

Council of Europe contribution for the 34th UPR session (Oct-Nov 2019) Regarding San Marino

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Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

2013 periodic visit

CPT report (French only):



CPT_inf_2014_33_S
an_Marino.pdf

Government response:



CPT_Inf_2014_34_G
ov_response_San_M:

Publication news flash for a brief summary of the report and response: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-san-marino>

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

Report on San Marino

On 15 October 2015, the Commissioner published a [report](#) following his visit to San Marino from 9 to 10 June 2015. The report focused on freedom of expression and media freedom and on the fight against discrimination, including women's rights and gender equality, the human rights of persons with disabilities and the human rights of LGBTI persons.



CommDH2015_22Sa
n_Marino.pdf

The Commissioner's main concern regarding media freedom related to the adoption of a new law on publishing and the profession of media operators: this law foresees an enforcement mechanism for a future code of ethics, which in the opinion of the Commissioner went beyond self-regulation and carries a risk of undue interference with media content. He therefore urged the Sammarinese authorities to replace this mechanism with one that is more respectful of media freedom and the principle of self-regulation. The Commissioner also encouraged San Marino to decriminalise defamation and to review the sanctions for disclosing pre-trial information.

As regards the fight against discrimination, the Commissioner encouraged the authorities to address a number of gaps in San Marino's anti-discrimination legislation and to ratify the revised European Social Charter. He considered that an existing body (Commission for Equal Opportunities) did not

meet the independence and effectiveness requirements for an equality body and encouraged San Marino to set up a human rights structure in compliance with the Paris Principles which could also fulfil this role.

Concerning women's rights and gender equality, the Commissioner warmly welcomed the progress made on combating violence against women, while urging the speedy ratification of the Istanbul Convention and encouraging the reinforcement of the competent national body. He highlighted specific problems relating to foreign-national women, in particular private carers, as well as the need to address the gender gap in employment and political participation. With respect to reproductive rights, the Commissioner encouraged San Marino to review the very strict criminal law provisions on abortion in the light of the relevant international standards.

While welcoming important progress concerning the human rights of persons with disabilities, the Commissioner encouraged San Marino to back up its recent legislation with a clear action plan and adequate resources. The Commissioner also urged a thorough review of the Sammarinese legal capacity legislation to align it with the standards of the United Nations Convention on the Rights of Persons with Disabilities. Notwithstanding the excellent quality of care in residential settings, the Commissioner also encouraged San Marino to support efforts to move towards fully community-based living arrangements.

As for the human rights of LGBTI persons, the Commissioner recommended the introduction of a framework based on self-determination in order to ensure the legal recognition of a person's gender. The Commissioner also recommended the introduction of legal protection for same-sex couples in the form of a civil union or registered partnership, while in the meantime extending the current protection enjoyed by non-married, cohabiting opposite-sex couples to same-sex couples. He furthermore called on the authorities to raise awareness on the human rights of LGBTI persons and to promote respect and equality.

Letter to the Minister for Labour, Co-operation and Information of the Republic of San Marino

On 9 September 2016, the Commissioner published a [letter](#) to the Minister for Labour, Co-operation and Information of the Republic of San Marino, Iro Belluzzi, concerning the final draft of a Code of Conduct for Media Operators, which the Minister had transmitted to him. Stressing that codes of ethics are important tools in promoting ethical journalism, the Commissioner welcomed efforts made by San Marino to set clear duties and responsibilities for journalists and media operators, in particular as concerns the protection of minors and disadvantaged groups and the protection of privacy and fundamental rights. However, the draft code did not allay the concerns the Commissioner had expressed in his last report on San Marino. In particular, the body which was entrusted with the enforcement of the code of conduct, and which ultimately retained the power to interpret and apply the said code in individual cases, was an externally appointed body in which journalists were not necessarily represented. The risk of undue interference and the potential chilling effect that this system might entail was of serious concern. Therefore, the Commissioner reiterated his recommendation to replace this mechanism with a system which is more respectful of freedom of the media and the principle of self-regulation.



[CommDH2016_32_San_Marino.pdf](#)

Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance ([ECRI](#)) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as “race”, national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI’s monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI’s country reports.

ECRI’s fifth report on San Marino was adopted on 6 December 2017 and published on 27 February 2018.



[ECRI2018_1_San_Marino.pdf](#)

Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

The Advisory Committee on the Framework Convention adopted the [4th Opinion in respect of San Marino](#) on 20 November 2015



[ACFC_San_Marino_2017_007.pdf](#)

Resolution CM/ResCMN(2016)11 on the implementation of the Framework Convention for the Protection on National Minorities by San Marino was adopted by the Committee of Ministers on 14 September 2016 at the 1264th meeting of the Ministers’ Deputies.



[CMResCMN2016_11_San_Marino.doc](#)

European Charter for Regional or Minority Languages

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals for recommendations.

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.



[GRETA_San_Marino_2019_01.pdf](#)

Preventing and combating violence against women and domestic violence (GREVIO)

The Council of Europe Convention on preventing and combating violence against women and Domestic violence ([Istanbul Convention](#), CETS No. 210) is the most far-reaching international treaty to tackle this serious violation of human rights. It aims at zero tolerance for such violence and is a major step forward in making Europe and beyond safer. Preventing violence, protecting victims and prosecuting the perpetrators are the cornerstones of the convention. It also seeks to change the hearts and minds of individuals by calling on all members of society, in particular men and boys, to change their attitudes. In essence, it is a renewed call for greater equality between women and men, because violence against women is deeply rooted in the inequality between women and men in society and is perpetuated by a culture of intolerance and denial.

The Council of Europe Istanbul Convention provides for two types of monitoring procedures:

- 1. a country-by-country evaluation procedure;*
- 2. and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention.*

The aim of the monitoring mechanisms of the Istanbul Convention is to assess and improve the implementation of the Convention by Parties. It consists of two distinct, but interacting, bodies:

- 1. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.*
- 2. The [Committee of the Parties](#) is composed of the representatives of the Parties to the Convention. The Committee of the Parties may adopt, on the basis of the reports and conclusions of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), specific recommendations addressed to the Parties concerned.*

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

San Marino is even further away in terms of the monitoring procedure so nothing to report at this stage.

Protection of children against sexual abuse (Lanzarote Convention)

The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as "[the Lanzarote Convention](#)", requires criminalisation of all kinds of sexual offences against children. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

The "Lanzarote Committee" (i.e. the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) is the body established to monitor whether Parties effectively implement the Lanzarote Convention. To do so, the Committee evaluates the information which has been provided by the national authorities and other sources in their replies to questionnaires developed by the Committee itself. This monitoring procedure is divided by rounds, each round concerning a theme; starting with sexual abuse in the circle of trust.

As to the 1st monitoring round on the "Protection of children against sexual exploitation and sexual abuse in the circle of trust", San Marino was urged to:

- review its legislation to ensure effective protection of children from situations where abuse is made of a recognised position of influence (R1, 1st implementation report);
- take the necessary legislative or other measures to set up or designate mechanisms for data collection or focal points at national or local level and in collaboration with civil society, for the purpose of observing and evaluating in terms of quantitative data collection the phenomenon of the sexual exploitation and sexual abuse of children in general and child sexual abuse committed in the circle of trust, in particular (R13, 1st implementation report);
- [as it limits mandatory screening only to specific professionals] to extend such screening to the recruitment of all professionals (public or private) in regular contact with children (R19, 2nd implementation report);

- to deny the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed (R22, 2nd implementation report);
- put in place effective intervention programs or measures for persons, including children, who fear they may offend to prevent the risk of offences being committed (R24, 2nd implementation report);
- put in place a tool or procedure to make an assessment of the dangerousness and possible risks of repetition of sexual offences against children (R26, 2nd implementation report);
- put in place a tool or procedure to evaluate the effectiveness of the intervention programmes or measures (R27, 2nd implementation report);
- put in place an offer dedicated to meet the developmental needs of children who sexually offend, including those who are below the age of criminal responsibility with a view to providing them adapted programmes or measures so that they can be helped (R28, 2nd implementation report);
- which have not yet put in place effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed, in the pre-trial phase of the procedure, to do so (R29, 2nd implementation report);
- put in place effective intervention programmes or measures in prison (R31, 2nd implementation report).

As regards the urgent monitoring round on "Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse", San Marino (as well as the other 39 parties covered by the round) received the following 5 "urge recommendations":

- urges Parties in line with Article 5 of the Convention to effectively screen all persons who, by their professions, have regular contact with children affected by the refugee crisis for convictions of acts of sexual exploitation or sexual abuse of children in line with their internal law (R18);
- since examining the family situation is important where there are suspicions of child sexual exploitation or abuse, urges Parties to take the necessary measures to avoid risks that the child may be abused or exploited in case of family reunification (R27);
- urges Parties that have not yet done so to take the necessary legislative or other measures to ensure that child victims of sexual exploitation and sexual abuse affected by the refugee crisis may benefit from therapeutic assistance, notably emergency psychological care (R29);
- urges Parties to encourage the co-ordination and collaboration of the different actors who intervene for and with children affected by the refugee crisis to ensure that appropriate support may be provided immediately after the disclosure of sexual exploitation and sexual abuse (R30);
- urges Parties to make use, within the context of the refugee crisis, of the specific co-operation tools already available in the framework of Europol/Interpol which are specifically aimed at identifying victims of sexual exploitation and sexual abuse (R33).

Fight against corruption (GRECO)

The 'Group of States against Corruption' (GRECO) monitors all its 49 members through a peer review evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

GRECO will carry out its 4th Round Evaluation visit to San Marino in September 2019.

Execution of judgments and decisions of the European Court of Human Rights

Statistical data

At 31 December 2018, there were no (one case at 31 December 2017) cases against San Marino pending before the Committee of Ministers for supervision of their execution.

In 2018, the CM was not seized by any new cases (one new leading case in 2015) and accordingly, no just satisfaction was awarded (€ 18 000 awarded in 2015).

In 2018, one case (one case closed also in 2017) was closed by the adoption of a Final Resolution.

For fuller overview of the situation see the [Country Factsheets](#) available on the website of the Department for the Execution of Judgments of the European Court of Human Rights and in the [Committee of Ministers' Annual Reports](#) on its supervision activity. More detailed information on execution in individual cases can be found through [Hudoc-EXEC](#).

Main cases / groups of cases under the Committee of Ministers' supervision

Currently, there are no cases pending before the Committee of Ministers.

Important cases closed in 2018

In December 2018 the Committee of Ministers ended the supervision of the execution by San Marino of a Court's judgment concerning the impossibility to obtain restitution of expropriated but unused plots of land. Following the Strasbourg Court's judgment, San Marino adopted legislation that provides for a specific procedure allowing partial or total retrocession of previously expropriated immovable property (case Beneficio Cappella Paolini v. San Marino, Application No. 40786/98, final on 13/10/2004, [Resolution CM/ResDH\(2018\)456](#)).



CASE OF BENEFICIO
CAPPELLA PAOLINI A

Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Not relevant for San Marino.

Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

Since 2013 we have not had any opinions on San Marino.