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Reply from San Marino to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Par- ties

Third evaluation round

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

Reply submitted on 3 February 2023



Republic of San Marino
Department of Foreign Affairs

Answers to the questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties

Third evaluation round

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

GRETA

Group of Experts on Action against Trafficking in Human Beings

San Marino, 30 January 2023

REPUBLIC OF SAN MARINO

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Introduction

In accordance with Article 38, paragraph 1, of the Convention on Action against Trafficking in Human Beings ("the Convention"), GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is 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 (THB), 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. Moreover, victims of trafficking, by virtue of their status as victims of human rights violations, are entitled to effective remedies under the European Convention on Human Rights. Access to justice and effective remedies must be guaranteed, in a gender- and age-sensitive manner, to all victims of trafficking subject to the jurisdiction of State Parties, irrespective of their immigration status or presence on the national territory and notwithstanding their capacity or willingness to cooperate in any criminal investigation.

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, regularisation of the victim's stay, the right to seek and enjoy asylum, and the application of the principle of *non-refoulement*. These preconditions, corresponding to different 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, rather than including once again questions related to the same provisions in the general questionnaire for the third evaluation round.

States Parties are requested to transmit to GRETA a reply to this questionnaire **within four months** from the date it was sent. The reply to the questionnaire should be submitted in one of the official languages of the Council of Europe (English and French), and preferably also in the original language. Where appropriate, in order to avoid unnecessary repetition, the reply may refer to information contained in the report submitted by the national authorities on measures taken to comply with the Committee of the Parties' recommendation concerning the implementation of the proposals made in GRETA's second evaluation report. States Parties should provide links, copies or extracts of relevant legislation, regulations, national action plans and case law mentioned in the reply to the questionnaire, in the original language and, wherever possible, also in one of the official languages of the Council of Europe.

A variety of stakeholders and civil society representatives should be effectively consulted in the preparation of the reply to the questionnaire, to ensure that the information provided is as comprehensive as possible.

Part I - Access to justice and effective remedies

1. Right to information (Articles 12 and 15)

1.1 How, at what stage and by whom are presumed victims and victims of THB informed of their rights, the relevant judicial and administrative proceedings, and the legal possibilities for obtaining compensation and other remedies, in a language that they can understand? Please provide copies of any information materials developed to inform victims of THB, including any materials specifically developed for child victims, in the languages in which they exist.

If presumed victims of THB are identified, they would be assisted *prima facie* by law enforcement agencies and promptly informed by them of their rights in a language they understand. If the victim is a child, the Minors' Service is notified without delay.

Victims are not required to take criminal action through a complaint: indeed, the criminal offences referred to in Article 167 of the Criminal Code (Coercion or maintenance in slavery or servitude), Article 168 of the Criminal Code (Trafficking in human beings) and Article 168-bis of the Criminal Code (Incitement to prostitution) - all seriously punishable - are prosecutable *ex officio*.

The offender may be sentenced to pay compensation in both criminal and civil proceedings. No specific information materials for victims of THB have been developed so far, but the documents of the proceedings are translated for those who cannot understand Italian.

Art. 167

(Coercion or maintenance in slavery or servitude)

Anyone who exercises on a person powers corresponding to property rights or anyone who enslaves or keeps a person under continuous subjugation, forcing such person to work, to have sexual intercourse, to beg or provide any performance entailing exploitation, shall be punished by terms of fifth degree imprisonment and fourth degree disqualification.

The reduction into or maintenance in slavery takes place when it is carried out with the use of violence, threat, deceit, abuse of authority or exploitation 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.

The punishment shall be raised by one degree if the crimes referred to in the first paragraph are committed against a minor aged less than 18 years or are aimed at exploiting prostitution or for the purpose of organ removal.

Art. 168

(Trafficking in human beings)

Anyone who trades or otherwise traffics in human beings that are in the conditions referred to in Art. 167, i.e. for the purpose of reducing or maintaining a person in slavery or servitude, induces such person with the use of deceit or forces such person with the use of violence, threat, abuse of authority or exploitation of physical or psychological inferiority or a situation of need, or with the promise or delivery of money or other benefits to the person who has authority over him/her, to enter or stay on or leave the territory of the State or to move within such territory, shall be punished by terms of sixth degree imprisonment and fourth degree disqualification.

The punishment shall be raised by one degree if the crimes referred to in the first paragraph are committed against a minor aged less than 18 years or are aimed at exploiting prostitution or for the purpose of organ removal.

Art. 168 bis
(Incitement to prostitution)

Anyone who incites others to engage in prostitution shall be punished with third degree imprisonment and disqualification from political rights, public offices, profession or art.

The punishment of imprisonment shall be increased by one degree if the offence is committed:

- 1) with violence, threat or deception;
- 2) against a person aged less than 18 or suffering from mental disorders or disabilities;
- 3) against any person having direct family links in descending or ascending line, relative by affinity, adopter, adopted, spouse, brother or sister.

1.2 How is the obligation to provide translation and interpretation services, when appropriate, met at different stages of the legal and administrative proceedings by different agencies?

Victims have the right to an interpreter/translator and the related costs are borne by the State in the proceedings concerning the victims.

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

2.1 How, by whom and from what moment is legal assistance provided to victims of trafficking? How is legal assistance provided to children?

With the initiation of criminal proceedings - which occurs ex officio - legal assistance is provided to victims by qualified lawyers.

Legal assistance is equally provided to children, who are represented in the proceedings by their parents or an ad-hoc curator appointed by the Guardianship Judge. In any case, San Marino legal system offers enhanced protection to meet children's needs. Indeed, if the victim is a child and the fact is committed "by the ascendant, the guardian, the adopter, or other relatives or third parties having significant relationships with the minor or his/her parents, a special curator is entrusted with the representation of the minor in court with a view to protecting the minor's rights. The curator is appointed by the Guardianship Judge upon immediate request by the Investigating Judge." (Article 18 of Law no. 97/2008). In such a case, all procedural acts detrimental to the child's best interest in which the special curator has not participated shall be declared null and void according to the law.

2.2 Do all presumed victims of THB have access to legal assistance, irrespective of immigration status or type of exploitation?

Yes, they do. Legal assistance is provided to victims when they are unable to arrange for their defence (Article 17 of Law no. 97/2008).

2.3 What are the conditions for access to free legal aid for victims of THB, including children? For which types of proceedings is free legal aid available? Is free legal aid available to help victims claim compensation and execute compensation orders? Please provide the text of the relevant provisions.

In addition to access to free legal aid, Article 17 of Law no. 97/2008 states that "In all proceedings, whether civil, criminal or administrative, legal assistance shall be ensured to the victim of violence when he or she cannot objectively afford his/her own legal defence, also outside the conditions to grant legal assistance free of charge." Paragraphs 7 and 8 of the same article also provide that procedural acts performed in the interest of the victim of violence

shall be exempt from all taxes and that the State shall advance the necessary expenses “to perform or to take part in judicial actions, including judicial expert reports, necessary for the protection of the victim of violence”. The State has then the right to seek reimbursement from the offender. Therefore, such assistance is provided not only in criminal proceedings, but in all other proceedings, including in civil proceedings for damages and the enforcement of compensation orders.

2.4 Are there lawyers specialised to provide legal aid and represent victims of THB in court? What regulations, if any, are applicable to the provision of such legal aid/representation?

Article 17, paragraph 2 of Law no. 97 of 2008 establishes a list of experts available to provide their assistance to victims of violence at the San Marino Association of Lawyers and Notaries Public. This list is notified to the competent Social Services, the Law Enforcement Agencies, the Court and the Authority for Equal Opportunities. The Association of Lawyers and Notaries provides for the permanent and specific training of those included in said list by organising interdisciplinary training courses. The provisions of Article 17 of Law no. 97/2008 are applied to this type of assistance.

2.5 How is the provision of legal assistance and free legal aid for victims of THB funded? Do victims have to pay a fee to obtain legal assistance or start a procedure, or are there other financial barriers in place? If yes, please specify the amount(s).

In the case of assistance pursuant to Article 17 of Law no. 97/2008, the costs are immediately borne by the State, which may seek reimbursement from the offender. Lawyers are entitled to payment of the fees by the offender or the perpetrator if violence is established with a final civil or criminal judgement or results from the acts following a specific statement made in adversarial proceedings by the Judge ordering that the criminal proceedings or the civil case be closed, or when protection orders have been taken. Consequently, victims do not bear any costs.

3. Compensation from the perpetrators (Article 15)

3.1 What measures are in place to enable courts to award compensation to victims of THB, including children, from the perpetrators as part of criminal proceedings? What is the role of prosecutors in this respect?

Victims may obtain compensation, at their choice, either in civil or criminal proceedings. Indeed, following the establishment of criminal liability, in all proceedings, the criminal judge may, if requested by the victim, order the defendant to pay compensation for damage also by paying a provisional award.

Otherwise, it is possible to claim compensation before a civil judge. Civil action for damages remains possible even after an acquittal in criminal proceedings because the offence has become time-barred or in the event of discontinuation because the offence has become time-barred.

Children act through a curator appointed by the Guardianship Judge at the request of the social services.

In San Marino criminal proceedings the role of “criminal prosecuting authority” is not played by a Public Prosecutor, but by an Investigating Judge. However, there is the role of Procuratore del Fisco, who is not a judge and is responsible for the lawfulness of judgements.

3.2 How is the amount of compensation calculated and are there specific criteria or models for calculating it? What types of injury/damage and costs are covered? Are there any circumstances/conditions that would lead to a reduction of the amount of compensation?

In general, San Marino legal system recognises compensation for pecuniary damage and non-pecuniary damage. Pecuniary damage includes, for actual damage, the reimbursement of expenses incurred and to be incurred as a result of the offence, as well as, for loss of profit, the reimbursement of sums that could have been received if the offence had not been committed. Non-pecuniary damage includes all the consequences of the offence on the victim that do not directly affect the victim's assets. One component of non-pecuniary damage is bodily injury, i.e. the damage to the person's bodily integrity and health and concerns not only the suffering, but also the consequences that the offence has produced on the victim's social and family life, the pain that results from not being able to have normal living conditions. For the purpose of compensating bodily injury, in order to establish indices guaranteeing the predictability of the amounts paid and the adequacy of the injured party's protection, a life annuity is awarded to the victim equal to three times the social pension multiplied by the capitalisation rates relating to the injured party's age contained in Table no. 3 annexed to Law no. 15 of 11 February 1983, multiplied again by the incidence value of impairments. This method ensures uniformity and consistency of assessments, as it is independent of the injured party's income capacity. Compensation for non-pecuniary damage is always admissible. For the purposes of payment, the judge must take into account "[...] the extent of the offence, the consequences it has caused to the injured party, the conditions as a person, family and citizen [...]. Therefore, the judge must act *arbitratu boni viri* and apply those criteria of presumptive estimation which are established by practical life and common experience. The judge should seek to allocate to the injured party a sum of money securing him/her material benefits approximately suitable to compensate the extent of the moral suffering undergone." (approach consistently followed by case-law). The non-pecuniary damage paid is related to the amount paid as bodily injury. There are no circumstances or conditions that could result in a decreased amount.

3.3 How are compensation orders/verdicts enforced? What measures are in place to guarantee and ensure effective payment of compensation?

Judgements that have become *res judicata* and judgements at first instance the content of which contains only an order to pay a sum of money are enforceable. Therefore, in the event that compensation is not paid voluntarily by the offender, enforcement proceedings may be initiated upon request of a party. Enforcement proceedings are very swift: 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. Also in this case, the costs of these proceedings are borne by the convicted person.

3.4 When foreign victims of THB are removed from or choose to leave the country where the exploitation took place, what measures are in place to enable them to obtain compensation and other remedies?

The remedies are the same as for those who remain in the State.

3.5 What procedures are in place to ensure effective access to compensation for victims of THB for the purpose of labour exploitation? Can such victims bring civil claims for compensation and/or recovery of unpaid wages and social contributions on the basis of tort, labour, employment or other laws? Please specify the relevant measures. Can victims of THB working in irregular employment or without a contract claim unpaid wages and other compensation and if yes, how is the amount of unpaid wages and other compensation established?

It is possible to file an employment case to obtain payment of wages and social contributions. This is also possible for THB victims working illegally or without a contract, because San Marino legal system recognises the principle of favouring the worker, i.e. the weaker party in the employment relationship, regardless of whether the employment relationship is regular or not.

3.6 What training is provided to build the capacity of relevant professionals, such as lawyers, law enforcement officers, prosecutors and judges, to enable victims of THB to obtain compensation and other remedies?

With regard to education, the University of the Republic of San Marino, which organises training courses for school teachers at all levels, organised a training course in 2019 on the following topics:

- From trafficking (e.g. gender-based sexual exploitation) to *gender-based violence* in migrations of asylum seekers. Introduction to the topic of trafficking starting from gender-based violence, which includes the different forms and levels of violence experienced by women (with reference to Articles 60-61 of the Istanbul Convention).
- The abuses and situations of violence experienced by women during the migration process and subsequently in the countries in which they arrive (also with reference to field research, particularly in Sicily, with pictures and concrete examples of life stories).

The course is addressed to teachers and health and social workers.

Barbara Pinelli taught the course. Barbara Pinelli teaches Anthropology of Migration Processes at the University of Milan-Bicocca. She deals with forced migration and refugees, combining perspectives of political anthropology, studies on power and subject with feminist and gender reflections. Her research focuses on gender-based violence in the migration of women asylum seekers. The University of San Marino (in particular the Department of Education) had planned a second meeting on the subject, to be opened up also to other professional categories, but the feedback of teachers on the first course discouraged the University from continuing the course.

With regard to law enforcement officers, the agents of the Gendarmerie Corps participated in a training course entitled 'Combating trafficking in human beings and smuggling of migrants', organised by the Italian "International Advanced Training Institute for the Prevention and the Fight against Organized Crime" from 22 November to 2 December 2022. On that occasion, the Training Institute relied on contributions from the specialised police forces of several countries (Estonia, Croatia, Kosovo).

The Authority for Equal opportunities undertakes every year to develop a training plan, in cooperation with the University of San Marino, to provide solid training to lawyers, teachers and operators on the issue of violence.

With regard to the training of the Judiciary, the Judicial Council approved a training plan for magistrates that specifically includes "gender-based violence and protection instruments for abused persons" as one of the main topics in the criminal sector. This issue includes specific training in the context of all offences against personal freedom, including offences under Sections 167 and 169.

4. State compensation (Article 15)

4.1 Do the eligibility criteria for State compensation schemes for victims of crimes exclude some victims of THB (e.g. due to irregular residence status, nationality, nature of the offence)? Does access to State compensation depend on the outcome of the criminal case and on failure to obtain compensation from the offenders?

No specific compensation is provided only for the crime of trafficking, but Law no. 57 of 6 March 2016 states that the victims of the acts of violence covered by the Istanbul Convention shall be given the right to bring action before the competent Judicial Authorities to obtain compensation for any damages resulting from the State Authorities' failure to take, for wilful misconduct or gross negligence, preventive or protective measures within the scope of their powers, in relation to the offences referred to in the Convention.

4.2 How is the amount of State compensation calculated so as to address the gravity of the harm endured by the victim?

Damages are calculated in the same way as compensation for damages from offenders (see question 3.2).

4.3 Is it possible for foreign victims of trafficking to submit claims for State compensation in your country after being returned or repatriated to their countries of origin? Please provide examples of any such cases and indicate the measures stipulating such a possibility.

Even if this has never occurred, there is no impediment to claiming compensation even if the person is returned to his/her State of origin. Regarding the modalities, please see the answers to the previous questions.

4.4 Are victims seeking State compensation liable for lawyers' costs and fees? Are State compensation awards subject to taxation? Does the receipt of compensation have consequences for access to social security or other benefits?

Victims claiming compensation from the State may request legal assistance under Article 17 of Law no. 97/2008, and therefore do not have to bear any costs.

Compensation from the State is not subject to taxation.

Receiving compensation does not affect access to social security or other benefits.

5. Sanctions and measures (Article 23)

5.1 Please describe the legislative and other measures adopted by your country which allow to: i) confiscate or otherwise deprive perpetrators of the proceeds of criminal offences, or property of an equivalent value to those proceeds; and ii) identify, trace, freeze or seize rapidly property which is liable to confiscation, in order to facilitate the enforcement of a later confiscation. Do these measures allow the identification, tracing and seizure of property into which the proceeds of illicit activities have been converted?

Below are the relevant provisions of the Criminal Code and the Code of Criminal Procedure. These measures make it possible to identify, trace and seize the assets into which these proceeds are converted.

Art. 58-quater

(Preservation order and advance registration of the lien)

1. The party bringing the civil action may request the adoption of the preservation order or

the advance registration of the general lien against the defendant or the third party civilly liable at any stage and instance of the proceedings, to secure that the obligations resulting from the crime referred to in Article 140, numbers 2 and 3 of the Criminal Code are met.

2. The Procuratore del Fisco may request the adoption of the preservation order or the advance registration of the general lien against the defendant at any stage and instance of the proceedings, as security for the payment of the pecuniary sanction, the costs of the proceedings and any other sum due to the State Treasury.

3. [...]

Art. 58-quinquies

(Preventive seizure)

1. The Judge shall order the preventive seizure of things relevant to the crime when the requirement of *fumus commissi delicti* is met and there is a concrete and current danger that the free availability of the assets may aggravate or extend the consequences of the crime, or facilitate the perpetration of other crimes.

2. [...]

3. Members of the police forces may order preventive seizure when, for reasons of urgency and necessity, it is not possible to wait for the order of the judicial authority. The report of the operations carried out shall be sent within forty-eight hours to the Investigating Judge, who, if the conditions are met, shall validate it within the following ninety-six hours, under penalty of forfeiture of the measure.

Art. 58-sexies

(Preventive seizure for the purpose of confiscation and confiscation in case of extinction of the crime)

1. At each stage of the proceedings, the Judge shall identify the things to be confiscated pursuant to Article 147, paragraphs 1 and 2, those whose confiscation shall be ordered in the cases referred to in Article 147, paragraphs 8 and 9, and, in proceedings for the crimes referred to in Article 147, paragraph 10 of the Criminal Code, the money and other assets whose legitimate origin is not justified by the suspect or defendant. If the Judge considers that the free availability of such assets to the holders may jeopardise confiscation, he/she shall order their seizure by means of a reasoned decree.

2. If, during the investigations, the seizure of assets pursuant to the preceding paragraph is ordered, the Investigating Judge, in case of dismissal due to extinction of the crime, shall order that the seizure be maintained by means of a reasoned decree on the existence of the crime and the legal qualification of the seized assets intended for confiscation pursuant to Article 147 of the Criminal Code. The adversarial proceedings with the party subject to the seizure and any third parties in good faith shall continue for the sole purpose of verifying whether the conditions set forth in Article 147 of the Criminal Code, excluding those arising from the extinction of the crime, are met. If the Investigating Judge establishes that the conditions set forth in Article 147 of the Criminal Code are met, he/she shall order the confiscation of the assets by means of a judgement.

3. With the judgement of acquittal due to the extinction of the crime vis-à-vis the defendant subject to the seizure of assets referred to in paragraph 1, the Judge, after establishing the existence of the crime and the legal qualification of the assets seized and intended for confiscation pursuant to Article 147 of the Criminal Code, shall order the confiscation of the assets.

4. The Judge shall proceed according to paragraphs 2 or 3, depending on the stage of the proceedings, also with respect to the money and assets subject to seizure under paragraph 1 and intended for confiscation under Article 147, paragraph 10 of the Criminal Code, if, by means of the decision to dismiss the case or the judgement of acquittal due to the extinction of the crime, the crime and the liability of the holder are nevertheless deemed to exist and

the value of the seized assets is disproportionate to the amount of legitimately earned income, declared economic activities or habitual standard of living.

5. In case of extinction of the crime, if the Judge does not order the continuation of the proceedings pursuant to paragraph 2 or does not proceed to confiscation at the same time as the acquittal pursuant to paragraph 3, the seizure shall cease to be effective and the Judge shall order the assets to be returned to the entitled parties.

6. In case of death of the interested party, the proceedings for the enforcement of the confiscation order shall continue against the heirs or legatees.

7. In case of seizure ordered pursuant to paragraph 1 and for the purposes referred to in Article 147, paragraph 2 of the Criminal Code, the Judge shall order the confiscation of the assets by means of the decision to dismiss the case or of the judgement, including non-final.

8. Ordinary remedies and the remedy provided for in Article 199bis shall be admitted against the decree ordering the confiscation of the assets in case of extinction of the crime.

Art. 147

(Confiscation)

1. By passing a judgement establishing the defendant's liability, the judge shall order the confiscation of the instrumentalities that served or were destined to commit the offence, and of the things being the price, product or profit thereof.

2. Regardless of conviction, confiscation shall also apply to the illegal making, use, carrying, holding, sale of or trade in property even not owned by the offender.

In the event of acquittal due to mental illness, the confiscation of the instrumentalities referred to in paragraph 1 shall always be mandatory when there is an ascertained and tangible risk that they might be used by the individual to commit offences.

3. For the purposes of confiscation, the assets that the offender has fictitiously registered in the name of third persons or, in any case, owns through an intermediary, shall be regarded as belonging to him/her.

4. The confiscation of the profit, price or product of the offence shall also be ordered against the person who, having nothing to do with the offence, has taken advantage thereof, if he/she could be aware of the illicit origin of the things available to him/her.

5. Confiscation may also be ordered with respect to property the ownership of which has been transferred to a person other than the offender by virtue of inheritance law. In this case, confiscation shall be ordered only with respect to the assets currently available to the heir.

6. Confiscation shall not affect the rights of bona fide third parties on the things confiscated.

7. If the instrumentalities indicated in paragraph 1 above cannot be confiscated for any reason, the judge shall order the confiscation of money, property or other benefits available to the convicted person, also through an intermediary, for a value corresponding to the product, profit or price of the offence.

8. When the instrumentalities referred to in paragraph 1 have been intermingled, in whole or in part, with property acquired from legitimate sources, the judge shall order the confiscation of the intermingled proceeds, up to the assessed value of the instrumentalities that served or were destined to commit the offence or of the things being the price, product or profit thereof. If the instrumentalities referred to in paragraph 1 have been transformed or converted, in whole or in part, in other assets, confiscation shall affect such assets, as well as the benefits deriving from the transformation, conversion or intermingling.

9. In case of conviction for the offences referred to in Articles [...] 167, 168, 168 bis, 169, 177 bis, 177 ter [...], the Judge shall order the confiscation of money, property or other benefits available to the convicted person, of which the offender is not able to demonstrate the lawful origin.

10. [...]

5.2 In what way do victims of THB benefit from seized and confiscated assets of perpetrators of THB? Do the confiscated assets go directly to victims, to a compensation fund or scheme for victims of trafficking or to other programmes for the assistance or support of victims of THB? Please provide information on seizures and confiscations of assets in THB cases and how they were used.

Victims are entitled to compensation for damages. Instead, confiscated properties or equivalent sums shall be transferred to the State Treasury.
To date, there have been no cases of trafficking and consequently no seizures and confiscations related to such offence.

5.3 Is it possible to use plea bargaining or some other form of settlement in cases of THB? If yes, please provide the relevant provisions. What protections are in place for victims of THB to ensure that their right of access to justice and effective remedies is not compromised by the plea bargaining or settlement in the legal process?

The plea bargaining procedure was introduced in San Marino legal system in March 2022 (Law no. 24 of 2 March 2022 "Provisions to implement the guarantees and ensure the efficiency of criminal proceedings"). Plea bargaining applies to offences for which the sentence of imprisonment, taking into account the circumstances and reduced on account of plea bargaining, does not exceed six years. Therefore, it could be difficult to apply in the case of trafficking. In any case, plea bargaining does not prevent proceedings for compensation for damages and confiscation of the seized assets, so that the rights of the victims could not be compromised in any way.

5.4 What is the average duration of court proceedings in THB cases? In which circumstances are such cases given priority? Do you have a system to fast-track human trafficking-related prosecutions in order to improve the trial process and reduce the burden on victims and witnesses, including children? What safeguards are in place to ensure that judges deal with cases of THB without undue delay?

To date, there has not been a trial for trafficking in human beings in the Republic of San Marino.

However, the priority criteria on the organisation of judicial work provide for priority to be given to offences that involve a serious and socially relevant criminal conduct. Therefore, in the case of trafficking, the proceedings would have absolute priority. The most urgent proceedings according to priority criteria, such as cases of violence against women, are decided in an average time of no more than three years.

5.5 How do you ensure that sanctions for THB offences are effective, proportionate and dissuasive?

The San Marino Criminal Code provides for the offences referred to in Article 167 ("*Coercion or maintenance in slavery or servitude*") and 168 ("*Trafficking in human beings*") to be punishable by fifth (from six to fourteen years) and sixth-degree (from ten to twenty years) imprisonment respectively, depending on the seriousness of the fact.

Such punishments shall be raised by one degree if the crimes are committed against a minor aged less than 18 years or are aimed at exploiting prostitution or for the purpose of organ removal.

6. Ex parte and ex officio applications (Article 27)

6.1 What is the procedural position of a victim of THB in criminal proceedings? What steps are taken to assist victims of THB, including children, to enable their rights, interests and views to be presented and considered during the criminal proceedings against offenders? Who is entitled to assist victims of THB in court? Can victims of THB be represented by NGOs in criminal proceedings?

There are no special procedures, positions or protections for victims of trafficking other than those provided for victims of offences. However, Article 24 of Law no. 97/2008, which provides for special protection of the victim during the trial, shall apply. Indeed, in the present case, the trial always takes place in camera if the victim is a minor and upon request of the victim of the offence if the latter is of legal age.

Moreover, testimonies and confrontations are not repeated if the defendant's right of defence was guaranteed during the investigation and, in any case, if there is a video recording. If the hearing or confrontation has to be repeated, psychological support is offered during the hearing. If the victim of the offence is a minor, repetition may not be ordered if there is a concrete danger of worsening the minor's conditions, which must be ascertained by means of a legal examination, after hearing the expert witnesses.

In the case of proceedings referred to in Law no. 97/2008, the Authority for Equal Opportunities has the right to intervene and join the proceedings as a civil party. To this end, the Investigating Judge immediately notifies the Authority of the criminal proceedings.

Since there have been no criminal proceedings for trafficking to date, NGOs have not had the opportunity to join the proceedings as civil parties. However, associations that have the protection of general interests among their statutory purposes - including, precisely, NGOs - can take a position in favour and in support of the victim.

6.2 If the authorities fail to discharge their obligation to effectively investigate and prosecute suspected cases of trafficking, what possibilities for redress exist for victims of THB and their families? To what extent have victims of trafficking, including children, access to complaint mechanisms, such as Ombudsman institutions and other national human rights institutions?

If criminal proceedings are dismissed, an appeal against the decision to dismiss the case is permitted. Since these are offences that can be prosecuted ex officio, omissions by investigating judges could still be relevant from a disciplinary and criminal point of view.

The San Marino legal system does not provide for the position of Ombudsman. However, the Authority for Equal Opportunities guarantees, promotes and supports any initiative aimed at preventing the phenomenon of violence in general, guaranteeing, in various ways, support to victims.

6.3 What reporting and complaint mechanisms are in place for victims of trafficking who are in an irregular migration situation and/or in detention?

The mechanisms are the same for all citizens of the Republic of San Marino; there are no exclusions or obstacles for immigrants who are in an irregular migration situation and/or in detention.

6.4 Can victims of THB bring claims against the State or its officials for: i) direct involvement in THB; ii) failure to prevent THB or protect them from THB? Have there been cases where State agents or persons acting on behalf, or at the direction, of the State were found responsible for engagement in THB and/or failure to prevent it or protect victims from THB by third parties? Please provide information on any prosecutions against diplomatic and consular staff for alleged involvement in THB.

As mentioned, there have been no cases of trafficking so far. However, all those who participated in the commission of the offence, including state officials, may be held criminally responsible. Proceedings for compensation of damages may also be brought against them.

6.5 What steps have been taken to strengthen and maintain the capacity of prosecutors to effectively prosecute trafficking cases?

Our criminal system does not provide for the role of public prosecutor, but that of the Investigating Judge, who is a Law Commissioner (judge of first instance) and who is assigned wide-ranging investigative powers in criminal matters.

7. Non-punishment provision (Article 26)

7.1 Please indicate what measures are taken to ensure that victims of THB, including children, are not punished for their involvement in unlawful activities (criminal, civil, administrative offences), to the extent they were compelled to do so, providing any concrete examples of their implementation.

The San Marino Criminal Code provides in Article 33 that "A person shall not be punished if he/she has been forced to commit an offence, through physical violence from which he/she could not escape. In this case, the author of violence shall be held responsible for the offence committed by the forced person".

7.2 Can persons who have breached national laws in the course, or as a consequence, of being trafficked have access to remedies for victims of trafficking, including State compensation?

Persons who have violated national laws during or as a result of trafficking may have access to the remedies provided for victims of trafficking. No specific State compensation is provided only for the crime of trafficking, but Law No. 57 of 6 March 2016 states that the victims of the acts of violence covered by the Istanbul Convention shall be given the right to bring action before the competent Judicial Authorities to obtain compensation for any damages resulting from the State Authorities' failure to take, for wilful misconduct or gross negligence, preventive or protective measures within the scope of their powers, in relation to the offences referred to in the Convention.

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

8.1 How are victims of THB protected in practice against potential retaliation or intimidation before, during and after legal proceedings? How is the assessment of the needs for protection performed and who recommends the application of the protection measures? Who is responsible of the implementation of the protection measures?

In the case of offences against personal safety, freedom or maltreatment of a person, Law no. 97/2008 provides for ensuring psychological support to the victim by experts when the victim is examined as a witness or during the confrontation with the defendant or other witnesses.

When a judicial or medical and legal examination has to be conducted during the proceedings, the expert shall be preferably chosen among professionals of the same sex of the victim.

The examination of the victim in court shall take place so as to avoid having to repeat it. To this end, the Investigating Judge shall take all appropriate measures, including video recording

the hearing. If the victim of the offence is a minor, the Investigating Judge shall examine the victim of the offence, in confrontation with the defendant or witnesses, through the use of a two-way mirror and an intercom system or through the use of other suitable equipment that guarantees confidentiality. The hearing must be video-recorded. The minor shall always be assisted by a child psychologist auxiliary to the Judge.

Moreover, Article 24 (*Protection of victims during the trial*) of Law no. 97/2008 ensures that the trial takes place in camera if the victim is a minor. The trial is held in camera even when it is requested by a victim of legal age.

In order to protect the victim, testimonies and confrontations are not repeated if the defendant's right of defence was guaranteed during the investigation and, in any case, if there is a video recording. If the victim of the offence is a minor, repetition shall not be ordered if there is a concrete danger of worsening the minor's conditions, which must be ascertained by means of a legal examination, after hearing the expert witnesses.

The Judge, in order to protect the victim, may order the removal from the family home of the spouse or cohabiting partner who has acted in a detrimental way against the victim, ordering him/her not to approach places usually frequented by the applicant. The Judge may also order the involvement of social workers or a family mediation centre, as well as of associations whose statutory purpose is the support and reception of women and children or other victims of abuse and ill-treatment. In the event that removal is ordered and is not spontaneously executed, the Judge may order forced removal by Law Enforcement Agencies. The Judge may also indicate the appropriate measures to prevent subsequent breach of barrings orders, including the supervision and assistance of Law Enforcement Agencies.

8.2 How do you ensure that victims are provided with realistic and practical information about the progress of the case and whether the perpetrator has been detained or released?

The assistance of a lawyer is guaranteed throughout the criminal proceedings. Such lawyer is granted access to the documents in the file.

8.3 How do you ensure respect for the victims' right to safety, privacy and confidentiality during court proceedings?

See answer to question 8.1.

8.4 In how many cases were witness protection measures used for the protection of victims and witnesses of THB, including children? If witness protection measures/programmes are not applied to victims of trafficking, what are the reasons?

So far, there have been no cases of trafficking, but should this happen, please see the answer to question 8.1.

8.5 When victim protection is provided by NGOs, how are NGOs resourced and supported to perform this function and how do the police and the prosecution co-operate with NGOs?

As already mentioned (answer to question 6.1), in the case of proceedings under Law no. 97/2008, the Authority for Equal Opportunities has the right to intervene and to join the proceedings as a civil party. Among the items of expenditure attributable to the Department of Institutional Affairs and Justice, a Fund shall be established in the State Budget for financial assistance to victims and be allocated to the Authority, which provides appropriate financial assistance to victims based on the resources available in the fund. The Authority, after ascertaining the need for resources, shall ensure their timely provision.

The Authority, in addition to being promptly informed of criminal proceedings by the Investigating Judge, shall be constantly informed by the police about cases of violence (Article 32 of Law no. 97/2008).

8.6 How do you ensure that child victims of THB are treated in a child-sensitive way and are provided with protection before, during and after judicial proceedings in accordance with the Council of Europe Guidelines on Child Friendly Justice? Are interviews with children conducted in specially designated and adapted spaces by professionals trained to interview children? What measures are taken in order to ensure a limited number of interviews?

Without prejudice to the answers to the previous questions, in the proceedings minors are represented by their parents or an ad-hoc curator appointed by the Guardianship Judge. Moreover, if the victim is a child and the fact is committed “*by the ascendant, the guardian, the adopter, or other relatives or third parties having significant relationships with the minor or his/her parents, a special curator is entrusted with the representation of the minor in court with a view to protecting the minor’s rights. The curator is appointed by the Guardianship Judge upon immediate request by the Investigating Judge.*” (Article 18 of Law no. 97/2008). In such a case, all procedural acts detrimental to the child's best interest in which the special curator has not participated shall be declared null and void according to the law.

In addition, pursuant to Article 24 of Law no. 97/2008, the trial is held in camera when the victim is a minor.

If the victim of the offence is a minor, the repetition or confrontation shall not be ordered if there is a real danger of worsening the victim's conditions.

The Court has spaces and equipment that allow for a child-friendly interrogation, however, child hearings take place in a protected manner at the Minors' Service with the assistance of a psychologist.

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

9.1 What budget, staff and resources, including technical means, are put at the disposal of law enforcement bodies specialised in combating and investigating THB?

Within the Police Forces, and in particular the Gendarmerie, there is an ad hoc office for cases of gender-based violence and violence against minors which is responsible for receiving reports. When it receives a report, this office offers immediate support to the victim, including by providing him/her with documents containing a list of lawyers with experience in cases of violence and their contact details. They are also given the contact details of a counselling centre for victims of violence and of the Authority for Equal Opportunities.

9.2 If your country has specialised units for financial investigations, financial intelligence units and asset and recovery units, please describe whether and how are they used in investigating and prosecuting THB cases. Which special investigation techniques do these units use? Which public and/or private bodies do these specialised financial investigation units cooperate with in relation to THB cases?

No trafficking cases have ever occurred. However, San Marino has several entities responsible for this matter. These include the Financial Intelligence Agency (FIA), which, ex officio and on the basis of reports from public and private entities, carries out control activities on capital flows (by consulting up-to-date databases and softwares for cross-checking financial data, including foreign ones) with suspected illegal origin. Banking and financial secrecy shall not be invoked against the FIA, which can receive information and cooperate with police forces and the Interpol (as far as transnational crime is concerned) as well as with foreign financial

intelligence units. There is also the Anti-Fraud Squad, which carries out specific tasks in the field of financial investigations including, in particular, financial crimes committed through the use of false invoices and other commercial frauds. Finally, the Inter-agency Operations Centre acts as a judicial police body, which provides support to the investigations of the judicial authorities. All these authorities, together with the Gendarmerie specialised sections for IT investigations, also carry out activities for the identification of goods originating from a crime or property.

10. International co-operation (Article 32)

10.1 How does your country co-operate with other countries to enable victims of THB to realise their right to redress and compensation, including recovery and transfer of unpaid wages after they leave the country in which the exploitation occurred?

10.2 Has your country co-operated with other countries in the investigation and prosecution of THB cases through financial investigations and/or Joint Investigation Teams? Please provide statistics on such cases and examples from practice.

10.3 How many mutual legal assistance requests and/or European Investigation Order have you made in THB cases and what was their outcome?

10.4 What forms of international co-operation have proven to be particularly helpful in upholding the rights of victims of trafficking, including children, and prosecuting alleged traffickers?

10.5 What international co-operation measures are in place to ensure protection and assistance to victims on return from your country to their countries of origin following their participation in criminal proceedings?

10.6 What international co-operation measures are in place to protect and assist victims of THB for the purpose of sexual exploitation through online streaming where the perpetrator is a national or habitual resident of your country and elements of the crime have occurred in your country's jurisdiction?

As no cases of trafficking have occurred so far, no judicial or police cooperation has been initiated. In any case, for each crime, the Police Forces of the Republic of San Marino cooperate with the corresponding Authorities of other Countries, in particular through the Interpol National Bureau and Europol, with which a 'working arrangement' was recently concluded. The judicial authorities cooperate and collaborate by means of an intense exchange of international letters rogatory, which are executed on the basis of the most widespread international models of judicial cooperation.

11. Cross-cutting questions

11.1 What steps are taken to ensure that victims of THB have equal access to justice and effective remedies, irrespective of their immigration status and the form of exploitation?

Victims of trafficking can have access to free and qualified legal assistance under Article 17 of Law no. 97/2008.

11.2 What steps are taken to ensure that criminal, civil, labour and administrative proceedings concerning victims of THB are gender-sensitive?

The measures set out in Law no. 97/2008 guaranteeing special protection for persons who suffer acts of sex or gender-based violence apply.

11.3 What steps are taken to ensure that procedures for obtaining access to justice and remedies are child-sensitive, readily accessible to children and their representatives, and give weight to the child's views?

See answer to question 8.6.

11.4 What steps are taken to ensure that private entities take steps to prevent and eradicate trafficking from their business or supply chains and to support the rehabilitation and recovery of victims? What options exist for victims of trafficking to access effective remedies from businesses implicated in human trafficking?

The legal system provides for a set of particularly strict checks to ensure that irregular workers and victims of trafficking are not employed, as well as severe sanctions for employers who employ such persons. On the contrary, the victims receive special protection (on this subject, please see the answer to question 11.4).

11.5 What legal, policy and practical measures are taken in your country to prevent and detect situations where corruption facilitates human trafficking and infringes the right of victims of THB of access to justice and effective remedies? Please provide information on any known or proven cases of corruption or related misconduct of public officials in THB cases and any sanctions issued.

San Marino has been a member of GRECO since 2010, distinguishing itself as one of the most virtuous countries in promptly and timely fulfilling the Recommendations. There have been cases of corruption, but so far not related to trafficking.

Part II – Country-specific follow-up questions

12. Please provide information on new developments in your country since GRETA's second evaluation report concerning:

- emerging trends of trafficking in human beings (new forms of exploitation, new recruitment methods, vulnerable groups, gender-specific aspects of trafficking, child trafficking);
- the legislation and regulations relevant to action against THB (e.g. criminalisation of THB, identification and assistance of victims of THB, recovery and reflection period, residence permit, supply chains, public procurement);
- the institutional and policy framework for action against THB (bodies responsible for co-ordinating national action against THB, entities specialised in the fight against THB, national rapporteur or equivalent mechanism, involvement of civil society, public-private partnerships);
- the current national strategy and/or action plan for combating trafficking in human beings (objectives and main activities, bodies responsible for its implementation, budget, monitoring and evaluation of results);
- recent case law concerning THB for different forms of exploitation.

No cases of trafficking have been reported to date, so there have been no new legislative or case-law developments on the subject.

13. Please provide information on measures taken in your country in respect to the following recommendations made in GRETA's second evaluation report:

- Adopt a policy document (in the form of an action plan or strategy) in the area of trafficking in human beings or incorporate action to combat human trafficking in an already existing policy document plan.
- Take steps to ensure that training on human trafficking is provided to relevant officials;
- Develop a multi-disciplinary framework for the identification and referral to assistance of victims of trafficking;
- Take legislative or other measures as may be necessary to ensure that all presumed and identified victims of trafficking can receive adequate assistance and support, in accordance with the obligations under Article 12 of the Convention, regardless of their gender or the form of exploitation;
- Review the legislation in order to ensure that the recovery and reflection period is specifically defined in law as provided for in Article 13 of the Convention, and that all possible foreign victims of trafficking are offered a recovery and reflection period.

As mentioned on other occasions, the Republic of San Marino, due to its geographical size and location, its history and the number of its inhabitants, is characterised by resilient, strong and close social relations. The territory of San Marino is then divided into 9 districts (Townships), headed by a sort of mayor (Head of the Township Council) and a city council (Township Council). Institutions are therefore very close to citizens and easily accessible. The Captains Regent (Heads of State) receive citizens once a week. Any citizen can ask to talk with them for all kinds of petitions and this generally happens weekly without delay.

Since 1955 health care has been free for all San Marino citizens or residents. The Social Security Institute¹ (SSI) is responsible for health and social welfare and provides a wide range of both health services and economic benefits such as sick pay, family allowances, pharmaceutical assistance, social and health care, pensions. In addition to managing the State Hospital, located in a central position, SSI provides public health territorial services, located in several areas of the Republic (3 Health Centres, a Centre for women's health, 7 pharmacies spread over the territory, a Mental Health Centre, a Minors' Service, a Service for people with disabilities and residential care, a Residential Elderly Care Centre, a Home Care Service with two Centres).

In San Marino there are three major trade unions (the Democratic Confederation of San Marino Workers, the San Marino Labour Confederation, the San Marino Union of Workers), which, in addition to their institutional role of defending worker's rights, provide citizens with various support services and point of contact dedicated to specific issues.

A very lively and dynamic sector in San Marino is that of associations in all fields of civil activity, which gathers at least 183 associations (this is the number of associations recorded in 2020

¹ <http://www.iss.sm/on-line/home/chi-siamo.html>

which benefited from the voluntary contribution deriving from general income tax; such figure, however, does not include the associations which have not benefited from it and de facto associations).

Given the aforementioned specific features, the presence of victims of trafficking in human beings, both in the workplace and in the family, and not promptly reported to the authorities constitutes a very remote possibility.

In the recent past, there have been a few cases of foreign nationals who immigrated illegally (without identification documents): in 2013 (ten Afghan nationals) and in 2021 (two citizens of Middle Eastern origin). In both cases, the police, social and health services immediately intervened to feed the illegal immigrants and find them a good accommodation. In both cases, they all left the country as soon as they could.

The real extent of the phenomenon has led the institutions to postpone the implementation of further legislative measures consistent with the above Recommendations, which would certainly be more suitable, useful and effective for a larger country, or one that is even marginally affected by the phenomenon of trafficking. Indeed, the current assistance, support and participation measures are considered, at least at present, to effectively address the phenomenon if concrete cases of trafficking occur, without prejudice to the willingness to implement further and immediate protection measures that may be necessary in the future.

Part III - Statistics on THB

14. Please provide the following statistics, **per year starting with 2015**, where available disaggregated as indicated below:

- Number of presumed victims and identified victims of THB in the sense of having been recognised by a state institution or mandated NGO as bearers of rights to services provided for by the Convention (with breakdown by sex, age, nationality, form of exploitation, internal or transnational trafficking, and body which identified them).
- Number of victims of THB identified as part of the asylum procedure (disaggregated by sex, age, nationality, form of exploitation).
- Number of victims of THB who received assistance (disaggregated by sex, age, nationality, form of exploitation, internal or transnational trafficking).
- Number of child victims of THB who were appointed legal guardians.
- Number of victims of THB granted a recovery and reflection period (disaggregated by sex, age, nationality, form of exploitation).
- Number of victims of THB granted a residence permit, with an indication of the type of the permit and its duration (disaggregated by sex, age, nationality, form of exploitation).
- Number of persons given refugee status or subsidiary/complementary protection on the grounds of being victims of THB (disaggregated by sex, age, nationality, form of exploitation).
- Number of victims of THB who claimed compensation, who were granted compensation and who effectively received compensation (disaggregated by sex, age, nationality, form of exploitation, with an indication of whether the compensation was provided by the perpetrator or the State, and the amount awarded).
- Number of victims of THB who received another form of financial support from the State, with the indication of the amount received.
- Number of victims of THB who received free legal aid.
- Number of victims of THB who were returned or repatriated to/from your country (disaggregated by sex, age, country of destination, form of exploitation).
- Number of investigations into THB cases (disaggregated by type of exploitation, with an indication of the number of victims concerned).
- Number of prosecutions in THB cases (disaggregated by type of exploitation, with an indication of the number of victims and defendants concerned).
- Number of convicted perpetrators of THB (disaggregated by sex, age, nationality, form of exploitation).
- Number of convictions for THB, with an indication of the form of exploitation, whether the victim was adult or child, the type and duration of the penalties, and whether they were effectively enforced or suspended.
- Number of judgments in THB cases resulting in the confiscation of assets.
- Number of convictions of legal entities for THB.

No cases of trafficking have been reported at least so far in the Republic of San Marino