

**ECRI CONCLUSIONS
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
IN RESPECT OF SAN MARINO
SUBJECT TO INTERIM FOLLOW-UP**

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¹Except where expressly indicated, any developments which occurred after 26 October 2015, date on which the latest response of the Authorities of San Marino to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

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FOREWORD

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.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

¹ CM/Del/Dec(2007)986/4.1.

1. *In its report on San Marino (fourth monitoring cycle) published on 9 July 2013, ECRI recommended that the Sammarinese authorities ensure that the Equal Opportunities Commission is able to address issues covered by ECRI's mandate. The Commission should be expressly provided with competence to combat racism and racial discrimination¹, should be made independent from the Government and given sufficient means to fulfil its tasks effectively. In reviewing the Commission's functioning and mandate. ECRI strongly recommended also that the authorities take into account ECRI's General Policy Recommendations No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, and No. 7 on national legislation to combat racism and racial discrimination.*

As it concerns the recommendation to review the mandate of the Equal Opportunities Commission, the Sammarinese authorities have informed ECRI that no legislation has been enacted yet providing the Commission with express terms of reference to combat racism and racial discrimination, despite a request submitted to this effect by the Commission itself.

As it concerns the recommendation to ensure the Commission's independence from the Government, the authorities claim that this is guaranteed by virtue of the plurality of views of its members; these are appointed by the parliament and represent all political parties, as well as civil society and trade unions.

ECRI notes, however, that the Commission does not have its own premises, budget and staff, and that its members work on a voluntary basis.² Moreover, ECRI has been informed that, as already noted in its fourth report, the Commission is not at all active in the fields covered by ECRI's terms of reference, despite the fact that its role is to promote full equality among citizens with reference to the grounds of discrimination enumerated in the Constitution (i.e. the 1974 Declaration).

ECRI, therefore, reiterates the view that, in order to effect real change, the law setting up the Commission should be amended; its de jure independence should be guaranteed; and provision should be made for the necessary funds and staff to ensure its independence de facto.

In light of the above, ECRI concludes that its recommendation has not been implemented.

2. *In its report on San Marino, ECRI recommended that the authorities review the legislation on stay and work permits for foreigners who come to San Marino to work as private carers and in particular to allow them to work for 12 consecutive months per year so as to reduce their precariousness of employment.*

The authorities have informed ECRI that in July 2015 the Sammarinese Parliament amended the legislation on stay and work permits for foreigners. Foreigners are no longer subject to an 11 month maximum period of stay. They can be issued with a 12 month stay permit, which may be renewed three times for a maximum period of four years (after which the foreigner has to submit a new application for a stay permit).

ECRI welcomes this positive development which reduces the precariousness of employment of foreign workers and in particular of the more of 300 private carers (so called badanti) working in San Marino.

In view of this legislative development, ECRI considers that its recommendation has been implemented.

¹ Discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language.

² Report on San Marino of the Commissioner for Human Rights of the Council of Europe, 15 October 2015.

