

ECRI

European Commission against Racism and Intolerance
Commission européenne contre le racisme et l'intolérance

CRI (2003) 42

European Commission against Racism and Intolerance

SECOND REPORT ON SAN MARINO

adopted on 20 March 2003

Strasbourg, 4 November 2003



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

For further information about the work of the European Commission against Racism and Intolerance (ECRI) and about the other activities of the Council of Europe in this field, please contact:

Secretariat of ECRI
Directorate General of Human Rights – DG II
Council of Europe
F - 67075 STRASBOURG Cedex
Tel.: +33 (0) 3 88 41 29 64
Fax: +33 (0) 3 88 41 39 87
E-mail: combat.racism@coe.int

Visit our web site : www.coe.int/ecri

TABLE OF CONTENTS

FOREWORD	5
EXECUTIVE SUMMARY	6
SECTION I: OVERVIEW OF THE SITUATION	7
A. INTERNATIONAL LEGAL INSTRUMENTS.....	7
B. CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS	8
- Law on citizenship.....	8
C. CRIMINAL LAW PROVISIONS.....	9
D. CIVIL AND ADMINISTRATIVE LAW PROVISIONS	10
E. SPECIALISED BODIES AND OTHER INSTITUTIONS	10
F. EDUCATION AND TRAINING/AWARENESS-RAISING	11
- Schools.....	11
- General public.....	11
G. RECEPTION AND STATUS OF NON-CITIZENS	12
- Immigrants.....	12
- Refugees and asylum seekers	13
H. ACCESS TO PUBLIC SERVICES	13
- Access to social services such as health care, welfare and housing	13
- Access to education.....	14
I. EMPLOYMENT	14
J. MONITORING THE SITUATION IN THE COUNTRY	14
SECTION II: ISSUES OF PARTICULAR CONCERN	15
K. INTEGRATION OF NON-CITIZENS IN SAN MARINO'S SOCIETY.....	15
BIBLIOGRAPHY	18

Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

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

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on San Marino is dated 7 February 1997 (published in March 1998). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to San Marino took place on 19 – 20 November 2002. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the national authorities of San Marino for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the national liaison officer for San Marino whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 20 March 2003 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

San Marino has taken positive steps over recent years which are relevant to combating racism and intolerance. These include the ratification or the signature of international legal instruments of importance for combating racism and racial discrimination, the strengthening of the position of international instruments in the field of human rights and fundamental freedoms within San Marino's domestic legal order and the reform of certain aspects of its citizenship legislation.

A number of problems still exist, however, partly connected with a general perception that problems of racism, discrimination and intolerance are not prevalent in the country and that San Marino's society is particularly tolerant. If manifestations of racism are not of the ideological or violent form, there appear to exist latent, and, in some cases, overt prejudices and stereotypes towards certain groups of persons, notably belonging to the non-citizen population. It is particularly important to combat stereotypes and prejudices since such latent phenomena may rapidly lead to more overt forms of racism and discrimination. Therefore further steps still need to be taken notably to raise awareness and combat prejudices among the general public. Criminal legislation aimed at combating racism and intolerance and effective civil and administrative law provisions in the fields of interest of ECRI still remain to be adopted. Certain aspects of San Marino's citizenship legislation are a cause for concern, especially as regards transmission of citizenship to children, but also naturalisation. A clear mission statement and strategy to integrate the non-citizen population into San Marino's society and ensure their full participation remains to be elaborated and implemented.

In the present report, ECRI recommends that the authorities of San Marino take action in a number of fields. These recommendations cover, *inter alia*: the need for further progress in ratifying international legal instruments; the need to adopt effective national legislation against racism and discrimination, the need to review some aspects of San Marino's citizenship legislation, and the need to raise society's levels of awareness of racism and discrimination, including through the development and implementation of a concrete strategy aimed at improving the integration of San Marino's non-citizen population and its participation in society.

SECTION I: OVERVIEW OF THE SITUATION

A. International legal instruments

1. San Marino is a party to several international instruments relevant in the field of combating racism and intolerance. Some of these instruments were ratified since the preparation of ECRI's first report, while others have since been signed. In particular, ECRI welcomes the ratification by San Marino, in April 2003, of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). ECRI also welcomes the ratification by San Marino, in March 2002, of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as recommended by ECRI in its first report. ECRI understands that the authorities of San Marino are examining the possibility of making a declaration under Article 14 of ICERD, recognising the competence of the Committee for the Elimination of Racial Discrimination to examine individual complaints, and encourages the authorities of San Marino to make such a declaration.
2. In its first report, ECRI recommended that San Marino ratify the European Social Charter. ECRI notes that, in October 2001, San Marino signed the Revised European Social Charter. However, ECRI regrets that, since then, little progress towards ratification of this instrument has been made. It therefore encourages the authorities of San Marino to speed up the necessary work in view of the ratification of the Revised European Social Charter.
3. ECRI reiterates its recommendation, already formulated in its first report, that the authorities of San Marino ratify the UNESCO Convention against Discrimination in Education and the European Charter for Regional or Minority Languages. It also encourages the authorities of San Marino to sign and ratify the European Convention on Nationality, the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on the Legal Status of Migrant Workers. Furthermore, ECRI urges the authorities of San Marino to ratify the Geneva Convention Relating to the Status of Refugees, which San Marino signed in 1967.
4. ECRI notes with interest that the amendments introduced in February 2002¹ to the "Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order"² clarify the hierarchy of norms in San Marino's legal order and strengthen within it the position of ECHR and of other international instruments in the field of human rights and fundamental freedoms. Customary law and *jus commune* shall constitute a supplementary source of law in the absence of statutory provisions and can therefore be applied directly by domestic courts. Article 1 (4) of the Declaration provides that international agreements concerning human rights and fundamental freedoms duly concluded and made applicable prevail over conflicting domestic norms.

¹ Law No. 36 of 26 February 2002

² See below, *Constitutional provisions and other basic provisions*

B. Constitutional provisions and other basic provisions

5. Although San Marino does not have a constitution, the Law No. 59 of 8 July 1974, "Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order", has a constitutional rank. Article 4 of the Declaration enshrines the principle of equality before the law, which is guaranteed without distinctions on grounds of personal, economic, social, political and religious status. In September 2000³, Article 4 was modified to explicitly include gender among these grounds. Although the authorities of San Marino have stated that the notion of personal status include grounds such as race, colour, language, nationality and national or ethnic origin, ECRI notes that these grounds are not explicitly covered by Article 4. ECRI encourages the authorities of San Marino to consider amending the Declaration accordingly.

- Law on citizenship

6. Before the November 2000 reform⁴ of the law on citizenship, citizenship of San Marino could be acquired in three main ways: through marriage, by descent or through naturalisation. As concerns acquisition of citizenship through marriage, only a male citizen could transmit citizenship to a non-citizen spouse, whereas a female citizen who married a non-citizen was unable to transmit citizenship of San Marino to her spouse. The November 2000 reform eliminated the possibility of acquiring citizenship through marriage. Thus, a non-citizen who gets married to a citizen of San Marino, be it male or female, can currently only acquire citizenship of San Marino through naturalisation, provided that he or she meets the criteria established by the law to this effect (see below).
7. Today, citizenship of San Marino can therefore mainly be acquired through transmission or naturalisation. ECRI will deal with acquisition of citizenship through transmission in Section II below.
8. As concerns naturalisation, the law on citizenship establishes that applicants must have resided continuously in San Marino for thirty years – or fifteen years if the applicant is married to a citizen of San Marino – and possess clean criminal records. In order to be naturalised citizens of San Marino, applicants must also relinquish any other citizenship they possess, unless they are citizens of countries whose legislation does not permit relinquishment of one's citizenship. Applications are examined by the administrative court, which must issue a motivated decision within 30 days. An appeal is not possible against these decisions. The actual naturalisation is granted by the Great and General Council (Parliament) by means of a special law approved by a two thirds majority. The citizenship law requires the Great and General Council to adopt such special laws at least once every ten years. The authorities of San Marino have informed ECRI that, on the occasion of the last two special naturalisation laws of 1984 and 2000, practically all applicants were successful.
9. While ECRI recognises the specificities of San Marino linked to its limited geographical size and population, which the authorities have highlighted as the main reasons for a cautious approach to issues relating to acquisition of citizenship, it considers nonetheless that the provisions on naturalisation of the

³ Law No. 95 of 19 September 2000

⁴ Law No. 114 of 30 November 2000

law on citizenship of San Marino are very restrictive. In particular, ECRI feels that the requirement of thirty years permanent residence in the country is excessively long, and invites the authorities of San Marino to consider reducing this period to conform more closely with European standards, taking into account in particular the European Convention on Nationality, which provides on this point for a period of residence not exceeding ten years before the lodging of an application. ECRI also considers that the requirement that previous citizenship be renounced in practically all cases is likely to deter some persons from taking up citizenship. It draws attention to the fact that there is a general trend amongst European States to move towards a more flexible approach as regards the issue of dual citizenship and that this approach is in conformity with the European Convention on Nationality. It is the opinion of ECRI that the rules which currently prevent the holding of double nationality upon acquisition of citizenship of San Marino should be made more flexible. Finally, ECRI feels that special naturalisation laws could be passed at time intervals shorter than the current maximum of ten years.

C. Criminal law provisions

10. The only existing criminal law provisions in the fields covered by ECRI's mandate are those contained in Articles 260, 261 and 262 of the criminal Code, which penalise denigration of a religion, violation of religious freedom and disruption of religious functions. There have been no cases where these provisions have been applied. Other provisions exist stipulating the principle of equal treatment of prisoners without discrimination on grounds, *inter alia*, of race, nationality, and religious beliefs⁵. These provisions have never given rise to court cases.
11. There are, however, no criminal law provisions against racist expression - for instance incitement to racial violence, hatred or discrimination, dissemination of ideas based on racial superiority or racist insults or threats -- and against racist organisations. Similarly, there are no provisions defining common offences but with a racist motive as specific offences or enabling the racist motive of the offender to be specifically taken into account. The authorities of San Marino have stated that, even if there have been no cases where this has been necessary, certain types of racist behaviour could be addressed through existing provisions establishing common offences, such as injury and defamation. ECRI considers however, that specific legislation against racism would ensure better protection should the need arise. It notes that, following its ratification of ICERD⁶, San Marino is under an obligation to legislate in these fields and strongly encourages the authorities of San Marino to do so as swiftly as possible. In this respect, ECRI draws the attention of the authorities of San Marino to its general policy recommendation N°7 "on national legislation to combat racism and racial discrimination", in which ECRI describes the elements it considers key to a comprehensive legislation in these fields.

⁵ Article 21 of Law No. 86 of 11 December 1974 and Article 1 of Law No. 44 of 29 April 1997

⁶ See above, *International legal instruments*

D. Civil and administrative law provisions

12. Most of the civil and administrative provisions against discrimination in the legal system of San Marino concern the field of employment. Reflecting the perception that discrimination on grounds such as race, colour, language and national or ethnic origin do not currently constitute a problem in San Marino, these provisions mostly cover – at least in an explicit manner -- discrimination only on grounds of religious beliefs, political or other opinion and affiliation and participation in a trade union. Thus, Article 14 of the Law on Employment establishes that, when recruiting, the employer cannot carry out investigations on the religious or political opinion of the employee or on facts which are not relevant for the evaluation of his or her professional capacity⁷. Article 7 of the Law concerning disciplinary sanctions and dismissals establishes the nullity of dismissals on grounds of religious faith and beliefs, freedom of thought or expression, affiliation to, or participation in the activities of, a trade union⁸. Article 89 of the Organic Law on civil servants establishes the nullity of acts which make recruitments or dismissals subject to trade union, political or religious considerations or cause otherwise prejudice on the basis of these considerations⁹. The authorities have informed ECRI that there have been no cases of implementation of these provisions.
13. As concerns fields other than employment, there exist provisions reiterating the general principle of equal treatment without discrimination on different grounds -- including in some cases race and nationality -- in education¹⁰, sport activities¹¹, access to health¹² and in the statutes of the medical professions¹³. However, these provisions have never given rise to court cases.
14. With a view to establishing a comprehensive and effective legal framework against racial discrimination, ECRI recommends that the authorities of San Marino introduce a body of civil and administrative law covering areas such as employment, education, housing, health, goods and services intended for the public and public places, exercise of economic activity and public services. In this respect, ECRI again draws attention to its general policy recommendation N° 7 on national legislation to combat racism and racial discrimination, in which ECRI describes the main elements of a comprehensive law in this field.

E. Specialised bodies and other institutions

15. At present, San Marino possesses no Ombudsman nor a specialised body, such as a specialised commission, which could serve, *inter alia*, as a contact and assistance point for victims of racism and discrimination, as an advisory body to the government on issues related to racism and discrimination, and as a focal point for public awareness-raising and similar educative initiatives within the country. The authorities of San Marino have stated that, so far, the establishment of a specialised body to combat racism and racial discrimination has not been a priority because of the virtual non-existence of these

⁷ Law No. 95 of 19 September 1989

⁸ Law No. 23 of 4 May 1977

⁹ Law No. 41 of 22 December 1972

¹⁰ Article 1 of Law No. 60 of 30 July 1980 and Article 1 of Law No. 21 of 12 February 1998

¹¹ Article 7 of Law No. 32 of 13 March 1997

¹² Law No. 43 of 28 April 1989

¹³ Decree No. 101 of 5 October 1999 and Decree No. 32 of 18 March 1996

phenomena in San Marino. ECRI believes, however, that such a body could in fact play an important role in examining in more critical depth the situation as concerns racism and intolerance in the country and in providing a visible contact point to which any victims could address themselves for assistance. In this respect, ECRI draws the attention of the authorities of San Marino to its general policy recommendation No 2 on specialised bodies at national level to combat racism and intolerance. This recommendation sets out a series of guidelines and principles to be borne in mind when setting up such a body, which could take the form of a separate body with a specific remit on questions of racism and intolerance or be part of a body with broader objectives in the field of human rights generally.

F. Education and training/awareness-raising

- Schools

16. The Department of Educational Training offers to different professional categories, including school teachers, training courses and study sessions on subjects which often include aspects related to multicultural education. The authorities of San Marino have emphasised that many teachers have taken up such training opportunities. ECRI considers, however, that training aimed at acquiring the necessary skills to act and teach in a multicultural environment should be included as an integral part of teacher training for teachers at all levels of education, including pre-school education.
17. Education in tolerance and respect of difference is not a separate subject in primary and secondary education, but constitutes one of the fundamental values which must be reflected in all disciplines. Individual schools at primary and secondary level often design and implement interdisciplinary educational projects aimed at promoting such values. ECRI encourages the authorities of San Marino to consider strengthening the human rights dimension of the curricula, with particular emphasis on non-discrimination and respect of difference. It considers that, in the long term, the teaching of human rights should be made compulsory at the primary and secondary level. ECRI also encourages the authorities of San Marino to monitor the extent to which intercultural education is in practice integrated into everyday teaching practice in schools in San Marino and to provide, as necessary, formal guidelines and encouragement in this respect.

- General public

18. It is a widely-accepted view within San Marino that problems of racism, discrimination and intolerance are not prevalent in the country and that San Marino's society is particularly tolerant. However, it has been commented to ECRI that, if manifestations of racism in San Marino are not of the ideological or violent form, there do exist latent, and in some cases overt prejudices and stereotypes towards certain groups of persons, notably belonging to the non-citizen population. Issues of racism, discrimination and intolerance and the recognition of San Marino as a country in which persons of different backgrounds will continue to reside on a permanent basis are not yet the subject of much public debate. ECRI considers that efforts to bring such issues to the public attention and debate are crucial and encourages the San Marino authorities to favour such process by giving political priority to issues relating to

the integration of non-citizens and to fighting racism, discrimination and intolerance¹⁴.

G. Reception and status of non-citizens

- *Immigrants*

19. The non-citizen population of San Marino numbers around 4 800 persons (approximately 16% of the population). Over 80% of non-citizens have residence permits (*residenza*), a status which grants them the vast majority of the rights attached to citizenship, with some exceptions such as the right to vote. The rest of the non-citizen population are holders of permits to stay (*permesso di soggiorno*). A person who has held a permit to stay for at least three to five years can apply for a residence permit. In addition to holders of residence permits and permits to stay, San Marino hosts some 5 000 residents of Italy who travel to San Marino everyday for work purposes. These transfrontier workers (*frontalieri*) are holders of a work permit (*permesso di lavoro*) and represent almost half of the work force in the private sector of San Marino.
20. Transfrontier workers are only entitled to temporary work permits, which can be renewed on a yearly basis. As a result, these workers, a considerable number of whom have worked in San Marino for many years, can only be employed on the basis of temporary work contracts. Although in most cases work contracts are renewed, it has been commented to ECRI that such a precarious position may sometimes result in situations where the workers are exploited or blackmailed by their employers. ECRI understands that the question of the duration of the work permits and contracts of transfrontier workers has been the subject of much public debate. It strongly encourages the San Marino authorities to continue the dialogue with the trade unions in order to find a suitable solution to this problem and ensure that these workers are not discriminated against as concerns the duration of their work permits and contracts. In this respect, ECRI notes that, on 17 March 2003, an *ad hoc* Commission on Transfrontier Workers, composed of representatives of the Government, trade unions and employers associations, was established in order to examine the issues related to transfrontier workers and table proposals for appropriate regulations.
21. It has also been commented to ECRI that some employers have recently started to recruit workers on a consultancy basis, even if the work relation is, in fact, of a continuous nature. The terms of these contracts are less favourable for the employees, notably as concerns remuneration. This situation reportedly concerns exclusively non-citizens of San Marino. ECRI encourages the authorities of San Marino to look more closely into this question and to take any necessary corrective action.
22. ECRI stresses that in a situation of considerable economic growth such as San Marino has experienced in the last fifteen years and of virtually full employment, such differences in status may not have given rise to particularly acute social tensions. However, as emphasised below¹⁵, ECRI believes that a deterioration

¹⁴ See below, *Integration of non-citizens in San Marino's society*

¹⁵ *Integration of non-citizens in San Marino's society*

of the economic and social conditions for the population as a whole may result in an increase of such tensions. In this respect, it has been commented to ECRI that there have already been some public expressions of intolerance by certain employers' associations *vis-à-vis* transfrontier workers.

23. The vast majority of non-citizens living in San Marino and of its transfrontier workers are Italians. In recent years, however, the number of persons from countries in Central and Eastern Europe, South America and Africa has considerably increased. These persons have found employment in different areas of the private sector, notably in hotels and restaurants, shops, the industry, or as construction workers. More recently, however, there has been a considerable increase in the number of persons, notably women from Central and Eastern European countries, who come to San Marino as private nurses to attend ill or elderly persons (*badanti*). In San Marino there are at present around 230 *badanti*, who constitute approximately 40% of the non-European Union citizens employed in the private sector in this country. Although these persons live and work in San Marino, their status does not at present reflect this reality. In fact, by decision of the government, their status is assimilated to that of transfrontier workers, with the ensuing limitations in terms of length of their work contracts. ECRI is concerned that this situation, combined with the sometimes isolated situation in which these women can find themselves, may result in their being exposed to exploitation. ECRI urges the authorities of San Marino to address this question and to carry out research on possibly similar situations for non-European Union citizens employed in other sectors, such as those mentioned above.

- ***Refugees and asylum seekers***

24. Asylum may be granted by the Great and General Council on the basis of "the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Legal Order"¹⁶, whose Article 1 (2) stipulates that San Marino "reaffirms the right to political asylum". Since the beginning of the 1990s, San Marino has issued 3 permits to stay (*permesso di soggiorno*) on asylum grounds and 12 permits to stay on humanitarian grounds. ECRI encourages the authorities of San Marino to ratify the Geneva Convention Relating to the Status of Refugees, as mentioned above¹⁷, and to establish a procedure for applying for asylum and adjudicating asylum claims.

H. Access to public services

- ***Access to social services such as health care, welfare and housing***

25. It has been commented that, unlike unemployed citizens of San Marino, unemployed foreigners with residency status or holders of permits to stay have to pay monthly social security contributions in order to be covered by the public health care system. ECRI encourages the authorities of San Marino to ensure that the conditions regulating the access of the unemployed to the public health care system do not discriminate between citizens and non-citizens with residency status or holders of permits to stay.

¹⁶ See above, *Constitutional provisions and other basic provisions*

¹⁷ See above, *International legal instruments*

- **Access to education**

26. Although increasing, the number of non-Italian mother-tongue children is still limited in San Marino primary and secondary schools. In the school year 2001/2002, for instance, these children represented approximately 2% of the whole primary school student population. ECRI welcomes the fact that non-Italian mother-tongue children follow the same classes as their Italian mother-tongue peers and are helped, as necessary, by a simultaneous translator. However, it encourages the authorities of San Marino to increase their efforts as concerns provision of professional teaching of Italian as a second language, as supplementary classes, to these children at all levels of education, including pre-primary.
27. Public schools in San Marino provide Catholic religious instruction. However, parents may choose that their children be exempted from such classes. The authorities of San Marino have stated that alternative activities are available for these children, although the teaching of other religions has never been requested. ECRI encourages the authorities of San Marino to ensure that alternative options to religious instruction reflect as far as possible the demands of the parents.

I. Employment

28. As mentioned in other parts of this report¹⁸, there are groups of persons who are in a position of disadvantage within the labour market or may be more vulnerable to discrimination. ECRI considers that it would be valuable to conduct a survey into the possible existence, extent and manifestations of discrimination within the labour market, possibly in the framework of a wider survey concerning racism and discrimination in San Marino¹⁹.

J. Monitoring the situation in the country

29. The Centre for Collection of Data and Statistics of the Office of Economic Planning collects data in respect of three main categories of persons: citizens of San Marino, holders of residence permits and holders of permits to stay. These data are broken down by gender, age, nationality, level of educational attainment and professional qualifications. In order to help uncover the presence of direct and indirect discrimination or situations of disadvantage, ECRI encourages the authorities of San Marino to extend their monitoring to other areas including housing, education or access to social services, paying due respect to the principles of confidentiality and the voluntary self-identification of persons as belonging to a particular group. Furthermore, ECRI draws attention to its general policy recommendation No. 4 ("national surveys on the experience and perception of discrimination and racism from the point of view of potential victims"), and strongly encourages the authorities of San Marino to undertake such a survey. At the same time as the relevant legislation is fine-tuned, as recommended in other parts of this report²⁰, ECRI considers that a system for monitoring the incidence of racist and discriminatory acts,

¹⁸ See *Reception and status of non-citizens – Immigrants, and Integration of non-citizens in San Marino's society*

¹⁹ See below, *Monitoring the situation in the country*

²⁰ See *Criminal law provisions, Civil and administrative law provisions*

including reports made to the authorities and the follow-up and outcome given to such reports, should also be put in place.

SECTION II: ISSUES OF PARTICULAR CONCERN

In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of San Marino, ECRI would like to draw attention to the question of integration of non-citizens in San Marino society.

K. Integration of non-citizens in San Marino's society

30. The population of San Marino is of about 30 000 persons. Approximately 83.7% are citizens of San Marino. The rest of the population is composed of Italians (14.2%), citizens of non-member States of the European Union (1.9%) and European Union citizens (0.2%). As mentioned above²¹, over 80% of the non-citizen population of San Marino have residence permits whereas almost 20% are holders of permits to stay.
31. Composed thus primarily of Italians, the vast majority of the non-citizen population of San Marino is not characterised by marked cultural differences from the citizen population and shares with it the same language. It has been commented to ECRI, however, that, even for these persons, for whom linguistic or cultural differences are unlikely to pose a barrier, it may be difficult to gain full acceptance into society. More generally, it has been commented that societal attitudes towards non-citizens, including Italians, are sometimes negative. For non-citizens of non-Italian origin, language and comparatively more pronounced cultural differences often constitute further elements which render their integration and effective participation into San Marino's society more difficult.
32. ECRI notes that although relations between non-citizens and the majority community are currently not particularly tense, it is possible that the situation might worsen if economic and social conditions become less favourable for the population as a whole. Under such conditions, the relative lack of integration of non-citizens as fully-participating members of society might leave them especially vulnerable should manifestations of xenophobia and intolerance become more acute.
33. ECRI considers that the development and implementation of an overall vision and strategy of how non-citizens might be fully integrated into San Marino's society and structures is an issue that needs to be addressed by the authorities of San Marino. Such a strategy should be designed in close consultation with the non-citizen communities. In this respect, ECRI notes that the relatively limited number of persons involved may facilitate the elaboration of a policy which genuinely reflects the concerns of a diverse non-citizen population. As indicated above, opinion surveys on the perceived levels of intolerance and discrimination may be particularly useful for the elaboration of such a strategy and the identification of its priority areas²². In any event, ECRI believes that areas to be covered by an integration strategy should include an intensification of existing efforts in the field of teaching Italian as a second language to non-

²¹ *Reception and status of non-citizens – Immigrants*

²² *Monitoring the situation in the country*

Italian mother-tongue children and adults and training of key professional groups, such as teachers, civil servants and certain categories of employers on issues of respect of difference and non-discrimination. Special efforts should be made to reach out to potentially isolated or more vulnerable persons, such as persons from countries in Central and Eastern Europe, South America and Africa employed as private nurses or in the tourist industry, particularly in order to ensure that they are properly informed about their legal situation, regulations in force, their rights and how they can seek further assistance and guidance. ECRI stresses that, since integration is a two-way process, a successful integration strategy cannot be limited to measures targeting the non-citizen population, but should include measures aimed at the majority population, notably in the fields of education and awareness-raising. ECRI believes that the elaboration of a National Action Plan in the framework of the follow-up to the Durban World Conference against Racism would constitute an ideal opportunity to address the issues of integration of non-citizens into San Marino's society.

34. ECRI also feels that the possibility of granting eligibility and voting rights at the local level to foreigners might be considered as a means to increase their participation in their local communities. In this respect, ECRI draws the attention of the authorities of San Marino to the European Convention for the Participation of Foreigners in Public Life at Local Level, which provides, *inter alia*, for the granting of eligibility and voting rights in local elections to non-citizens who are long-term residents²³.
35. ECRI also believes that an important element and incentive for a person's integration into a country may be his or her acquisition of citizenship. It therefore considers that further steps might be taken to facilitate access to naturalisation, as outlined above²⁴. It also considers that the existing provisions regulating transmission of citizenship should be reviewed. As mentioned above²⁵, by removing the possibility of acquiring citizenship through marriage, the November 2000 reform of the law on citizenship abrogated certain provisions establishing differential treatment between male and female citizens of San Marino. However, other instances of differential treatment on the basis of gender remain as concerns transmission of citizenship of San Marino to children. In fact, only male citizens of San Marino transmit citizenship of San Marino at birth to their children born to a non-citizen spouse. On the other hand, female citizens of San Marino do not transmit citizenship of San Marino to their children at birth and thus, if the father of the child is a non-citizen, the child will not gain citizenship of San Marino at birth, although she or he may apply and acquire citizenship with the attainment of 18 years of age.
36. ECRI is concerned that such differential treatment, which is discriminatory *vis-à-vis* the parents on grounds of gender, is similarly discriminatory *vis-à-vis* the children on grounds of their parents' nationality. Children of whom only the mother is a citizen of San Marino cannot apply for citizenship of San Marino until they are 18. Until recently, pending the attainment of 18 years of age, these children were granted permits to stay, although ECRI understands that they are now granted residence permits. The rights attached to this status include the vast majority of the rights flowing from possession of citizenship of

²³ See above, *International legal instruments*

²⁴ *Constitutional provisions and other basic provisions – law on citizenship*

²⁵ *Ibidem*

San Marino. It has been commented to ECRI, however, that lack of citizenship of San Marino means for these children that they are excluded from certain activities such as, for instance, participation in sport events as representatives of national teams. Over and above the impact it has on the exercise of specific rights, lack of citizenship of San Marino reportedly results in societal attitudes which can sometimes be humiliating for the children in their everyday life.

37. The authorities of San Marino have stated that they are keeping under review this aspect of the legislation on citizenship with a view to a possible modification. ECRI strongly urges the authorities of San Marino to reconsider the provisions of the law on citizenship mentioned above with a view to allowing all children of a citizen of San Marino, be it male or female, to acquire nationality of San Marino at birth.

BIBLIOGRAPHY

This bibliography lists the main published sources used during the examination of the situation in San Marino: it should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

1. CRI (98) 25: Report on San Marino, European Commission against Racism and Intolerance, Council of Europe, March 1998
2. CRI (96) 43: ECRI general policy recommendation n° 1: Combating racism, xenophobia, antisemitism and intolerance, European Commission against Racism and Intolerance, Council of Europe, October 1996
3. CRI (97) 36: ECRI general policy recommendation n° 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, European Commission against Racism and Intolerance, Council of Europe, June 1997
4. CRI (98) 29: ECRI general policy recommendation n° 3: Combating racism and intolerance against Roma/Gypsies, European Commission against Racism and Intolerance, Council of Europe, March 1998
5. CRI (98) 30: ECRI general policy recommendation n° 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, European Commission against Racism and Intolerance, Council of Europe, March 1998
6. CRI (2000) 21: ECRI general policy recommendation n° 5: Combating intolerance and discrimination against Muslims, European Commission against Racism and Intolerance, Council of Europe, April 2000
7. CRI (2001) 1: ECRI general policy recommendation n° 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, December 2000
8. CRI (98) 80 rev: Legal measures to combat racism and intolerance in the member States of the Council of Europe, ECRI, Strasbourg, 2000
9. CDMG (97) 17 rev.: « Recent developments in policies relating to migration and migrants », European Committee on Migration, Council of Europe, January 1998
10. CDMG (99) 7 final: « Recent developments in policies relating to migration and migrants », European Committee on Migration, Council of Europe, 1999
11. Dichiarazione dei diritti dei cittadini e dei principi fondamentali dell'ordinamento sammarinese
12. « I programmi per la scuola elementare », Dicastero pubblica istruzione e cultura, Repubblica di San Marino
13. « Ipotesi di programmazione educativa didattica organizzativa della scuola elementare », Dipartimento istruzione e cultura, Direzione scuole elementari, Repubblica di San Marino
14. ACFC/SR (99) 1: Report submitted by San Marino pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities, February 1999
15. ACFC/INF/OP/I(2001)7: "Opinion on San Marino", Advisory Committee on the Framework Convention for the Protection of National Minorities, November 2000
16. Resolution Res CMN (2001)8: On the implementation of the Framework Convention for the Protection of National Minorities by San Marino, Committee of Ministers, Council of Europe, November 2001
17. HRI/CORE/1/Add.119, « Core document forming part of the reports of State Parties – San Marino », United Nations, May 2002

18. Case of Buscarini and others v. San Marino (24645/94), European Court of Human Rights, February 1999
19. «Country Reports on Human Rights Practices for 2001 – San Marino», US Department of State, March 2002
20. « US Department of State Annual Report on International Religious Freedom for 2002 – San Marino», US Department of State, October 2002
21. « Rapporto sull'occupazione nella Repubblica di San Marino», Confederazione Democratica Lavoratori Sammarinesi, September 2002

