



MINISTRY OF FOREIGN AFFAIRS

Ref. no. 86048/2020

San Marino, 14 September 2020

Madam Commissioner,

Thank you for your letter dated 8 September 2020, Ref: CommHR/DM/sf 018-2020, which I read very carefully, regarding concerns about the independence of the Judiciary in the Republic of San Marino following some communications sent to you by representatives of the San Marino Judiciary. I fully understand that these communications you have received may have worried or even alarmed you.

First of all, I feel the duty to draw your attention to the fact that these communications were sent to you by only a part of the Judiciary and not by all Magistrates working in San Marino. This is worth specifying in order to avoid accepting *a priori* what has been pointed out and, consequently, affecting our dialogue, which I would like to carry out on a purely technical level in order to deal with this issue with the greatest possible objectivity.

Your letter gives me the opportunity to make some considerations that I deem important to better understand what has recently happened in San Marino; these considerations will be explained (and expanded, if necessary) also to all competent Council of Europe bodies, first of all the Group of States of the Council of Europe against Corruption (GRECO), which will adopt an evaluation report on San Marino next 21 September.

For several years, the Judiciary of the Republic of San Marino has been characterised by an intense and complex activity; in addition to putting the entire Judiciary under pressure, this activity has brought to light some vulnerabilities and problems affecting San Marino judicial system, inevitably leading to different visions about the correct application of some of its rules. In this circumstance, a series of internal conflicts arose within the Court, which inevitably also involved politics because of the current regulatory framework regarding the composition of the bodies provided for by the judicial system.

Besides the various visions that still exist today, the legislator has considered it necessary to carry out a regulatory intervention in order to dispel any doubts, from an interpretative point of view, as to the application of the current legislation. With regard to this intervention, Their Excellencies the Captains Regent, Heads of State and Presidents of the Judicial Council, requested a *pro veritate* and *super partes* opinion to an authoritative constitutional law expert not from San Marino, who has confirmed the adequacy of the legislative interventions adopted with respect to the Constitutional Charter of our country. This opinion will be sent to you as soon as possible for your information.

Ms. **Dunja Mijatović**
Commissioner for Human Rights
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San Marino Judicial Council has instead recently decided to remedy the irregularity of some measures that had been taken in the absence of a law provision, therefore illegitimately, and that could not be considered remedied by the mere passage of time. In addition, some serious evidence has emerged of possible conducts that could be associated with a non impartial administration of justice in some proceedings; GRECO could also be informed of such conducts, if it deems it appropriate, as part of the current evaluation process on San Marino.

What explained above cannot fill all the gaps and vulnerabilities existing in our judicial system, as also highlighted by GRECO in its evaluation visit to San Marino; in this regard, the Government looks forward to the starting of a deep and fruitful cooperation between San Marino Authorities and the competent Council of Europe Institutions, with a view to achieving an overall judicial reform in compliance with the main international standards in this field. However, worth recalling is that in a small country like San Marino particular attention must be paid to the system of mutual control and balance between the fundamental powers of the State, as highlighted and extensively discussed by the related doctrine that has developed here from 1748 to the present day.

I hope that the reform that we are going to carry out can solve the problems that have emerged so far and can also finally reconcile the differences of opinion existing within the Judiciary and San Marino politics. Only in the context of this overall reform will the necessary regulatory interventions be implemented and, therefore, it is not the Government's intention, at this stage, to promote further individual legislative initiatives in the field of justice outside of this context.

In thanking you once again for your letter, I would like to take this opportunity to renew to you my best wishes and to ensure you that both myself and San Marino Government will be fully available to continue this dialogue and to provide you with any further information you may request.


Luca Beccari
MINISTER

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