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**Réponse du Gouvernement de Saint-Marin
au rapport du Comité européen pour la
prévention de la torture et des peines ou
traitements inhumains ou dégradants (CPT)
relatif à sa visite effectuée à Saint-Marin**

du 9 au 11 juin 1999

Le Gouvernement de Saint-Marin a donné son accord à la publication de la réponse susmentionnée. Le rapport relatif à la visite effectuée à Saint-Marin en juin 1999 figure dans le document CPT/Inf (2004) 14.

Strasbourg, 10 juin 2004

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With reference to the CPT letter of 14 December 1999, signed by Mr Ivan Zakrine and concerning the transmission of the report on the CPT second visit to San Marino, please find enclosed all requested clarifications and information on some aspects outlined during said visit.

Please note that the answers given by the competent Authorities have been integrally reproduced hereunder.

A) Information provided by San Marino Civil and Criminal Court:

The report requests clarifications on:

1) Any possible complaint concerning ill-treatment of detainees by law enforcement agents, the number of any subsequent disciplinary action and relevant sanctions.

Please note that no complaints concerning ill-treatment cases by law enforcement agents were received during 1998 and 1999. Therefore, no disciplinary action has been started, nor sanctions applied.

2) Detention conditions of people held for questioning.

Whenever the law enforcement authorities of the Republic hold someone caught in the very act of committing the crime or because suspected, such person shall remain in the premises of the police forces only for the time necessary for the Law Commissioner, the Investigating Magistrate to intervene. The Magistrate shall be immediately informed of the holding operation; the interested person shall be questioned, without any delay, in said premises or at the Court during working hours, at the presence of an advocate of his choosing or of a public defender, who shall also be immediately summoned. Subsequently, the investigated person shall be either released or, in case of serious crimes or for investigating purposes, the Investigating Magistrate may confirm the holding or issue a warrant of arrest and order that the investigated person be transferred to the prison.

The above mentioned judicial operations shall not last more than one or two hours. During this period, the investigated persons shall be held or examined in the offices of the police forces, watched over by agents. They may also use the bathroom, receive a light meal or rest.

However, some detention rooms meeting the requirements of the European Committee are being built or adapted in the offices of the police forces of the Republic.

With reference to the recommendations in point 4 (page 11) of the report, all provisions and regulations concerning the issues indicated by the Committee shall be enacted by the competent State Authorities. However, it is worth mentioning that in case of holding or arrest, the relatives indicated by the suspected person shall be immediately informed of such judicial measures, unless otherwise specified in writing by the interested party.

In case of minors, those exercising parental authority shall be informed, also in case of dissent of the interested person, and immediately summoned to the police offices or the Court in order to be present at the investigating procedure.

3) In San Marino two public defenders are annually appointed and remunerated by the State. In turn, the two professionals shall be available 24 hours a day. Whenever a person held or arrested does not have an advocate of his/her choosing, one of the two public defenders shall be immediately summoned to

participate in the investigating procedure; he/she shall be allowed to confer with the investigated person. The public defender may not be summoned only upon explicit and written refusal by the investigated. However, a public defender shall always be appointed and informed of any measure adopted.

4) Medical assistance of detainees is guaranteed by the Penitentiary Law and Regulation in force.

During the holding in the premises of the police forces, whenever necessary or requested, the personnel of the State hospital may be asked to provide medical assistance, 24 hours a day, in case the interested person does not indicate a physician of his/her choosing or the latter cannot be summoned.

Since the investigated person is held by the police officers only for a short time, a medical dossier shall be prepared at the establishment, whenever the holding is extended or an arrest warrant issued by the Magistrate. According to the law in force, the person entering the establishment is immediately examined by the medical staff duly appointed to this end and subject to availability requirements. A medical dossier of the detainee is then prepared.

5) Any investigating activity by law enforcement authorities shall be ordered by the Investigating Magistrate. Such investigation shall be in accordance with the provisions of the code of criminal procedure in force.

6) Detention conditions in the establishment - Disciplinary sanctions - Intervention by the Giudice dell'Esecuzione (Magistrate competent for the execution of sentences).

Art. 23 of the Penitentiary Law provides for solitary confinement, for a maximum of ten days, as the only disciplinary sanction, which can only be ordered by the Giudice dell'Esecuzione. Also in this case, the detainee is entitled to open-air exercise, to be performed in isolation.

The Penitentiary Law and Regulation establish and govern all detention conditions, prohibiting torture and inhumane or degrading treatments or punishments of detainees.

Moreover, detainees may request to be heard by the Giudice dell'Esecuzione at any time and submit petitions either personally or through their defender. Any provision of the Giudice dell'Esecuzione can be appealed against either to this Magistrate or to the Judge of Appeal.

The Giudice dell'Esecuzione shall visit the establishment periodically, whenever necessary for questioning purposes, and upon request of the detainees or the staff. No verbatim records are drafted, except for visits related to ongoing investigations; in this case, all documents shall be attached to the detainee's criminal file.

B) Information provided by the Police Department:

A. Law enforcement authorities

1. Torture and other forms of ill-treatment.

This office has not been informed of any disciplinary and/or criminal actions started in 1998 and 1999 on the basis of complaints for ill-treatment by law enforcement authorities.

2. Detention conditions.

Recommendations have been sent to the Gendarmerie Headquarters.

People held for a few hours in the premises of the law enforcement authorities because of ongoing investigations, are entitled to receive something to eat and drink.

3. Fundamental guarantees against ill-treatment.

Recommendations shall be taken into account, as regards any aspect falling within the competence of the Police Department.

B. Prison of San Marino

C. Non-voluntary psychiatric internment

D. Minors deprived of their freedom

Any aspect of the recommendations concerning this office has been duly considered.

C) Information provided by the Gendarmerie:

With reference to CPT recommendations, comments and information requests in Annex I, page 29, of the report, please be informed of the following:

A. Law enforcement authorities

Request:

Torture and other forms of ill-treatment (page 29)

Answer:

No complaint about ill-treatment was submitted in 1998 and 1999.

Request:

Detention conditions (page 29)

Answer:

In the premises of the law enforcement authorities where people held for questioning are watched over, the criteria in paragraphs 12 and 13 of the CPT report (page 9) are regularly adopted.

Moreover, a new wing of the Gendarmerie Headquarters is being completed. This section already includes a detention room, as provided for in paragraph 15, which will be equipped with a calling system and arranged to host a person held for questioning. For logistical reasons, the room cannot be illuminated by daylight. The detention room will have the following furniture: one bed fixed to the floor, one mattress and walls covered with shock-resistant and sound-deadening material.

Request:

Fundamental guarantees against ill-treatment

Answer:

Article 2 of the Penitentiary Regulation approved by the Congress of State with Decision no. 42 on 26 May 1997 states: "In the exercise of his supervision functions, the Judge competent for the execution of sentences obtains direct

Information on the performance of detention services by means of visits and interviews and, when necessary, by reading documents".
According to routine procedure, all recommendations in paragraph 18 of CPT report, are applied to people held for questioning by the Gendarmerie; with regard to detainees, Law no. 44 of 29 April 1997 and the provisions of the Penitentiary Regulation of 26 May 1997 shall apply.

B. Prison of San Marino

Request:

Preliminary observations

Answer:

No modernisation works have been carried out since the last CPT visit.

Request:

Detention conditions

Answer:

As provided for by the Penitentiary Regulation, individual imprisonment is applied; if not possible, however, no more than two detainees are placed in each cell.

As far as possible, detainees are entitled to stay outside their cell for at least 8 hours a day in order to perform activities such as work, sport or other leisure activities together with other detainees.

Request:

Medical service

Answer:

The medical, pharmaceutical and psychiatric service is guaranteed by the Social Security Institute. Medical assistance in the prison is a responsibility of a physician annually appointed by the Institute among the physicians of the local Health Centre. If special treatments or examinations are needed, detainees are transferred to the State hospital. When entering the establishment, a general medical examination of the detainees is carried out to assess any physical disease or psychological disorder. All ill detainees, or anyone requesting it, are entitled to a daily medical examination. Detainees and internees affected or suspected of being affected by a contagious disease are immediately isolated in adequate detention establishments or hospitals. With regard to the organisation and operation of health services, the penitentiary administration may collaborate with local public health services, both inside and outside the hospital. Detainees and internees may request to be examined, at their own expense, by a physician of their choosing, who collaborates with the colleague appointed by the Social Security Institute. The Institute's Director shall visit the establishment at least twice a year to assess hygienic and health conditions, as well as the appropriateness of the measures adopted by the physician responsible for the establishment to prevent infectious diseases.
Medical documents are not included in the detainees' files.

Request:

Other questions falling within the competence of the CPT (please specify in detail type and duration of disciplinary sanctions).

Answer:

Article 22 of Law no. 44 of 29 April 1997, Penitentiary Law, sets forth the rules of behaviour to be observed by the detainees. Articles 27, 29 and 30 of the

Penitentiary Regulation regulate rules of behaviour, solitary confinement and searches respectively.

The law does not provide for any register of disciplinary sanctions.

D) Brief reply provided by the Civil Police

With reference to the request for information in the report of the Committee for the Prevention of Torture (CPT) page 29, please take note that no detention rooms exist at the Civil Police Headquarters and those held for questioning are immediately transferred to the prison.

E) Information provided by the Neuropsychiatric Service:

Please note that paragraph C. non-voluntary psychiatric internment, page 33 of the report is the only section falling within our competence.

With reference to the recommendation to give priority to the adoption and implementation of the new draft law on the treatment of psychiatric patients, especially in cases of non-voluntary internment (paragraph 45), Dr. Luigi Morganti, as representative of the Neuropsychiatric Service within the ad-hoc Working Group, has communicated that the final draft should be submitted within a few months.

Paragraph 46 requests more detailed information on the building of a new unit for the treatment of psychiatric patients in San Marino.

This issue is particularly important, as in San Marino there is no possibility of hospitalising psychiatric patients under compulsory health treatment conditions (TSO). Moreover, there is no First Aid station where they can be properly looked after and/or observed for a short period.

The establishment of a small division for the observation and treatment of these patients has reached the planning stage and more detailed information can be obtained directly from the political and administrative bodies of the Social Security Institute.

F) Information provided by the Minor Service on the new institution "Colore del grano":

With regard to your request for information in Annex I, paragraph D. *Minors deprived of their freedom*, point 2. *Institute for minors (Casa Famiglia)* please note that:

- The new centre for disabled called "Colore del grano", which has replaced the Casa Famiglia, avails itself of a nursing staff working at the institute 24 hours a day. The prescription of drugs is a responsibility of the medical staff, while the nursing staff or the health assistant are in charge of their administration.
- In case of emergency (two cases over the last 10 years, considering also the Casa Famiglia), the centre "Colore del grano" may be entrusted with the custody of minors who are delinquents or need special care. Their surveillance is arranged in agreement and co-operation with the Gendarmerie. In the future, these minors will be hosted in appropriate single rooms, where doors and

windows can be closed, under the supervision of a policeman and an educator, even if this does not fall within the original functions of the institute.

- The San Marino Association of Disabled (Associazione Sammarinese Disabili ad Esordio Infantile - ASDEI) includes some parents of handicapped children who assist those wishing to submit complaints. Moreover, as already stated, the "Colore del grano" was set up as a centre favouring meetings and the establishment of new relations, where it is possible to get to know people different from us and gain their confidence. Therefore, the function of this centre is certainly not to deprive people of their freedom, as indicated in the CPT report. Anyone wishing to see the "Colore del grano" and meet its guests may visit the centre at any time.

