

# Third report on San Marino

Adopted on 14 December 2007

Strasbourg, 29 April 2008



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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.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

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 propose, if they consider it necessary, amendments to 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 following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 14 December 2007 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.**

### **Executive summary**

Since the publication of ECRI's second report on San Marino on 4 November 2003, progress has been made in a number of the fields highlighted in that report. The provisions governing the acquisition of citizenship by descent have been amended so as to enable children of all citizens of San Marino to acquire citizenship of San Marino at birth. A process of stabilising the employment situation of transfrontier workers is under way. A number of initiatives have been taken to raise awareness of issues of racism and racial discrimination among the general public, notably in the framework of the Council of Europe's "All Different All Equal" campaign. Opportunities for teachers to acquire competencies in the field of intercultural education and for pupils to increase their knowledge of human rights have been increased. Additional support in Italian as a second language has been introduced in schools. In 2004, an Equal Opportunities Commission was established with the task of promoting equality before the law and equal opportunities. Furthermore, the Government of San Marino has announced plans to establish an Ombudsman with the task of protecting human rights and to introduce legislation against racist expression, racist organisations and racially motivated offences.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. There is still a need to improve the understanding of the notions of racism and racial discrimination in San Marino and promote awareness among the general population of the way in which these phenomena operate in society. The authorities of San Marino have not yet fully taken into account the specific needs of some parts of San Marino's population, such as women from Central and Eastern Europe who come to work as private carers and citizens of San Marino from Argentina. As a result, the members of these groups often find themselves in a situation of disadvantage compared with the rest of the population, which can make them vulnerable to discrimination. An overall National Action Plan against racism which would address these and other aspects of combating racism and racial discrimination in San Marino has not yet been adopted. The provisions governing naturalisation have not been reviewed since ECRI's second report and remain excessively restrictive. Comprehensive civil and administrative legislation prohibiting discrimination in all fields of life still remains to be adopted.

In this report, ECRI recommends that the authorities of San Marino take further action in a number of areas. These areas include: the need to adopt a National Action Plan against Racism in close consultation with potential victims of racism and racial discrimination; the need to fine-tune the legal and institutional framework against racism and racial discrimination, notably through the adoption of criminal law provisions against racist expression, racist organisations and racially motivated offences and of civil and administrative antidiscrimination legislation providing for effective mechanisms of redress; and the need to facilitate acquisition of citizenship of San Marino through naturalisation. In this report, ECRI also recommends that the authorities of San Marino: monitor racism and racial discrimination, including by generating data based on perceptions of these phenomena among potential victims; review legislation and practices concerning the granting of permits to certain categories of workers, including private carers and seasonal workers, and extend the rights they confer; better promote the learning by adults of Italian as a second language.

## I. FOLLOW-UP TO ECRI'S SECOND REPORT ON SAN MARINO

### International legal instruments

1. In its second report, ECRI recommended that the authorities of San Marino make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), recognising the competence of the Committee for the Elimination of Racial Discrimination to examine individual complaints. ECRI is pleased to note that the *Consiglio Grande e Generale* (Parliament) made such a declaration in February 2008.
2. In its second report, ECRI also recommended that San Marino ratify the European Social Charter (Revised), the UNESCO Convention against Discrimination in Education and the Geneva Convention Relating to the Status of Refugees. None of these instruments has since then been ratified. However, the authorities of San Marino have informed ECRI that they are examining the possibility of ratifying the European Social Charter (Revised), although at present there is no established timetable for doing so. They have also reported that San Marino's legal order essentially conforms with the UNESCO Convention against Discrimination in Education. However, there are no immediate plans for the ratification of this instrument, notably in consideration of the reporting obligations that it would entail. Ratification of the Geneva Convention Relating to the Status of Refugees is not envisaged for the foreseeable future either<sup>1</sup>.
3. In its second report, ECRI furthermore recommended that San Marino sign and ratify the European Convention on Nationality, the European Charter for Regional or Minority Languages and the European Convention on the Legal Status of Migrant Workers. ECRI notes that none of these instruments has been signed by San Marino and that there are at present no plans to do so. The authorities of San Marino have explained that some aspects of San Marino's citizenship legislation<sup>2</sup> are not in line with the European Convention on Nationality. They have also expressed the view that the European Charter for Regional or Minority languages is not relevant to San Marino. ECRI also notes that San Marino has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
4. In its second report, ECRI recommended that San Marino sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level. The authorities of San Marino have not yet considered the possibility of signing this instrument. However, they have stressed that such a possibility could be examined in the framework of the work which is under way to reform the statutes of local authorities<sup>3</sup>.
5. Since ECRI's second report on San Marino, the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems have been opened for signature and ratification and have entered into force. The authorities of San Marino have not yet examined these instruments with a view to their possible ratification.

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<sup>1</sup> See below, Reception and status of non-citizens – Refugees and asylum seekers.

<sup>2</sup> See below, Constitutional provisions and other basic provisions.

<sup>3</sup> See below, Reception and status of non-citizens.

### **Recommendations:**

6. ECRI recommends that the authorities of San Marino ratify the European Social Charter (Revised), the UNESCO Convention against Discrimination in Education and the Geneva Convention Relating to the Status of Refugees.
7. ECRI encourages the authorities of San Marino to sign and ratify the European Convention on Nationality, the European Charter for Regional or Minority Languages, the European Convention on the Legal Status of Migrant Workers and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
8. ECRI recommends that the authorities of San Marino sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level.
9. ECRI furthermore recommends that the authorities of San Marino sign and ratify 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.

### **Constitutional provisions and other basic provisions**

10. In its second report, ECRI noted that Article 4 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order guarantees equality before the law without distinctions on a number of grounds<sup>4</sup>. However, since these did not explicitly include race, colour, language, nationality and national or ethnic origin, in its second report ECRI recommended that the authorities of San Marino consider amending the Declaration to expressly include these grounds.
11. ECRI notes that the Declaration has not been amended. The authorities of San Marino have stressed that Article 4 guarantees equality before the law without distinctions related to, *inter alia*, "personal circumstances" and that this covers grounds such as race, colour, language, nationality and national or ethnic origin. They have also stressed that since international agreements concerning human rights ratified by San Marino prevail over conflicting domestic provisions<sup>5</sup>, the prohibition of discrimination set out in the European Convention of Human Rights (ECHR)<sup>6</sup> and Protocol No. 12 to the ECHR<sup>7</sup>, including the list of grounds

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<sup>4</sup> Article 4 of the Declaration stipulates: "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 service 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 for the effective participation of citizens in the economic and social life of the country".

<sup>5</sup> Article 1(4) of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order stipulates : "International agreements concerning the protection of human rights and freedoms duly concluded and made applicable prevail over conflicting domestic norms".

<sup>6</sup> Article 14 (Prohibition of discrimination) of ECHR stipulates: " The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

<sup>7</sup> Article 1 (General prohibition of discrimination) of Protocol No. 12 stipulates: "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1".



contained therein, supersede any conflicting provisions contained in Article 4 of the Declaration. However, in accordance with its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, ECRI considers that an explicit mention of the grounds mentioned above in the Declaration would be beneficial to improving protection against racial discrimination and promoting equal opportunities in the fields covered by its mandate<sup>8</sup>.

### **Recommendations:**

12. ECRI reiterates its recommendation that the authorities of San Marino amend Article 4 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order to include explicit grounds such as race, colour, language, nationality and national or ethnic origin. ECRI draws the attention of the authorities of San Marino to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, where it provides further guidance in this area<sup>9</sup>.

#### **- Law on citizenship**

13. As noted in ECRI's second report, citizenship of San Marino can be acquired through naturalisation and by descent.
14. As concerns acquisition of citizenship through naturalisation, in its second report ECRI recommended that the authorities of San Marino consider reducing the length of residence required to apply for naturalisation and adopt a more flexible approach to the holding of double nationality upon acquisition of citizenship of San Marino. There have been no developments in this field. Applicants for naturalisation still need to have resided continuously in San Marino for thirty years, or fifteen years if they are married to a citizen of San Marino. They must also relinquish any other citizenship they possess unless they are citizens of countries whose legislation does not permit relinquishing one's citizenship.
15. In its second report, ECRI also noted that naturalisation could only be granted by the *Consiglio Grande e Generale* (Parliament) by means of special naturalisation laws which must be passed at least once every ten years. Concretely, these special laws enable residents to file their applications within a certain time-limit. ECRI notes that this system has not changed and that those who meet all the requirements for naturalisation at one point in time still have to wait until an opportunity to file an application is opened by the following naturalisation law. When this happens, an *ad hoc* Council established within the Administrative Tribunal verifies that individual applicants meet the requirements for naturalisation (which, in addition to length of residence and relinquishment of citizenship, include not having been convicted of an offence of fraud and sentenced to more than one year's imprisonment or more than one year's restrictions on certain of their civil rights) and issues a motivated decision. ECRI notes, however, that an appeal is not possible against this decision.
16. The authorities of San Marino have stressed that the cautious approach to naturalisation taken in San Marino reflects the country's specificities, notably related to its limited size and population. As already mentioned in ECRI's second report however, even when such considerations are taken into account, the

<sup>8</sup> See below, Specialised bodies and other institutions.

<sup>9</sup> See ECRI General Policy Recommendation N°7, paragraph 2 (and paragraphs 9-10 of the Explanatory Memorandum).

provisions that regulate the acquisition of citizenship of San Marino through naturalisation appear to ECRI to be excessively restrictive. As a minimum, ECRI considers that those persons who have already waited for exceptionally long periods of time to become eligible for naturalisation should have the possibility to have their applications examined as soon as the relevant criteria are met.

#### **Recommendations:**

17. ECRI recommends that the authorities of San Marino review the provisions that regulate the acquisition of citizenship of San Marino through naturalisation. It recommends that they reduce the length of residence necessary for residents to apply for naturalisation and allow for more flexibility in the holding of double nationality upon acquisition of citizenship of San Marino. ECRI strongly recommends that the authorities of San Marino ensure that applications for naturalisation can be lodged at any point in time and that decisions on naturalisation are subject to an appeal.
18. As regards acquisition of citizenship by descent, in its second report ECRI considered that, by establishing that only male (and not female) citizens of San Marino could transmit citizenship of San Marino to their children at birth, the law on citizenship discriminated against children on the grounds of their parents' nationality. It therefore recommended that such discrimination be removed. ECRI is pleased to note that the authorities of San Marino have followed this recommendation through the adoption of amendments to the law on citizenship in June 2004<sup>10</sup>. Thus, all children with one parent holding San Marino citizenship (irrespective of whether the parent in question is the father or the mother) now acquire San Marino citizenship at birth. These children are required to confirm their willingness to retain San Marino citizenship within one year of their eighteenth birthday.

#### **Criminal law provisions**

19. In its second report, ECRI noted that there were no criminal law provisions in force in San Marino against racist expression (for instance, prohibiting incitement to racial violence, hatred or discrimination and racist insults or threats) or against racist organisations. Similarly, there were no provisions expressly enabling the racist motive of an offender to be taken into account as an aggravating circumstance in sentencing. It therefore recommended that San Marino introduce these provisions. ECRI is very pleased to note that, in order to follow this recommendation, in September 2007 the *Congresso di Stato* (Government) decided to prepare draft legislation which will prohibit both racist expression and the establishment of racist organisations, and provide that these offences can be prosecuted *ex officio*. This draft, which was also announced at a press conference organised by the Ministry of Justice and subsequently forwarded to the competent offices for submission to one of the next sessions of Parliament, also contains provisions that expressly establish the racist motivation of an offence as an aggravating circumstance in sentencing.
20. At the time of writing, however, the situation is still as described in ECRI's second report. As concerns racist expression, certain types of racist conduct can currently be addressed through the application of provisions establishing certain common offences, such as Article 184 of the Criminal Code, which prohibits insults. ECRI notes that there have been at least two cases in which this provision has been used to address racist insults since its second report. In both

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<sup>10</sup> Law No. 84/2004 of 17 June 2004.

cases, the insults were directed to Italian citizens on the basis of their nationality. In the first case, the insult was directed towards a civil servant who was an Italian citizen, and a conviction was recorded. In the second case, no sentence was imposed, as the victim withdrew the complaint before the final hearing.

21. As regards the consideration of the racist motivation of an offence as an aggravating circumstance, Article 90 of the Criminal Code provides for specific aggravating or attenuating circumstances, whereas Article 88 sets out criteria for the assessment of the gravity of an offence. The authorities of San Marino have stated that some of these circumstances and criteria could be used to address racially-motivated offences. However, it appears that these provisions have not been applied since ECRI's second report.
22. As concerns racist organisations, there are currently no specific provisions in force in San Marino against their establishment. In this connection, ECRI notes that in September 2006, some material with xenophobic images and expressions produced by an extreme right-wing group active in Italy was found in a public place in one of San Marino's towns. However, the authorities of San Marino have reported that this was an isolated incident, for which sympathisers of the group mentioned above who came from neighbouring regions in Italy were probably responsible.

#### **Recommendations:**

23. ECRI recommends that the authorities of San Marino introduce criminal law provisions against racist expression (including incitement to racial violence, hatred or discrimination, racist insults or threats and dissemination of racist material) and against racist organisations. It also recommends that they introduce provisions expressly enabling the racist motivation of the offender to be taken into account as an aggravating circumstance in sentencing. To this end, ECRI strongly encourages the authorities of San Marino to pursue their work on drafting legislation in these fields and carry it through to enactment, and in so doing to draw inspiration from ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which provides extensive guidance in this area<sup>11</sup>.

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

24. In its second report, ECRI recommended that the authorities of San Marino introduce comprehensive civil and administrative legislation prohibiting racial discrimination in all areas of life, including employment, education, housing, health, access to goods and services intended for the public and public places, and the exercise of economic activities.
25. No such legislation has been adopted since ECRI's second report. At present, the situation is therefore the same as described in ECRI's second report. Thus, the only antidiscrimination clauses are to be found in the field of employment<sup>12</sup>, and cover discrimination on grounds of religious beliefs, political or other opinion and affiliation with a trade union. There are also provisions which reiterate in a very general manner the principle of equal treatment without discrimination on different grounds (including in some cases race and nationality) in certain areas,

<sup>11</sup> See ECRI General Policy Recommendation N°7, paragraphs 18 a), b), c), d), e), f) g), 20, 21, 22 and 23 (and paragraphs 38 - 43 and 46 - 49 of the Explanatory Memorandum).

<sup>12</sup> Article 14 of the Law on Employment, Article 7 of the Law concerning disciplinary sanctions and dismissals and Article 89 of the Organic Law on civil servants.

including education<sup>13</sup>, sport activities<sup>14</sup>, access to health<sup>15</sup>, the treatment of detainees<sup>16</sup> and in the statutes of the medical professions<sup>17</sup>. However, as was the case at the time of ECRI's second report, there are still no cases of the application of any of these provisions.

26. The authorities of San Marino have underlined that, when assessing the extent to which legal protection is available against racial discrimination, it should be kept in mind that Protocol No. 12 to the ECHR is in force in San Marino<sup>18</sup>. ECRI attaches great importance to this fact. At the same time, in line with its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, ECRI considers that legislation should be in place in order to facilitate the practical implementation of the prohibition of discrimination contained in Protocol No. 12 and provide effective means of redress to any victims of discrimination. In this connection, ECRI also notes that since its entry into force in San Marino on 1 April 2005, Protocol No. 12 has never been invoked in domestic legal proceedings.
27. The authorities of San Marino have also expressed the view that a single body of antidiscrimination legislation would be ill-suited to San Marino's legal tradition, which is based on *jus commune* and is characterised, for instance, by the lack of a civil code. However, ECRI considers that the key elements of civil and administrative antidiscrimination legislation contained in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination can, if necessary, be adapted to the specific circumstances that characterise San Marino's legal system<sup>19</sup>.

#### **Recommendations:**

28. ECRI strongly recommends that the authorities of San Marino adopt civil and administrative antidiscrimination provisions that would prohibit racial discrimination across all fields of life and provide victims with effective means of redress. It recommends 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 authorities of San Marino draw inspiration from its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination<sup>20</sup>.

#### **Specialised bodies and other institutions**

29. In its second report, ECRI recommended that the authorities of San Marino establish a specialised body to combat racism and racial discrimination, either as a separate organ or as part of an organ with wider competence in the field of human rights. It recommended that the functions of such a body include assisting with the implementation of anti-discrimination legislation, providing advice to

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<sup>13</sup> Article 1 of Law No. 60 of 30 July 1980 and Article 1 of Law No. 21 of 12 February 1998.

<sup>14</sup> Article 7 of Law No. 32 of 13 March 1997.

<sup>15</sup> Law No. 43 of 28 April 1989.

<sup>16</sup> Article 1 of Law No. 44 of 29 April 1997.

<sup>17</sup> Decree No. 101 of 5 October 1999 and Decree No. 32 of 18 March 1996.

<sup>18</sup> See above, Constitutional provisions and other basic provisions.

<sup>19</sup> See ECRI General Policy Recommendation N°7, paragraph 4 of the Explanatory Memorandum.

<sup>20</sup> See ECRI General Policy Recommendation N°7, paragraphs 4 – 17 and 25 – 27 (and paragraphs 6 – 8, 12 – 37 and 56 – 57 of the Explanatory Memorandum).

public institutions and raising awareness of racism and racial discrimination among the general public.

30. The authorities of San Marino have reported that since manifestations of racism and intolerance have so far not been a prevalent phenomenon in San Marino, they have not considered establishing a separate body to deal with these issues. However, since ECRI's last report, there are two developments that go in the direction indicated by ECRI's recommendation.
31. Firstly, ECRI welcomes the fact that an Equal Opportunities Commission was established in 2004<sup>21</sup> with the task of promoting and guaranteeing the principles of equality before the law and equal opportunities contained in Article 4 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order. As mentioned above<sup>22</sup>, Article 4 guarantees these principles without distinctions relating to gender or personal, economic, social, political or religious circumstances. The Commission, which is appointed by the *Consiglio Grande e Generale* (Parliament), is composed of thirteen members, who cannot be members of Parliament. Ten are chosen from the lists of candidates so as to reflect the main political groups represented therein. The other three are designated, respectively, by the trade unions, employers' associations and the Council of associations and cultural co-operatives. ECRI notes that the tasks of the Commission include advising the institutions on matters concerning equality before the law and equal opportunities, monitoring the general implementation of legislation and policies in these fields and raising awareness of these issues among the general public. In 2005, the Commission has also been empowered to file before the *Collegio Garante* (Constitutional Court) constitutionality reviews of laws that it considers to be in breach of the principles of equality before the law and equal opportunities. Furthermore, although it does not adjudicate or provide legal assistance in individual cases where breaches of these principles are alleged, the Commission is tasked with collecting and examining petitions from individuals and associations and can participate in civil, criminal and administrative proceedings in representation of collective interests relating to equal opportunities. ECRI understands that, so far, the Equal Opportunity Commission has not been active on questions covered by ECRI's mandate.
32. Secondly, ECRI notes with interest that since its second report, the authorities of San Marino have committed to establishing an Ombudsman with the task of guaranteeing the protection of the human rights of all persons under San Marino's jurisdiction. The authorities of San Marino have reported that they are currently examining the different forms that such an institution could take. Alongside the establishment of an Ombudsman of the same type as those existing in many other European countries, these options include attributing additional functions to the *Capitani Reggenti* (Heads of State).

#### **Recommendations:**

33. ECRI strongly recommends that the authorities of San Marino 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 encourages the authorities of San Marino to ensure that the expertise necessary to this end is reflected in the membership of the Commission.

<sup>21</sup> Law No. 26 of 25 February 2004.

<sup>22</sup> See above, Constitutional provisions and other basic provisions.

34. ECRI encourages the authorities of San Marino to continue with their plans to establish an Ombudsman. It recommends that they consider providing the Ombudsman with a specific competence relating to combating racism and racial discrimination.
35. ECRI strongly recommends that, in examining the different options as concerns the establishment of an Ombudsman and in reviewing the work of the Equal Opportunities Commission, the San Marino 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. In particular, ECRI draws the attention of the San Marino authorities to the guidance it has provided on guaranteeing the independence of such a specialised body<sup>23</sup> and on the functions that should be attributed to it<sup>24</sup>.

### **Education and awareness-raising**

36. The need, on a general level, to improve understanding and promote awareness of racism and racial discrimination in San Marino is discussed elsewhere in this report<sup>25</sup>; the present section examines the specific measures taken to date in this field.

#### **- General public**

37. In its second report, ECRI recommended that the San Marino authorities raise awareness of issues related to combating racism, discrimination and intolerance among the general public. ECRI notes that the work of the San Marino National Committee that was established in San Marino to implement the Council of Europe's "All Different, All Equal Campaign" within the country resulted in the holding of a National Day for the Campaign on 27 April 2007, the organisation of summer schools, festivals, and conferences, and the specific courses for both teachers and students mentioned below<sup>26</sup>. The authorities have indicated that, although the terms of reference of the Committee expired on 31 October 2007, after the Council of Europe's campaign came to an end, they were considering renewing a number of the initiatives developed in the framework of the Campaign, including a festival and summer school similar to those held in 2007, focusing in 2008 on intercultural dialogue.
38. ECRI also welcomes that the San Marino Football Federation launched its own "No to Racism" campaign. During the months of May and June 2007, anti-racist banners, T-shirts and gadgets were widely available at all football-related events and the media (press, television and Internet) also spread the messages of the campaign.

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<sup>23</sup> See ECRI General Policy Recommendation N°2, principle 5.

<sup>24</sup> See ECRI General Policy Recommendation N°7, paragraph 24 (and paragraphs 50 - 55 of the Explanatory Memorandum).

<sup>25</sup> See below, The need to improve understanding and promote awareness of racism and racial discrimination in the country.

<sup>26</sup> See below, this chapter.

### **Recommendations:**

39. ECRI encourages the San Marino authorities to pursue their efforts to raise awareness of issues related to combating racism, discrimination and intolerance and promote appreciation of diversity among the general public. These efforts should form an integral part of a more general National Action Plan against Racism, as recommended below<sup>27</sup>.
40. ECRI recommends that the authorities of San Marino continue successful initiatives developed as part of the “All Different, All Equal Campaign”, in the field covered by ECRI’s mandate.

#### **- Schools**

41. In its second report, ECRI recommended that training aimed at providing teachers with the necessary skills to act and teach in a multicultural environment be included as an integral part of teacher training for teachers at all levels of education, including pre-school education.
42. The authorities of San Marino report that since then the Department of Training, which is responsible for the training of teachers at all levels of education, has introduced new courses both as part of the two-year specialisation (for instance through the introduction of a course on Intercultural Pedagogy) and as part of in-service training. The San Marino authorities have also indicated that most teachers undertake their two-year specialisation courses at Italian universities, and that intercultural training is provided as part of these courses. As regards in-service training, the authorities report that twenty out of the 160 hours of in-service training that teachers are required to follow are devoted to issues such as respect for difference and non-discrimination. ECRI is pleased to note that these courses are compulsory.
43. The National Committee that was established in San Marino to implement the Council of Europe’s “All Different All Equal Campaign” in this country has also decided to provide additional training courses for teachers in the year 2007/8. The San Marino authorities report that the relevant budgetary appropriations for these courses (which are intended to take a concrete approach and deal with specific methodologies and strategies to promote interculturalism in schools) have already been made.
44. ECRI also recommended in its second report that the San Marino authorities consider strengthening the human rights dimension of school curricula, with particular emphasis on non-discrimination and respect for difference. The San Marino authorities have stated that, since ECRI’s second report, human rights have been increasingly present in the education provided in classrooms in San Marino. For instance, the school year 2006/7 was launched through a day of training on human rights designed for teachers at all levels and delivered by experts. Teaching modules were included at all levels, from pre-school to high school, based on knowledge and awareness of human rights. Beyond human rights strictly speaking, the San Marino authorities have also stressed that education in tolerance and respect of difference are not taught as separate subjects but as cross-cutting themes.

<sup>27</sup> See The need to improve understanding and promote awareness of racism and racial discrimination in the country.

45. In its second report, ECRI also recommended that the authorities of San Marino monitor the extent to which intercultural education is in practice integrated into everyday teaching practice in schools in San Marino and provide, as necessary, formal guidelines and encouragement in this respect. The San Marino authorities report that the new curriculum guidelines adopted in 2006<sup>28</sup> establish that, as from the school year 2006/7, intercultural education must be fully integrated into the everyday pedagogical practice in classrooms.
46. ECRI notes that difficulties are still reported to be experienced by some children in schools, on the basis of their skin colour or sometimes of a failure by teaching staff to appreciate, for example, the differences that may arise due to a child's background. ECRI welcomes the initiatives so far taken by the San Marino authorities, which may provide an important contribution towards overcoming such difficulties.

**Recommendations:**

47. ECRI encourages the authorities of San Marino in their efforts to ensure that intercultural education is concretely reflected in everyday teaching practice. To this end, it encourages the authorities of San Marino to continue and strengthen their efforts to train teachers in these issues. It recommends in particular that the authorities provide teachers with practical training to equip them to deal with individual differences that may lead to students being or feeling targeted on grounds such as "race", colour, language, religion, nationality or national or ethnic origin and react to any manifestation of prejudice towards these children in schools.
48. ECRI encourages the authorities of San Marino in their efforts to educate students in human rights. In the long term however, ECRI considers that the authorities should consider making human rights a compulsory subject at both primary and secondary levels.

- **Civil servants**

49. In its second report, ECRI recommended that, as part of the development and implementation of an overall vision and strategy of how non-citizens might be fully integrated into San Marino's society and structures, the San Marino authorities train civil servants on issues of respect of difference and non-discrimination. The authorities of San Marino have indicated that since ECRI's second report, and as part of an overall reform of the Administration, which is still being defined, the creation of a Civil Service Department has been envisaged. This Department will also be responsible for the training of civil servants. However, ECRI understands that no specific training on issues of respect of difference and non-discrimination is planned at present.

**Recommendations:**

50. ECRI recommends that the San Marino authorities provide specific training to civil servants on issues of respect of difference and non-discrimination.

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<sup>28</sup> Decree No. 57 of 15 March 2006.



## Reception and status of non-citizens

51. As was the case at the time of ECRI's second report, just over 16% of the total population of San Marino (i.e. 5,182 persons out of 31,614 on 31 December 2006) is composed of non-citizens with residence and stay permits. Approximately 82% of these are Italians, while the remainder is made up of citizens of Ukraine, Romania, Argentina, Croatia, Poland and Moldova and smaller numbers of citizens from other countries.
52. In addition, as already noted in ECRI's second report, a considerable number of non-citizens (approximately 5600 at the time of writing) travel to San Marino everyday for work purposes from the neighbouring regions of Italy, where they reside. Mostly Italian citizens, these transfrontier workers represent approximately 39 % of San Marino's private sector employees. In its second report, ECRI noted that since they could only obtain temporary work permits, transfrontier workers found themselves in a precarious position that could result in their being exploited or blackmailed by their employers. ECRI therefore recommended that the San Marino authorities ensure that transfrontier workers are not discriminated against as concerns the duration of their work permits and contracts. ECRI is pleased to note that there have been positive developments in this area since its second report. A process of stabilising the status of transfrontier workers is under way. Thus, those transfrontier workers who have ten years of service within the same company or group are being given indefinite duration contracts, and will therefore not need to obtain work permits anymore. ECRI notes that at the time of writing, approximately 18% of all transfrontier workers have been given indefinite duration contracts. In addition, certain aspects relating to temporary work permits have been improved: for instance, a request from the employer is not necessary for these permits to be renewed, and the validity of the permits has been extended from twelve to eighteen months for employees with two or more years of service.
53. In addition to those who have continuous or stable contracts as described above, transfrontier workers are reported to include increasing numbers of persons employed on project-based contracts or recruited through employment agencies used by employers to outsource work that in some cases is carried out in the same workplace, as well as a number of undeclared workers, especially in the construction sector. It has been reported to ECRI that the workers employed through outsourcing (who are all non-citizens, including many of non-Italian nationality) enjoy considerably less advantageous conditions in terms of pay, holidays, career advancement etc, than their colleagues although they reportedly work alongside regular employees and often carry out the same functions.
54. As already noted in ECRI's second report, non-citizen holders of stay permits include seasonal workers, who are essentially employed in the tourism and trade sector. The authorities of San Marino have reported that every year, the country hosts approximately 400 such workers during the summer period and 250 during the Christmas period. The authorities have also reported that work permits are given to these persons for an average duration of three to five months. No right to family reunification is recognised. The authorities of San Marino have stated however that there is no demand for this and that, when requests are made for a family member to join a seasonal worker in San Marino, a tourism permit of a maximum validity of ninety days is issued. However, it has been reported to ECRI that the work carried out by some of these workers is not seasonal in nature, and that in practice some of them work in San Marino continuously throughout the year. ECRI notes with interest that the authorities of San Marino are planning a

review of the legislation governing residence and stay permits and hopes that this will provide an opportunity to address these issues.

55. In its second report, ECRI made a number of recommendations aimed at promoting integration of the non-citizen population in San Marino's society. One of these recommendations concerned the need to strengthen the provision of teaching of Italian as a second language for adults. ECRI notes that the State Secretariat for Education continues to run evening courses of Italian as a second language for adults. These classes, which have been run since 1980 in order to promote the social and professional integration of foreigners present in San Marino, include the teaching of the Italian language and workshops to strengthen the linguistic competences acquired. The authorities of San Marino underline that in recent years, the results have been positive since attendance at these classes enables not only the learning of the language but also the establishment of relations between people from different countries who have thereby had an opportunity to share with others their own experience of immigration. At the time of writing, 18 persons are reported to participate in these courses. However, ECRI has registered a need among civil society for greater provision of opportunities to learn Italian and for a more active involvement on the part of the authorities in promoting the participation of non-Italian mother tongue adults living in San Marino in these courses<sup>29</sup>.
56. Another recommendation made by ECRI in its second report to promote integration and greater participation of non-citizens in San Marino's society related to granting eligibility and voting rights in local elections to non-citizens who reside in San Marino. ECRI notes that non-citizens who reside in San Marino have not yet been granted these rights. However, the authorities of San Marino have reported that a reform of the statutes of the nine *Giunte di Castello* (local authorities) is underway and that the question of granting eligibility and voting rights to non-citizens in the elections to these authorities could be examined as part of this reform.

#### **Recommendations:**

57. ECRI encourages the authorities of San Marino in their efforts to address the discrimination against transfrontier workers, notably through a process of stabilisation of their employment situation.
58. ECRI encourages the authorities of San Marino to monitor practices of hiring workers on project-based contracts, through outsourcing as well as illegally, and to address any unjustified disproportionate impact of these practices on non-citizens that may be found.
59. ECRI recommends that the authorities of San Marino review the situation of seasonal workers and ensure that the permits granted to these persons reflect the nature of the work carried out by these persons in practice, including as concerns their duration and the rights they confer.
60. ECRI strongly recommends that the authorities of San Marino 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.

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<sup>29</sup> See below, Vulnerable groups – Citizens of San Marino from Argentina.

61. ECRI recommends that the authorities of San Marino grant eligibility and voting rights in local elections to non-citizens who reside in San Marino.

- ***Refugees and asylum seekers***

62. In its second report, ECRI recommended that the authorities of San Marino establish a procedure for applying for asylum and adjudicating asylum cases. The authorities of San Marino have expressed the view that the establishment of a refugee-determination procedure is ill-suited to the lack of border controls between Italy and San Marino. They have also explained that this is one of the main reasons why ratification of the Geneva Convention on the Status of Refugees is currently not envisaged<sup>30</sup>. However, the authorities have stressed that San Marino remains attentive to issues of international protection and that since ECRI's second report, a number of permits to stay on humanitarian grounds have been granted.

***Recommendations:***

63. ECRI recommends that the authorities of San Marino establish a procedure for applying for asylum and adjudicating asylum cases.

**Access to services**

- ***Access to education***

64. In its second report, ECRI recommended that the authorities of San Marino strengthen their efforts to provide non-Italian mother tongue children with teaching of Italian as a second language at all levels of education. Since ECRI's second report, the number of non-Italian mother tongue children in San Marino's schools has been steadily on the rise, although the authorities report that it still remains modest. Non-Italian mother tongue children in San Marino's schools include foreign children of non-Italian nationality (approximately 2% of the total number of children in kindergartens, 1,6% of those in elementary schools and 2,7% of those in lower secondary schools) as well as a number children with citizenship of San Marino who come from families recently settled in the country, notably from Argentina<sup>31</sup>.

65. The authorities of San Marino have reported that, as was the case at the time of ECRI's second report, non-Italian mother tongue children are assigned to mainstream classes at the level corresponding to their age. ECRI is pleased to note that from the school year 2006/2007, these children are given additional Italian language support in schools at all levels. Civil society organisations have welcomed these efforts, although they have stressed that the current provision of Italian language support still does not fully meet the needs. They have also stressed that the principle whereby all children are assigned to classes corresponding to their age is not always respected in practice. The authorities of San Marino have stressed that the decision not to assign students to classes corresponding to their age, which is taken in very few cases, aims at furthering as far as possible the full integration of the students in question, taking account of their very limited knowledge of Italian (which does not enable them to understand and deal with complex course content), and of differences in school curricula. Furthermore, ECRI understands that there are currently no initiatives aimed at providing non-Italian mother tongue children with education in their mother

<sup>30</sup> See above, International legal instruments.

<sup>31</sup> See below, Vulnerable groups – Citizens of San Marino from Argentina.

tongue. In this respect, the authorities of San Marino have stressed that the provision of such education proves all the more difficult because children whose mother tongue is not Italian do not all have the same mother tongue and it is thus possible that each linguistic group would contain only one student.

66. As already noted in ECRI's second report, the teaching of the Catholic religion is compulsory in San Marino's schools, although parents may choose to exempt their children from these classes. In its second report, ECRI recommended that the authorities of San Marino ensure that alternative options to religious instruction reflect as far as possible the requests of the parents. The authorities of San Marino have reported that the vast majority of children who ask for an exemption are Jehovah's Witnesses and that alternative activities are chosen in consultation with the parents. They have also reported that the parents of the few Muslim students who are present in San Marino's schools have not requested exemption from the Catholic religion courses for their children. The authorities of San Marino have furthermore reported that the number of teachers of religious instruction who are Catholic priests have been reduced; currently five out of eighteen teachers are priests.

#### **Recommendations:**

67. ECRI encourages the authorities of San Marino in their efforts to provide of non-Italian mother tongue children with teaching of Italian as a second language, at all levels of education, including kindergartens. It recommends 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. It encourages the authorities of San Marino to consider providing non-Italian mother tongue children with education in their mother tongue.
68. ECRI encourages the authorities of San Marino to ensure that pupils are given an instruction on religion which complies with the scientific neutrality essential in any educational approach, as recommended in its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education<sup>32</sup>.

#### **Employment**

69. In its second report, ECRI recommended that the authorities of San Marino conduct a survey into the possible existence, extent and manifestations of racial discrimination within the labour market, possibly as part of a wider survey into perceptions of racism and racial discrimination among potential victims of these phenomena<sup>33</sup>. The authorities of San Marino have reported that no such survey has been carried out since racial discrimination does not currently appear to be an important phenomenon in San Marino's labour market. As explained in another part of this report however, ECRI considers that this perception is partly linked to the restrictive interpretation of the notion of racial discrimination currently prevailing in San Marino<sup>34</sup>.
70. ECRI notes that, due to a lack of nursing staff in San Marino, since 2004 the country's State Hospital has resorted to the services of recruitment agencies in the surrounding towns of Italy. Some of the nurses selected by these agencies

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<sup>32</sup> See ECRI General Policy Recommendation N°10, paragraph II, 2, b).

<sup>33</sup> See below, Monitoring the situation.

<sup>34</sup> The need to improve understanding and promote awareness of racism and racial discrimination in the country.

are of Romanian nationality. The San Marino authorities have reported that, on some occasions, it has been necessary to discontinue the contracts of the Romanian nurses because their poor command of the Italian language posed a health risk, especially as it rendered communication between them and the doctors difficult. They have also stressed that at present, six of the eight foreign nurses in service at the State Hospital are of Romanian nationality. It has been reported to ECRI, however, that at least on some occasions, the discontinuation of the contracts of Romanian nursing staff was prompted by complaints from patients that the authorities themselves had considered as unjust and unjustified.

#### **Recommendations:**

71. ECRI recommends that the authorities of San Marino conduct a survey into the possible existence, extent and manifestations of racial discrimination within the labour market, possibly as part of a wider survey into perceptions of racism and racial discrimination among potential victims of these phenomena.
72. ECRI recommends that the authorities of San Marino ensure that no discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin takes place in the recruitment of nursing staff at the State Hospital.

#### **Vulnerable groups**

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

73. In its second report, ECRI recommended that the authorities of San Marino pay attention to the situation of women from Central and Eastern Europe who came to San Marino to work as private carers to attend ill or elderly persons (so-called *badanti*). Since then, the number of carers (coming mainly from Romania, Ukraine and, to a lesser extent, Moldova) has continued to increase and is at present about 500. ECRI notes that there have been a number of positive developments as concerns the situation of these women. For instance, regulations facilitating the regularisation of their employment position, with the ensuing entitlement to health insurance cover, pension rights, etc. have been adopted. The San Marino authorities also report that vocational training courses to enable the carers to acquire specific skills related to their work as private nurses have been put in place. Furthermore, the non-governmental sector has been providing them with opportunities to meet socially and improve language and other skills.
74. However, ECRI is concerned that women from Central and Eastern Europe who come to San Marino to work as private carers remain exposed to a risk of exploitation due to the combined effect of the precarious nature of their employment and the situation of isolation in which they sometimes find themselves. In this respect, ECRI notes that the carers are only allowed to work in San Marino for ten consecutive months per calendar year. The authorities have stressed that generally the carers do not request permits for longer periods of time, as the working conditions are difficult and they need to go back to their countries of origin to attend to their families or for other personal reasons. ECRI also notes, however, that for those women who do not have the need to return, this rule is disadvantageous. ECRI also notes that the *badanti* are not currently entitled to family reunification. The authorities of San Marino have stressed that there is no demand for this. However, ECRI understands that, in practice, some of these women have obtained permits to enrol their children in schools in San Marino outside family reunification procedures. ECRI notes that the authorities of

San Marino are planning a review of the legislation governing residence and stay permits; it hopes that this will provide an opportunity to address these issues<sup>35</sup>.

75. More generally, it has been reported to ECRI that Central and Eastern European carers are generally well received in the families where they work and live and in society. At the same time, prejudice and negative generalisations concerning these women are reported to be present and a certain unease at their increasing presence in San Marino can sometimes be felt.

#### **Recommendations:**

76. ECRI recommends that the authorities of San Marino pay more attention to the situation of women from Central and Eastern Europe who come to San Marino to work as private carers. In particular, it encourages the authorities of San Marino 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.

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

77. A number of descendants of citizens of San Marino who emigrated to Argentina at the beginning of the 20<sup>th</sup> century have settled in San Marino in the last decades, and particularly in more recent years, often due to the difficult economic conditions experienced in Argentina. These persons, who have retained citizenship of San Marino by descent from generation to generation, carry language and cultural features that often differ from those prevailing in San Marino. In general, these citizens are reported to find their way in San Marino's society and there are no reports of overt manifestations of racism or intolerance towards them. However, ECRI considers that the authorities of San Marino have not yet adequately taken into account the specific needs of this part of San Marino's population. As a result, citizens of San Marino from Argentina often find themselves in a situation of disadvantage as compared to the rest of the population, which can make them vulnerable to discrimination.
78. Insufficient command of the Italian language is reported to be one of the main sources of difficulties for citizens of San Marino from Argentina, with negative repercussions in a number of areas of life, and notably education and employment. The authorities of San Marino have stressed that courses of Italian as a second language for adults are available<sup>36</sup>. However, ECRI notes that more could be done by the authorities of San Marino to actively promote the participation of citizens from Argentina in these courses.
79. Citizens of San Marino from Argentina are also reported to experience difficulties in finding employment that corresponds to their qualifications. The authorities of San Marino have reported that many of these citizens do not possess higher education diplomas and qualifications. However, ECRI has received reports according to which those who do often only manage to secure employment in lower-skilled jobs. Difficulties in recognition of diplomas and qualifications gained in Argentina also appear to play a part in this situation. The authorities of San Marino have reported that, when a person possesses such diplomas and qualifications, the necessary is done so as to have them recognised in San Marino. However, ECRI has received reports according to which this is not always the case. Furthermore, information on steps that must be taken to secure

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<sup>35</sup> See above, Reception and status of non-citizens.

<sup>36</sup> See above Reception and status of non-citizens.

recognition, including information on any additional exams required or the universities that provide these, is not always readily available.

80. More generally, it has been reported that more support from the authorities would be beneficial to help citizens settling in San Marino from Argentina to find their way through the different practical aspects of everyday life, which for other citizens pose comparatively less difficulties. At present, citizens from Argentina are reported to find most of this practical help from family members already living in San Marino.
81. ECRI has also received reports according to which prejudice and a certain detachment towards this part of San Marino's citizenry is present among the general population of San Marino, who sometimes do not consider these persons as "real" citizens. In this respect, ECRI notes that there have been no initiatives by the authorities of San Marino specifically to inform the general public about these citizens and promote a better reception.

#### ***Recommendations:***

82. ECRI recommends that the authorities of San Marino pay specific attention to the situation of citizens of San Marino from Argentina. It recommends that they promote a better reception of these persons in San Marino's society through awareness raising measures targeted at the general public. ECRI also recommends that the authorities of San Marino 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 encourages the authorities of San Marino 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.

#### **Monitoring the situation**

83. In its second report, ECRI recommended that the authorities of San Marino extend the collection of data broken down by nationality, gender, age and other grounds to a number of areas, including housing, education and access to social services. ECRI also recommended that a survey into perceptions amongst potential victims of racism and racial discrimination on the possible existence, extent and manifestations of these phenomena be carried out in San Marino. There have been no developments in these two areas since ECRI's second report.
84. In its second report, ECRI furthermore recommended that the authorities of San Marino put in place a system for monitoring the incidence of racism and racial discrimination, including reports made to the authorities and the follow-up given to these. Work is currently under way to set up a computerised system where all reports made to law enforcement institutions (whether they concern an offence or not) would be recorded, including any reports of racism and racial discrimination. ECRI welcomes this development. It also stresses that in order to gain a comprehensive picture of the response of the criminal justice system as a whole to racist incidents and racist offences, data on the implementation of the relevant provisions, once adopted<sup>37</sup>, should also be available within the prosecuting authorities and the courts.

<sup>37</sup> See above, Criminal law provisions.

### **Recommendations:**

85. ECRI strongly recommends that the authorities of San Marino improve their systems for monitoring manifestations of racism and uncovering possible patterns of racial discrimination in San Marino.
86. ECRI recommends that the authorities of San Marino consider collecting relevant information broken down according to categories such as ethnic or national origin, religion, nationality and language. 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. Collection of such information should be elaborated in close co-operation with all the relevant actors, including civil society organisations and should take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.
87. ECRI recommends that the authorities of San Marino generate data concerning manifestations of racism and racial discrimination based on perceptions of potential victims of these phenomena. To this end, it draws the attention of the authorities of San Marino to its General Policy Recommendation No. 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims, which provides detailed guidance on how to carry out these surveys.
88. ECRI encourages the authorities of San Marino in their efforts to monitor racist incidents and racist offences reported to law enforcement institutions. It draws the attention of the authorities to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which provides extensive guidance in this area<sup>38</sup>.

## **II. SPECIFIC ISSUES**

### **The need to improve understanding and promote awareness of racism and racial discrimination in the country**

89. In its second report, ECRI recommended that the authorities of San Marino bring issues relating to racism, racial discrimination and intolerance to the public attention and encourage debate. As mentioned above<sup>39</sup>, the authorities of San Marino have since then taken a number of initiatives in this field. However, ECRI considers that there is a need to improve the understanding of the very notions of racism and racial discrimination in San Marino and promote awareness among the general population of the way in which these phenomena operate in society. ECRI considers that the authorities of San Marino have a central role to play in this process.
90. ECRI notes that by and large, racism and racial discrimination in San Marino are still understood as encompassing solely the most blatant and overt forms of these phenomena, such as those connected with the activities of extreme-right groups resorting to violence, or discriminatory legislation targeting members of minority groups. Since these types of manifestations have not been prevalent in the

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<sup>38</sup> See ECRI General Policy Recommendation N°11, paragraphs 11, 13 and 14 (and paragraphs 65-67 and 72-75 of the Explanatory Memorandum).

<sup>39</sup> Education and awareness raising.



country, there is a widely accepted view that racism and racial discrimination are not problems with which San Marino is faced. However, ECRI considers that this approach results in other more common manifestations of racism and racial discrimination being overlooked or deprived of the level of priority that the authorities of San Marino rightly attribute to the fight against these phenomena.

91. One illustration of this is, in ECRI's opinion, the restrictive interpretation of the notion of discrimination that is currently given by both the authorities and civil society in San Marino. Generally, discrimination is understood as legally-sanctioned differential treatment. The fact that in practice, persons may experience unjustified differential treatment at the hands of individuals in everyday life situations is much less recognised as discrimination. Furthermore, there is a need to improve the understanding of indirect discrimination, as a phenomenon occurring, for instance, when criteria and practices that are apparently neutral and do not discriminate against members of certain groups directly still put them at particular disadvantage in an unjustified manner.
92. Racism and racial discrimination are also predominantly viewed as phenomena targeting people on the basis of their "race" or ethnic origin and, to a certain extent, religion. However, ECRI considers that in Europe today, including San Marino, manifestations of racism and racial discrimination encompass conduct that targets people on other grounds too, such as nationality, national origin or language. In fact, racism and racial discrimination often happen at the nexus between different grounds, including all those mentioned above. Thus for instance, patterns of racial discrimination may exist even in respect of persons who are as a rule not visibly different from the majority, such as citizens of San Marino from Argentina or women from Central and Eastern Europe. Similarly, the racist dimension of insults directed against people on the basis of their Italian nationality<sup>40</sup>, which are generally considered as manifestations of regional animosity between neighbours, should not be overlooked.
93. Partly because racism and racial discrimination often take forms which are subtle and not immediately obvious, ECRI attaches great importance to actively monitoring these phenomena in different ways<sup>41</sup>. In ECRI's view monitoring can help to uncover patterns of disadvantage and discrimination affecting certain persons or groups of persons, measure their extent and, ultimately, serve as a basis to start a debate on the necessary measures to address any problems found. At present, ECRI has registered a rather low level of awareness of the need to actively monitor racism and racial discrimination among the authorities of San Marino, which is mainly linked to the perception that these phenomena are simply not present in the country. However, ECRI considers that there are areas which would benefit from monitoring, including for instance the labour market and the position of citizens from Argentina within it.
94. In ECRI's opinion, shortcomings in the understanding of racism and racial discrimination and in the awareness of the way in which these phenomena operate in society have negatively affected the readiness of the authorities of San Marino to consider legislation specifically aimed at combating these phenomena. As mentioned above<sup>42</sup>, there are promising developments as concerns the legal framework to counter racist expression, racially motivated offences and racist organisations. However, in the field of combating racial discrimination, the

<sup>40</sup> See above, Criminal law provisions.

<sup>41</sup> See above, Monitoring the situation.

<sup>42</sup> Criminal law provisions.

adoption of comprehensive legal provisions accompanied by effective means of redress does not yet appear to have gained the necessary level of priority<sup>43</sup>. In this connection, ECRI underlines that in addition to providing better protection to any victims of discrimination, these provisions would also constitute a powerful tool to raise awareness of racial discrimination among the general public.

95. In its second report, ECRI recommended that the authorities of San Marino draw up a National Action Plan in the framework of the follow-up to the Durban World Conference against Racism. No such plan has been prepared yet. ECRI considers that the elaboration of a National Action Plan against racism would constitute an ideal opportunity to improve the understanding of racism and racial discrimination in San Marino and promote awareness of the way in which these phenomena operate in society.

***Recommendations:***

96. ECRI strongly recommends that the authorities of San Marino promote a better understanding of racism and racial discrimination and raise awareness of the way in which these phenomena operate in society, among the general population. It strongly recommends that the authorities of San Marino draw up a National Action Plan against Racism, in which these issues would feature prominently. ECRI recommends that the authorities of San Marino 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.

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<sup>43</sup> See above, Civil and administrative law provisions.

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## APPENDIX

### **The following appendix does not form part of ECRI's analysis and proposals concerning the situation in San Marino**

ECRI wishes to point out that the analysis contained in its third report on San Marino, is dated 14 December 2007, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on San Marino was subject to a confidential dialogue with the authorities of San Marino. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the authorities of San Marino requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.



« Observations générales des autorités saint-marinaises

- En ce qui concerne la partie I, *Dispositions constitutionnelles et autres dispositions fondamentales - Loi relative à la nationalité*, en matière de naturalisation (paragraphe 16) il est opportun de souligner que bien que le système ait de profondes racines historiques et que la population se soit exprimée dans le passé par référendum pour conserver des mesures protectionnistes, le Gouvernement saint-marinais a tout de même modifié, dans le temps, et rendu plus souple les lois sur la naturalisation. Dans les précédentes législations, en effet, on demandait même jusqu'à quarante ans de résidence pour pouvoir demander la naturalisation et la loi sur la naturalisation était promulguée de temps en temps alors qu'aujourd'hui, depuis la loi n.115 du 30 Novembre 2000 en matière de "Dispositions extraordinaires sur la naturalisation", il faut obligatoirement procéder dans ce sens avant le délai maximum de dix ans. De plus, grâce à cette loi, même les hommes mariés à des citoyennes saint-marinaises ont la possibilité de demander la naturalisation après quinze ans de résidence comme les femmes, alors qu'avant cela ne leur était pas permis.

- En ce qui concerne la partie I, *Groupes vulnérables - Saint-Marinais d'Argentine* (paragraphe 79), en matière de reconnaissance mutuelle des diplômes, Saint-Marin a conclu un accord avec l'Italie. Aucun autre accord n'existe avec d'autres pays. Par conséquent, lorsque le titulaire d'un diplôme obtenu hors de l'Italie désire le faire valider à Saint-Marin, il faut que ce diplôme soit avant tout reconnu en Italie par le biais d'une déclaration du Consulat italien compétent dans le lieu de résidence du titulaire sur la base d'un tableau d'équivalence expressément rédigé par les autorités italiennes. Ensuite, les autorités scolaires saint-marinaises, après une vérification administrative avec le Ministère de l'Education italien, reconnaissent l'équivalence du diplôme étranger à Saint-Marin. Toutes les informations concernant les démarches nécessaires à accomplir sont fournies à la demande des personnes intéressées par le Département des Affaires Etrangères. »





