

**Follow-up report of the Government of Croatia
in response to the report of the European
Committee for the Prevention of Torture
and Inhuman or Degrading Treatment
or Punishment (CPT)
on its visit to Croatia**

from 20 to 30 September 1998

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REPORT

Written in accordance with paragraph 190/I of the Report to the Government of the Republic of Croatia on the visit to Croatia of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, No.: CPT (99) 1.

A. Police Institutions

1. Preliminary Notes

Requested Information

At the end of the last year, the work related to the drafting of legal and sub-legal regulations, which would regulate the authorities and organisation of the police as well as the status of police officers concerning labour law, was interrupted. The renewed activities regarding the drafting of these regulations started at the beginning of March this year, but with changed conception. The new conception includes the drafting of the unique legal regulation under the name "Law on Police", which would determine the organisation, authorities and the status of police officers concerning labour law. The Government of the Republic of Croatia gave deadline to the Ministry of the Interior to prepare this Law for the consideration to the Government by the end of May this year. This means, that we shall send the part of the Law on Police, which determines the police authorities, to the Council of Europe for the Expert Opinion (this has already being foreseen in ADACS program). After the Government's consideration of the mentioned Law, the activities related to passing the sub-legal acts, particularly those which are necessary for the implementation of the Law on Police, as well as those which are necessary for the application of the Law on Criminal Procedure. We expect, that all mentioned regulations shall come into force on the 1st of January, 2001

2. Torture and Other Forms of Ill-treatment

Recommendations

Apart from legal regulations regulating the police use of means of coercion, the Ministry of Interior observes the situation in this field and gives instructions and guidelines with the aim of bringing its use to the smallest possible extent. It should be underlined that, on 16th September 1998, the Ministry sent to the Heads of all Police Administrations an instruction, warning them of the increase of the use of means of coercion and drawing their attention to the necessity of analysing these cases and taking measures provided by law against police officials. The mentioned instruction was issued under the following number: 511-01-12-9493/98. The instruction mentioned in your Report as an instruction issued by the Head of the Police Administration Splitsko-Dalmatinska was actually the instruction issued by the Ministry of the Interior and forwarded by the Head of the PA Splitsko-Dalmatinska to heads of Police Stations in the area covered by the PA, with an enclosed letter (see Attachment 2).

The Ministry of the Interior also takes account of the legality of the police use of means of coercion in all cases where unlawful behaviour of police officers towards citizens is observed and takes necessary measures. Police Administrations' managing personnel are obliged to inform all police officers on negative occurrences and measures taken against the shortcomings observed. (In Attachments 2, 3, 4, we are sending copies of previous years' instructions).

Measures taken by the Republic of Croatia, aiming at creation of regular police work, are twofold. Firstly, one should mention the selection of candidates for police service. Apart from the tests of knowledge, psychological tests are carried out for each candidate, who achieved certain results in the general education system. Intellectual abilities and personality structure are measured within the psychological tests. In the measurements stated, certain departure is allowed, as defined in a special sub-legal act (see Attachment 5). If a candidate departs from the norms, either in intellectual or the personality structure, this leads to his/her elimination from further competition. The sub-legal act (see Attachment 5) contains the obligation of psychological tests during the service of police officers. However, these are not carried out due to many reasons. A great interest for police service, which is sometimes 10:1, makes high-quality selection of candidates possible. Course of lectures "Human Rights and Police Ethics" at the Police High School and Academy also significantly contribute to understanding and respecting human rights. We are aware of the fact that human rights always have to be discussed, which is the reason for considering the introduction of lectures and discussions on police ethics issues at police stations.

Interpersonal communication is a part of educational process in two ways. The first is within the psychology lectures in the fourth year of the High Police School. This subject is a continuation of "general" psychology, which is a part of the third year's grammar school programme. Within the fourth year's subject, theory is studied and exercises are carried out in the following subjects: the relationship of a police officer and public, relation towards suspects, expressing emotions, recognition of emotional states, control of emotions, etc. The subject is studied in 64 lessons. The other way is the introduction of communicology into additional forms of in-service training. The latter has been introduced last school year. It should also be underlined that within Police College in the first semester there is a one-semester subject of communicology.

We accept the recommendation that investigative judge should ask for forensic medical examination and inform the state attorney's office each time there is well-founded belief that an arrested person taken before the judge is a victim of ill-treatment. Such obligation exists *de lege lata* in the Republic of Croatia. The standpoint is based on the fact that ill-treatment is a criminal act, and investigative judge is obliged to inform state attorney's office on criminal act he learns of during the investigation (Art. 195. para. 2 of the Criminal Procedure Act). Investigative judge has the authority to request for forensic medical examination as an urgent investigative activity without informing the state attorney's office (Art. 186 Criminal Procedure Act). While making amendments to the Criminal Procedure Act, we may consider the introduction of explicit regulation of the obligation mentioned in the Criminal Procedure Act.

We accept the recommendation that we should take steps to ensure that all subjects, which will be used as evidence, are marked and stored in a specially designated place. The problem justifiably implied in paragraph 22, as there are still some shortcomings, has been found out by the Ministry already in 1994. After that, a letter has been sent to all police administrations, so that in 1996, clear obligations in this sense have been established (see Attachments 6, 7 and 8). After certain shortcomings were still being found during the controls of police administrations by the Ministry of the Interior, a meeting was held between 11th and 13th June 1998 with heads of criminal technique departments/divisions at police administrations on the subject matters such as the manner of finding, packing, storing and recording material traces, and observing entering and exiting of corpus. The conclusions made at the meeting were sent to all police administrations under the number: 511-01-26/1-454/1998 dated 17th June 1998, in Attachment 8. In the controls, which took place afterwards, it was established that at police administrations and police stations facilities were provided for depositing material traces, which for certain reasons were not sent to judiciary bodies. It was also established that in the rooms of criminal police officers and interview rooms, material traces related to criminal acts were not kept. During the first quarter of 1999, uniformed manner of packing material traces was introduced for all police administrations and police stations, and the specifications of material traces were established. In this way, keeping material traces outside the place for their storage was prevented. We intend to continue carrying out measures to prevent that these items are kept outside facilities designed for this purpose. This especially refers to prevention of keeping items, which might terrify persons during interviews at police facilities.

Comments

As regards the relations between the Internal Control Office and the functions of police administrations, state attorney's office and courts in connection to ill-treatment, one should underline the following: the Internal Control Office is situated at the Minister's Cabinet. When a police officer uses a means of coercion, jeopardising life, health and property of a person, the Internal Control Office can take on the investigation of such case. As a rule, the Internal Control Office investigates the cases of use of means of coercion in co-operation with officers in the organisation unit where the means was used. Naturally, officers from the Internal Control Office are not the first to learn on the use of the means of coercion, likewise, they are not the first to take measures in the clarification of the case. One of the reasons for this is the fact that the Office does not have officers placed at police administrations. When the Office in any way receives an information on the use of the means of coercion, a decision may be made on investigating each case regardless of their seriousness. In investigating the legality of the use of means of coercion only those measures can be used, which are provided by the Criminal procedure Act. The Internal Control Office may request that police administrations take certain measures and bring charges in a certain case. As a rule, the Internal Control Office does not bring charges, but in a certain cases it may request that a police administration or a lower level organisation does so. Normally, the Office does not keep direct contacts with State Attorney's Office and judiciary, but both institutions may require information from the Office (in such circumstances, the basis for the co-operation is the Criminal Procedure Act). The above mentioned implies that the Internal Control Office's activity is observing illegal actions and taking appropriate measures, but never deciding on procedure upon each use of means of coercion.

Searching for the information

The issue resulting from the Paragraph 14 relating to the link between the criminal acts from Article 126 (extortion of statement), Article 127 (abuse of office) and Article 176 (torture and other cruel, inhuman or degrading treatment) of the Penal Code is justified. The Republic of Croatia is the first state in the world that has included the criminal act from Article 176 in its penal legislation, in accordance with the United Nations Committee against Torture recommendations. Simultaneously with the inclusion of the aforementioned criminal act, the attitude towards the acts relating to the protection of the citizens from torture carried out by the officials (criminal acts from Articles 126 and 127 of the Penal Code) was not sufficiently defined. The *de lege lata* situation is such that at least two of the above mentioned incriminations are realised in practice in the cases of mentioned behaviour of the officials.

The case mentioned in Paragraph 14 took place in July 1998, only seven months after coming into force of the current Penal Code, so that the state attorney and judicial services took no stand on the relations between the mentioned criminal acts. It should be mentioned again that the qualification of the criminal act by the police does not oblige the state attorney, and he can change the police qualification of the criminal act depending on the collected evidence. It is certain that the overlapping of descriptions of activities in different criminal acts in the Penal Code is not the best solution, but in the described case there is a good side - a normative interdiction of a larger number of interventions into human rights.

Description of the mentioned case: On July 28, 1998, P. Z. filed a complaint with the Criminal Investigation Department of the Police Administration Istarska stating that on July 27, 1998 her minor son, J. B., born on January 25, 1982, was taken around 17:35h to the 1st police station Pula by the police officers from that station the after allegedly being caught when committing a crime. He was being held there for 20 hours under suspicion of committing a criminal act of grant theft, and beaten by the police officers, when he received light bodily injuries.

The aforementioned officials have not informed the parents or Social Work Center or Juvenile Delinquency Department of carrying out of the investigation of minor J. B. in accordance with the Act on Juvenile Courts.

On July 7, 1998, in accordance with decision of the Head of Police Administration Istarska, D. C. and I. M. are suspended from duty for serious violation of official duties from Article 82, paragraph 1, Item 3 of the Internal Affairs Act, and a request for instigation of disciplinary procedure for serious infringement of work discipline has been filed against the aforementioned persons.

On August 18 1998, after consultations with the Municipal State Attorney's Office, officials of the 1st Police Station Pula filed a criminal report with the Municipal State Attorney Office against the suspects, I. M. and D. C., for reasonable suspicion of committing a criminal act of extortion of statement described in Article 126, paragraph 1 of the Penal Code of Republic of Croatia, committed in detriment of minor J. B., and not a criminal act described in Article 126, paragraph 1, or Article 176, paragraph 1.

Disciplinary Court of the Police Administration Istarska made a decision in the disciplinary procedure held in April 1999, by which both police officers were adjudged a disciplinary measure, a

fine amounting to 20% of the salary paid in March 1999.

- The case of Riccardo Cetina

On September 1/2, 1998 between 22:30 and 01:30 near Zvečevo, Primošten municipality, in the course of intervention and suppression of resistance of the Italian citizen Riccardo Cetina (1954) carried out by the police officers from Police Administration Šibensko-Kninska J. B. (1977), N. G. (1969), P. B. (1976); M. N. (1964), I. K. (1967), I. K. (1964) and D. B. (1968), it has come to the overstepping of authority while using the means of force. On that occasion Riccardo Cetina was seriously injured, and as a consequence of that he died on September 3, 1998 in Clinical Center Split.

The aforementioned police officers were arrested on September 5, 1998. After criminal investigation they were taken to the investigative judge of the County Court in Šibenik because of reasonable suspicion that they had committed a criminal act of torture while performing duty or authority as described in Article 127, paragraph 1, and of inflicting a serious bodily injuries, as described in Article 99, paragraph 1 of the Penal Code of the Republic of Croatia, committed in detriment of Riccardo Cetina.

On April 12, 1999 the municipal State Attorney in Šibenik brought charges in the Šibenik Municipal Court against J. B., D. B., P. B., N. G. and I. K. because for reasonable suspicion of committing the criminal acts described in Article 127, paragraph 1 and Article 99, paragraph 1 of the Croatian Penal Code, and against M. N. and I. K. for reasonable suspicion of committing a criminal act described in Article 127, paragraph 1 of the Croatian Penal Code.

The investigative actions of the Municipal State Attorney lasted from September 5, 1998 to April 12, 1999. the reported police officers spent at least 3 months and 1 day in the investigative prison, i.e. period from September 5, 1998 to November 1998, and from November 30, 1998 to December 29, 1998, from when they are out on pre-trial release.

Head of the Police Administration Šibensko-Kninska filed a request for instigation of the disciplinary procedure against the aforementioned police officers because of the reasonable suspicion of committing a serious violation of work discipline from Article 82, paragraph 1, Item 1 of the Internal Affairs Act, such as abuse of office and overstepping of official authority.

Disciplinary Court of the Police Administration Šibensko-Kninska reached the verdicts on cessation of employment for J. B., N. G., M. N., I. K., D. B. and P. B. For I. K. was sentenced to a fine amounting to 20% of a monthly advance payroll.

All of the police officers have filed a complaint with the Appellate Disciplinary Court of the Police Administration Šibensko-Kninska against a Disciplinary Court sentence, and the head of the Police Administration Šibensko-Kninska has also filed a complaint with the Appellate Disciplinary Court of the Ministry of Interior against a Disciplinary Court sentence against I. K., with a proposal to sentence him to a disciplinary measure of cessation of employment.

The Appellate Court of the Ministry of Interior has refused the complaints of the aforementioned police officers as unfounded, accepted the complaint of the head of Police Administration Šibensko -Kninska and pronounced a disciplinary measure of employment cessation for all of the police officers.

- In the Republic of Croatia generally speaking there are two ways of taking the preventive measures. The first one is a selection of candidates for employment, and the second is education. Education against stress is still not organised in the best manner, but the efforts in this direction are visible. We should stress that in the curriculum of the Police Academy "Stress and Stress Prevention", which is lectured at the third year (total of 30 lessons). Also special police members as well as pyrotechnicians attending the specialist courses undergo the systematic anti-stress training through the special lectures. We inform you that we have made a pilot-study on the impact of stress in the police, and the personnel of the Police Academy currently carries out a scientific project "Stress in the Police". The goals of the research are 1) to research work and traumatic stress that are the most present ones and have the greatest impact; b) to find out what are the characteristics of the persons who are specially sensitive to stress; c) to establish the methods for identifying persons under stress. The practical use we expect from the research is: a) insight in the stress impact in order to carry out stress prevention in the police; b) knowledge that can enable better selection of officers for certain duties within the police force; c) creation of instruments for observing the psychological health; d) duly intervention for persons under the influence of stress. The professors of the Police Academy have prepared a special booklet "Stress in the Police" which is going to be published until the end of this year, and we can send you a copy if you are interested in having one.

- The Case of M. P.

On May 29, 1998, at 00:15 am, in Šibenik, , M. P., born on July 26, 1970 in Šibenik , and J. V., born on October 30, 1971, in Šibenik, , committed a criminal act of aggravated theft by cutting and stealing 8 copper cables with the overall length of 140 m from the Light Metal Factory storage.

Having committed the criminal act, the said individuals were caught by surprise by the police patrol of the 1st Police Station Šibenik on the forest route in the vicinity of the place where they had committed the criminal act. Having detected the police patrol, the both suspects started running away in spite of the repeated warning by the patrol policemen to stop running. Soon after issuing the warning, police officer M. N. caught M. P. The latter put up a corporal resistance by pushing away the former trying to hit him. N. warned P. to stop resisting otherwise he would be forced to use the means of coercion. Since the latter ignored the warning, N. hit him several times with a rubber truncheon on the back after which P. stopped resisting and was taken to the premises of the 1st Police Station in view of criminal investigation. Pending the use of means of coercion, M. P. did not suffer any visible injury.

Taking advantage of the situation with M. P., J. V. escaped in the direction of Gornje Ražine where he was soon found, arrested without the use of means of coercion and taken to the 1st Police Station in view of criminal investigation.

Pending criminal enquiry, M. P. stated to the crime police officers that during his arrest he had been hit several times with a rubber truncheon by the police officers. The stated police officers offered him medical help that he explicitly refused.

The magistrate of the County Court in Šibenik, Mr I. N. and municipal state attorney, Mrs I. S. were notified thereof. After performed criminal enquiry and in co-operation with Mr N. and Mrs S., criminal charges were brought against M. P. and J. V. who were brought in the Investigative Centre of the County Court in Šibenik, on the basis of a reasonable doubt of having committed a criminal act of aggravated theft as stated in Article 217, paragraph 1, item 1 of the Penal Code of the Republic of Croatia.

While handing over M. P. and J. V. to the County Prison in Šibenik, a justice policeman asked the suspects if they had any visible bodily injuries. M. P. replied affirmative stating that he was a drug abuser and that he needed drugs to prevent withdrawal symptoms. The justice policeman of the County Prison Šibenik thereupon refused to accept P. before the latter received medical help after which the latter was transported to the General Hospital Šibenik where he was diagnosed with minor injuries, bruises on the back, stomach and the leg (total of 5) inflicted by a rubber truncheon. He received a smaller quantity of sedatives from a neuropsychiatrist of the stated hospital following which he was handed over to the County Prison in Šibenik.

Pursuant to Article 174, paragraph 1 of the Temporary Rules of Service of the Ministry of the Interior of the Republic of Croatia, chief police officer of the Police Administration Šibenik-Knin has judged the use of means of coercion by the police officer M. N. in the case of M. P. as justified.

– The Case of E. S.

The Report states the case of E. S., a former prisoner of the County Prison in Split. Reviewing his prison medical record, the CPT delegation has ascertained that E. S. was imprisoned on August 15, 1998 and three days later, i.e. on August 18, went through a medical check discovering his injuries. He explained to the prison doctor that they were inflicted by the police in Makarska.

Having received information on the stated case, officers of the Crime Police Sector of the Police Administration Split-Dalmatia have performed numerous operative measures in view of clarifying the stated case and have identified the following:

E. S., born in 1968, Croat, with a place of residence in Bosnia and Herzegovina, spent the first half of August in Makarska. Lacking means of subsistence, he slept on the beach.

On August 14, 1998, at approx. 1:40 pm, in Makarska on Donja Luka promenade in the vicinity of the hotel "Meteor", the crime police officers of the Police Station Makarska came across E. S. and performed a regular ID papers check. External check of the clothing discovered a paper packet marked "joint" at the rear pocket of the trousers, containing 1.3 gr. of cannabis which is registered as a narcotic, following which the stated individual was taken to the Police Station Makarska in view of criminal investigation.

During criminal enquiry, E. S. confessed to having committed another two criminal acts in the first half of August in Makarska area.

Upon completion of criminal investigation on August 15, E. S. was charged on the basis of a reasonable doubt for having committed a criminal act of drug abuse and theft as described in Article 173, paragraph 1 and Article 216 paragraph 1 of the Penal Code of the Republic of Croatia and was taken to the Investigative Centre of the County Court in Split where a magistrate ordered his staying in custody on the premises of the County Court in Split.

Pending arrest and performance of criminal investigation at the Police Station Makarska, it has not been identified that E. S. has been subdued to any kind of coercion or physical force.

Pending procedure before the magistrate ordering his custody, E. S. did not complain about any police officer using physical force against him.

Furthermore, pending his arrival at the County Prison, E. S. did not complain to the officers on duty about any injuries.

Three days later, i.e. on August 18, 1998, during the first obligatory medical check at the County Prison in Split, a prison doctor identified that the prisoner E. S. had three haematomas on the left thigh, one on the left buttock and one on the left forearm, qualified as minor injuries for which he claimed to have been inflicted by the police officers in Makarska.

Prison doctor did not specifically treat these injuries because the prisoner did not complain about any pain since the injuries were minor, nor did he notify the magistrate or anybody else thereof and the doctor found the prisoner's statement unconvincing.

On September 15, 1998, The County Court in Makarska found the defendant E. S. guilty of the stated criminal acts sentencing him to a unique eight months prison sentence, i.e. conditional three year sentence, as well as proscribing a security measure of expulsion for the term of 2 years. Furthermore, his custody was cancelled on September 15, 1998.

Collected information and the absence of E. S. has prevented the authorities to verify his statement that the injuries were inflicted by the police officers in Makarska, nor was it possible to determine the manner, time and place where the said injuries were inflicted.

On June 14, 1998, Municipal State Attorney Office in Makarska has been informed through a General-Special Report about the established material facts and all relevant circumstances regarding infliction of injuries of E. S..

- Statistic data on complaints against police officers stemming from citizen abuse for 1998 (section 20): In the course of 1998, citizens filed the total of 82 complaints against police officers' procedures stemming from certain manners of abuse. Each case has been dealt individually and after examination 40 claims have been qualified as unjustified. In the remaining cases brought before competent state attorneys, criminal charges stemming from the criminal act of "abuse of authority" from Article 127 of the Penal Code have been brought against 27 police officers and criminal charges stemming from the criminal act of "aggravated bodily injury" from Article 99 of the Penal Code have been brought against 10 police officers. So far, criminal liability has been dropped in case of 3 police officers, criminal charges have been dropped against 3 police officers whereas other proceedings are still pending.

- On the basis of the stated citizen claims, disciplinary proceedings have been instituted against 53 police officers stemming from the serious abuse of work discipline, 31 police officers have been sanctioned with a fine, 3 police officers have been issued a public citation, 4 police officers have been acquitted from criminal liability on the basis of disciplinary court judgement and in case of 6 police officers, disciplinary proceeding is still pending (section 21).

- In co-operation with the Ministry of the Interior, especially with the Police Sector and the Internal Control Office, the Police School is carrying out a research entitled "Use of Means of Coercion by the Police". The purpose of the research is to establish the quality of normative regulation regarding the use of means of coercion by the police and the level of legality thereof.

The research consists of three parts:

1. Analysis of cases that include the use of means of coercion, that have been registered by the Ministry of the Interior or found out from arrested individuals and other persons.

2. Interviewing police officials on real and possible levels of the use of means of coercion and on the competence of normative and practical bases for the use thereof.

3. Analysis of normative regulation of the use of means of coercion by the police. This research bound to last for three years, has been launched this year and the first results are expected in December this year. The research should clarify for the first time in Croatia normative and practical side of the use of means of coercion by the police. Research results are highly valuable for formulation of the training program regarding the use of means of coercion. If You are interested therein, we can already send You questionnaires used for gathering research data. Since the research has specific stages, upon Your request we can send You results gathered after each stage.

- The Republic of Croatia has been monitoring police officers regarding the PTDS from 1995. This monitoring consists of several levels. Firstly, senior police officers are obliged to implement corresponding measures when they detect suspicious behaviour or other elements implying the PTDS in order to have these individuals medically examined. Medical examinations are carried out in specialized institutions which are not only used for police health care. The final decision on the treatment of the person diagnosed with the PTSD is reached by a special commission comprised of experts from the Ministry of the Interior and the Ministry of Health. From 1995, 339 cases of the PTSD have been identified. Of the total amount, 142 police officers have been sent into retirement, 18 police officers have been transferred to working posts that have no police authority whereas in 179 cases, corresponding medical and other measures are being performed that will ultimately result in retirement or transfer.

3. Guarantees Against Mistreatment of Detainees

Recommendations

The recommendation regarding obligatory immediate notification of the close relative or a third person of the arrested person regarding his/her arrest has been accepted. This right is guaranteed by Article 96, paragraph 5 of the Criminal Procedure Act. The stated article being a general regulation proscribes that the family has to be notified thereof within the period of twenty-four hours. By-law regulations will contain clarifications regarding immediate notification of the family and notification postponed up to twenty-four hours in exceptional cases if demanded by the circumstances that will also be exactly described. By the stated by-law the obligation to notify will also cover notification of persons stated by the arrested individual in question (paragraph 27). Furthermore, it is necessary to mention the Instruction no. 511-01-64-52393/94 (see appendix 9) proscribing certain obligations regarding retention of persons pursuant to the Internal Affairs Act.

- The recommendation on the right to attorney and the right to private counselling with the attorney pending police retention has also been accepted. As in the previous paragraph (30), this issue will elaborately be covered by a by-law currently under construction.

- Guarantees referred to in the paragraph 31 are proscribed by the Criminal Procedure Act. The stated Act in Article 170 paragraph 8 defines the arrested individual as "... a person subdued to any measure or act in view of deprivation of freedom thereof". Pursuant to this definition of the arrested individual, the right to attorney is guaranteed to every individual. It should again be reiterated that the normative situation will be clarified by the elaborated by-law that is to be finalised and enacted.

- All recommendations regarding the right of the arrested person to doctor (paragraph 32 and 33) have been accepted.

- The recommendation regarding elaboration of a multilanguage form explaining the rights of every person deprived of freedom has been accepted. It should be mentioned that this obligation will be covered by the already mentioned by-laws. This act proscribes in an elaborate manner all obligations and after entering into force thereof, it will be easy to apply these regulations on the special form (paragraph 35).

- Regarding Your proposal for elaboration of the code of conduct during police interviews (paragraph 37), we should notify You that beside the already mentioned by-laws, Ethical Code of Croatian Police is also being prepared. The purpose of this Code is to emphasise all ethical values necessary for legal performance of police duties. The Code stresses legal and humane aspects of behaviour more than it is proscribed by the law. After we enact the two stated acts, we see no obstacles to discuss with You the issue of elaboration of the special code You have suggested.

Comments

The recommendation from the paragraph 38 has been accepted. The Republic of Croatia will look into the possibility of permitting visits of independent organisations to police retention premises.

Requested information

- Offering legal aid to persons retained by the police is covered by general regulations of the Criminal Procedure Act. This issue will be further elaborated by means of the stated by-laws.

4. Retention Conditions

Recommendations

- Recommendations contained in paragraphs 40, 42, 43 and 44 have been accepted. Regarding Your recommendations, we should mention that the majority of retention premises has been “inherited” from the previous state. During the Patriotic War, numerous premises have been destroyed. Thus, in this relatively short time span of existence of the Croatian state it has not been possible to carry out all necessary construction and adaptation works on the inspected premises. However, in all newly built police stations, all retention premises comply with the standard conditions for the size and technical terms stated in paragraph 40 of Your Report.
- In Police Stations of Knin, Makarska, Split and Šibenik, all defects stated in paragraph 43 of the Report have been eliminated, except the size of the Police Station Šibenik that is to be adapted to standards during the incoming reconstruction of the overall structure.
- All retention premises in the Republic of Croatia that do not meet the most important standards are out of use. We should stress that the premises in the Police Station Sinj have been out of use for a longer period and premises of nearby police stations that comply with the standards are used for retention purpose.
- In the region of the Zagreb Police Administration which includes the Police Station Trešnjevka, retention of persons is carried out in the premises of the unit for retention and custody containing 9 rooms for the purpose in Đorđićeva Street no. 4
- Pending June 1998, chiefs of police of all police administration were instructed to eliminate all failures regarding conduct towards detainees, to check all premises for retention and especially to eliminate all failures regarding security and health conditions. (see appendix 7).

Request for Information

- Premises referred to in paragraph 45 situated in Zagreb, Đorđićeva Street 4, have been reconstructed following your visit and thus meet all standards regarding the size and level of equipment thereof.

REPORT
on the Prison System in the Republic of Croatia
in connection with the visit of the European Committee for the Prevention of Torture and
Inhuman or Degrading Treatment or Punishment (CPT)
in the period from 20th to 30th September, 1998

B. Prisons

The Act on Prison Sentence Implementation was passed and published on 30th November, 1999. It will enter into force six months after the date of its publication (on 1st June, 2000).

The court procedure and the duration of detention are within the sole jurisdiction of the judicial authority and the prison system may not affect it. Regarding the CPT Report, the Ministry of Justice, Administration and Local Self-Government (hereinafter referred to as: the "Ministry") sent a letter to the Supreme Court of the Republic of Croatia and the list of all remand prisoners who were detained over six months, in order that it may bring about the urgency of procedure within its authority as the highest court in the Republic of Croatia. The list and the data are updated regularly.

The Directorate for Sanction Implementation of the Ministry has prepared the House Rules for Remand Prisons, which was passed by the Minister, in accordance with the Article 118 of the Criminal Procedure Act. The Rules were published in the official journal "Narodne Novine" and they have been applied since 18th December, 1999. The Rules are binding for all persons dealing with remand prisoners. This way a balance in the treatment of remand prisoners in the entire prison system was achieved.

2. Ill-treatment

The objection and the recommendation given by the CPT was accepted and a commission was established, which re-examined the treatment of prisoners in the strict surveillance section of the prison in Lepoglava. The criteria for this section were proposed as well as the treatment method in the form of the alterations and additions to the house rules of the Prison.

We report herewith that in October 1999 a Training Centre for the Croatian Prison System Personnel was established in the prison in Lipovica with the cooperation and assistance of the OESC and the English Prison Administration and their Training Centre. With the establishment of the Centre and through continuing training of prison employees, in particular for communicating with prisoners, one of the main tasks of prison employees will be fulfilled, i.e. the development and promotion of their positive relations to prisoners. The curriculum taught in the Centre is based on generally accepted standards of positive communication with convicted persons and the respect for the prisoner's personality. As special subjects, the Standard minimum rules for treatment of prisoners and the European Prison Rules are lectured.

The Centre has started to function and the first generation of 39 newly-employed security officials have completed their training. The training of a new group of 36 employees is under way. In the meantime, the training of the medical personnel and security personnel took place in the area of health protection from contagious diseases (HIV, hepatitis, TBC) and harmonisation in the method of keeping medical files.

3. Lepoglava State Prison

We accept the opinion of the CPT and report that the completion of the adaptation of the prison in Lepoglava is one of the priorities of the prison system in Croatia. The state budget of the Republic of Croatia has secured the funds for that purpose and the implementation will depend on the progress of the money inflow.

All prisoners are provided with the personal hygiene necessities, however, due to the current lack of finances, the supply is at the minimum level. The CPT's opinion and objection on the need to reduce the number of prisoners in the prison in Lepoglava. A commission was set up to carry out a re-classification of prisoners carrying out their prison sentence in Lepoglava for the purpose of transfer to adequate conditions of other prison centres for further sentence implementation, so that the number of prisoners was reduced to 500, and others were transferred to other closed, semi-open or open conditions.

We accept the CPT's opinion on ensuring work for prisoners as well as various forms of free activities. However, according to the Constitution of the Republic of Croatia, prisoners are not obliged to work, so that it is not possible for work to be laid down in the law as an obligation but only as a right of a prisoner. We point out that the number of working prisoners has been increased as well as the number of programmes offered for free activities.

In cooperation with the Lepoglava Prison, a special commission has laid down the criteria for placing prisoners in the intense surveillance section. The Prison House Rules, amended to that effect, lay down that prisoners may be transferred to that section because of organising and preparing a riot of prisoners, preparing or attempting to escape, physical conflict with another prisoner, commission of a crime during the prison time and because of frequent and heavy violation of the House Rules. Before transferring a prisoner to that section, a medical opinion is to be obtained. The treatment service group is obliged to discuss the justification of the transfer within 4 days from the date of transfer, and one month after the transfer it is obliged to discuss the effects of the transfer and take adequate measures. An order including a rationale is issued in connection with the transfer and there is a right to appeal.

Two doctors, a dentist, four medical assistants, a pharmaceutical attendant and a dental assistant are permanently employed in the prison in Lepoglava. Psychiatric treatment and assistance is provided once a week by a psychiatrist coming from the Prison Hospital. The prisoners in need of a hospital psychiatric treatment are sent for treatment to the hospital. The medical service organisation is ordered and it functions in a way which ensures that every prisoner is examined by a doctor or other official of the medical profession within 24 hours from his arrival to the prison in Lepoglava.

For the time being it is not possible to ensure that the prisoners have the right to appeal in the disciplinary procedure, as the valid Act on the execution of sanctions for crimes, commercial violations and offences does not include this right or the disciplinary procedure, but the prisoners are informed about the possibility to submit claims in connection with all decisions of the prison or penal institution administration. The disciplinary procedure, measures and the legal protection of prisoners in the disciplinary procedures are entirely laid down in the new Act on the prison sentence execution, which states the right of appeal in the disciplinary procedure explicitly.

The valid Act on the execution of sanctions for crimes, commercial violations and offences stipulates that the letters sent or received by the prisoners from their family members or other persons, if the sentence is carried out in open or semi-open conditions, are not controlled i.e. read. The contents of letters are controlled for prisoners in controlled conditions according to the Act. However, regardless of the level of security of the prison or penal institution where the prisoner does the sentence, it is forbidden to control the letters of prisoners with the state authorities and the ombudsman.

We confirm that the correspondence of prisoners with the defence counsel, judiciary and other authorities, international human rights organisations, e.g. the European Court of Human Rights, is not subject to control, i.e. the letters are not read.

4. County Prisons

We accept the opinion on the need to replace the metal frames on the windows of prisoners by other architectural designs. The designs for the modification of the existing shades are being developed. Due to the lack of funding, they will be carried out after the funds are made available for that purpose. We point out that the state budget for this year includes the funds only for the penal institutions in Lepoglava and Glina.

We accept the opinion that the prison in Split is over-crowded (its capacity is optimum for 90 persons, and from time to time it accommodates as many as 220 persons). A storey extension is planned, which, due to the lack of funds, may not be carried out for the time being. The transfer of remand prisoners is sometimes carried out from Split to other prisons due to it being over-capacitated (e.g. with the approval by the court, a number of remand prisoners was transferred from Split to Šibenik). A permanent transfer of the remand prisoners is not possible due to court procedures and the legal right of remand prisoners to attend the court hearing.

In most prisons in the state the sanitary facilities are separated from the rest of the room. There are plans to do the same in Split, once the funds are provided. The bells in the rooms of prisoners in Split have been repaired.

We accept the CPT's opinion regarding the number of prisoners who may be accommodated in the prison in Šibenik. For the time being this is observed. However, in case of it being over-crowded, a larger number of persons than planned will have to be accommodated in the rooms.

We are aware of the lack of work and other programmes and activities for persons deprived of their liberty in prisons. This is partly caused by the lack of funds, so that the improvement of the financial situation will result in an improvement in the life conditions in prisons. As a positive example we would like to point out the contract concluded by the district prison in Šibenik with the company “Poliplast” d.d., factory of plastic products from Šibenik, which will ensure full employment of all prisoners willing to work. However, it is necessary to state that the present status of remand prisoners is a result of legal regulations as well, according to which a remand prisoner is in the sole jurisdiction of the court which decides or approves any activity on the part of a detained person. Therefore, in the context of the first amendment of the Criminal Procedure Act, an alteration of these provisions will be initiated as well as the alteration of provisions regarding officials dealing with the execution of the penal law detention measure, in accordance with the CPT’s suggestions.

We accept the opinion on the need to have special training for prison personnel working with juvenile offenders. The establishment of the Training Centre will make it possible for this personnel to be specially trained. In their training programmes special attention is paid to special features of the work with juvenile offenders, so that, apart from the legal framework, specific treatment of juvenile offenders is trained.

We have been trying to find a replacement for the absent psychiatrist in the prison in Zagreb, but without success. This is caused by the fact that the salary is relatively low compared to the demanding tasks of the job. Therefore, we applied the only solution that is legally possible, i.e. the psychiatrist from the Prison Hospital comes to the prison, or the prisoners in need of a psychiatric help are brought to the Prison Hospital.

- we accept the opinion that the medical examination of a prisoner has to be performed within 24 hours of his admission. In the prison in Split and Zagreb it is organized that medical personnel is on duty over the weekend as well, whereas in Šibenik a doctor comes on call over the weekend, or, if necessary, a prisoner is taken to a hospital for medical examination;
- we accept the opinion that the prison doctor has to keep an overall report on the performed examination, where he is to state the statements of the prisoner about abuse, findings and conclusions; a letter has been sent to all prisons and penal institutions making it obligatory for doctors to proceed that way. We repeat that the medical personnel has been trained in the Training Centre in order to harmonize the method of keeping medical evidence;
- visits to remand prisoners take place in accordance with the House Rules and upon court approval as stipulated in the Criminal Procedure Act, and the duration of a visit is determined by the number of prisoners in each prison, space factor and daily activities;
- we accept the opinion, however, the number of persons in a room depends on the actual capacity of a prison compared to the current number of prisoners;
- Directorate for Execution of Sanctions of the Ministry has ordered the administration of the prison in Split to organize the medical service in a way which would enable it to provide medical services over the weekend as well, and it is carried out that way (the medical personnel consists of a doctor and three medical assistants);

- a prison doctor has to examine a person brought to prison even if that person has already been examined by another doctor, e.g. in a medical institution. The prison doctor need not agree with the opinion of another doctor, and if he finds necessary, he may ask for additional examinations and opinions of competent specialists. In connection with the above, a letter to that effect has been sent to prisons and penal institutions;
- we accept the opinion regarding the rooms for visits in the prison in Split, and efforts will be made to find another solution once financial resources allow it. Regarding the opinion on the need for more free visits to prisoners, we refer to what has already been stated, i.e. according to the legal framework, approval for visits is subject to court approval;
- it is planned to carry out training of the prison personnel for dealing with sexual offenders, with particularly violent prisoners, long-term prisoners, younger offenders between 18 and 23 years of age, old and weak prisoners, and the programme for treatment before releasing prisoners after the prison term (immediately after the end of the course which is under way);
- a commission has been established at the Directorate for Execution of Sanctions which carries out permanent re-classification of prisoners in cooperation with the Centre for psycho-social diagnosis of the prison in Zagreb and their transfer to different conditions more appropriate for their personal and penologic characteristics. The re-categorisation of the penal bodies will be carried out after the completion of the adaptation of prisons in Glina and Lepoglava;
- in the Centre for psychological diagnosis for prisons in Zagreb the observation of the personality of a prisoner is carried out and the approximate programme of treatment is developed, which includes the basic treatment needs in view of psycho-physical characteristics of the prisoner (the period of observation may last 20 to 30 days). This programme is further developed up to the implementation level (implementation programme) in the prison to which the prisoner is sent, and this implementation programme includes the exact job title, type of education, free or voluntary activities, stimulating group, type of surveillance and inclusion in some of the special programmes, e.g. for addictions etc.

The opinion is accepted that the detention of the prisoner in the reception section of the prison of up to 30 days is too long, so that by arrangement with prisons this period has been reduced to the period of 3 to 10 days, during which the implementation programme is developed and the prisoner is informed about the provisions of the House Rules. During the prison term the prisoner is taken to the reception section no more, not even to carry out the monthly assessment;

- the contents of the letters of prisoners and defence counsels are not controlled, i.e. they are not read.

5. Complaints and Inspection Procedures

Each person that is deprived of freedom on the basis of the law is entitled to correspondence with the ombudsman without any restrictions or control of the contents of letters.

The Minister of Justice has sent an excerpt from the CPT's report and opinion on the contents and the method of the implementation of surveillance activities by judicial authorities to

the county courts authorized to control the treatment of prisoners.

We confirm that all persons deprived of freedom, convicted prisoners as well, have the right to uncontrolled (uncensored) correspondence with the ombudsman.

The execution judge, his field of responsibility and method of conduct are laid down in the new Act on Prison Sentence Implementation, according to which he may, based on his assessment and without a prisoner's complaint, carry out surveillance in a prison or penal institution under his responsibility.

The submission of written complaints to competent courts is the right of each prisoner, so that it is forbidden to invade the contents of complaints.

C. Correctional Centre Turopolje

2. Ill-treatment

The uniformed personnel in the Correctional Centre Turopolje is informed about the consequences of the use of measures of force or any other form of abuse of juveniles. The minors were also acquainted with the obligation to observe the law and the House Rules and with the possible disciplinary responsibility in case of their violation.

A letter has been sent to all prisons, penal and correctional institutions requiring doctors to keep files exactly and precisely, to record statements on abuse, findings and necessary treatment as well as issuing an injury confirmation. A doctor is also ordered to inform the head of the institution about his report and finding immediately, and the head of the institution is instructed to send a report on abuse to the authorized public prosecutor.

With the establishment of the Training Centre for Prison Personnel, the education and training for work with minors was introduced by means of the basic course and other education forms. We accept the opinion that the security personnel should carry their truncheons in the inside pocket so that they are not visible. The new investigation of the managers of the Correctional Institution Turopolje on the incident described in the chapter 120 confirms that it was not a case of abuse of a minor. However, even so, the two security officials who did not show enough sensitivity in the treatment of minors or understanding of the special features of this population group were transferred to other jobs.

3. Detention Conditions

We accept the CPT's opinion and we report that the largest part of the area with minors is adequately arranged.

The expert opinion on the juvenile person mentioned in the comment stated that he does not suffer from a psychiatric disease but from the consequences of the psychoorganic syndrom accompanied by heavy psychosocial disturbances in the adaptation to the institutional way of life.

He is suicidal and aggressive. He has been in all social protection institutions so far, he was treated in civilian hospitals and in the prison hospital. He has no contacts with his family and it does not seem that he will have them. He is entirely dependent on the assistance of state authorities, and since he is not a psychiatric patient and continues to commit crimes, the accommodation in penal conditions is the only legal solution for the time being.

In the correctional institution Turopolje there is a school offering the elementary and professional education, its personnel is adequate and the teachers also run extracurriculum activities. The education programmes for cooks, waiters, builders and metal profession worker are verified with the Ministry of Education, and so the professional education for minors has been extended. The education for other professions is also provided in cooperation with outside schools. Additional education programmes depend on further financial investments, so that they cannot be planned at the moment.

Regarding the education of juveniles and the personnel on addictions, particularly about drugs, the training of the personnel of the Correctional Institution for qualified application of addiction programmes was carried out in January 1999. The experts who completed this training organized a workshop for other employees in the prison system (October 1999).

4. Other Questions relevant for the CPT's mandate

In the Training Centre for Prison Personnel special attention is paid to the training of the personnel in providing the first aid. The present group of students takes part in the course of 20 periods learning the theory and practical application of the first aid.

The juveniles are regularly informed about the possibility to lodge complaints both to the head of the institution and to the Directorate for Implementation of Sanctions as well as about the possibility to lodge complaints to the court, if they think that their rights are violated or that they are deprived of some rights.

An opinion poll was carried out among the minors and it made evident that they do not feel the need to use the complaint box, since they resolve their problems through discussions with a counselor and other personnel. The juveniles have the right, without any restrictions or control of the contents, to correspond with the state authorities.

The newly admitted minors are examined within the period of 24 hours, all minors are provided with the medical check-up according to their wish or need; we point out that the training for personnel dealing with addicted persons was already carried out (January 1999).

According to the Act on Execution of Sanctions for Crimes, Commercial violations and Offences as well as the House Rules of the correctional institution a juvenile may be separated in a separate room up to seven days, and during that period of time an adequate individual programme of treatment of a juvenile has to be carried out. Otherwise, this measure must not be implemented.

The medical examinations of juveniles are carried out in the out-patient clinic in the presence of the medical personnel. The security personnel attends the examination only if required by the medical personnel. In 1998 the correctional institution was visited once by the juvenile judge of the Municipal Court in Osijek, Bjelovar, Koprivnica and Varaždin and twice by the juvenile judge of the Municipal Court in Zagreb. Representatives of the public prosecution did not visit the correctional institution during 1998. The reports have pointed out the need to adequately arrange the premises for juveniles, to increase their work participation and to improve the organisation of their free time. The adequate arrangement of accommodation premises has been realised.

D. Prison Hospital

1. Preliminary remarks

The prison hospital is a penitentiary institution established for treatment of convicted and other persons deprived of their freedom. As a special state authority institution it is under the general and administrative control of the Ministry. The expert supervision of the treatment of persons deprived of freedom and the supervision of professional and other working conditions is carried out by the Ministry of Health. Each ministry within its field of responsibility carries out individual and commission visits of the hospital and supervises the appropriate activities through direct controls on the spot (examination of premises, examination of the documentation, discussions with employees and persons deprived of freedom). A report on the supervision is drawn up, measures are ordered to eliminate inadequacies and the implementation of the measures ordered is controlled in accordance with the law and rules of the medical ethics.

2. Ill-treatment

The hospital for persons deprived of freedom proceeds in accordance with the law and the medical ethics. Accepting the opinion, the hospital has established appropriate files; truncheons, as a part of the uniform, will be covered (based on the Act on Prison Sentence Execution the sub-legal rules are altered, which determine the visual appearance of the uniform).

We accept the opinion; therefore, the training of the hospital personnel working on the psychiatric ward will be trained on the basis of a special curriculum in the Training Centre for Prison Personnel. The curriculum will be developed during the year in cooperation with the OESC and the English prison administration.

3. Personnel and Medical Facilities

A total of 124 employees is employed in the Hospital for persons deprived of freedom. The medical personnel includes 47 employees (30 female, 17 male). There are 15 doctors, 8 of them female, and there are 22 women in the remaining medical staff. The security personnel includes 5 women and 42 men. The Internal Rules provide for 136 employees. At the moment 124 employees are employed in the Hospital; four nurses are qualified to work with psychiatric patients; outside the regular working hours, over the weekend and on national holidays two nurses and one doctor are on duty. The work obligation of another doctor will be ensured after the job openings are resolved upon approval of the Government of the Republic of Croatia.

4. Living Conditions and Treatment of Patients

- minor patients are separated from the patients of age and the joint accommodation is possible only if recommended as useful by a doctor;
- the separations of other patients are based on a doctor's opinion and the lack of accommodation capacities;
- the number of persons in a room oscillates and depends on the number of persons deprived of freedom in comparison to the capacity;
- the persons deprived of freedom may keep their belongings in their hospital rooms, if these are allowed and if it does not jeopardize the safety or if it is not against the House Rules or contrary to medical standards and criteria applied on civilian hospitals;
- since the Hospital for persons deprived of freedom is, after all, a hospital for the treatment of patients deprived of freedom, the same medical criteria and standards have to be applied as in civilian hospitals, and among other things, adequate clothing or underwear has to be worn;
- the sanitary facilities have already been renovated partly and the rest is planned, but the implementation progress will depend on the provision of funds;
- we accept the recommendation, but the activities of the persons deprived of freedom who are treated on the psychiatric ward are limited by factors, such as available personnel, space and equipment. At this moment the social-psychological team consists of a head, defectologist and a psychologist;
- we accept the recommendation, it is planned to extend and arrange the space for outdoor time and the realisation depends on the provision of funds.