislation in place relating to racism and racial discrimination. It also encourages the authorities to raise awareness of the new criminal law provisions relating to racism and racial discrimination, particularly among potential victims of this type of crime. These efforts should form an integral part of a general National Action Plan against Racism, as recommended below<sup>11</sup>.

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

41. In its previous report ECRI strongly recommended that the San Marinese authorities adopt civil and administrative anti-discrimination provisions that would prohibit racial discrimination across all fields of life and provide victims with effective means of redress. It recommended that, in examining the different options, the need to grant the highest level of protection to victims of racial discrimination is taken into consideration. To this end, ECRI recommends that the San Marinese authorities draw inspiration from its GPR No. 7 on national legislation to combat racism and racial discrimination.
42. ECRI notes that there have been no legislative changes in the field of civil and administrative law. It refers to its comments on issues concerning discrimination in employment (see paragraphs 50 et seq.).

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<sup>11</sup> See Education and Awareness Raising.

43. ECRI strongly recommends that the San Marinense authorities enact comprehensive civil and administrative legislation against racial discrimination, drawing on its General Policy Recommendation No. 7.

#### **Anti-discrimination bodies**

44. In its third report, ECRI recommended that the authorities ensure that, as part of its work to guarantee equality before the law and equal opportunities, the Equal Opportunities Commission addresses issues covered by ECRI's mandate. It also encouraged the San Marinense authorities to ensure that the expertise necessary to this end is reflected in the membership of the Commission. In addition, ECRI recommended that the San Marinense authorities continue with their plans to establish an Ombudsman, providing it with a specific competence relating to combating racism and racial discrimination. In examining the above mentioned different options ECRI strongly recommended that the authorities take into account ECRI's GPR No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, and No. 7 on national legislation to combat racism and racial discrimination.
45. The situation remains unchanged. San Marino has not yet an Ombudsman's Office and the authorities are not envisaging its establishment. The Equal Opportunities Commission has not been active on questions covered by ECRI's mandate. In addition, there is no provision in the above mentioned Law 66/2008 on provisions on racial, ethnic, religious and sexual orientation discrimination for the establishment of an independent specialised body to combat racism and racial discrimination at national level.
46. However, according to the authorities the Equal Opportunities Commission is composed of experts in the areas covered by ECRI's mandate and is ready to take action in this regard, if required. In any case, the authorities would favour a solution in line with ECRI's recommendations in this field without creating another body, which is considered unnecessary in the current context of San Marino.
47. ECRI is fully aware of the challenges of building new institutions to fight racism and racial discrimination given the limited available resources in terms of expertise, staff and funds. For this reason, ECRI is pleased to know that the authorities are considering the possibility of extending the powers of the Commission to cover matters related to ECRI's mandate<sup>12</sup>.
48. However, ECRI draws the attention of the authorities to the fact that the Commission does not fully follow the guidelines contained in its GPR No. 2 on specialised bodies to combat racism xenophobia, antisemitism and intolerance at national level. In particular, the Commission's lack of independence from the Government, as well as its limited accessibility and visibility, make it doubtful that the Commission will be able to function as an anti-racial discrimination body. This could be redressed only with a revision of the law establishing the Commission, which should ensure its independence de jure and make provision for the allocation of necessary funds and staff to ensure its independence de facto.

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<sup>12</sup> Law No. 97 of 2008, on violence against women and gender based violence, has established an Equal Opportunities Authority, which became operational in January 2009. The Authority consists of three members appointed by the *Consiglio Grande e Generale* chosen among legal experts, representatives of non-governmental organisations active in the field of gender equality and experts in communication and psychology. The Authority does not take over the tasks of the Equal Opportunities Commission except for the specific task of combating gender based violence; and the Authority does not address other discrimination grounds.

49. ECRI reiterates its recommendation that the San Marinense authorities ensure that the Equal Opportunities Commission is able to address issues covered by ECRI's mandate. The Commission should be expressly provided with competence to combat racism and racial discrimination, should be made independent from the Government and given sufficient means to fulfil its tasks effectively. In reviewing the Commission's functioning and mandate ECRI strongly recommends that the authorities take into account ECRI's General Policy Recommendations No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level<sup>13</sup>, and No. 7 on national legislation to combat racism and racial discrimination<sup>14</sup>.

## II. Discrimination in Various Fields

### Employment

50. In its third report, ECRI recommended that the working conditions of seasonal workers should be improved and that the hiring of project-based workers should be monitored. In addition, ECRI encouraged the authorities to pursue their efforts to address discrimination against transfrontier workers<sup>15</sup>. ECRI is of the opinion that these recommendations remain valid in the current context of economic crisis and consequent loss of jobs.
51. The authorities have informed ECRI that Law No. 73 of 2010 on reform of social benefits to favour employment mobility has reshaped the welfare system in order to support all workers (be they San Marinense citizens, residents, with stay permits or transfrontier workers), experiencing difficulties due to working-time reduction, temporary suspension or job loss. Moreover, according to the authorities the Decree/Law No. 156 of 5 October 2011 on urgent intervention for the simplification and efficiency of the labour market has given further impetus to, inter alia, the fight against irregular work.
52. As concerns the specific recommendation to monitor the practice of hiring workers on "project-based cooperation" contracts, the authorities have stressed that the above-mentioned decree/law introduced a new regulation with quotas<sup>16</sup> limiting the use of workers on "project-based cooperation" contracts (to a certain percentage of the workers employed on permanent contracts). In addition, Law No. 158 of 5 October 2011 on social-security reform introduced an obligation for the employer to pay contributions also for employees on "project-based collaboration" contracts.
53. Regarding the so called "seasonal" workers, the authorities informed ECRI that "stay permits" for work purposes can be issued to foreigners who wish to stay temporarily on the territory in order to work in the tourist, hotel, trade and agriculture sectors, in conformity with Law No. 118 of 2010. In its third report, ECRI recommended that the San Marinense authorities should ensure that the permits granted to these persons reflect the nature of the work they really do. The authorities have assured ECRI that they are not aware of any cases where a

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<sup>13</sup> See in particular principle No. 5.

<sup>14</sup> See in particular paragraph 7.

<sup>15</sup> According to paragraph c of Article 2 of Law No. 118/2010, a transfrontier worker is "a dependent foreign worker employed in the territory (of San Marino), not in possession of residence or 'stay permit' in the Republic of San Marino, resident or domiciled or with a 'stay permit' in the Republic of Italy where s/he returns every day".

<sup>16</sup> The number of workers hired by an employer on "project-based cooperation" contracts may not exceed 20% of his/her employees on permanent contracts (when s/he employs up to 40 persons) and 10% of his/her employees on permanent contracts (when s/he employs more than 40 persons). Services of an exclusively intellectual nature may be provided by both resident and transfrontier workers; they are always subject to prior approval by the Labour Office.



person holding a “stay permit” for a seasonal job is employed on a completely different job not seasonal in nature.

54. Transfrontier workers are confronted with problems of taxation. Article 56 of Law No. 194 of 22 December 2010, which amended Article 9 of Law No. 91 of 13 October 1984, now provides that only workers residing in San Marino may benefit from tax deduction (*spese produzione reddito*), a possibility previously recognised to all workers (whether resident, with “stay permits” or non-resident). The press called this new provision an “ethnic tax”; it has as a consequence that workers who have the same job in the same company earn different net salaries on the basis on their residence (if resident in San Marino they earn more, if non-resident they earn less). Twenty-seven members of Parliament referred the case to the Collegio Garante della Costituzionalità delle Norme (Constitutional Court) alleging that this provision was discriminatory. On 28 March 2011 the Constitutional Court rejected the claim<sup>17</sup>, arguing that the difference in treatment is not based on nationality but on residence; it is not discriminatory (workers who are San Marinese citizens but not resident cannot benefit from the deduction either); and the law has not introduced a different salary system, but only new fiscal standards<sup>18</sup>. ECRI considers that the constitutional court should have also examined the case under the angle of indirect discrimination.
55. Moreover, ECRI notes that the situation of Italian transfrontier workers is aggravated by the fact that Italy requires them to pay tax on part of the income they earn in San Marino. In the absence of ratification of the Convention on Avoidance of Double Taxation, signed between Italy and San Marino in 2002, which contains a general non-discrimination clause concerning taxation and specific provisions on the taxation of transfrontier workers residing in Italy, the matter is currently regulated unilaterally by Italy. Every year the Italian authorities adopt a decree fixing the taxable income threshold. For a long period of time this had not been adjusted and in 2012 it was even decreased.
56. The signature on 13 June 2012 by Italy and San Marino of a Protocol that modifies the 2002 Convention, including the provisions on the taxation of transfrontier workers, has paved the way for a permanent solution to this problem. In the same month San Marino ratified the Convention and the recent Protocol. Italy is expected to ratify the Convention and the Protocol before long. Paragraph 6 of the additional Protocol provides that Italy shall fix the taxable income threshold by ordinary law.
57. In view of the above, ECRI is of the opinion that the San Marinese authorities should continue to monitor closely the situation of transfrontier workers. They should involve trade unions and employers association in this exercise. They should also be ready to address cases of discrimination against this category of workers.
58. ECRI has been informed that, in recent years, media have reported some work accidents especially in the construction industry and in the informal sector, such as cleaning, which are known to employ a growing number of foreign workers. According to the authorities, existing safety and health standards in employment are applied to all workers without any distinction, and the judicial system enforces

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<sup>17</sup> Judgment of the *Collegio Garante* No. 5 of 28 March 2011.

<sup>18</sup> The Court referred to the Customs Agreement between San Marino and the European Union which prohibits discrimination of workers based on nationality not on residence, and as regards working conditions and remuneration (not in respect of taxes for which the Custom Agreement does not guarantee absolute equality and reciprocity of treatment). In addition, according to the Court, there was no violation of Article 14 of the ECHR because the provision should be read in conjunction with Article 1 of Protocol 1 to the ECHR as interpreted by the Grand Chamber’s judgment in the case *Ferrazzini v. Italy* of 12 July 2001, which considers that tax disputes fall outside the scope of that article.

these standards effectively. In addition, according to domestic labour law, workers have the right to refuse to perform tasks that endanger their health or safety without risking losing their employment. However, given their vulnerable situation, ECRI considers that certain categories of foreign workers may be subject to undue pressure in order not to denounce poor working conditions.

59. ECRI recommends that the authorities conduct an awareness-raising campaign to inform properly foreign workers about their employment rights and existing mechanisms for challenging any failure of their employers to respect them. In addition, ECRI recommends that the authorities monitor the application of the relevant rules in order to protect this category of workers from any forms of reprisals or harassment<sup>19</sup>, which can create an intimidating or hostile working environment as a consequence of the denunciation by these persons of poor working conditions. ECRI draws the attention of the San Marinese authorities to the relevant guidelines contained in its General Policy Recommendation No. 14 on combatting racism and racial discrimination in employment.

60. This recommendation should be read in connection with reports received by ECRI pointing to the existence of a latent feeling of resentment vis-à-vis transfrontier workers (see paragraph 78 et seq. on the climate of opinion).

## Education

61. In its third report, ECRI encouraged the San Marinese authorities in their efforts to provide non-Italian-mother-tongue children with teaching of Italian as a second language, at all levels of education, including kindergartens. It recommended that they strengthen their efforts to ensure that the principle whereby all children are assigned to classes corresponding to their age is respected in all cases<sup>20</sup>. It also encouraged the San Marinese authorities to consider providing non-Italian-mother-tongue children with education in their mother tongue.

62. Concerning the teaching of Italian as a second language, ECRI was informed that additional Italian-language support is given in schools at all levels through a specific course, which is individualised teaching because the number of non-Italian -mother-tongue minors is very low. This number was significantly higher in the period 2000-2007, because many non-Italian-mother-tongue San Marino citizens had returned from Argentina.

63. The curricula of pre-primary and primary school usually involve the simultaneous presence of more than one teacher in the classroom for the teaching of many subjects. According to relevant data<sup>21</sup> in the academic year 2009-2010 there was a ratio of 7,7 pupils per teacher in kindergartens, 7,9 in primary schools, 9,4 in lower secondary schools and 8,7 in higher secondary schools. It should be added that, in the same academic year, there was a total of 75 learning-support teachers. ECRI believes that this favourable ratio has enabled teachers to carry out individualised educational activities to promote and further develop the learning of Italian to non-Italian-mother-tongue children.

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<sup>19</sup> "Harassment is one of the major forms of discrimination and it is difficult to prove. Racial harassment occurs when unwanted conduct related to" racial discrimination "takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment". Explanatory memorandum of GPR No. 14.

<sup>20</sup> This recommendation was related to ECRI's findings that that the principle whereby all children are assigned to classes corresponding to their age was not always respected in practice. The authorities of San Marino had stressed that the aim of the decision not to assign certain pupils to classes corresponding to their age had been to further as far as possible their full integration, taking account of their very limited knowledge of Italian and of differences in school curricula.

<sup>21</sup> *Alunni ed insegnanti nella scuola sammarinese: i numeri dell'anno scolastico 2009/10, Centro per il monitoraggio del sistema di istruzione e formazione.*

64. Concerning the provision of education to non-Italian-mother-tongue children in their mother tongue, the authorities reported that they have received no such request. In any case, taking such an initiative would prove to be difficult because non-Italian-mother-tongue children do not all have the same mother tongue; some linguistic groups might even consist of one single student.
65. In its third report, ECRI also encouraged the San Marinense authorities to ensure that pupils were given an instruction on religion which complies with the scientific neutrality essential in any educational approach, as recommended in its GPR No. 10 on combating racism and racial discrimination in and through school education.
66. ECRI has been informed by the authorities that State schools<sup>22</sup> provide Roman Catholic religious instruction. However, pupils may choose to be exempted from it. In the academic year 2011-2012, there were 20 such requests in primary schools and 27 in secondary schools from parents of Jehovah's Witness students. According to the authorities, the parents of the few Muslim pupils did not request any exemption for their children. There are no alternative courses for children exempted from religious instruction. In consultation with their parents, these pupils may be offered an ordinary course included in the school curricula in parallel classes or, in the presence of a teacher, they can carry out personal research activities or individual study activities.
67. ECRI has been informed by the authorities that some interfaith initiatives were organised as extra curriculum activities during the academic year 2011-2012, including a meeting with the rabbi of the Jewish community of Ferrara and one with a pastor of the Waldesian Church. However, ECRI has also learnt that - once a year - pupils of some classes are invited, during school hours, to attend a Catholic mass; it was reported that no alternative activities are provided for those who do not want to participate. ECRI encourages the authorities to provide alternative activities to these pupils in order to avoid that they suffer feelings of exclusion.
68. Furthermore, ECRI is of the opinion that, in order not to discriminate against pupils exempted from Catholic religious instruction, they should be given the possibility of improving their overall mark, through the attendance of alternative classes of their choice, in order to compensate for the absence of marks that other pupils are awarded attending the Catholic religion class.
69. ECRI recommends that the San Marinense authorities ensure that alternative courses to Catholic instruction are provided in response to all requests made in accordance with the applicable rules so as to ensure that no pupil suffers indirect discrimination, particularly with regard to award of credits.
70. In the same report, ECRI strongly recommended that the authorities strengthen their efforts to provide teaching of Italian as a second language to non-Italian mother tongue adults living in San Marino and promote the latter's participation in these courses.
71. The authorities have informed ECRI that Italian courses for foreigners continue to be offered in the evening to allow workers to attend. With a view to promoting attendance further, the payment of the enrolment fee is suspended in case the foreigner faces economic difficulties. However, attendance is now very poor (in 2012 only one foreigner attended) compared to previous years when these courses were mainly attended by recently arrived citizens of San Marino from Argentina.

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<sup>22</sup> There are no private schools in San Marino.

72. In addition, ECRI notes with satisfaction that a free training course on private home assistance is organised by the Vocational Training Centre; this is mainly addressed to foreign women working in San Marino as private carers for the elderly ( see paragraph 107 et seq.). This course includes Italian classes and the teaching of San Marinense culture and traditions to promote their integration in society. In 2012, 19 persons attended this course. The authorities informed ECRI that, in order to facilitate attendance of the course, free public transport is organised for the participants.

## Health

73. ECRI has been informed that Law No. 42 of 22 December 1955 established a free compulsory social-security system in San Marino. However, Law No. 9 of 1976 provides that non-San Marinense citizens resident or with “stay permit”, who do not perform any working activity entailing the payment of contributions or who cannot be considered dependant family members, are required to pay a monthly fee of 200 € (*quota capitaria*) to cover part of the cost of their health assistance<sup>23</sup>. Payment of this fee ensures health coverage for the person concerned and any dependant family members. The fee is increased by 50% in case of more than one dependent family member.
74. Law No. 64 of 9 May 1995 has introduced an obligation to pay a contribution to the health system also for San Marinense citizens who are not resident and intend to avail themselves of health assistance in the country. Therefore, the difference in treatment is only between San Marino citizens, who are resident in the country and do not perform any working activity or are not dependant family members of individuals entitled to health assistance, and foreigners who are resident in the country or in possession of a “stay permit” and do not perform any working activity or are not dependant family members of individuals entitled to health assistance.
75. ECRI has been informed that, the number of foreign residents, referred to in paragraphs 73-74, now amounts to about 100 persons, including family members. The authorities have told ECRI that they are aware of the problem and are looking for possible solutions<sup>24</sup>.
76. ECRI recommends that the authorities pursue their efforts in order to guarantee equal treatment in the field of health assistance between San Marino citizens and foreigners with residence or “stay permits”.

## III. Racist Violence

77. ECRI has not been informed of any cases of racist violence in San Marino and, therefore, considers that the situation requires no comment.

## IV. Climate of Opinion and Media

78. As also mentioned in its third report, ECRI finds that the general climate of society in San Marino continues to be one of dialogue and tolerance. However, it has been informed that there are occasionally unexposed forms of prejudice against non-nationals.

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<sup>23</sup> This provision does not apply to non-San Marinense citizens residing in San Marino who fall within the scope of the Convention between Italy and San Marino on Social Security.

<sup>24</sup> The authorities have indicated that Law No. 150/2012 on the 2013 state budget (approved on 21 December 2012) amended the provisions on the so called *quota capitaria*. Article 50 of this law suspends from 1 January 2013 the obligation to pay the *quota capitaria* for all non-San Marinense citizens who are resident or have a “stay permit” as referred to in paragraph 73. Article 50 also provides that a law amending Law No. 9/1976 should be adopted by 30 June 2013.

79. According to national statistics, almost 6,000 Italian workers cross the border between Italy and San Marino every day, representing about 38% of the workforce in the private sector. In addition, more than 15% of the local population is made up of Italian nationals. In recent years the long-standing good diplomatic relations between the two States have experienced some problems. ECRI has been informed that the change of climate between the two States has also affected relations between the two peoples. Furthermore, the international economic crisis has had an impact on the finances of the State of San Marino; many companies are closed and unemployment is on the rise.
80. In this context, it has been reported to ECRI that, in the last few years, there is a latent feeling of resentment against Italians, especially against transfrontier workers. In its third report, ECRI recommended that the San Marinense authorities conduct a survey into the possible existence, extent and manifestations of racial discrimination within the labour market. ECRI's recommendation notwithstanding, such a survey has not yet been carried out.
81. Even if ECRI has been informed that recently relations between the two States have improved, it still considers it necessary to conduct a survey in order to monitor the possible existence of xenophobic feelings towards foreign workers, and more generally towards foreigners, and assess whether this attitude has affected access to employment.
82. ECRI reiterates its recommendation that the San Marinense authorities conduct a survey into the possible existence, extent and manifestations of discrimination against foreigners within the labour market, possibly as part of a wider survey into perceptions among potential victims. This recommendation should be understood as part of a more general recommendation to improve the systems for monitoring manifestations of intolerance and uncovering possible cases of discrimination on grounds such as colour, language, nationality and national or ethnic origin in San Marino, as indicated in the section on monitoring racism and racial discrimination.
83. Media reported that "Forza Nuova", a political movement of the extreme right, openly xenophobic, intended to open a "section" in San Marino. This news was not confirmed to ECRI, but a page was opened on 2011 in the Facebook social network called "Forza Nuova, San Marino" which was followed by a few hundreds persons, not necessarily from San Marino. In early 2008, in the town of Borgo Maggiore graffiti invoking national pride and inciting racial hatred towards "blacks" and "foreigners" were discovered. Most likely this was an isolated incident, emulating the then racist and xenophobic wave in Italy.
84. Despite the absence of a Roma community permanently settled in San Marino, ECRI's attention has been drawn to the fact that the local press on a few occasions commented facts involving Roma by typecasting members of this community as people with a tendency to steal. The Roma origin of criminal suspects is often underlined with the adjective "*Nomadi*" in big letters in the title of news reports, sometimes without any mention of their names or citizenship.
85. According to the authorities, the San Marinense constitutional order ensures respect for members belonging to groups of concern to ECRI and any victims of discrimination can institute proceedings before the competent judicial authorities. Moreover, the San Marinense authorities have chosen to refrain from subjecting mass media to strict regulations, since mass media could interpret this as interference or undue pressure on them.
86. ECRI appreciates San Marino's commitment to freedom of expression and independence of media. Nevertheless, ECRI considers it important that members of the public have access also to a non-judicial mechanism to complain about possible breaches of the rules on journalistic ethics.

87. ECRI recommends that the San Marinese authorities impress on the media, without encroaching on their editorial independence, the need to ensure that the material they publish does not contribute to convey a negative image of Roma and encourage them not to mention the ethnic origin of a person named in articles or reports when it is not essential for a good understanding of events.
88. ECRI also recommends that the authorities encourage, in full compliance with the principle of media independence, the setting up by the media of a non-judicial mechanism to deal with complaints against the media concerning, inter alia, cases of discrimination.

## **V. Vulnerable Groups**

### **Citizens of San Marino from Argentina**

89. In its third report, ECRI recommended that the San Marinese authorities pay specific attention to the situation of citizens of San Marino from Argentina; promote a better reception of these persons in San Marino's society through awareness- raising measures targeted at the general public; address more actively the difficulties encountered by these citizens, especially as concerns the acquisition of Italian language skills, employment and recognition of diplomas and qualifications. ECRI also encouraged the San Marinese authorities to increase their support to help citizens settling in San Marino from Argentina to find their way through the different practical aspects of everyday life
90. The recommendations of the third report were based on ECRI's views that in 2007 this part of the San Marino population, who had returned from Argentina at the beginning of 2000 for economic reasons, was still facing considerable language and cultural barriers. They had specific needs different from the rest of San Marinese citizens, who did not seem always to consider them as "real citizens".
91. ECRI has been informed that, since the publication of its previous report, a number of these citizens have returned to Argentina due to the economic crisis in San Marino and the improvement of the economic situation there. As of February 2012, the Registry Office of the Republic of San Marino reported only 232 San Marinese citizens repatriated from Argentina and residing in San Marino. The registry recorded also the presence of 71 foreign citizens who had emigrated from Argentina and resided in San Marino (the mothers of nine of them were San Marinese citizens).
92. According to the authorities, nothing prevents the full integration of this group in San Marinese society today. ECRI has received confirmation that this part of the San Marinese population has succeeded in overcoming the above-mentioned language and cultural barriers.

### **Non-Nationals**

93. In its third report, ECRI made a number of recommendations concerning reception and status of non-nationals, which have been already dealt under the sub-sections on employment (paragraph 50 et seq.) and education (paragraph 61 et seq.). In addition, ECRI recommended that the San Marinese authorities grant eligibility and voting rights in local elections to non-nationals who reside in San Marino.
94. As of 1 March 2012, over 18% of the total population of San Marino were foreigners with residence or "stay permits". At the time of writing, 80% of the foreign population is Italian. The remainder are Ukrainian (332), Romanian (227) Argentinean, (83), Moldovan (62), Russian (52) Albanian (51), Polish (42),

Brazilian (39) Croatian (36), in addition to a smaller number of citizens of other countries or persons whose nationality is unknown. These statistics indicate a growing cultural diversity in San Marinese society, with a foreign population totalling more than 6,000 individuals from almost 70 different countries.

95. Law No. 118 of 28 June 2010 and subsequent amendments reformed the system of residence and “stay permits”, while maintaining the main principles and the rights granted under the previous legislation. According to this law, no foreigner may stay in the territory of San Marino for a period longer than 20 days without a “stay permit” or residence.
96. “Stay permits” are always granted for a limited period of time, mostly for a maximum period of 11 consecutive months per year, and are divided into five categories: for tourism (for a maximum period of 90 days); for specific categories of foreigners, such as students, professional sport practitioners and worship ministers or purposes such as for medical assistance (for a maximum period of one year); for work purposes (for a maximum period of 11 consecutive months per year); ordinary (for family reunification); and extraordinary (for humanitarian reasons). Moreover, the authorities issue “stay permits” for minors and parental permits, as well as permits in order to establish a permanent relationship<sup>25</sup> with a citizen or a foreign resident.
97. Residence permits are granted to specific categories of foreigners for an indefinite period, such as the spouse or child of a resident citizen, or for a definite period to certain categories of employees (managers, doctors, etc.) or to first instance judges, while they exercise their functions with a possibility of an extension, or to certain categories of foreign investors.
98. According to Articles 16 and 39 of Law No. 118/2010 and subsequent amendments, there is a link between “ordinary stay permit” and residence, since residence can be granted after a continuous period of five years from the date of issue of an ordinary stay permit.
99. The possibility to grant, under Article 15 of the above-mentioned law, a *permesso convivenza* is a remarkable novelty. It can be requested by a citizen or a foreign resident for a foreigner citizen with whom s/he intends to live like husband and wife (*more uxorio*) in San Marino.
100. ECRI has been informed that in April 2012 a popular petition (*Istanza d’Arengo*) was signed by a number of citizens requesting to delete the mention *more uxorio* from Article 15. The petition claims that this mention is discriminatory on grounds of sexual orientation and nationality and asks for its deletion to extend the possibility to grant a *permesso convivenza* to the foreign partner of a same-sex couple that intends to live in San Marino. The Parliament declared the petition admissible in June 2012. The Government authorities are now required to adopt the necessary measures. .
101. ECRI notes that a general provision contained in Article 3 of Law No. 118 prohibits discrimination against “foreigners however present (*comunque presenti*) on the territory of the Republic of San Marino” who “shall enjoy the fundamental human rights granted by the national legislation, the international conventions in force and the generally recognised principles of international law” and “shall be treated in the same way as San Marinese citizens with regard to the judicial protection of rights and legitimate interests”.

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<sup>25</sup> See below, paragraph 99 et seq.

102. ECRI has been informed that another issue concerning non-nationals is their limited right to acquire immovable goods. The law (*rubrica XXXIV libro III in Leges Statutae Republicae Sancti Marini*) provides that a foreigner cannot buy an immovable good unless s/he obtains permission from the Consiglio dei XII (a body composed of 12 members and elected by the parliament among its members). Since 2010 the *Consiglio dei XII* became more lenient giving permission to buy real property to all residents independently of the period of their residence, while before it would have required the prospective owner to have completed 10 years of residence. While ECRI welcomes this more lenient practice, it regrets the absence of clear criteria set by law for granting permission to buy property, which leaves an excessive discretionary power to this institution.
103. Clear standards are instead contained in Article 25 of the already mentioned Law No. 118 of 2010 in the matter of inheritance by a foreigner of immovable goods in San Marino. The law now provides that a foreigner can inherit an immovable good located in San Marino, without prior permission by the *Consiglio dei XII*, if s/he is a direct-line descendant, or spouse of a deceased San Marinense citizen or of a deceased foreigner resident of San Marino.
104. ECRI welcomes these positive developments towards more equitable conditions for foreigners residing in San Marino, which will strengthen relations between them and San Marinense citizens. However, ECRI regrets that its recommendation to promote foreigners' participation in political life by granting them eligibility and voting rights in local elections was not taken into consideration when Law No. 36 of 23 March 2009, amending the 1994 legislation on town councils, was drafted.
105. ECRI has been informed that the enactment of this law was followed by extensive debate within the political parties, in particular on the number of years that could be required before non-nationals were to be granted voting rights. It is hoped that this debate could lead to the law of 2009 being amended and to foreigners residing in the country being granted eligibility and voting rights in local elections.
106. ECRI reiterates its recommendation that the San Marinense authorities grant eligibility and voting rights in local elections to non-nationals who reside in San Marino, in accordance with the principles enshrined in the Convention on the Participation of Foreigners in Public Life at Local Level.

#### **Female migrant workers from Central and Eastern Europe**

107. In its third report, ECRI recommended that the San Marinense authorities pay more attention to the situation of women from Central and Eastern Europe who had come to San Marino to work as private carers. In particular, it encouraged the San Marinense authorities to review the legislation on stay and work permits so as to reduce precariousness of employment for these persons and ensure respect of their private and family life.
108. The authorities have informed ECRI of a series of legislative and regulatory measures that have been adopted to improve these persons' situation. In particular, during the last years, clearer procedures have been put in place to regularise private carers and the competent services are better coordinated.
109. With regard to private carers, the above-mentioned Law No. 118/2010 contains a novelty extending the maximum length of "stay permits" from 10 to 11 months per year. Moreover, according to this law, if private carers lose their job before the end of their contract, they are allowed to remain in San Marino for 90 days following their dismissal, so that they can find another job.



110. The authorities have also reported that information documents and circulars have been translated into the most widely spoken languages in the countries of origin of these women. As already mentioned in paragraph 71, between December 2011 and April 2012 the Vocational Training Centre organised training courses specifically for private carers on Italian language, San Marino's history, the legal system and local cuisine; this was intended to favour the integration of these persons.
111. ECRI has also received information that, in some places of worship, it was made possible for private carers to take part in religious rites other than those of the Roman Catholic Church. In addition, trade unions and NGOs, in cooperation with the State, have been running, for a long time, a service for these workers and their employers providing them with information on employment, pension and social security contributions and "stay permits".
112. ECRI welcomes all these positive steps. Nevertheless, regarding the extension of the validity of "stay permits" to 11 months, ECRI notes that there is 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.
113. ECRI recommends that the San Marinense authorities review the legislation on stay 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.

### Refugees and asylum-seekers

114. In its two previous reports, ECRI recommended that the San Marinense authorities establish a procedure for processing asylum applications and adjudicating asylum cases. ECRI regrets that San Marino has disregarded this recommendation. In addition, as already noted, San Marino has not completed the ratification process of the 1951 Geneva Convention relating to the Status of Refugees and its 1967 protocol.
115. The authorities have reiterated to ECRI their view that putting in place a refugee status determination procedure would be problematic mainly due to the lack of border controls between Italy and San Marino. However, they have pointed out that Law No. 118 (Article 14) and Decree No.186 of 2010 (Article 15) now expressly provides for the delivery of a "stay permit" for extraordinary humanitarian and social protection (*permesso di soggiorno straordinario per ragioni umanitarie*). This permit, issued by the *Congresso di Stato*, may be granted in case of special humanitarian needs and entitles the holder to receive health assistance and temporary economic benefits from the Social Security Institute<sup>26</sup>.
116. While acknowledging that the possibility, now expressly provided by law, of granting on an ad hoc basis a "stay permit" on humanitarian grounds is a positive development, ECRI remains of the opinion that the need has not been addressed for an appropriate legal framework for properly processing applications for asylum.
117. ECRI reiterates its recommendation that the authorities establish a procedure for processing asylum applications and adjudicating asylum cases.

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<sup>26</sup> The 2012 UNHCR statistics report the presence of one individual in San Marino to whom "a complementary form of protection / temporary protection" has been granted.

## VI. Monitoring Racism and Racial Discrimination

118. In its third report, ECRI recommended the San Marinese authorities to improve the systems for monitoring manifestations of racism and uncovering possible patterns of racial discrimination in San Marino; to consider collecting relevant statistical information broken down according to categories such as ethnic or national origin, religion, nationality and language; and to generate data concerning manifestations of racism and racial discrimination based on perceptions of potential victims of these phenomena. ECRI also encouraged the authorities to monitor racist incidents and racist offences reported to law-enforcement institutions.
119. ECRI notes that in November 2010 there was a census of the population of San Marino of which final results have not been published yet. However, it would seem from the census's questionnaire that no statistical information broken down according to the above-mentioned categories, with except of nationality, was collected
120. With regard to measures adopted to collect data on the San Marinese population, the authorities have informed ECRI that Article 7 of Law No. 70 of 23 May 1995 expressly prohibits the collection, processing and use of data relating to private life. Therefore, such data are not collected by the Statistics Office of San Marino.
121. As emphasised by ECRI in a number of country reports, the collection of equality data is about obtaining relevant information on the situation of vulnerable groups to enable the authorities to take appropriate action where necessary. ECRI has equally emphasised that this should be done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group.
122. In addition, ECRI notes that data disaggregated by nationality, gender, residence status and occupation was already made available to it by the authorities, in relation to specific vulnerable groups such as foreign private carers. ECRI has been also informed that the Statics Office publishes regularly surveys on specific topics, such as education, family consumption, level of trust of the population in the economy, life style of families, crime records, etc.
123. ECRI is of the opinion that the increasing complexity of social conditions of San Marino requires not only the adoption of appropriate policies and legislation but also constant monitoring of social developments in order to review the results of policies and compliance with the laws. ECRI, therefore, would encourage the authorities to conduct a survey among members of various groups that are liable to be affected by xenophobia and intolerance, with questions about their experience of discrimination and their perception of various aspects of the society in which they live.
124. ECRI reiterates its recommendation that the San Marinese authorities improve their systems for monitoring manifestations of xenophobia and intolerance in San Marino. ECRI recommends that the authorities generate data based on perceptions of potential victims in accordance with its General Policy Recommendation No. 4, which provides detailed guidance on how to carry out these surveys.
125. ECRI has been informed that the Gendarmerie has created a computerised system for the registration of all reports made to law enforcement institutions (whether they concern an offence or not). ECRI takes note with approval of this development which would allow for the monitoring of racist incidents that may occur.

## VII. Education and Awareness Raising

126. In its third report, ECRI recommended the authorities to provide teachers with practical training to equip them to deal with racism and racial discrimination in schools. In addition it encouraged them to consider making human rights a compulsory subject at both primary and secondary school and recommended to provide training to civil servants on issues of respect of difference and non-discrimination.
127. ECRI has received information on a number of awareness-raising events organised since ECRI's third report by the authorities with a view to promoting a better understanding of the consequences of racism and racial discrimination for teachers and students. In addition, the authorities have indicated that the post-graduated course on San Marino Law provides specific training on the European Convention on Human Rights, its case law and the international protection of human rights in general. The same applies to vocational training to prepare for lawyers', notaries' and accountants' state examinations, for which knowledge of the Convention and its case law is required.
128. ECRI welcomes these initiatives in the field of human rights education. However, ECRI reiterates its view that the authorities should consider possible ways of making human rights a compulsory subject in school at both primary and secondary level. In addition, the analysis made on the increasing complexity of the social phenomena that characterise San Marinense society shows the continued relevance of the recommendation made by ECRI in its third report that teachers should be equipped to deal with individual differences to avoid situations that may lead some pupils to become or feel targets of discrimination or prejudice.
129. ECRI recommends the authorities to introduce mandatory initial and on-going training for teachers at all levels in human rights and issues of racism and intolerance.
130. In its previous report, ECRI also recommended that the San Marinense authorities promote among the general population a better understanding of racism and racial discrimination and raise awareness of the way in which these phenomena operate in society. In particular, it recommended that the San Marinense authorities draw up a National Action Plan against Racism, in which these issues would feature prominently. ECRI also recommended that the San Marinense authorities closely involve all relevant stakeholders, notably persons and groups of persons that may be vulnerable to discrimination on grounds of "race", colour, language, religion, nationality and national or ethnic origin in the elaboration of this plan.
131. These recommendations were based on ECRI's findings that the majority population understood the notion of racism and racial discrimination in San Marino to cover only the most blatant and overt forms of these phenomena, which remain uncommon in the country. In view of this, ECRI found that other more common manifestations of intolerance experienced in everyday life were overlooked or not given the priority attention that they deserved.
132. Since the time of this previous report, ECRI has noted that public institutions and private associations have continued their efforts in raising citizens' awareness of discrimination, intolerance and antisemitism. However, these have been one-off initiatives, such as seminars, meetings with political or religious personalities, or prize award ceremonies on specific occasions (Holocaust Remembrance Day, Human Rights Day, etc.). ECRI notes that these activities have had little effect in changing the perception of the majority of the population of intolerance, which is

considered to be absent in San Marino. Therefore the analysis made in ECRI's third report remains valid.

133. In ECRI's view there is a need to prioritise, mainstream and co-ordinate, under a general action plan, awareness-raising activities for the general population on issues related to discrimination, on the ground inter alia of citizenship and intolerance. In the preparation and implementation of this plan, the authorities should fully involve civil society, various communities of non-nationals residing in San Marino and other vulnerable groups.
134. ECRI recommends that the San Marinense authorities draw up an action plan to promote among the general population a better understanding of discrimination (for example on grounds of citizenship) and intolerance, and raise awareness of the way in which these phenomena operate in society. ECRI recommends that the authorities closely involve all relevant stakeholders, notably vulnerable groups of persons, in the elaboration, implementation and evaluation of this plan, which should include clear targets and indicators.

## INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of Marino are the following:

- ECRI reiterates its recommendation that the San Marinense authorities ensure that the Equal Opportunities Commission is able to address issues covered by ECRI's mandate. The Commission should be expressly provided with competence to combat racism and racial discrimination, should be made independent from the Government and given sufficient means to fulfil its tasks effectively. In reviewing the Commission's functioning and mandate ECRI strongly recommends that the authorities take into account ECRI's General Policy Recommendations No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, and No. 7 on national legislation to combat racism and racial discrimination.
- ECRI recommends that the San Marinense authorities review the legislation on stay 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.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.



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