



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 15 October 2015

CommDH(2015)22
English only

REPORT BY NILS MUIŽNIEKS

COMMISSIONER FOR HUMAN RIGHTS
OF THE COUNCIL OF EUROPE

**FOLLOWING HIS VISIT TO SAN MARINO
FROM 9 TO 10 JUNE 2015**

Summary.....	1
Introduction	3
1 Freedom of Expression and Media Freedom	4
1.1 Relevant Criminal Law Provisions	4
1.2 Media Regulation	5
1.3 Conclusions and Recommendations.....	5
2 The Fight against Discrimination	7
2.1 Legislative and institutional framework	7
2.1.1 Conclusions and Recommendations	8
2.2 Women’s Rights and Gender Equality	8
2.2.1 Violence against women and domestic violence	8
2.2.2 Gender equality and discrimination against women	10
2.2.3 Conclusions and Recommendations	11
2.3 Human Rights of Persons with Disabilities	11
2.3.1 Conclusions and Recommendations	13
2.4 Human Rights of LGBTI Persons	14
2.4.1 Conclusions and Recommendations	16

SUMMARY

Commissioner Nils Muižnieks and his delegation visited San Marino from 9 to 10 June 2015. In the course of the visit, the Commissioner held discussions with state authorities, national bodies active in the human rights field and civil society representatives. The present report focuses on the following human rights issues:

1. Freedom of Expression and Media Freedom

Media in San Marino, like in any democratic society, must be able to play their role as public watchdog without undue interference from the state. While recognising the measured approach Sammarinese courts developed in criminal law cases affecting freedom of expression, the Commissioner encourages the Sammarinese authorities to decriminalise defamation, which should be dealt with through strictly proportionate civil sanctions only, and review the punishment for disclosing pre-trial information. The Commissioner acknowledges that the new law on publishing and the profession of media operators was adopted to meet legitimate concerns relating to the regulation of the journalistic profession and journalistic ethics. However, the provisions contained in this law regarding the enforcement mechanism of a future code of ethics are of serious concern as they go beyond the framework of self-regulation and carry a risk of undue interference with media content. The Commissioner therefore urges the authorities to replace this mechanism with one that is more respectful of the freedom of the media and the principle of self-regulation.

2. Fight against Discrimination

The Commissioner encourages the authorities to remedy a number of gaps in San Marino's anti-discrimination legislation identified by international monitoring bodies, including in constitutional, criminal, civil and administrative law, and urges them to ratify the revised European Social Charter. He finds that the current Commission for Equal Opportunities does not meet the key independence and effectiveness requirements for an equality body. Considering that San Marino also lacks a national human rights structure complying with the Paris Principles, he encourages the authorities to establish such a structure, which could also act as an equality and anti-discrimination body.

Concerning women's rights and gender equality, the Commissioner commends the progress made on combatting violence against women, while recommending the allocation of adequate resources to the Authority for Equal Opportunities. Ratification of the Istanbul Convention should be the next step in this endeavour. The Commissioner encourages the authorities to continue paying special attention to foreign-national women, and in particular to private carers and domestic workers, in order to ensure that they have access to integration measures and adequate supports against potential exploitation. Decisive action should also be taken to address the gender gap in employment and political participation, along with measures to combat gender stereotypes from the earliest levels of education. Regarding reproductive rights, the Commissioner encourages the authorities to review the very strict criminal law provisions concerning abortion in the light of the approach of the Parliamentary Assembly of the Council of Europe and relevant international human rights bodies.

As regards the human rights of persons with disabilities, the Commissioner also welcomes the important progress achieved by San Marino, particularly with respect to its exemplary policy on inclusive education. While welcoming the adoption of a new framework law on inclusion in society, he recommends supporting this law with a clear action plan and an adequate budget. The Commissioner urges a thorough review of the Sammarinese legal capacity legislation in the light of the United Nations Convention on the Rights of Persons with Disabilities. The aim of this review should be to abolish full incapacitation and plenary guardianship, including the attendant restriction of political rights, without delay and to gradually phase out any substitute decision-making and replace it with supported decision-making alternatives based on consent. Notwithstanding the excellent quality of care in residential settings, the Commissioner encourages San Marino to support efforts to move towards fully community-based living arrangements. He also recommends further measures against disability discrimination in the labour market.

Concerning the human rights of LGBTI persons, the Commissioner recommends the introduction of a legal framework ensuring the legal recognition of a person's gender in a quick, transparent and accessible way based on self-determination. In the light of the recent case-law of the European Court of Human Rights, the

Commissioner recommends the introduction of legal protection for same-sex couples, in the form of a civil union or registered partnership, and in the meantime, the extension of the current protection enjoyed by couples cohabiting *more uxorio* (as husband and wife) to same-sex couples, including for stay permits. He calls on the authorities to engage in awareness-raising activities for the promotion of respect and equality for LGBTI persons.

INTRODUCTION

1. The present report follows a visit to San Marino by the Council of Europe Commissioner for Human Rights (“the Commissioner”) from 9 to 10 June 2015.¹ The visit focused on media freedom and on the fight against discrimination with a particular focus on women’s rights and gender equality, the human rights of persons with disabilities and the human rights of LGBTI persons.
2. In the course of his visit, the Commissioner was granted an audience by Their Excellencies the Captains Regent and met with the Minister of Foreign and Political Affairs, Mr Pasquale Valentini, the Minister of Internal Affairs, Public Function, Justice and Relations with the Township Councils, Mr Gian Carlo Venturini, the Minister of Education, Culture and University, Scientific Research, Social Affairs and Gender Equality, Mr Giuseppe Morganti, the Minister of Health and Social Security, Family, National Insurance and Economic Planning, Mr Francesco Mussoni, and the Minister of Labour, Co-operation and Information, Mr Iro Belluzzi. He also met with the Bureau of the Grand and General Council and members of the Delegation of San Marino to the Parliamentary Assembly of the Council of Europe. In addition, the Commissioner met with magistrates from different branches of the judiciary, including the President of the Guarantor’s Panel, Mr Carlo Fusaro, as well as representatives from various public bodies competent in the field of human rights, including the Commission for Equal Opportunities, the Authority for Equal Opportunities, the Social-Health Department of the Social Security Institute, the Minors’ Service and the Mental Health Service.
3. In addition to his official meetings, the Commissioner also held meetings with representatives of civil society and journalists, and visited a centre and workshops catering for persons with disabilities, as well as the premises of the Territorial Domiciliary Service and the Minors’ Service of the Social Security Institute.
4. The Commissioner wishes to thank sincerely the Sammarinese authorities for their assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.
5. The Commissioner invites the authorities to step up their efforts to address the issues examined in this report and looks forward to continuing a constructive dialogue with them to this end. He trusts that this dialogue will be facilitated by the present report and its recommendations.

¹ During his visit the Commissioner was accompanied by the Deputy to the Director of his Office, Mr Giancarlo Cardinale, and by his Adviser, Mr Hasan Bermek.

1 FREEDOM OF EXPRESSION AND MEDIA FREEDOM

6. In a democratic society, media must be able to play their vital public-watchdog role to the full extent. As stressed by the Council of Europe Committee of Ministers, “[m]edia facilitate the scrutiny of public and political affairs and private or business-related matters, thereby increasing transparency and accountability”.² The Commissioner underlines that any regulatory measure affecting the media constitutes an interference with the freedom to receive and impart information protected under Article 10 of the European Convention on Human Rights (ECHR), and as such is subject to strict conditions; namely, that it be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. The latter condition requires in particular that regulatory measures must respond to a pressing social need and, having regard to their tangible impact, be proportionate to the aim pursued.

1.1 RELEVANT CRIMINAL LAW PROVISIONS

7. The Commissioner notes that defamation, insult and public libel remain criminal offences punishable by fines, pursuant to Articles 183, 184 and 185 of the Criminal Code of San Marino. In addition, offences to the honour or dignity of public officials are punishable by a prison sentence from 3 months up to one year, as well as a fine pursuant to Article 344 of the Criminal Code. The Commissioner’s interlocutors informed him, however, that the case-law of the Sammarinese judiciary has been measured and proportionate regarding defamation cases. The Commissioner welcomes, in particular, a judgment rendered by the Criminal Court of Appeal in 2013 which, in accordance with the case law of the European Court of Human Rights, emphasises that politicians are by definition exposed to higher levels of criticism. It also stresses that such criticism, when conducted in the public interest, is considered a fundamental freedom recognised in the Sammarinese legal order, and that only a gratuitous and vulgar attack upon the person of the public official would constitute the abovementioned crimes.³
8. The Commissioner reminds the Sammarinese authorities that decriminalisation of defamation is a long-standing recommendation of the Council of Europe, especially in cases where the law provides for increased protection for public figures.⁴ He considers that the existence of laws which criminalise the offense to the reputation of a person and the mere threat of criminal proceedings that these laws entail may result in undesirable forms of self-censorship. The response in genuine defamation cases should be within the bounds of civil law, while allowing for corrections and apologies as remedies and ensuring that any pecuniary damages awarded be strictly proportionate and not of a nature to threaten the economic survival of the offender.⁵
9. In his report on his visit to San Marino in 2008, the Commissioner’s predecessor raised concerns about plans to increase the punishment for journalists who disclose pre-trial information.⁶ In effect, a law on criminal procedure and the secrecy of criminal proceedings adopted in June 2008 (also known as the due process law⁷) introduced a new Article 192*bis* into the Criminal Code, rendering the publication of documents covered by the confidentiality of investigations punishable by a fine of EUR 12 000. The representatives of the judicial branch whom the Commissioner met during his visit informed him that subsequent case-law clarified the application of this Article. The main criteria retained by the judiciary in this connection appear to have been whether the disclosure jeopardises the investigations or

² Recommendation [CM/Rec\(2011\)7](#) of the Committee of Ministers to member states on a new notion of media, paragraph 58 Paragraph 1.

³ Judgment no. 252/13 of the Criminal Court of Appeal of 16 December 2013.

⁴ See in particular [Recommendation 1814 \(2007\)](#) and [Resolution 1577 \(2007\)](#) of the Parliamentary Assembly of the Council of Europe, “Towards decriminalisation of defamation”, and the [Reply](#) adopted by the Committee of Ministers on 11 June 2008.

⁵ See, for example, the Commissioner’s [joint op-ed](#) with Frank La Rue, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Dunja Mijatović, OSCE Representative on Freedom of the Media, on defamation in Italy of 8 June 2014.

⁶ [Report](#) by Thomas Hammarberg on his visit to San Marino on 23-25 January 2008, CommDH(2008)12, paragraph 19.

⁷ Law No. 93 of 17 June 2008 entitled “Norme sulla procedura penale e sul segreto istruttorio nel processo penale”.

violates the principle of the presumption of innocence, in that the news articles must make it clear that the information in question concerns ongoing investigations.

1.2 MEDIA REGULATION

10. The Commissioner's interlocutors agreed that for a long time there had been a lack of regulation concerning the media sector and the profession of journalism. The Commissioner was further informed by the authorities of an *Istanza d'Arengo* (popular petition), approved by the Grand and General Council (Parliament) in 2012, to regulate the profession of journalist by setting out the rights and duties of journalists and establishing a register. The authorities also pointed to the lack of a professional code of ethics of the Sammarinese media.
11. The Commissioner notes that these considerations prompted the adoption by San Marino of a Law on publishing and the profession of media operators in December 2014.⁸ This law defines the rights and obligations of journalists and establishes a statutory order of journalists (*Consulta per l'Informazione*) with which every journalist (including radio/TV journalists, web journalists, and photojournalists) must register. On-line publications such as blogs or social media posts by individuals, associations or political parties are not considered as web journalism. The Commissioner notes that the law also contains provisions protecting journalists, such as those enshrining their right to protect the secrecy of their sources or to act in the name of public interest.
12. Under the new law, journalists and media owners can become members of the *Consulta*. Article 5 of the law defines the tasks, obligations and working methods of the *Consulta* in great detail, including, for instance, the relative weight between different types of journalists and media owners within its executive board. The *Consulta* will also keep registries for different categories of journalists and media owners, and admit journalists into the profession by administering an exam. The law further specifies that one of the tasks of the *Consulta* will be to adopt a code of ethics which must take account of, *inter alia*, protection of minors and disadvantaged groups, protection of privacy and fundamental rights, and the need to make clear distinctions between facts and opinions. The code of ethics will also provide for disciplinary sanctions. This code, once approved by the *Consulta*, will subsequently be adopted as a decree (*decreto delegato*).
13. Another feature of the law is the establishment of an Authority (*Autorità Garante per l'Informazione*) with five members appointed by the Parliament: the Chair is nominated by the Secretary of State for Information, two members are nominated by political parties (one each for the majority and the opposition) and two by the *Consulta* (one for print/online media and news agencies, and one for State broadcasting). As regards the latter two, the Commissioner received information that in interpreting the law, the State Advocate had recommended to the *Consulta* that these two members be proposed by the media establishments directly and not be members of the *Consulta*. The Commissioner highlights that the interests of media owners and journalists do not necessarily coincide or may at times be even in conflict. As a result, the Commissioner is concerned that the viewpoint of journalists will not necessarily be represented within the Authority.
14. The law grants the Authority extensive powers to regulate the profession, such as controlling compliance with laws and applying sanctions, including in terms of media pluralism and prevention of dominant positions, as well as transparency of ownership. The Commissioner is concerned, however, that the powers of the Authority may also extend to actual media content, including for print media, pursuant to Article 6, paragraph 7, sub-paragraph h of the law. This provision empowers the Authority to examine complaints by any physical person, association or institution relating to the breach of the code of ethics to be adopted by the *Consulta*, and administer the sanctions foreseen in it. No administrative appeal against such sanctions is foreseen, which means that the decisions of the Authority can only be appealed to courts.

1.3 CONCLUSIONS AND RECOMMENDATIONS

15. The Commissioner notes that the Sammarinese authorities have not yet decriminalised defamation. Despite the measured approach of the Sammarinese courts, the Commissioner considers that the

⁸ Law No. 211 of 5 December 2014 entitled "Legge in materia di editoria e di professione degli operatori dell'informazione".

existing criminal provisions send a negative signal to journalists and encourages the Sammarinese authorities to consider repealing them, dealing with defamation through strictly proportionate civil sanctions only. The Commissioner also considers that, despite the restrained approach of the courts, a single fine of EUR 12 000 to punish the disclosure of pre-trial information, which cannot be adapted to the circumstances of the offence, may lead to a certain degree of self-censorship, including when it comes to high-profile court cases which are of public interest. This is all the more relevant in a small country like San Marino where such a fine could have a particularly disproportionate impact threatening the survival of newspapers. The Commissioner therefore encourages the authorities to replace it with a sanction that can be better adapted to the circumstances of the offender and the case.

16. As regards media regulation, the Commissioner understands that the Law on publishing and the profession of media operators was adopted in response to legitimate concerns relating to the regulation of the profession of journalism and the protection of journalists. He welcomes certain positive aspects in the law, such as the protection of journalistic sources and the right to impart information of public interest. The Commissioner also acknowledges that journalistic ethics is a legitimate concern in European societies. He stresses, however, that self-regulation has consistently been favoured both by Council of Europe bodies⁹ and the OSCE¹⁰ in order to uphold journalistic ethics. As a case in point, he draws the attention of the Sammarinese authorities to the fact that the Parliamentary Assembly of the Council of Europe recently called on the Committee of Ministers to “produce guidelines for governments in order to support media self-regulation nationally while respecting media freedom in accordance with the European Convention on Human Rights” and “strengthen practical activities aimed at raising self-regulatory ethical standards among journalists and the media”.¹¹ The Commissioner believes that media self-regulation helps journalists and other media professionals to resist external influences and to ensure a better quality of information.
17. In the Commissioner’s opinion, the system established under the new law cannot be considered as self-regulation: while the *Consulta*, a body in which journalists are represented, will indeed prepare a code of ethics and establish sanctions, the complaints body will be an externally appointed body in which journalists are not necessarily represented. The Commissioner is concerned that, regardless of the eventual content of the code of ethics, it is this latter body which retains the exclusive power to interpret and apply the said code in individual cases. The risk of undue interference and the potential chilling effect that this system might entail is of serious concern to the Commissioner.
18. The Commissioner considers that the authorities could have envisaged far less intrusive measures by encouraging and supporting journalists to develop a genuine self-regulation mechanism. This could have included, for example, entrusting the tasks of both developing and enforcing a journalistic code of ethics to a representative body of journalists such as the *Consulta*.
19. The Commissioner therefore urges the authorities to revise the relevant law in order to replace this mechanism with a solution that is more respectful of the freedom of the media and the principle of self-regulation.

⁹ See, for example, [Resolution 1003 \(1993\)](#) of the Parliamentary Assembly of the Council of Europe on the ethics of journalism, or Recommendation [CM/Rec\(2011\)7](#) of the Committee of Ministers to member states on a new notion of media.

¹⁰ See, for example, the [Media Self-Regulation Guidebook](#) published by the OSCE Representative on Freedom of the Media in 2008.

¹¹ [Recommendation 2075 \(2015\)](#) of the Parliamentary Assembly of the Council of Europe on media responsibility and ethics in a changing media environment.

2 THE FIGHT AGAINST DISCRIMINATION

2.1 LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

20. The main constitutional act concerning the fight against discrimination in San Marino is the “Declaration on the Citizens’ Rights and Fundamental Principles of San Marino Legal Order”, enacted in 1974. Article 4 of the Declaration provides for equality before the law without distinctions relating to gender (since 2000) or personal economic, social, political or religious circumstances. The Commissioner observes that the European Commission against Racism and Intolerance (ECRI) called on Sammarinese authorities on several occasions to extend this article to other grounds such as race, colour, language, nationality and national or ethnic origin,¹² a call echoed by many other international monitoring bodies. The Commissioner also notes that San Marino has ratified Protocol No. 12 to the European Convention on Human Rights, which has been applied by domestic courts in the past.
21. As for criminal law provisions, in 2008 San Marino introduced Article 179bis in its Criminal Code, which prohibits dissemination of ideas based on superiority or racial or ethnic hatred, as well as incitement to and commission of acts of discrimination or violence “on racial, ethnic, religious grounds or related to sexual orientation”. The offence is punishable by a prison sentence of six months to three years. If these grounds constitute the motivation for the commission of a separate offence, this is considered an aggravating factor and leads to an *ex officio* prosecution (Article 90, paragraph 1.1). The Commissioner notes that the grounds of discrimination explicitly covered do not include neither gender identity (see below), nor, as noted again by ECRI, colour or language. ECRI further observed that these provisions had never been used in practice. The Commissioner understands that civil and administrative law provisions against discrimination are lacking in the Sammarinese legal order. He further notes that San Marino has not yet ratified the revised European Social Charter (which it signed in 2001), the key Council of Europe instrument guaranteeing non-discrimination in the enjoyment of social and economic rights.
22. As regards the institutional setup, in 2004 San Marino established an Equal Opportunities Commission, appointed by the Great and General Council and reporting to the Ministry of Health and Social Security. The Commission’s role is to promote full equality among citizens with reference to the grounds of discrimination enumerated in the Constitution (i.e. the 1974 Declaration), however this role appears to be mainly consultative, in that it provides advice on equal opportunities to official institutions and opinions on legislation. The mandate of the Commission nonetheless allows it to refer laws to the *Collegio Garante* (Constitutional Court) or to make third-party interventions to defend “collective interests” in judicial proceedings. Gender-based discrimination has subsequently been removed from the remit of this body, with the creation of the Equal Opportunities Authority (see below under women’s rights). The Commissioner was informed that the members of the Commission work on a voluntary basis, and that the Commission lacks specific premises, a budget and staff. He understands that this has hampered the Commission’s ability to organise events or raise awareness of the population about issues under the Commission’s remit. The representatives of the Commission informed the Commissioner that they supported the adoption by San Marino of an action plan on equality.
23. Individual complaints received by the Equal Opportunities Commission appear to have been directed either to the relevant Secretary of State or the Captains Regent. The Commissioner also notes that ECRI found in 2013 that the Commission had not been active on questions covered by ECRI’s mandate and stated that “the Commission’s lack of independence from the government, as well as its limited accessibility and visibility, make it doubtful that the Commission will be able to function as an anti-racial discrimination body”.¹³

¹² See ECRI’s third and fourth reports on San Marino, adopted on 14 December 2007 and 21 March 2013 respectively, available [here](#).

¹³ [Fourth report](#) of ECRI on San Marino, CRI(2013)21, paragraph 48.

2.1.1 CONCLUSIONS AND RECOMMENDATIONS

24. The Commissioner notes that several gaps remain in the legal framework against discrimination, as pointed out by ECRI and other international monitoring bodies, and encourages the Sammarinese authorities to complete the constitutional and criminal law provisions relating to discrimination, hate speech and hate crime accordingly, and consider adopting relevant civil and administrative anti-discrimination legislation. He urges the Sammarinese authorities to prioritise the ratification of the European Social Charter (revised) and its protocol establishing a collective complaints procedure.
25. The Commissioner stresses the essential role he attaches to national structures for promoting equality. While acknowledging the goodwill and efforts, despite extremely limited means, of the Commission for Equal Opportunities, the Commissioner considers that this body is far from satisfying the essential requirements of independence (both *de jure* and *de facto*) and effectiveness for the good operation of an equality body, even taking into account San Marino's small size. He urges the Sammarinese authorities to review this situation and encourages them to draw inspiration from his predecessor's Opinion on this subject when revising the relevant legislation.¹⁴
26. In this connection, the Commissioner wishes to point to the fact that San Marino does not have an ombudsperson institution or other national human rights structure established in accordance with the Paris Principles.¹⁵ Such bodies are not only key actors in ensuring compliance with international human rights standards at the domestic level, but also crucial partners for the Commissioner who is explicitly mandated to facilitate their establishment and activities.¹⁶ While all citizens have the right to petition the Captains Regent at the end of their six-month mandate (the so-called "*Istanza d'Arengo*"), the Commissioner shares the views expressed by numerous international monitoring bodies that this mechanism, despite its unquestionable value, does not fulfil the need of an independent complaints mechanism. As the Commissioner's predecessor also pointed out, the Captains Regent are the head of the executive, appointed from within the Parliament, and stay in office only for six months, whereas national human rights structures must be able to act as an independent, institutional voice for human rights in the country. This requires, among others, an institutional memory and adequate resources devoted to human rights promotion.
27. The Commissioner therefore encourages the Sammarinese authorities to set up a human rights body in compliance with the Paris Principles which could, given San Marino's circumstances, also act as an equality and anti-discrimination body.

2.2 WOMEN'S RIGHTS AND GENDER EQUALITY

2.2.1 VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

28. The Commissioner recalls that violence against women, including domestic violence, is one of the most widespread human rights violations affecting Council of Europe member states and combatting it must be a top priority.¹⁷ The Commissioner observes that San Marino signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in April 2014, but has not ratified it yet.
29. At the time of the visit of the Commissioner's predecessor in 2008, San Marino had not yet introduced specific provisions relating to violence against women and spousal rape.¹⁸ The Commissioner was therefore very pleased to note the positive improvements which had occurred since then. He particularly welcomes the adoption in 2008 of a Law for combatting violence against women and

¹⁴ [Opinion](#) of the Commissioner for human rights on national structures for promoting equality, CommDH(2011)2.

¹⁵ Principles appended to the Resolution of the United Nations General Assembly on national institutions for the promotion and protection of human rights, A/RES/48/134 of 1993.

¹⁶ [Resolution\(99\)50](#) of the Committee of Ministers of the Council of Europe on the Council of Europe Commissioner for Human Rights, 7 May 1999, Article 3.

¹⁷ [Fighting violence against women must become a top priority](#), Human Rights Comment of the Commissioner for Human Rights, 29 July 2014.

¹⁸ Report by Thomas Hammarberg on his visit to San Marino on 23-25 January 2008, CommDH(2008)12, paragraph 26.

gender-based violence.¹⁹ In addition to thoroughly modifying criminal law provisions (for example by establishing injury, rape or murder committed by a partner or a member of the household as aggravating circumstances and by defining trafficking-related offences, as well as persecutory acts such as stalking or mobbing), the law also introduced several protective measures for the victims. These include measures to protect the confidentiality of the victims, legal assistance and psychological support, special arrangements in criminal proceedings, as well as the possibility of obtaining civil protection orders against family abuse and suspension of parental rights for perpetrators or enablers of violence.

30. The law set up at the same time an Authority for Equal Opportunities, an autonomous institution composed of three experts appointed by the Parliament. The Authority co-ordinates public policy relating to gender-based violence and can grant support to victims, in particular place them in shelters in Italy based on conventions it concludes with NGOs. The law also provides that the Authority can refer to courts the dissemination of degrading or discriminatory images or information, including those concerning sexual orientation and gender identity.
31. While the Commissioner's interlocutors informed him that the Authority carried out important work, in particular as regards awareness-raising, he understands that the members of the Authority work on a voluntary basis, have no allocated premises, fixed budget (with the exception of EUR 15 000 for education and awareness-raising activities) or any staff, factors which severely limit its capacity for further developing its actions.
32. Social services, law enforcement agencies and health professionals have the obligation to report to the judiciary any act of violence against women or minors. As regards the prevalence of gender-based violence in San Marino, the Authority for Equal Opportunities collects statistics of cases referred to courts. For 2014, the Authority reported that there were 33 such cases concerning adults (except offences which can be prosecuted *ex officio*) and 18 cases concerning minors (in 14 of which the victim was a girl). However, the Commissioner notes that the Authority stressed that these figures corresponded only to confirmed cases of violence and that the experience of law enforcement and social services suggest a much higher number of cases which remain hidden, owing to the difficulty or reluctance of victims to seek help, despite improvements in recent years thanks to a higher degree of awareness.²⁰
33. In this connection, the situation of foreign nationals is of particular concern. The Commissioner notes that the Sammarinese legislation provided for the withdrawal of a stay permit of a foreign spouse in case of divorce or *de facto* separation, unless the spouses have lived together for at least five years or have descendants. Persons whose stay permit had thus been revoked used to face expulsion, which increased their vulnerability to gender-based violence and abuse. The Commissioner welcomes therefore the abrogation of the provision in question by the Parliament in July 2015.²¹
34. The Commissioner also received information according to which private carers (*badanti*) for older persons or persons with disabilities may be in a particularly vulnerable situation. Private carers are mostly women from Ukraine, Romania, Moldova and other Eastern European countries, who live in the households where they work and who were found to be potentially vulnerable to trafficking and exploitation by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA).²² A particular issue concerned the fact that their stay permits were valid for a maximum period of 11 consecutive months per year. The obligation to leave San Marino after the expiry of the 11-month stay permit, even if the person could come back one month later, was seen as putting these women at a disadvantageous and precarious situation by GRETA and ECRI.²³

¹⁹ Law No. 97 of 20 June 2008, entitled "Prevenzione e repressione della violenza contro le donne e di genere".

²⁰ See the report of the Authority for Equal Opportunities, "Elaborati dati statistici violenza di genere gennaio – dicembre 2014".

²¹ Law No. 118 of 30 July 2015 (modifying Law No. 118 of 28 June 2010 on the entry and stay of foreigners), Article 16.

²² Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by San Marino, [GRETA\(2014\)19](#), adopted on 4 July 2014.

²³ See ECRI's fourth report on San Marino, 9 July 2013, paragraph 113.

35. The Commissioner was informed that the social care services check the working and living conditions of the *badanti* and give them an orientation course. However, he gained the impression that the courses in question concerned mainly the skills and qualifications of the *badanti* in fulfilling their duties, rather than information provided to them on their rights or on how to seek help in case of problems. Civil society representatives also highlighted the lack of integration measures in favour of this group.
36. The Commissioner was pleased to note that the authorities acknowledged the need to address some of these issues and that they were examining, for instance, means of facilitating co-operation between services responsible for private carers and services used by the latter, and measures to make it easier for the *badanti* to turn to trade unions, courts and the Equal Opportunities Commission for protection. The Commissioner also welcomes the fact that the Sammarinese Parliament amended the legislation in July 2015 in order to remove the requirement of 11-month stays, replacing it with a 12-month stay permit renewable three times (and subject to reapplication after three years).²⁴

2.2.2 GENDER EQUALITY AND DISCRIMINATION AGAINST WOMEN

37. The Commissioner notes that San Marino abolished only relatively recently some dated legal provisions, such as those in the citizenship legislation, removed in 2004, preventing Sammarinese women from transmitting citizenship to their children at birth. Important progress has nevertheless been made in recent decades, including regarding women's participation in the labour market. As of 2015, women made up around 45% of the workforce, most being employed in the public sector. However, according to official employment statistics, the unemployment rate for women was 11.56% as of May 2015, significantly higher compared to the rate for men (6.43%).²⁵
38. The Commissioner observes that the representation of women in politics remains very weak, despite some legislative measures to bolster it (for example a law from 2007 which requires that parties cannot present lists with more than two thirds of the candidates of the same gender): at the time of his visit only eleven out of the sixty Members of the Grand and General Council and one of the nine Secretaries of State were women.
39. An issue examined by the Commissioner's predecessor in his 2008 report concerned reproductive rights of women, namely the fact that abortion and aiding a person to abort are criminal offences under Article 153 of the Criminal Code (punishable by a prison sentence of six months to three years), aggravated for medical professionals who are in addition suspended from practicing. A lesser penalty applies if abortion occurs for "reasons of honour" (Article 154). The Commissioner was informed that abortions performed to save the life of the mother are reported to be generally permitted by legal principles of necessity, but are not specifically excepted in the law. No other exceptions are permitted including, for instance, preservation of physical or mental health, fatal abnormality of the foetus, rape or incest. In practice, women in San Marino seek abortions in Italy. The Commissioner's predecessor considered that the fact that women had to go abroad in these cases could put individual women into difficult circumstances, not least if there are any medical complications.²⁶
40. In September 2014, a proposal to decriminalise abortion (through an *Istanza d'Arengo*) was rejected by the Parliament, which however accepted to review within three months a possible modification of Article 153 in order to "confirm the non-prosecution in San Marino of those who abort in countries where the procedure is legal", because in theory, abortions performed abroad could also be subject to criminal prosecution, although in practice they are not. While the Commissioner understands that no public statement has been made in this regard, the representatives of the government informed him that the authorities had come to the conclusion that criminal sanctions would not apply in such cases and that as a result they did not foresee to change the legislation.

²⁴ Law No. 118 of 30 July 2015 (modifying Law No. 118 of 28 June 2010 on the entry and stay of foreigners), Article 9.

²⁵ According to official employment statistics available on the [website](#) of the Office of economic planning, data processing and statistics of San Marino (accessed on 4 August 2015).

²⁶ [Report](#) by Thomas Hammarberg on his visit to San Marino on 23-25 January 2008, CommDH(2008)12, paragraph 27.

2.2.3 CONCLUSIONS AND RECOMMENDATIONS

41. The Commissioner welcomes the important measures San Marino has taken in order to combat violence against women since his predecessor's visit in 2008. He encourages the authorities to sustain their efforts and urges them to ratify the Istanbul Convention as a logical continuation of this process and a matter of priority. In this connection, the Commissioner considers that the Authority for Equal Opportunities needs to be supported with a proper and permanent budget and adequate human resources in order to facilitate its awareness-raising, outreach and support work.
42. The Commissioner encourages the Sammarinese authorities to pay special attention to women of foreign nationality in San Marino, and in particular to private carers and domestic workers. He welcomes the extension of the 11-month period of stay to 12 months, but considers that this measure should also be supported with better attention, including through labour inspections, to the working conditions of these women. The Commissioner is of the view that San Marino should ensure an orientation system, supported by integration measures, laying more emphasis on informing private carers of their human rights, including social rights, and the ways in which they can request support from the authorities, legal professionals and trade unions if faced with the risk of exploitation. The Commissioner also encourages San Marino to ratify the relevant ILO Convention No. 189 on Domestic Workers.
43. The Commissioner also notes the continuing gender gap in employment and stresses that this is yet another of the many reasons for which it is essential for San Marino to ratify the European Social Charter (revised) without further delay. He also considers that San Marino should take resolute measures to combat gender stereotypes, starting from the earliest levels of education, and to guarantee a much better participation of women in political life, taking account of the relevant Council of Europe standards.²⁷
44. As regards reproductive rights, the Commissioner draws the attention of Sammarinese authorities to the view of the Parliamentary Assembly of the Council of Europe that "the lawfulness of abortion does not have an effect on a woman's need for an abortion, but only on her access to a safe abortion" and that a ban on abortions does not result in fewer abortions but mainly leads to clandestine abortions, which are more traumatic and increase maternal mortality.²⁸ Where they result in abortions performed abroad, these bans also entail costs, delay the timing of an abortion and result in social inequities. For these reasons, the Parliamentary Assembly invited the member states of the Council of Europe to decriminalise abortion within reasonable gestational limits. The Commissioner also notes that relevant international bodies, and in particular the Human Rights Committee and the Committee on the Elimination of Discrimination against Women (CEDAW), on several occasions highlighted concerns relating to the criminalisation of abortion, notably owing to the severe mental suffering caused by the denial of abortion services in cases of rape, incest, serious risks to the health of the mother, or fatal foetal abnormality.²⁹
45. The Commissioner considers that the focus should be on preventing unwanted pregnancies, not on limiting women's choices. The Commissioner particularly encourages the Sammarinese authorities to decriminalise, at a minimum, abortions performed to preserve the physical and mental health of women, or in cases of fatal foetal abnormality, rape or incest. The Commissioner also recommends that the Sammarinese authorities publicly confirm that criminal sanctions would not apply in cases of abortions legally performed abroad.

2.3 HUMAN RIGHTS OF PERSONS WITH DISABILITIES

46. The Commissioner is pleased to note that San Marino was among the first countries to ratify the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol.

²⁷ See, in particular, Recommendation [CM/Rec\(2007\)13](#) on gender mainstreaming in education and Recommendation [Rec\(2003\)3](#) on balanced participation of women and men in political and public decision making of the Committee of Ministers.

²⁸ [Resolution 1607 \(2008\)](#) of the Parliamentary Assembly of the Council of Europe on access to safe and legal abortion in Europe.

²⁹ See the Concluding Observations of the Human Rights Committee on Ireland, CCPR/C/IRL/CO/4 (2014), paragraph 9.

However, at the time of his visit San Marino had not yet submitted its first state report under this treaty, which had been due since June 2010.

47. In March 2015, San Marino adopted a Framework Law for assistance to, social inclusion and rights of persons with disabilities,³⁰ setting as an explicit goal their full inclusion in education, the labour market and society. This law contains many provisions pertaining, *inter alia*, to autonomy and inclusion, accessibility, awareness-raising, as well as participation in political, public and cultural life. It also establishes a Sammarinese Commission for the implementation of the CRPD, composed of seven members elected by the Grand and General Council, which will have the task of monitoring and promoting the implementation of the Convention, as well as of drawing up three-yearly national action plans and the reports under the CRPD.
48. While warmly welcoming the adoption of this law, the Commissioner considers that ensuring its implementation in accordance with CRPD standards will require sustained efforts, including legislative reform to eliminate practices incompatible with the CRPD, measures to remove various barriers to inclusion, and individualised supports to persons with disabilities to neutralise any remaining barriers. In this connection, the Commissioner was informed that, while a budget of EUR 100 000 was set aside for improving accessibility, there was no separate budget dedicated to disability policy as such. Furthermore, the Commissioner understands that similar to other commissions operating in San Marino, the Commission on the implementation of the CRPD will also work on a voluntary basis and not have dedicated premises nor human and financial resources at its disposal.
49. As regards legal capacity of persons with intellectual and psychosocial disabilities, the Commissioner emphasises that Article 12 of the CRPD guarantees the right to equal recognition before the law for persons with disabilities and, in particular, the right to enjoy legal capacity on an equal basis with others in all aspects of life. The CRPD Committee has reaffirmed “that a person’s status as a person with a disability or the existence of an impairment must never be grounds for denying legal capacity or any of the rights provided for in article 12”.³¹ It has called on states parties to “review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences”.³²
50. Sammarinese legislation allows for full or partial withdrawal of legal capacity (*interdizione* and *inabilitazione*). While a law adopted in June 2015 establishes support administrators in San Marino,³³ the Commissioner notes that the previous regimes of deprivation of legal capacity and substitute decision-making, including full substitution, will continue to operate in parallel. Furthermore, it is unclear to the Commissioner whether the new system of support administration can be considered as supported-decision making in the sense of the CRPD standards: while the law provides that the administrator must take account of the needs and aspirations of the beneficiary, it also states that the beneficiary retains her/his capacity for acts which do not require the administrator’s “exclusive representation or necessary assistance”. The Commissioner further notes that an administrator can be appointed at the request of persons other than the beneficiary (for example, his/her spouse, relatives, a judicial authority based on information provided by social services, or even by the guardian or trustee in case the beneficiary has been stripped of legal capacity).
51. As regards political rights, the Commissioner observes that Sammarinese legislation continues to deny the right to vote and stand for elections on the basis of mental illness, for those subjected to judicial interdiction due to mental illness (“*gli interdetti per infermità di mente*”).
52. During the visit, the Commissioner also examined questions relating to the right of persons with disabilities to autonomy and inclusion in the community. He was informed that the Territorial Domiciliary Service organises a number of services aimed at assisting persons with disabilities to live in

³⁰ Law No. 28 of 10 March 2015, entitled “Legge-quadro per l’assistenza, l’inclusione sociale e i diritti delle persone con disabilità”.

³¹ Committee on the Rights of Persons with Disabilities, General Comment on Article 12 on Equal recognition before the law, paragraph 9.

³² *Ibid.* paragraph 26.

³³ Law No. 81 of 5 June 2015, entitled “Istituzione e disciplina dell’amministrazione di sostegno”.

their home, such as support for daily activities, transportation or facilitating access to healthcare services, which the authorities are seeking to develop further.

53. The Commissioner visited a centre for adults with disabilities (“Il colore del grano”), which combines residential and day-care services for adults with severe disabilities who cannot live in a family setting. At the time of the Commissioner’s visit, there were 13 full-time residents. While the compatibility of such an institutional setting with the general requirements of Article 19 of the CRPD must be questioned,³⁴ the Commissioner, like his predecessor, was impressed by the excellent material conditions in the institution, as well as the dedication and professionalism of its staff. He welcomed in particular the information provided by staff members that they do their utmost to personalise the living space and daily activities of the residents according to their wishes, as well as organising activities outside the institution and in the community, for example by accompanying one of their users to a concert. The Commissioner was pleased to learn from the head of the disability service that they are exploring ways of moving some of their “more high-functioning” residents to small flats for one or two persons, but also heard that they face a lot of resistance from the families who feel more comfortable with the more institutional setting.
54. Regarding involuntary hospitalisation and treatment of persons with psychosocial disabilities, the Commissioner notes the adoption of a law on the “regulation of health interventions for persons with mental disorder” in 2009, which provides a specific framework for involuntary placement and treatment, thus remedying the legal lacunae previously criticised by the European Committee for the Prevention of Torture (CPT) and the Commissioner’s predecessor. The law established the Commission for the protection of mental health, which the patient can appeal to in order to contest placement decisions. Such decisions are taken by a judge on the basis of the evaluation of two psychiatrists, but the Commissioner notes the CPT’s criticism that a placement does not require the person to be heard in person by the judge.³⁵ Another issue of concern is the lack of an adequate mental health structure in San Marino, despite the fact that the law provides for it, and the fact that as a result placements occur abroad (in Italy and Switzerland). However, on this issue the authorities informed the Commissioner that they have been trying to find better solutions and that of the four placements which took place in 2014, only one occurred in Italy, and that all the placements in 2015 occurred in San Marino.
55. The Commissioner also notes other concerns and recommendations expressed by the CPT concerning the potential use of restraints, as well as the regime for the admission of residents in a therapeutic apartment accommodating persons with behavioural disorders.
56. Concerning access to education for children with disabilities, all interlocutors of the Commissioner agreed that San Marino guarantees inclusion in mainstream education, as well as in extracurricular activities, to all children with disabilities, including through the provision of extensive individual supports where necessary. As for inclusion in the labour market, however, again all interlocutors, including the government, recognised that the private sector in particular was lagging behind its obligations. The Commissioner understands that the authorities are contemplating the institution of fines in this connection, which would be earmarked and used to implement disability policies.

2.3.1 CONCLUSIONS AND RECOMMENDATIONS

57. The Commissioner welcomes San Marino’s considerable efforts to protect and promote the rights of persons with disabilities. He commends, in particular, the level of inclusion of persons with disabilities in mainstream schools and the recent adoption of framework legislation to support inclusion in society. As regards the latter, the Commissioner recommends that the authorities support this legislation with an ambitious action plan including a clear timetable and an adequate, earmarked budget. As regards the future Commission on the implementation of the CRPD, the Commissioner urges the authorities to ensure that the Commission have the necessary budgetary and human

³⁴ See the [Issue Paper](#) published by the Commissioner’s Office on the right of people with disabilities to live independently and be included in the community in 2012.

³⁵ [Report](#) of the CPT on its visit to San Marino between 29 January and 1 February 2013, CPT/Inf (2014) 33.

resources to carry out its work. The authorities should in particular ensure that San Marino submit its state report under the CRPD without any further delay.

58. While the adoption of the legislation on support administrators constitutes a more flexible alternative to incapacitation procedures, the Commissioner is of the opinion that Sammarinese legislation does not yet fully reflect the paradigm shift operated by the CRPD with respect to legal capacity. He calls on the authorities to abolish full incapacitation and plenary guardianship as a priority, and gradually develop a flexible system of genuine supported decision-making based on individual consent. Such a system should rest on safeguards to ensure that the support provided respects the preferences and will of the persons receiving it, is free of conflict of interest and is subject to judicial review.³⁶ The aim should be the eventual phasing out of substitute decision-making. However, while substitution remains, the Sammarinese authorities are urged to ensure that persons placed under guardianship/trusteeship have effective access to judicial review proceedings to challenge such placement or the way in which guardianship/trusteeship is administered, and that they enjoy equal standing in courts to effectively challenge any interference with their right to legal capacity.
59. As regards the right to vote, the Commissioner recalls the relevant Recommendation of the Council of Europe Committee of Ministers³⁷ and urges the Sammarinese authorities to take all the necessary legislative measures to ensure that persons with disabilities, including with intellectual or psychosocial disabilities, are not deprived of their right to vote and to be elected owing to their impairment under any circumstances.
60. While fully acknowledging the high quality of care available to persons with disabilities who are not able to live in a family setting, the Commissioner encourages the Sammarinese authorities to support efforts to direct persons in residential care towards alternatives fully based in the community. This should, where appropriate, include awareness-raising within the community and the families.
61. The Commissioner stresses that all people with disabilities have the right to enjoy the highest attainable standard of health without discrimination and the care provided to them should be based on free and informed consent in line with Article 25 of the CRPD. While observing that the number of involuntary placements and treatments in San Marino is low and their duration generally short, the Commissioner urges the authorities to implement the outstanding recommendations of the CPT and to review psychiatric practices on a regular basis in order to ensure their full compliance with the CRPD standards.
62. Finally the Commissioner encourages the authorities to increase their efforts to improve the access of persons with disabilities to the labour market, notably by combatting discrimination on the basis of disability through dissuasive sanctions, including for private employers. It should be clarified that such discrimination includes the failure to provide reasonable accommodation to persons with disabilities.

2.4 HUMAN RIGHTS OF LGBTI PERSONS

63. Traditional attitudes to LGBTI persons started changing only very recently in San Marino, where habitual homosexual acts constituted a criminal offence until 2004. As noted above, in 2008 San Marino introduced Article 179bis in its Criminal Code, which prohibits, among other grounds, incitement to and commission of acts of discrimination or violence “related to sexual orientation”. The offence is punishable by a prison sentence of six months to three years. If another crime is committed with the same motivation, this is considered an aggravating factor and leads to an *ex officio* prosecution.
64. While discrimination, hate speech and hate crimes on the basis of sexual orientation have thus become criminal offences, no similar provision exists for gender identity or sex characteristics. The Commissioner also observes that there is no constitutional or other provision expressly providing for equality before the law irrespective of sexual orientation, gender identity or sex characteristics, nor

³⁶ For further guidance see the Commissioner’s [Issue Paper](#) “Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities”, 2012.

³⁷ Recommendation [CM/Rec\(2011\)14](#) of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, point 3.

specific civil or administrative law provisions explicitly prohibiting discrimination on these grounds in the field of employment, access to goods or services, or any other area.

65. The Commissioner further notes that, according to ILGA Europe, there are no provisions in the Sammarinese legal order for legal gender recognition,³⁸ whereas it appears that gender recognition is possible through judicial decisions which require gender reassignment surgery (performed in Italy in most cases).³⁹ The Commissioner stresses that the Committee of Ministers of the Council of Europe recommends that member states guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way.⁴⁰ The Commissioner also refers to the recommendations of the Parliamentary Assembly of the Council of Europe⁴¹ and of his predecessor⁴² concerning transgender persons which include, *inter alia*, the abolition of sterilisation and other compulsory medical treatment as a legal requirement for gender recognition, while ensuring accessibility and coverage by public insurance schemes of gender reassignment procedures.
66. San Marino does not provide any legal recognition to same-sex couples or same-sex parenting. The Commissioner was informed that numerous popular initiatives seeking to introduce protection for LGBTI persons, recognition of same-sex couples, or recognition of same-sex marriages celebrated abroad have been rejected by the Parliament. In this connection, the Commissioner wishes to bring to the attention of the Sammarinese authorities a recent judgment of the European Court of Human Rights concerning Italy:⁴³ in this judgment, the Court found that the legal protection currently available to same-sex couples in Italy, limited mainly to private contractual agreements and cohabitation agreements, failed "to provide for some basic needs which are fundamental to the regulation of a relationship between a couple in a stable and committed relationship, such as, *inter alia*, the mutual rights and obligations they have towards each other, including moral and material support, maintenance obligations and inheritance rights" and was not sufficiently reliable. The Court considered, therefore, that a civil union or registered partnership would be the most appropriate way for recognising the relationship of same-sex couples and affording them the protection that they need.
67. The Commissioner notes that Sammarinese law recognises cohabitation *more uxorio* (as husband and wife) and confers certain rights and obligations on non-married, opposite-sex couples in this situation.⁴⁴ These rights do not apply, however, to same-sex couples in comparable situations. The Commissioner draws the attention of the Sammarinese authorities to the abovementioned Recommendation of the Committee of Ministers which provides that "where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples". This recommendation is also strongly reaffirmed by the case-law of the European Court of Human Rights.⁴⁵
68. A particular issue which rose to prominence in San Marino concerned stay permits for same-sex partners of citizens or residents in view of a cohabitation in San Marino (a right which exists for opposite-sex partners cohabiting *more uxorio*). Despite the fact that the Parliament had approved an *Istanza d'Arengo* in favour of extending this right to same-sex couples in June 2012, the legislation had not yet been amended at the time of the Commissioner's visit. According to the authors of the *Istanza d'Arengo*, the obvious way to execute this decision would have been to amend the legislation by removing the words "*more uxorio*", thereby granting the permits to all cohabiting partners. The

³⁸ See ILGA's [Rainbow Europe 2015](#).

³⁹ [Study](#) on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Legal Report: San Marino, prepared by COWI and the Danish Institute for Human Rights for the Council of Europe Commissioner for Human Rights.

⁴⁰ 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, paragraph 21.

⁴¹ [Resolution 2048 \(2015\)](#) on discrimination against transgender people in Europe.

⁴² Human Rights and Gender Identity, [Issue Paper](#) by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 29 July 2009.

⁴³ [Oliari and Others v. Italy](#), judgment of 21 July 2015, not yet final.

⁴⁴ For example, the recognition of cohabiting partners as members of the same family, as well as certain obligations deriving from cohabitation *more uxorio* for more than 15 years, pursuant to Law No. 49 of 22 May 1986 on the reform of family law.

⁴⁵ In particular, [Vallianatos and Others v. Greece](#), Grand Chamber judgment of 7 November 2013.

Commissioner understands that the political debate surrounding this question was to a certain extent informed by the strong resistance of religious leaders, who publicly stated that removing the words “*more uxorio*” would amount to equating homosexual couples to heterosexual cohabiting partners, which would be profoundly against both the Catholic tradition and Sammarinese custom. He regrets that in the version of the amendments finally adopted by the Sammarinese legislature, the authorities decided instead to introduce a new ground for granting a cohabitation permit, namely cohabitation for “solidarity purposes or mutual assistance” (*coabitazione a fini solidaristici e di mutuo aiuto*).⁴⁶ It is unclear to the Commissioner if the implementing regulations in connection with this new category will include different or additional conditions to those applying to partners cohabiting *more uxorio*.

69. Finally, the Commissioner notes that Sammarinese NGOs highlight a lack of awareness-raising concerning the rights of LGBTI persons, measures to fight against homophobia and transphobia, as well as integration and anti-bullying programmes in schools.⁴⁷ A number of popular petitions in favour of activities in these areas have reportedly been rejected.

2.4.1 CONCLUSIONS AND RECOMMENDATIONS

70. While welcoming the protection now provided by the Criminal Code against hate speech and hate crime on the grounds of sexual orientation, the Commissioner invites the authorities to extend such protection also on the grounds of gender identity and sex characteristics. Any civil and administrative anti-discrimination legislation adopted in conformity with the recommendation made above (see section 2.1.1) should cover all these grounds as well.
71. The Commissioner recommends that San Marino introduce a legal framework ensuring the legal recognition of a person’s gender in a quick, transparent and accessible way based on self-determination, and without requiring sterilisation and other compulsory medical treatment, or a mental health diagnosis. He also calls on the authorities to ensure that gender reassignment procedures, such as hormone treatment, surgery and psychological support, are accessible for transgender people and are reimbursed by public health insurance.
72. Recalling the case-law of the European Court of Human Rights, the Commissioner calls on the Sammarinese authorities to introduce legal protection for same-sex couples, at a minimum in the form of a civil union or registered-partnership capable of providing for the core needs of a couple in a stable committed relationship. While such legislation is pending, the Commissioner urges the authorities to ensure that cohabiting same-sex couples are legally granted all the rights enjoyed by opposite-sex couples cohabiting *more uxorio*. As regards stay permits for foreign same-sex cohabiting partners, the Sammarinese authorities should ensure that the new category of stay permits for “solidarity and mutual assistance” do not result in a discriminatory or differential treatment of same-sex couples in comparison with partners cohabiting *more uxorio*.
73. The authorities are encouraged to promote the public’s awareness of diversity and respect for all persons’ sexual orientation, gender identity and sex characteristics, notably through human rights education and awareness-raising campaigns, including in schools.

⁴⁶ Law No. 118 of 30 July 2015 (modifying Law No. 118 of 28 June 2010 on the entry and stay of foreigners), Article 20.

⁴⁷ See the joint submission of Sammarinese NGOs for the Universal Periodic Review of 11 February 2010.