



G R E T A

GROUP OF EXPERTS
ON ACTION AGAINST
TRAFFICKING IN HUMAN BEINGS

GRETA(2019)01

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

SECOND EVALUATION ROUND

Adopted 7 December 2018

Published 14 March 2019



Secretariat of the Council of Europe Convention
on Action against Trafficking in Human Beings
(GRETA and Committee of the Parties)
Council of Europe
F-67075 Strasbourg Cedex
France

trafficking@coe.int

www.coe.int/en/web/anti-human-trafficking

Table of contents

I. Introduction.....	5
II. Main developments in the implementation of the Convention by San Marino	7
1. Emerging trends in trafficking in human beings and types of exploitation	7
2. Developments in the legal framework	7
3. Developments in the institutional framework	7
4. National Action Plans	8
5. Training of relevant professionals	8
6. Data collection and research	9
III. Article-by-article findings	10
1. Prevention of trafficking in human beings	10
a. Measures to raise awareness (Article 5)	10
b. Measures to prevent THB for labour exploitation (Article 5)	10
c. Measures to prevent trafficking in children (Article 5)	12
d. Measures to prevent trafficking for the purpose of organ removal (Article 5)	12
e. Measures to discourage demand (Article 6)	13
f. Border measures (Article 7)	14
2. Measures to protect and promote the rights of victims, guaranteeing gender equality	14
a. Identification of victims of THB (Article 10)	14
b. Assistance measures (Article 12)	15
c. Identification and assistance of child victims of THB (Articles 10 and 12)	16
d. Protection of private life (Article 11)	17
e. Recovery and reflection period (Article 13)	17
f. Residence permits (Article 14)	17
g. Compensation and legal redress (Article 15)	18
h. Repatriation and return of victims (Article 16)	18
3. Substantive criminal law	19
a. Criminalisation of THB (Article 18)	19
b. Criminalisation of the use of services of a victim (Article 19)	20
c. Corporate liability (Article 22)	20
d. Non-punishment of victims of trafficking in human beings (Article 26)	20
4. Investigation, prosecution and procedural law	21
a. Measures related to effective investigations (Articles 1, 27 and 29)	21
b. Protection of witnesses and victims (Articles 28 and 30)	22
c. Jurisdiction (Article 31)	22
5. International co-operation and co-operation with civil society	23
a. International co-operation (Articles 32 and 33)	23
b. Co-operation with civil society (Article 35)	23
IV. Conclusions	24
Appendix: List of public bodies, non-governmental organisations and other civil society actors with which GRETA held consultations	28
Government comments	30

Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) has been set up pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), which entered into force on 1 February 2008. GRETA is composed of 15 independent and impartial experts coming from a variety of backgrounds, who have been selected on the basis of their professional experience in the areas covered by the Convention. The term of office of GRETA members is four years, renewable once.

GRETA is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party. In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is to be based and defines the most appropriate means to carry out the evaluation. GRETA adopts a questionnaire for each evaluation round which serves as the basis for the evaluation and is addressed to all parties.

The first evaluation round was launched in February 2010 and the questionnaire for this round was sent to the parties according to a timetable adopted by GRETA, which reflected the time of entry into force of the Convention for each party. GRETA organised country visits to all parties in order to collect additional information and have direct meetings with relevant actors, both governmental and non-governmental.

Following the first round of monitoring, which provided an overview of the implementation of the Convention by each party, GRETA launched the second evaluation round of the Convention on 15 May 2014. During this new evaluation round, GRETA has decided to examine the impact of legislative, policy and practical measures on the prevention of trafficking, the protection of the rights of victims of trafficking, and the prosecution of traffickers. The adoption of a human rights-based approach to action against trafficking in human beings remains at the centre of the second evaluation round. In addition, particular attention is paid to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking. The questionnaire adopted by GRETA for the second evaluation round is sent to all parties which have undergone the first evaluation round, following a timetable approved by GRETA.

GRETA's reports are based on information gathered from a variety of sources and contain recommendations intended to strengthen the implementation of the Convention by the party concerned. In its recommendations, GRETA has adopted the use of three different verbs - "urge", "consider" and "invite" - which correspond to different levels of urgency of the recommended action for bringing the party's legislation and/or practice into compliance with the Convention. GRETA uses the verb "urge" when it assesses that the country's legislation or policy are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of an obligation of the Convention is lacking. In other situations, GRETA "considers" that it is necessary to make improvements in order to fully comply with an obligation of the Convention. By "inviting" a country to pursue its efforts in a given area, GRETA acknowledges that the authorities are on the right track.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each party in a plenary session. The process of confidential dialogue with the national authorities allows the latter to submit, within two months, comments on GRETA's draft report with a view to providing additional information or correcting any possible factual errors. These comments are taken into account by GRETA when establishing its final report. The final report is adopted by GRETA in a plenary session and transmitted to the party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month GRETA's report, together with eventual comments by the party concerned, is made public and sent to the Committee of the Parties to the Convention.

I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention") by San Marino took place in 2013. Following the receipt of San Marino's reply to GRETA's first questionnaire on 3 July 2013, a country evaluation visit took place from 4 to 6 December 2013. The draft report on San Marino was examined at GRETA's 19th meeting (18-20 March 2014) and the final report was adopted at GRETA's 20th meeting (30 June – 4 July 2014). Following the receipt of the San Marino authorities' comments, GRETA's final report was published on 15 September 2014.¹

2. In its first evaluation report, GRETA noted that no cases of trafficking in human beings (THB) had been identified in San Marino. While trafficking in human beings had been criminalised in 2008, there was no co-ordination structure dealing specifically with action against human trafficking in San Marino. GRETA considered that the authorities should establish a framework for co-ordinating different actors in the event of a trafficking case being identified, including law enforcement agencies, inspection agencies, social services and civil society. Further, GRETA stressed the need for raising awareness of human trafficking among the general public and professionals likely to come into contact with victims. GRETA recommended that the authorities systematically provide information to foreigners employed as domestic workers, carers and seasonal workers on their rights and the risks of trafficking. GRETA also urged the authorities to adopt measures making it possible to proactively identify victims of trafficking. GRETA noted the existence of assistance facilities for women victims of violence and stressed the need for legislative and other measures to provide assistance to all victims of human trafficking, regardless of their gender and form of exploitation. Moreover, GRETA urged the San Marino authorities to provide in law for a recovery and reflection period for victims of trafficking and the possibility of issuing them with renewable residence permits. Finally, GRETA urged the authorities to adopt legislative or other measures to guarantee compensation for victims of human trafficking, including State compensation.

3. On the basis of GRETA's report, on 5 December 2014, the Committee of the Parties to the Convention adopted a recommendation to the San Marino authorities, requesting them to report back on the measures taken to comply with this recommendation by 5 December 2016.² The report submitted by the San Marino authorities was considered at the 20th meeting of the Committee of the Parties (10 March 2017). The Committee of the Parties decided to transmit the authorities' report to GRETA for consideration and to make it public.³

4. On 1 June 2017, GRETA launched the second round of evaluation of the Convention in respect of San Marino by sending the questionnaire for this round to the San Marino authorities. The deadline for submitting the reply to the questionnaire was 2 November 2017. San Marino submitted its reply on 20 December 2017.⁴

5. In preparation of the present report, GRETA used the reply to the questionnaire by the San Marino authorities, the above-mentioned report submitted by them to the Committee of the Parties and information provided by civil society. An evaluation visit to San Marino took place from 20 to 22 February 2018 in order to hold meetings with relevant actors, collect additional information and assess the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Ms Alina Braşoveanu, member of GRETA;
- Mr Mihai Şerban, member of GRETA;
- Mr David Dolidze, administrator in the Secretariat of the Convention.

¹ <http://rm.coe.int/168063bdcf>

² <http://rm.coe.int/168063bdcd>

³ <http://rm.coe.int/16806fd50f>

⁴ <http://rm.coe.int/greta-2017-40-rq2-smr/168077adac>

6. During the visit, the GRETA delegation met Mr Nicola Renzi, State Secretary of Foreign Affairs, Political Affairs and Justice, Mr Franco Santi, State Secretary for Health, Equal Opportunities, Social Security and Social Affairs, and Mr Andrea Zafferani, State Secretary for Industry, Crafts, Trade, Labour and Telecommunications. GRETA also held consultations with officials from the Authority for Equal Opportunities, the Commission for Equal Opportunities, the Department of Education, the Department of Labour, the Labour Inspectorate, law enforcement agencies, the Department of Agriculture and Territory, the Department of Tourism, the Department of Justice, the Health Authority, the Minors' Service, and the Anti-Violence Centre. Further, GRETA held consultations with representatives of the judiciary and Members of Parliament.
7. Separate meetings were held with representatives of the San Marino Union of Workers and the San Marino Lawyers and Notaries Association.
8. In the course of the visit, the GRETA delegation visited a shelter for women and children victims of violence, run by the social co-operative "Il Millepiedi" in the Rimini region of Italy, which can accommodate victims of violence and trafficking in human beings referred from San Marino on the basis of a contract with the San Marino Institute for Social Security.
9. The list of the national authorities and civil society representatives with which the delegation held consultations is set out in the Appendix to this report. GRETA is grateful for the information provided by them.
10. GRETA wishes to place on record the co-operation provided by the San Marino authorities during the second evaluation, and in particular by the contact person appointed to liaise with GRETA, Ms Sylvie Bollini, First Secretary at the Department of Foreign Affairs of the Ministry of Foreign and Political Affairs.
11. The draft of the present report was approved by GRETA at its 32nd meeting (9-13 July 2018) and was submitted to the San Marino authorities for comments on 19 July 2018. The authorities' comments were received on 9 November 2018 and were taken into account by GRETA when adopting the final report at its 33rd meeting (3-7 December 2018). The report covers the situation up to 7 December 2018; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made since the first report, the issues which require immediate action and the other areas where further action is needed (see pages 24-28).

II. Main developments in the implementation of the Convention by San Marino

1. Emerging trends in trafficking in human beings and types of exploitation

12. No victims of trafficking in human beings (THB) have ever been identified in San Marino, which has a population of around 33,000 and a surface area of just over 61 km², surrounded by Italy. GRETA has not received any reports concerning possible cases of human trafficking in San Marino, even though some sectors of the economy (agriculture, hotels, restaurants) may represent risks of exploitation (see paragraph 38). Further, as already noted in GRETA's first report, domestic workers and private carers for the elderly and disabled persons (the so-called "*badanti*"), living in the households where they work, could potentially be exposed to risks of THB (see paragraph 36).⁵

2. Developments in the legal framework

13. Amendments to the Law on the Entry and Stay of Foreigners adopted on 30 July 2015 introduced the possibility to issue renewable residence permits to victims of violence, including victims of THB (see paragraph 78) and improved the conditions for issuing work and residence permits to private carers (see paragraph 36). The authorities have also taken legislative and practical measures to improve the provision of information to foreign citizens employed as private carers (see paragraph 36).

14. Further, Law No. 57 of 6 May 2016 adjusting San Marino's legal system to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("Istanbul Convention") introduced some amendments to Law No. 97 of 20 June 2008 on Prevention and Criminalisation of Violence against Women and Gender-based Violence (hereinafter "Law No. 97/2008"), which criminalises THB. These amendments include the adoption of a definition of "violence against women, gender violence and domestic violence", which according to the authorities covers any woman, man or child who are victims of THB and provide that the assistance measures envisaged for victims of violence are accessible to victims of THB.

15. In addition, on 31 March 2014, the San Marino Parliament adopted a new law on licences for pursuing industrial, service, handicraft and commercial activities. The new law prohibits issuing licences to persons having been convicted of criminal offences in the 15 previous years or in respect of whom criminal proceedings are on-going.

16. Some of the above-mentioned legislative developments are discussed in greater detail in later parts of this report (see paragraphs 36, 63, 78 and 107).

3. Developments in the institutional framework

17. As noted in GRETA's first evaluation report, the Authority for Equal Opportunities, operational since January 2009, has competences in all matters covered by Law No. 97/2008, including THB. The Authority for Equal Opportunities has the task of promoting initiatives aimed at preventing violence against women and gender-based violence, providing support to victims and concluding operational protocols with relevant stakeholders. Further, the Commission for Equal Opportunities, a consultative body established in 2004 and consisting of members elected by Parliament, is competent for all gender equality issues, except for gender-based violence. Its main focus is on promoting the rights of people with disabilities and combating racism, homophobia and other forms of intolerance and discrimination. GRETA was informed that following the general elections in San Marino in 2016, the compositions of the Authority for Equal Opportunities and the Commission for Equal Opportunities had been renewed.

⁵ See paragraph 67 of GRETA's first report.

18. In addition, the Ministry of Industry, Trade and Crafts and the Ministry of Labour were merged into one Ministry of Industry, Crafts, Trade, Labour and Telecommunications.

4. National Action Plans

19. As was the case at the time of the first evaluation, San Marino has no national action plan for combating THB. Owing to the absence of identified cases of THB in San Marino, the authorities do not deem it necessary to adopt such a plan for the time being.

20. **Nevertheless, in order to ensure a comprehensive approach to action against trafficking in human beings as required by the Convention and an effective implementation of GRETA's recommendations, GRETA urges the San Marino authorities to adopt a policy document (in the form of an action plan or strategy) in the area of THB or to incorporate action to combat THB in an already existing policy document plan. This should cover action to raise awareness of THB and to provide training to relevant professionals.**

5. Training of relevant professionals

21. In its first report, GRETA urged the San Marino authorities to ensure that training on THB, in particular on the definition and indicators of THB, the difference between THB and smuggling of migrants, the detection of vulnerable individuals and groups, and the identification, assistance and compensation of victims, was provided to all relevant professionals, such as law enforcement officials, prosecutors, judges, labour inspectors, lawyers, social workers, child care professionals, medical and educational staff.⁶

22. Law No. 97/2008 provides for the provision of compulsory training on a yearly basis to all staff dealing with gender-based violence, including health-care professionals, law enforcement officials, judges, lawyers, social workers and educational staff. The authorities informed GRETA that this training had so far focused on different forms of violence and discrimination, without addressing specifically THB, but in future training sessions this topic could be included.

23. As already noted in GRETA's first report, pursuant to an agreement concluded with Italy in 2012, San Marino law enforcement officials and other professionals can receive training in Italy, including on THB.⁷ According to the authorities, a training module for professionals who may be involved in the fight against trafficking in human beings has been introduced in the Training and Information Plan of the Authority for Equal Opportunity. The training will be managed by the Co-ordinated Research Centre "Escapes" of the University of Milan. GRETA has not been informed whether any training has already taken place.

24. Further, GRETA was informed that a cross-sectorial working group on health education, composed of representatives of schools and the Social Security Institute, was planning to train the educational staff of all schools on the topics of sexual abuse, exploitation of children and THB.

25. The authorities have referred to a report commissioned by the Authority for Equal Opportunity, entitled "Against gender violence: training and intervention. Reflections following a research project in the Republic of San Marino", which was published on 23 November 2017.

26. GRETA stresses that even though no cases of THB have been discovered in San Marino, the provision of training to relevant professionals is crucial for enabling them to detect indicators of human trafficking and deal with them in accordance with the provisions of the Convention.

⁶ See paragraph 53 of GRETA's first report.

⁷ See paragraph 60 of GRETA's first report.

27. **Noting the lack of progress in the provision of training on THB to relevant professionals, GRETA once again urges the San Marino authorities to take steps to ensure that training on THB is provided to law enforcement officers, labour inspectors, prosecutors, judges, social workers, educational staff, child protection specialists and health-care professionals, either in San Marino or abroad.**

6. Data collection and research

28. In its first report, GRETA encouraged the San Marino authorities to consider how data on victims of trafficking in human beings would be collected, having due regard to their right to personal data protection, and to support research into THB related issues.

29. As described in the first evaluation report, the responsibility for collecting data on matters covered by Law No. 97/2008 (including THB) is vested with the Authority for Equal Opportunities. All relevant authorities, including law enforcement agencies, health services, the Minors' Service and the Counselling Centre for Victims of Violence, are responsible for collecting disaggregated data on victims of violence and perpetrators and transmitting it to the Authority for Equal Opportunities.

30. GRETA has not been informed of any research concerning THB in San Marino.

31. **GRETA considers that the San Marino authorities should increase their efforts to conduct and support research on THB-related issues as an evidence base for future policy measures. Areas where research could be conducted include THB the purpose of labour exploitation in different sectors of economy (domestic work, agriculture, construction, hospitality) and trafficking in children for different forms of exploitation.**

III. Article-by-article findings

1. Prevention of trafficking in human beings

a. Measures to raise awareness (Article 5)

32. In its first report, GRETA considered that the San Marino authorities should raise awareness of THB and the different forms of exploitation involved, both among the general public (including through school and university education) and among professionals likely to come into contact with victims of THB.

33. No activities to raise awareness on THB have been carried out in San Marino during the reporting period. The authorities referred to general awareness-raising activities concerning the prevention of violence against women carried out in the context of ratification of the Istanbul Convention.

34. **Noting that awareness raising is essential for preventing THB and detecting possible cases, GRETA urges the San Marino authorities to introduce awareness raising on THB for different forms of exploitation, both for the general public and in a targeted manner for groups at risk. The awareness raising should be accompanied by research and the impact of the measures should be assessed.**

b. Measures to prevent THB for labour exploitation (Article 5)

35. In its first report, GRETA urged the San Marino authorities to ensure that foreign persons employed as domestic workers or private carers are systematically informed in a language they understand about their rights and the danger of THB, and are given the possibility to contact, in a language they understand, an office or a person who could assist them in case of problems with their employers. GRETA noted that similar measures should be introduced for foreign workers employed in San Marino, in particular on the basis of seasonal work permits in the sectors of tourism, domestic work and construction.

36. In GRETA's first report, concerns were raised about the potential vulnerability to THB and exploitation of women from Romania, Ukraine, the Republic of Moldova and other Eastern European countries who work in San Marino as private carers (*"badanti"*) for elderly or disabled people and live in the households where they work. The regulations enabling them to have residence and work permits of a maximum duration of 11 months within a given year and obliging them to leave San Marino at the expiry of 11 months, even if they can come back a month later, have been amended.⁸ Pursuant to the amended Law on the Entry and Stay of Foreigners, private carers can obtain work and residence permits for the duration of 12 months, thus removing the requirement to leave the country prior to requesting new permits. Further, pursuant to Decree No. 21 of 24 February 2016 on "Action for elderly and disabled persons who are unable to look after themselves and receive continuous assistance", a dedicated helpdesk has been set up for private carers, providing them with information on their rights and the relevant laws and regulations in a language they can understand, and assisting them in understanding and verifying the conditions stipulated in their contracts. GRETA welcomes these developments, which take into account its previous recommendations, **and invites the San Marino authorities to ensure the effective and consistent application of the legislation in practice as a means of preventing THB.**

⁸ See paragraph 67 of GRETA's first report.

37. According to the authorities, foreign workers are mostly employed in the hospitality and commerce sectors. To be entitled to work, migrant workers must obtain a work permit from the Labour Office. A new Law No. 115 of 2017 amending and supplementing the Rules on Supporting Economic Development and Decree No. 137 of 2017 list the documents necessary to apply for a work permit. According to the authorities, no private recruitment agencies operate in San Marino. The Labour Office is responsible for verifying whether those wishing to register on the employment list meet the necessary requirements.⁹ Additional verifications are carried out by the Labour Commission established by Law No. 131 of 29 September 2005 for the Promotion, Support and Development of Employment and Training, which co-operates with the Labour Office. By 30 April of each year, the Labour Commission transmits to Parliament a report on the general employment situation.

38. The Labour Inspectorate is responsible for supervising the implementation of labour legislation, including that on the protection of employees, and examines irregular work situations. However, labour inspectors are not entitled to enter private households to check the working conditions of private carers. Information on any detected employees in an irregular migration situation is transmitted to the Gendarmerie for further processing of the cases. Labour law violations may lead to fines and other sanctions against employers, as well as sanctioning of employees. According to the San Marino authorities, the Labour Inspectorate carries out about 4,000 inspections per year. In the course of 2016, there were some 769 labour inspections in the commercial sector, which resulted in discovering 39 workers in irregular situations, but no suspected cases of THB. As noted earlier, labour inspectors have not received any training on the subject of THB and have not been provided with indicators for detecting possible cases of THB. According to representatives of the San Marino Trade Union, there is a need to develop a more effective inspection mechanism to cover all economic sectors where foreign workers may be employed and extend inspections beyond regular office hours. The authorities have stated that labour inspectors carry out checks including on public holidays and evenings, and request the Police to carry out night checks.

39. GRETA was informed of the on-going reform of the Labour Inspectorate, including its merger with the Office of Supervision. At the time of the visit, the Labour Office was being merged with the Office for Industry, Crafts and Business to become the Office for Economic Activities. According to the authorities, this reform implies centralising the control functions of the new Office of Supervision and includes transferring of Labour Inspectorate, exercising supervisory functions of labour standards, to the new Organisational Unit, without any changes to its competence: if, in the course of their verification activities, labour inspectors should encounter cases of abuse or exploitation of workers, they would still have the competence to intervene in such cases.

40. **GRETA considers that the San Marino authorities should take further measures to prevent trafficking for the purpose of labour exploitation, including by:**

- **raising awareness amongst migrant workers and the general public of THB for the purpose of labour exploitation;**
- **strengthening the mandate of labour inspectors with a view to preventing THB for the purposes of labour exploitation in different sectors of the economy and in private households;**
- **training labour inspectors, law enforcement officers, prosecutors and judges on combating THB for the purpose of labour exploitation, identifying victims of trafficking for labour exploitation and the rights of victims (see also paragraph 27).**

⁹ Registration is possible only for nationals and residents of San Marino who have attained working age, completed compulsory education, are in possession of the "Professional booklet" issued by the Labour Office, and have the certificate of residence.

c. Measures to prevent trafficking in children (Article 5)

41. The public social and health services, including the Minors' Service and the Authority for Equal Opportunity, are vested with different child-protection tasks.

42. Apart from the training of school personnel planned for 2018 (see paragraph 24), GRETA was informed of an on-going revision of the school curriculum in San Marino, which will reportedly take into account the need to inform pupils about THB and exploitation. The authorities have made contacts with Italian counterparts in order to obtain examples of training provided to school teachers on this subject.

43. The adoption of children is regulated by the Law on Reform of Family Law of 1986, the Law on the Adoption of Foreign Citizens of 1999 and the Law on the Rules on International Adoption and Protection of Minors. Pursuant to this legislation, in order to allow children to leave their countries legally, entry to San Marino for the purposes of adoption is granted only to children eligible for adoption, after the administrative and judicial authorities of the child's country of origin have issued either an adoption decision, a pre-adoption foster care decision, or any other decision on guardianship, affirming that the child is authorised to leave the country.

44. As regards unaccompanied and separated children, according to the authorities, two Gambian children arrived in San Marino during the reporting period. They were provided with accommodation and assistance on the basis of humanitarian residence permits. Public officials and representatives of civil society confirmed to GRETA that no cases of suspicion of child trafficking had been detected in San Marino, including involving unaccompanied children.

45. **GRETA considers that the San Marino authorities should take additional measures to prevent trafficking in children, in particular by:**

- **closely following developments on the labour market, tourism and hospitality industries, as well as migration trends, to detect children in vulnerable situations, in particular any children at risk of sexual exploitation or child labour;**
- **strengthening the role and capacity of the child protection systems to prevent trafficking in children and alerting other relevant stakeholders to possible cases of trafficking;**
- **promoting online safety of children and alerting relevant actors of risks of trafficking in children committed through the misuse of the Internet.**

d. Measures to prevent trafficking for the purpose of organ removal (Article 5)

46. GRETA notes that while human trafficking for the purpose of organ removal as defined by the Convention and organ trafficking as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs¹⁰ are two distinct crimes, they bear certain similarities and share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put persons in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal and the reverse is also true.¹¹ Among the necessary preventive measures, GRETA emphasises the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care professionals. GRETA also stresses the importance of conducting a thorough investigation of each case where there is information or suspicion of trafficking for the purpose of organ removal, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of trafficking in human beings.

¹⁰ Opened for signature in Santiago de Compostela on 25 March 2015; entry into force 1 March 2018.

¹¹ See ["Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs", Joint Council of Europe/United Nations Study](#) (2009), in particular pages 55-56; "Trafficking in human beings for the purpose of organ removal in the OSCE region: Analysis and Finding", OSCE Occasional Paper No. 6 (2013).

47. In San Marino, the collection, storage and use of human organs, blood, tissues and cells is regulated by the Framework Law on the Use of Blood, Cells, Tissues and Organs of 2010. Further, Decree No. 106 of 17 August 2016 entitled "Implementation of European Directives concerning the quality and safety standards for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells" specifies the scope of application and competences of the different bodies responsible for monitoring the procedures and accredited institutions, including the Bioethics Committee, which is an independent public body. The Decree also defines the measures concerning inspection, supervision, control, import and export of organs, blood, tissues and cells. The central authority responsible for supervising the implementation of this law is the Health Authority. The authorities informed GRETA that the donation of organs, blood, tissues and cells is free and voluntary.

48. According to the authorities, organ transplants are not carried out in San Marino. Nearly all transplant surgeries on San Marino nationals are done in Italy. San Marino nationals needing an organ are placed on a waiting list of beneficiaries operated by the Italian authorities, while Italian hospitals performing transplants are in charge of ensuring the informed consent and donor identification procedures. The Social Security Institute provides health-care services to persons who undergo an organ removal (as a donor) or an organ transplant surgery.

49. No training of doctors and medical professionals on THB for the purpose of the removal of organs has been provided so far. GRETA was informed of the on-going process of introducing continuous professional training of medical doctors in San Marino. The Ministry of Health is currently discussing the organisation of such training, one of the purposes of which would be sensitising medical professionals on THB for the removal of organs.

50. GRETA was informed that all doctors employed by the Institute for Social Security have the obligation to report to law enforcement authorities any activity or observation, which may be attributed to acts of violence of any kind, under a penalty of a first-degree prohibition or a third-degree fine.¹²

51. GRETA considers that the San Marino authorities should introduce training and awareness-raising measures aimed at health-care professionals and other relevant professionals regarding trafficking for the purpose of organ removal.

52. Further, GRETA encourages the San Marino authorities to sign and ratify the Council of Europe Convention against Trafficking in Human Organs as this would contribute to the prevention of trafficking for the purpose of organ removal.

e. Measures to discourage demand (Article 6)

53. The authorities informed GRETA that no measures had been taken to discourage demand for services from trafficked persons. **GRETA considers that the San Marino authorities should adopt legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media.**

¹² As stipulated in Article 370 of the Criminal Code ("offence of omission to report a crime"), any health-care professional who fails to report injuries or illnesses that may be the consequences of a crime will be subject to criminal sanctions, if the reporting would not lead to criminal proceedings against the assisted person.

f. Border measures (Article 7)

54. San Marino is landlocked by Italian territory and has no airport. The Convention on Friendship and Good Neighbourhood between San Marino and Italy of 1939 establishes, *inter alia*, the free movement of nationals between the two countries. In addition, San Marino has a customs union agreement with the European Union.

55. San Marino does not issue entry visas. Pursuant to Law No. 118/2010 on the Entry and Stay of Foreigners, nationals and residents of States Parties to the Schengen Agreement may enter San Marino without a visa, and all other foreigners can enter with a valid visa issued by one of the Schengen States. General information on the legal entry and stay in San Marino is available in Italian on the website of the Ministry of Foreign Affairs.¹³ San Marino embassies and consulates abroad provide information on the entry and stay in San Marino to interested persons. The migration controls performed in San Marino are mainly focused on checking travel documents, means of transport and luggage of foreign nationals travelling through the country. Such controls are not systematic and can be performed by all law enforcement authorities.

56. **GRETA invites the San Marino authorities to continue their efforts to detect and prevent THB through border control measures and to provide information to foreign nationals arriving in San Marino, in a language that they can understand, on their rights and where to turn for advice and assistance.** In this context, GRETA refers to the United Nations Office of the High Commissioner for Human Rights (OHCHR) 2014 Recommended Principles and Guidelines on Human Rights at International Borders.¹⁴

2. Measures to protect and promote the rights of victims, guaranteeing gender equality

a. Identification of victims of THB (Article 10)

57. In its first report, GRETA urged the San Marino authorities to adopt such legislative or other measures as may be necessary to proactively identify victims of THB and refer them to assistance and to provide relevant actors with indicators for detecting possible victims.

58. There have been no developments reflecting GRETA's recommendation. The authorities indicated that the Gendarmerie would be responsible for the identification of victims of THB. The procedure for identifying and assisting victims of violence, set out in accordance with Law No. 97/2008, which is co-ordinated by the Authority for Equal Opportunity, would apply to any detected cases of THB. According to representatives of the Anti-Violence Centre, there is no clearly defined mechanism for the identification and referral to assistance of victims of THB, but the close co-operation developed between the social services and law enforcement agencies in the area of assisting victims of violence can be used and adapted to victims of THB.

59. San Marino is not party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol. GRETA was informed that there is no specific procedure for requesting asylum in San Marino. The San Marino Government can accord protection to people at risk of persecution based, *inter alia*, on race, religion, social group affiliation or political opinions.¹⁵ Applications for such protection have been very rare. No victims of THB have been identified among persons seeking international protection in San Marino.

¹³ www.esteri.sm

¹⁴ http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf

¹⁵ More information is available at: <https://borgenproject.org/10-facts-about-refugees-in-san-marino/>

60. GRETA received no indications from its interlocutors, including non-state actors, about possible cases of THB. Nonetheless, in GRETA's opinion, having clear indicators for detecting THB and identifying its victims is an indispensable prerequisite for effective identification of any possible cases of THB.

61. **GRETA once again urges the San Marino authorities to adopt such legislative or other measures as may be necessary to identify victims of THB, and in particular to:**

- **provide indicators for the identification of victims of THB for different forms of exploitation to all professionals who may come into contact with possible victims of trafficking, to enable the proactive detection of signs of trafficking;**
- **develop a multi-disciplinary framework for the identification and referral to assistance of victims of trafficking, involving law enforcement agencies, labour inspections, health-care staff, social workers and child protection authorities;**
- **increase efforts to proactively identify victims of THB for the purpose of labour exploitation, paying particular attention to at-risk sectors, by effectively involving labour inspectors and trade unions.**

b. Assistance measures (Article 12)

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

63. San Marino has no assistance infrastructure specifically tailored to the needs of victims of THB. Law No. 97/2008 envisages the provision of assistance measures for victims of violence, which could be adapted to the needs of victims of THB. Following the 2016 amendments to the law, the assistance measures are available not only to women but also to men and children. A Counselling Centre for women victims of violence was opened in July 2013 in Dogana.¹⁶

64. The authorities informed GRETA that the Social Security Institute had concluded an agreement with the Italian authorities for the provision of safe accommodation to adult women victims of violence, which could be applied to possible female victims of THB. However, GRETA was not informed of any accommodation and assistance structures or measures which could be offered to possible male victims of THB.

65. The GRETA delegation visited a shelter for women and children victims of violence run by the non-governmental organisation "Il Millepiedi" in the region of Rimini in Italy. On the basis of a contract concluded in 2017 with the Social Security Institute of San Marino, this shelter can accommodate women victims of violence together with their children who are referred from San Marino. It has five rooms with the capacity to accommodate up to 10 beneficiaries at a time. Psychological support to victims referred from San Marino is provided by the San Marino social services, including Minors' Service. Legal assistance is provided by lawyers on the list who provide free legal aid. The location of the shelter is kept confidential. The security of the shelter is ensured through direct contact with the Italian law enforcement agencies. So far, two victims of violence have been referred to the centre from San Marino. The staff of the shelter have not received any training on assisting victims of THB.

¹⁶ See paragraph 84 of GRETA's first report.

66. Access to health care can be provided to victims of THB through the general health-care scheme. Foreigners working in San Marino pay contributions to the public health insurance and are therefore entitled for health care. Foreigners in irregular migration situation have access to emergency medical assistance.

67. **GRETA once again urges the San Marino authorities to take such legislative or other measures as may be necessary to ensure that all presumed and identified victims of trafficking can receive adequate assistance and support, in accordance with the obligations under Article 12 of the Convention, regardless of their gender or the form of exploitation.**

c. Identification and assistance of child victims of THB (Articles 10 and 12)

68. According to the authorities, the identification of child victims of THB would follow the same procedure as that for the identification of adults. The protection measures provided for child victims of THB are regulated by Law 97/2008, which was amended through Law 57/2016. GRETA was informed that no special measures for child victims of THB are envisaged but all the assistance measures concerning child victims of violence would be applicable.

69. In the case of discovering an unaccompanied child in San Marino, the guardianship judge will decide upon measures to protect the interests of the child, according to the circumstances, including locating the child's family. If it is established that a person has not attained 18 years of age, he/she is entrusted to the Minors' Service which is responsible for providing care and assistance. The Minors' Service would assess the best interests of an unaccompanied child respecting the child's privacy, and assess the measures to be adopted, including a search for the child's family, repatriation to the country of origin or accommodation in appropriate facilities, as required by the best interests of the child.

70. No agreements have been concluded between the Minors' Service and relevant Italian institutions capable of accommodating and assisting children in difficult situations. The Minors' Service is entrusted with ensuring that such centres are adequately adapted to the needs of children. The Minor's Service is also responsible for ensuring the integration into society of children without parental care. According to the authorities, the Minors' Service may offer assistance and reintegration support to child victims of trafficking, if the child's stay in his/her family would not be in the best interests of that child.

71. The authorities informed GRETA that if the age of a possible victim of THB is uncertain, and there are reasons to believe that the person is a child, all measures envisaged for children would be applied. However, GRETA received no information as to the age assessment procedure which would be applied in such cases. **GRETA invites the San Marino authorities to ensure that the age assessment procedure takes into account psychological, cognitive or behavioural factors and ensures that the best interests of the child are effectively protected, taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child.**¹⁷

72. **GRETA urges the San Marino authorities to develop procedures for the identification and referral to assistance of child victims of trafficking, including by:**

- **setting up a child identification mechanism based on inter-agency co-operation which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration;**
- **ensuring that relevant actors (police, service providers, NGOs, child protection authorities, social workers) are adequately trained and provided with guidance to enable them to proactively identify child victims of THB.**

¹⁷ [General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin, Committee on the Rights of the Child, Thirty-ninth session, 17 May - 3 June 2005.](#)

d. Protection of private life (Article 11)

73. Pursuant to Article 16 of Law No. 97/2008, during civil or criminal proceedings related to violence against a person, the victim's confidentiality and privacy, as well as his/her personal details, those of the victim's children or of any other person under his/her custody shall be protected. A sanction of 12,000 euros would apply in case of non-compliance with this rule. According to Article 19 of Law No. 97/2008, social services, law enforcement agencies and health-care professionals are required to report any act of violence of which they have become aware to the Law Commissioner (judicial authority in San Marino's judicial system)¹⁸ acting as Civil Guardianship Judge any act of violence of which they have become aware. The Law Commissioner ensures the confidentiality of such reports and records.

e. Recovery and reflection period (Article 13)

74. In the first report, GRETA urged the San Marino authorities to provide in law for a recovery and reflection period for victims of THB, in conformity with Article 13 of the Convention, and to ensure that all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention were provided during this period.

75. The situation has not changed since the first evaluation round and the recovery and reflection period for victims of THB is still not envisaged under San Marino's law. GRETA was not informed of any plans to introduce such a period in law.

76. GRETA once again urges the San Marino authorities to ensure that the recovery and reflection period, as provided for in Article 13 of the Convention, is specifically defined in law and that all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention are made available during this period to persons with regard to whom there are reasonable grounds to believe that they are victims of THB. It should be made clear that the recovery and reflection period should last at least 30 days and should not be conditional upon any additional requirement, beyond the existence of reasonable grounds.

f. Residence permits (Article 14)

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

78. Following GRETA's recommendation, the authorities have amended, on 30 July 2015, the Law on Entry and Stay of Foreigners, introducing in Article 14 an extraordinary residence permit for victims of THB for humanitarian reasons of social protection, having regard to their personal situation, and/or for the purpose of their co-operation in the investigation or criminal proceedings. The permit can be renewed annually based on the opinion of the Authority for Equal Opportunities or by a court. GRETA welcomes this development.

¹⁸

<http://www.sanmarino.sm/on-line/en/home/institutions/judicial-system.html>

g. Compensation and legal redress (Article 15)

79. In its first report, GRETA urged the San Marino authorities to adopt legislative or other measures necessary to guarantee compensation for victims of human trafficking, including compensation from the State when compensation cannot be secured from the perpetrator.

80. As was the case during the first evaluation, victims of violence, including THB, are entitled to legal aid if they demonstrate the lack of means to pay for it. The San Marino Association of Lawyers and Notaries is tasked with providing such assistance, the costs of which are paid by the State. The law also envisages that those found guilty of the offences in question are convicted to pay damages. Representatives of the Association of Lawyers and Notaries stated that no specific training had been provided on representing victims of THB and assisting victims to claim compensation.

81. GRETA was informed that the Decree no. 56 of 17 May 2018 concerning the autonomy of the Authority for Equal Opportunities envisages the setting up of a fund for financial assistance to victims of violence. According to representatives of the Authority for Equal Opportunities, all victims of violence, including victims of THB, would have access to this fund on the basis of a preliminary assessment of their needs carried out by the Authority.

82. GRETA considers that the San Marino authorities should ensure effective access to compensation for victims of THB, including by:

- **enabling victims of THB to exercise their right to compensation by building the capacity of legal practitioners to support victims to claim compensation and including compensation in existing training programmes for law enforcement officials and the judiciary;**
- **ensuring that victims of trafficking are entitled to have access to the victims' assistance fund and making full use of it to provide State compensation to any identified victims of THB.**

h. Repatriation and return of victims (Article 16)

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

84. As no victim of THB has ever been identified in San Marino, no returns of victims have been carried out and there is no specific procedure in this respect. The authorities indicated that pursuant to Article 4 of Law No. 57 of 6 May 2016, the Authority for Equal Opportunities would be required to protect the rights of victims of THB, including not returning them to countries if this would be contrary to the obligations under the principle of *non-refoulement*.

85. **GRETA considers that the San Marino authorities should ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention)¹⁹. The authorities should establish voluntary return procedures which would protect victims of THB from re-victimisation and re-trafficking and, in the case of children, fully respect the principle of the best interests of the child, including pre-removal risk assessment. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people.²⁰**

3. Substantive criminal law

a. Criminalisation of THB (Article 18)

86. The definition of THB as a criminal offence in San Marino law has not been amended since GRETA's first evaluation report. Article 168 of the CC, entitled "Trafficking in human beings", criminalises "trafficking or otherwise selling human beings who are in the conditions referred to in Article 167." Article 167 of the CC, entitled "Reducing or holding in slavery or servitude", prohibits "the exercise over a person of powers corresponding to property rights or enslavement or keeping a person under continuous subjugation, forcing such a person to work or to have sexual intercourse or to beg or subjecting this person to any other form of exploitation".²¹ Article 167 also provides that "the reduction into or holding in slavery takes place when it is carried out with the use of violence, threat, deceit, abuse of authority or abuse of physical or psychological inferiority, or through the promise or the actual delivery of money or other benefit to those who have authority over the person."²²

87. Further, Article 168 of the CC punishes "whoever, for the purpose of reducing or holding a person in slavery or servitude, induces such person with the use of deceit, or forces such person with the use of violence, threat, abuse of authority, or abuse of physical or psychological inferiority or of a situation of need, or with the promise or delivery of money or other benefit to the person who has authority over him/her, to enter or stay on or leave the territory of the State or to move within such territory."²³ According to the authorities, this covers abuse of a position of vulnerability. The aggravating circumstances envisaged under Article 168 of the CC are the commission of THB against a child and/or when THB is committed for the purpose of the prostitution of others, or for the removal of organs.

88. As noted in GRETA's first report, Article 168 of the CC does not refer expressly to the actions provided for in Article 4(a) of the Convention, but rather to trafficking or otherwise selling a person, inducing or forcing a person to enter or stay on or leave the territory of the State, or to move within its territory. These actions correspond largely to the ones set forth in the Convention. Article 168 of the CC refers to a list of means which, although not identical, is very close to the list of means provided for in Article 4(a) of the Convention. All forms of exploitation mentioned in Article 4(a) of the Convention are expressly covered by Article 168 of the CC, read in conjunction with Article 167 of the CC. The CC also prohibits specifically TBH for the purpose of forced begging.

¹⁹ [UNHCR, Guidelines on International Protection: The application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/07, 7 April 2006](#)

²⁰ <http://www.unhcr.org/publ/PUBL/443b626b2.pdf>

²¹ Unofficial translation.

²² Unofficial translation.

²³ Unofficial translation.

89. In the first report, GRETA considered that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions and provide victims with greater confidence in self-reporting to NGOs and public authorities. GRETA sees benefits in stating explicitly in legislation that consent is irrelevant to determining whether the crime of human trafficking has occurred. Setting out this pivotal principle in law could facilitate its use by investigators, prosecutors and judges when dealing with cases of human trafficking and be conducive to obtaining a more consistent approach. Indeed, consent is an important factor at different stages of human trafficking cases, for instance, if victims refuse to self-report because they consider that they consented to exploitation, when taking a decision on whether to investigate and prosecute a case as THB where the victim apparently consented to the exploitation, or when deciding on the penalty for offenders where there are assertions of consent.²⁴ GRETA refers to the judgment of the European Court of Human Rights in the case of *Chowdury and Others v Greece*, where the Court stated that “in certain cases or circumstances, a given service could not be treated as having been voluntarily accepted beforehand by an individual” and that “the validity of the consent had to be assessed in the light of all the circumstances of the case.”²⁵ **GRETA considers that the San Marino authorities should clearly state the irrelevance of the consent of a victim to the intended exploitation, when any of the means were used, in the criminal law definition of THB.**

b. Criminalisation of the use of services of a victim (Article 19)

90. In its first report, GRETA invited the San Marino authorities to consider establishing as a criminal offence the use of services which are the object of exploitation, with the knowledge that the person is a victim of trafficking in human beings.

91. GRETA was informed that no consideration had been given by the San Marino to adopting legislation reflecting Article 19 of the Convention.

92. **GRETA considers that the San Marino authorities should criminalise the use of services, with the knowledge that the persons providing them are victims of THB, for all types of exploitation.**

c. Corporate liability (Article 22)

93. There have not been any legal changes with regard to corporate liability since GRETA's first report. Under San Marino's law, a legal person can be held criminally liable for the offence of THB as provided in Law No. 99/2013 on the liability of legal persons. The penalties envisaged include a fine ranging from 2,000 to 100,000 euros, confiscation of the assets of the legal person, suspension of its activities, and dissolution of the legal person. No legal persons have been charged with involvement in THB offences.

94. **GRETA invites the San Marino authorities to keep under review the effectiveness of the legislation establishing criminal liability of legal persons for the offence of THB.**

d. Non-punishment of victims of trafficking in human beings (Article 26)

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

²⁴ See UNODC Issue Paper, The Role of Consent in the Trafficking in Persons Protocol, United Nations, Vienna, 2014. Available at: www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf

²⁵ *Chowdury and Others v. Greece*, application No. 21884/15, judgement of 30 March 2017, paragraph 90.

96. As noted in GRETA's first report, there is no specific provision in San Marino's law which would provide for a possibility of not imposing penalties on victims of THB for their involvement in unlawful activities. The San Marino authorities indicated that Article 33 of the CC, which provides for exemption of criminal liability for those who have been coerced to commit an offence, would apply to victims of THB. According to the authorities, other relevant provisions are Article 35 of the CC, which excludes responsibility if a person was tricked by another person into committing an offence, Article 41 of the CC, which provides for self-defence, and Article 42 of the CC, which provides that exemption shall apply to anyone forced to commit an offence to protect him/herself from the risk of serious personal harm or a threat.

97. GRETA notes that foreign workers in an irregular employment or migration situation may be subject to fines and other sanctions, upon discretion of the Labour Inspectorate.

98. **GRETA considers that the San Marino authorities should take measures to ensure compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, including administrative offences, to the extent that they were compelled to do so, as contained in Article 26 of the Convention. Such measures should include the adoption of a specific legal provision and/or the development of guidance for police officers, prosecutors and judges on the scope of the non-punishment provision.** Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.²⁶

4. Investigation, prosecution and procedural law

a. Measures related to effective investigations (Articles 1, 27 and 29)

99. No investigations have been initiated to date into THB offences under Article 168 and 167 of the CC. Investigations into THB would be the responsibility of the Judicial Police. According to representatives of law enforcement bodies, the police are most likely to discover human trafficking cases; however, no written indicators are available for doing so and no specialised training on THB has been provided to law enforcement officers.

100. Prosecutors have an obligation to initiate *ex officio* investigations into THB cases. The Prosecutor General's Office would be in charge of prosecuting cases of THB. Offences relating to THB would be adjudicated by Courts for Serious Crimes.

101. The Judicial Police is also responsible for investigating organised crime, corruption, terrorism, money laundering and financial crimes, including offences committed by the misuse of the Internet. Websites located in the territory of San Marino can be closed down on the basis of court decision.

102. As for special investigation techniques, San Marino's legislation does not envisage the possibility of using informants, undercover agents, wire-tapping and controlled deliveries, except for what is provided in Article 7 of the Law on the Repression of the Sexual Exploitation of Children exclusively with respect to the field covered by this law. As for other special investigation techniques, Article 3, paragraph 1, point 1, of Law No. 98 of 21 July 2009 provides that wire-tapping is allowed in case of crimes punishable by no less than third-degree imprisonment,²⁷ therefore THB offences would be covered.

²⁶ <https://www.osce.org/secretariat/101002?download=true>

²⁷ According to Article 54 of the CC, third-degree imprisonment envisages a three-year prison sentence and may be combined with other sanctions.

103. **GRETA considers that the San Marino authorities should strengthen their efforts to proactively detect offences of THB for different types of exploitation and ensure their effective investigation and prosecution, with a view to ensuring proportionate and dissuasive sanctions. In this respect, GRETA refers to the recommendation under paragraph 27.**

b. Protection of witnesses and victims (Articles 28 and 30)

104. In its first report, GRETA considered that the San Marino authorities should ensure that all measures to protect victims of trafficking from potential retaliation or intimidation, in particular during and after investigation, as envisaged in Articles 28 and 30 of the Convention, were effectively available for victims of trafficking of all types of exploitation, including labour exploitation.

105. No significant developments have taken place in this area since the first evaluation round. Law No. 97/2008 provides for the possibility of issuing protection orders in favour of victims of gender-based violence.²⁸ The victim or witness of violence has the right to receive psychological support during the trial and during cross-examination with the accused. Legal and medical examination of the victim should preferably be conducted by a professional of the same sex. Video recording can be used to avoid unnecessary re-traumatisation of the victim. Further, pursuant to Article 5 of Law No. 93 of 17 June 2008, a judge may decide on special protection measures for victims or witnesses, instructing the police to act accordingly.

106. As regards children, the authorities have stated that they are always interviewed in the premises of the Minors' Service by a psychologist and a child specialist. Law enforcement authorities, prosecutors or judges usually follow such interviews from behind a one-sided mirror and interviews with children are video-recorded to avoid repeated interviews

107. Under Law No. 57 of 6 March 2016, the activities carried out by the Authority for Equal Opportunities for the protection of victims and witnesses, including support and assistance measures, are aimed at encouraging victims and witnesses to report violence and protect them from any threats or retaliation in the course of the criminal proceedings. For this purpose, the Authority may sign ad hoc protocols with the Association of Lawyers and Notaries on the provision of assistance, including out-of-court, and of information on access to the channels used for individual and collective complaints.

108. **GRETA invites the San Marino authorities to ensure that all measures to protect victims of criminal offences are available in practice to victims and witnesses of THB and their legal representatives, to prevent retaliation and intimidation during the investigation, as well as during and after the court proceedings.**

c. Jurisdiction (Article 31)

109. Pursuant to Article 5 of the CC, any person who commits an offence, including THB, on San Marino's territory, would be criminally liable under the CC of San Marino. As per Article 6 of the CC, any person committing a THB offence under Article 168 of the CC, irrespective of on whose territory the offence has been committed, is subject to criminal liability.

²⁸ See paragraph 120 of the GRETA's first report.

5. International co-operation and co-operation with civil society

a. International co-operation (Articles 32 and 33)

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

111. As noted in GRETA's first report, on 29 February 2012, a Co-operation Agreement for the prevention and combating of crime was signed between the Governments of San Marino and Italy, which provides for collaboration in preventing, combating and investigating unlawful immigration and all forms of THB, with particular reference to the exploitation of women and children, including joint training and capacity building of law-enforcement officers. Further, on 20 December 2013, a Technical Agreement between San Marino's Police Department and the Department of Public Security of the Italian Ministry of the Interior was concluded, with the aim of strengthening co-operation in the fight against transnational organised crime. Article 2 of this Agreement, listing the areas of co-operation, makes an explicit reference to THB.

112. The San Marino authorities regularly resort to Interpol as a channel for exchanging information with other States.

113. GRETA considers that the San Marino authorities should continue developing international co-operation for the purpose of training relevant professionals, raising awareness of THB, improving the identification of victims and providing them with necessary accommodation and assistance.

b. Co-operation with civil society (Article 35)

114. There are currently no NGOs or other civil society actors directly involved in preventing and combating THB in San Marino. The San Marino Union of Workers (one of the three trade unions in San Marino) and the San Marino Lawyers and Notaries Association do not have any anti-trafficking activities and are not participating in anti-trafficking initiatives implemented by the authorities.

115. GRETA considers that the San Marino authorities should enhance their efforts to encourage the involvement of civil society actors and the private sector in activities aiming at achieving the purposes of the Convention, including prevention, awareness-raising, training of relevant professionals, identification and assistance of victims of THB.

IV. Conclusions

116. Since the adoption of GRETA's first report on San Marino in July 2014, the legal framework relevant to action against trafficking in human beings has evolved.

117. GRETA welcomes the 2015 amendments to the Law on the Entry and Stay of Foreigners, enabling the issuing of renewable residence permits to victims of trafficking in human beings for humanitarian reasons and/or for the purpose of their co-operation in the investigation or criminal proceedings.

118. Another positive development as a result of the 2015 amendments to the Law on the Entry and Stay of Foreigners concerns foreign citizens working as private carers, who have been enabled to obtain work and residence permits for the duration of 12 months, without the requirement to leave the country prior to requesting new permits. The setting up of a dedicated helpdesk to provide private carers with information on their rights is also commendable.

119. Furthermore, through the adoption of Law No. 57 on 6 May 2016, the San Marino authorities have extended the available assistance measures to all victims of violence (women, men and children), including victims of human trafficking.

120. However, despite the measures taken, several issues continue to give rise to concern. In this report, GRETA requests the San Marino authorities to take further action in a number of areas. The position of the recommendations in the text of the report is shown in brackets.

Issues for immediate action

- In order to ensure a comprehensive approach to action against trafficking in human beings as required by the Convention and an effective implementation of GRETA's recommendations, GRETA urges the San Marino authorities to adopt a policy document (in the form of an action plan or strategy) in the area of THB or to incorporate action to combat THB in an already existing policy document plan. This should cover action to raise awareness of THB and to provide training to relevant professionals (paragraph 20);
- Noting the lack of progress in the provision of training on THB to relevant professionals, GRETA once again urges the San Marino authorities to take steps to ensure that training on THB is provided to law enforcement officers, labour inspectors, prosecutors, judges, social workers, educational staff, child protection specialists and health-care professionals, either in San Marino or abroad (paragraph 27);
- Noting that awareness raising is essential for preventing THB and detecting possible cases, GRETA urges the San Marino authorities to introduce awareness raising on THB for different forms of exploitation, both for the general public and in a targeted manner for groups at risk. The awareness raising should be accompanied by research and the impact of the measures should be assessed (paragraph 34);
- GRETA once again urges the San Marino authorities to adopt such legislative or other measures as may be necessary to identify victims of THB, and in particular to:
 - provide indicators for the identification of victims of THB for different forms of exploitation to all professionals who may come into contact with possible victims of trafficking, to enable the proactive detection of signs of trafficking;
 - develop a multi-disciplinary framework for the identification and referral to assistance of victims of trafficking, involving law enforcement agencies, labour inspections, health-care staff, social workers and child protection authorities;
 - increase efforts to proactively identify victims of THB for the purpose of labour exploitation, paying particular attention to at-risk sectors, by effectively involving labour inspectors and trade unions (paragraph 61);
- GRETA once again urges the San Marino authorities to take such legislative or other measures as may be necessary to ensure that all presumed and identified victims of trafficking can receive adequate assistance and support, in accordance with the obligations under Article 12 of the Convention, regardless of their gender or the form of exploitation (paragraph 67);
- GRETA urges the San Marino authorities to develop procedures for the identification and referral to assistance of child victims of trafficking, including by:
 - setting up a child identification mechanism based on inter-agency co-operation which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration;
 - ensuring that relevant actors (police, service providers, NGOs, child protection authorities, social workers) are adequately trained and provided with guidance to enable them to proactively identify child victims of THB (paragraph 72);

- **GRETA once again urges the San Marino authorities to ensure that the recovery and reflection period, as provided for in Article 13 of the Convention, is specifically defined in law and that all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention are made available during this period to persons with regard to whom there are reasonable grounds to believe that they are victims of THB. It should be made clear that the recovery and reflection period should last at least 30 days and should not be conditional upon any additional requirement, beyond the existence of reasonable grounds (paragraph 76).**

Further conclusions

- GRETA considers that the San Marino authorities should increase their efforts to conduct and support research on THB-related issues as an evidence base for future policy measures. Areas where research could be conducted include THB the purpose of labour exploitation in different sectors of economy (domestic work, agriculture, construction, hospitality) and trafficking in children for different forms of exploitation (paragraph 31);
- GRETA invites the San Marino authorities to ensure the effective and consistent application of the legislation in practice as a means of preventing THB (paragraph 36);
- GRETA considers that the San Marino authorities should take further measures to prevent trafficking for the purpose of labour exploitation, including by:
 - raising awareness amongst migrant workers and the general public of THB for the purpose of labour exploitation;
 - strengthening the mandate of labour inspectors with a view to preventing THB for the purposes of labour exploitation in different sectors of the economy and in private households;
 - training labour inspectors, law enforcement officers, prosecutors and judges on combating THB for the purpose of labour exploitation, identifying victims of trafficking for labour exploitation and the rights of victims (paragraph 40);
- GRETA considers that the San Marino authorities should take additional measures to prevent trafficking in children, in particular by:
 - closely following developments on the labour market, tourism and hospitality industries, as well as migration trends, to detect children in vulnerable situations, in particular any children at risk of sexual exploitation or child labour;
 - strengthening the role and capacity of the child protection systems to prevent trafficking in children and alerting other relevant stakeholders to possible cases of trafficking;
 - promoting online safety of children and alerting relevant actors of risks of trafficking in children committed through the misuse of the Internet (paragraph 45);
- GRETA considers that the San Marino authorities should introduce training and awareness-raising measures aimed at health-care professionals and other relevant professionals regarding trafficking for the purpose of organ removal (paragraph 51);
- GRETA encourages the San Marino authorities to sign and ratify the Council of Europe Convention against Trafficking in Human Organs as this would contribute to the prevention of trafficking for the purpose of organ removal (paragraph 52);
- GRETA considers that the San Marino authorities should adopt legislative, administrative, educational, social, cultural or other measures to discourage demand for the services of trafficked persons, for all forms of exploitation, in partnership with civil society, trade unions and the media (paragraph 53);

- GRETA invites the San Marino authorities to continue their efforts to detect and prevent THB through border control measures and to provide information to foreign nationals arriving in San Marino, in a language that they can understand, on their rights and where to turn for advice and assistance (paragraph 56);
- GRETA considers that the San Marino authorities should ensure effective access to compensation for victims of THB, including by:
 - enabling victims of THB to exercise their right to compensation by building the capacity of legal practitioners to support victims to claim compensation and including compensation in existing training programmes for law enforcement officials and the judiciary;
 - ensuring that victims of trafficking are entitled to have access to the victims' assistance fund and making full use of it to provide State compensation to any identified victims of THB (paragraph 82);
- GRETA considers that the San Marino authorities should ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention). The authorities should establish voluntary return procedures which would protect victims of THB from re-victimisation and re-trafficking and, in the case of children, fully respect the principle of the best interests of the child, including pre-removal risk assessment. Full consideration should be given to the UNHCR's guidelines on the application of the Refugees Convention to trafficked people (paragraph 85);
- GRETA considers that the San Marino authorities should clearly state the irrelevance of the consent of a victim to the intended exploitation, when any of the means were used, in the criminal law definition of THB (paragraph 89);
- GRETA considers that the San Marino authorities should criminalise the use of services, with the knowledge that the persons providing them are victims of THB, for all types of exploitation (paragraph 92);
- GRETA invites the San Marino authorities to keep under review the effectiveness of the legislation establishing criminal liability of legal persons for the offence of THB (paragraph 94);
- GRETA considers that the San Marino authorities should take measures to ensure compliance with the principle of non-punishment of victims of THB for their involvement in unlawful activities, including administrative offences, to the extent that they were compelled to do so, as contained in Article 26 of the Convention. Such measures should include the adoption of a specific legal provision and/or the development of guidance for police officers, prosecutors and judges on the scope of the non-punishment provision (paragraph 98);
- GRETA considers that the San Marino authorities should strengthen their efforts to proactively detect offences of THB for different types of exploitation and ensure their effective investigation and prosecution, with a view to ensuring proportionate and dissuasive sanctions. In this respect, GRETA refers to its recommendation under paragraph 27 (paragraph 103);
- GRETA invites the San Marino authorities to ensure that all measures to protect victims of criminal offences are available in practice to victims and witnesses of THB and their legal representatives, to prevent retaliation and intimidation during the investigation, as well as during and after the court proceedings (paragraph 108);
- GRETA considers that the San Marino authorities should continue developing international co-operation for the purpose of training relevant professionals, raising awareness of THB, improving the identification of victims and providing them with necessary accommodation and assistance (paragraph 113);
- GRETA considers that the San Marino authorities should enhance their efforts to encourage the involvement of civil society actors and the private sector in activities aiming at achieving the purposes of the Convention, including prevention, awareness-raising, training of relevant professionals, identification and assistance of victims of THB (paragraph 115).

Appendix

List of public bodies, non-governmental organisations and other civil society actors with which GRETA held consultations

Public bodies

Ministry of Foreign Affairs, Political Affairs and Justice

Ministry of Industry, Crafts, Trade, Labour and Telecommunications

Ministry of Health, Equal Opportunities, Social Security and Social Affairs

Department of Education

Department of Labour

Department of Agriculture and Territory

Department of Justice

Department of Tourism

Authority for Equal Opportunities

Commission for Equal Opportunities

Health Authority

Minors' Service

Police Forces

Judiciary

Labour Inspectorate

Members of Permanent Parliamentary Commissions on:

- Constitutional and Institutional Affairs; Public Administration; Internal Affairs; Civil Protection; Relations with the Township Councils; Justice; Education; Culture and Cultural Goods, University and Scientific Research;
- Foreign Affairs, Emigration and Immigration, Security and Public Order; Information;
- Finance, Budget and Planning; Handicraft, Industry, Trade; Tourism, Services, Transport and Telecommunications, Labour and Cooperation;
- Hygiene and Health, pensions and Social Security, Social Policies and Sports; Territory, Environment and Agriculture.

Members of Special Parliamentary Commissions on:

- Justice;
- Infiltration of Organised Crime.

NGOs and other civil society organisations

Centre for assistance and protection of women and children victims of violence "Casa Amina", Rimini

Ordine degli avvocati e notai RSM (San Marino Lawyers and Notaries Association)

USL - Unione Sammarinese dei Lavoratori (San Marino Trade Union)

Government's comments

The following comments do not form part of GRETA's analysis concerning the situation in San Marino

GRETA engaged in a dialogue with the San Marino authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the authorities on 11 January 2019 and invited them to submit any final comments. The comments of the authorities, submitted on 27 February 2019, are reproduced hereafter.

24. *Le GRETA a été informé qu'un groupe de travail intersectoriel sur l'éducation sanitaire, composé de représentants des écoles et de l'Institut de sécurité sociale, prévoyait de former le personnel enseignant à tous les niveaux sur les thèmes des abus sexuels, de l'exploitation des enfants et de la traite des êtres humains, à compter de 2018. **Le GRETA souhaiterait être informé des sessions de formation déjà effectuées, de leur contenu, de l'attention portée à la question de la traite et du nombre et des catégories de participants.***

Le personnel enseignant de Saint-Marin à tous les niveaux (environ 700 au total) suivra une formation spécifique sur la reconnaissance des abus des enfants pendant l'année scolaire 2018/19.

De même, il est prévu d'organiser une formation spécifique sur le thème de la traite des êtres humains par petits groupes (pas tous ensemble) à partir de l'année scolaire 2018/19. Le groupe de participants qui suivra la formation sur la traite dispensée par l'anthropologue, Madame Barbara Pinelli, sera composé non seulement d'enseignants, mais aussi des membre du personnel sanitaire et socio-sanitaire ainsi que du personnel des forces de police de Saint-Marin.

Le séminaire de formation sur la traite organisé par Madame Pinelli aura lieu le 10 avril 2019.

Le titre du premier séminaire est le suivant : **De la traite (comme exploitation sexuelle selon le genre) à la violence fondée sur le genre (gender-based violence) dans les voies de migration pour les demandeurs d'asile. - Introduction au thème de la traite à partir de la violence fondée sur le genre, qui inclut les différentes formes et niveaux de violence subis par les femmes (en référence aux articles 60-61 de la Convention d'Istanbul) - Les abus et les situations de violence que vivent les femmes le long des voies de migration et ensuite dans les lieux de destination (sur la base des recherches sur le terrain, en particulier en Sicile, à travers du matériel photographique et des exemples concrets d'histoires de vie)**

25. *Les autorités ont mentionné un rapport commandé par l'Autorité pour l'égalité des chances, intitulé "Contre la violence fondée sur le genre : formation et intervention. Réflexions suite à un projet de recherche à Saint-Marin", publié le 23 novembre 2017. **Le GRETA souhaiterait recevoir de plus amples informations sur la pertinence de ce rapport pour la lutte contre la traite des êtres humains.***

Le rapport a été publié et présenté lors d'une conférence organisée par l'Université de Saint-Marin à l'occasion de la Journée internationale pour l'élimination de la violence à l'égard des femmes. En plus de témoigner du travail fait à Saint-Marin sur le thème de la formation en matière de violence fondée sur le genre, cet ouvrage est également un instrument utile pour orienter les nouvelles politiques de formation, qui incluront dorénavant une formation sur les thèmes de la traite.

42. *Au-delà de la formation du personnel scolaire prévue pour 2018 (voir par. 24), le GRETA a été informé d'une révision en cours des programmes scolaires de Saint-Marin, qui tiendra compte de la nécessité d'informer les élèves sur la traite et l'exploitation des êtres humains. Les autorités ont contacté leurs homologues italiens pour obtenir des exemples de formations proposées aux enseignants dans ce domaine. **Le GRETA souhaiterait recevoir des informations actualisées sur les projets visant à introduire la traite des êtres humains dans la formation du personnel scolaire et dans les programmes scolaires.***

Pour l'année scolaire 2018/19 le système scolaire de Saint-Marin a introduit le programme d'éducation à la citoyenneté. Ce programme d'études comprend des actions éducatives liées au genre, y compris celles qui concernent les thèmes de la traite ; à cette fin, les enseignants, comme mentionné ci-dessus, suivront une formation spécifique.