



EVALUATION REPORT

SAN MARINO

Third evaluation round

GRETA

Group of Experts
on Action against
Trafficking
in Human Beings

Access to justice
and effective remedies
for victims of trafficking
in human beings

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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

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Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) was established 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 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 of the Convention on which the evaluation procedure is based.

The first round of monitoring of the Convention provided an overview of its implementation by State Parties. The second evaluation round of the Convention examined the impact of legislative, policy and practical measures on the prevention of trafficking in human beings, the protection of the rights of victims of trafficking, and the prosecution of traffickers, paying particular attention to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking.

GRETA has decided that the third evaluation round of the Convention will focus on trafficking victims' access to justice and effective remedies, which is essential for victims' rehabilitation and reinstatement of rights, and reflects a victim-centred and human-rights based approach to the fight against human trafficking. A number of provisions of the Convention establishing substantive and procedural obligations are relevant to this topic, in particular articles 12, 15, 23, 26, 27, 28, 29, 30 and 32.

Access to justice and effective remedies is contingent on the fulfilment of a number of preconditions, including prompt and accurate identification of victims of trafficking, the provision of a recovery and reflection period, the availability of material, psychological, medical and legal assistance, access to translation and interpretation, when appropriate, regularisation of the victim's stay, the right to seek and enjoy asylum, and full respect for the principle of *non-refoulement*. These preconditions, corresponding to various provisions of the Convention, have been examined at length during the first and second evaluation rounds of monitoring of the Convention. Consequently, GRETA has decided to ask each State Party for an update on the implementation of GRETA's previous recommendations on selected topics through a separate country-specific part of the questionnaire. GRETA's findings and analysis of these topics are presented in a separate chapter.

Executive summary

The legislative and institutional framework for combating trafficking in human beings in San Marino has remained unchanged since GRETA's second evaluation. San Marino still does not have a national action plan or other policy document for combating human trafficking. GRETA therefore urges the authorities to adopt without further delay a strategic policy document on action against human trafficking, including measures in the areas of prevention, identification of victims, awareness raising and training of relevant professionals, and to ensure that the necessary resources are allocated and a precise timetable for its implementation is established.

No victims of human trafficking have been identified in San Marino. Nevertheless, GRETA notes that the strong demand for foreign labour creates trafficking risks for the purpose of labour exploitation, particularly in sectors such as domestic work, construction, tourism and agriculture.

The focus of the third evaluation round of the Convention being on trafficking victims' access to justice and effective remedies, the report analyses in detail the implementation of provisions of the Convention establishing substantive and procedural obligations relevant to this topic.

The San Marino authorities intend to prepare a multilingual website with information on the available services and rights of victims of violence as well as an information brochure for foreign nationals, which will contain information on how to recognise and report human trafficking and relevant contacts for assistance. GRETA asks the authorities to ensure that presumed victims of trafficking are proactively provided with information on their rights as soon as they come into contact with a competent authority.

Legal assistance and free legal aid may be provided to victims of trafficking by eight lawyers registered on a list drawn up by the Association of Lawyers and Notaries. GRETA considers that the authorities should ensure that legal assistance is systematically provided as soon as there are reasonable grounds for believing that a person is a victim of trafficking, and that access to free legal aid for victims of trafficking does not depend on proof of lack of financial means to pay for a lawyer.

Victims of trafficking may claim compensation from the perpetrator either by joining the criminal proceedings as an accusing party or as a civil party seeking damages. GRETA considers that the authorities should ensure that victims are systematically informed of the right to seek compensation and are provided with effective legal assistance and legal aid to exercise this right. Further, GRETA considers that the fund for financial assistance to victims of violence should be available to provide state compensation to victims of trafficking.

No investigations have been initiated to date concerning human trafficking offences. GRETA asks the authorities to provide law enforcement officers and judges with systematic and continuous training on human trafficking and to ensure that human trafficking offences are promptly and proactively investigated, regardless of whether a complaint is filed by the victim, making use of special investigation techniques.

More generally, GRETA urges the authorities to ensure that training on human trafficking is integrated into the training curricula of all relevant professionals and to provide specific guidance for each profession's role in victim identification, assistance, investigation and prosecution of cases.

There is still no specific provision in Sammarinese law on the non-punishment of victims of trafficking for unlawful activities they were compelled to commit. GRETA urges the authorities to adopt such a provision and/or to develop guidance and training for police officers, prosecutors and judges on the aims and scope of the non-punishment provision.

The report also examines progress made in implementing previous GRETA recommendations on selected topics.

GRETA is concerned that trafficking for the purpose of labour exploitation may be underestimated by the authorities. Consequently, GRETA urges the authorities to raise awareness amongst professionals, the general

public and migrant workers of the risks of trafficking for labour exploitation and the rights of victims, to strengthen the capacities and training of the Labour Inspectorate to detect possible victims of trafficking, and to co-operate with trade unions and the private sector in preventing and combating labour trafficking.

Moreover, GRETA urges the authorities to develop a multi-disciplinary framework for the identification and referral to assistance of victims of trafficking, to provide indicators for the identification of victims, as well as guidance and training to all relevant professionals.

While welcoming the agreements concluded with structures in Italy, GRETA considers that the San Marino authorities should take further steps to ensure that any presumed and identified victims of trafficking can receive adequate assistance and support, including by developing training for relevant professionals.

GRETA once again urges the authorities to set up a child-specific identification mechanism based on multi-agency co-operation, and ensure that relevant actors are systematically trained and provided with guidance to enable them to proactively identify and refer child victims for assistance. In addition, the authorities should continue their efforts to prevent trafficking in children, in particular by raising awareness of the risks of human trafficking, including recruitment and abuse through internet/social networks.

Sammarinese law still makes no provision for granting a recovery and reflection period to victims of trafficking. GRETA once again urges the authorities to enshrine in internal law the recovery and reflection period and to ensure that it is systematically offered to presumed foreign victims of trafficking, together with all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention.

I. Introduction

1. The Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) entered into force for San Marino on 1 March 2011. GRETA’s first evaluation report¹ on San Marino was published on 15 September 2014, and the second evaluation report² on 14 March 2019.

2. On the basis of GRETA’s second report, on 5 April 2019 the Committee of the Parties to the Convention adopted a recommendation to the Sammarinese authorities, requesting them to inform the Committee within a one-year period of the measures taken to comply with the recommendation. The report submitted by the authorities with a delay of over two years³ was considered at the 30th meeting of the Committee of the Parties (17 June 2022) and was made public.⁴

3. On 22 June 2022, GRETA launched the third round of evaluation of the Convention in respect of San Marino by sending the questionnaire for this round to the Sammarinese authorities. The deadline for submitting the reply to the questionnaire was 24 October 2022. The Sammarinese authorities’ reply was received on 3 February 2023.⁵

4. In preparation of the present report, GRETA used the reply to the third-round questionnaire by the Sammarinese authorities and the above-mentioned report to the Committee of the Parties. Further, an evaluation visit to San Marino took place from 18 to 20 December 2023 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of adopted measures. The visit was carried out by a delegation composed of:

- Ms Tatiana Catana, member of GRETA;
- Ms Ia Dadunashvili, member of GRETA;
- Ms Teresa Armengol de la Hoz, Administrator in the Secretariat of the Convention.

5. During the visit, the GRETA delegation met Mr Gian Nicola Berti, Minister of Interior Affairs, Civil Service, Institutional Affairs and Relations with Castle Councils, Mr Luca Beccari, Minister of Foreign Affairs, International Economic Cooperation and Telecommunications, and Mr Andrea Belluzzi, Minister of Education and Culture, University and Scientific Research, and Youth Policy. The GRETA delegation also met officials from the Ministry of Labour, Economic Planning, Sports, Information and Relations with the State Company for Public Services (A.A.S.S), the Ministry of State for Industry, Handicraft, Trade, Technology Research, and Regulatory Simplification (including the Labour Inspectorate and the Labour Office), the Ministry of Foreign Affairs, International Economic Cooperation and Telecommunications, the Department for Institutional Affairs and Justice, the Financial Intelligence Unit of San Marino, the Education Department, as well as the Human Science Department of the University of San Marino. Discussions were also held with officials from the Authority for Equal Opportunities, the Commission for Equal Opportunities and the Social Security Institute. Furthermore, the delegation met law enforcement officials, members of the Judicial Council and judges from the Single Court of San Marino. A meeting was also held with representatives of the Parliament of San Marino.

6. GRETA’s delegation held separate meetings with representatives of trade unions and the Lawyers and Notaries Association of San Marino.

¹ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063bdcf>

² <https://rm.coe.int/greta-2019-1-fgr-smr-en/1680937df5>

³ The San Marino authorities apologised for the late submission of their reply, explaining that it was due to the severe impact of the COVID-19 pandemic and the limited size of the state administration.

⁴ <https://rm.coe.int/report-submitted-by-the-authorities-on-measures-taken-to-comply-with-c/1680a6fac7>

⁵ <https://rm.coe.int/san-marino-reply-from-san-marino-to-greta-questionnaire-3rd-round-/1680ab0d32>

7. In the course of the visit, the GRETA delegation visited the counselling centre “Centro d’Ascolto” for women victims of domestic violence and a shelter for unaccompanied children in the Italian region of Emilia-Romagna that can accommodate any child victims of trafficking identified in San Marino. Further, GRETA’s delegation paid a visit to a residential complex in Montegiardino providing accommodation to Ukrainian refugees.

8. The list of the national authorities and civil society organisations with which the delegation held consultations is set out in Appendix 2 to this report. GRETA is grateful for the information provided by them.

9. GRETA wishes to place on record the excellent co-operation provided by the Sammarinese authorities and in particular by the contact person appointed by them to liaise with GRETA, Ms Gloria Valentini, Second Secretary within the Department of Foreign Affairs of the Ministry of Foreign Affairs, International Economic Cooperation and Telecommunications.

10. The draft version of the present report was approved by GRETA at its 50th meeting (18-22 March 2024) and was submitted to the Sammarinese authorities for comments. The authorities’ comments were received on 5 June 2024 and were taken into account by GRETA when adopting the final report at its 51st meeting (1-5 July 2024). The report covers the situation up to 5 July 2024; developments since that date are not taken into account in the following analysis and conclusions. GRETA’s conclusions and proposals for action are summarised in Appendix 1.

II. Overview of the current situation and trends in the area of trafficking in human beings in San Marino

11. No victims of trafficking in human beings (THB) have been identified in San Marino since the Convention entered into force in respect of San Marino in 2011, and no reports have been made to evidence or suggest that there have been any instances of THB in the country.

12. The Sammarinese authorities reiterated their view that the absence of trafficking cases was due to the smallness of the population (about 33 000 inhabitants) and the country's territory (61 km²), together with a strong and significant social interconnection and good coordination among law enforcement authorities. However, the smallness of the country's population coupled with a high percentage of elderly people creates a strong demand for foreign labour, raising concerns about possible trafficking risks for the purpose of labour exploitation. Several sectors of the economy have been identified by civil society and the Sammarinese authorities as being at risk, namely domestic work (including vulnerable groups such as domestic workers and private carers), construction, tourism (hotels and restaurants) and agriculture (mainly seasonal workers).

13. GRETA acknowledges the difficulties that States Parties to the Convention which have a small territory and population may face in identifying and assisting victims of trafficking, and the importance of international co-operation with neighbouring countries.

III. Developments in the legal, institutional and policy framework for action against human trafficking

14. National legislation criminalising THB has remained unchanged during the reporting period. As already noted in GRETA's second evaluation report,⁶ Law No. 97 of 20 June 2008 on Prevention and Criminalisation of Violence against Women and Gender-based Violence (hereinafter "Law No. 97/2008") introduced several provisions into the Criminal Code (CC) of San Marino to criminalise THB. Law No. 97/2008 was recently amended through Delegated Decree No. 62 of 20 March 2024. According to the authorities, both Law No. 97/2008 and Law No. 57 of 6 May 2016 (adapting San Marino's law to the provisions of the Istanbul Convention and introducing measures to protect and assist victims of violence), are relevant to victims of THB.

15. As regards the institutional framework for action against THB, there is no dedicated national co-ordination structure for anti-trafficking action. According to the Sammarinese authorities, the Authority for Equal Opportunities would in principle be in charge of ensuring such co-ordination. As already noted in GRETA's previous evaluation reports,⁷ the Authority for Equal Opportunities, which became operational in 2009, is competent for several tasks, including the promotion of initiatives aimed at preventing violence against women and gender-based violence, the provision of support to victims, the conclusion of operational protocols with relevant stakeholders, the co-ordination of information exchange with law enforcement agencies, as well as the incorporation of equal opportunities actions in initiatives proposed by domestic institutions.⁸ The Authority has also recently set up the first emergency intervention centre for victims of violence in San Marino (see paragraph 150).

⁶ See paragraph 14 of GRETA's second report.

⁷ See paragraphs 15 to 18 of GRETA's first report and 17 of GRETA's second report on San Marino.

⁸ Its responsibilities are listed partly in Law No. 97/2008 and partly in Decrees No. 60/2012 and 65/2018 implementing this piece of legislation.

16. The Commission for Equal Opportunities was established in 2004 and consists of 10 representatives elected by Parliament. Its main focus is on promoting the rights of people with disabilities and combating racism, homophobia and other forms of intolerance and discrimination. As explained in GRETA's second report,⁹ this consultative body is competent for all gender equality issues and co-operates closely with the Authority for Equal Opportunities on issues related to gender-based violence.

17. GRETA was informed that the authorities were in the process of drafting a resolution for the setting up of a working group to draft a law establishing a new authority, the Equal Opportunities Co-ordination Unit (*Polo per le Pari Opportunità*), in line with the provisions of the Comprehensive National Plan of Action against Violence against Women 2024-26.¹⁰ According to the authorities, this Unit, which will merge into one single body all authorities dealing with human rights issues, will be responsible, *inter alia*, for co-ordinating national action against THB.

18. The Social Security Institute (SSI) provides healthcare and social services to victims of violence (see paragraph 146). It recently underwent some structural changes. According to a decision of its executive committee, the previous Minors' Service was divided into two departments: the Minors' Service, which supports mainly families and parents of children with disabilities, and the Child Protection Unit, which implements protection measures for child victims of violence.

19. Among the number of civil society organisations in San Marino,¹¹ there are no NGOs specialised or directly involved in preventing and combating THB. The NGO Caritas provides medical assistance to foreign nationals. In addition to their institutional role of defending worker's rights, the Sammarinese trade unions provide citizens with various support services and points of contact for specific issues (see paragraph 38). However, neither the trade unions nor the Lawyers and Notaries Association have been involved in activities related to combating THB.

20. There is still no national action plan or other policy document for combating THB in San Marino. GRETA was informed during the visit that the Sammarinese Government had recently decided to develop a national strategy for combating THB, accompanied by an operational protocol. The authorities shared with GRETA a preliminary summary of the strategy which refers to the recommendations made in the previous GRETA reports and sets out a number of measures, including awareness-raising, training, victim assistance, child protection measures and co-operation with civil society. However, no measures on the identification of victims of trafficking were included in the draft. The document did not specify the budget to be allocated for the implementation of the strategy. GRETA was informed during the visit that the operational protocol supplementing the strategy would specify the actions to be carried out by all relevant stakeholders in charge of identifying and assisting potential victims of THB. The preparation of these documents is being carried out by officials from the Foreign Affairs Department, law enforcement agencies as well as healthcare and social services. In their comments on the draft GRETA report, the authorities indicated that the draft national strategy was almost finalised, while the content of the operational protocol was being evaluated. However, due to the parliamentary elections scheduled to take place on 9 June 2024, the finalisation and adoption of these documents would be postponed until the start of the new legislature. **GRETA would like to be kept informed of the adoption of the national strategy for combating THB and the operational protocol.**

21. GRETA welcomes the decision to prepare a strategy and operational protocol for combating THB, but regrets that little has been done to implement the recommendations made in GRETA's second report. GRETA encourages the authorities to consult and involve civil society organisations, including trade unions, during the drafting process of these policy documents and the subsequent stages leading to their final adoption.

⁹ See paragraph 19 of GRETA's second report.

¹⁰ Approved by the Congress of State through Resolution No. 83 of 28/12/2023.

¹¹ According to the authorities, there were 188 associations registered in 2022 which benefited from contributions deriving from the general income tax.

22. **GRETA once again urges the Sammarinese authorities to adopt without further delay a strategic policy document on action against trafficking in human beings, including measures in the areas of prevention, identification of victims, awareness raising and training of relevant professionals, and ensuring that the necessary resources are allocated and that a precise timetable for its implementation is established.**

23. **GRETA also considers that the Sammarinese authorities should involve civil society organisations, including trade unions, in the drafting process of the strategy for combating THB and its operational protocol, as well as in their implementation.**

IV. Access to justice and effective remedies for victims of human trafficking

1. Introduction

24. Victims of human trafficking, by virtue of their status as victims of crime and victims of human rights violations, have the right to access to justice and effective remedies for any harm committed against them. These rights must be guaranteed, in a gender- and age-sensitive manner, to all victims of trafficking subject to the jurisdiction of parties to the Convention, irrespective of their immigration status or presence on the national territory, and notwithstanding their capacity or willingness to co-operate in any criminal investigation.

25. The right to effective remedies is a reflection of the human rights-based approach underpinning the Convention. Regardless of whether a State is implicated in the trafficking or directly responsible for the harm, the positive obligations arising from international human rights law require States to facilitate and guarantee effective access to remedies if they have failed to take reasonable steps to prevent human trafficking, protect potential or actual victims of THB, and effectively investigate trafficking offences.¹²

26. According to the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons,¹³ the right to an effective remedy is considered to include restitution,¹⁴ compensation,¹⁵ rehabilitation,¹⁶ satisfaction¹⁷ and guarantees of non-repetition.¹⁸ All victims of trafficking require access to appropriate and effective remedies, starting with access to justice. The provision of effective remedies serves

¹² *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application No. 21884/15, judgment 30 March 2017.

¹³ UN General Assembly, Basic principles on the right to an effective remedy for victims of trafficking in persons, Annex to the Report by the Special Rapporteur on trafficking in persons, especially women and children, 28 July 2014, A/69/33797.

¹⁴ Restitution includes restoration of liberty, including release of the victim from detention; enjoyment of human rights and family life, including reunification and contact with family members; safe and voluntary repatriation; temporary or permanent residence status, refugee status, complementary/subsidiary protection or third-country resettlement; recognition of the victim's legal identity and citizenship; restoration of the victim's employment; assistance and support to facilitate social integration or reintegration; return of property, such as identity and travel documents and other personal belongings.

¹⁵ Compensation may cover damages for physical or mental harm; damages for lost opportunities, including employment, education and social benefits; reimbursement of costs of necessary transportation, childcare or temporary housing; material damages and loss of earnings; moral or non-material damages; reimbursement of legal fees and other costs relating to the participation of the victim in the criminal justice process; reimbursement of costs incurred for legal, medical or other assistance.

¹⁶ Rehabilitation includes medical and psychological care, legal and social services, shelter, counselling and linguistic support, independently of the capacity or willingness of the victims to co-operate in legal proceedings.

¹⁷ Satisfaction includes effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety, privacy and other interests of the victims of their families; an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim; public apologies; judicial and administrative sanction against the perpetrators.

¹⁸ Guarantees of non-repetition include ensuring the effective investigation, prosecution and sanctioning of traffickers; all measures necessary to protect victims from re-trafficking; providing or strengthening training of relevant officials; strengthening the independence of the judiciary; modifying practices that cause, sustain or promote tolerance to trafficking, including gender-based discrimination and situations of conflict and post-conflict; effectively addressing the root causes of trafficking; promoting codes of conduct and ethical norms for public and private actors; protecting legal, medical and other professionals and human rights defenders who assist victims.

multiple purposes. The remedy of compensation, for instance, for any injury, loss or harm sustained, can provide critical support in victims' recovery and empowerment, help their social inclusion and prevent re-victimisation. The remedy of rehabilitation can similarly help in the victims' recovery, as well as social inclusion. Of relevance in this respect is also the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Council of Europe Committee of Ministers Recommendation CM/Rec(2023)2 on rights, services and support for victims of crime,¹⁹ which outline the main steps to be taken to improve access to justice, and fair treatment, restitution, compensation and social assistance for victims of crime.²⁰

27. The Convention provides specifically for the substantive right of victims of trafficking to compensation and legal redress, as well as for a number of procedural rights necessary to ensure access to these entitlements. These include the rights to be identified as a victim of trafficking, to be granted a recovery and reflection period, as well as a residence permit (to enable a victim to remain in the country and seek access to remedies), and to receive counselling, information, legal assistance and free legal aid. Another important procedural right is provided by the non-punishment provision of the Convention (Article 26), according to which victims of human trafficking must not be subjected to penalties for their involvement in unlawful activities that they have been compelled to commit. Further, the Convention requires State Parties to enable the seizure and confiscation of the assets of traffickers, which could be used to fund State compensation schemes for victims.

28. Children need special support to access remedies, the best interests of the child being the primary consideration in all actions concerning trafficked children. The appointment of legal guardians to represent unaccompanied or separated children plays a vital role in enabling child victims of trafficking to access justice and remedies. Further, facilitating family reunification can be an important element of restitution.²¹

29. Civil society, including NGOs, trade unions, diaspora organisations and employer organisations, plays a vital role in enabling victims of THB to claim compensation and other remedies.²² In this context, reference should be made to the international projects COMP.ACT - European Action on Compensation for Trafficked Persons²³ and Justice at Last - European Action for Compensation of Victims of Crime,²⁴ which aim to enhance access to compensation for trafficked persons.

30. The private sector should also play a role in enabling access to, as well as providing, remedies to trafficked persons, in accordance with the UN 'Protect, Respect and Remedy' Framework and the United Nations Guiding Principles on Business and Human Rights.²⁵ The role of businesses includes steps to ensure that their supply chains are free of trafficked labour, as well as the adoption and implementation of measures to facilitate victims' access to remedies for any harm that occurs. Further, businesses have the potential to help trafficked persons regain economic autonomy.²⁶ States should therefore ensure that business enterprises implicated in human trafficking are held responsible and take steps to reduce barriers that could lead to a denial of access to remedies.

¹⁹ Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime, and its Explanatory report: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa8263

²⁰ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, available at: https://www.unicef-irc.org/portfolios/documents/472_un-declaration-crime.htm

²¹ UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 7-8. Available at: http://icat.network/sites/default/files/publications/documents/Ebook%20ENG_0.pdf

²² OSCE Compensation for Trafficked and Exploited Persons in the OSCE Region, 2008, pp. 48-53.

²³ <http://www.compactproject.org/>

²⁴ <http://lastradainternational.org/about-lsi/projects/justice-at-last>

²⁵ United Nations Guiding Principles on Business and Human Rights, implementing the UN 'Protect, Respect and Remedy' Framework, Doc. A/HRC/17/31 (2011).

²⁶ UNODC, ICAT Issue Paper, Providing Effective Remedies for Victims of Trafficking in Persons, 2016, pp. 8-9.

31. Because human trafficking is often a transnational crime, effective international co-operation is essential for fulfilling the obligations with regard to the right to justice and effective remedies. This includes co-operation in tracing and seizing criminal assets, and in returning confiscated proceeds for the purpose of compensation.

2. Right to information (Articles 12 and 15)

32. Victims who are no longer under their traffickers' control generally find themselves in a position of great insecurity and vulnerability. Two common features of victims' situation are helplessness and submissiveness to the traffickers, due to fear and lack of information about how to address their situation. Article 12, paragraph 1, sub-paragraph d, of the Convention provides that victims are to be given counselling and information, in particular as regards their legal rights and the services available to them, in a language that they understand. Further, pursuant to Article 15, paragraph 1, of the Convention, Parties must ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings, in a language they can understand.

33. The information that victims of trafficking must be provided with deals with essential matters, including availability of protection and assistance arrangements, the various options open to the victim, the risks they run, the requirements for legalising their presence in the Party's territory, the various possible forms of legal redress, how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties, the possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment being fully and effectively enforced). The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them.²⁷

34. Many victims do not speak, or barely speak, the language of the country they have been brought to for exploitation. Ignorance of the language adds to their isolation and is one of the factors preventing them from claiming their rights. The provision of translation and interpretation, where needed, is an essential measure for guaranteeing access to rights, which is a prerequisite for access to justice. GRETA has stressed the need for ensuring the availability, quality and independence of interpreters.²⁸

35. In San Marino, Article 4 of Law No. 97/2008 foresees the provision of information to victims of violence (including victims of human trafficking) on the different types of support services, assistance and legal measures available. Article 32 of Law No. 97/2008 establishes that law enforcement officials are required to inform victims about their rights, which include assistance, free legal aid, and urgent healthcare. As regard child victims, the Minors' Service is responsible for informing them of their rights. GRETA was informed that due to the fact that no external border checks are carried out at the border crossing points between San Marino and Italy, random checks are performed by law enforcement officials on San Marino's territory and a multilingual form is handed out to persons subject to such checks. This form consists of three questions, including one on whether the person is in need of legal assistance and another on whether the person is in need of healthcare.

36. During GRETA's visit, the Sammarinese authorities referred to their intention to develop information materials for foreign workers, to be handed out when they apply for residence permits. In their comments on the draft GRETA report, the authorities indicated that an information brochure is being prepared for foreign nationals who present themselves to the authorities and immigration offices. It will contain information on how to recognise and report human trafficking as well as relevant contacts for assistance. Both the brochure and the website for victims of violence (see paragraph 40) will include indications on how to contact the free anti-violence helpline (see paragraph 152) and will be translated into the languages most commonly spoken by migrant workers.

²⁷ See Explanatory Report on the Convention, paragraphs 160 to 162.

²⁸ See 8th General Report on GRETA's activities, paragraphs 168 and 169.

37. According to the authorities, victims of THB would be informed of their rights in a language they understand. Irrespective of the nature of the proceedings (criminal or civil) the costs of interpretation and translation would be covered by the state.

38. Furthermore, since 2016 there is a dedicated helpdesk to provide private carers with information on their rights in a language they can understand.²⁹ One of the three trade unions of San Marino, the Democratic Confederation of Workers, acts as a contact point for such workers and assists Ukrainian women working mainly in the domestic work sector. The Labour Confederation supports workers regardless of whether they are members of trade unions or not.

39. The state-run counselling centre for women victims of violence visited by GRETA runs a hotline providing information on protection and assistance services for victims of violence (see paragraph 152).

40. According to the representatives of the Authority for Equal Opportunities met during the evaluation visit, a multilingual website would be developed with information on the rights of victims of violence and the available services.

41. **While welcoming the decision to prepare an information brochure and a website, GRETA considers that the authorities of San Marino should take measures to ensure that presumed victims of THB are proactively provided with information on their rights as soon as they come into contact with a competent authority, and in particular:**

- **develop information materials for victims of THB which takes into account the victim's age, maturity, intellectual and emotional capacity, literacy and any mental, physical or other disability which may affect the victim's ability to understand. Information on rights should be provided regardless of the victim's ability or willingness to co-operate in criminal proceedings and should refer to the right to a recovery and reflection period, the services and support measures available, the right to legal aid, the compensation procedure and other relevant civil and administrative remedies and procedures. The information should be available in several languages, present the essence of these rights in a straightforward manner and explain how to exercise them;**
- **train and instruct professionals who may come into contact with victims of THB on how to properly explain to victims of THB their rights, including how to exercise them.**

3. Legal assistance and free legal aid (Article 15)

42. Article 15(2) of the Convention obliges Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. As court and administrative procedure is often very complex, legal assistance is necessary for victims to be able to claim their rights. It is for each Party to decide the requirements for obtaining such free legal aid. Parties must have regard not only to Article 15(2) of the Convention, but also to Article 6 of the ECHR. Even though Article 6, paragraph 3.c of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case-law³⁰ also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6(1) of the ECHR. Thus, even in the absence of legislation granting free legal assistance in a civil matter, it is for the courts to assess whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer.

²⁹ See paragraph 36 of GRETA's second report.

³⁰ *Airey v. Ireland*, no. 6289/73, 9 October 1979.

43. GRETA's reports highlight the value of a lawyer being appointed as soon as there are reasonable grounds for believing that a person is a victim of trafficking, before the person makes an official statement and/or decides whether to co-operate with the authorities. Early access to legal assistance is also important to enable victims to take civil actions for compensation and redress.³¹

44. In San Marino, legal aid is provided to victims of violence, including THB, under Article 17 of Law No. 97/2008, if they demonstrate the lack of means to pay for it. It applies to criminal, civil or administrative proceedings.

45. Legal assistance and free legal aid are provided by eight lawyers registered on a list drawn up by the Association of Lawyers and Notaries. The list, which is updated yearly, includes the contact details of the lawyers and is shared with law enforcement bodies, social services, courts and the Authority for Equal Opportunities. The costs of legal aid are borne by the State, which advances the expenses necessary to perform or take part in judicial actions, including judicial expert reports, necessary for the protection of victims of violence. The State can seek reimbursement of the costs of legal aid from the offender upon conviction.³² Pursuant to Article 4 of Law No. 57/2016, a protocol between the Association of Lawyers and Notaries and the Authority for Equal Opportunities is being drafted in order to define certain procedural aspects of the provision of legal assistance to victims of violence, including victims of human trafficking. Access to free legal aid for child victims is discussed in paragraph 114.

46. Victims of violence who contact the anti-violence hotline (see paragraph 152) or the state-run counselling centre are provided with the above-mentioned list of lawyers. In principle, the lawyer is contacted by the victim, but in case the victim is not capable of contacting the lawyer, the centre's doctor will assist the victim and a social worker will be available to accompany the victim at the first meeting with the lawyer.

47. GRETA was informed that the Association of Lawyers and Notaries provides interdisciplinary training to the lawyers included in the list, however, this training does not cover THB. In this context, GRETA refers to the availability of an online course on combating THB developed by the Council of Europe's European Programme for Human Rights Education for Legal Professionals (HELP).³³

48. GRETA considers that the Sammarinese authorities should guarantee the right to legal assistance and free legal aid for trafficking victims, in particular by:

- **ensuring that legal assistance is systematically provided as soon as there are reasonable grounds for believing that a person is a victim of trafficking;**
- **making sure that access to free legal aid for victims of THB does not depend on proof of lack of financial means to pay for a lawyer;**
- **raising awareness among law enforcement officials, prosecutors and judges of the right of victims of trafficking in human beings to legal assistance and free legal aid;**
- **encouraging the Association of Lawyers and Notaries to develop training on trafficking in human beings for lawyers registered as free legal aid providers.**

³¹ See 8th General report on GRETA's activities, paragraph 167.

³² Article 17 of Law No. 97/2008.

³³ <https://help.elearning.ext.coe.int/course/view.php?id=1936>

4. Psychological assistance (Article 12)

49. Human trafficking and exploitation may have serious psychological and physical consequences for the victims, including mental health problems and loss of self-esteem. Psychological assistance is needed to help victims of trafficking deal with the trauma they have been through, and to achieve a sustained recovery and social inclusion. Some victims require long-term therapeutic intervention due to the violence they have suffered. Every victim of trafficking should have a clinical assessment tailored to include an evaluation of their particular readiness for therapy, conducted by an experienced clinician.³⁴ In the case of trafficked children, specialist child psychologists should be employed.

50. Article 23 of Law No. 97/2008 establishes that psychological support will be provided to the victim whenever the victim is examined as a witness, during the trial or during confrontation with the defendant or other witnesses. In addition, it establishes that victims should not be required to repeat their testimony. If the hearing or confrontation has to be repeated, psychological support will be offered.

51. The SSI is the institution responsible for health and social welfare (including psychological assistance) to all San Marino citizens or residents. Pursuant to Article 4 of Law No. 97/2008, victims of violence, including THB victims, are entitled to first aid and psychological support.

52. According to the representatives of the SSI met by GRETA during the evaluation visit, the mental health unit of the SSI would be responsible for arranging free psychological assistance for victims of trafficking for as long as necessary. Three psychologists are available within this unit.

53. The state-run counselling centre for women victims of violence visited by GRETA delegation employs a psychologist who provides psychological support and advice to victims of violence, including any victims of THB who might attend the centre.

54. According to the authorities, the procedure followed in respect of child victims of violence consists of a first analysis carried out by a social worker who evaluates the child's situation. The case is further reported to a multi-disciplinary team of professionals within the Child Protection Unit. A responsible psychologist would then be appointed. The representative of the shelter for children in Italy visited by the GRETA delegation (see paragraph 161) indicated that a psychologist provides support to every child at the shelter.

55. GRETA was informed that Ukrainian refugees who arrived in San Marino after the outbreak of the war³⁵ were also provided with psycho-physical³⁶ support by the SSI. Social workers carried out home visits and paid close attention to the psychological health of the refugees, recommending support programmes where necessary.

56. GRETA welcomes the existence of psychological support for women and children victims of violence and invites the Sammarinese authorities to ensure that such support is provided to any detected victims of trafficking, regardless of their gender and form of exploitation.

³⁴ See OSCE, *Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-Treatment* (2013), Vienna, p.115.

³⁵ See footnote 86.

³⁶ This is a holistic therapeutic approach that combines theories and techniques from body therapy and talk therapy.

5. Access to work, vocational training and education (Article 12)

57. Article 12, paragraph 4, of the Convention requires State Parties to enable victims of trafficking who are lawfully present in the country to have access to the labour market, vocational training and education. An important element of the recovery and successful social inclusion of trafficked persons is their economic empowerment, which can be achieved through job placement, microbusinesses and social enterprises.³⁷ GRETA has stressed the need to develop public-private partnerships with a view to creating appropriate work opportunities for victims of trafficking.³⁸

58. According to the Sammarinese authorities, access to training, education and professional integration for victims of violence would apply to victims of human trafficking under Article 4 of Law No. 97/2008. The article also envisages programmes for social integration.

59. The authorities informed GRETA that any identified victims of trafficking who are granted an extraordinary residence permit (i.e. for humanitarian reasons) may access the labour market under the conditions laid down in Article 14.1 of Law No. 118 of 28 June 2010 on the Entry and Stay of Foreigners. Pursuant to Article 19 of this Law, a decree establishes every year quotas for work-related residence permits in different sectors.³⁹

60. **GRETA considers that the Sammarinese authorities should adopt such legislative or other measures as may be necessary to ensure effective access to the labour market, vocational training and education for all victims of THB, in line with Article 12(4) of the Convention.**

6. Compensation (Article 15)

61. Article 15(3) of the Convention establishes a right of victims to compensation. The compensation is pecuniary and covers both material injury (such as the cost of medical treatment) and non-material damage (the suffering experienced). However, even though it is the trafficker who is liable to compensate the victim, in practice there is rarely full compensation whether because the trafficker has not been found, has disappeared or has declared him/herself bankrupt. Article 15(4) therefore requires that Parties take steps to guarantee compensation of victims. The means of guaranteeing compensation are left to the Parties, which are responsible for establishing the legal basis of compensation, the administrative framework and the operational arrangements for compensation schemes. In this connection, Article 15(4) suggests setting up a compensation fund or introducing measures or programmes for social assistance to, and social integration of, victims that could be funded by assets of criminal origin. Of relevance in this respect is the European Convention on the Compensation of Victims of Violent Crimes, pursuant to which, when compensation is not fully available from other sources, the State shall contribute to compensate those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence, as well as the dependents of persons who have died as a result of such crime, even if the offender cannot be prosecuted or punished.

62. Compensation fulfils multiple purposes: payment of reparation for injury, loss or harm caused by the offender, access to justice, empowerment of victims, as well as being seen as a form of punishment and deterrence of traffickers. As such, compensation plays a crucial role in the fight against human trafficking, not only as an instrument of restorative justice, but also by way of prevention and recognition by States of their failure to meet their human rights obligations.

³⁷ Rebecca Surtees, NEXUS Institute, *Re/integration of trafficked persons: supporting economic empowerment*, Issue paper No. 4, King Baudouin Foundation (2012).

³⁸ 8th General report on GRETA's activities.

³⁹ The last decree of 28 November 2023 set the following quotas for 2024: 275 seasonal residence permits in the tourism, hotel and trade sectors, 25 seasonal permits in the agricultural sector, and 630 temporary residence permits for work reasons (including 10 for carers for persons with disabilities or invalidity, 140 for family carers and 430 for care givers for the elderly).

63. Victims often leave the country where they were exploited at the end of the criminal proceedings. This creates obstacles to making civil claims for compensation, which in addition are associated with a number of other barriers, such as high costs, unavailability of free legal aid and victim-support services, as well as the claimant bearing the burden of proof of the amount of the damage. State parties should therefore consider adopting a procedure through which victims are entitled to obtain a decision on compensation by the offender as part of the criminal trial, within a reasonable time.

64. In San Marino, victims of trafficking can claim compensation in accordance with the procedure set out in Article 140, section 2, of the Criminal Code (CC). A victim may claim compensation from the perpetrator either by joining the criminal proceedings as an accusing party or as a civil party seeking damages. The court ascertains criminal responsibility and liability and sentences the perpetrators to pay compensation to the victim from their present and future assets.

65. Victims can also claim compensation through civil proceedings, even after an acquittal of the defendant in criminal proceedings. Victims of labour exploitation who wish to recover unpaid wages and social contributions may apply to civil courts. Representatives of trade unions met by GRETA noted that this possibility applies to all workers, including those working irregularly and/or without an employment contract.

66. GRETA was informed that the police have an obligation to conduct an investigation to support the claim for compensation filed by a victim in criminal proceedings. Further, the authorities have referred to Article 4 of the Budget Amendment Law No. 132/2023, amending Article 15 of Law No. 100/2013 which deals with the confiscation of assets, with particular regard to cases of co-operation with foreign authorities that have requested confiscation. In this context, the principle has been expressly provided that in the execution of confiscation of assets, the right to compensation of victims of crime are safeguarded; therefore, the State at the time of the actual execution of the confiscation assesses the existence of victims' right to compensation by putting them before the confiscation itself.

67. The Authority for Equal Opportunities has the possibility to join legal proceedings as a plaintiff and claim compensation on behalf of victims of violence, including victims of THB, pursuant to Article 20 of Law No. 97/2008.

68. Compensation covers physical, moral and material damage suffered by the victims. It is established on a case-by-case basis by the court, taking into account relevant assessments (medical, psychological and psychiatric), as well as all costs incurred by the victim as a result of the offence. The calculation of non-pecuniary damages by the judge follows a formula which takes into consideration the extent of the offence, the consequences for the injured party, and other relevant factors. In the case of a child victim, a legal guardian would be appointed by the guardianship judge at the request of the social services to represent the child through the process and claim compensation on his or her behalf (see paragraph 114).

69. If the perpetrator does not comply with the obligation to pay the compensation, enforcement proceedings may be initiated, and the court will verify whether the person owns property and may be obliged to sell it. Following a summons, if the convicted debtor fails to pay within three days, forced expropriation by attachment and sale of assets or collection of the debtor's claims takes place.

70. Pursuant to Article 4 of Law No. 97/2008, law enforcement officers are required to inform victims of violence of the different types of support services and legal measures available. However, law enforcement officers stated that it was not the practice to inform victims of the right to obtain compensation.

71. Lawyers, investigating judges and judges met by GRETA during the visit stated that they had received no training on the issue of victim compensation.

72. As there have been no victims of THB identified during the reporting period and no criminal proceedings related to THB, it is difficult to assess the effectiveness of the provisions for access to compensation as regards victims of THB.

73. In its second report, GRETA referred to plans to set up 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. The fund has been set up in the meantime, however, it does not grant state compensation as part of the financial assistance provided to victims. In this context, GRETA refers to a recent recommendation of the Committee of Ministers of the Council of Europe which calls on member States to set up a state compensation mechanism for victims of intentional, violent crimes committed on their territory.⁴⁰

74. GRETA considers that the Sammarinese authorities should take steps to facilitate and guarantee effective access to compensation for victims of trafficking, including by:

- **systematically informing victims of trafficking of their right to seek compensation in criminal and civil proceedings and the procedure to be followed, and ensuring that they are provided with effective legal assistance and legal aid to exercise this right;**
- **building the capacity of legal practitioners to support victims to claim compensation and including compensation into existing training programmes for law enforcement officials and the judiciary;**
- **ensuring that the fund for financial assistance to victims of violence is available to provide state compensation to any identified victims of THB.**

7. Investigations, prosecutions, sanctions and measures (Articles 22, 23 and 27)

75. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB. Article 27(1) of the Convention establishes that the investigation or prosecution of THB offences must not depend on victims' reports. The aim is to avoid traffickers' subjecting victims to pressure and threats in attempts to deter them from complaining to the authorities. Pursuant to Article 27(2), if the competent authority with which the complaint has been lodged decides that it does not itself have jurisdiction in the matter, then it must forward the complaint without delay to the competent authority of the Party in whose territory the offence was committed. Further, under Article 27(3), each Party shall ensure to non-governmental organisations and other associations which aim at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence of trafficking in human beings.

76. Article 23 requires Parties to match their action to the seriousness of the offences and lay down criminal penalties which are "effective, proportionate and dissuasive". Further, paragraph 3 of Article 23 places a general obligation on Parties to adopt appropriate legal instruments enabling them to confiscate or otherwise deprive offenders (e.g., by so-called "civil" confiscation) of the instrumentalities and proceeds of human trafficking criminal offences. As trafficking in human beings is nearly always engaged in for financial profit, measures depriving offenders of assets linked to or resulting from the offence are an effective anti-crime weapon. The confiscation of criminal assets is crucial for reinforcing the effect of the penalty, as well as ensuring the payment of compensation to the victim. It requires as a prerequisite to detect, identify and seize the illegal assets at the time of the criminal investigations and to have adequate procedures to do so. The identified, seized and confiscated illegal profits of trafficking should be used to compensate victims of trafficking, directly or through a victim compensation fund.

77. Further, Article 22 of the Convention requires Parties to ensure that legal persons can be held liable for human trafficking offences committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person who has a leading position within the legal person. Liability under this article may be criminal, civil or administrative.

⁴⁰ [Recommendation CM/Rec\(2023\)2 of the Committee of Ministers to member States on rights, services and support for victims of crime adopted on 15 March 2023 and its Explanatory Memorandum, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680aa8263](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680aa8263)

78. The criminalisation of THB in San Marino law remains as described in GRETA's second evaluation report.⁴¹ 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".⁴² 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."⁴³

79. 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. However, these provisions do not specify that the trafficking victim's consent to the exploitation is irrelevant. The Sammarinese authorities have referred to the general provisions of the CC which state that a person's consent is not valid if it is obtained by violence or deception.⁴⁴ However, as already noted in the previous reports, GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions and provide victims with greater confidence in self-reporting to NGOs and public authorities. **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.**

80. Under Article 168 of the CC, a person who commits the offence of THB shall be punished by a prison sentence of 10 to 20 years (sixth degree in Sammarinese law) and a prohibition to exercise civic rights for a term of two to five years (fourth degree interdiction). Aggravating circumstances which would increase the prison sentence by one degree (which corresponds to 14 to 24 years) are imposed if the offence of THB is committed against a child, is aimed at exploiting in prostitution or is committed for the purpose of organ removal.

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

82. In San Marino, 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.

83. San Marino's criminal system is based on the principle of mandatory prosecution. Criminal investigations may be initiated *ex officio*⁴⁵ or based on a complaint from the victim. When the police acquire information about a criminal activity, they inform the investigating judge, who starts a judicial investigation. The investigating judge has the power to direct any of the three police corps to serve as Judicial Police in the conduct of investigations. The investigation of THB offences is the responsibility of the Judicial Police.⁴⁶

⁴¹ See paragraphs 86 to 89 of GRETA's second report.

⁴² Unofficial translation.

⁴³ Unofficial translation.

⁴⁴ Article 39(2) of the CC states that "consent shall not be valid if it is extorted by violence or given by easily recognisable mistake, obtained by deception or manifested by a person under the age of eighteen years or incapable of understanding".

⁴⁵ It should be noted that in San Marino there is no public prosecutor as such and the role of "criminal prosecuting authority" is played by an investigating judge ("*giudice inquirente*", judge of first instance), who is assigned wide-ranging investigative powers in criminal matters.

⁴⁶ This body, which is included within the Gendarmerie, is also in charge of investigating corruption, organised crime, money laundering, terrorism and financial crimes, including offences committed by the misuse of the Internet.

84. Except for what is provided in Article 7 of the Law on the Repression of the Sexual Exploitation of Children, San Marino's legislation does not envisage the possibility of using informants, undercover agents, wiretapping and controlled deliveries. However, Article 3, paragraph 1, point 1, of Law No. 98 of 21 July 2009 introduced the use of wiretapping as a special technique for conducting investigations in case of crimes punishable by no less than third-degree imprisonment, which includes THB offences.

85. According to the Judicial Police, no investigations have been initiated to date concerning THB offences. Judges met by GRETA during the evaluation visit indicated that Articles 168 and 167 of the CC have never been applied.

86. The Financial Intelligence Agency (FIA), which is San Marino's Financial Intelligence Unit (FIU), is an operationally independent and autonomous national agency established at the Central Bank of the Republic of San Marino, which is responsible for receiving and analysing suspicious transaction reports and other disclosures relevant to money laundering and associated predicate offences, including transactions related to THB or terrorist financing. There has been no submission of information to investigating judges related to human trafficking resulting from the FIA analysis. However, money laundering cases related to "exploitation of prostitution" and "exploitation of illegal migration" have been transferred by the FIA to investigating judges for investigation.⁴⁷ Two money laundering National Risk Assessments (NRAs) have already been conducted (2015/2016 and 2019/2020). Even if human trafficking did not emerge as a predicate offence for money laundering in the 2019 NRA, "exploitation of prostitution" and "exploitation of illegal migration" resulted in a medium-low level of money laundering threat.⁴⁸

87. Law No. 24 of 2 March 2022 on provisions to implement the guarantees and ensure the efficiency of criminal proceedings introduced the plea-bargaining procedure in San Marino's legal system. According to Article 9, section 1, of this law,⁴⁹ plea bargaining applies to offences for which the sentence of imprisonment, considering the circumstances and reduced as a result of the plea-bargaining agreement, does not exceed six years. According to the authorities, this limit would make it difficult to apply plea bargaining to human trafficking cases.

88. GRETA considers that the Sammarinese authorities should take measures to strengthen the criminal justice response to THB, including by:

- **providing systematic and continuous training on THB to law enforcement officials and judges, including the constituent elements of the crime and the need to adopt a victim-centred approach;**
- **ensuring that human trafficking offences for any form of exploitation are promptly and proactively investigated, regardless of whether a complaint is filed by the victim, making use of special investigation techniques in order to gather material, documentary, financial and digital evidence, and not having to rely exclusively on testimony by victims or witnesses.**

89. Further, GRETA considers that the Sammarinese authorities should review the effectiveness of the legal provisions on corporate liability in relation to THB offences and take measures to ensure that the criminal liability of legal entities can be acted upon in practice.

⁴⁷ According to the FIA, there were two cases of money laundering related to "exploitation of prostitution": one case in which a person was acquitted in the first instance and another case, which has not yet been concluded, in which a person was convicted and his assets were confiscated. In another case related to "exploitation of illegal migration", the procedure is in the final stage of investigation.

⁴⁸ <https://www.aif.sm/site/en/home/risk-based-approach/national-risk-assessment/documento50063107.html>

⁴⁹ This provision introduced Article 136bis into the Criminal Procedure Code of San Marino.

8. Non-punishment provision (Article 26)

90. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties upon victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so. As previously stressed by GRETA, the criminalisation of victims of THB not only contravenes the state's obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the state's obligation to investigate and prosecute those responsible for THB.⁵⁰ Furthermore, GRETA has noted that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the prosecutor in charge of the case.

91. There is still no specific provision in Sammarinese law on the non-punishment of victims of THB for unlawful activities they were compelled to commit. The Sammarinese authorities have once again referred to several general provisions of the CC which, according to them, could be used to apply the non-punishment principle to victims of THB, in particular Article 33, which provides that criminal responsibility may be excluded if the person acted under coercion, Article 35, which excludes responsibility if a person was tricked into committing an offence, Article 39(2), which considers the person's consent obtained by means of violence or deception to be invalid, and Article 42, which provides that an exemption shall apply to anyone forced to commit an offence to protect him/herself from the risk of serious personal harm or a threat.⁵¹

92. In GRETA's view, the possibility to apply the general criminal law provisions cannot be considered as an appropriate response because they are narrower in scope than the non-punishment principle enshrined in the Convention and, in practice, investigating judges leave it to courts to decide whether or not the conditions are met, thus exposing victims to prosecution and pre-trial detention, and shifting the burden of proof to the victim. GRETA notes that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the investigating judge in charge of the case. Furthermore, GRETA stresses that the non-punishment principle not only applies to criminal liability but also to administrative and other types of liability.

93. **GRETA urges the San Marino authorities to 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 aims and scope of the non-punishment provision. Furthermore, the non-punishment provision should be included in the training of police officers, prosecutors, judges and lawyers.**

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

94. Under Article 28 of the Convention, Parties must take the necessary measures to provide effective and appropriate protection from potential retaliation or intimidation to victims and witnesses of human trafficking, as well as to members of civil society organisations supporting victims during criminal proceedings and, where appropriate, to victims' family members. Intimidation of victims and witnesses is nearly always aimed at suppressing evidence against defendants. Effective protection can be of various types (physical protection, relocation, identity change...) and depends on the assessment of the risks that victims and witnesses run. In addition, Article 28(3) provides that a child victim shall be afforded special protection measures, taking into account the best interests of the child. Regarding the period during which the protection measures are to be provided, the Convention aims in a non-exhaustive manner at the period of investigation and of the proceedings or the period following them. The period in which protection measures have to be provided depends on the threats to the persons concerned. Moreover, because trafficking in human beings is often international and some countries are small, Article 28(5) encourages Parties to enter into agreements or arrangements with other countries so as to implement Article 28.

⁵⁰ See 2nd General Report on GRETA's activities, paragraph 58.

⁵¹ See GRETA's first report on San Marino, paragraph 113, and GRETA's second report, paragraph 96.

95. Further, Article 30 of the Convention requires Parties to adapt their judicial procedure so as to protect victims' privacy and ensure their safety, including special protection measures for child victims. While the measures provided for in Article 28 address extra-judicial protection, the measures referred to in Article 30 are concerned with the procedural measures to be introduced. The following means can be used, in accordance with the European Convention on Human Rights and the case-law of the European Court of Human Rights, to achieve the objectives of Article 30: non-public hearings, audio-visual technology, recordings of testimony, and anonymous testimony.

96. As noted in the previous two GRETA reports,⁵² pursuant to Law No. 97/2008, victims of gender-based violence can be issued with protection orders. Victims or witnesses of violence have also the right to receive psychological support during the trial and the confrontation with the defendant. 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.

97. As regards the protection of child victims, see paragraphs 113 and 114.

98. GRETA was informed that the authorities from San Marino can, when necessary, co-operate with the Italian authorities to ensure the security and protection of victims of THB.

99. **GRETA invites the authorities of San Marino to ensure that all measures available in law aimed at protecting victims of criminal offences are effectively made available in practice to victims and witnesses of trafficking, to prevent reprisals and intimidation during the investigation, as well as during and after the court proceedings.**

10. Specialised authorities and co-ordinating bodies (Article 29)

100. Under Article 29(1) of the Convention, Parties have to adopt the necessary measures to promote specialisation of persons or entities in anti-human-trafficking action and victim protection. Each country must have anti-trafficking specialists in sufficient numbers and endowed with appropriate resources. The staff of specialised authorities and coordinating bodies should, as far as possible, be composed of both women and men. To combat trafficking effectively and protect its victims, it is essential that proper training is provided to relevant officials.

101. In San Marino, the Gendarmerie is responsible for criminal investigations in the areas of organised crime, corruption, money laundering, terrorism and cybercrime. Within the Gendarmerie, the Judicial Police is in charge of conducting THB investigations. It has a staff member specialised in cybercrime. According to the authorities, there is an ad hoc office within the Gendarmerie dealing with cases of gender-based violence and violence against children which could also be responsible for THB investigations. Neither staff of the ad hoc office nor of the Judicial Police received training on THB during this period.

102. There are no investigating judges or judges trained to deal with THB cases. In their comments on the draft GRETA report, the Sammarinese authorities have indicated that two court magistrates will participate in courses on child protection and violence against women organised by the Italian Higher School for the Judiciary in 2024. As part of these courses, topics of relevance to the subject of THB will be addressed. In addition, compulsory internal training initiatives will be implemented by the Court in 2024 for all magistrates with reference to the phenomenon of THB and its implications.

103. **While taking note of the above-mentioned plans, GRETA urges the authorities of San Marino to ensure that training on THB is integrated into the training curricula of relevant professionals and provides specific guidance geared to the role of each profession in the identification and assistance of victims, and the investigation and prosecution of cases.**

⁵² See paragraphs 119-122 of GRETA's first report and paragraphs 104-108 and 110 of GRETA's second report on San Marino.

11. International co-operation (Article 32)

104. Article 32 of the Convention requires parties to co-operate to the widest extent possible to prevent and combat THB, to protect and to provide assistance to victims, and to investigate and prosecute cases of THB. International co-operation between State Parties to the Convention is also essential for enabling access to effective remedies for victims of trafficking. Parties must co-operate with one another “to the widest extent possible”. This principle requires them to provide extensive co-operation to one another and to minimise impediments to the smooth and rapid flow of information and evidence internationally. As regards international co-operation in criminal matters for the purposes of investigations or proceedings, the provisions of the Convention neither cancel nor replace the provisions of relevant international or regional instruments⁵³ on mutual legal assistance and extradition, reciprocal arrangements between Parties to such instruments and relevant provisions of domestic law concerning international co-operation.

105. As noted in GRETA’s previous reports,⁵⁴ an informal technical agreement was concluded in 2013 between San Marino’s Police Department and the Department of Public Security of the Italian Ministry of the Interior in order to strengthen co-operation in the fight against transnational organised crime, including THB.

106. International co-operation in criminal matters is often conducted by the Sammarinese police forces through Europol and the Interpol National Central Bureau. This Bureau, which is under the responsibility of the Ministry of Foreign Affairs, liaises with the Bureaux of the other States, as well as with the General Secretariat of Interpol. GRETA was informed that San Marino recently concluded a working arrangement with Europol to facilitate international co-operation and the exchange of information.

107. As there have been no cases of trafficking identified in San Marino, no judicial or police co-operation was initiated with another country on this matter. Further, no requests for mutual legal assistance have been made by or to San Marino concerning suspected cases of THB.

108. Since August 2019, San Marino has established within its judiciary a contact point with Eurojust to improve international judicial co-operation, including mutual legal assistance.

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

12. Cross-cutting issues

a. gender-sensitive criminal, civil, labour, and administrative proceedings

110. As noted in CEDAW General recommendation No. 33 on women’s access to justice, discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men.⁵⁵ The Council of Europe Gender Equality Strategy 2018-2023 notes that while accessing justice might be difficult for everyone, it is even more so for women, due to gender inequality in society and in the justice system, and therefore one of the objectives of the Strategy is to ensure

⁵³ For example, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and its protocols, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member states, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

⁵⁴ See paragraph 111 of GRETA’s second report on San Marino.

⁵⁵ CEDAW General recommendation No. 33 on women’s access to justice, paragraph 8, CEDAW/C/GC/33 of 3 August 2015: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en

the equal access of women to justice.⁵⁶ GRETA notes that in the case of trafficking in human beings, gender stereotypes, prejudices, cultural barriers, fear and shame impact women's access to justice, and these barriers may persist during investigations and trials. This is particularly true for some groups of women, such as victims of gender-based violence, migrant, refugee and asylum-seeking women, ethnic minority women and women with disabilities. On the socio-economic level the obstacles include lack of awareness of one's legal rights and legal procedures or of how to access legal aid, which can stem from gender differences in educational levels, and access to information. A further obstacle may be the lack of financial resources, including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts or childcare.⁵⁷ Such obstacles, and remedies to them, are listed in a Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, as well as in the publication "Women's Access to Justice: Guide for Legal Professionals".⁵⁸

111. According to Article 23 of Law No. 97/2008, when a judicial and forensic medical examination is carried out during the proceedings, the selected expert should preferably be of the same sex as the victim. The Commission for Equal Opportunities is competent for all gender equality issues (see paragraph 16), except for gender-based violence, which is within the remit of the Authority for Equal Opportunities. According to the Sammarinese authorities, the Commission has not considered the issue of trafficking in women and girls or, more generally, inequalities in women's and girls' access to justice. In this context, GRETA refers to GREVIO's Baseline Evaluation Report on San Marino, published on 23 September 2021, which stressed the need to take measures to strengthen women victims' access to justice.⁵⁹

112. GRETA invites the Sammarinese authorities to take the necessary measures to promote a gender-sensitive approach to access to justice for victims of THB, including through gender mainstreaming and training.

b. child-sensitive procedures for obtaining access to justice and remedies

113. Specific protection arrangements for child victims exist under Article 23 of Law No. 97/2008, such as systematically conducting interviews in a child-friendly interview room within the Minor's Service, with the assistance of a psychologist trained to handle trauma situations. Such interviews are followed by law enforcement authorities and judges from behind a one-sided mirror and video-recorded. Furthermore, if the victim is a child, Article 24 of Law No. 97/2008 stipulates that the trial will be held behind closed doors. In addition, the repetition of interviews should be avoided if there is a concrete danger to worsen the minor's condition.

114. Further, according to Article 18 of Law No. 97/2008, a special legal guardian is appointed to represent the interests of the child in legal proceedings if the offence was committed by the family, relatives or guardian of the child. All procedural acts detrimental to the child's best interests in which the legal guardian has not participated shall be declared null and void according to the law.

115. GRETA invites the Sammarinese authorities to ensure that child-sensitive procedures are consistently followed when investigating, prosecuting, and adjudicating cases of THB, in line with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.⁶⁰

⁵⁶ Council of Europe Gender Equality Strategy 2018-2023, pp.24-26, <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1>

⁵⁷ Council of Europe training manual for judges and prosecutors on ensuring women's access to justice, page 13 available at <https://rm.coe.int/training-manual-women-access-to-justice/16808d78c5>

⁵⁸ Available at: <https://rm.coe.int/factsheet-womens-access-to-justice/16808ff44e>

⁵⁹ See paragraph 218 of GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): <https://rm.coe.int/grevio-baseline-report-on-san-marino/1680a3eb65>

⁶⁰ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).

c. role of businesses

116. No legislative changes or other measures aimed at preventing human trafficking in public procurement procedures and supply chains have been implemented since GRETA's second report.⁶¹ There is no national action plan in San Marino for implementing the Guiding Principles on Business and Human Rights, contrary to the recommendation of the United Nations, and there are no projects under way regarding the due diligence of companies to avoid human rights violations in their supply chains.

117. No awareness-raising campaigns aimed specifically at businesses have been carried out on issues relating to trafficking or human rights more generally, even though labour exploitation is a matter of concern in San Marino in certain economic sectors reliant on foreign labour, in particular construction, hotels and restaurants, and agriculture (see paragraph 122 et seq.).

118. GRETA invites the Sammarinese authorities to strengthen their co-operation with the private sector and raise companies' awareness of their responsibility and role in preventing and eradicating trafficking in human beings, including in business supply chains. GRETA refers in this connection to the United Nations Guiding Principles on Business and Human Rights⁶² and to Council of Europe Committee of Ministers recommendations CM/Rec(2016)3 on human rights and business and CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation.⁶³

d. measures to prevent and detect corruption

119. Trafficking in human beings may be engaged in by organised criminal groups, which frequently use corruption to circumvent the law and money laundering to conceal their profits, but it can occur in other contexts. Consequently, other Council of Europe legal instruments are also relevant to combating human trafficking, in particular those designed to combat corruption, money laundering and cybercrime. The Council of Europe body with the main role to play in the fight against corruption is the Group of States against Corruption (GRECO). Its country reports are relevant in addressing structural shortcomings in preventing corruption, including potentially in a THB context.

120. In its compliance report on San Marino on corruption prevention in respect of parliamentarians, judges and prosecutors (2022), GRECO considered that progress had been made, in particular with regard to members of Parliament (a Code of Conduct was adopted, and an advisory committee was established to provide support on ethical issues and potential conflict of interest) and the judiciary (a vast reform regarding the composition and functioning of the judicial council was undertaken conferring greater guarantees of independence).⁶⁴ However, there is no independent anti-corruption body or specialised agency nor a targeted anti-corruption policy in San Marino.

121. According to the Sammarinese authorities, no cases with a link between THB and corruption have been detected in San Marino.

⁶¹ See paragraph 93 of GRETA's second report on San Marino.

⁶² http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶³ [Recommendation CM/Rec\(2016\)3](#) of the Committee of Ministers to member States on human rights and business, adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies.

[Recommendation CM/Rec\(2022\)21](#) of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation and [Explanatory Memorandum](#), adopted by the Committee of Ministers on 27 September 2022 at the 1444th meeting of the Ministers' Deputies.

⁶⁴ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a6ec11>

V. Follow-up topics specific to San Marino

1. Measures to prevent and combat trafficking for the purpose of labour exploitation

122. As indicated in paragraph 12, there are risks of exploitation in certain economic sectors reliant on foreign labour, such as domestic work, construction, tourism (hotels and restaurants) and agriculture.

123. The Labour Inspectorate is the authority in charge of supervising the implementation of labour regulations and carrying out labour control activities, including the examination of irregular working situations. The Inspectorate is in charge of checking working conditions within all private companies and commercial premises. At the time of GRETA's visit, it comprised a head of department and seven labour inspectors who carry out labour inspections, divided in four teams of two inspectors each. Labour inspectors do not have a checklist of indicators for detecting possible cases of THB. Further, they are not accompanied by interpreters when conducting labour inspections to places where foreign workers work, which limits the possibility for workers to communicate with labour inspectors and report abuses. According to the Inspectorate, a yearly report on the inspections conducted is presented to a tripartite committee which includes representatives of trade unions, police and inspectors.

124. GRETA was informed that labour inspectors had participated in five training sessions together with Italian inspectors during the reporting period. However, the training was not related to THB. In their comments on the draft GRETA report, the authorities indicated that the Labour Office was in the process of reaching an agreement with Italian colleagues on future training that will include the topic of THB.

125. Joint inspections of the Labour Inspectorate with the police or the Gendarmerie can take place pursuant to a Memorandum of Understanding (MoU). As already noted in GRETA's second report,⁶⁵ labour inspectors are not entitled to enter private households to check the working conditions of private carers. However, based on this MoU, labour inspectors can request the Gendarmerie to enter private households. If the police identify irregularities related to labour exploitation, they can refer the case to the Inspectorate. The Gendarmerie informed GRETA of some cases of private caregivers in a potentially risky situation, but none of them were identified as human trafficking.

126. The Labour Office is the body issuing work permits to migrant workers. The list of documents necessary to apply for a work permit is included in Law No. 115 of 2017.⁶⁶ Staff from the Labour Office are also responsible for raising awareness on labour rights and clarifying the elements of employment contracts. GRETA was informed that the most common complaints from foreign workers are related to excessive working hours or performing work other than that stipulated in the contract.

127. There have been no initiatives aimed at raising awareness of THB for the purpose of labour exploitation in San Marino or measures directed towards migrant workers informing them of the risks of exploitation and trafficking, their rights and where to seek assistance.

128. Law No. 118/2010 on the Entry and Stay of Foreigners (with subsequent amendments) provides for the issuing of work and residence permits to foreigners. The body responsible for issuing residence permits is the Foreign Office of the Gendarmerie (*Ufficio Stranieri*). The procedure involves an interview at the Foreign Office, which is preceded by a series of checks by the Gendarmerie.⁶⁷ The interview is followed by checks at the domicile of the person to verify risk indicators, at least once a year. The annual renewal of the permits is an opportunity to assess the foreign workers' conditions.

⁶⁵ See GRETA's second evaluation report on San Marino, paragraph 38.

⁶⁶ Amending and supplementing the Rules on Supporting Economic Development and Decree No. 137 of 2017.

⁶⁷ A list of countries at risk is available for this purpose. The countries included on the list are Nigeria, Cameroon, Ivory Coast, Morocco, Philippines, Pakistan, Vietnam, Brazil and Albania. If a foreigner arrives in San Marino from one of these countries, the head of the Foreign Office receives an alert and further checks are carried out.

129. Pursuant to Article 18 of Law No. 118/2010, the loss of employment does not entail the immediate withdrawal of a foreign worker's residence permit, except in the event of resignation. In the case of loss of employment, migrant workers have the option to register in a special placement list at the Employment Office, no later than 10 days after losing their job, to find a new job in the same sector. The residence permit is withdrawn only if the foreign worker fails to register in the placement list or when the worker does not find a new job within the duration of the remainder of the permit.⁶⁸ The residence permit can only be obtained once the work permit has been granted and for the duration of the work permit. Trade union representatives met by GRETA expressed concern about the discriminatory and vulnerable situation created for those workers who resign as well as for those who lose their job and do not find another one before the end of their permit. GRETA notes that San Marino's laws on residence permits for foreigners are particularly rigid and strict and could place possible trafficking victims in a particularly precarious and vulnerable situation.

130. Pursuant to the 2015 amendments to Law No. 118/2010,⁶⁹ 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.⁷⁰ The extension of the length of the residence permits from 11 to 12 months has reduced job insecurity for foreign workers, including private carers.

131. During the visit, GRETA was informed of a case which concerned caregivers (originating from Ukraine, Moldova, the Russian Federation, Romania, and Poland) working at the main hospital in San Marino. One of the hospital managers was admitting unauthorized patients to the hospital and, as a result, caregivers worked under pressure with a huge workload due to the high number of patients. At the time of GRETA's visit, there was an ongoing court proceeding. The charges included extortion and fraud linked to employing non-registered workers as caregivers. As a reaction to this case, the authorities were planning to introduce a new piece of legislation to better regulate the working conditions of caregivers, but at the end the adoption of an internal regulation of the hospital was considered to be sufficient. According to the authorities, the working conditions and protection of the caregivers employed at the hospital has improved.

132. According to the statistical bulletin of San Marino,⁷¹ the majority of foreigners residing in the country (5,503) were Italians, followed by citizens of Romania, Albania, Ukraine and the Russian Federation. Foreign nationals holding a residence permit include women from Moldova, Romania, Ukraine, and the Russian Federation. The vast majority of the foreign women with a residence permit is engaged as unskilled workers.⁷² Most of them work as private carers ("*badanti*") for elderly persons or people with disabilities, living in the households where they work, or as seasonal workers in the commerce, hospitality and tourism sectors. GRETA reiterates its concern about the potential vulnerability to THB and exploitation of women from Eastern European countries who work in San Marino.⁷³

133. According to trade union representatives, foreign workers are well protected thanks to the good co-ordination between trade unions and the Labour Inspectorate and direct contact with employers. Foreign workers are usually hired through collective agreements which include clear and detailed provisions. However, concern was raised about individual agreements between non-EU citizens and persons receiving services from them. GRETA was informed that there is a community of Philippine women working as caregivers who are hired through individual agreements brokered by an intermediary agency in the Philippines and vetted by their Embassy. Trade union representatives expressed concern about these individual agreements, which include generic provisions that could be interpreted in different ways. Concern was also raised by trade unions and the Inspectorate about seconded workers from non-EU countries in the construction sector, where cases of contracts with a lower level of worker protection have been identified.

⁶⁸ [Comments \(ilo.org\)](https://www.ilo.org/publications/Commentary/Commentary%20on%20the%20ILO%20Convention%20on%20Migrant%20Workers%20-%20Direct%20Request%20(CEACR)%20adopted%20in%202022%20and%20published%20during%20the%20111st%20ILC%20session%20(2023).) Direct Request (CEACR) adopted in 2022 and published during the 111st ILC session (2023).

⁶⁹ Law No. 118/2010 was amended following GRETA's recommendation made in the first report on San Marino (see paragraph 96 of GRETA's first report).

⁷⁰ Before the amendments, residence and work permits with a maximum duration of 11 months obliged private carers to leave San Marino at the expiry of 11 months, even if they could come back a month later.

⁷¹ <https://ghdx.healthdata.org/series/san-marino-statistical-bulletins>, information provided as of March 2022.

⁷² [Comments \(ilo.org\)](https://www.ilo.org/publications/Commentary/Commentary%20on%20the%20ILO%20Convention%20on%20Migrant%20Workers%20-%20Direct%20Request%20(CEACR)%20adopted%20in%202022%20and%20published%20during%20the%20111st%20ILC%20session%20(2023).) Direct Request (CEACR) adopted in 2022 and published during the 111st ILC session (2023).

⁷³ See paragraph 67 of GRETA's first report and paragraph 36 of GRETA's second report on San Marino.

134. Temporary work agencies are allowed to operate in San Marino pursuant to Law No. 164 of 9 December 2022 on the reform of employment regulations. However, as the law is relatively recent, no such agencies have yet been licensed.

135. The Sammarinese authorities consider that the absence of cases of THB for the purpose of labour exploitation is due to the small size of the country, good coordination between the different authorities, efficient labour controls and good collaboration with trade unions. However, GRETA is concerned that trafficking for the purpose of labour exploitation may well be underestimated by the authorities.

136. **GRETA urges the Sammarinese authorities to take further measures to prevent and combat trafficking in human beings for the purpose of labour exploitation, taking into account GRETA's Guidance Note on combating trafficking for labour exploitation⁷⁴ and the CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation.⁷⁵ This should include steps to:**

- **raise awareness amongst professionals, the general public and, in a targeted manner, among migrant workers about the risk of THB for the purpose of labour exploitation and the rights of trafficking victims;**
- **strengthen the capacities and resources of the Labour Inspectorate so that they can be actively involved in the prevention of trafficking for the purpose of labour exploitation and the detection of possible victims in different sectors of the economy, including in private households, and paying particular attention to the contracts used for non-EU countries workers;**
- **ensure the systematic involvement of qualified and independent interpreters in person or remotely when inspecting at-risk workplaces where foreign workers are being employed;**
- **ensure continuous training to labour inspectors on combating THB for the purpose of labour exploitation, proactively identifying victims of trafficking for labour exploitation and the rights of victims;**
- **co-operate with trade unions and the private sector in preventing and combating trafficking for the purpose of labour exploitation.**

2. Identification of victims of trafficking

137. There have been no developments since GRETA's second evaluation report.⁷⁶ The authorities indicated that the procedure for identifying and assisting victims of violence, which is laid down in Law No. 97/2008, would apply to any detected cases of THB. The Gendarmerie or another law enforcement agency (Civil Police or *Guardia di Rocca*) would be responsible for the identification of victims of THB. Pursuant to Article 19 of Law No. 97/2008, the social services, health care and law enforcement professionals are obliged to report to the judge ("*commissario della legge*") or the juvenile judge, in the case of child victims, any case of violence, while respecting the privacy of the victim.

138. There is still no guidance nor list of THB indicators which can be used to perform victim identification. Furthermore, the body primarily entitled to conduct the identification, namely, the Gendarmerie, indicated that, as the phenomenon is not widespread in the country, only one member of its staff had received training

⁷⁴ <https://rm.coe.int/guidance-note-on-preventing-and-combating-trafficking-in-human-beings-/1680a1060c>

⁷⁵ Recommendation CM/Rec(2022)21 of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation and Explanatory Memorandum, adopted by the Committee of Ministers on 27 September 2022 at the 1444th meeting of the Ministers' Deputies.

⁷⁶ See paragraph 57 et seq. of GRETA's second report on San Marino.

on human trafficking.⁷⁷ None of the other professionals who may come into contact with possible victims have received training on THB. Some interlocutors met during the visit were of the view that there was lack of knowledge among professionals likely to come into contact with THB victims (including law enforcement officers, labour inspectors, social workers, health-care staff and trade unions).

139. Civil society organisations are not involved in the detection and identification of victims of THB in San Marino. GRETA reiterates that the Convention emphasises the importance of building strategic partnerships with civil society organisations, which in many countries are the first point of contact with potential victims or groups that are particularly vulnerable and are therefore well placed to assist the authorities in their tasks of detecting and identifying victims.

140. GRETA is concerned that insufficient knowledge about the phenomenon and indicators of THB, and lack of guidance on how to detect and identify victims of THB, may account for the absence of identified victims of trafficking.

141. **GRETA once again urges the Sammarinese authorities to adopt measures to promote the proactive identification of victims of THB, in particular by:**

- **developing a multi-disciplinary framework for the identification and referral to assistance of victims of trafficking, involving law enforcement agencies, labour inspectors, health-care staff, social services, civil society organisations and child protection authorities;**
- **providing indicators for the identification of victims of THB for different forms of exploitation, as well as guidance and training to all professionals who may come into contact with possible victims of trafficking;**
- **increasing 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.**

3. Assistance to victims

142. As explained in the previous GRETA reports,⁷⁸ San Marino has no assistance infrastructure specifically tailored to the needs of victims of THB. Law No. 97/2008 envisages the provision of assistance and protection measures for victims of violence,⁷⁹ which would be adapted to the needs of victims of human trafficking.

143. Further amendments to Law No. 97/2008 in 2016⁸⁰ envisaged that the Authority for Equal Opportunities is the body responsible for co-ordinating the assistance for victims of violence, including victims of THB. To that end, the Authority is in charge of concluding operational protocols with relevant institutions.⁸¹ In practice, it is the SSI which directly concludes co-operation agreements with relevant stakeholders to provide different support services to victims of violence.

⁷⁷ The training was entitled "Combating THB and smuggling of migrants" and was organised by the Italian International Advanced Training Institute for the Prevention and the Fight against Organized Crime from 22 November to 2 December 2022.

⁷⁸ See paragraphs 83 to 90 of GRETA's first report and paragraphs 62 to 67 of GRETA's second report on San Marino.

⁷⁹ Following the 2016 amendments to the law, the assistance measures are available not only to women but also to men and children.

⁸⁰ See Article 3 of Law No. 57/2016.

⁸¹ Including the competent unit of the SSI for the provision of psychological support, the Lawyers and Notaries Association for the provision of legal assistance and advice, shelter facilities and the offices responsible for assisting victims in accessing education, training courses and employment.

144. At the time of GRETA's visit in December 2023, there were only two persons working for the Authority for Equal Opportunities, in addition to other jobs.⁸² GRETA was informed that the Authority was expecting to have in 2024 a secretariat that would mainly deal with media communication tasks. GRETA is concerned that the capacity of the Authority to fulfil its tasks, including the co-ordination of the support provided to victims, is directly impacted by the non-permanent character of the members' positions, and notes that in order to ensure the sustainability of its work, the positions for all its members should be permanent, full-time, and fully funded by the State.

145. Pursuant to Article 5 of Law No. 57/2016, the Authority for Equal Opportunities manages a financial assistance fund for victims of violence. It can be accessed in cases of economic difficulty of the victims, including victims of THB, irrespective of the victim's nationality. The fund is used to cover short-term support to victims, such as clothing and short hotel stays. The financial assistance provided to victims is based on a preliminary needs assessment carried out by the Authority and depends on the resources available in the fund. The fund is financed through the damages awarded to the Authority in legal proceedings to which it was a party. GRETA expresses concern about the uncertain character of this financing.

146. The SSI is in charge of providing a range of healthcare and social services to victims of violence, following a clinical evaluation and involving a multidisciplinary team. An individual support plan is prepared and the victim's situation is closely monitored by the multidisciplinary team.

147. Staff of the SSI have not received training on THB and there is no guidance or protocol of intervention specifically about the provision of assistance to victims of THB. The authorities referred to a procedure set up in 2016 for the referral, support and treatment of victims of violence which is followed by all SSI units and can be adapted if a possible victim of human trafficking is detected.

148. Access to health care can be provided to victims of THB through the general health-care scheme. Foreign workers, including seasonal workers, pay contributions to the health insurance scheme which entitles them to public health care. Caritas San Marino provides medical assistance to people without resources or in difficult situation, including foreign nationals in an irregular migration situation, who can also have access to emergency medical assistance.

149. There is no shelter for victims of violence in San Marino and the SSI had concluded four agreements with structures in Italy for the provision of safe accommodation to adult women victims of violence, which could be applied to possible female victims of THB.⁸³ All these agreements have been renewed in 2023. According to representatives of the SSI, on average one or two victims of violence per year are transferred to these shelters. GRETA was also informed that male victims could be accommodated in an Italian shelter, but no agreement on accommodation was mentioned.

150. In addition, state funding has been allocated to the Authority for Equal Opportunities for the establishment of an emergency intervention centre for victims of violence, in which victims and their children can be protected for the time necessary to activate the social, health and legal assistance pathway. It includes a day-care centre and a flat which can accommodate up to two adults and two children. The use of the facility can be activated on call when needed to receive victims of violence (adults and children), as well as unaccompanied children or children removed from their homes in order to be placed with suitable families. According to the authorities' comments on GRETA's draft report, the centre is fully operational.

⁸² Since 2021, they have been paid 400 euros per month by the state, while previously they were working on a voluntary basis.

⁸³ Three agreements were concluded between the SSI and Italian sheltering facilities for women and children victims of violence and one agreement for children victims of violence, ill treatment or abuse.

151. The GRETA delegation visited the state-run counselling centre “Centro d’Ascolto” for women victims of violence, set up in July 2013 at the Women's Health unit of the SSI.⁸⁴ The staff of the centre include one doctor and one psychologist specialised in domestic violence. It offers advice and support services, including psychological support to victims. In addition, victims of violence are provided by the centre’s staff with a list of lawyers available for legal counselling (see paragraph 46). GRETA was informed that in 2022, the psychologist of the centre followed training on migration, including basic notions about THB.

152. The free anti-violence helpline that was launched in April 2020 is managed by the psychologist of the counselling centre. It is available in Italian around the clock; during working hours, the centre’s doctor answers the helpline, and after working hours, law enforcement officials who would transmit information about any calls received to the doctor via an email. The hotline is advertised on posters in hospitals and on the government website.

153. GRETA acknowledges the difficulties that State Parties to the Convention with a small territory and population face in providing specialised support services to victims of THB. **While welcoming the agreements concluded with structures in Italy, GRETA considers that the Sammarinese authorities should take further steps to ensure that any presumed and identified victims of trafficking can receive adequate assistance and support, in accordance with the obligations under Article 12 of the Convention, including by developing training for relevant professionals (in particular social workers and health-care professionals) so that the assistance they provide is geared to the needs of any THB victims detected.**

4. Prevention of child trafficking and identification of, and assistance to, child victims of trafficking

154. Concerning measures to prevent child trafficking in San Marino, a project is being implemented at schools for children aged 11-14 aimed at raising awareness of risks related to the use of the Internet, including sexual abuse, cyber bullying and online fraud. Despite the plans mentioned in the second report⁸⁵ to train schools teachers on exploitation of children, including sexual abuse, no such training was organised during the reporting period by the University of San Marino.

155. GRETA was informed that as part of the response of the San Marino authorities to the arrival of Ukrainian refugees,⁸⁶ Ukrainian children were quickly integrated in primary and secondary schools. They were also given the opportunity to follow remotely school courses in Ukraine. Furthermore, several working groups were created to promote projects for the integration of children into schools as well as their inclusion in sport, music, and theatre activities. A group of psychologists was also made available to monitor and follow closely their situation.

156. As regards unaccompanied and separated children, according to the authorities, two Afghan children (teenagers) arrived in San Marino during the reporting period. They were found in a truck crossing the territory of San Marino. The driver was unaware of their presence in the truck. GRETA was informed that child protection and support measures were applied to them, a psychologist attended the interviews with the children, social workers were involved, an interpreter into Pashtun was present during the whole process, and the guardianship judge was informed immediately. A foster family was designated to them, but they disappeared a few days after being found.

⁸⁴ See paragraph 84 of GRETA’s first report and paragraph 63 of GRETA’s second report.

⁸⁵ See paragraph 24 of GRETA’s second report on San Marino.

⁸⁶ There were 135 children out of a total of 399 Ukrainian refugees according to the Report submitted by the authorities of San Marino on measures taken to comply with Committee of the Parties Recommendation CP/Rec(2019)03 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings submitted on 3 June 2022.

157. Representatives of the Child Protection Unit met by GRETA during the visit indicated that no age assessment was conducted in the case of the Afghani children as it was evident that they were minors. GRETA was informed that in case of doubt, the victim is always considered to be a child, that no intrusive measures to determine the age of the victim would take place and that the best interests of the child will be effectively protected.

158. There is no specific identification procedure for child victims of THB. According to the authorities, the same procedure as for the identification of adult victims described in Law No. 97/2008 will be followed in the case of children (see paragraph 137 et seq.), but the Gendarmerie will inform the Minors' Service and a psychologist will be present when the child is interviewed (see paragraph 113).

159. When it comes to assistance measures for child victims of THB, the provisions of Law 97/2008 will apply. If the child is unaccompanied, the guardianship judge will decide upon measures to protect the interests of the child, including the designation of a legal guardian.⁸⁷ All child victims would be referred to the Minors' Service which is responsible for providing care and assistance, including reintegration support, according to the specific needs of the child. The child protection unit will be responsible for providing psychological support to the child victim (see paragraph 54).

160. The Minors' Service concludes agreements with Italian institutions to accommodate and assist child victims of violence, including any child victims of trafficking identified in San Marino. For that purpose, an agreement was concluded in 2020 between the SSI and an NGO in the Italian region of Emilia-Romagna. The Minors' Service is responsible for checking periodically and ensuring that such centres are adequately adapted to the needs of children.

161. GRETA visited the shelter for unaccompanied children in the Italian region of Emilia-Romagna, with capacity to accommodate up to 18 beneficiaries. It consists of two separate houses, one for boys and the other one for girls, each comprising bedrooms, a kitchen, a dining room and a living room. There are 12 social workers ensuring 24-hour presence in shifts of 12 hours each. A psychologist visits the shelter. So far, only one victim of violence has been referred to the centre from San Marino. There is no time limit for children to stay at the shelter and when they turn 18, they are assisted up to the age of 21 with finding a job or pursuing studies. Staff of the shelter informed GRETA that the funding is mainly made up of donations and projects they participate in and that a small amount of their budget comes from the Italian state. San Marino contributes financially for the victims they refer to the shelter.

162. **While welcoming the agreements concluded with Italian institutions, GRETA once again urges the authorities to develop procedures for the identification and referral to assistance of child victims of trafficking, including by:**

- **setting up a child-specific identification mechanism based on multi-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 (educational staff from schools, law enforcement officials, service providers, child protection authorities, education professionals, social workers, legal guardians) are systematically trained and provided with guidance to enable them to proactively identify child victims of THB and know where to refer them for assistance.**

163. **Further, GRETA considers that the Sammarinese authorities should continue their efforts to prevent trafficking in children, in particular by raising awareness of the risks of human trafficking, including recruitment and abuse through internet/social networks.**

⁸⁷ The authority that selects a legal guardian among the professionals included in the list of legal guardians for unaccompanied children is the Child Protection Unit. Most of them are lawyers with experience in cases of violence and familiar with contacts with the Authority for Equal Opportunities and the police. Staff of the social services are never appointed as legal guardians.

5. Recovery and reflection period and residence permits

164. Sammarinese law still makes no provision for granting a recovery and reflection period to victims of trafficking.

165. **GRETA once again urges the Sammarinese authorities to enshrine in their internal law the recovery and reflection period provided for under Article 13 of the Convention and to ensure that it is systematically offered to presumed foreign victims of human trafficking, together with all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. 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.**

166. GRETA was informed that in the event of a foreign victim in need of a residence permit being identified, the Foreign Office would process the application and issue an extraordinary residence permit for a renewable period of one year based on the favourable opinion of the Authority for Equal Opportunities or a court. Article 14 of the Law No. 118/2010, after its amendments in 2015, would be the legal framework applied in this case.⁸⁸

167. In the context of the humanitarian crisis provoked by the Russian aggression against Ukraine, Decree-Law No. 27 was promulgated in March 2022 establishing the issuance of a special stay permit for Ukrainian citizens for a period of three months, renewable for a further three months, guaranteeing free health care, social assistance, and the right to education and other welfare services deemed necessary for the entire period of stay. The special stay permits have been renewed repeatedly for those Ukrainians wishing to extend their stay in San Marino.

⁸⁸

See paragraphs 77 and 78 of GRETA's second report on San Marino.

Appendix 1 - List of GRETA's conclusions and proposals for action

The position of the proposals for action in the text of the report is shown in parentheses.

Topics related to the third evaluation round of the Convention

Right to information

- GRETA considers that the authorities of San Marino should take measures to ensure that presumed victims of THB are proactively provided with information on their rights as soon as they come into contact with a competent authority, and in particular:
 - develop information materials for victims of THB which takes into account the victim's age, maturity, intellectual and emotional capacity, literacy and any mental, physical or other disability which may affect the victim's ability to understand. Information on rights should be provided regardless of the victim's ability or willingness to co-operate in criminal proceedings and should refer to the right to a recovery and reflection period, the services and support measures available, the right to legal aid, the compensation procedure and other relevant civil and administrative remedies and procedures. The information should be available in several languages, present the essence of these rights in a straightforward manner and explain how to exercise them;
 - train and instruct professionals who may come into contact with victims of THB on how to properly explain to victims of THB their rights, including how to exercise them (paragraph 41).

Legal assistance and free legal aid

- GRETA considers that the Sammarinese authorities should guarantee the right to legal assistance and free legal aid for trafficking victims, in particular by:
 - ensuring that legal assistance is systematically provided as soon as there are reasonable grounds for believing that a person is a victim of trafficking;
 - making sure that access to free legal aid for victims of THB does not depend on proof of lack of financial means to pay for a lawyer;
 - raising awareness among law enforcement officials, prosecutors and judges of the right of victims of trafficking in human beings to legal assistance and free legal aid;
 - encouraging the Association of Lawyers and Notaries to develop training on trafficking in human beings for lawyers registered as free legal aid providers (paragraph 48).

Psychological assistance

- GRETA welcomes the existence of psychological support for women and children victims of violence and invites the Sammarinese authorities to ensure that such support is provided to any detected victims of trafficking, regardless of their gender and form of exploitation (paragraph 56).

Access to work, vocational training and education

- GRETA considers that the Sammarinese authorities should adopt such legislative or other measures as may be necessary to ensure effective access to the labour market, vocational training and education for all victims of THB, in line with Article 12(4) of the Convention (paragraph 60).

Compensation

- GRETA considers that the Sammarinese authorities should take steps to facilitate and guarantee effective access to compensation for victims of trafficking, including by:
 - systematically informing victims of trafficking of their right to seek compensation in criminal and civil proceedings and the procedure to be followed, and ensuring that they are provided with effective legal assistance and legal aid to exercise this right;
 - building the capacity of legal practitioners to support victims to claim compensation and including compensation into existing training programmes for law enforcement officials and the judiciary;
 - ensuring that the fund for financial assistance to victims of violence is available to provide state compensation to any identified victims of THB (paragraph 74).

Investigations, prosecutions, sanctions and measures

- 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 79);
- GRETA considers that the Sammarinese authorities should take measures to strengthen the criminal justice response to THB, including by:
 - providing systematic and continuous training on THB to law enforcement officials and judges, including the constituent elements of the crime and the need to adopt a victim-centred approach;
 - ensuring that human trafficking offences for any form of exploitation are promptly and proactively investigated, regardless of whether a complaint is filed by the victim, making use of special investigation techniques in order to gather material, documentary, financial and digital evidence, and not having to rely exclusively on testimony by victims or witnesses (paragraph 88);
- GRETA considers that the Sammarinese authorities should review the effectiveness of the legal provisions on corporate liability in relation to THB offences and take measures to ensure that the criminal liability of legal entities can be acted upon in practice (paragraph 89).

Non-punishment provision

- GRETA urges the San Marino authorities to 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 aims and scope of the non-punishment provision. Furthermore, the non-punishment provision should be included in the training of police officers, prosecutors, judges and lawyers (paragraph 93).

Protection of victims and witnesses

- GRETA invites the authorities of San Marino to ensure that all measures available in law aimed at protecting victims of criminal offences are effectively made available in practice to victims and witnesses of trafficking, to prevent reprisals and intimidation during the investigation, as well as during and after the court proceedings (paragraph 99).

Specialised authorities and co-ordinating bodies

- GRETA urges the authorities of San Marino to ensure that training on THB is integrated into the training curricula of relevant professionals and provides specific guidance geared to the role of each profession in the identification and assistance of victims, and the investigation and prosecution of cases (paragraph 103).

International co-operation

- GRETA considers that the Sammarinese authorities should continue developing international co-operation, in particular with Italy, 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 109).

Gender-sensitive criminal, civil, labour, and administrative proceedings

- GRETA invites the Sammarinese authorities to take the necessary measures to promote a gender-sensitive approach to access to justice for victims of THB, including through gender mainstreaming and training (paragraph 112).

Child-sensitive procedures for obtaining access to justice and remedies

- GRETA invites the Sammarinese authorities to ensure that child-sensitive procedures are consistently followed when investigating, prosecuting, and adjudicating cases of THB, in line with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (paragraph 115).

Role of businesses

- GRETA invites the Sammarinese authorities to strengthen their co-operation with the private sector and raise companies' awareness of their responsibility and role in preventing and eradicating trafficking in human beings, including in business supply chains. GRETA refers in this connection to the United Nations Guiding Principles on Business and Human Rights and to Council of Europe Committee of Ministers recommendations CM/Rec(2016)3 on human rights and business and CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation (paragraph 118).

Follow-up topics specific to San Marino

Developments in the legal, institutional and policy framework for action against human trafficking

- GRETA once again urges the Sammarinese authorities to adopt without further delay a strategic policy document on action against trafficking in human beings, including measures in the areas of prevention, identification of victims, awareness raising and training of relevant professionals, and ensuring that the necessary resources are allocated and that a precise timetable for its implementation is established (paragraph 22);
- GRETA considers that the Sammarinese authorities should involve civil society organisations, including trade unions, in the drafting process of the strategy for combating THB and its operational protocol, as well as in their implementation (paragraph 23).

Measures to prevent and combat trafficking for the purpose of labour exploitation

- GRETA urges the Sammarinese authorities to take further measures to prevent and combat trafficking in human beings for the purpose of labour exploitation, taking into account GRETA's Guidance Note on combating trafficking for labour exploitation and the CM/Rec(2022)21 on preventing and combating trafficking in human beings for the purpose of labour exploitation. This should include steps to:
 - raise awareness amongst professionals, the general public and, in a targeted manner, among migrant workers about the risk of THB for the purpose of labour exploitation and the rights of trafficking victims;
 - strengthen the capacities and resources of the Labour Inspectorate so that they can be actively involved in the prevention of trafficking for the purpose of labour exploitation and the detection of possible victims in different sectors of the economy, including in private households, and paying particular attention to the contracts used for non-EU countries workers;
 - ensure the systematic involvement of qualified and independent interpreters in person or remotely when inspecting at-risk workplaces where foreign workers are being employed;
 - ensure continuous training to labour inspectors on combating THB for the purpose of labour exploitation, proactively identifying victims of trafficking for labour exploitation and the rights of victims;
 - co-operate with trade unions and the private sector in preventing and combating trafficking for the purpose of labour exploitation (paragraph 136).

Identification of victims of trafficking

- GRETA once again urges the Sammarinese authorities to adopt measures to promote the proactive identification of victims of THB, in particular by:
 - developing a multi-disciplinary framework for the identification and referral to assistance of victims of trafficking, involving law enforcement agencies, labour inspectors, health-care staff, social services, civil society organisations and child protection authorities;
 - providing indicators for the identification of victims of THB for different forms of exploitation, as well as guidance and training to all professionals who may come into contact with possible victims of trafficking;
 - increasing 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 141).

Assistance to victims

- While welcoming the agreements concluded with structures in Italy, GRETA considers that the Sammarinese authorities should take further steps to ensure that any presumed and identified victims of trafficking can receive adequate assistance and support, in accordance with the obligations under Article 12 of the Convention, including by developing training for relevant professionals (in particular social workers and health-care professionals) so that the assistance they provide is geared to the needs of any THB victims detected (paragraph 153).

Prevention of child trafficking and identification of, and assistance to, child victims of trafficking

- While welcoming the agreements concluded with Italian institutions, GRETA once again urges the authorities to develop procedures for the identification and referral to assistance of child victims of trafficking, including by:
 - setting up a child-specific identification mechanism based on multi-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 (educational staff from schools, law enforcement officials, service providers, child protection authorities, education professionals, social workers, legal guardians) are systematically trained and provided with guidance to enable them to proactively identify child victims of THB and know where to refer them for assistance (paragraph 162);
- GRETA considers that the Sammarinese authorities should continue their efforts to prevent trafficking in children, in particular by raising awareness of the risks of human trafficking, including recruitment and abuse through internet/social networks (paragraph 163).

Recovery and reflection period and residence permits

- GRETA once again urges the Sammarinese authorities to enshrine in their internal law the recovery and reflection period provided for under Article 13 of the Convention and to ensure that it is systematically offered to presumed foreign victims of human trafficking, together with all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. 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 165).

Appendix 2 - List of public bodies and civil society actors with which GRETA held consultations

Public bodies

- Ministry of the Interior, Civil Service, Institutional Affairs and Relations with Castle Councils
 - o Civil Police
- Ministry of Foreign Affairs, International Economic Cooperation and Telecommunications
 - o Foreign Affairs Department
 - Directorate of Legal Affairs
 - Direction of Political and Diplomatic Affairs
 - o Gendarmerie
 - Foreign Office
 - Judicial Police
 - o Fortress Guard (*Guardia di Rocca*)
- Ministry of Education and Culture, University and Scientific Research, and Youth Policy
 - o Education Department
- Ministry of Labour, Economic Planning, Sports, Information and Relations with the State Company for Public Services
- Ministry for Industry, Handicraft, Trade, Technology Research, and Regulatory Simplification
 - o Economic Department
 - Labour Inspectorate
 - Labour Office and Vocational Training Centre
- Ministry of State for Justice and Family Affairs
 - o Department for Institutional Affairs and Justice
- Authority for Equal Opportunities
- Commission for Equal Opportunities
- Social Security Institute
 - o Mental Health Unit
 - o Children protection Unit
 - o Minor's Service
 - o Coordinator for violence against women and children
- Financial Intelligence Unit of San Marino (AIF)
- Human Science Department of the University of the Republic of San Marino
- Judicial Council
- Judges of the Single Court of San Marino
- Members of the Parliament of San Marino

Civil society actors

- Association of Lawyers and Notaries of San Marino
- Civil protection service
- Democratic Confederation of San Marino Workers (CDLS)
- San Marino Labour Confederation (CSDL)
- San Marino Union of Workers (USL)

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 Sammarinese 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 Sammarinese authorities on 16 July 2024 and invited them to submit any final comments. The comments of the authorities, submitted on 9 September 2024, are reproduced hereafter.

1) Authorities ask to reconsider their comments regarding paragraph no.79:

79.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. However, these provisions do not specify that the trafficking victim's consent to the exploitation is irrelevant. The Sammarinese authorities have referred to the general provisions of the CC which state that a person's consent is not valid if it is obtained by violence or deception.⁴¹ However, as already noted in the previous reports, GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions and provide victims with greater confidence in self-reporting to NGOs and public authorities. **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.**

Article 39(2) of the Criminal Code already states that: *"Consent shall not be valid if it is extorted by violence or given by easily recognisable mistake, obtained by deception or manifested by a person under the age of eighteen years or incapable of understanding"*.

Thus, even though it is a general provision, under the multiple general provisions of the Criminal Code, the victims of trafficking could not be punished. Once again, the Authorities would like to express that the victim's right regarding the principle of non punishment is already guaranteed and respected.

2) Authorities would like to ask for a revision of paragraph no. 92, as previously indicated in the first Authorities' comment

92.In GRETA's view, the possibility to apply the general criminal law provisions cannot be considered as an appropriate response because they are narrower in scope than the non-punishment principle enshrined in the Convention ~~and, in practice, investigating judges leave it to courts to decide whether or not the conditions are met, thus exposing victims to prosecution and pre-trial detention, and shifting the burden of proof to the victim. GRETA notes that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of differential treatment, depending on the investigating judge in charge of the case. Furthermore, GRETA stresses that the non-punishment principle not only applies to criminal liability but also to administrative and other types of liability.~~

With respect to what is referred to in paragraph 92, clarifications are needed. The Investigating Judges, as well as the Deciding Judges, are bound by the general provisions of the Criminal Code, so that they cannot make a committal for trial against trafficking victims. Moreover, the constant dialogue between the Judges in the criminal sector - even higher Judges - through periodic meetings makes it possible to minimize discrepancies in the application of the provisions of the Criminal Code with a view to ensuring within the Court the nomophilic function. Therefore, we request to amend Paragraph 92.

Moreover, as mentioned in the previous point, the Authorities want to underline the applicability of Article 39(2) of the Criminal Code.

3) Authorities would like to modify paragraph no. 121 as follows and they would like to add some useful information:

120. In its compliance report on San Marino on corruption prevention in respect of parliamentarians, judges and prosecutors (2022), GRECO considered that progress had been made, in particular with regard to members of Parliament (a Code of Conduct was adopted, and an advisory committee was established to provide support on ethical issues and potential conflict of interest) and the judiciary

(a vast reform regarding the composition and functioning of the judicial council was undertaken conferring greater guarantees of independence).⁶⁴ ~~However~~ There is no independent anti-corruption body or specialised agency nor a targeted anti-corruption policy in San Marino. However, in recent years, the Public Administration has equipped itself with analysis and planning tools aimed at preventing and countering the risks of corruptive phenomena. This includes the Transparency Regulation and the resolution on the definition of annual and multiannual training plans for all public employees, which includes, among the transversal areas of training, that aimed at preventing corruptive phenomena.

The Authorities would like to point out that the above mentioned measures are mutually complementary and strengthen the Public Administration's path to qualification in the interest of users, through the implementation of regulatory, organisational, procedural and training tools. Measures that have also brought the regulatory and legislative framework in line with international standards and GRECO's recommendations.

Among the cornerstones of this process are the Codes of Conduct for public officers and police officers, the opening of the desk for monitoring the quality of services and for receiving suggestions and complaints, which is also designed to receive suggestions, proposals, and reports both from external users and from the employees themselves concerning risks of distortion. In addition, the training course, which has already been carried out, on ethical standards and anti-corruption addressed to managers and officials, and the one being planned for several years that will cover all employees.

In conclusion, the Authorities wish to mention that the Republic of San Marino welcomed a GRECO delegation in June 2024, which carried out the fifth evaluation visit, to be followed shortly by the adoption of the fifth-cycle evaluation report.