

ECRI REPORT ON SAN MARINO

(sixth monitoring cycle)



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FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI’s country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, those of the fourth round in the beginning of 2014, and those of the fifth round at the end of 2019. Work on the sixth round reports started at the end of 2018.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI’s reports are not the result of inquiries or testimonial evidence. They are analyses based on information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The sixth round country reports focus on three topics common to all member States: (1) Effective equality and access to rights, (2) Hate speech and hate-motivated violence, and (3) Integration and inclusion, as well as a number of topics specific to each one of them.

In the framework of the sixth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. Unless otherwise indicated, it covers the situation up to 7 December 2023; as a rule, developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since ECRI's fifth report on San Marino was adopted on 6 December 2017, progress has been made and good practices developed in a number of fields.

A Working Group was set up in 2022 to prepare a proposal aimed at establishing a special commission to combat racism, intolerance and incitement to hatred and violence.

In the area of inclusive education, a course on "Ethics, culture and society" has been introduced for pupils exempted from attending Catholic religion classes. Several projects on the prevention of bullying and cyberbullying have been carried out in some secondary schools.

A number of developments to promote equality for LGBTI persons were noted, including the extension of the scope of the principle of equality before the law, as enshrined in the Declaration on Citizens' Rights and Fundamental Principles of the San Marino Legal System, to exclude any distinction based on sexual orientation and the adoption of the Law on civil unions.

The authorities have taken a number of measures to raise awareness and prevent hate speech, primarily through initiatives in schools. They have also ratified the Council of Europe Convention on Cybercrime and its First Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Furthermore, the capacity of law enforcement officials to fight hate crimes has been strengthened.

In 2020, the authorities granted the right to vote in local elections (*Giunte di Castello*) to foreign nationals who have been resident in San Marino for at least 10 years.

The authorities, with the support of the population, have extended an exceptionally warm welcome to Ukrainian citizens displaced as a result of the Russian Federation's war of aggression against Ukraine.

ECRI welcomes these positive developments in San Marino. However, despite the progress achieved, some issues continue to give rise to concern.

San Marino has not yet set up an equality body.

Teachers are not adequately sensitised about issues related to sexual orientation, gender identity and sex characteristics. There is growing concern about bullying in schools and in particular about cyberbullying. In addition, there is currently no system for monitoring cases of bullying in schools or for compiling official data on the issue.

San Marino still does not have a legal framework that explicitly regulates the conditions and procedures concerning legal gender recognition and clear guidelines on gender-affirming healthcare.

An increase in cases of hate speech, mainly occurring on social media, has been observed. Judicial statistics on cases of hate speech and hate-motivated violence are separate from those of the gendarmerie, both of which are not published.

The range of language courses available to foreign nationals is still unsatisfactory, especially in terms of the number of hours offered and the level of proficiency to be achieved with a view to facilitating integration. The authorities have also still not granted foreign nationals resident in San Marino the right to stand as a candidate in local elections.

The legislative framework for preventing and combating discrimination in San Marino remains incomplete.

In this report, ECRI asks the authorities to take further action in a number of areas and makes a series of recommendations, including the following.

An equality body which has all the necessary safeguards as to its independence, sufficient human and financial resources and the functions and competences required to carry out its tasks should be set up in the light of the revised General Policy Recommendation No.2 on equality bodies to combat racism and intolerance at national level.*

The authorities should work towards the adoption of standards for preventing and combating bullying, including cyberbullying, and violence in

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

schools and set up a system for monitoring racist and LGBTI-phobic bullying and violence in schools.*

The authorities should, in co-operation with the relevant civil society organisations, run an information campaign targeting all sectors of society to raise awareness of racist and LGBTI-phobic hate speech, including online hate speech, the legal provisions and existing rights in the field and the remedies available against instances of such speech.

Steps should be taken to ensure that the grounds of language, colour, gender identity and sex characteristics are explicitly included in all criminal law provisions aimed at combating racism and intolerance.

The authorities should (i) reduce to five years the period of residence required for foreign nationals

resident in San Marino to be eligible to vote in local elections; (ii) grant foreign nationals resident in San Marino the right to stand as a candidate in local elections; and (iii) sign and ratify the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.

A comprehensive body of legislation to prevent and combat discrimination should be adopted in the light of ECRI's relevant General Policy Recommendations. The legislation should prohibit any form of discrimination on the basis of a list covering all grounds of discrimination within ECRI's mandate and in all areas of life, establish clear obligations for the authorities and provide the necessary legal tools to prevent and combat racial discrimination and discrimination against LGBTI people.

FINDINGS AND RECOMMENDATIONS

I. EFFECTIVE EQUALITY AND ACCESS TO RIGHTS

A. Equality bodies¹

1. In its previous reports,² ECRI noted that San Marino did not have an equality body and that the Equal Opportunities Commission (hereinafter “the Commission”)³ and the Equal Opportunities Authority (hereinafter “the Authority”)⁴ did not have an explicit mandate to combat racism and intolerance.
2. ECRI regrets that such a body has not yet been set up. However, it is pleased to note that significant progress has been made in this respect since its last report. In the light of ECRI’s recommendations⁵ and following a popular petition (*Istanza d’Arengo*) approved by the *Consiglio Grande e Generale* (Parliament),⁶ a Working Group was tasked to draw up a proposal aimed at establishing a special commission to combat racism, intolerance and incitement to hatred and violence.⁷
3. In its report submitted to the *Congresso di Stato* (Government) in September 2022, the Working Group proposed setting up an overarching body that would include, *inter alia*, the Commission and the Authority and could be known as the Co-ordination Centre for Equal Opportunities and for Preventing and Combating Discrimination and Intolerance (hereinafter “the Centre”). ECRI notes that a reform of the Commission and the Authority was also proposed. According to the Working Group, their mandate would be to combat all forms of racism, intolerance and incitement to hatred and violence.⁸
4. On the one hand, the Commission would be responsible for drawing up legislative proposals, giving opinions on draft laws, attending meetings of parliamentary standing committees in an advisory capacity, submitting applications for judicial review of constitutionality, implementing awareness-raising initiatives, training and informational activities and visiting schools. The Authority, on the other hand, in addition to its functions under current legislation, would be responsible for receiving and examining complaints from individuals and associations, providing various forms of assistance to victims, taking legal action, bringing and acting in civil proceedings to defend collective interests, monitoring the implementation of legislation and parliamentary guidelines and collecting and disseminating data and information on the implementation of the principles of equality before the law and equal opportunities.⁹
5. With regard to the composition of the Commission and the Authority, the Working Group proposed changing the number of members and reviewing the professional

¹ The term “national specialised bodies” was updated to “equality bodies” in the revised version of [General Policy Recommendation No. 2](#) which was published on 27 February 2018.

² ECRI (2003), § 15; ECRI (2008), §§ 29-35; ECRI (2013), §§ 44-49; and ECRI (2018), §§ 21-25; see also ECRI conclusions on the implementation of the recommendations subject to interim follow-up (2016), p. 5.

³ The Commission was established by Article 3 of Law No. 26 of 25 February 2004, as subsequently amended. It is made up of 10 members appointed for five years by Parliament, two of whom are nominated by civil society and trade unions. The members, who are unpaid, are appointed on a proportional basis to represent the political forces present in Parliament. The Commission has no staff. The authorities informed ECRI that, since 2018, it has received annual public funding of €5 000, which may be increased according to requirements. Its responsibilities are set out [here](#) (in Italian).

⁴ The Authority was established by Law No. 97/2008 on violence against women and gender-based violence. It is composed of three members appointed by Parliament. The Authority was given the task of promoting and supporting initiatives to prevent gender-based violence. Its responsibilities are set out [here](#) (in Italian).

⁵ In particular, ECRI (2018), §§ 24-25.

⁶ *Istanza d’Arengo* No. 1 of 4 April 2021 approved by Parliament [Decision](#) No. 17 of 14 September 2021. The *Istanza d’Arengo* is a form of direct democracy in San Marino. It allows citizens to submit requests of public interest on the first Sunday after 1 October and the first Sunday after 1 April, coinciding with the election of the two new Captains Regent.

⁷ Government [Decision](#) No. 5 of 25 April 2022. The Working Group was co-ordinated by a representative of the Authority.

⁸ Working Group report, p. 3.

⁹ *Ibid.*, p. 4-6.

skills required. In order to ensure the independence of members, in particular from the political authorities, it also recommended a reform of the appointment procedure for both bodies. As regards their working arrangements, the Working Group considered paying members for each meeting attended, paying them monthly and/or granting them justified leave of absence from work.¹⁰

6. Furthermore, the Working Group also considered that the Centre should have a joint secretariat consisting of a lawyer and a secretary, a separate budget fund and its own premises. In this context, ECRI notes that efforts have been made to set up the headquarters of the Commission and the Authority. They were allocated premises in February 2023¹¹ and ECRI very much hopes that these will soon be operational.
7. ECRI reiterates its opinion on the need to set up an equality body in San Marino¹² and welcomes the authorities' genuine willingness to do so, as demonstrated during the visit.
8. ECRI recommends, as a matter of priority, that the authorities set up an equality body which has all the necessary safeguards as to its independence, sufficient human and financial resources and the functions and competences required to carry out its tasks in the light of its revised General Policy Recommendation No. 2 on equality bodies to combat racism and intolerance at national level.

B. Inclusive education

9. This part of the report deals with policies¹³ aimed at combating exclusion and marginalisation through inclusive education and fostering a society that is respectful of diversity and tolerant, in accordance with Sections II and III of ECRI's General Policy Recommendation (hereinafter "GPR") No. 10.¹⁴
10. First of all, ECRI notes that, according to the legislation of San Marino, everyone has the right to education without discrimination.¹⁵ Furthermore, ECRI notes with satisfaction that San Marino ratified the UNESCO Convention against Discrimination in Education in March 2020, as recommended in its previous reports.¹⁶
11. In its GPR No. 10, ECRI recommends ensuring that human rights education is an integral part of the school curriculum at all levels and across all disciplines. In this respect, the authorities informed ECRI that human rights were not taught as a separate subject in the school curriculum. However, they also stated that human rights issues were addressed by all teachers at all levels (from nursery school to secondary school). The aim is to instil fundamental values in pupils, including equality, which is a value that is consistently taught in schools. However, ECRI regrets that issues related to the prevention of racism and intolerance are not explicitly mentioned in the curriculum. Following the recent reform of the

¹⁰ Ibid., p. 6-7. At the Working Group meetings, the Commission representative emphasised how difficult it was for members to attend the regular meetings and, more generally, to ensure consistent attendance. This was due both to the large number of members and to the problem of having to take time off work without leave or payment for attendance.

¹¹ Government [Decision](#) No. 13 of 1 February 2023.

¹² See also Parliamentary Assembly of the Council of Europe, [Resolution 2497 \(2023\)](#) on the honouring of membership obligations to the Council of Europe by San Marino, 28 April 2023, § 8.3; Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fifth Opinion](#) on San Marino, 4 October 2021, § 37; and United Nations, Human Rights Council, [Report](#) of the Working Group on the Universal Periodic Review - San Marino, 24 February-20 March 2020, pp. 16-17.

¹³ This sub-chapter deals with the education of all children and young people. Measures specifically aimed at migrant children are addressed in the "Integration and Inclusion" section.

¹⁴ ECRI [General Policy Recommendation No. 10](#) on combating racism and racial discrimination in and through school education.

¹⁵ [Law No. 21 of 12 February 1998](#) on general standards in education.

¹⁶ UNESCO, [States Parties](#); ECRI (2013), § 9; ECRI (2008), § 6; ECRI (2003), § 3; and ECRI (1998), § 1.

curriculum,¹⁷ human rights are also addressed as part of the teaching of “citizenship skills” through a cross-curricular approach introduced in 2019, covering all subjects at all levels of schooling.¹⁸ ECRI welcomes the fact that respect for diversity is one of the central themes. In practice, according to the authorities met by the ECRI delegation during the visit, the way in which human rights are taught depends on the skill set and sensitivity of teachers.¹⁹

12. ECRI welcomes the introduction of a course on “Ethics, culture and society”, which has been taught from primary level onwards as of the 2019-2020 school year.²⁰ This subject provides an alternative for pupils who are exempted from attending Catholic religion classes and its introduction is in line with one of ECRI’s previous recommendations aimed at avoiding any discrimination or exclusion of pupils exempted from religious education.²¹ Parents or pupils, if the latter are of age, can choose between the two classes. In the 2022-2023 school year, almost 10% of pupils took this course.
13. ECRI notes that San Marino has still not introduced compulsory education on issues related to sexual orientation, gender identity and sex characteristics.²² In this context, the authorities explained that, as part of the “Health Education” project, sessions on emotional and sexual education were held in various schools in 5th (optional), 8th and 10th grades and at the Vocational Training Centre.²³ Certain aspects of sexual orientation are addressed only in 10th grade and at the Vocational Training Centre.
14. The authorities informed the ECRI delegation during the visit that teachers’ in-service training covered human rights, but the ECRI delegation noted that teachers were not adequately sensitised about issues related to sexual orientation, gender identity and sex characteristics. This aspect was raised both by the representatives of the authorities and by the teachers met during the visit.²⁴ In this respect, ECRI reiterates that human rights, including matters related to sexual orientation, gender identity and sex characteristics, should be an integral part of initial and in-service teacher training and should be taught in a systemic manner and on a long-term basis.²⁵
15. Furthermore, during its visit to Serravalle lower secondary school, the ECRI delegation was interested to learn that “inclusion teachers” had been appointed within the San Marino education system. Initially, these teachers supported pupils with special educational needs (e.g., pupils with learning difficulties). Over time,

¹⁷ From 2019 to 2021, the curriculum was reformed through the adoption of several legislative measures. The new curriculum was drawn up in collaboration with teachers, headteachers and educational experts, taking into account recent European and international tools and instruments in the field of education.

¹⁸ [Law No. 95 of 6 June 2019](#) on the launch of the San Marino school curriculum pilot project. See also San Marino’s implementation of the 2030 Agenda for Sustainable Development, [Voluntary National Review](#), 2021, pp. 56-57; Committee on the Elimination of Racial Discrimination, [Initial report](#) submitted by San Marino under Article 9 of the Convention, 2 December 2022, § 38; Human Rights Council, Working Group on the Universal Periodic Review, [National report](#) submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - San Marino, 4-15 November 2019, § 34; and [www.educazione.sm](#).

¹⁹ In this context, ECRI did not receive any information on the availability of appropriate teaching materials for teachers.

²⁰ [Law No. 96 of 6 June 2019](#) introducing the teaching of Ethics, culture and society and [Delegated Decree No. 144 of 19 September 2019](#) providing guidelines for the teaching of Ethics, culture and society. See also Human Rights Council, Working Group on the Universal Periodic Review, [Report](#) of the Working Group on the Universal Periodic Review - San Marino, 24 February-20 March 2020, § 50.

²¹ ECRI (2013), § 69.

²² International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Youth and Student Organisation (IGLYO), [LGBTQI Inclusive Education Report](#), 2022, p. 135.

²³ From 2023, these sessions will be held in accordance with Article 3 of [Law No. 127 of 7 September 2022](#) on voluntary terminations of pregnancy.

²⁴ In some cases, annual training seminars for teachers were also held to mark International Day for the Elimination of Racial Discrimination: see Advisory Committee on the Framework Convention for the Protection of National Minorities, op. cit., § 22.

²⁵ ECRI (2013), § 129. See also ECRI GPR No. 10, § 5 and ECRI [General Policy Recommendation No. 17](#) on preventing and combating intolerance and discrimination against LGBTI persons, recommendation 44.

their role has been extended to meet the educational needs of all pupils in all their diversity (e.g., migrant pupils).²⁶ ECRI considers this to be **good practice**.

16. ECRI recommends that the authorities ensure that human rights education includes the prevention of racism and intolerance and, in particular, greater age-appropriate awareness on issues related to sexual orientation, gender identity and sex characteristics in the school environment. In this context, the initial and in-service training of primary and secondary school teachers on human rights issues, including those related to sexual orientation, gender identity and sex characteristics, should be strengthened.
17. It should be noted that in its GPR No. 10, ECRI recommends setting up a system to monitor racist and intolerant incidents in schools. In this context, the authorities informed ECRI that there was currently no system for monitoring cases of bullying in schools or for compiling official data on the issue. It was also pointed out that there was growing concern about bullying in schools and in particular about cyberbullying. In this context, ECRI was pleased to learn that work was under way on a draft law on combating bullying, including cyberbullying, which would apply to the education sector. This is a welcome development.
18. ECRI was also informed that, since 2018, several projects to prevent bullying and cyberbullying had been carried out in some secondary schools, such as the “Bullying” and “Respect” projects. Furthermore, teachers have received training on bullying, cyberbullying and hate speech. ECRI considers these measures to be **promising practices** and encourages the authorities to pursue them.
19. At the time of the ECRI delegation’s visit in 2023, it was left up to each school to decide how to deal with cases of bullying. In this context, the teachers met by the ECRI delegation explained that they acted on a case-by-case basis, favouring an approach based on in-depth listening and involving all the pupils in the class. The headteacher and the developmental psychologist²⁷ are also involved. However, given the pernicious effects of hate-motivated bullying where it exists and the potential harm to victims as well as to their families and wider communities, ECRI considers that a robust system for monitoring hate-motivated bullying could make a valuable contribution to preventing hatred in schools and providing helpful information and guidance to teaching staff.
20. ECRI recommends, as a matter of priority, that the authorities work towards the adoption of standards for preventing and combating bullying, including cyberbullying, and violence in schools and set up a system for monitoring racist and LGBTI-phobic bullying and violence in schools.

C. Irregularly present migrants

21. In its GPR No. 16 on safeguarding irregularly present migrants from discrimination,²⁸ ECRI calls for the introduction of effective measures (hereinafter “firewalls”) to ensure the protection of the fundamental human rights of irregularly present migrants in fields such as education, healthcare, housing, social security and assistance, labour protection and justice. Such firewalls should ensure that the activities of public authorities responsible for providing services can be decoupled from immigration control and law enforcement obligations, so that irregularly present migrants are not deterred from exercising their rights for fear of deportation.
22. The number of irregularly present migrants in San Marino is a priori very limited. For example, the authorities informed ECRI of eight such cases between 2018 and 2022 and in all of them, the persons concerned left the country within a few days.

²⁶ It should be noted that these teachers receive specific training. See also [Inclusive education](#).

²⁷ A help service for distress prevention and well-being at school, co-ordinated by a developmental psychologist, was set up in 2020 for all schools in San Marino.

²⁸ ECRI [General Policy Recommendation No. 16](#) on safeguarding irregularly present migrants from discrimination.

According to civil society interlocutors met by ECRI, workplace safety standards made a significant contribution to reducing the number of irregularly present migrant workers.

23. There is no specific legislation or government policy for irregularly present migrants. However, the authorities informed ECRI that such persons could have access to medical care without fear of being reported or deported. Furthermore, the identification procedure carried out by the law enforcement agencies (the gendarmerie) when irregularly present migrants are identified also includes the provision of social assistance (accommodation, food and medical support).
24. ECRI has not received any indication, either from government sources, civil society organisations or other interlocutors, that there is a pressing need for action in this area. However, as a preventive measure, it encourages the authorities to review the cases of irregularly present migrants in San Marino on an ongoing basis and, where appropriate, to take measures in the light of its GPR No. 16.

D. LGBTI equality²⁹

25. There are no organisations representing LGBTI people in San Marino. ECRI notes with some concern that, according to the Rainbow Europe Map and Index 2022, San Marino meets only 14% of the indicators relating to the protection of the rights and freedoms of LGBTI people in law and in practice.³⁰
26. ECRI also notes that there is still no official data on the LGBTI population in San Marino.³¹ According to the Law on the protection of individuals with regard to the processing of personal data, sexual orientation constitutes personal data which may be processed only under certain conditions.³² In ECRI's view, the collection of relevant and disaggregated data on LGBTI people, in line with international standards in this field, incorporating an intersectional perspective and ensuring respect for the principles of confidentiality, voluntary self-identification and informed consent can help to clarify the scope of their needs and to design more targeted policies.³³
27. ECRI is pleased to note that there is a general climate of respect for the human rights of LGBTI people. The fact that Parliament voted to accept a popular petition calling on San Marino to observe International Day Against Homophobia, Biphobia and Transphobia³⁴ in 2022 is a positive development. In the same year, one of San Marino's two Captains Regent became the first openly gay Head of State.³⁵
28. ECRI welcomes a number of legislative developments that have contributed to strengthening LGBTI equality in San Marino. In 2019, the scope of the principle of equality before the law enshrined in Article 4 of the Declaration on Citizens' Rights and Fundamental Principles of the San Marino Legal System (hereinafter "the Declaration") was extended to exclude any distinction based on sexual orientation.³⁶ This amendment was approved in a confirmatory referendum, with 71.50% of the votes in favour.³⁷

²⁹ For terminology, see [ECRI's Glossary](#).

³⁰ ILGA Europe, [Rainbow Europe 2022](#): San Marino ranked 43rd out of 49 countries assessed.

³¹ See also ECRI (2018), § 78.

³² Article 8 of [Law No. 171 of 21 December 2018](#) on the protection of individuals with regard to the processing of personal data.

³³ See also ECRI GPR No. 17, recommendation 5.

³⁴ [Istanza d'Arengo](#) No. 8 of 3 April 2022 approved by Parliament [Decision](#) No. 19 of 20 May 2022. See also the [statement](#) by the Equal Opportunities Commission on the occasion of the 2023 International Day against Homophobia, Biphobia and Transphobia.

³⁵ See [Politique et société - Saint-Marin se dote d'un chef d'État gay, une "première mondiale" – L'essentiel \(lessentiel.lu\)](#).

³⁶ [Law No. 1 of 28 March 2019](#) amending Article 4 of Law No. 59 of 8 July 1974, as amended. Article 4 of the [Declaration](#) now reads as follows: "All are equal before the law without distinctions relating to gender, sexual orientation, personal, economic, social, political or religious circumstances. [...] The Republic guarantees equal social dignity and equal protection of rights and freedoms [...]". However, ECRI regrets that other grounds of discrimination have not been added, despite its previous recommendations (see, for example, ECRI (2018), § 5).

³⁷ See the [results](#) of the confirmatory referendum of 2 June 2019.

29. In addition, the adoption of the Law on civil unions in 2018 was a significant step forward and met the expectations expressed by ECRI in a previous recommendation for which priority implementation had been requested.³⁸ The law enables same-sex (and different-sex) couples to obtain a form of legal recognition of their relationship that is equivalent to marriage in several areas, such as residence, social security and pensions, inheritance, cohabitation and mutual assistance. To date, 97 different-sex couples and 17 same-sex couples have benefited from this law.
30. ECRI is pleased to note that legislative amendments have subsequently been made which have improved the implementation of the Law on civil unions. In particular, it was decided that the provisions relating to marriage and those referring to a “spouse”, “spouses” or equivalent terms, wherever they appear in regulations, also apply to “parties” to a civil union.³⁹ However, this provision does not apply to adoption, which is only available to married couples and single people.⁴⁰ In this context, ECRI regrets to note that a popular petition calling for adoption to also be open to couples living together in a long-term relationship and to those in a civil union was rejected by Parliament in 2023.⁴¹ It invites the authorities to address this issue in the future, in the light of its GPR No. 17 on preventing and combating intolerance and discrimination against LGBTI persons.⁴²
31. With regard to transgender persons, ECRI notes that there is still no legal framework explicitly governing the conditions and procedures for granting or rejecting a request for legal recognition of sex markers,⁴³ which is incompatible with the relevant Council of Europe instruments.⁴⁴ To date, the authorities have taken action in the light of two Italian judgments concerning change of sex marker and name on official documents.⁴⁵ Given that in the first case, dating back to 1995, the San Marino courts ruled that the Italian judgment was not contrary to San Marino law, in 2023 the authorities implemented the Italian judgment in an administrative procedure.
32. At the time of ECRI's visit, San Marino's medical services, in co-operation with those of Italy, were providing care to several young transgender persons. In this context, it was explained that health insurance covers the cost of gender-affirming healthcare (in this case, hormone treatment). In this context, ECRI notes with interest that a counselling centre, to be set up within the Social Security Institute, is expected to provide psychological support on gender issues to all those who need it.⁴⁶
33. ECRI recommends that the authorities develop a legal framework explicitly regulating the conditions and procedures concerning legal gender recognition and establish clear guidelines concerning gender-affirming healthcare, in the light of its

³⁸ [Law No. 147 of 20 November 2018](#) on civil unions. See also ECRI (2018), § 89 and ECRI, Conclusions on the implementation of the recommendations in respect of San Marino subject to interim follow-up, fifth monitoring cycle, 2021.

³⁹ [Law No. 115 of 24 June 2021](#) on regulatory amendments for the co-ordination of Law No. 174 of 20 November 2018 on civil unions. In addition, the Criminal Code has been amended to provide that the term “marriage” also extends to civil union and that the term “spouse” refers to a person bound by marriage or the “party” to a civil union.

⁴⁰ See Article 1 of Law No. 115 of 24 June 2021 and Article 62 of [Law No. 49 of 26 April 1986](#) on the reform of family law.

⁴¹ [Istanza d'Arengo](#) No. 7 of 2 April 2023 rejected by Parliament [Decision](#) No. 9 of 13 September 2023.

⁴² ECRI [GPR No. 17](#), recommendation 19.

⁴³ See also ECRI (2018), § 81. The procedure for changing names is governed by [Law No. 17 of 26 January 2006](#) on changes to public records and official documents and the simplification of procedures and by [Delegated Decree No. 7 of 19 January 2007](#).

⁴⁴ ECRI GPR No. 17, recommendations 24-31; [Recommendation CM/Rec\(2010\)5](#) of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, §§ 20-22; Parliamentary Assembly of the Council of Europe, [Resolution 2048 \(2015\)](#): Discrimination against transgender people in Europe, §§ 6.2 and 6.3; and relevant case law of the European Court of Human Rights (see, *inter alia*, X and Y v. Romania, [Nos. 2145/16 and 20607/16](#), 19 January 2021).

⁴⁵ See Judgment No. 301 1995 of 5 April 1996.

⁴⁶ Article 2 of Law No. 127 of 7 September 2022. It should be noted that the counselling centre would also provide psychological, gynaecological and andrological assistance to any person and according to their sexual orientation.

34. As part of the current monitoring cycle, ECRI is also assessing the situation of intersex persons.⁴⁷ Many of these persons suffer as a result of medical interventions, which are in most cases non-consensual and medically unnecessary, and have irreversible consequences. During its visit, the ECRI delegation was informed that San Marino's healthcare services had not dealt with any cases of intersex children for about 10 years and that, should such a case arise, it would be examined by an attending physician, who could refer the parents to clinics in Italy. ECRI notes that in San Marino, there is no legal framework or guidelines in this area, leaving it to individual doctors to decide what advice and guidance should be given. In this context, ECRI invites the authorities to take steps to adopt legislation prohibiting unnecessary "sex-normalising" surgery and other such treatment practised on intersex children until such time as they are able to participate in the decision, based on the principle of free and informed consent, in the light of its GPR No. 17 and other relevant international instruments.⁴⁸

II. HATE SPEECH AND HATE-MOTIVATED VIOLENCE

A. Hate speech⁴⁹

Data and public discourse

35. According to data provided by the authorities (from San Marino's electronic judicial statistics system, ARET), six cases of hate speech and hate-motivated violence were recorded between 2017 and 2022. The statistics provided include information on the outcome of the various cases (four closed during the investigation phase, two pending - one before the court and one under investigation) and are classified by type of offence (in this case, Article 179 bis of the Criminal Code). However, they are not systematically broken down by type of discrimination.⁵⁰ Moreover, the judicial statistics are separate from those of the gendarmerie and are not published in either case.⁵¹ ECRI strongly encourages the authorities to improve data collection, taking due account of the relevant Council of Europe instruments,⁵² and to make the data publicly available.
36. In general, ECRI notes that hate speech is not widespread in San Marino. However, representatives of the authorities and civil society met by the ECRI delegation during the visit have observed an increase in cases of hate speech in recent years, mainly occurring on social media.⁵³ Civil society and trade union representatives also informed the ECRI delegation that, in a context of widespread economic crisis, the latent prejudices noted in previous reports against foreign nationals, in particular Italian cross-border workers, persist.⁵⁴

⁴⁷ Persons who are born with biological sex characteristics that do not fit societal norms or medical definitions of what makes a person male or female. See Parliamentary Assembly of the Council of Europe, [Resolution 2191 \(2017\)](#): Promoting the human rights of and eliminating discrimination against intersex people.

⁴⁸ ECRI GPR No. 17, recommendation 32. See also Parliamentary Assembly of the Council of Europe (2017), *op.cit.*; the [Yogyakarta Principles plus 10](#) (2017); and Council of Europe's Commissioner for Human Rights (2015), [Human rights and intersex people](#).

⁴⁹ See definitions of hate speech and hate crime in [ECRI's Glossary](#).

⁵⁰ In four of the six cases, the grounds of discrimination were "race", colour and ethnic origin. According to the authorities, in one case the general nature of the complaint made it impossible to understand the type of discrimination complained of.

⁵¹ Although the Court of San Marino publishes [annual reports](#) on the state of justice, the data are not broken down by type of offence.

⁵² See § 3, c) and d), of ECRI [General Policy Recommendation No. 15](#) on combating hate speech and § 58 of [Recommendation CM/Rec\(2022\)16](#) of the Committee of Ministers to the member States on combating hate speech.

⁵³ See also [Istanza d'Arengo](#) No. 1 of 4 April 2021, which notes the worrying increase in public incidents of hate against individuals and entire communities, including in politics.

⁵⁴ ECRI (2018), § 28 and ECRI (2013), § 80. See also Advisory Committee on the Framework Convention for the Protection of National Minorities, *op. cit.*, § 20.

37. ECRI's attention was drawn in particular to an incident in 2018. After a woman reported that she had been attacked "by a Black person who had tried to take her bag", a group went to the *Casa di San Michele*, a church-owned facility known for providing shelter to migrants, including those from sub-Saharan Africa, with the apparent aim of intimidation. Social media appeared to be fuelling a climate of anti-Black hatred. The incident continued the next day when a group of workers were targeted and photographed because they were "people of colour". The photos were shared on social media and accompanied by racist comments.⁵⁵

Responses to hate speech

38. Several initiatives have been taken to raise awareness and prevent hate speech. The Council of Europe "No Hate Speech Movement" campaign has continued with various awareness-raising activities, mainly in schools,⁵⁶ which can be considered as **good practices**. ECRI also notes that the gendarmerie regularly carries out awareness-raising activities in upper and lower secondary schools.⁵⁷ Furthermore, San Marino continues to celebrate International Day for the Elimination of Racial Discrimination (21 March) and to mark International Day of Commemoration in Memory of the Victims of the Holocaust (27 January) through various initiatives in the media.
39. However, ECRI notes that, with the exception of a march against hate held on 13 May 2018,⁵⁸ which it welcomes, awareness-raising activities were mainly limited to the field of education. Given the increase in cases of hate speech, ECRI considers that the authorities should raise public awareness of the dangers and unacceptability of hate speech by combating negative stereotypes and stigmatisation. The scope of initiatives should therefore be extended beyond the educational sphere to cover the population as a whole.⁵⁹
40. ECRI recommends that the authorities, in co-operation with the relevant civil society organisations, run an information campaign targeting all sectors of society to raise awareness of racist and LGBTI-phobic hate speech, including online hate speech, the legal provisions and existing rights in the field and the remedies available against instances of such speech. In doing so, the authorities should take due account of ECRI's General Policy Recommendation No. 15 on combating hate speech and Recommendation Rec(2022)16 of the Committee of Ministers of the Council of Europe on hate speech.
41. In order to combat the use of hate speech, ECRI recommended in its fifth report that the authorities promote self-regulation by public and private institutions, including elected bodies and political parties.⁶⁰ ECRI notes that the code of conduct for public officials, which also applies to Members of Parliament and the Government, local authorities and law enforcement agencies,⁶¹ requires them to perform their functions in a non-discriminatory manner.⁶² Two political parties also have their own codes of conduct.⁶³ In this context, ECRI regrets to note that the code of conduct for Members of Parliament, adopted in 2022, does not provide for

⁵⁵ See, in particular, [San Marino: caccia aperta all'uomo "di colore" \(cronachediordinariorazzismo.org\)](#). This case is pending before the courts.

⁵⁶ See also Human Rights Council, Working Group on the Universal Periodic Review, [Report of the Working Group](#) on the Universal Periodic Review - San Marino, 24 February-20 March 2020, § 11.

⁵⁷ An awareness-raising session on issues such as hate speech and hate-motivated violence was also held at the senior citizens' centre.

⁵⁸ See [Marcia contro l'odio: organizzatori, intorno a mille i partecipanti \(sanmarinortv.sm\)](#).

⁵⁹ See also ECRI (2018), § 47.

⁶⁰ ECRI (2018), § 34.

⁶¹ Since 2015, there has also been a specific code of conduct for law enforcement officers. See [Delegated Decree No. 59 of 29 April 2015](#) on the code of conduct for law enforcement officers.

⁶² Articles 2 and 6 of [Law No. 141 of 5 September 2014](#) on the code of conduct for public officials.

⁶³ One of the codes is based on a number of values, including equality, while the other emphasises the commitment to combat all forms of discrimination.

penalties in the event of the use of hate speech, contrary to what was envisaged during its previous visit in 2017.⁶⁴ Given their role in the democratic political process, political leaders and Members of Parliament should be encouraged to combat the use of hate speech, drawing inspiration from the Charter of European political parties for a non-racist and inclusive society.⁶⁵

42. With regard to self-regulation in the media, the code of conduct for media professionals provides that human dignity must be respected and that discrimination on the grounds of, *inter alia*, race, ethnic origin, nationality, religion and sexual orientation is prohibited. ECRI notes that disciplinary proceedings may be brought before the *Autorita Garante per l'Informazione* (regulatory authority for information) and that a range of penalties may be imposed, from a warning to being struck off the register.⁶⁶
43. As regards legal remedies, Article 179 bis of the Criminal Code seems to be the main remedy against the use of hate speech in the public sphere.⁶⁷ According to the authorities, hate speech may also constitute defamation, which carries a heavier penalty when committed via social media.⁶⁸ In addition, Article 90, paragraph 1, of the Criminal Code makes discrimination on the grounds of race, ethnic origin, nationality, religion or sexual orientation an aggravating circumstance that increases the penalty. Despite ECRI's long-standing recommendation in this regard,⁶⁹ Articles 179 bis and 90, paragraph 1, of the Criminal Code still do not cover the grounds of colour and language, contrary to the requirements of GPR No. 7 on national legislation to combat racism and racial discrimination.⁷⁰ Furthermore, these articles do not include the grounds of sex characteristics and Article 90, paragraph 1, does not cover gender identity.
44. ECRI considers as a positive development the fact that the gendarmerie takes into account bias motivation when hate crimes, including hate speech, are reported. However, in the absence of any final court judgments on violations of Article 179 bis of the Criminal Code and making use of Article 90, paragraph 1, of the Criminal Code, it is not possible to determine whether the penalties for hate speech are effective and proportionate, as recommended in ECRI's GPR No. 15.⁷¹
45. ECRI recommends that the authorities take steps to ensure that the grounds of language, colour, gender identity and sex characteristics are explicitly included in all criminal law provisions aimed at combating racism and intolerance.
46. In its GPR No. 15, ECRI also recommended that member states clarify the scope and applicability of responsibility under civil and administrative law for the use of hate speech.⁷² Representatives of the judiciary whom ECRI met during its visit explained that a victim of hate speech could seek compensation by bringing civil

⁶⁴ ECRI (2018), § 33 and [Decision No. 29 of 21 March 2022](#) on the code of conduct for Members of Parliament.

⁶⁵ [The Charter of European political parties for a non-racist and inclusive society](#) as endorsed by the Parliamentary Assembly of the Council of Europe in [Resolution 2443 \(2022\)](#).

⁶⁶ Articles 3, 5, 15 and 22 of [Delegated Decree No. 90 of 31 July 2017](#) on the code of conduct for media professionals. The RTV broadcasting company also has a code of conduct that prohibits racist and discriminatory behaviour and comments.

⁶⁷ Article 179 bis of the [Criminal Code](#) provides that anyone who disseminates, by any means, ideas based on racial or ethnic superiority or hatred, incites to commit or commits acts of discrimination on grounds of race, ethnic or national origin, religion, sexual orientation or gender identity, incites or commits acts of violence or provocation of violence based on race, ethnic or national origin, religion, sexual orientation or gender identity shall be punished by imprisonment of the second degree (from six months to three years).

⁶⁸ See also Articles 183 and 185 of the Criminal Code.

⁶⁹ ECRI (2018), § 13 and ECRI (2013), § 36.

⁷⁰ [ECRI General Policy Recommendation No. 7](#) on national legislation to combat racism and racial discrimination.

⁷¹ ECRI GPR No. 15, § 10.

⁷² *Ibid.*, § 8.

proceedings for tort liability, even if the facts were time-barred under criminal law.⁷³ However, no such case has been brought to date.

47. Under the new Law on Information and Media which entered into force in 2023,⁷⁴ providers of audiovisual and radio services and video-sharing platforms must respect human dignity and not incite violence, hatred or discrimination based on sex, race, colour, ethnic and social origin, language, religion, sexual orientation or nationality (Article 45, b). In addition, providers of video-sharing platform services under San Marino's jurisdiction are required to set up clear and user-friendly mechanisms for users to notify or report content, programmes or videos that incite violence, hatred or discrimination (Article 52, paragraph 3). The *Autorita Garante per l'Informazione* is responsible for investigating cases of hate speech in print and electronic media (Article 12).⁷⁵ Although the effectiveness of these new provisions remains to be seen, ECRI considers them to be a positive development.
48. With regard to combating online hate speech, particularly of a criminal nature, ECRI notes that a cybercrime unit within the gendarmerie monitors the appearance of any hate speech on the Internet. In addition, the judge has the power to remove or block online hate content as part of the preventive seizure procedure. In urgent cases, law enforcement officers may also take such measures, which must be subsequently authorised by a judge.⁷⁶
49. ECRI also notes with satisfaction that, as recommended in its previous reports,⁷⁷ the authorities have ratified the Council of Europe Convention on Cybercrime and its First Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, both of which entered into force on 1 July 2019.⁷⁸

B. Hate-motivated violence

50. As stated earlier, Article 179 bis of the Criminal Code criminalises hate-motivated violence and speech which constitutes a hate crime. In addition, Article 90, paragraph 1, of the Criminal Code explicitly states that the commission of an ordinary offence for reasons of racism and intolerance constitutes an aggravating circumstance (see paragraph 43). According to the authorities, the latter provision has never been applied in sentencing.
51. Despite being a participating State in the Organisation for Security and Co-operation in Europe (OSCE), San Marino has never submitted data on hate crimes to the OSCE Office for Democratic Institutions and Human Rights (ODIHR)⁷⁹ and does not publish statistics on the subject. According to information gathered by ECRI, cases of racist or LGBTI-phobic violence have been very rare in San Marino.
52. However, ECRI invites the authorities to remain vigilant and to consider taking further preventive measures. In this context, ECRI welcomes the preventive surveillance activities carried out by the gendarmerie during public events attended by large numbers of people or considered to be of a sensitive nature. In particular, these activities are aimed at detecting the presence of any symbols or elements that might indicate the commission of a hate crime.

⁷³ In this context, see the case of *Fabbi and Others v. San Marino*, [Nos. 6319/21 and 3 Others](#), pending before the Grand Chamber of the European Court of Human Rights.

⁷⁴ [Law No. 40 of 8 March 2023](#) on the right to information and the media.

⁷⁵ The *Autorita Garante per l'Informazione* may also temporarily suspend the reception or retransmission of audiovisual services from a provider under the jurisdiction of another State that is party to the European Convention on Transfrontier Television, in the case of programmes containing incitement to violence and hatred (Article 53 of Law No. 40/2023).

⁷⁶ See Article 58 quinquies of the [Code of Criminal Procedure](#). To date, one such procedure has been initiated, in which the judge ordered the blocking of a website.

⁷⁷ ECRI (2018), § 50; ECRI (2013), § 13; and ECRI (2008), § 9.

⁷⁸ Council of Europe, [Treaty list](#).

⁷⁹ See OSCE/ODIHR, [San Marino | HCRW \(osce.org\)](#).

53. Since ECRI's last report,⁸⁰ steps have been taken to strengthen the capacity of law enforcement officials to fight against hate crimes. On 28 April 2022, the authorities, in co-operation with the Italian Observatory for Security against Acts of Discrimination, held a conference on combating hate crimes and preventing all forms of discrimination.⁸¹ This is a positive development. ECRI encourages the authorities to continue improving the knowledge and expertise of law enforcement officials and to ensure that all legal professionals (including judges and lawyers) also receive appropriate training on the specificities of hate crimes.⁸²

III. INTEGRATION AND INCLUSION

A. Migrants

Data

54. As of 31 July 2023, there were 6 909 foreign nationals lawfully resident in San Marino (1 246 with a stay permit and 5 663 with a residence permit), representing approximately 20% of the total population of 35 127. Italians remained the largest group of foreign nationals, accounting for almost 80% (5 449).⁸³ The others included Ukrainians, Romanians, Russians, Albanians, Moldovans, Argentinians, Brazilians, Poles and Cubans. In addition to those authorised to stay and reside in San Marino, as of 31 July 2023, there were 7 781 cross-border workers living in Italy.⁸⁴
55. The authorities also reported that 26 special stay permits have been granted on humanitarian and social protection grounds in the last five years. In addition, between 24 February 2022 and 28 February 2023, 397 Ukrainian nationals displaced as a result of the Russian Federation's war of aggression against Ukraine were granted special stay permits. At the time of ECRI's visit in 2023, 112 Ukrainian nationals were still in San Marino.
56. Since 2018, 759 applications for naturalisation have been granted, including 451 from Italian nationals (287 men and 164 women) and 308 from other non-nationals (70 men and 238 women).

Policy framework and measures taken by the authorities

57. The laws on entry to and residence in San Marino grant non-nationals the same rights in terms of access to employment, education, housing, social assistance, healthcare, economic activities, etc.⁸⁵ ECRI has not been informed of any integration policy for migrants and is not aware of any integration courses offered to help them integrate into society, apart from language courses.
58. ECRI is pleased to note that Italian language courses continue to be provided for adult migrants. On arrival in San Marino, non-nationals with a stay permit are entitled to 18 hours of free language tuition to learn the basics. The average attendance rate is 10%. A further 44 hours of language courses are available at levels A2 and B1. These are run by the Ministry of Education and Culture and are not free, but there are reduced rates for students and/or the unemployed. From 2023, individual language proficiency certificates will be issued in line with the

⁸⁰ ECRI (2018), § 48.

⁸¹ See [Convegno a San Marino su "Le vittime dell'odio" | Polizia di Stato](#).

⁸² See also Advisory Committee on the Framework Convention for the Protection of National Minorities, *op. cit.* § 45. With regard to judges, ECRI was informed that the training plan for 2023, approved by the Judicial Council, includes training courses to be held on minority rights and non-marital relationships (dealing only in broad terms with non-discrimination aspects) and on gender-based violence. In general, judges may also attend training courses run by the Italian School for the Judiciary, which may include aspects related to violence and hate speech.

⁸³ See www.statistica.sm.

⁸⁴ See www.statistica.sm (cross-border workers by qualification).

⁸⁵ According to Article 3 of [Law No. 118 of 28 June 2010](#), as amended, non-nationals "enjoy the fundamental rights enshrined in national legislation, international conventions in force and the generally recognised principles of international law" and are to be "treated in the same way as San Marinese citizens with regard to the judicial protection of rights and legitimate interests".

criteria set out in the Common European Framework of Reference for Languages. However, in ECRI's view, the range of language courses available to non-nationals is still unsatisfactory, especially in terms of the number of hours offered and the level of proficiency to be achieved in order to facilitate their integration.

59. ECRI recommends that the authorities improve the provision of language courses for migrants by (i) extending the duration of the courses and raising the level of language proficiency to be achieved, taking into account international guidelines⁸⁶ and (ii) setting up a monitoring and evaluation system with a view to making any necessary adjustments and adaptations.

- *Legal status*

60. Foreign nationals wishing to stay in San Marino for more than 30 days must obtain a stay or residence permit. Stay permits are temporary permits that, in principle, legally authorise stays of between three months and one year. They may be issued for a variety of reasons, including for tourism, work, family reunification and cohabitation. Residence permits are issued under certain conditions for long-term stays in the country.⁸⁷ Under legislation in force since 2018, 20 cross-border workers per year who have been working in San Marino continuously for at least 15 years may apply for residence status. If the number of applications submitted exceeds the quota, according to the authorities, a ranking list will be established on the basis of the highest seniority.⁸⁸

61. Despite ECRI's previous recommendations,⁸⁹ San Marino has not completed the process of ratifying the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol. In this regard, the authorities informed the ECRI delegation that they did not plan to introduce a procedure for determining refugee status, which would require specific structures to be set up, and that they preferred to act on a case-by-case basis.⁹⁰ However, since 2010, special stay permits could be granted on humanitarian and social protection grounds.⁹¹ In this context, ECRI is pleased to note that as of 2019,⁹² this type of permit may be upgraded to a regular stay or residence permit after the holder has been resident continuously in San Marino for at least two years, with a view to facilitating their integration.

62. On 4 March 2022, San Marino introduced a special temporary stay permit for Ukrainian citizens displaced as a result of the Russian Federation's war of aggression against Ukraine.⁹³ The authorities explained to the ECRI delegation during the 2023 visit that they intended to extend the validity of this type of permit for as long as necessary.⁹⁴ Ukrainian citizens have been granted free access to healthcare and other social services deemed necessary throughout their stay.

⁸⁶ [Language support for adult refugees: A Council of Europe toolkit - Language policy \(coe.int\)](#).

⁸⁷ Information available [online](#) (in Italian and English). See also San Marino's implementation of the 2030 Agenda for Sustainable Development, op. cit. pp. 122-123.

⁸⁸ See also [Delegated Decree No. 122 of 24 September 2018](#) on the introduction of ordinary residence for cross-border workers, which refers to the drawing of lots in such cases.

⁸⁹ ECRI (2013), §§ 9 and 117; ECRI (2008), §§ 6 and 63; and ECRI (2003), § 3. See also United Nations, Human Rights Council, [Report](#) of the Working Group on the Universal Periodic Review - San Marino, 24 February-20 March 2020, pp. 15-16 and United Nations High Commissioner for Refugees, [Submission](#) for the Universal Periodic Review - San Marino, 2019. In 2018, San Marino supported the [Global Compact on Refugees](#) endorsed by the United Nations General Assembly.

⁹⁰ In this context, it should be noted that Article 1 of the Declaration reaffirms the right to political asylum.

⁹¹ Article 14 of Law No. 118 of 28 June 2010. This permit entitles the holder to receive healthcare and temporary economic benefits from the Social Security Institute and to work in San Marino. However, there are no provisions on the possibility of being included in the list of jobseekers.

⁹² [Law No. 78 of 17 May 2019](#) amending Law No. 118 of 28 June 2010.

⁹³ [Delegated Decree No. 27 of 4 March 2022](#) on the introduction of special temporary stay permits in response to the situation in Ukraine. According to Article 2, paragraph 1, "on an exceptional and temporary basis, foreign nationals of Ukrainian nationality who are currently in a war zone anywhere in the national territory and who are in a situation of instability and danger are entitled to obtain a temporary stay permit [...]".

⁹⁴ The period of validity was extended by [Delegated Decree No. 125 of 31 August 2022](#), [Delegated Decree No. 15 of 3 February 2023](#) and [Delegated Decree No. 100 of 30 June 2023](#) (until 31 December 2023).

Steps were also taken to facilitate access to employment.⁹⁵ They were accommodated in public and private facilities and received a monthly allowance. ECRI commends the exceptionally warm welcome extended to Ukrainian citizens by the authorities, with the support of the local population. It encourages the authorities to continue such efforts in order to provide protection and support to all those fleeing war or other emergency situations and refers in this respect to its 2022 statement on the consequences of the Russian Federation's aggression against Ukraine.⁹⁶

63. With regard to family reunification, ECRI notes that the categories of persons entitled to family reunification vary according to the type of permit held.⁹⁷ It also appears that holders of special stay permits for humanitarian and social protection purposes are not entitled to family reunification under current legislation. With a view to facilitating the integration of lawfully resident foreign nationals, ECRI invites the authorities to extend the categories of persons entitled to family reunification and to allow persons with special stay permits for humanitarian and social protection purposes to benefit from family reunification.
64. As regards the acquisition of San Marino nationality by naturalisation, ECRI notes that there is still a legal requirement to renounce any other nationality held.⁹⁸ During its visit, the ECRI delegation was informed that this condition does not in fact apply to foreign nationals from countries where the law prohibits renunciation of nationality (e.g., Belarus, Cuba, Argentina). ECRI is also pleased to note that in the case of children who have been the subject of a simple adoption and spouses or partners who have entered into a civil partnership with San Marino nationals, the period of continuous residence required to obtain nationality has been reduced from 15 to 10 years, which is in line with the relevant European standards.⁹⁹ Although in other cases¹⁰⁰ the period has been reduced from 25 to 20 years, it is still exceptionally long.
65. ECRI reiterates its recommendation that the authorities (i) review the provisions on the acquisition of San Marino nationality by naturalisation in order to reduce the length of continuous residence required to be eligible to submit an application, and (ii) introduce greater flexibility as concerns dual nationality when acquiring San Marino nationality.
 - *Education, employment and healthcare*
66. In the 2022-2023 school year, 43 migrant children were enrolled in San Marino's education system. Individual education plans may be drawn up by class councils and implemented by teachers until migrant children are fully integrated into the school system. In addition, projects for newly arrived migrant pupils and Italian language programmes are run to support school activities for children attending nursery schools. In this respect, ECRI encourages the authorities to ensure that projects for newly arrived migrant pupils and Italian language programmes are introduced at all levels of education.
67. ECRI welcomes the various initiatives taken by the authorities to receive Ukrainian schoolchildren. Guidelines for the reception in schools of Ukrainian children

⁹⁵ See, *inter alia*, [Delegated Decree No. 64 of 13 April 2022](#).

⁹⁶ [Statement](#) on the consequences of the aggression of the Russian Federation against Ukraine, adopted by ECRI at its 88th plenary meeting (29 March-1 April 2022).

⁹⁷ For example, holders of a stay permit for employment purposes (*permesso di soggiorno per motivi di lavoro*) may apply for family reunification only for their minor children, whereas holders of a stay permit for entrepreneurial reasons (*permesso di soggiorno per motivi imprenditoriali*) may apply for family reunification of their spouse or cohabitant and children up to the age of 25.

⁹⁸ See Article 2, paragraph 1, letter f, of [Law No. 121 of 2 August 2019](#) amending Law No. 114 of 30 November 2000 on citizenship.

⁹⁹ See Article 6, paragraph 3, of the [European Convention on Nationality](#) (ETS No. 166) of the Council of Europe. Despite ECRI's recommendations, San Marino has still not signed and ratified this convention.

¹⁰⁰ With the exception of persons who have been resident in the country continuously since birth, for whom a period of 18 years is required (Article 2 bis of Law No. 121 of 2 August 2019).

displaced as a result of the war were adopted¹⁰¹ and a project entitled “At school with young Ukrainians” was launched on 6 April 2022.¹⁰² Following an appeal by the Department of Education, many teachers volunteered to help the pupils integrate into the schools. Italian language classes were offered outside school and co-operation contracts were signed with linguistic and/or cultural mediators as an essential tool to support communication between families, teachers and children during school activities. ECRI considers these measures to be **good practice**.

68. The authorities informed ECRI that the procedure for recognising qualifications acquired abroad has been brought into line with the provisions of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS No. 165), to which San Marino acceded in 2012. In this context, ECRI is pleased to note that, in 2022, the National Information Centre for Education and Academic Recognition (CINERTA-ENIC) joined the Council of Europe’s “European Passport for Refugee Qualifications” project,¹⁰³ which is a **promising practice**.
69. According to official statistics as at 31 December 2023, the overall employment rate in San Marino was 68.01% (67.51% for San Marino nationals and 69.48% for foreign nationals). In the same period, the unemployment rate was 3.08% for San Marino nationals (4.10% for women and 2.05% for men) and 3.14% for foreign nationals (4.27% for women and 1.94% for men). As of 16 February 2023, 594 public sector positions were held by foreign nationals (including 527 Italians and 21 Romanians).
70. With regard to cross-border workers, ECRI notes that, thanks to the liberalisation of the labour market through Law No. 164 of 9 December 2022, which entered into force on 1 January 2023, cross-border workers may be recruited on an equal footing with San Marino workers.¹⁰⁴
71. In October 2023, 258 female migrant workers were employed in the San Marinense private sector as carers (hereinafter “*badanti*”). Most of them came from Ukraine (143), Albania (38), Romania (20), Georgia (15) and the Philippines (11). ECRI is pleased to note that the one-stop shop set up in 2016 to deal with all the relevant formalities and administrative procedures is still operational.¹⁰⁵ ECRI was informed that, in the event of complaints, the one-stop shop takes all relevant measures to provide appropriate assistance to the *badanti*.¹⁰⁶ Most of the complaints concerned rude or inappropriate behaviour by employers or their families. According to the authorities, two cases required more complex handling in 2023. ECRI reiterates that the situation of the *badanti* remains vulnerable and encourages the authorities to ensure that they are not subjected to forms of intersectional discrimination based on their gender and migration status.¹⁰⁷
72. As in its previous reports,¹⁰⁸ ECRI notes that there is still a difference in treatment between resident San Marinense who are not gainfully employed (who voluntarily choose not to work and decline to be registered as jobseekers) and who benefit from free medical assistance and foreign nationals with a stay or residence permit who are not gainfully employed (who voluntarily choose not to work and decline to

¹⁰¹ Department of Education, [Guidelines for the reception of Ukrainian refugees in schools, 2022](#).

¹⁰² See [A scuola con i giovani ucraini - Portale dell'educazione](#).

¹⁰³ See [European Qualifications Passport for Refugees - Education \(coe.int\)](#).

¹⁰⁴ [Law No. 164 of 9 December 2022](#) on the reform of labour law. See also [Continua il percorso delle riforme: approvata la Legge sull'occupazione \(sanmarinortv.sm\)](#).

¹⁰⁵ Article 3 of [Delegated Decree No. 21 of 24 February 2016](#) on measures for the elderly and people with disabilities who are not self-sufficient and require ongoing assistance.

¹⁰⁶ Where violations of the law were found, other institutions such as the mental health unit, the gendarmerie, the police and the courts were also involved.

¹⁰⁷ See in this regard Recommendation [CM/Rec\(2022\)17](#) of the Committee of Ministers of the Council of Europe on protecting the rights of migrant, refugee and asylum-seeking women and girls.

¹⁰⁸ ECRI (2018), § 58 and ECRI (2013), § 76.

be registered as jobseekers) and who must pay a contribution (*quota capitaria*) to the San Marinese healthcare system. ECRI notes that the Ministry of Health and Social Security held a series of meetings with a view to amending the relevant legislation¹⁰⁹ and strongly encourages the authorities to continue their efforts to eliminate this apparently unjustified differential treatment.

- *Participation in public life*

73. ECRI is pleased to learn that, in accordance with its long-standing recommendations,¹¹⁰ the authorities have granted the right to vote in local elections (*Giunte di Castello*) to foreign nationals who have been resident in San Marino for at least 10 years.¹¹¹ An additional electoral roll was drawn up, identifying 2 809 foreign nationals who were newly eligible to vote. The majority are Italian (2 449), Romanian (62), Ukrainian (42), Argentinean (35), Russian (20), Polish (18), Albanian (18), Brazilian (17), French (15) and Cuban (12) nationals. In the local elections of 29 November 2020, 40.23% of all foreign nationals eligible to vote under the new law voted. However, ECRI notes that the 10-year residence requirement remains high, particularly in the light of the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144), which provides for a maximum period of residence of five years prior to elections.¹¹² Furthermore, ECRI regrets to note that the authorities have still not granted foreign nationals resident in San Marino the right to stand as a candidate in local elections.
74. ECRI recommends that the authorities: (i) reduce to five years the period of residence required for foreign nationals resident in San Marino to be eligible to vote in local elections; (ii) grant foreign nationals resident in San Marino the right to stand as a candidate in local elections; and (iii) sign and ratify the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.

B. Religious communities

75. San Marino does not systematically collect data on the presence of different religious communities in the country. In addition to Catholics, who are in the majority, other groups include Jehovah's Witnesses, Baha'is, Muslims, Jews, Orthodox Christians and Waldensians.¹¹³ With the exception of the Jewish community, all minority groups have registered as associations.
76. In its previous report, while focusing on the situation of Jehovah's Witnesses, ECRI noted that the rules applicable to associations were ill-suited to religious practice.¹¹⁴ Despite a meeting held on 22 May 2019 between representatives of the Jehovah's Witnesses and the authorities to explore various solutions, the situation remains unchanged. ECRI therefore strongly encourages the authorities to allow all religious groups, other than the Catholic community, which already enjoys this right, to register as religious organisations in San Marino.¹¹⁵
77. ECRI notes that there are good relations between the various religious communities in San Marino. In this context, ECRI is pleased to note that the authorities pay particular attention to intercultural and interreligious dialogue.¹¹⁶

¹⁰⁹ [Law No. 114 of 22 July 2014](#) on the rules governing persons entitled to healthcare services and provisions on *quota capitaria*.

¹¹⁰ ECRI (2018), § 61; ECRI (2013), § 106; ECRI (2008), § 61; and ECRI (2003), § 34.

¹¹¹ Article 8 of [Law No. 158 of 24 September 2020](#) on the reform of Law No. 127 of 27 September 2013 on local authorities.

¹¹² Article 6 § 1 of the [Convention on the Participation of Foreigners in Public Life at Local Level](#). Despite ECRI's previous recommendations, San Marino has still not signed and ratified this Convention.

¹¹³ Committee on the Elimination of Racial Discrimination, op.cit., § 2.

¹¹⁴ ECRI (2018), § 74.

¹¹⁵ See also Parliamentary Assembly of the Council of Europe (2023), op.cit.; § 8.1.

¹¹⁶ See Human Rights Council, Working Group on the Universal Periodic Review, [National report](#) submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - San Marino, 4-15 November 2019, §§ 94-95 and Advisory Committee on the Framework Convention for the Protection of National Minorities, op.cit., § 21.

IV. TOPICS SPECIFIC TO SAN MARINO

National legislation on preventing and combating discrimination

78. It should be recalled that a number of recommendations made in ECRI's previous reports related to the adoption of a comprehensive body of anti-discrimination legislation taking into account its GPR No. 7.¹¹⁷ In particular, ECRI recommended that national legislation should (i) make explicit reference to the forms of discrimination prohibited under civil law, including segregation, discrimination by association, announced intention to discriminate, harassment¹¹⁸ and instructing, inciting or assisting others to discriminate; and (ii) provide for a shared burden of proof in discrimination cases and an obligation on public authorities to promote equality and to withdraw public funding from or dissolve organisations, including political parties, which promote racism and intolerance.
79. ECRI notes with regret that the legislative framework for combating discrimination in San Marino remains incomplete and that a number of isolated provisions prohibiting discrimination on certain grounds are still scattered across sector-specific laws on education,¹¹⁹ employment,¹²⁰ the media,¹²¹ sport¹²² and the prison system.¹²³ According to the authorities, the principle of equality is reaffirmed in the provisions on healthcare, in particular in the statutes of the medical professions.¹²⁴ The principle of equality is also enshrined in the Declaration on Citizens' Rights and Fundamental Principles of the San Marino Legal System (Article 4).¹²⁵ In this context, the authorities also reiterated that, in the event of contradiction between national legislation and the international agreements on human rights and fundamental freedoms ratified by San Marino, the latter shall prevail (Article 1 of the Declaration). Furthermore, the authorities stated that, in the absence of statutory provisions, customary law and *jus commune* constituted an additional source of law and as such could be applied directly by domestic courts. The authorities therefore consider that the legal framework is adequate and protects individuals against all forms of discrimination.
80. In ECRI's view, it is only through the development of a comprehensive anti-discrimination legislative framework that international legal commitments to equality can be translated into effective rights at the national level. In San Marino, the adoption of a law to prevent and combat all forms of discrimination would greatly facilitate the enforcement of the prohibition of discrimination enshrined, in particular, in Article 14 of the European Convention on Human Rights and Article 1 of Protocol No. 12 (ETS No. 177) thereto, and would provide any victim of discrimination with effective means of obtaining redress.

¹¹⁷ ECRI (2018), § 20; ECRI (2013), § 43; ECRI (2008), § 28; and ECRI (2003), § 14.

¹¹⁸ The authorities informed ECRI that harassment is a criminal offence under Article 181 bis of the Criminal Code. ECRI notes that San Marino ratified the International Labour Organisation Convention on Violence and Harassment in 2022. See [Violence and Harassment: The Republic of San Marino ratifies the Violence and Harassment Convention \(ilo.org\)](#).

¹¹⁹ Article 1 of [Law No. 60 of 30 July 1980](#) on the reform of the education system prohibits discrimination on the grounds of race, sex, language, religion and political opinion. Article 1 of Law No. 21 of 12 February 1998 does not explicitly mention the prohibited grounds of discrimination.

¹²⁰ Article 14 of Law No. 95 of 19 September 1989 on employment, Article 7 of Law No. 23 of 4 May 1977 on disciplinary sanctions and dismissal, Article 89 of Law No. 41 of 22 December 1972 on civil servants. These provisions cover the prohibition of discrimination on the grounds of religious beliefs, political or other opinions and trade union membership.

¹²¹ Article 45, b, of Law No. 40 of 8 March 2023 prohibits discrimination on the grounds of sex, race, colour, ethnic and social origin, language, religion, sexual orientation or nationality.

¹²² Article 2, e, of [Law No. 80 of 9 May 2023](#) on the Sports Code prohibits discrimination on the grounds of sex, sexual orientation, personal, economic and social conditions, political orientation and religious belief.

¹²³ Article 1 of [Law No. 44 of 29 April 1997](#) on prison rules prohibits discrimination on the grounds of nationality, race, economic and social conditions, political opinion and religious belief.

¹²⁴ [Law No. 43 of 28 April 1989](#) on the rights and duties of patients; [Decree No. 101 of 5 October 1999](#) amending the regulations governing psychologists; and [Decree No. 32 of 18 March 1996](#) ratifying Decree No. 20 of 23 February 1996 giving legal recognition to the Order of Surgeons and Dentists.

¹²⁵ See footnote 36.

81. In addition to the fact that discrimination is not prohibited in all spheres of life, ECRI notes that the existing provisions provide different levels of protection for the various grounds of discrimination in the areas where it is prohibited. ECRI therefore considers that a comprehensive anti-discrimination law would ensure equal protection against discrimination in all its forms and in all spheres of life. The absence of such legislation may also explain why case law on discrimination in civil proceedings remains limited.¹²⁶ In this context, ECRI stresses that such a lack also constitutes a barrier to access to justice, since, with the exception of the field of employment,¹²⁷ victims of discrimination do not benefit from provisions establishing a shared burden of proof in cases where the facts give rise to a presumption of discrimination.
82. Lastly, ECRI stresses that the adoption of such a law, in addition to providing better protection for victims of discrimination, could have an important preventive and informative effect, helping to raise public awareness. ECRI reiterates its view that the adoption of a comprehensive anti-discrimination law would constitute an essential step in San Marino's efforts to prevent and combat the various forms of discrimination falling within ECRI's mandate.
83. ECRI strongly recommends that the authorities adopt a comprehensive body of legislation to prevent and combat discrimination, in the light of its relevant General Policy Recommendations.¹²⁸ The legislation should prohibit any form of discrimination on the basis of a list covering all grounds of discrimination falling within ECRI's mandate and in all areas of life, establish clear obligations for the authorities and provide the necessary legal tools to prevent and combat racial discrimination and discrimination against LGBTI people. If necessary, Council of Europe support should be sought.
84. Furthermore, ECRI notes with interest the recent adoption of provisions aimed at regulating the use of algorithms in public administration decision-making procedures, taking into account the principle of non-discrimination.¹²⁹ Although the authorities are not aware of any decision-making procedures in which the public administration will be required to use algorithms, they indicated that the establishment of a protocol to ensure compliance with these provisions could be considered. ECRI encourages the authorities to continue their efforts in this respect.

¹²⁶ The authorities informed ECRI of two cases handled in 2008 and 2014. ECRI was also informed by its other interlocutors of two cases dealt with in 2007 and 2017, respectively.

¹²⁷ Article 11 of [Law No. 23 of 4 May 1977](#).

¹²⁸ ECRI GPRs Nos. 7 and 17.

¹²⁹ Article 77 of Law No. 40 of 8 March 2023: “[...] The Republic shall ensure that algorithms are used in accordance with the principles of transparency, non-exclusivity and non-discrimination in the implementation of decision-making processes of the State administration regarding natural or legal persons. Transparency refers to the right of natural or legal persons to know whether automated decision-making mechanisms are used in procedures concerning them and, if so, to receive clear information about the logic involved. Non-exclusivity is the right of natural or legal persons to obtain a decision which is not exclusively based on automated procedures in proceedings which concern them or significantly affect their rights. Non-discrimination relates to the right of natural or legal persons to have appropriate processing procedures applied for fair profiling, with the development of appropriate technical and organisational measures to avoid unjustified discrimination, inaccuracies or errors [...]”

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of San Marino are the following:

- (§8) ECRI recommends that the authorities set up an equality body which has all the necessary safeguards as to its independence, sufficient human and financial resources and the functions and competences required to carry out its tasks in the light of its revised General Policy Recommendation No. 2 on equality bodies to combat racism and intolerance at national level.
- (§20) ECRI recommends that the authorities work towards the adoption of standards for preventing and combating bullying, including cyberbullying, and violence in schools and set up a system for monitoring racist and LGBTI-phobic bullying and violence in schools.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§8) ECRI recommends, as a matter of priority, that the authorities set up an equality body which has all the necessary safeguards as to its independence, sufficient human and financial resources and the functions and competences required to carry out its tasks in the light of its revised General Policy Recommendation No. 2 on equality bodies to combat racism and intolerance at national level.
2. (§16) ECRI recommends that the authorities ensure that human rights education includes the prevention of racism and intolerance and, in particular, greater age-appropriate awareness on issues related to sexual orientation, gender identity and sex characteristics in the school environment. In this context, the initial and in-service training of primary and secondary school teachers on human rights issues, including those related to sexual orientation, gender identity and sex characteristics, should be strengthened.
3. (§20) ECRI recommends, as a matter of priority, that the authorities work towards the adoption of standards for preventing and combating bullying, including cyberbullying, and violence in schools and set up a system for monitoring racist and LGBTI-phobic bullying and violence in schools.
4. (§33) ECRI recommends that the authorities develop a legal framework explicitly regulating the conditions and procedures concerning legal gender recognition and establish clear guidelines concerning gender-affirming healthcare, in the light of its General Policy Recommendation No. 17 on preventing and combating intolerance and discrimination against LGBTI persons and other relevant Council of Europe instruments.
5. (§40) ECRI recommends that the authorities, in co-operation with the relevant civil society organisations, run an information campaign targeting all sectors of society to raise awareness of racist and LGBTI-phobic hate speech, including online hate speech, the legal provisions and existing rights in the field and the remedies available against instances of such speech. In doing so, the authorities should take due account of ECRI's General Policy Recommendation No. 15 on combating hate speech and Recommendation Rec(2022)16 of the Committee of Ministers of the Council of Europe on hate speech.
6. (§45) ECRI recommends that the authorities take steps to ensure that the grounds of language, colour, gender identity and sex characteristics are explicitly included in all criminal law provisions aimed at combating racism and intolerance.
7. (§59) ECRI recommends that the authorities improve the provision of language courses for migrants by (i) extending the duration of the courses and raising the level of language proficiency to be achieved, taking into account international guidelines and (ii) setting up a monitoring and evaluation system with a view to making any necessary adjustments and adaptations.
8. (§65) ECRI reiterates its recommendation that the authorities (i) review the provisions on the acquisition of San Marino nationality by naturalisation in order to reduce the length of continuous residence required to be eligible to submit an application, and (ii) introduce greater flexibility as concerns dual nationality when acquiring San Marino nationality.
9. (§74) ECRI recommends that the authorities: (i) reduce to five years the period of residence required for foreign nationals resident in San Marino to be eligible to vote in local elections; (ii) grant foreign nationals resident in San Marino the right to stand as a candidate in local elections; and (iii) sign and ratify the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.

10. (§83) ECRI strongly recommends that the authorities adopt a comprehensive body of legislation to prevent and combat discrimination, in the light of its relevant General Policy Recommendations. The legislation should prohibit any form of discrimination on the basis of a list covering all grounds of discrimination falling within ECRI's mandate and in all areas of life, establish clear obligations for the authorities and provide the necessary legal tools to prevent and combat racial discrimination and discrimination against LGBTI people. If necessary, Council of Europe support should be sought.

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