



CPT/Inf (2008) 10

**Response of the Government of San Marino
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on its visit to San Marino**

from 8 to 11 February 2005

The Government of San Marino has requested the publication of this response. The report of the CPT on its February 2005 visit to San Marino is set out in document CPT/Inf (2008) 9.

Strasbourg, 26 February 2008

**REPLY BY THE GOVERNMENT OF THE REPUBLIC OF SAN MARINO
TO THE LIST OF RECOMMENDATIONS, REMARKS AND REQUESTS
FOR INFORMATION BY THE CPT
[ref. document CPT(2005)37]**

A. Law-enforcement agencies

Preliminary remarks

Recommendations

- **The CPT recommends that the necessary steps be taken to ensure that every person arrested by law-enforcement agencies be brought before a judge before he or she is possibly remanded in custody; the CCP should therefore be amended to this effect. It is also important that arrested persons be brought promptly before the judge**

The draft Reform of the Code of Criminal Procedure has now reached the final stage of approval. Indeed, as communicated by Gian Marco Marcucci, Chairman of the deciding Parliamentary Commission in charge of the reform's approval to their Excellencies the Captains Regent on 8 June 2005, said Commission has now concluded its work. The points still on the table must now be solved in agreement with the author of the project, Prof. Massimo Nobili. Concomitantly, a working group composed of some public officials shall draft the provisions necessary to harmonise said reform with the existing legal system and propose appropriate measures concerning: organization, human and technical resources, staffing of the magistracy and police forces, as well as any other aspect related to the entry into force of the new Code of Criminal Procedure. CPT remarks will certainly be precious mainly at this stage of our work.

- **The CPT recommends that detention registers be kept by the two establishments visited (gendarmerie/police)**

Detention registers have now been introduced in the two services (gendarmerie and police).

Conditions of detention

Remarks

- **If the existing cell at the Gendarmerie Headquarters- currently being used as a storeroom - were to be used for holding persons in custody/identification of people, it would have to be equipped in the light of the recommendations made after the 1999 visit. In particular, the cell would have to be equipped with a means of relaxation (for example, a fixed bench or seat) and a call system would have to be installed. Further, if the cell were intended for overnight use, a mattress and a blanket should be provided.**

We have been fully reassured by the Commander-in-Chief of the Gendarmerie that the cell at the Gendarmerie Headquarters will never be used for holding persons in custody.

Safeguards against the ill-treatment of detained persons

Recommendations

- The CPT calls upon the authorities of San Marino to take effective steps to ensure that all persons deprived of their liberty by law-enforcement agencies, for whatever reason, are granted the right to notify a close relative or third party of their choice of their situation, as from the very outset of their deprivation of liberty.

- Any possibility to postpone exceptionally the right to notify a close relative or third party should be clearly defined by law, and resort to such a delay should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefor, and to require the approval of a judicial authority) and should be strictly limited in time.

Any delay in the communications to relatives has been expressly excluded by the new Article 93, paragraph 2, of the Code of Criminal Procedure, introduced by Article 1 of Law N° 20 of 24 February 2000 – Provisions concerning criminal proceedings – which reads: “*Upon request of the interested person, relatives must be informed of any police stop or arrest. Such communication is compulsory and, in case of minors, it must be made immediately, before any other act or measure*”. Such provision excluding any delay in the communication to relatives confirms what envisaged in Article 20, paragraph 1, of San Marino penitentiary system (Law n. 44 of 29 April 1997), which reads: “*Detainees shall be allowed to immediately inform their relatives and any other persons they might have indicated of their entry into prison*”.

- The CPT recommends that the San Marino authorities take effective steps to ensure that the right of access to a lawyer (if necessary, one appointed *ex officio*), including the right to speak to him or her in private, is enjoyed by all persons deprived of their liberty by law-enforcement agencies, as from the very outset of their deprivation of liberty.

In practice, no limitations apply to meetings between detainees and their advocates.

This is also provided for and guaranteed by Article 15.2 of Decree n. 79 of 8 July 2002, Declaration on the citizens’ rights and fundamental principles of San Marino constitutional order, which reads: “*Everyone shall be entitled to defend himself at any stage of the judicial proceedings*”, by Article 14.2 of Law n. 44 of 29 April 1997 on the penitentiary system, which reads: “*The meetings between the accused and the relatives and the advocate of his/her own choice shall enjoy special treatment*”, by Article 13.2 of Law n. 86 of 11 December 1974, Rules implementing the Criminal Code and reforming criminal procedure, which reads: “*The advocates of the parties shall have the right to be present during interviews and confrontations involving the defendant, to attend experiments, judicial accesses, search of people, things and premises. In such case, the judge shall notify the advocates the time and place fixed for these acts by any means and at least 24 hours in advance*”, and by the new Article 93.2 of the Code of Criminal Procedure, introduced by Article 1 of Law n. 20 of 24 February 2000, Provisions concerning criminal proceedings, which reads: “*Police officers shall immediately draw up a report of any police stop or arrest. A copy of this report shall be given to the interested party and another copy notified to his/her advocate, or in his/her absence, to the public defendant, who have the right to be informed of and participate in any interrogation by the police. Such report shall contain the will of the legitimate party to file a complaint*”.

- **The CPT calls upon the authorities of San Marino to ensure that specific legal provisions be adopted governing the right of access to a doctor for persons detained by law-enforcement agencies, from the very outset of their deprivation of liberty. Further, the necessary steps should be taken to ensure that the confidentiality of medical data be scrupulously observed.**

Article 8.4 of Law n. 44 of 29 April 1997 on the penitentiary system reads : *“Upon entry into prison, all detainees shall be subject to a general medical examination in order to ascertain any possible physical or mental disease”*; moreover, paragraph 5 of the same Article states: *“Every day a physician shall examine ill detainees as well as all those making such a request”*, while paragraph 8 states: *“Detainees and internees may request, to be examined, at their own expense, by a physician of their choosing, who shall collaborate with the physician appointed by the Social Security Institute”*.

As reported also by the press, the Italian citizen Giovanni Lentini, one of the few persons recently detained in San Marino, expressed *“his sincere appreciation to San Marino health system for the care and diligence with which physicians treated him”* (Corriere di San Marino, Sunday, 6 November 2005). Mr. Lentini also resorted to all legal remedies available not to be extradited to his own country.

- **The CPT calls upon the authorities of San Marino to take steps to ensure that a form setting out, in a straightforward manner, the rights of persons detained by law-enforcement agencies is systematically given to such persons at the very outset of their deprivation of liberty. This form should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.**

Article 10, paragraph 4 of the Penitentiary Regulation, approved by Government Decision n. 42 of 26 May 1997 – File 2294 – reads: *“The detainee shall be given an abstract of the main rules contained in the law and regulation, also indicating where the integral texts can be consulted”*. The person responsible for the detention establishment has made this text translated into English and French. Due to the small number of detainees, the translation of the text into the language of the person concerned can be quite easily provided.

B. San Marino Prison

Material conditions

Recommendation

- **The CPT recommends that measures be taken without delay to carry out the prison restructuring programme announced since 1992.**

The administrative procedures for the implementation of the project are underway. The technical bodies have already approved it and the relevant expenses have been authorised and allocated by the Congress of State (Government). At present, the project is being examined by the Environmental Hygiene Service, which shall provide all necessary indications concerning construction works, safety measures and any other aspect falling under its competence.

Regime

Recommendation

- **The CPT recommends that the necessary steps be taken to ensure that all prisoners are able to spend a reasonable amount of time outside their cells, engaged in purposeful activities. Further, the activities offered to long-term prisoners should be especially varied. The implementation of the above-mentioned restructuring plan should, in particular, allow the provision of a multi-purpose room as an important step in this direction.**

The above-mentioned project provides for the construction of two additional premises, excavated in the rock, to be used as workshop and gymnasium.

Medical services

Recommendations

- **The CPT recommends that the necessary steps be taken without delay to ensure that the computer terminal installed at the prison since after the 1999 visit be connected to the central network of the San Marino health services.**

As underlined by the CPT Commission during its visit, it would be extremely expensive and difficult for San Marino to comply with this recommendation. Indeed, major excavation works should be carried out and cables placed in a rocky, inaccessible terrain, in the historical centre. However, the IT Technical Commission and the Directorate General of Posts and Telecommunications have already granted their authorisation and requested a cost estimate for the placement of the necessary connecting cables. For cost-effectiveness reasons, this intervention could be better defined at the time of the starting of the restructuring works of the detention establishment.

Remarks

- **The authorities are invited to take the necessary steps so that the administration of medical treatment be not entrusted, even partially, to the custodial staff.**

As the CPT Commission could verify during its visit, the district health centre is at a walking distance from the detention establishment. Therefore, medical care is provided by the medical and paramedical personnel of such health centre. Custodial staff only intervenes in case of first aid emergency (unexpected attack.....) or absolute necessity.

Other questions of relevance to the CPT's mandate

Recommendations

- **The CPT recommends that staff assigned to custodial duties at San Marino Prison receive specific prison training. The prison governor should likewise be given appropriate training.**

The new Commander-in-Chief of the Gendarmerie, Colonel Achille Zecchini, is drafting a personal training and refresher programme in collaboration with the Coordinator of the Ministry of Foreign Affairs. Part of this programme has already been implemented.

- **The CPT reiterates its recommendation that the authorities draw up a procedure ensuring that prisoners have the right to a hearing on an alleged offence and a right of appeal to a higher and/or independent authority against any penalty imposed. Such a procedure should be distinct from the general right of appeal laid down in Article 25 of the 1997 Prison Act.**

The appeal possibilities laid down in Article 25 of the Prison Law are not limited to the cases covered therein, but they obviously include also those provided for San Marino legal system which protects, at any stage of the judicial proceedings, among others, full hearing procedure. Any appeal filed under such article cannot therefore be rejected or received tout court, but shall benefit of all guarantees provided for by San Marino legal system and international law in case of jurisdictional appeals.

- **The CPT recommends that the legislation concerning prisoners' contact with the outside world be reviewed in the light of comments in paragraph 36.**

- **The CPT calls on the authorities to take appropriate measures without delay to ensure that prisoners can see their lawyers in private and without restrictions.**

Restrictions to the private meetings of prisoners with their lawyers are imposed only in case of overcrowding of the prison, in that, at present, the prison has only one visiting room. However, as already said, this is a very remote possibility.

Also this problem will be solved with the restructuring of the prison.

Remark

- **The Committee calls on the San Marino authorities to take appropriate measures ensuring that every inspection by the relevant authorities is recorded in a detailed, written report.**

In case of visits under Article 33 of the Prison Law, the person responsible for the prison is required to draw up a detailed, written report.

Request for information

- **The CPT would like to receive information on progress made towards the enactment of a specific law on minors.**

San Marino authorities are attentively considering all aspects concerning minors. Under the decision "Administration of justice" adopted by the Great and General Council in its meeting of 30 June 2004, the Chief Magistrate of the Single Court is requested to closely monitor minor discomfort in the year ahead, in cooperation with the Minors' Service of the Health and Social Security Institute. It also ordered the recruitment, through public competition, of an additional Law Commissioner particularly specialized in family and child law. Over the last years, the Single Court made great efforts to prevent and repress minor delinquency and, as a result, no minor detentions have occurred over the period. Indeed, the magistrate has always resorted to probation or to the assignment of the minor to the Minors' Service or to the CSSA (Social Service Centre for Adults). Therefore, the legislator deemed not urgent to draft specific legislation in this regard, since no minor detentions have occurred over several years, and considering that the measures being implemented already offer a wide range of guarantees.

C. Involuntary psychiatric internment

The neuro-psychiatric department of the General Hospital

Remarks

- **The CPT asks the San Marinese authorities to reconsider setting up a unit for patients subject to TSO within the neuro-psychiatric department of the General Hospital.**
- **The CPT asks the San Marinese authorities to reconsider setting up a child psychiatry unit within the neuro-psychiatric department of the General Hospital.**

The enforcement of these recommendations and remarks must be considered in the light of the Republic's situation, population and health facilities. The population would hardly accept a health policy decision implementing such suggestions, since other services and departments, even more important than these, like the intensive and semi-intensive care departments, or having a much higher number of potential patients (for example, geriatrics), consist of smaller units.

Safeguards in the context of involuntary placement/consent to treatment

Recommendations

- **The CPT calls upon the San Marino authorities to draw up, without delay, a legal framework for involuntary psychiatric placement/compulsory medical treatment in the light of the remarks in paragraphs 43 – 46 and of the general principles which the CPT laid down in its 8th yearly General Report.**
- **The CPT recommends that the legislation concerning lack of criminal responsibility be amended in the light of remarks in paragraph 48.**

The technical commissions in charge of studying the issue and defining possible solutions have concluded their work and submitted the relevant documentation. The passing of the relevant legislation will be subject to intense political debate, since it entails very important health policy decisions also of ethical nature. This delicate issue cannot be dealt with in this period, because current legislature is drawing to a close and, in the months ahead, the legislative and governing bodies of the Republic will only perform ordinary administration functions in view of 4 June 2006 general elections.

D. Rest-homes for the elderly

Recommendations

- **The CPT recommends that the San Marinense authorities take measures to ensure that, whenever a resident at a rest-home for the elderly is no longer capable of consenting to placement, a guardian is appointed and formal permission has to be obtained from the Family Council. The same procedure should be followed if an inmate ceases to be capable of consent to placement during his or her stay at the establishment.**
- **The Committee recommends that measures be taken to ensure that the need for placement without consent in a rest-home for the elderly is reviewed at regular intervals by an appropriate authority (the Family Council).**
- **In the case of inmates declared incapable of legal consent, the CPT recommends that the guardian's written permission be systematically required for use of means of restraint.**
- **The Committee recommends introducing special registers for recording any use of means of physical restraint in the two homes for the elderly persons visited.**

As regards the rest-homes for the elderly in the Republic, all major measures concerning inmates, including therefore means of restraint, are always taken upon written permission of the Family Council. This is a guarantee also for the rest-home itself. In consideration of the limited dimensions of the establishments and of the small number of their inmates, ordinary measures are taken in agreement with relatives and therefore without any formal authorisation. In a small country like San Marino, also a minor ill-treatment would immediately give rise to a lot of gossip among the entire population and in the local press and consequently tarnish the reputation of the establishment concerned.

