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Response

**of the Italian Government
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on the visit to Italy**

from 13 to 25 May 2012

The Italian Government has requested the publication of this response. The report of the CPT on its May 2012 visit to Italy is set out in document CPT/Inf (2013) 32.

Strasbourg, 19 November 2013

**ITALY’S RESPONSE
TO THE PERIODIC VISIT REPORT
BY THE EUROPEAN COMMITTEE
FOR THE PREVENTION
OF TORTURE AND INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT
(CPT)
(MAY 13 TO 25, 2013)**

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INTRODUCTION

Further to your query by letter, dated December 12, 2012, Italy is in a position to provide the following relevant information:

1. The protection and promotion of human rights – be it civil and political, economic, social and cultural, be it referred to freedom of expression or to the fight against racism or to the rights of the child and of women – is one of the fundamental pillars of both domestic and foreign Italian policies.
2. As recalled in Government's remarks dated October 2009, the domestic constitutional system, governing the organization of the State, includes the following principles: democracy (Article 1); the so-called *personalistic* principle (Article 2), which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Arts. 2 and 5); the principle of social solidarity (Article 2); the principle of equality and non-discrimination (Article 3); and above all, welfare and rule of law.
3. The **Italian Basic Law** guides the political framework for action and organization of the State.
4. Within this framework, we would like to inform you that Italy signed and ratified the Optional Protocol to the UN Convention Against Torture, which entered into force last May 3rd, 2013.
5. As far as the **crime of torture is concerned**, besides recalling our previous information, we would like to reiterate as follows: Article 606 and other provisions, contained in the same section of the criminal code, safeguard the individual against illegal arrest, as undue restriction of personal liberty, abuse of office against detainees and prisoners, illegal inspections and personal searches. These safeguards are supplemented by provisions under Article 581 (battery), Article 582 (bodily injury), Article 610 (duress, in cases where violence or threat are not considered as a different crime) and Article 612 (threat) of the criminal code. Even more so, the provisions under Article 575 (homicide) and Article 605 (kidnapping), to which general aggravating circumstances apply, regarding brutality and cruelty against individuals and the fact of having committed these crimes by abusing of power and violating the duties of a public office or public service, respectively (Article 61, paragraph 1, number 4 and 9 of the criminal code). The code of criminal procedure contains principles aiming at safeguarding the moral liberty of individuals: its Article 64, paragraph 2, and Article 188 set out that, “during interrogation and while collecting evidence, methods or techniques to influence the liberty of self-determination or to alter the ability to remember and to value facts cannot be used, not even with the consent of the person involved” (paragraph 6).

A. POLICE CUSTODY

6. (paras. 13-21) Ad hoc orders were issued for all Stations, especially of the Carabinieri Corps, with the aim, inter alia, of drawing the attention to the correct use and constant update of "the so-called Register of persons detained in the security rooms" and of "the so-called Sheet of rights"¹. It is also worth-recalling that the person detained or apprehended shall declare and confirm in writing that s/he received a copy of such a Sheet. The whole staff has been sensitized about that.¹ More generally, with regard to ethics, professionalism and conduct, ad hoc directives have been issued in order to prevent whatsoever inadequate conduct by the personnel under reference.

7. Persons deprived of their liberty shall be fully informed of their rights. All cases in which a person is deprived of liberty are recorded by the Police custody and the Registers are updated accordingly. The ministerial Memos, dated 4 January 2007 and 19 July 2007 respectively set out the requirements for the proper use of the "Register of the rights of the person arrested or apprehended" and of the "Register of the persons restricted in security rooms". The Code of Criminal Procedure states unequivocally the procedures and deadlines which must comply with the police officers who carried out the arrest or the apprehension.

8. The Carabinieri Corps General Regulation envisages that the military servicemen shall always maintain an attitude appropriate to his/her status. Whatsoever form of ill-treatment, abuse or harassment by the military servicemen towards the population or those arrested must be considered as a very serious fault, to be pursued in accordance with applicable provisions. In this regard were issued specific directives aimed at ensuring that any "overbearing" attitude and / or "arrogant" shall be the subject of rigorous investigations and severe sanctions.

9. Plus, with specific regard to the Carabinieri Corps, no complaints for alleged beatings cases were lodged, in 2012 (paragraph 9).

10. On a more general note, it should be stressed that training activities, including HRE-related courses, have been introduced for all law enforcement agencies. Along these lines, all Italian Forces pay the utmost attention to international humanitarian and human rights law, within the framework of the ad hoc training and educational curricula.

11. The Department of Public Safety underlines that the Police staff is periodically sensitized on HR Law, in order to ensure full compliance with legal/judicial safeguards, especially in the event of those people put under arrest or detention. Likewise, the Prison Administration extensively provides the staff of the prisons with training and a continuous refresher courses, including on the respect for the dignity and rights of the person, as well as on the management and treatment of the various types of people restricted (i.e. collaborators of justice, minors, "41-bis" interned).

12. With regard to the invitation to amend the legislation contained in Art. 582 of the Criminal Code on the ill-treatment of persons deprived of their liberty, it is noted that the law enforcement officials' conduct is often pursued *ex officio*, even in cases of minor injuries, as it entails acts which constitute offences that may be prosecuted *ex officio*, such as the offence of *Abuso di autorità contro arrestati o detenuti* [Abuse of authority over arrested or detained persons] (Art. 608 of the Criminal Code), *Violenza privata* [Private violence] (Art. 610 of the Criminal Code), *Abuso di ufficio* [Abuse of office] (Art. 323 of the Criminal Code) or the offence of *Falso in atto pubblico* [Forgery of documents].

¹ In this regard, see also mission's report (in particular paras. 11-15) by UN WGAD, dated November 28, 2008 (A/HRC/10/021/Add.5).

13. As regards the advocated introduction into the Italian criminal system of the offence of torture, many have been the legislative proposals already formulated, however not yet approved by Parliament. According to one of such proposals, the offence takes place whenever there is a repetition of the criminal conduct over time (in its judgment no. 30780 of 27 July 2012, the Court of Cassation proposed a broad interpretation of the ill-treatment offence set forth in Art. 572 of the Criminal Code), so that if the violence has been exhausted in one sole action, the factual situation would not be included in the provision of the new legal instrument.

14. Since June 1998, D.A.P. [Department of Penitentiary Administration] ordered that where the medical personnel working in the prison facilities verifies the presence of bodily injuries during the medical examination of a prisoner's first entry or of an inmate, not only are they obliged to take note (in the register defined as model 99: register of the medical examinations, observations and proposals) of the outcome of the medical examination carried out, but also of the statements made by the concerned party in relation to the circumstances of the ill-treatment suffered. The annotations included in the register, accompanied by any other observation useful for ascertaining the facts, must be immediately transmitted to the judicial authority, insofar as they fall within its competence.

15. The problem detected by the CPT will appear on the agenda of the first possible meeting of the *Tavolo di Consultazione Permanente* [Permanent Working Group] for prisoners' health care: medical staff will be invited to make use of the register and to comply with the necessary communications, even where the injuries are curable in less than 20 days (and a complaint has not been filed) and the use of the register shall be also solicited where the injuries have been detected during medical examinations subsequent to those made at the prisoners' first entry (pursuant to Art. 11 of law no. 354/75, a medical examiner is obliged to examine whoever may requests it).

16. A monitoring system of all the critical events, among which the injuries suffered by the inmates, has been instituted at the "*Sala Situazioni*" [Situations room] of the *Ufficio per l'Attività Ispettiva e del Controllo del DAP* [Office for the Inspection and Control Activity of the Department of Penitentiary Administration]: the information are transmitted in real time by all the prison facilities in Italy and afterwards the Office performs the required thorough checks relating to the most serious and repeated episodes and transmits the relevant information to the competent Offices of the Supervisory Magistrates.

17. With regard to the failure to transmit the certificates and to initiate investigations, in the framework of a renewed action of the Department aimed at strengthening the cooperation with the judiciary, new and more adequate information practices shall be adopted.

18. The Prison Administration Department provided to inform all the prison facilities on the Istanbul Protocol, i.e. "Manual for an effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment", translated into Italian by the *Ufficio Studi Ricerche Legislazione e Rapporti Internazionali del Dipartimento* [Office for Studies Research Legislation and International Relations of the Department] in April 2008 (Paragraph 12 (-81)).

19. (paras. 13-21) **The Constitution prohibits arbitrary arrest and detention (Art. 13).** The Italian legal system provides that a person may be placed under police custody when s/he is arrested in the act (*flagrante delicto*) or apprehended (Arts. 380 et seq. of the code of criminal procedure) or under enforcement of an order of preventive custody, as issued by the judge, upon request of the Public Prosecutor (Art. 272 et seq, Art. 285 et seq of the code of criminal procedure). Art. 13 of the Italian Constitution states that the inviolability of personal liberty may be restricted by the judicial authority, only on motivated grounds and only for the cases and with the modalities provided for by the Law. Moreover, under exceptional circumstances of necessity and urgency, strictly defined by

law, said Article provides that the authority for public security might adopt provisional measures to be submitted to the judicial authority's approval within the peremptory deadline of 96 hours, after which it will immediately lose its effects.

20. In the cases provided for in Articles. 380 and 381 of Code of Criminal Procedure - Shutdown, obligatory or optional, in the act - are governed specific requirements of the police after the arrest or detention, which is always exercised control by the prosecutor. Received the minutes of arrest or detention, the prosecutor operates initially screened on the work of the police having to provide three alternative options: The first option is represented by the provision of Article. 389 Code of Criminal Procedure, which provides that the prosecutor can lay in the freedom arrested or stopped in case of: a) mistaken identity, b) ineffectiveness of measures to expiry of deadlines for the transmission of documents to his office; c) arrest or detention carried out in the cases provided by law. In these situations, of course, the prosecutor did not ask the judge to validate the arrest or detention. The second option provided for in Article. 121 disp. att. cpp, is available to the public prosecutor in the case, he may decide to request the court to validate the arrest or detention, but not the application for interim measures under Article .391, co. 5 °, Code of Criminal Procedure (In this case he is, even considering the lawful arrest or detention, provides for the release of the person detained or arrested and sends the documents to the judge for validation, in order to "see that it is law"). The third option is configured in the case of full membership to the result of the judicial police: it consists in the validation request to the court of the arrest or the apprehension and application of a coercive measure.

21. Within this framework, it should be recalled that: Warrants are required for arrest (Art. 386 of the code of criminal procedure) unless there is a specific and immediate danger to which the police must respond; Detainees are allowed prompt and regular access to lawyers of their choosing and to family members; The State provides a lawyer to indigents (Art. 97 of the code of criminal procedure). In fact, in line with both Art.24 of the Constitution and Art.98 of the code of criminal procedure - which envisages the defence of the indigents -, Presidential Decree No. 115/2002 provides for legal aid in criminal proceeding (Art. 74 et ff.): For being admitted to legal aid, no particular conditions or formalities are required (a mere self-certification is sufficient, pursuant to Art. 79, para1, letter c).

22. Art. 386 of the criminal proceeding code sets out as a general provision that the judicial police executing the arrest measure or guarding the person arrested must promptly inform the competent public prosecutor, accordingly. **They also inform the person under arrest about the right to choose a legal counsel**². Pursuant to Art. 111 of the Italian Constitution, as amended by Constitutional Law No. 2/1999, the law guarantees that a person, who has been accused of an offence, must be promptly informed, in a confidential manner, of the nature and the grounds of the charges moved against him/her, and be placed in the condition necessary for preparing his/her defence, as well as his/her right to be assisted by an interpreter, should s/he does not understand or speak the language used during the trialⁱⁱ. Pursuant to Art.143 of the code of criminal procedure, the defendant has the right to be assisted by an interpreterⁱⁱⁱ, free of charge. Art. 387 of the code of criminal procedure provides that the judicial Police, with the consent of the person arrested or apprehended, must inform without any delay the person's family of said person's arrest or apprehension^{iv}. Besides, the Italian legal system includes a general provision on the basis of which no waiver of legal defence is allowed to those who are put under arrest.

² In implementing such constitutional rules, Art. 386 of the code of criminal procedure provides that "the judicial Police officers and agents who have carried out the arrest or the apprehension, or to whom the arrested person has been surrendered, expeditiously inform the Public Prosecutor of the place where the arrest or the apprehension took place. They must also inform the person put under arrest or apprehended of his/her right to appoint a defense counsel. The Judicial Police must promptly inform the private defense counsel or the Court-appointed defense counsel, as designated by the Public Prosecutor, pursuant to Art. 97 of the occurred arrest or apprehension."

23. Art. 24 of the Italian Constitution stipulates that the right of defense is a fundamental right; and Art. 27 lays down the principle of the assumption of innocence, up to the final judgment. In this context, the Italian legal system considers **the right of being assisted by a defense counsel as an inalienable right, from the very outset** (the technical-legal defense is mandatory, see Art. 97 and 98 of the code of criminal procedure). Thus, **meetings with the defense counsel cannot be limited in any way and are possible since the very beginning of the imprisonment**. **The visual meetings with duly entitled family members also take place at fixed time and days, after having ascertained the actual family relationship – even by means of a self-declaration.**

24. Along these lines, the Prison Rules [Ordinamento Penitenziario] (Act No. 355/1975) and the relating Implementing Regulation [Regolamento di esecuzione] (Decree of the President of the Republic, D.P.R. No. 230/2000) contain specific provisions aimed at ensuring that every person, as from his/her first contact with the prison, is granted the recognition of some fundamental rights. It is therefore provided that upon his/her first arrival (Art. 23, para.3, of the above Regulation), the prisoner be given a medical examination and meet an expert in prison treatment, in order to “verify whether, and should it be the case with what precautions, s/he can adequately cope with the state of restriction”, and also in order to ascertain whether there are any situations of risk or other type of problems. Art. 23, para. 5, also provides that the Prison Warden, or his/her delegate, have a further talk with the prisoner “in order to give him/her the information provided for in Art. 32, para.1, of the (cited)Act”, and to also give him/her a copy of the regulations governing life in prison (Article 69 of the Regulation expressly provides that the regulations be made available in several languages).

25. Art. 388 of the code of criminal procedure sets out **the rules governing the questioning** of the person arrested or apprehended **by the public prosecutor**. S/he shall proceed with the questioning, in compliance with Art. 64 of the code of criminal procedure, and timely inform of said questioning the person’s private or Court-appointed defense counsel (Arts. 96 and 97 of the code of criminal procedure). S/he shall also inform the person arrested or apprehended of the acts under investigation, the grounds on which the measure is based, the evidence gathered against him/her and – provided that this does not cause any prejudice to the investigations – the sources of said evidence.

26. Specifically, Art. 391 of the code of criminal procedure entails the obligatory participation of the defense counsel in the validation hearing of provisional arrest or the arrest. Art. 294 of the code of criminal procedure rules the questioning of the arrested person or the person under provisional arrest on behalf of the judge, who, generally speaking, has to proceed immediately to the questioning, or, at any rate, no more than five days after the start of the custody measure, if s/he did not do so during the validation hearing (para. 1). The precautionary custody loses immediately its efficacy in case the judge does not proceed with the questioning by said deadline (Art. 302, para.1, of the code of criminal procedure).

27. The **questioning before the judge** shall take place with the mandatory participation of the defense counsel (para.4) and according to the terms provided for by Art. 64 and Art. 65 of the code of criminal procedure, which contain the general provisions on questioning, in compliance with the constitutional writs mentioned above).

28. Art. 104 of the code of criminal procedure, the person who has been arrested while in the act of committing an offence or subject to provisional arrest (according to Art. 384 of the code of criminal procedure) and the accused under precautionary custody, have the right to talk to the defense counsel immediately after their arrest, or provisional arrest or the starting of the execution of the precautionary custody in prison. Art. 104, para. 3, of the code of criminal procedure, provides

for an exception to said general rule: the possibility that the judicial authorities, by means of a motivated decree, defer the exercise to confer with the defense counsel for a period of time not exceeding five days. Said postponement is allowed, as specified under the same Article, only in the presence of precise assumptions on which the measure is grounded, i.e. “the existence of specific and exceptional reasons for precaution”.

29. The only case under which there could be a **temporary limitation of meetings**, even with the defense counsels, occurs when the prisoner is subject to a measure of judicial isolation (Art. 22 of the Regulation). Such a condition stems from an act of the prosecuting judicial authority and is connected with very strict precautionary and investigative requirements when there is the risk of tampering with evidence. In this case, the decree imposing such measure shall indicate in detail the length and modalities thereof. In any case, if there is an order of deferral of the meetings with the defense counsel, such deferral shall not last more than five days (Art. 104 of the code of criminal procedure). **Even during the period of judicial isolation, the prisoner may have contacts with the prison guards, the surveillance magistrate and the medical staff.**

30. In case of arrest or provisional arrest, the same power is exercised by the Public Prosecutor until the arrested person or the person subject to provisional arrest is put at the disposal of the judge for the validation hearing (Art. 104, para. 4).

31. According to the Supreme Court, “the illegitimate postponement of the hearing with the defense counsel and hence the infringement of the right provided for under Art. 104 para. 1 and 2 of the code of criminal procedure, entails the infringement of the right to defense, to be considered within the framework of general nullity provided for under Art. 178, letter c, of the code of criminal procedure; nullity, which, according to Art. 185 para. 1 of the code of criminal procedure, makes invalid the questioning rendered by the arrested person, who has been illegally denied the right to talk before the defense counsel, with the consequences provided for under Art. 302 of the code of criminal procedure, i.e. the loss of efficacy of precautionary custody (judgement N° 3025/1992, confirmed by judgment division VI- 04/20/2000 Memushi Refat). The exceptional provision contained in Art. 104, paras. 3 and 4, of the code of criminal procedure does not affect the right of the arrested person to be questioned in the presence of the defense counsel: the above-mentioned Articles 391 and 294 of the code of criminal procedure expressly provide for the obligatory participation of the defense counsel in the validation hearing and the questioning before the judge.

32. Along these lines, the **right of access to medical care** is always guaranteed when the person under arrest or detained requires medical assistance or when s/he explicitly requests it. The State police underlines that the person deprived of his/her freedom has the right to request the presence of a physician who, regardless of such a request, shall be present in any case when the Police officer deems it to be necessary. Moreover, on the basis of the internal practice, the access to medical services for persons under arrest must be reported in the ad hoc register devoted to record individuals who are placed in security rooms, the so-called “*Registro delle persone ristrette*”, under the item “AOB”.

33. Article 11 of the Penitentiary Legislation (Act No. 354/1975) and Art. 17 of the relating Regulation envisage that **medical and pharmaceutical assistance be constantly provided through the presence in prison of specialist doctors and the possibility of being hospitalized either in the prison administration’s medical centres (Centres for diagnosis and treatment/Centri Diagnostici e Terapeutici) or in external health-care facilities.**

34. (paras. 21-24) The competent offices of the General Command of the Carabinieri Corps, provide that the risk of self-damage persist, have identified, with the aim of ensuring an adequate

level of comfort and ease of sanitation treatments, a type of mattress made of suitable material. The purchase is under definition, whose costs will be the subject of a transaction to be finalised by the Ministry of the Interior. In this regard, it should be noted that it is under definition by settlement agreement, the dispute between the Department and the company "1M Srl" on the supply of cyto-artifacts purchased by the Ministry in 2009. In the event of a rapid amicable settlement, the mattresses so purchased shall be placed in the logistics cycle, presumably, by the end of the current year.

35. The Carabinieri Corps has also purchased "on the cheap" a lot of mattresses that will be placed in the logistics cycle in the course of the current month (June 2013).

36. With specific regard to **the Gazzi (ME) station**, the General Command of the Carabinieri Corps has ensured the start of a dispute with the supplier of mattresses and – pending the definition of such a situation has urgently ordered a supply of mattresses

37. Both the Police Headquarters in **Palermo and Florence** have discontinued the use of the security rooms under reference. The former has created a new structure with a suitable environment for the temporary detention in accordance with current regulations – being already in use since the end of last year; the latter has identified other places to be used for new security rooms and for which necessary works are about to be launched;

38. With regard to the request for the revision of the conditions of detention of the security rooms supplied to the police offices, it should be noted that it has been recently established a technical Committee, consisting of various relevant Departments at the Central Directorate for General Affairs of the State Police. The technical Committee has the following tasks, inter alia: monitoring the situation of security rooms; verifying that they meet the requirements of the applicable provisions, with special emphasis on the structural conditions and the modalities for the performance of the relevant obligations by the relevant personnel, also in view of a subsequent inter-forces exchange of views – to be organized by the Central Directorate of the Criminal Police

B. DETENTION OF FOREIGN NATIONALS UNDER ALIENS LEGISLATION

39. (paras. 25 et ff.) Nobody has been any-longer accommodated in the Identification and Expulsion Centre (CIE) in Bologna, since the facility is undergoing emergency maintenance works, following the assessment by the ad hoc Working Group, established under and coordinated by the Public Works Agency, having focused especially on structural, sanitary and management conditions.

40. With regard to the recommendations made under paragraphs 28, 29, 30 and 40 of the Report, the Department of Public Safety stressed that the representations made by the Tunisian national, named Mr. B. M. to the CPT Delegation, does not correspond to the truth. Following the non-repatriation of Mr. B., scheduled for April 20, 2012, with a normal flight departing from Bologna, due to the batteries ingested by the person concerned, the Police Station Staff of Bologna promptly assisted him who was immediately transferred to a hospital, before returning him to the Centre for identification and Expulsion. During the transfer, Mr. B. maintained an aggressive behaviour which degenerated into a physical assault against a police officer. For this reason, of Mr. B.'s behaviour resulting in the offenses of indecent assault and resistance to a public officer were duly informed the competent Judicial Authorities (paragraph 28);

41. As already mentioned, the Center for Identification and Expulsion in Bologna has been closed down last 8 March 2013, due to the urgent realization of restoration works aimed at improving both the sanitary conditions and the safety of the structure.

42. With regard to the condition of detention rooms and related equipment: 10 rooms for men and 9 rooms for women are available in the CIE; each room has a five-bed capacity and is equipped with built-in beds and shelves, a lavatory and a TV set. However, due to the poor structural and sanitary conditions, all rooms underwent emergency management works.

43. Works are ongoing at the Bologna CIE in order to restore hygienic and sanitary conditions and to better implement safety measures: such interventions are funded by the Directorate Central for approx. 150.000,00 Euros.

44. With regard to the alleged lack of recreational activities within the Centre, it will be the managing Authority, in accordance with the Tender Scheme for the management of the reception Centre, "to organize socio-cultural entertainment activities through active participation of the beneficiaries, as well as those dedicated to carry out religious functions. For the purpose of the service is necessary to ensure adequate physical space as a place of reference taking into account in particular vulnerable groups"(paragraphs 29 and 30)

45. Minimum standards for the assistance services to be provided by government Centre's managing bodies are set out in the Technical Document approved by decree of the Ministry of Interior and intended for all centres located on the national territory.

46. Regarding third-country nationals held in the CIEs, technical specifications of general assistance services to migrants provide also for information on migration-related regulations, rights and duties of the hosts, the aliens' condition as well as on the behavioral rules to be followed in the centres.

47. The managing Authority confirmed that one of the two sports grounds (the one intended for volleyball) is not used; only the one intended for football is being used. Such use is allowed only in the afternoon and during the winter season, due to very low temperatures, it was considerably restricted. Every room is equipped with a television set: playing cards and draughts boards are often purchased and distributed to the inmates . Furthermore, an MoU was signed by the Prefecture, the Municipality of Bologna and volunteers' associations through which the associations committed themselves – among other things – to set up a series of laboratories involving the inmates of the Centre, with the aim, inter alia, of transmitting language competences, that is to say notions of spoken Italian language.

48. Since 1 January 2012, the Organizations involved in the so-called “*Praesidium VII*” Project (IOM/IRC/UNHCR/Save the Children), funded by the Ministry of Interior, Department for civil liberties and immigration, have been acting, each of them according to its institutional mandate, in the main landing spots as well as in the government Centres and have been making themselves available for the hosts' needs. In this regard, the ongoing audit activity in the government centres stressed that, in relation to the first six months of 2012, services were regularly offered by the staff not only upon arrival at the facility but also every time the hosts required them. With regard to 2013, “*Praesidium VIII*” contains a new feature which consists of an *addendum* to the related convention according to which, in order to strengthen the monitoring and control actions carried out by the local Prefecture through the audit procedures, a Commission is established in each government Centre where it is tasked to monitor and check the reception standards. Each Commission is composed of representatives of each organisation involved in the project, of the Prefectures and of Police Headquarters³.

49. (paragraph 33) In conformity with the above Technical Document, Bologna CIE, which has a formal capacity of 95 places, must ensure the presence of a nurse h24 and of a physician h8 a day, for 6 days a week, respectively. The absence of medical and nursing staff was spotted on specific dates, notified to the Managing Authority last February 12th and subjected to a penalty levied last April 30th.

50. Pending the adoption of the related provision, the Managing Authority ensured that, as a general rule, until the closure of the CIE due to maintenance works, a doctor was present in the Centre round the clock, seven days a week; the nursing staff are present twelve hours a day, seven days a week.

51. The managing Authority also ensured that, as soon as the facility is re-opened, it will be attended by health-care staff, in accordance with the above Technical Document.

52. (*paragraph 37*) The Managing Authority informed that whenever the medical staff identify injuries consistent with allegations of ill-treatment made by a CIE's host, the record is transmitted to the police officer on duty at the permanent police station within the Centre, who forwards it to the Judicial Authority.

53. The Managing Authority informed that the inmates' medical records are kept in a closed metal filing cabinet and that only health-care staff may have access to it. Such records can be shown only to the concerned foreign national or to his/her lawyer. The software for treating health files can be exclusively installed onto computers which are protected by access passwords.

54. The nursing register (where all interventions made on each host must be recorded) has to be regularly updated, as provided for by the above-mentioned Technical Document. Moreover, in

³ Both bodies are peripheral offices of the Ministry of Interior, based in 103 provinces.

conformity with the penal code, all the physicians are bound to report to the judicial authority cases of ill-treatments and injuries detected. Sanctions are issued in the event of omission of medical report and omitted denunciation.

55. (paragraph 35) Within the above-mentioned “*Praesidium Project*”, the Italian Red Cross (IRC) performs the monitoring of health assistance standards and carries out, together with the health units operating in the facilities, interventions and/or procedures aimed at improving the health conditions of the inmates. The IRC, besides promoting the best health and assistance standards, also provides guidance and information on health education, also by disseminating information material in several languages. Furthermore, an affective and relational support is offered to the migrants, consisting in actively listening to their psychological and social needs. The IRC helps the institutional actors detect vulnerable cases and/or those in need of treatment, which are then reported to the territorial health units.

56. Finally, since 14 June 2012, an MoU with Medecins sans Frontières has been signed, with the aim of controlling and preventing the spread of TB in the CIEs in Milan, Rome, Trapani and Caltanissetta. MSF made itself available to renew the protocol, which is going to expire soon, until 31 December 2013, and also to extend its action to some CARAs (Reception Centres for Asylum Seekers).

57. The identification of the foreigner put under detention starts from the outset of his/her entrance into the prison, with the transmittal of the fingerprint cards to the appropriate diplomatic Missions. However, many third countries do not have a central record of identity. Plus, they issue the necessary travel document only upon interview of the person concerned; and usually are not willing to perform these interviews in prison. Furthermore, the measures of early and/or transfer of foreign prisoners from one prison facility to another – to reduce the prisons overcrowding - affect both the communication and registration of those people destined to expulsion, whose release. In this regard, since August 9, 2012, in the SDI database, it has been envisaged a system managed by the Immigration Police Headquarters, with the aim of tracing the identification scheme followed by each foreign prisoner, in order to reduce any problems that might arise from the transfer from one prison to another (paragraph 40).

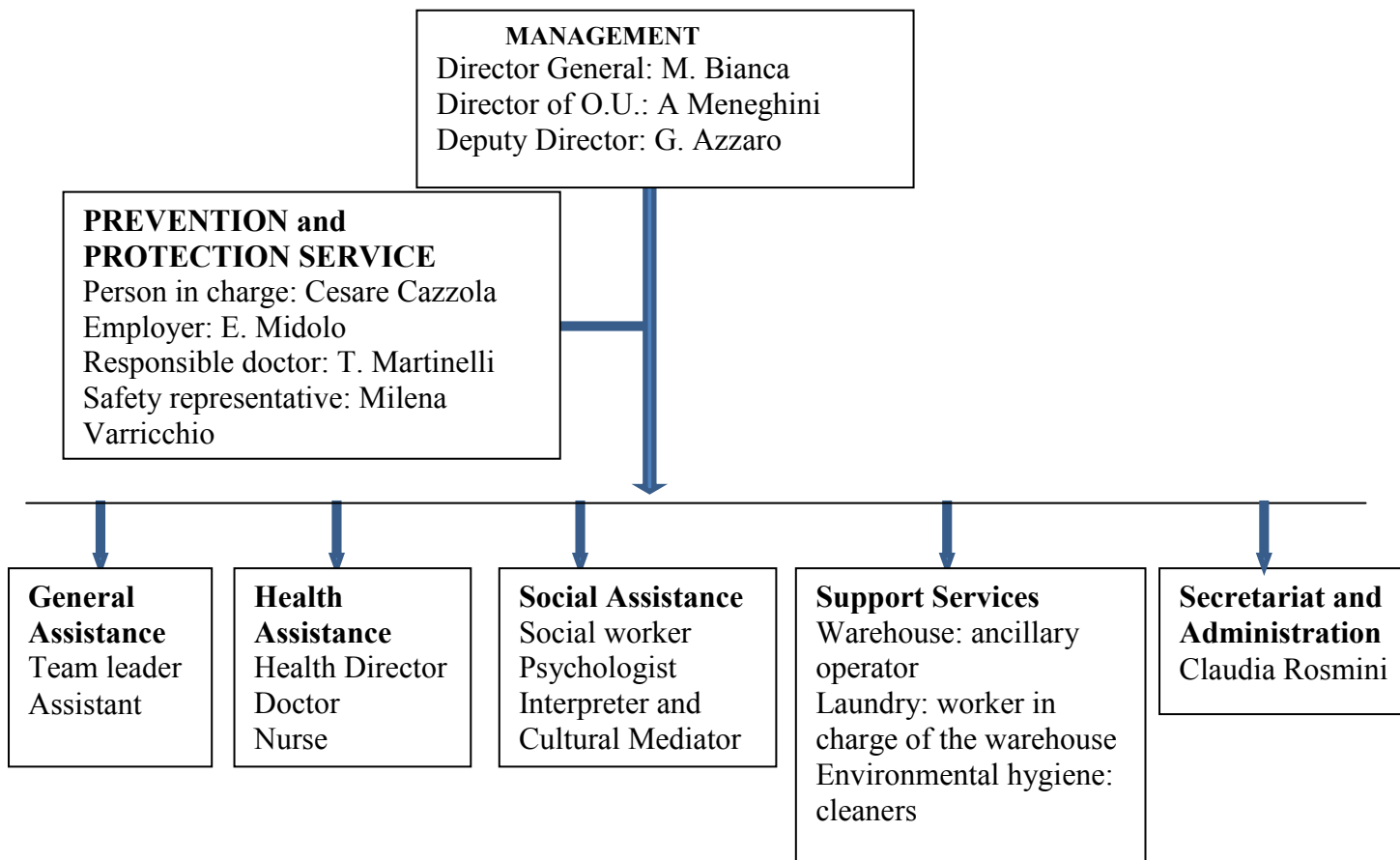
58. The former Under-Secretary of State, S. Ruperto, during his institutional mandate, prepared a policy Document on Identification and Expulsion Centres containing proposals for improvement with a view to implementing more effective forms of coordination and cooperation between the Ministry of Justice, the Ministry of Interior and the Ministry of Foreign Affairs. In compliance with an inter-ministerial directive (Ministry of Justice in agreement with the Ministry of the Interior), the Italian Penitentiary Administration issued a circular for the regulation of the “Identification procedure of non-EU detainees pending expulsion”. This procedure provides that the prison governors transmit, on a bi-monthly basis, to the competent Police Headquarters the information relating to the release date of the non-EU detainees against whom expulsion orders must be adopted, as well as all elements useful for their identification, which have been gathered during their detention. For this purpose, the Registration offices of the prisons will begin to set up specific lists of prisoners who satisfy the conditions for expulsion, which shall be then transmitted to the competent supervisory magistrate and the Police Headquarters, so that a verification of the correct identification of the prisoner, the recovery of the travel documents and a verification of any obstacles to the expulsion may be made.

59. The procedure described above does not, for the time being, guarantee a rapid exhaustion of the formalities. An intervention is therefore required in order to make the coordination of the bodies involved more efficacious and the supervisory magistrate’s jurisdictional procedure more fluid. This

Administration aims at achieving, through appropriate inter-ministerial agreements, a system which would allow to immediately initiate the investigation and a timely expulsion in respect of a considerable number of prisoners. A legislative amendment entailing an expansion of the potential recipients of the measure at issue is also advocated.

60. Consortium “THE OASIS”
O. U. Identification and Expulsion Center in Bologna

Company organizational chart



B. PRISONS

61. Act No. 199/2010 introduced a new regulation aimed at enabling the execution of prison sentences shorter (before term not exceeding one year, time of eighteen months) to locations outside the prison (home of the offender or other public or private care , assistance and welcome) that fall within the definition of residence and abode as introduced by relevant regulation. As a result of raising the threshold from twelve to eighteen months of minimum penalty of imprisonment, including residual one, for access to house detention, provided for by Article 3 of Law Decree No. 211/2011, the number of inmates admitted to home detention has increased significantly.

62. At the core of the relevant regulatory intervention there is the emergency situation in which Italian prison facilities are, whose overcrowding has led the European Court of Human Rights, initially by the judgment in the case Sulejmanovic against Italy, issued on July 16, 2009, and then with the pilot judgment Torreggiani against Italy, to condemn Italian Authorities for the violation of Article 3.

63. The composition of the prison population included about 32% of inmates who, as a result of a final judgment, were serving prison sentences not exceeding one year. This percentage resulted in constant growth (about 25 percent in June 2007 to 31 percent in June 2008) so as to cause an uncomfortable condition that, besides exposing Italian Authorities to the convictions by the European Court, do not allow to fully implement the rehabilitative function of the penalty provided for in Article. 27 of the Italian Constitution. It should be also noted that the rate of inmates to whom to address the above measures is reduced in the event of foreign prisoners since they undergo the process of identification of an abode or residence if the former lacks.

64. The assessment required by the legislation to the surveillance judge is therefore a discretionary assessment to be made on a case by case basis - in analogy to the assessment of the elements deemed necessary for the purpose of checking the existence of the precautionary requirements provided for by art. 274 lett. b) and c) of the Criminal Procedure, Code or for the application of the criterion of suitability of specific measures, in accordance with art. 275 of Criminal Proceeding Code. This assessment will entail an individualized content exercise, in which to include the problem of the effective protection of the victims.

65. A different path follows the procedure for the application of the benefit, depending on whether the offender is detained or not. Assuming that the person is a condemned inmate, the initiative has to be taken by the prison centre - otherwise by the prosecutor. In both cases, relevant documentation and any suspension of the order of detention shall be forwarded without delay to the supervising judge who has the power to decide that the punishment is carried out at home. Ultimately, Art. 1 of Law 199/2010, as amended by the above Legislative Decree, provides for the suspension of sentences of imprisonment not exceeding eighteen months just in case the convicted person is not eligible for one of the alternative measures to detention in prison, to be granted through the procedure provided for in Article 656 of the Code of Criminal Procedure.

66. With regard to the data relating to the impact of the aforementioned provisions, the computerization of the records of the courts and on-site supervision for the processing of the relevant data is newly implemented. The standardization of registration and cases management allows just this year to be able to have some meaningful data, although not exhaustive, of judicial activity in this area.

67. The judicial activity is aimed, on the one hand, to the identification of alternatives to detention, on the other hand, to the monitoring of compliance of individual rights of detainees. The latter activity, primarily under the responsibility of the supervising judge, does not present particular problems as shown by relevant data (See below). With regard to the evaluation of alternative measures, over the past few years there has been an extension of the competence and growing by the court office. This extension, if on the one hand, was decided in agreement with the expectations of the legislator to lighten the prison density; on the other hand has determined some counter-indication with regard to the increase in the workload of the oversight magistrates (See below).

68. In relation to the assessment of the suitability of the security rooms, this action has been agreed with the administration of the Interior and of Defence. The Minister of the Interior has agreed to restore the use by the police, of the security rooms, even before the entry into force of Law Decree No.211/2011.

69. By the above Law Decree, the arrested person, for acts of lesser social alarm, can wait for the validation of the arrest in home detention (Please also refer to Annex No.1).

Tab.5.1 Concessione misure - dati di flusso e di stock degli oggetti delle istanze Anni 2010-2011
(Totale Nazionale)

Oggetti delle istanze*	Anno 2011			Anno 2010		
	Iscritti	Definiti	Pendenti fine periodo	Iscritti	Definiti	Pendenti fine periodo
Misure alternative						
Affidamento al Servizio Sociale	37.838	26.278	16.293	30.035	27.658	14.786
Affidamento Servizio Sociale ex art. 94 DPR 300/90	8.270	6.171	2.778	7.049	6.756	2.668
Affidamento art. 47 quater O.P.	170	155	95	204	195	88
Detenzione Domiciliare art. 47 ter O.P.	17.735	16.971	9.191	20.395	18.987	8.588
Detenzione Domiciliare art. 47 ter 1 bis	10.477	9.848	5.231	11.403	10.582	4.662
Detenzione domiciliare art. 16 novies D.L. 3/1991	141	131	69	125	102	61
Detenzione Domiciliare art. 47 quater o.p.	73	71	31	122	109	30
Detenzione domiciliare per recidivi	7	7	2	15	14	2
Detenzione domiciliare per ultrasettantenni	51	61	14	80	71	24
Detenzione Domiciliare Speciale	165	138	68	140	132	44
Esecuzione presso domicilio della pena detentiva	17.789	18.118	2.460	1.015	801	2.819
Semilibertà	11.385	10.880	5.951	12.190	11.596	6.376
Sanzioni sostitutive						
Libertà Condizionata	655	549	295	474	415	180
Semidetenzione	67	53	55	76	54	42
Altre misure						
Espulsione straniero e titolo di sanzione alternativa (art. 16 comma 5 D.Lgs 286/1998 e succedenti)	5.035	4.926	1.731	5.562	5.656	1.672
Sospensione Condizionata della Pena Detentiva Art. 21, 202/2001	575	591	229	853	861	247
Sospensione Esecuzione Pena ex art. 90 DPR 300/90	571	544	295	608	610	272
Liberazione Condizionale	657	860	226	751	708	230
Lavoro Esterno Art. 21 O.P.	2.209	2.308	55	1.795	1.775	75

* L'unità della rilevazione è l'oggetto/misura della istanza.

Ogni istanza può contenere uno o più oggetti/misura. Il totale oggetti/misure potrebbe quindi essere maggiore del totale istanze non può essere preso come indicatore del numero di istanze presentate.

La stessa avvertenza vale nei confronti dei soggetti, dato che possono presentare più di una istanza.

in corsivo le misure di competenza dell'ufficio di sorveglianza

Tab.5.2 Concessione misure -esito delle decisioni in % sul totale definiti degli oggetti delle istanze nell'anno 2011
(Totale Nazionale)

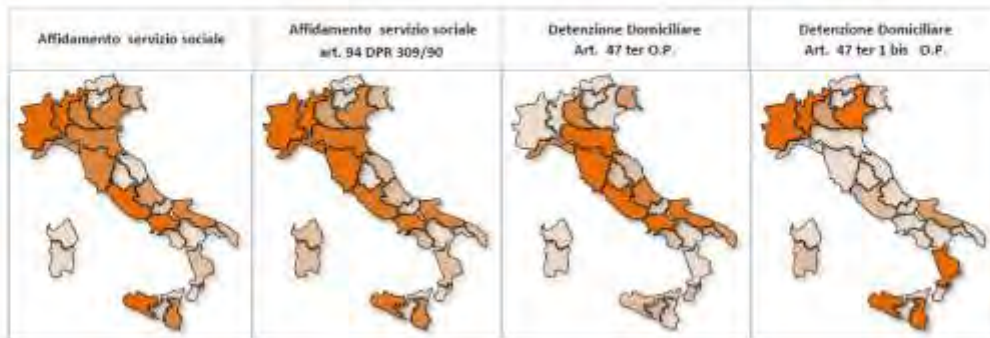
Oggetti delle istanze*	Anno 2011					Totale	Totale in v.a.
	% accolti	% rigettati	% NLP_NDP	% Inammissibilità	% altrimenti definiti		
Misure alternative							
Affidamento al Servizio Sociale	26,46%	43,44%	12,64%	10,80%	6,60%	100,00%	26.278
Affidamento Servizio Sociale ex art. 54 DPR 409/00	17,29%	22,53%	9,15%	21,82%	9,23%	100,00%	6.133
Affidamento art. 47 quater O.P.	13,55%	28,49%	14,19%	10,97%	32,80%	100,00%	355
Detenzione Domiciliare art. 43 ter O.P.	23,58%	22,54%	23,22%	22,12%	8,49%	100,00%	18.571
Detenzione Domiciliare art. 47 bis I bis	22,35%	19,01%	11,43%	21,20%	6,01%	100,00%	9.048
Detenzione domiciliare art. 18 nonies D.L. 8/1993	32,82%	35,11%	6,07%	16,70%	6,40%	100,00%	133
Detenzione Domiciliare art. 47 quater o.p.	11,27%	22,54%	18,11%	32,48%	15,49%	100,00%	73
Detenzione domiciliare per recidivi	14,29%	14,29%	0,00%	14,29%	57,14%	100,00%	7
Detenzione domiciliare per ultrasessantenni	32,79%	14,75%	16,39%	21,41%	14,75%	100,00%	63
Detenzione Domiciliare Speciale	11,59%	38,86%	15,94%	19,57%	13,04%	100,00%	138
Esecuzione presso domicilio della pena detentiva Semilibertà	30,48%	28,13%	12,88%	23,08%	6,51%	100,00%	18.118
Semilibertà	8,76%	28,01%	14,48%	21,71%	7,05%	100,00%	10.889
Sanzioni sostitutive							
Libertà Condizionata	77,78%	0,00%	6,19%	0,36%	15,67%	100,00%	549
Semilibertazione	54,77%	0,00%	14,07%	1,09%	24,51%	100,00%	53
Altre misure							
Esibizione straniera a titolo di sanzione alternativa (art. 76 comma 3 D.Lgs 200/2001 e ss. mod.)	23,10%	13,36%	41,51%	16,71%	6,31%	100,00%	4.526
Sospensione Condizionata della Pena Detentiva Art. 25, 307/2003	1,15%	15,40%	4,57%	69,88%	8,00%	100,00%	303
Sospensione Esecuzione Pena ex art. 90 DPR 309/90	2,02%	21,12%	16,93%	42,10%	17,83%	100,00%	584
Libertazione Condizionale	6,06%	81,67%	10,92%	52,12%	9,44%	100,00%	860
Lawia Esterna Art. 21 G.P.	32,07%	1,08%	1,08%	0,12%	3,44%	100,00%	2.208

* In corsivo le misure di competenza dell'ufficio di sorveglianza

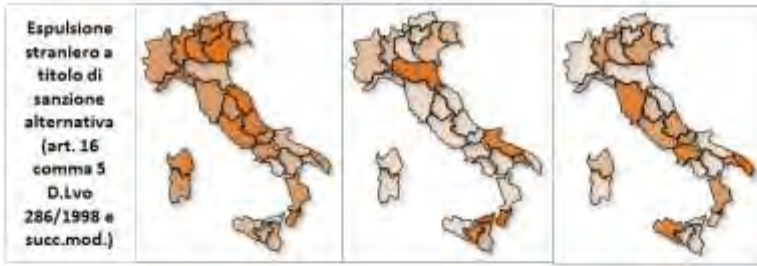
Tab.S.3 Richieste per esercizio/limitazione dei diritti delle persone nell'anno 2011
(Totale Nazionale)

Richieste per esercizio/limitazione diritti	Anno 2011			di cui accolte in %	Pendenti a fine periodo
	Iscrete	Definite			
Diritti personali					
Autorizzazione Corrispondenza Telefonica	3.257	3.328	88%	2	
Autorizzazione al controllo auditivo e registrazione colloqui (art. 41 bis c.2quater lett. f)	173	170	75%	3	
Controllo del contenuto delle buste che racchiudono la corrispondenza	38	92	74%	1	
Limitazioni nella corrispondenza epistolare e telegrafica e nella ricezione della stampa	952	950	89%	16	
Sottoposizione della corrispondenza a visto di controllo	305	304	87%	13	
Proroga sottoposizione della corrispondenza a visto di controllo	1.932	2.050	96%	37	
Trattamento corrispondenza	1.170	1.246	58%	10	
Diritto alla salute					
Visite Specialistiche in Luogo Esterno di Cura	46.880	46.817	98%	517	
Ratifica Visita Specialistica in Luogo Esterno di Cura	4.446	4.245	97%	48	
Ratifica Ricovero in Ospedale Civile o Luogo Esterno di Cura	2.258	2.224	97%	52	
Revoca ricovero in Opg	26	23	30%	8	
Revoca Ricovero in Ospedale Civile o luogo Esterno di Cura / Nulla osta al rientro in carcere	449	452	87%	-	
Ricovero in Ospedale Civile o Luogo Esterno di Cura	3.410	3.406	92%	95	
Ricovero Day Hospital in struttura sanitaria pubblica	1.109	1.099	98%	11	
Ricovero in Opg	84	78	62%	11	
Ricovero in Opg per Osservazione Psichiatrica	423	415	87%	18	
Prosecuzione Ricovero Opg	16	15	53%	1	
Permessi					
Permesso Premio	43.163	42.777	48%	4.888	
Permesso Necessità	7.043	7.985	43%	334	
Modifica Permesso	340	341	84%	1	
Revoca Permesso Necessità	81	80	95%	2	
Revoca Permesso Premio	243	244	95%	3	
Ruolo genitoriale					
Assistenza dei Figli All'Esterno	152	177	34%	19	

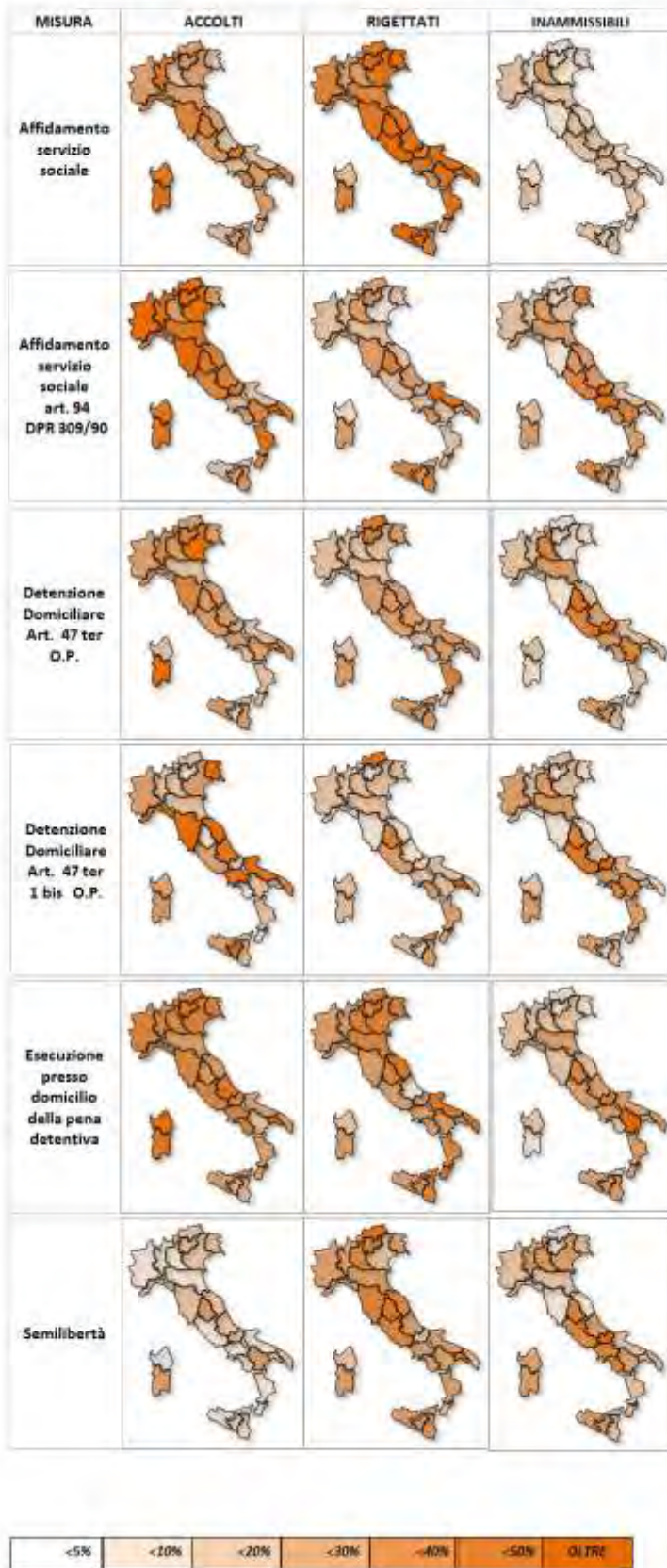
Graf. 1 Oggetti delle istanze per le principali misure alternative detenzione iscritti per distretto in % su totale nazionale
 Tribunali e uffici di sorveglianza
 anno giudiziario 2011/2012



Graf. 2 Esito decisioni oggetti istanze misure alternative detenzione per distretto in S su totale decisioni
 Tribunali e uffici di sorveglianza
 anno giudiziario 2011/2012 (2/2)



Grf. 2 Esito decisioni oggetti istanze misure alternative detenzione per distretto in % su totale decisioni
 Tribunali e uffici di sorveglianza
 anno giudiziario 2011/2012 (1/2)



70. (Paragraph 45) The overall maximum **capacity** of prisoners that the 207 Italian prison facilities could accommodate on 6 May 2013 was **47,045** and the number of **prisoners present** on that same date was **65,894**. Following the recent completion of the realization of new blocks, which will be consigned on December 2013, a capacity of **2,301** places will increase the data relevant to the overall capacity.

71. During the last months, great efforts have been made in order to carry out interventions in the preservation and appreciation activities of the existing prison properties and to realize, as quickly as possible, new prison facilities and blocks. The completion of the realization of new blocks will allow, by December 2013, the availability of **2,301** more places.

72. Always by December 2013, the interventions carried out in the framework of the so-called “Prison plan” will put at the disposal of our Administration **1,430 more** places.

73. The restructuring (achieved almost always thanks to the employment of the detainees’ hand-labor) of the unsafe blocks will allow, by March 2014, an overall availability of **1,960** more places.

74. By the end of March 2014, the judicial psychiatric hospitals will be closed and, by transferring the individuals who are currently under their care, may be transformed in new prison facilities which will accommodate **900** prisoners.

75. In consideration of the ratio between the number of inmates and the surface of cells and considering that the regular capacity is defined by referring to a greater amplitude with respect to the minimum one based on the CPT criteria (9 sq. meters for single cells and 14 sq. meters for double ones), it is obvious that the current non-rational distribution of the inmates on the national territory contributes to the overcrowding of prisons.

76. The Penitentiary Administration undertakes to identify the blocks which are closed or under-utilized and to assess the re-distribution of part of the spaces currently used for high-security prisoners (where overcrowding conditions do not exist).

77. A **deep, complex reorganization of the prison system** is already at an advanced phase and it aims at achieving a more rational use of the prison spaces and distribution of the prisoners.

78. The creation of more homogeneous **prison circuits**, differentiating the prisoners on the basis of their legal status, the length of their sentence and their “dangerousness”, will enable to facilitate the treatment activities and improve the conditions of the prisoners and the staff. The application of the principle of territoriality of criminal enforcements will make a prisoner’s socio-affective links with his/her place of origin less complicated so that when released, he/she may receive the right support and reduce his/her risk of re-offending.

79. The spaces which may be used for common activities will be increased in those prison facilities hosting prisoners with a low degree of dangerousness and the surveillance exercised by the prison personnel will be based on a form of “dynamic” surveillance, consistent with what is provided for by the European Prison Rules.

80. By strengthening the habit of developing the sense of responsibility, the inmates will be prepared, through the stimulation of their active and participative commitment, to be reintegrated into society, with the consequent **reduction of recidivism** (as has been already shown by the flows

related to the prisons where this model has already been applied about a decade ago, like, for example, the Bollate Prison, in Milan).

81. For the first time, therefore, not only a program for prison building construction has been chosen, but also a radical reform of an organizational nature which will initially concern the selection of prisoners on the basis of their degree of dangerousness.

82. In parallel, the implementation of Art. 6 of Law no. 354/75 on Penitentiary Act (which mentions the “**areas used as sleeping quarters**”) will also enable a greater application of the CPT recommendations, which call for a guarantee of the prisoners’ rights to spend most of the day time outside their cells, engaged in various types of significant activities (at least 8 hours for prisoners pending trial and even more favorable conditions for those whose judgment has become final).

83. This will take place through the spreading of constructing criteria and organizational methods which are such as to enable the prisoners, within each wing, to spend most of their hours in a common context where the surveillance is more efficacious and the prison personnel’s observation more useful. This will contribute to improve the overall life conditions inside the prisons.

84. As regards the application of pre-trial custody in prison, account should be taken of the fact that the considerable difference with other European countries (where the number of prisoners pending a final judgment is much lower than the one in Italy) is explained as follows: elsewhere prosecution is based on a discretionary principle, the first instance judgment is enforceable, appeals are very rare or reduced, the trial is inquisitorial in nature with more rapid fact finding. Moreover, Italian statistics include among the “accused prisoners” even those who have already been convicted, even though their judgment has not yet become final.

85. The Department of Penitentiary Administration will continue, also for the purpose of spreading the conviction that it is necessary to reduce the application of pre-trial custody as much as possible, the dialogue it successfully started with the judges and public prosecutors during the 17th CDAP held in Rome on 22-24 November 2012. In this regard, mention must be made of the recent internal circulars issued by the State Prosecutors at the Courts of Milan and Turin and the indications given by the Prosecutor General at the Court of Venice, aimed at limiting the application of pre-trial custody measures only to cases held absolutely indispensable.

86. Under the profile of the legislative interventions, the above Department advocates:

- a. the amendment of the early release mechanism, which may be applied indistinctly to all prisoners provided that they give proof that they are on their way towards rehabilitation, extending the reduction of penalty from 45 to 60, 75 or 90 days per semester. Through an assessment based on estimates, it can be held that the amendment may entail an increase in the releases of prisoners between **1,500 and 3,000** convicts within a three-year period. This “*safeguard clause*”, aimed at avoiding incarcerations in inhumane conditions, would allow, within these limits, to obtain a deflationary effect through the strengthening of a re-education measure. If the expansion effect of the measure were to be extended to the last two years of detention, the effect of the reduction of the prison population would be doubled and would involve the release of at least 6,000 prisoners;
- b. the removal of some generalized barriers which preclude the access to prison benefits and alternative measures deriving from the strict rules regarding repeated recidivism regulated today by Art. 99, paragraph four, of the Criminal code;

- c. the expansion of the hypothesis of the suspension of the enforcement of the punishment, pursuant to Art. 656 of the Code of Criminal Procedure, so as to apply alternative measures to imprisonment directly to the offender at liberty;
- d. the suppression of the “compulsory” cases of pre-trial custody provided for by Art. 275, paragraph 3, of the Code of Criminal Procedure (pre-trial custody must be *extrema ratio*);
- e. the amendment of the law regarding the offence of unlawful possession of narcotic substances for marketing purposes provided for by Art. 73 of Presidential Decree no. 309/90, which entails a differentiated sanctioning treatment based on the type of narcotic substance, and a less strict law for the cases specified in paragraph 5 (less serious cases);
- f. the application of probation mechanisms also to adults in relation to those offences punished by a five-year maximum prison term, and conferring on the judge autonomous initiative;
- g. a more radical reform of the sanctioning system by introducing the possibility, as regards the judge, to impose alternative measures to pre-trial custody in respect of those offences for which the law prescribes a five-year maximum prison term. Greater results could also be achieved if the legislative intervention were coordinated by means of a reform of the conditional suspension of the sentence mechanism and by means of a consequential anticipation of the State’s “undertaking responsibility” for the offender, beginning from the very first criminal proceedings. Moreover, where the prisoner expresses his/her interest, it would be necessary, pending other legal remedies, to anticipate the criminal enforcement after the judgment of conviction. The strengthening of the *Uffici di Esecuzione Penale Esterna* [Offices for the Execution of Sentences in the Community] and the realization of an efficient *probation* system would finally allow to ensure the security requirements and those of support and social reintegration.

87. (Paragraph 46) Recently, on the occasion of a visit made last December to the Vicenza Prison, the *Ufficio per l’attività ispettiva e del controllo* [Office for the Inspection and Control Activity] lodged a report. Situations of concern as regards the overall management of prisoners, anchored to strict custodial systems, have emerged. Several episodes of ill-treatment, of which an information report was filed with the local State Prosecutor’s Office, have been reported. The management of said prison facility is obviously “*marked by a custodialistic connotation and based on a strict application of the order and security concept*”.

88. At the end of the visit, the governor of the Vicenza Prison was invited to reconsider the rigidity of the methods adopted, intensify the treatment-type interventions and not address the distress, which often manifests itself through acts of self-punishment, by sanctioning-type mechanisms, which at times take place without the actual participation of the prisoner.

89. During a meeting held by the *Provveditore Regionale* [Regional Director], the prison governor communicated that the changes had begun (by letter dated 12 March 2013).

90. By letter dated 18 April 2013, addressed to the prison governor, this Administration recommended that the personnel be informed that any form of ill-treatment suffered by prisoners shall not be tolerated and shall be punished, and recommended as well that any episode relating to injuries inferring ill-treatment must be reported to the Public Prosecutor.

91. (Paragraph 47) As regards the Bari Prison, works for the restructuring of the II wing are ongoing and will be finished by December 2013. Between 2011 and 2012, the prison was subject to various interventions entailing, for example, the creation of social spaces and rooms for treatment activities, the restructuring of the CDT areas, the areas used as depots and warehouses, and of the visitors’ room, the renewal of the sleeping quarters’ sanitary facilities.

92. Thanks to the “Dash Project”, financed by the association “*Il Carcere Possibile*” [“A Possible Prison”], a series of restructuring works and general cleaning were carried out in the women’s wing.

93. The “Sollicciano” Prison, in Florence, requires indeed consistent maintenance and modernization interventions.

94. Based on the *Piano Carceri* [Prison Plan], a new prison block, which would accommodate 200 prisoners, should be built in the Vicenza Prison. This prison complex has already been subjected to many and important maintenance and restructuring interventions and further maintenance and restructuring interventions are yet to be performed.

95. For what concerns the Palermo Ucciardone Prison, the governor has issued a service order according which the wing nurse will provide once a month to lay in supplies of necessary cleansing agents and tools, will keep them in the infirmary and will provide them to the working prisoner; the nurse working in the pharmacy will provide for the infirmaries in wing IV. In each wing, the staff will provide every day at 7.30 a.m. to make available the working inmate entrusted with the cleaning.

96. Wing II of the Palermo Ucciardone Prison was recently restored (together with wings IV and VIII). In the framework of the Prison Plan, restoration works in wings V and VI have already been planned: the works will begin within this year and will conclude in 2014. The restoration of wing VII will be completed in March 2014. The interventions of restoration and modernization of wings III and IX are currently being examined (for the latter the removal of the metal shutters from cell windows has already been envisaged) as well as of the buildings intended for *intra* and *extra moenia* services.

97. The monumental estate will become a modern prison facility for the advanced treatment of about 750/800 prisoners, 100 of which will be women (in wings II and III).

98. (Paragraph 48) **The examination of the data detected through an information program named “Monitoring of cells and custody spaces” on 1.5.2013 at 12 pm, reveals that the situation described by the CPT did not improve very much: In the Bari Prison more than one cell measuring about 20m² accommodate 10 or 11 prisoners. For what concerns the female wing unfortunately the cell nr. 2, measuring about 6m², is occupied by 3 prisoners. In Palermo Ucciardone, Wing VIII, the cell nr. 23, measuring 22 m², is occupied by 7 prisoners, in Wing IX on the first, second and third floor, some cells of 8m² contain 4 or 5 prisoners, and in Wing II some cells measuring from 10 to 14m² accommodate 4 or 5 prisoners. In Vicenza, actually, cells of 13m² accommodate even 3 prisoners and in a single case 4 prisoners (in some cells works are ongoing). It should be recalled what we said at point 47 about the forthcoming opening in the Bari Prison of a second wing with 117 places (within December 2013). Moreover when the restoration works of wings V, VI and VII – which are currently closed – are completed the places available in Palermo Ucciardone within 2014 will be in all 501.**

99. (Paragraph 51) For what concerns the Florence Sollicciano Prison, in two wings accommodating finally sentenced prisoners, the doors of the cells remain open during the common activities time, in order to enable the prisoners to move freely in the wing corridor and outdoor activities are allowed, generally for 4 hours per day (two hours in the morning and two hours in the afternoon).

100. The participation in treatment activities enables in any case the prisoners attending training or educational courses, and those who work, to spend a part of the day outside of the custody wing.

101. To increase the work opportunities and the number of prisoners employed in remunerated work activities, albeit on a part-time basis, the criterion of a rotation system for a definite length of time has been recently adopted. The number of prisoners who work remains in any case inferior to the demand and to the number of prisoners, and, as of 3 April 2013, the number of working prisoners was 130.

102. The pedagogical program for the year 2013 envisages training courses intended both for female and male prisoners; tailoring courses and courses for cleaners of industrial premises, addressed to female prisoners, and IT and gardening courses, plumbing, building and electronic courses for male prisoners, are being carried out.

103. In the Palermo Ucciardone Prison the prisoners can spend 4 hours per day outside of their cells (two hours in the morning and two hours in the afternoon). The development of treatment activities – which the Direction has lately intensified – enables the prisoners taking part in them to spend a part of their day outside of their cells; currently, two institutional schools courses are being carried out (a course providing 150 hours of education, and a scientific secondary school), as well as about ten vocational courses, each of them attended on the average by 8 prisoners. 70 prisoners are occupied in part-time work activities.

104. An important contribution to the satisfaction of the most urgent material needs complained by indigent prisoners is provided by voluntary organizations, and in particular by the ASVOPE, a voluntary association with which the Directorate made a convention envisaging, among other things, the supply of clothes and hygiene and personal care products to the indigent. Works of remediation of the library, the school classes and the gymnasium have been completed.

105. Directorate's objective is that of guaranteeing the carrying out of treatment activities reducing the stay of prisoners in the cells, providing, meanwhile, the implementation of minimum security conditions; such objective requires the arrangement of systems of video-surveillance and of systems preventing prisoners from jumping over the boundary wall, video-surveillance in the visiting rooms, as well as the automation of gates, a security defense the installment of which has been planned.

106. In Bari, where unfortunately the work concerns only the "home" sector, and is performed on a rotation basis, last 14 December a Protocol of Understanding was agreed between the PRAP and the Apulia Region, aimed at creating job and professional opportunities for prisoners.

107. As to the Vicenza Prison, the major issues concern the difficulty in establishing complete and satisfactory relations with foreign prisoners, who are the majority; such difficulty is caused by reasons connected with their language, culture and habits.

108. To front the situation, the prison governor has availed himself, and still avails, of cultural and linguistic mediators (CLM) who started their activity towards the end of 2012.

109. The Vicenza Prison has reached a good level of integration in the territory, establishing good relations of cooperation with agencies, associations and cooperatives.

110. The internal work activity is featured by work in the prison under the Prison Administration. In all 125 people worked in 2012.

111. The *Cooperativa Saldo & Mecc* and the *Cooperativa S. Bernardo* operate inside the Prison, offering work and professional training to a group of prisoners. Also the “*Consorzio Prisma*” cooperates with the Directorate, it groups several cooperatives and offers work opportunities to the prisoners eligible for alternative measures who can work outside of the prison.

112. As to the vocational training courses, in the first semester of 2012 a course for “house painter and decorator” and a 80 hours course for “welder”, funded by the Chamber of Commerce of Vicenza, have been carried out.

113. School courses concern literacy for foreigners (4 courses); an intensive middle school course (from September to January) mostly attended by foreigners, and an annual middle school course and, finally, a secondary education course for “agricultural operator”.

114. The Library service is efficient thanks to the *Bertoliana* Library of Vicenza which has supplied the Prison with several texts. The cooperation with volunteer associations has always been remarkable, thanks to the activity of several associations.

115. (Paragraph 59) Article 41-b of Prison Rules, recently amended by Law 94/2009, envisages a number of restrictions for prisoners who have a top role within Mafia-type, terrorist or subversive criminal organizations, in custody for one of the offences indicated in the first sentence of article 4-bis of Penitentiary Act, paragraph 1. In particular, the prisoners subjected to article 41-b can spend two hours per day outside of their cell, one of which in outdoor exercise, and one in the areas intended for common activities, in groups consisting of a maximum of four people. They can have one visit per month (instead of 4 or 6) by their family, lasting one hour (which cannot be extended either where the family reside in an another Municipality or in the event of exceptional circumstances) in premises equipped so as to prevent the passage of objects, and the video-recording is mandatory, or, alternatively, where they did not benefit from a visit, they can have a telephone call. Such restrictions, which are all provided for directly by the law and cannot be modified either by the administrative or the judicial authority, have been examined by the Constitutional Court, which has ruled their lawfulness (judgment no 190 of 28.5.2010). The Department of Penitentiary Administration will consider the possibility of submitting to the Legislative Office proposals for amendment of these rules in the part in which restrictions that are not functional to the aim of limiting the contacts with the external world can possibly be found in the law.

116. The prisoners subjected to the 41-b regime can, within the limits indicated above, carry out work, education and recreation activities provided for by the Penitentiary Act and, in particular in the Terni Prison, they can carry out work activities within their wing, can study (a lot of prisoners subjected to 41-b regime are presently studying at university and regularly take examinations) and can take part in recreational activities (drawing and painting, etc); moreover they can avail themselves of the library and the gymnasium which are in the wing.

117. (Paragraph 60) For what concerns the installation of closed circuit cameras in the cells of the 41-b wing of Terni Prison, the Directorate has reported that such a system of permanent surveillance is present only in the so-called “reserved area”. Only in the latter custody space the cameras are connected with a video-recording system whose purpose is that of enabling a better supervision and document any possible critical event and anomaly.

118. The video-recorded data are placed on file automatically and are kept for a limited period of time, with a progressive overwriting and consequent deletion. In the sanitary facilities a blurred ray

of the image is envisaged, enabling only the visualization of the outline of a person, without distinguishing the details, in order to safeguard the prisoners' privacy requirement.

119. (paragraph. 61) As to the screening of the cell windows of the mentioned semi-wing, the Directorate of the Terni Prison has assured that it will provide to replace the boards in Plexiglass with others which let the natural light through.

120. (paragraph 65) As communicated by the Governor of the Palermo Ucciardone Prison, in order to remedy the serious lack of cleaning noted during the CPT visit both in the central infirmary and the other infirmaries placed in the other custody wings, a detailed service order has been issued, reasserting the need of a greater care in cleaning operations in the wing infirmaries, and also recommending the presence of the wing nurse, in order to give appropriate instructions to the prisoners entrusted with the task.

121. (paragraph 66) The Governor of the Bari Prison has communicated that he has suggested that the cell nr. 20 of the CDT could be used for the transit of the prisoners released awaiting the transfer to another prison, or for the recovery where places lack in the unit and in any case for a limited period of stay. The widening of the window has been requested.

122. (paragraph 70) It should be highlighted that the service of internal medical assistance has been transferred to the National Health Service, which depend on the Regions. The passage has taken place as a matter of fact in all Regions, except in those under special statutes, among which Sicily, which is providing to it only in this period. Therefore the Regions have to answer of the efficiency and functionality of the same service. The Head of the Department of Penitentiary Administration has invited the competent Regional Directorates and the Governors of the Bari and Palermo Ucciardone prisons to implement, through the cooperation with the Regions and the competent Local Health Services, an assistance service which satisfies the health needs of prisoners and an effective cooperation aimed at getting over the remarks made by the CPT. Please see, in this respect, also the reply provided in the subsequent paragraph.

123. For what concerns the scarce availability in the budget item relative to specialist examinations, the governor of the Palermo Ucciardone Prison has communicated to the Regional Directorate the requirements in the item relevant to the "health service" necessary until the month of June of this year, which corresponds to the sum of €320,238,00 which, compared to the budget allocated for the 2012 financial year, envisages a further sum of € 10,000,00 aimed at the increase of specialist examinations, with particular reference to dental care.

124. (paragraphs 72 and 77) The DPCM [Translator's note: Decree of the President of the Council of Ministers] dated 1.4.2008, governing the transit of the internal health assistance to the National Health Service, envisages in Annex A that the Local Health Service guarantees the specialist services that have to be provided inside prisons; the resort to external structures is limited to the cases in which cares or diagnostic ascertainments that cannot be provided by the health services within the prisons are necessary (therefore when sophisticated and diagnostic equipments which cannot be transported are required, as clarified by this Administration, by circular dated 13.4.2011).

125. By letter dated 4 April 2013, the Head of Department of the Penitentiary Administration requested to urgently put on the agenda of the first available meeting of the Permanent Consultation Table for Prison Health the issue noted by the CPT, relating to the increase in examinations and ascertainments in external treatment centers. He has also submitted to the Regional Directors the need to increase the financial allocations for the Bari and Palermo Ucciardone Prisons, providing to

find Penitentiary Police staff resources to assure the transfers of prisoners for external medical examinations and consultations, when it is not possible to carry out them in prison.

126. By letter dated 10 April 2013, the Apulia Regional Director of the Penitentiary Administration assured that he will provide, through the Security and Transfer Office of the same Regional Directorate, to constantly monitor the service of Transfers and Surveillances of the Bari Prison (carried out by a Unit composed of 90 individuals), and where necessary he will provide to the due supplements, identifying and removing any obstacle of organizational nature in order to assure the efficiency of the prisoners accompanying service to the possible consultations in an external treatment center.

127. The Directorate of the Bari Prison assured that it will provide to effect meetings with the penitentiary Health Manager in order to optimize times and procedures relating to specialist examinations (that in the specific case fall under the strict competence of the health area). The Directorate informs, moreover, that the system is based on a nurse, entrusted with collecting the applications for reservation of medical examination submitted by the prisoners, and who subsequently forwards them to the doctor in charge.

128. The Directorate of the Palermo Ucciardone Prison has communicated that the Unit for Transfers and Surveillance stationed at the Palermo Pagliarelli Prison, on ground of countless engagements, first among everything those connected with justice, has sometimes to put off specialist examinations in external treatment centers.

129. (paragraph 74) With reference to the inadequacy of living conditions, to the lack of rooms equipped for disabled persons and to the existence of barriers to mobility, the Department of Penitentiary Administration, with a letter dated 13 November 2012, has recommended to prison governors, in agreement with the physicians of the local Healthcare Services, to bring to the attention of the Judicial Authorities all the situations where it is clear and evident that the status of detention and its prorogation can anyway bring to situations contrary to the sense of humaneness of the sentence.

130. The Apulia Regional Director of the Penitentiary Administration, with reference to the lack of specialised hospital beds for disabled prisoners accommodated at the Bari CDT, asked the Bari prison governor to contact the local Healthcare Service in order to identify and to agree upon the types and the characteristics of the necessary equipment. As for the presence of prisoners on wheelchairs who are accommodated in inadequate cells outside the CDT, the prison governor was urged to agree with the Building Service at the Regional Penitentiary Administration upon the solutions to build adequate rooms, starting from those wings which currently accommodate the largest number of disabled prisoners.

131. (paragraph 75) The Penitentiary Administration specifies that the so-called "*piantone*" carries out tasks limited to rooms cleaning and to help the disabled persons in their movements (disabled prisoners who are in need of healthcare assistance are assigned to one of the wings for disabled prisoners established in the prisons of Parma, Bari, Busto Arsizio and Catanzaro); the DAP commits itself to bring in the Agenda of the Permanent table the training of the "*piantoni*". As for the training of the "*piantoni*", the Bari remand prison governor has communicated that an integrated project of training was drafted in agreement with the local Healthcare Services in Bari, to be submitted for regional funding, as soon as the financial forms will be completed.

132. (paragraph 83) As for medical examination confidentiality, since July 2000, general directions were issued (circular letter n. 3256/59 reference n. 653521 -1/12.1 of 11.7.2000 concerning “*Directives in matter of healthcare service in prisons aiming at overcoming some observations by the European Committee for the Prevention of torture (CPT)*”). Such document, issued while prison healthcare was being reorganized, expresses the need that the health protection of persons deprived of their personal liberty occurs in the same conditions of equality and equal dignity as free persons, even under the aspect of confidentiality of medical examinations. The exceptions to such principle are allowed only upon request of the physician carrying out the examination or for particular security reasons even in relation to the various types of prisoners.

133. The dutiful and necessary supervision activity shall be applied, while enabling the exercise of the right to health respecting the prisoner dignity, taking care that penitentiary police staff is close enough to intervene immediately, if necessary, but so as to avoid listening the contents of the interview between the physician and the patient.

134. The staff on duty in all the prisons has to scrupulously comply with such rule.

135. As for the access to sensitive data of medical nature, we outline what follows.

- By the entry into force of the legislation on the privacy of personal data, the Penitentiary Administration has requested and obtained by the Guarantor for the protection of privacy the authorization to process sensitive and very sensitive data concerning persons submitted to measures depriving them of their personal liberty. Subsequently, the transfer of penitentiary healthcare to the National Healthcare Service has highlighted the opportunity to proceed to a study-in-depth of the subject-matter concerning the access to medical data of prisoners and internees.
- Upon approval of an Agreement during a Unified Conference on 20 November 2008 the sharing of medical data and the access to them by the Penitentiary Administration were agreed to carry out the institutional tasks and in particular to adopt appropriate measures for the assignment and the treatment of persons with particular health problems.
- According to the Agreement approved by the Unified Conference on 26 November 2009 the Penitentiary Administration has access to all medical data in order to correctly carry out its functions and namely to enable the transfer of prisoners and a correct assignment of them.

136. (paragraph 65) The Governor of Palermo-Ucciardone prison, in order to remedy the deplorable state of hygiene found during the CPT visit both in the central infirmary and in the other infirmaries located in the other detention areas of Palermo-Ucciardone prison, has issued detailed instructions, in which the necessity of taking greater care of hygiene in the ambulatories of the wings is underlined, and the presence of a nurse in each wing is recommended, in order to give appropriate directions to working prisoners.

137. (paragraph 66) As for the technical equipment for physiotherapy, the governor of Bari prison has communicated that said equipment is provided according to law and is regularly working. In a few events it has not been possible to perform the therapy due to lack of penitentiary police staff who has to escort the prisoners to be submitted to said treatment.

138. (paragraph 68) The Apulia Regional Director of the Penitentiary Administration, by letter dated 10 April 2013, has involved the Directorate General of the Local healthcare service, the Directorate of Bari remand prison and the competent offices of the Regional Directorate, to carry out the necessary interventions to cope with the problematic issues identified. In particular, the

Regional Directorate has highlighted the necessity of the competent local healthcare service and of the Regional Assessor to increase the funds for a greater efficiency and functionality of intramural assistance which, as per Decree of the President of the Council of Ministers dated 1.4.2008, has been already transferred to the National Healthcare Service (see previous paragraphs).

139. The Directorate of Bari remand prison has committed itself to monitor the critical issue concerning the presence of nursing staff at the Therapeutic Diagnostic Centre and to urge the intervention of the Directorate General of Bari local healthcare Service in order to increase specialist services, the equipment and the nursing staff.

140. (paragraph 80) The Directorate General for Prisoners and Treatment of the Department of Penitentiary Administration constantly cooperates and supports initiatives aiming at encouraging prison population to take care of their health as well as those ones of Local bodies or scientific associations. To this purpose, it has to be underlined that good practices concerning the prevention of transmissible diseases, observed by the CPT at Palermo Ucciardone Prison, fall within the framework of a planned intervention named “Health has not borders, information campaign and promotion of awareness-raising activities on HIV and other chronicle viral pathologies in prisons”, proposed by the Italian society of Infectious and Tropical diseases (SIMIT) the Italian society of Medicine and Prison Healthcare (SIMSPE-ONLUS), the Network of seropositive persons (NPS ONLUS) and DONNE IN RETE, involving in 2012 other 18 Italian prisons throughout the national territory. The possibility to widen such initiative in 2013 in other 10 prisons is studied with said associations.

141. (paragraph 84) As communicated by Bari prison governor, the accommodation of prisoners in medical seclusion rooms concerned one single case for a limited period of time, as provided for by the Judicial Authority.

142. (paragraph 88) In the crèche of the Sollicciano Remand Prison, as of 3rd April 2013, there were 2 female inmates with their two children. In connection to that, it must be remarked that, as a consequence of the entry into force of the Law nr. 62 of 21st April 2011, starting from 1st January 2014, the Penitentiary Administration shall open Low-security penal establishments (so-called “*Istituti a custodia attenuata*”) for accused persons who need to be held in custody and finally sentenced persons of both genders having children up to 6 years of age. Such establishment shall have structural characteristics different from traditional prisons and inspired to normal houses; in those structures, one specific homely regime will be established, focusing on raising the inmates’ responsibility as for their parental duties. The new law is inspired to the need of ensuring an adequate protection of parenthood and of children during the execution of detention sentences, while ensuring that children grow up harmoniously and without shocks. The above-mentioned Law 62/2011 also provides for the possibility that the parents imprisoned in Low-security penal establishments keep their children with them up to the age of 10, waiting to access home detention under articles 47-c and 47-e of the Penitentiary Act.

143. Those measures alternative to detention can be enforced at the offenders’ domicile or in a public health care centre or attendance centre or housing centre, including the newly established protected housing structures (so-called *case-famiglia protette*), not belonging to the penitentiary circuit; those housing structures have been introduced by the Law 62/2011 and are specifically intended for the enforcement of house arrests or of home detention of parents who need to keep their children with them.

144. Those protected housing structures will enable also those offenders without family links and without housing solutions to benefit from alternative measures.

145. New Low-security prisons for Mothers (s.-c. “*ICAM*”) are under construction, in Florence and in Venice (which is going to be opened soon and which will accommodate up to 12 female offenders with their children up to six years of age), in Turin and in Rome. A number of organisations and bodies in several Regions of Italy are working on the opening of protected housing structures. Among those initiatives, it is worth mentioning the National Project of Housing for Female prisoners with their children up to 6 years of age, promoted by the *Caritas Italiana* together with the *Centri Diocesani Migrantes* (diocesan centres for Migrants) and the Italian Prison Chaplains: that Project ensures a network of available housing structures, throughout our country, and carefully provides for a plan of intervention which tailors, depending upon the judicial status of imprisoned mothers, customised paths for their social resettlement.

146. (paragraph 89) We ensure that what has been reported will be taken into due consideration, as soon as procedures are activated in order to plan possible interventions to increase the number of custodial staff in prisons, upon the ending of training courses for penitentiary Agents, in July and September 2013. The custodial staff of Bari, Firenze Sollicciano and Vicenza prisons and the Judicial Psychiatric Hospital of Barcellona has been partially increased.

147. (paragraph 90) The Directorate General for staff and training in all the initial training courses addressed to the penitentiary police staff puts particular care on the subject-matters related to the intramural treatment of prisoners, the protection of legality and security as well as the protection of human rights. More particularly, in all the curricula a workshop on the management of mental disease is provided for.

148. The training includes technical, operational and legal aspects necessary to perform one’s duties, a psychophysical training preparatory to the maintenance of the wellness of prison workers in order to develop the necessary psychological stability and physical energy to face critical events, and also to deal with the psychic troubles of prisoners, through self-defence and self-control skills. Such training is supplemented by the study of appropriate communication techniques applied to various relationships, with particular reference to the management of aggressions, self-harming events, suicide attempts, difficulties in communicating. It also includes the training on methods of listening and decoding behaviours and spoken and non spoken signs of prisoners to the purpose of preventing possible problems, even concerning psychic troubles, or on effective interventions to solve possible emergency situations.

149. During the three-year training 2007-2009 the central training agencies have encouraged to deal with the topic of the handling of psychic troubles in prisons, even within the training and continuous training initiatives of the staff at local level, proposed and carried out through Annual Regional Training Plans.

150. In the three-year planning 2007-2009 there have been several initiatives concerning the reception of persons arriving for the first time in prison, according to the various legislative amendments, as such reception is decisive for an adequate assignment and an initial careful observation of persons arriving in prison, to the purpose of detection, prevention and analysis of any problematic issues concerning them. Unfortunately, said initiatives regarded a small number of beneficiaries because of the almost chronic lack of funds available for the training at local level, therefore the outcome of CPT’s report underlining this difficulty is easily understandable.

151. The Higher Institute of Penitentiary Studies has delivered initial training courses for officers dealing with the execution of sentences in the Community and for officers belonging to the juridical-pedagogical sector. This category of staff members was mainly trained on the handling of

particular typologies of prisoners such as: foreigners, drug-addicts, prisoners with dual diagnosis, sex offenders. A particular care has been placed on female detention.

152. On the complex subject-matter of workers' discomfort and on the wider topic of organizational welfare, the Higher Institute has carried out various interventions which today constitute a true system of actions. It is committed in the training on "*The contact person of the organizational welfare in a managerial structure*" since 2011. The first training course involved all the prisons of first and second levels as per Ministerial decree 26 September 2007 and in the years 2012-2013 it involved the prisons of third level and the Judicial Psychiatric Hospitals. Even on this occasion, appropriate importance has been given to the enhancement of the capacity of organizational listening and to the technical and relationship skills.

153. In the year 2013, in its articulated training Plan, as for the complex issues pointed out in the Committee Report and the consequent interventions, the Higher Institute of Penitentiary Studies will answer those requests through the delivery of courses where the above-mentioned subject-matters will be widely dealt with.

154. (paragraph 92) The Apulia Regional Director of the Penitentiary Administration – with a letter dated April 8th 2013 – urged the Governor of the Bari Remand Prison to identify adequate solutions for the adjustment of the visiting room, aimed at allowing also prisoners with disabilities to benefit from decent conditions in their contacts with their visitors; any relevant proposal concerning building interventions shall be submitted to the Building Service at the Regional Penitentiary Administration.

155. (paragraph 95) As per art. 69 paragraph 6 of Law 354/75 the Supervisory Judge shall make decisions "*on the complaints of prisoners concerning the conditions for exercising the disciplinary power, the establishment and competence of the disciplinary body, the charging of violations, and the defence*". As for art. 71-b Law 354/75, before the Supervisory Judge the prisoner is defended by his/her defence counsel or by a defence counsel appointed ex-officio and can submit defence briefs; the supervisory Judge can acquire the documents concerning the observation and treatment and, if necessary, carry out further inquiries. The Penitentiary Administration has issued specific directions in order that each disciplinary measure be adequately motivated and communicated to the prisoner. As for the avenues for lodging an appeal and any other right, each prisoner at his/her arrival at prison shall receive the Charter of Prisoners' and Internees' Rights and Duties, introduced by Decree of the President of the Republic 5 June 2012, n.136, amending art.69, paragraph 2 of the Decree of the President of the Republic 230/2000 (Penitentiary Regulations). Such Charter aims at ensuring that prisoners and internees of any nationality (to this purpose, the "Charter" has been translated into the main languages) be informed on the provisions concerning their rights and duties as well as the disciplinary aspects and the treatment in prisons. The prison governor is not entitled to challenge the measure by which the supervisory judge has repealed a disciplinary sanction in the complaint proceeding.

156. (paragraph 95) To this purpose, it has to be pointed out that, for the majority of case-law, the Supervisory Judge cannot merely review the merits of said measures, being able also to assess if the prisoner's behavior can be included under one of the disciplinary infractions provided for and can ascertain if the penitentiary administration has complied with the rules peremptorily imposing preconditions and types of sanctions (see Supervisory Judge Alessandria 15/09/1995).

157. (paragraphs 96 and 97) The role of the physician within the disciplinary Council is in reality a guarantee. Only the physician can assess if at the basis of the behavior examined by the competent authority applying the sanction, there is a medical reason. To this purpose, it has to be underlined

the importance of the physician's assessment with regard to self-harming acts which sometimes can be considered a protest to be sanctioned rather than symptoms of a discomfort. As the CPT considered unacceptable that provision, and given that this specific recommendation has been made several times, and has been implemented in the European Prison Rules, the Department of Penitentiary Administration will take into consideration the possibility of proposing an amendment of art. 40 of Law 354/75 so as to ensure that the physician member of the discipline Committee is a different person from the physician carrying out the medical examinations.

158. (paragraph 98) Art. 72 of the criminal code provides that life sentence be aggregated to the sentence of continuous solitary confinement, for offenders having committed more than one crime, each of them entailing life sentence, or crimes which respectively entail life sentence and temporary sentences for an overall term exceeding 5 years. As highlighted by the Court of Cassation, such provision not only governs the modalities of execution of prison sentence, but it constitutes a true criminal sanction for crimes concurring to life sentence.

159. The Constitutional Court (n.115/64) in expressing the decision of compliance of said provision with the Constitution, has stressed that the execution of the solitary confinement must be carried out in compliance with the principle of the re-education of the finally sentenced person provided for by art. 27 of the Italian Constitution. As provided for by the law and the Regulations, during the solitary confinement the prisoner has the right to communicate by means of ordinary, face-to-face, epistolary and telephonic interviews and to meet volunteers and the ministers of faith. He/she can participate in working, educational or training activities and has free access to daily newspapers, magazines and television.

160. The law has significantly adjusted the provisions as per art. 72 of the criminal code to the constitutional principle of art. 27, in particular considering it inconsistent with the penitentiary benefits in the community (Court of Assize of Rome 14.5.2001) and with the optional postponement of the execution of the penalty as per art. 147 of the criminal code (Palermo Court of Assize 22.1.2007).

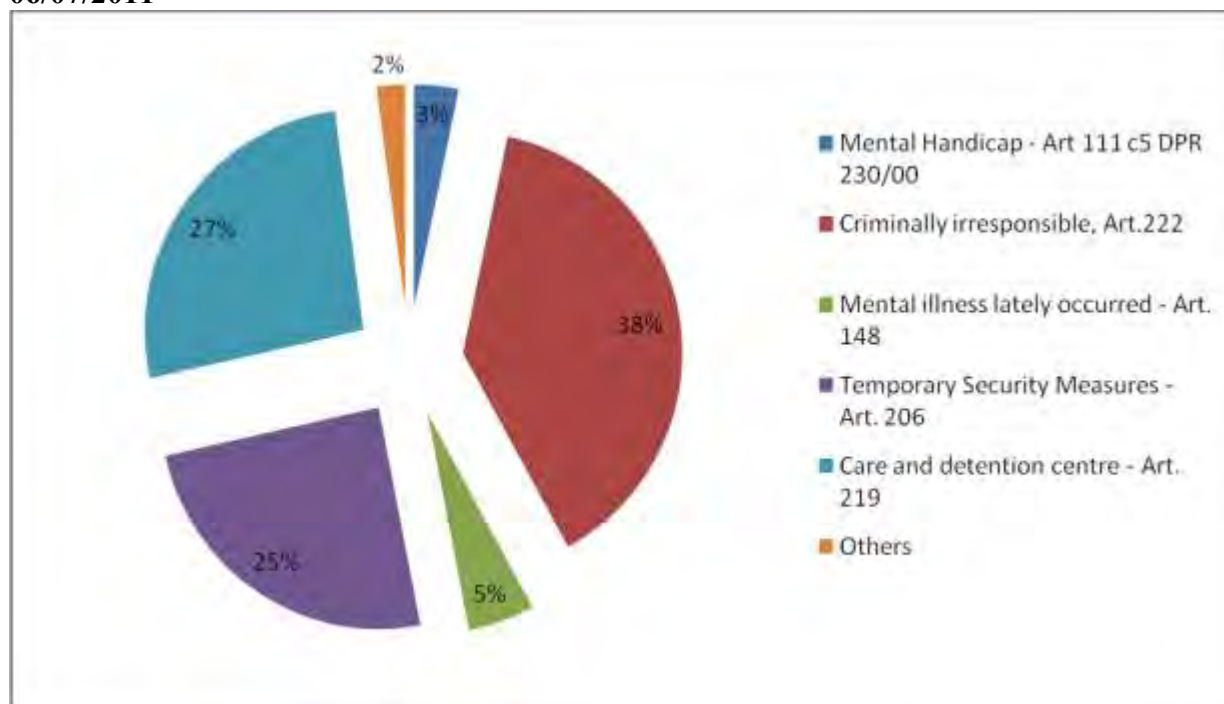
161. Recent case-law has to be mentioned (see the supervisory judge of L'Aquila on 22.6.2012) which, applying constitutional principles, has interpreted the provision in that the prohibition to communicate with the other inmates must not be applied (only provided for the disciplinary solitary confinement and in the cases of written indications by the physician certifying that the prisoner can bear such prohibition).

D. PSYCHIATRIC ESTABLISHMENTS

162. **Forensic hospitals (OPG) and mental health.** Since the mid-1970's 'Judiciary Psychiatric Hospitals' (*Ospedali Psichiatrici Giudiziari* – OPG, the Italian forensic inpatient units) have replaced the former criminal asylums in Italy. There are currently 6 forensic inpatient units in Italy: the Judiciary Psychiatric Hospital of Barcellona Pozzo di Gotto (Sicilia); the Judiciary Psychiatric Hospital of Reggio Emilia (Emilia Romagna); the Judiciary Psychiatric Hospital of Montelupo Fiorentino (Toscana); the Judiciary Psychiatric Hospital of Castiglione delle Stiviere (Lombardia); the Judiciary Psychiatric Hospital of Napoli (Campania) and the Judiciary Psychiatric Hospital of Aversa (Campania). Due to the implementation of Law 9 (see below) and the current process of closure of all OPGs, the number of inmates decreased from 1 378 in July 2011 to 972 inmates in June 2012 and the figure is continuing to decrease.

162. As at July 2011, the patients' legal status was the following: 534 patients declared criminally irresponsible and involuntarily placed in an OPG under Section 222 of the Penal Code; 338 patients whose provisional placement in an OPG had been ordered under Section 206 of the Penal Code (Temporary Security Measures); 68 sentenced prisoners requiring psychiatric care placed in the OPG under Section 148 of the Penal Code; 364 patients declared partially criminally irresponsible and placed in a 'care and detention centre' (*Casa di Cura e Custodia*) under Section 219 of the Penal Code; 45 patients declared mentally handicapped under Section 111 c5 DPR 230/00 of the Penal Code (see Figure 1).

**Figure 1. Inmates' legal status within OPGs–
06/07/2011**



Source: ITALIAN PARLIAMENT (2011), *Revisione sulle condizioni di vita e di cura all'interno degli Ospedali Psichiatrici Giudiziari [Review on life conditions and health care standards within OPGs]*.

Available:

http://www.senato.it/documenti/repository/commissioni/servizio_sanitario16/Relazione_OOPPGG_doc_XXII-bis_4.pdf Italian Parliament, Senate, 2011

163. Formerly linked to the Penitentiary Administration, the Italian forensic inpatient units were put under the responsibility of the Ministry of Health with the Prime Ministerial Decree/2008 (Ministry of Health & Ministry of Justice, 2008a). More precisely the Prime Ministerial Decree/2008, that took effect on the 14th June 2008, entrusted Regions and Local Health Authorities with health care responsibilities over prisons, juvenile justice services, as well as OPGs (Ministry of Health & Ministry of Justice, 2008a). ‘Guidelines for the operations of the NHS to protect the health of detainees and inmates in prisons and minors subjected to penal measures’ (*Linee di indirizzo per gli interventi del Servizio sanitario nazionale a tutela della salute dei detenuti e degli internati negli istituti penitenziari, e dei minorenni sottoposti a provvedimento penale*) (Ministry of Health & Ministry of Justice, 2008a) and the ‘Guidelines for the interventions in Judicial Psychiatric Hospitals and Care Homes’ (*Linee di indirizzo per gli interventi negli Ospedali Psichiatrici Giudiziari e nelle case di cura e custodia*) (Ministry of Health & Ministry of Justice, 2008b) were approved as a complement to the Prime Ministerial Decree/2008. The former identifies optimal paths for the prevention and treatment on mentally disordered offenders, in order to achieve the LEAs; the latter is the programmatic document which defines a three-phase process for the harmonisation of safety and sanitary requirements within OPGs (Ministry of Health & Ministry of Justice, 2008b). Nevertheless, the implementation of the Prime Ministerial Decree/2008 was disregarded by the Sicily Region, which have not transferred health competencies to the NHS for the administration of the Psychiatric Hospital of Barcellona Pozzo di Gotto.

164. The National Strategic Plan for Mental Health (Ministry of Health, 2008a) mentioned forensic inpatient units as one of the elements in mental health services requiring special attention. In this respect the National Strategic Plan for Mental Health suggested that:

- People admitted in OPGs (especially people acquitted with total/partial mental default) should be reassessed and a category of inmates should be set up for rapid discharge and possible use of the NHS services, especially mental health services;
- Inmates should be taken care of from their first admission in an OPG in the perspective of managing their rehabilitation and social reintegration, with active collaboration with the concerned Departments of Mental Health;
- The discharge of inmates who have come to the term of their security measure should be planned with the concerned Regions and local actors in order to ensure effective social inclusion;
- All necessary actions must be taken on a Regional level to enforce alternative projects to the admission in OPGs through the continuity of the relationship between the Departments of Mental Health and the Courts of Justice;
- Inmates formerly admitted in penitentiary facilities before being admitted to OPGs should reintegrate their former facilities with guarantee that all health interventions and rehabilitative programmes would be performed in the institutes of punishment.

165. Under Art. 82 of the Italian Constitution, a Parliamentary Commission of Inquiry into the efficacy and the efficiency of the National Health Service (*Commissione Parlamentare di Inchiesta sull'efficacia e l'efficienza del Servizio Sanitario Nazionale*) (hereafter the ‘Commission’), was set in 2008 in order to monitor the quality of both public and private health services provided in the whole territory and to control the actual implementation of health policies, thus providing the Parliament and the Public Administration with comprehensive indications on the state of health services provision in Italy. The Commission was composed by 20 senators and 1 President and holds, for the entire period of the legislature (5 years), the same powers and limitations conferred to legal authorities. Following the abovementioned recommendations of the National Strategic Plan for Mental Health (Ministry of Health, 2008a), part of the work undertaken by the Commission was devoted to the investigation of OPGs’ operations in Italy. The Commission organized regular unannounced on-the-spot inspections during the years 2008-2011 into each of the 6 OPGs and carried out interrogations with OPGs’ directors and consumers’ associations.

166. Following the inspections, the Commission published in July 2011 an evidence-based ‘Review of life conditions and health care standards within OPGs’ (‘*Revisione sulle condizioni di vita e di cura all’interno degli Ospedali Psichiatrici Giudiziari*’) (Italian Parliament, 2011). In addition to encouraging the actual transfer of responsibilities from the penitentiary administration to the NHS in the Psychiatric Hospital of Barcellona Pozzo di Gotto (Sicily) as required by the Prime Ministerial Decree/2008, the review provided a number of recommendations for the renewal of the mental health legislation and the subsequent overrun of the OPG model:

- Specific legislation on mentally disordered offenders should be approved as a complement to Law 180. The new model should couple mental health treatment with adequate security measures.
- Departments of Mental Health (DMH) should be directly responsible for taking charge of mentally disordered offenders. The new model should be based on the provision of evidence-based mental health treatments used as a form of health care, rather than restraint and control measures used as a form of punishment. For this to happen, additional resources should be allocated to DMHs. With the financial and human resources thus achieved, DMHs should provide mentally disordered offenders with small therapeutic communities (maximum 20 hosts) across a range of security levels in the whole territory.
- In order to avoid the perpetual extension of temporary security measures, which in some cases results in the so-called ‘*ergastolo bianco*’⁴, the Penal Code should be substantially modified. In this respect, the length of security measures should be clearly defined when the sentence is pronounced, as is the case in Spain. This is in line with the broader idea that the length of the detention period within an OPG should not exceed the penalty provided in prison for the same violation. A valuable alternative to this proposal would be to ensure that the level of social dangerousness of inmates is established by an adequate psychiatric medical board, rather than being assessed by the surveillance judge.
- Even following beyond the scope and the legal powers of the Commission, the Review suggests that the actual duality of the Penal Code, adopting distinct custodial measures with respect to sane and insane patients, should be replaced by a univocal approach.

167. Other concrete actions for the overrun of OPGs in Italy were undertaken between 2009 and 2011, through the establishment of National Committees (*Tavolo di Consultazione permanente sull’attuazione del DPCM 1 aprile 2008* and the *Comitato Paritetico per le problematiche degli Ospedali psichiatrici giudiziari*).

168. Legislation was approved in February 2012 (Law 9) by the Italian Government, according to which all OPGs should be closed within the 31st March 2013. Law 9 also required that, following the closure of OPGs, people who are no longer considered to be socially dangerous are taken over by Mental Health Departments, whilst other patients are integrated into new security mental health facilities of smaller size. The Ministry of Health established a working group with the aim of defining the structural, technological and organisational requirements for the construction of the new security mental health facilities, among which:

- New structures should be differentiated by the severity of the pathology;
- New facilities should be publicly owned, in virtue of the fact that in Italy the execution of a penal sentence is under the responsibility of the public administration;
- New services should host a maximum of 20 inmates.

⁴ *Ergastolo Bianco*, literally ‘white life sentence’. It is the situation under which security measures are continuously extended up until the point detained people are in security facilities for all their lives.

169. In order for the legislation to be timely implemented, the Italian Government earmarked funding totaling EUR 272 million, of which some EUR 174 million for the construction of new infrastructures destined to host socially dangerous OPG inmates and the remaining EUR 38 million for 2012 and EUR 55 million for 2013 to be allocated to Regions and provinces for running and managing activities.

170. Due to the impossibility to timely create alternative mental health infrastructures, the closure of OPGs was postponed to the 31st of March 2014. The programs designed by any single Italian region have been evaluated by the Ministry of health and in many cases adjustments have been required. As soon as modifications in the planning will be submitted, money will be transferred to the Region for starting works.

171. (paragraph 109) The process to overcome the Judicial Psychiatric Hospitals (OPG) started on the 1st April 2008 with the Decree of the President of the Council of Ministers (DPCM), establishing to shift to the Regions the responsibility of the penitentiary healthcare service, and providing for:

- to establish and to implement wings, within prisons, dedicated to the care of mental health and intended to accommodate:
 - o accused prisoners and finally sentenced prisoners affected with mental illness which intervened before or during the execution of the sentence (as per art. 148 of the Criminal Code);
 - o those offenders submitted to psychiatric observation as per art. 112, paragraph 1 of the Decree of the President of the Republic (DPR) 230/2000;
 - o finally sentenced persons having their sentence reduced because of their partial mental illness as per art. 111, paragraphs 5 and 7 of the DPR 230/2000. Those wings have been just partially established so far;
- the internees coming from the OPGs will be assigned to the Italian Region of their origin and the Mental Health Departments of the Regional Healthcare Services will take them under their responsibility and care, through therapeutic and rehabilitation programs aimed at their resettlement into community upon release, either in healthcare structures or under assignment to ambulatory local psychiatric services;
- for those subjects who are assessed as very dangerous to society, the security measures of hospitalisation in OPG and of assignment to prison hospital will be enforced in Residential facilities for the enforcement of security measures (so-called REMS – *Residenze per l'Esecuzione delle Misure di Sicurezza*), where those subjects will be gathered, according to territorial criteria.

172. That process dragged on during 2012 without coming to an end because of the problems met by the Regions in arranging the necessary structures, so that the recent law-by-decree of 25th March 2013 nr. 24 postponed the deadline for the closing of OPGs to 1st April 2014, in order to allow the Regions to establish the substitutive healthcare structures and to arrange the individual therapeutic-rehabilitation paths.

173. (paragraphs 106 and 109) The situation in Barcellona Pozzo di Gotto OPG is constantly carefully monitored by the Department of Penitentiary Administration. Despite the penitentiary healthcare services had not been transferred to Sicily Region yet (see reply to paragraph 70 above), the new Regional Government and the new President of the Sicily Region have recently showed their availability and a particular awareness on implementing the above-mentioned DPCM of 1st April 2008 as well as on identifying residential healthcare structures meeting the requirements provided for by the Ministerial Decree of 1st October 2012, also as a consequence of the visit

carried out in December 2012 by the Parliamentary Inquiry Commission presided over by Senator Ignazio Marino.

174. The Department of Penitentiary Administration urged Regional Authorities so that the healthcare structures under article 3-c of the Law 9/2012 were put at the disposal of the internees residing in Sicily Region. During the first months of 2013, some interventions have been carried out for those internees held in Barcellona P. G. OPG along with some renovation interventions of the structure, and namely:

- The internees able to be released have been identified; for them, tailored individual projects of release and assignment to regional psychiatric structures have been drafted;
- The typologies of “protected structures” have been identified, where patients will be accommodated who are not yet in the position of being released and followed by local services, given the danger which they represent to society;
- The healthcare activity has been widened, waiting for the establishment of protected structures, in the OPG wings, by increasing the number of hours of duty for psychiatrists and psychologists, by introducing a fair number of social-healthcare workers and two technicians of psychiatric rehabilitation; that was possible thanks to an increase in the budget, as suggested by the CPT in paragraph 107 of its Report);
- Sicily Region was urged to acknowledge the DPCM of 1st April 2008 and to transfer the Penitentiary Healthcare Service to the Regional Healthcare Service.

175. The Director of Barcellona Pozzo di Gotto OPG ordered, with the purpose of re-structuring the logistics and healthcare services within the structure, to evacuate the ground floor of the 8th Wing in order to quickly carry out renovation works, and, at the same time, to open the 7th Wing which became a “low-security” wing inside the establishment, where internees are entrusted to and managed by an autonomous team of physicians and nurses (without the physical presence of Penitentiary Police staff); such team was implemented thanks to the increase of economic resources and of staff.

176. The synergic actions carried out by both the Regional Authorities and the Department of Penitentiary Administration brought to a drastic reduction in the number of internees: the patients present in that OPG decreased from 237 in December 2012 to 150 in April 2013.

177. The above-mentioned Parliamentary Commission ascertained the good result of the interventions carried out, thus ordering the revocation of the building seizure which had been carried out in the previous months as a consequence of the lacks ascertained in the Barcellona Pozzo di Gotto OPG.

178. The renovation works carried out in some wings implied the temporary transfer of some internees to the female wing which was intended to accommodate the female internees coming from the OPG of Castiglione delle Stiviere, and the consequent postponement of the necessary works of sanitation of that wing (as requested by the Committee in paragraph 106 of its Report).

179. In the last years, an experience was started to accommodate in one low-security wing named “Carmen Salpietro” – established as a support to the Barcellona OPG – some internees who could be directed towards a therapeutic-rehabilitation path and who could subsequently be followed by local competent healthcare authorities. That structure today accommodates 12 internees.

179. On a more general note, with regard to joint training, this has been included in all official Agreements between relevant (health and justice) State and Regional Authorities

180. Those general issues raised by the CPT delegation, involving inter-institutional discussion aimed at sharing the answers between Ministry of health, ministry of Justice and Regions, have been reported by the MoH to the “Permanent Committee on Health in Prison” to be taken into account for common solutions. A working group has been established for addressing them together with other urgent matters

181. Prevention programs against transmissible diseases is already ongoing in some prisons, according to local programs. The above-mentioned Permanent Committee is considering to promote a National general framework, in line with the previous one on HIV (Agreement dated 15/3/2012).

CONCLUSIONS

Italian Authorities take this opportunity to reiterate their firm willingness to continue its cooperation fully with the Committee’s experts.

ⁱ In this regard it is worth recalling that Carabinieri General Command has adopted and distributed to all its dependent Commands, a register in order to record individuals who are placed in security rooms (“*Registro delle persone ristrette nelle camere di sicurezza*”) which collects all relevant information. The document is a sort of check-list for high-ranking officers when inspecting the Commands. Similar instructions were given in the past to the Police offices and recently updated by means of the Ministerial Directive mentioned below concerning the system of registration of persons being detained in the security rooms, by which it was reiterated that the following data should be recorded in said registers: full personal details of the detained persons; hour and reason of the arrest or detention, and of the subsequent release, as well as a list of personal belongings, indication of any person authorized to access and reporting of any information emerging from the carrying out of their duties. It was also recommended that the register, whose pages shall be numbered and authenticated, should be maintained by an officer entrusted with the registration operations – possibly the surveillance shift foreman – and periodically checked by the responsible officer.

ⁱⁱ a) Warrants are required for arrests (Art. 386 of the code of criminal procedure) unless there is a specific and immediate danger to which the police must respond without waiting for a warrant; b) Detainees are allowed prompt and regular access to lawyers of their choosing and to family members; c). The State provides a lawyer to indigents (Art. 97 of the code of criminal procedure). Art. 386 of the criminal proceeding code sets out as a general provision that the criminal investigation department officers executing the arrest measures or guarding the person arrested must give prompt notice about that to the competent public prosecutor. They also inform the person under arrest about the right to choose a legal counselling. Thus, the criminal investigation department officers must give prompt notice of the arrest to the legal counsel who may be appointed *ex officio* by the public prosecutor unless chosen by the person under arrest, pursuant to Art. 97 of the criminal proceeding code. Besides, the Italian legal system includes a general provision on the basis of which **no waiver of legal defense is allowed** to those who are put under arrest.

ⁱⁱⁱ The Act enforcing Article 111 of the Constitution provides, in its present wording, that any person, since his/her first contact with the judicial authorities, shall be informed of his/her rights in the language s/he knows. The Supreme Court (*Corte di Cassazione*) recently reaffirmed that any judicial act regarding the suspect (*indagato*) and/or the accused (*imputato*) shall be null and void if it has non been translated in his/her mother-tongue. Article 143 of the code of criminal procedure envisages that the accused who does not understand the Italian language has the right to be assisted, free of charge, by an interpreter, in order to understand the accusations against him/her and to be able to follow the conclusions of the case in which s/he is involved. Besides, the competent Authority appoints an interpreter, when necessary, to translate a printed document in a foreign language, a dialect not easily comprehensible, or upon request of the person who want to make a declaration and does not understand the Italian language. The declaration can also be in a written form. In such case it will be integrated in the report with the translation made by the interpreter. An interpreter is nominated even when the judge, the Public Prosecutor or the officer of the Criminal Investigations Police have personal knowledge of the language or of the dialect that are to be interpreted. Along these lines, due attention is also paid to the institution of legal aid, the system of which was amended by Legislative Decree No.115/02, with the aim at ensuring adequate and effective legal defense (More specifically, this Decree simplifies and extends the access to legal aid in civil and administrative proceedings. Access to this institution is guaranteed to whoever has an income below 9.296,22 € per year). As to the criminal proceedings, Act No.134/01 envisages the self-certification procedure for the income of the defendant. Such procedure is also extended to those foreigners who have an income abroad (In this regard, ad hoc information desks have been established at Bar Associations).

^{iv} More specifically, Art.387 of the criminal proceeding code envisages that upon agreement with the person under arrest or detained, the criminal investigation police must promptly inform his/her family members.

**Annex No.1 - The granting of measures - stock and flow data regarding the subjects of the applications for the years 2010-2011
(national total)**

	Year 2011			Year 2010		
	recorded	Decided	Pending at the end of the year	recorded	Decided	Pending at the end of the year
subjects of the applications*						
Alternative measures						
Probation under the supervision of social services	27,838	26,278	16,292	30,035	27,658	14,786
Probation under the supervision of social services pursuant to Art. 94 of Presidential Decree 119/2005	6,270	6,131	2,778	7,039	6,756	2,668
Probation pursuant to Art. 47 quater of Prison Rules	170	155	95	204	195	88
Home detention pursuant to Art. 47 ter of Prison Rules	17,735	16,971	9,191	20,395	18,987	8,588
Home detention pursuant to Art. 47 ter 1 bis	10,472	9,848	5,231	11,433	10,582	4,662
Home detention pursuant to Art. 16 nonies of Decree- Law 8/1991	141	131	69	125	102	61
Home detention pursuant to Art. 47 quater of Prison Rules	73	71	31	122	109	30
Home detention for recidivists	7	7	2	15	14	2
Home detention for persons over 70 years of age	53	61	14	80	71	24
Special home detention	165	138	68	140	132	44
<i>Enforcement of a custodial sentence at home</i>	17,799	18,118	2,460	3,615	801	2,814
Semiliberty	11,385	10,889	5,851	12,190	11,596	5,376
Substitute sanctions						
<i>Monitored liberty</i>	655	549	295	474	415	190
<i>semidetention</i>	67	53	55	76	54	42
Other measures						
<i>Expulsion of a foreign national as an alternative sanction (pursuant to Art. 16 para 1 of Law 30/2003)</i>	5,035	4,926	1,733	5,562	5,656	1,672
<i>Conditional suspension of a custodial sentence pursuant to Art. 2 of Law 207/2003</i>	575	591	229	853	863	247
<i>Suspension of sentence execution pursuant to Art. 90 of Presidential Decree 309/90</i>	571	544	295	609	616	272
Parole	657	660	226	751	768	230
<i>Work release pursuant to Art. 21 of Prison Rules</i>	2,209	2,208	55	1,795	1,775	75

* the subject/measure of the application is the the data collection unit

Each application can contain one or more subjects/measures, therefore the total number of subjects/measures can be more than the total number of applications and cannot be regarded as indicating the number of applications submitted.

The same is true with regard to the number of applicants since each one of them can submit more than one application

In italics the measures falling within the competence of the Supervisory Office

**ANNEX No.1 - The granting of measures - outcome of the decisions expressed as a percentage of the total application subjects decided for the year 2011
(National total)**

	Year 2011						
	% granted	% rejected	% dismissed because there was "no reason to decide" or "no need to decide"	% inadmissible	% otherwise decided	total	Total in absolute value
subjects of the applications*							
Alternative measures							
Probation under the supervision of social services	26.46%	43.49%	12.64%	10.80%	6.60%	100.00%	26,278
Probation under the supervision of social services pursuant to Art. 94 of Presidential	37.29%	22.51%	9.15%	21.82%	9.23%	100.00%	6,131
Probation pursuant to Art. 47 quater of Prison Rules	13.55%	28.39%	14.19%	10.97%	32.90%	100.00%	155
Home detention pursuant to Art. 47 ter of Prison Rules	23.58%	22.54%	23.27%	22.12%	8.49%	100.00%	16,971
Home detention pursuant to Art. 47 ter 1 bis	22.35%	19.01%	31.43%	21.20%	6.01%	100.00%	9,848
Home detention pursuant to Art. 16 nonies of Decree- Law 8/1991	32.82%	35.11%	6.87%	16.79%	8.40%	100.00%	131
Home detention pursuant to Art. 47 quater of Prison Rules	11.27%	22.54%	18.31%	32.39%	15.49%	100.00%	71
Home detention for recidivists	14.29%	14.29%	0.00%	14.29%	57.14%	100.00%	7
Home detention for persons over 70 years of age	32.79%	14.75%	16.39%	21.31%	14.75%	100.00%	61
Special home detention	11.59%	39.86%	15.94%	19.57%	13.04%	100.00%	138
<i>Enforcement of a custodial sentence at home</i>	30.49%	28.13%	12.89%	21.98%	6.51%	100.00%	18,118
Semiliberty	8.76%	28.01%	34.49%	21.71%	7.03%	100.00%	10,889
Substitute sanctions							
<i>Monitored liberty</i>	77.78%	0.00%	6.19%	0.36%	15.66%	100.00%	549
<i>semidetention</i>	54.72%	0.00%	18.87%	1.89%	24.53%	100.00%	53
Other measures							
<i>Expulsion of a foreign national as an alternative sanction (pursuant to Art. 16 para. 5</i>	23.10%	13.36%	41.51%	15.71%	6.31%	100.00%	4,926
<i>Conditional suspension of a custodial sentence pursuant to Art. 2 of Law 207/2003</i>	1.35%	15.40%	4.57%	69.88%	8.80%	100.00%	591
Suspension of sentence execution pursuant to Art. 90 of Presidential Decree 309/90	2.02%	21.32%	16.91%	42.10%	17.65%	100.00%	544
Parole	6.06%	41.67%	10.91%	32.12%	9.24%	100.00%	660
<i>Work release pursuant to Art. 21 of Prison Rules</i>	92.07%	3.08%	1.09%	0.32%	3.44%	100.00%	2,208
In italics the measures falling within the competence of the Supervisory Office							

**Table.S.3 applications concernig the exercise or the limitation of the rights of persons in the year 2011
(National total)**

	Year 2011			
Applications for the exercise/limitation of a right	recorded	decided	% granted	pending at the end of the year
Personal rights				
Permission to make phone calls	3,257	3,328	88%	2
Possibility of listening to and recording prisoner meetings (pursuant to Art. 41 bis para.2 quater le	173	170	75%	3
Checking the contents of the envelopes containing letters	88	92	74%	1
Limiting the exchange of letters and telegrams and the access to press	952	950	88%	16
Subjecting letters to a seal of approval	305	304	87%	13
delaying affixing a seal of approval on letters	1,932	2,050	96%	37
Withholding letters	1,170	1,246	58%	10
Right to health				
Specialist examination in an outside treatment facility	46,880	46,817	98%	517
Approving a specialist examination in an outside treatment facilitiy	4,446	4,245	97%	48
Approving hospitalization in a civil hospital or in an outside treatment facility	2,258	2,224	97%	52
Revoking hospitalization in a forensic psychiatric hospital	26	23	30%	8
Revoking hospitalization in a civil hospital or outside treatment facility/authorisation to go back to	449	452	87%	-
Hospitalization in a civil hospital or outside treatment facilitiy	3,410	3,406	92%	95
Day hospitalization in public health facility	1,109	1,099	98%	11
Hospitalization in a forensic psychiatric hospital	84	78	62%	11
Hospitalization in a forensic psychiatric hospital for psychiatric observation	423	415	87%	18
Extension of hospitalization in a forensic psychiatric hospital	16	15	53%	1
Leaves of absence				
Bonus leave of absence	43,161	42,777	48%	4,888
Emergency leave of absence	7,943	7,985	43%	334
Modification of leave of absence	340	341	84%	1
Revocation of emergency leave of absence	81	80	95%	2
Revocation of bonus leave of absence	243	244	95%	3
Parental role				
Assisting children outside prison	152	177	34%	19



CPT/Inf (2013) 30

Report

**to the Italian Government
on the visit to Italy
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 14 to 18 June 2010

The Italian Government has requested the publication of this report and of their response. The Government's response is set out in document CPT/Inf (2013) 31.

Strasbourg, 19 November 2013

Note:

In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

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Copy of the letter transmitting the CPT's report

Mr Diego Brasioli
Minister Plenipotentiary
President of the Inter-Ministerial Committee on
Human Rights
Ministry of Foreign Affairs
Piazzale della Farnesina 1
I – 00194 Rome

Strasbourg, 3 December 2010

Dear Mr Brasioli,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Italy drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning two aspects of its visit to Italy from 14 to 18 June 2010, namely the prevention of suicide in the prison context, and the transfer of responsibility for prison health care from the Ministry of Justice to the regional health-care authorities. This report was adopted by the CPT at its 73rd meeting, held from 8 to 12 November 2010. A further report concerning the third aspect of the visit, namely accountability for ill-treatment allegedly inflicted on detained persons, will be forwarded to the Italian authorities separately, at a later date.

The various recommendations, comments and requests for information formulated by the CPT are listed in the Appendix of the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Italian authorities to provide within **four months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Italian authorities to provide, in the above-mentioned response, reactions and replies to the comments and requests for information.

It would be most helpful if a copy of the response could be provided in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Mauro Palma
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Italy from 14 to 18 June 2010. The visit was one which appeared to the Committee “to be required in the circumstances” (see Article 7, paragraph 1, of the Convention).

2. The visit was carried out by the following members of the CPT:

- Marc NÈVE, Head of delegation
- Dan DERMENGIU
- Pétur HAUSSON
- Xavier RONSIN.

They were supported by Caterina BOLOGNESE and Francesca MONTAGNA, of the CPT’s Secretariat, and were assisted by:

- Alan MITCHELL, medical doctor, former Head of Health-care, Scottish Prison Service, United Kingdom (expert)
- Paula BRUNO (interpreter)
- Maria FITZGIBBON (interpreter)
- Salim GHOSTINE (interpreter)
- Antonella LUCCARINI (interpreter).

B. Context of the visit and establishments visited

3. The visit focused on three issues. Following its previous periodic visit to Italy in 2008, the CPT had recommended a number of measures in relation to suicide prevention in prisons¹. In the light of the high number of suicides in Italian prisons, the Committee decided to take a closer look at this issue.

Further, the CPT decided to take stock of the ongoing transfer of responsibility for prison health care from the central penitentiary administration to the regional health-care authorities.

The opportunity was also taken during the visit to examine accountability for ill-treatment by law enforcement officials and prison officers, including the effectiveness of investigations. In this connection a number of recent cases of alleged ill-treatment were considered. On 13 September 2010, the Italian authorities provided the CPT with extensive documentation concerning, inter alia, this issue; on 9 November 2010, they provided the Committee with the full record of the investigative acts taken in respect of one of the specific cases considered during the visit. In light of this information, the Committee decided to consider the issue of accountability in a separate report, to be delivered at a later date.

4. The delegation paid targeted visits to a number of establishments, none of which had previously been visited by the CPT.

Castrognone Prison², located in the outskirts of Teramo (Abruzzo region), opened in 1986. With an official capacity for 231 inmates, the establishment comprises a small section for up to 21 women and four detention blocks for men. At the time of the visit, it was overcrowded, accommodating 29 women and 360 men.

Mammagialla Prison³, in Viterbo, north of Rome (Lazio region), was originally built in 1993 as a high security prison for men and consists of several three-storey blocks. At the time of the visit it was overcrowded, holding 683 inmates, for an official capacity of 443. According to the prison authorities, a high proportion of the inmate population had been transferred to the establishment because they were considered to be particularly challenging, either from a security perspective or due to their suffering from a psychiatric condition.

The vast majority of inmates, 570, were held in six sections with medium-security (standard) accommodation; the high security unit, consisting of three sections (including so-called "41 bis" prisoners, suspected or convicted of very serious organised crime) held 52 prisoners; and the protection unit for vulnerable persons accommodated 43 inmates. A further 18 inmates were held in the section for newly arrived prisoners.

The **Prison Health-Care Unit at Sandro Pertini Hospital** in Rome is a 22-bed facility which opened in 2005. It is one of three such facilities in Italy, providing inpatient and outpatient care to inmates primarily from prisons in Lazio. Nine patients were hospitalised at the time of the visit.

¹ See CPT/Inf (2010) 12, at paragraphs 106, 108, 109, 112 and 113.

² Hereinafter "Teramo Prison".

³ Hereinafter "Viterbo Prison".

The **holding cells at the Rome Courthouse** are located at lower ground floor level in two separate buildings. They are intended for stays of up to a few hours prior to or after a court hearing.

The delegation also visited three *Carabinieri* establishments, all in Rome: **Trionfale area Headquarters** and the **stations of Monte Mario and Ponte Milvio**. Whereas the cells at Trionfale had been out of service for a few months prior to the visit, Monte Mario and Ponte Milvio stations each possessed two cells in which most persons deprived of their liberty by the *Carabinieri* usually did not spend more than a few hours (and in no case more than 24 hours).

Some of the above-mentioned establishments were visited with reference to the third aspect of the visit (see paragraph 3 above).

C. Consultations held by the delegation and cooperation received

5. In the course of the visit, the CPT's delegation held consultations with officials from the Ministries of Foreign Affairs, Health, Interior (in particular, representatives of the national police) and Justice, as well as with representatives of the *Carabinieri* and the *Guardia di Finanza*. It also met with health-care service providers in the regions of Abruzzo and Lazio.

The delegation had discussions with Mr Vitaliano ESPOSITO, the Prosecutor-General, Mr Giovanni FERRARA, Chief Prosecutor of Rome, Mr Gabriele FERRETTI, Chief Prosecutor of Teramo, and a number of prosecutors at the Supreme Court and the Rome District Court.

The CPT's delegation also met two parliamentarians: Senator Albertina SOLIANI and Deputy Leoluca ORLANDO, President of the parliamentary *inquiry on deficiencies in the health-care sector and on regional health-care deficits*.

Further, the delegation met Mr Angiolo MARRONI, the *Garante dei detenuti* (detained persons' Ombudsman) for the Lazio region, as well as representatives of non-governmental organisations active in the areas of interest to the Committee.

Some of the above-mentioned persons were met by the delegation in relation to the third aspect of the visit (see paragraph 3 above).

6. With one exception, the CPT's delegation had unlimited access to places it wished to visit. The delegation was also able to meet in private with all detained persons with whom it wanted to speak.

The exception referred to above concerned the initial refusal of access – expressed in an improper and, in particular, arrogant manner by officers on duty – to one of the two detention blocks situated at the Rome Courthouse. The incident was resolved after three quarters of an hour, following clarification of the situation by the central authorities. **The Committee trusts that, in future, the credentials supplied by the Italian authorities to CPT visiting delegations will cover all places where persons may be deprived of their liberty by a public authority, including courthouse detention cells, and that delegations will be received with a level of courtesy which is in keeping with good cooperation.**

As regards access during the visit to information requested, the CPT's delegation did not receive complete copies of the reports on investigations into deaths at Teramo and Viterbo Prisons in 2008 and 2009. In particular, no copies of autopsy results or conclusions of the prosecutor into the circumstances surrounding the deaths were provided. Statistics requested on criminal and/or disciplinary proceedings concerning alleged ill-treatment by law enforcement officials and prison staff were also not provided in the course of the visit.

7. At the end of the visit, the delegation provided the Italian authorities with its preliminary observations and reiterated a number of requests for information and documentation.

By letter of 13 September 2010, the Italian authorities informed the CPT of measures taken in response to some of the delegation's preliminary observations, and provided the Committee with much of the specific information and documentation requested by the delegation. This information and documentation has been taken into account in the relevant sections of the present report.

Further, as mentioned at paragraph 3, extensive documentation pertaining in particular to investigations into alleged ill-treatment was provided on 9 November 2010. This information will be taken into account in the separate report addressing this issue.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Prevention of suicide (and self-harm) in the prison context

1. Preliminary remarks

8. By virtue of its preventive mandate, the CPT is concerned with every aspect of prison life related to the safety and well-being of prisoners, including measures taken by the authorities, in the discharge of their duty of care towards prisoners, to prevent instances of suicide and self-harm.

9. In 2009, 52 suicides⁴ were officially recorded throughout the Italian prison system, for an average daily inmate population of 63,087. In the first seven months of 2010, there had already been 38 suicides for an average daily prison population of 67,596 inmates⁵. This represents a worrying suicide rate.

At Viterbo Prison, two suicides were registered in 2008 and one in 2009. Six suicides were recorded at Teramo Prison since 2005, i.e. around one per year, whereas in the past they had occurred far less frequently.

⁴ This figure does not include six cases of gas inhalation, where it was not possible to ascertain a suicidal intent.

⁵ It should also be noted that the (non-governmental) "Permanent Observatory on Deaths in Prison" registered 72 suicides in Italian prisons in 2009. Both the Observatory and OSAPP, a national prison staff trade union, had registered 58 suicides in 2010 by 31 October 2010, when the official prison population stood at 68,795 inmates.

The suicide rate among the general population in Italy was less than five per 100,000 inhabitants in 2008⁶. While it is not unusual for the suicide rate to be higher in prison⁷, the number of suicides in the prisons visited, as well as in Italian prisons in general, appears to be disproportionately high.

10. The CPT notes that the causes of prisoner deaths were often not recorded in a medically satisfactory or consistent manner. For example, for certain inmates who had died in their thirties, who apparently suffered from no relevant pre-existing pathological condition, the cause of death noted was “cardio-respiratory arrest”; this is not a cause of death *per se* but merely confirmation that a person is dead.

Further, the criteria for classifying apparently self-inflicted death as suicide varied. Nearly all suicides officially recorded by the Italian authorities concern deaths by hanging. The delegation was told by the authorities that a considerable number of prisoner deaths were classified as “accidental overdose” or as other types of accident, such as gas inhalation, even when they might have been suicides. As a result, the statistics on suicides are not necessarily reliable and it is very difficult to assess the impact of suicide prevention interventions.

11. The various circulars issued by the Department of Penitentiary Administration⁸ provide for a comprehensive, multidisciplinary approach to the question of prevention of suicide in prisons. However, the CPT delegation’s observations indicated that the practical implementation of the above suicide prevention policy was facing a number of challenges which undermined its effectiveness. For example, in one of the establishments visited there was no new arrivals section, and the delegation saw little evidence in either establishment of so-called “listener” staff.

12. The delegation also observed that suicide prevention programmes varied significantly between the two prisons visited. At Viterbo Prison, a “multi-disciplinary suicide prevention team” had been established and met every fortnight. It was composed of an educator, a psychologist, a nurse, prison officers and the prison director, and assisted by a trainee psychiatrist. In Teramo Prison, on the other hand, the delegation was informed that a similarly composed team existed but it only met on an ad hoc basis. The management of both prisons pointed to the lack of a sufficient number of educators to ensure the effectiveness of coordination among the individual team members.

Given the average of one suicide per year and the significant number of inmates (around 120) identified to be at risk of suicide (or self-harm), regular and frequent coordination of suicide prevention efforts would appear to be essential at Teramo Prison.

⁶ In 2008, 2828 suicides were registered in the general population in Italy, which corresponds to 4.7 suicides per 100,000 inhabitants. In the Lazio region 182 suicides were recorded, corresponding to a rate of 3.3. Sixty-two suicides were recorded in Abruzzo, corresponding to a rate of 4.7. It is acknowledged that the rate of notified suicides in the general population might be lower than the rate of actual suicides.

⁷ See Seena Fazel *et al* "Prison suicide in 12 countries: an ecological study of 861 suicides during 2003-2007", *Soc Psychiat Epidemiol*, 7 February 2010.

⁸ See DAP circular no. 0177644 of 26 April 2010, *aimed at reducing uneasiness resulting from detention and preventing self-harm*, as well as circulars no. 3233/5683 (1987) on *protection of the life and physical and psychological integrity of prisoners*, no. 3524 (2000) on *guidelines on self-harm and suicide*, no. 0181045 (2007) on *guidelines on reception of inmates first arriving in prison*, and no. 0032296 (2010) on *the suicide emergency and the establishment of listener units among prison staff*.

2. Identification of prisoners who may be at risk of suicide or self-harm

13. Medical screening on arrival, and the reception process as a whole, has an important role to play in suicide prevention; performed properly, it should assist in identifying those at risk and relieve some of the anxiety experienced by all newly-arrived prisoners.

14. At Teramo and Viterbo Prisons, inmates were medically screened by a doctor usually within a few hours of their arrival, irrespective of whether it was their first point of entry into the prison system or they had been transferred from another prison. The screening included, in theory, a suicide risk assessment carried out by the doctor and subsequently by a psychologist; the doctor could also refer an inmate for a psychiatric assessment.

However, no identified screening tool⁹ was in place at either of the prisons visited to assist in assessing the risk of suicide or self-harm. Further, it appeared from the delegation's interviews and from the medical files examined, that the increased risk of suicide among drug and alcohol dependent inmates was not sufficiently taken into account in the course of the screening process¹⁰.

Finally, when prisoners were transferred from other establishments, information about self-harm, suicide risk or other indicators of vulnerability was not immediately and systematically transmitted to the new prison establishment¹¹.

The CPT recommends that the Italian authorities introduce a standard screening algorithm to assess the risk of suicide (and self-harm) in prisons; such a tool should, in particular, ensure that drug and/or alcohol dependence are adequately taken into account in the screening process as factors potentially heightening the risk of suicide. Further, steps should be taken to ensure that information on an inmate at risk of suicide or self-harm is transmitted in full and promptly to all those who have a role in caring for the prisoner, including when he or she is transferred to another establishment.

15. The prevention of suicide, including the identification of those at risk, should not rest with the health-care service alone. All prison staff coming into contact with inmates – and as a priority staff who work in the reception and admissions units – should be trained in recognising indications of suicidal risk. In this connection, it should be noted that the periods immediately before and after trial and, in some cases, the pre-release period, are associated with an increased risk of suicide.

Although the delegation was informed by the authorities that staff members had succeeded in averting deaths by suicide, it was also noted that staff at the prisons visited received no specific training in suicide prevention. **The CPT recommends that all prison staff in contact with inmates be provided with practical training on the recognition of behaviour indicative of a risk of suicide. Training should also be provided on basic resuscitation skills.**

⁹ Including a checklist of standard questions, e.g. the Viennese Instrument for Suicidality in Correctional Institutions, or “VISCI”.

¹⁰ For example, one inmate who committed suicide by hanging was initially evaluated at both Regina Coeli and Viterbo Prisons as presenting a “minimal risk of self-harm and/or violence”, despite suffering from drug addiction.

¹¹ Notwithstanding this being required by Penitentiary Administration Circular Letter no. 3233/5683 of 30 December 1987 and, at Viterbo Prison, by Service Order No. 282/2008 of 27 October 2008.

3. Management of prisoners at risk

16. Prison management, including the head of the prison health service, should ensure that there is an adequate awareness of the subject of suicide prevention throughout the establishment, and that appropriate procedures are in place. Steps should also be taken to ensure a proper flow of information within a given establishment about persons who have been identified as potentially at risk¹².

All persons identified as presenting a suicide risk should benefit from counselling, support and appropriate association. Further, such persons should be subject to special precautions (see paragraph 19).

17. At Viterbo and Teramo Prisons, inmates manifesting inclinations of suicide or self-harm at the first medical screening or later during their sentence were classified as requiring “high” or “very high” surveillance. A very small number of inmates were identified as having to be under “constant” supervision of staff, usually at the request of a psychiatrist. These classifications essentially determined the frequency of visual checks to be made by prison staff on the prisoners concerned¹³.

The supervision of prisoners at risk was carried out by prison officers only, who evidently understood this duty as a security measure and not as being a welfare-related task. Medical staff appeared to have little if any role in following up their assessment of the potentially life-threatening situation of prisoners classified as requiring high or very high surveillance. As regards, more specifically, prisoners identified as requiring very high surveillance, they remained in their cells alone.

In the CPT's view, the treatment and care of patients identified as being at risk of suicide should be overseen by medical staff. Once such a person has been identified, he or she should be the subject of regular medical visits and follow-up. Risk factors should be identified and removed, as far as possible.

Both medical and custodial staff should have an important role to play in the management of the risk of suicide or self-harm. **The CPT recommends that their respective roles be better defined and strengthened in this regard.**

18. At both Teramo and Viterbo Prisons, many prisoners classified as needing high or very high surveillance claimed that prison staff only looked into their cells on an infrequent basis and only via the spy-hole, rather than entering the cell and engaging the inmate in conversation, and that staff often did not respond to their calls for assistance.

¹² As regards transfers of inmates and the exchange of information between establishments, see paragraph 14 above.

¹³ “High” being 4 to 5 times daily; “very high” being 2 to 3 times per hour; “constant” being four times per hour.

In the CPT's view, a key element of suicide prevention is the establishment of constructive relations between staff and inmates, as well as between inmates themselves. The death of an inmate is likely to cause suffering and warrants the provision of appropriate psychological support to inmates and prison staff. But each life saved by a staff member also gives greater meaning to custodial tasks, and should be valued as such by the prison staff and management alike.

As far as the CPT's delegation could observe, contacts between prison staff and inmates in the prisons visited were distant. Moreover, several allegations of verbal abuse were heard at Viterbo Prison, including claims that when inmates asked to see a doctor for already diagnosed depression, certain prison staff responded in an unacceptable manner, for example by telling them to "go hang" themselves. This observation reinforces the necessity to ensure that staff working with vulnerable prisoners possess the requisite skills. **The CPT recommends that staff entrusted with the supervision of prisoners presenting a suicide risk receive specific training on interpersonal communication skills.**

19. Several inmates classified as requiring high surveillance at Teramo and Viterbo Prisons had died from asphyxiation using makeshift nooses (bed sheets, underwear or fabricated items) to hang themselves from a window or a hook affixed by the inmate in the cell bathroom. Suicide-proof clothing and bedding was apparently not in use at the establishments visited.

The CPT recommends that persons who present a major suicide risk are placed in a cell which does not contain any ligature points or other means which might facilitate an attempt to commit suicide (e.g. cell window bars, broken glass, belts or ties, etc), and kept under constant supervision by prison staff. Further, the Committee calls upon the Italian authorities to ensure that, when necessary, appropriate suicide-proof clothing is provided to inmates.

20. The CPT's delegation learned that a considerable number of deaths, including of inmates under surveillance, have occurred as a result of intentional inhalation of gas from small canisters available to prisoners for cooking purposes. Although it is difficult to ascertain precisely how many of these deaths are attributable to suicide as opposed to accidental overdose, the provision of such gas canisters to prisoners, especially those inmates already identified as being at risk of suicide, is not compatible with ensuring a safe prison environment. **The CPT recommends that such devices never be available in prison cells occupied by prisoners who present a risk of suicide (or self-harm); alternative cooking arrangements should be made in such cases.**

21. Further, the delegation was informed of cases in which prisons, due to delays in access to acute mental health care services, were obliged to cope with prisoners showing signs of severe suicidal or auto-aggressive behaviour. In a number of such cases, the prisoner in question committed suicide while in prison¹⁴.

The CPT recommends that the necessary steps be taken to ensure that persons presenting an acute risk of suicide are immediately transferred, for appropriate care, to an acute mental health unit.

¹⁴ For example, an inmate who committed suicide at Viterbo Prison on 19 January 2008 had been recommended by two separate doctors in September and December 2007 for transfer to a Judicial Psychiatric Hospital due to a very high risk of suicide.

22. More generally, the limited availability of psychiatric, psychological and educator staff – coupled with the absence of meaningful activities – undermined overall efforts at a systematic, multi-disciplinary approach towards the prevention of self-harm and the associated risk of suicide. **The Committee reiterates its recommendation¹⁵ that effective access to psychological or psychiatric care for all prisoners who require it be ensured.**

23. In some cases, prisoners considered to be at risk of suicide or self-harm were isolated from other prisoners. *De facto* isolation, resulting from a combination of confinement to a cell for most of the day, little or no contact with staff, and a poor regime, is the exact opposite of the care required; prisoners presenting a risk of suicide or self-harm should be afforded increased contacts with other persons. Indeed, isolation may well increase the risk of suicide rather than decrease it. The CPT's delegation met a number of inmates who had been in *de facto* isolation for several weeks and who declared that they would go insane if their isolation were to continue.

24. Provision of contact with the outside world should also be reviewed. The delegation noted that infrequent contact with family members was considered by medical staff in the prisons visited as the most pronounced damaging factor for a prisoner's mental health. In certain instances, increased family contact (i.e. visits and telephone calls) had been helpful in improving the mental health of persons met by the delegation. However, the need for enhanced contacts did not appear to be individually assessed.

25. To sum up, the central plank of a suicide prevention programme in the Italian prison context must be to address the problems of inadequate regimes and understaffing and to ensure that appropriate staff training needs are met. It should also be noted that the multiple adverse consequences of overcrowding may increase the risk of suicide.

The CPT calls upon the Italian authorities to analyse the high suicide rate and its causes and to introduce alternative suicide prevention measures – instead of isolation – such as increased and varied activities, opportunities for association, contact with the outside world and effective, multidisciplinary addiction treatment. Active suicide prevention efforts are needed, through the provision of supportive monitoring and the development of trusting relationships between inmates and staff. Further, measures should be taken to ensure that prevention efforts are adequately coordinated, in particular by regular and frequent meetings of the multidisciplinary team and through an adequate level of input from specialist staff such as psychiatrists and educators.

¹⁵ See the report on the CPT's previous periodic visit to Italy in 2008 (CPT/Inf (2010) 12), at paragraphs 106, 108, 109, 112 and 113.

4. Measures taken in the event of death or self-harm in custody

26. All prison deaths were investigated internally by the Department of Penitentiary Administration Inspectorate in order to establish whether the death could be linked to any negligence or wrongdoing on the part of prison administration staff. From the files provided to the CPT's delegation, it would appear that such investigations were conducted in a thorough, apparently critical manner, leading to recommendations, where appropriate, aimed at preventing deaths in future.

Nevertheless, it is not clear from the information provided to the delegation which cases are investigated by the judicial authorities, or what are the criteria for carrying out an autopsy.

Further, the conclusions of investigations, including autopsy reports, were not routinely communicated to the prison management which, in the CPT's view, limits their ability to see what lessons could be learned from the deaths and to respond accordingly. Completeness of information about the actual cause and modality of death is needed in order to identify the magnitude of the problem, the profiles of the prisoners who commit suicide, and to develop a strategy aimed at preventing this phenomenon.

27. It should also be noted that acts of self-harm frequently reflect problems and conditions of a psychological or psychiatric nature, and should be approached from a therapeutic and not from a punitive standpoint. As already noted above, the isolation of the prisoners concerned (even if it is not considered a disciplinary sanction) is likely to exacerbate their psychological or psychiatric problems. It should also be added that all cases of self-harm ought to be assessed medically immediately after the incident to evaluate the extent of any injuries and to assess the psychological state of the prisoner. **In the CPT's view, these requirements were not being met to a satisfactory extent at the prisons visited.**

28. **The CPT recommends that the Italian authorities introduce a clear policy and comprehensive procedure on the identification of the causes of death of detained persons – including when the death occurs in (or on the way to) hospital – and clear criteria on the classification of deaths as suicides.**

In particular, every death of a prisoner should be the subject of a thorough investigation (separate from the *internal* investigation referred to at paragraph 26, subparagraph 1) to ascertain, *inter alia*, the cause of death, the facts leading up to the death, including any contributing factors, and whether the death might have been prevented. Further, whenever a person dies in prison (or soon after transfer from prison), an autopsy should be carried out¹⁶ and the prison's management and medical services should be informed of the outcome.

Finally, **an analysis should be undertaken of each death in prison to consider what general lessons may be learned for the prison in which the death occurred and whether in the case of self-inflicted death there are any systemic, nationwide measures that need to be taken.**

¹⁶ The Committee acknowledges that there may be highly exceptional cases in which, as prescribed by law, an independent authority may decide that an autopsy is not required.

B. Transfer of responsibility for prison health care from the Ministry of Justice to the regional health-care authorities

29. Extensive prison healthcare reform has been under consideration in Italy for the past few decades, with the main aim of integrating those services into the national health-care system, i.e. to transfer responsibility for the health care of inmates away from the central prison administration and towards the *Aziende Sanitarie Locali* (“ASLs”), which are the regional entities responsible for providing health-care services to the general population. A major part of the reform has been concluded in respect of most regions since the CPT’s periodic visit in 2008. Having raised a number of concerns in the report on that visit in view of the imminent transfer of responsibility¹⁷, the Committee decided to take stock of progress made since 2008.

30. The recent policy trend in Europe has favoured prison health-care services being placed either to a great extent, or entirely, under Ministry of Health responsibility¹⁸. In principle, the CPT supports this trend. In particular, it is convinced that a greater participation of Health Ministries in this area will help to ensure optimum health care for prisoners, as well as implementation of the general principle of the equivalence of health care in prison with that in the wider community.

31. One of the stated aims of the transfer of responsibility in Italy was to ensure that persons held in prison benefit from the same level of medical care as persons in the wider community. In this respect, the CPT would emphasise that equality of care must mean effective equality. The fact that ASLs would treat prisoners just as they would other patients should be positive. In practice, however, effective equality of care requires the special circumstances of detained patients to be adequately taken into consideration.

There would appear to be a variation in the level of health-care benefits provided to persons residing in different Italian regions. This means that prisoners, too, will receive a varying degree of health care depending on the region in which they are incarcerated. Given also that prisoners are often transferred between prisons in different regions, such regional differences may signify a variation in the level of care and may also have an impact on the continuity of care.

The CPT would welcome the comments of the Italian authorities as regards the above-mentioned issues.

¹⁷ See the 2008 visit report (CPT/Inf (2010) 12, at paragraph 87. The transfer in respect of Italy’s autonomous regions (Friuli Venezia Giulia, Sardinia, Sicily and Val d’Aosta) and provinces (Trento and Bolzano) was still pending at the time of the 2010 visit.

¹⁸ See, for example, Recommendation No R (87) 7 of the Committee of Ministers of the Council of Europe to member States concerning the ethical and organisational aspects of health care in prison.

32. Funding in general appeared to present a problem, in that the ASLs had, at least until the visit in June 2010, been advancing payment for health care staff salaries and services from the regional budgets, to which the relevant financial resources had still not been transferred from the Justice Ministry. Fortunately, the situation had not led to an interruption of services. However, it was clear that such a situation could not be sustained financially in the long term, especially in the less affluent regions.

The CPT trusts that the above-mentioned budgetary difficulties have now been resolved **and would like to receive confirmation that this is the case.**

33. In terms of access to health-care services, it would appear from the delegation's observations that, on the whole, since the transfer of responsibility, a level of health-care service similar to that in the outside community has been provided to inmates in the establishments visited. In particular, at both prisons visited, it had become easier for an inmate to be referred to a local hospital for a specialist opinion and, if necessary, specialist treatment. The CPT welcomes this development.

A wide variety of specialists visited the prisons in order to see patients. Nevertheless, it was also noted that specialists were generally more reluctant than in the past to provide services in prison, or at any rate did so to a lesser extent. This difference was partly attributable to the fact that some specialist medical equipment within prisons was found not to be in compliance with national health service standards and had been taken out of service since the transfer. In this context, it should be noted that some of this equipment is relatively inexpensive machinery for routine tests (e.g. ECG), and ought to be replaced rapidly.

As a result of the increase in medical transfers for specialist care outside prisons, more prison officer time was spent escorting inmates to hospital. This has clearly had a negative impact on staffing levels within prisons, which are already understaffed (particularly compared to current prison occupancy levels¹⁹).

Specialist health-care services should be provided in an appropriate setting, whether within a prison establishment or outside. Whatever arrangements are made to ensure that this requirement is met, **the CPT recommends that the relevant authorities take the necessary steps to ensure that these arrangements do not undermine other important aspects of prison life, such as the provision of an appropriate regime and sufficient numbers of staff present on the wings.**

¹⁹ On 31 October 2010, prisons in Italy accommodated 68 795 inmates for an official capacity of 44 962. See also paragraph 4.

34. It was not clear to the delegation what criteria were applied for selecting prisoners to receive consultations or care from specialists attending the prisons visited. For instance, certain prisoners appeared to be given priority and moved up the waiting list even though their health condition was clearly not urgent compared to that of other inmates. Particular mention should be made to dental care provided at Teramo Prison: a consultation of the registers showed that inmates of certain nationalities appeared to have no effective access to such care.

In the interest of dispelling any possible perception of favouritism or discrimination, **the CPT recommends that the Italian authorities ensure that access to health care and, in particular, to consultations and care provided by specialists visiting prisons, is managed in a transparent, non-discriminatory manner.**

35. A positive aspect of the service provided to persons on their arrival in the two prisons visited was the promptness with which medical screening was generally carried out.

Although no central trauma register was kept in the establishments visited, the medical files examined showed that injuries were recorded thoroughly. However, the record did not always indicate statements of the inmates as to the origin of injuries observed. Further, in none of the medical files examined in the course of the visit was the doctor's opinion noted regarding the consistency between the injuries observed and the inmate's explanation for them. Finally, and perhaps most importantly, the delegation's observations during the visit indicate that no automatic reporting of any injuries to the appropriate authority is required of prison doctors.

The CPT calls for steps to be taken to ensure, throughout the Italian prison system, that the record drawn up after a medical examination of a prisoner, whether newly-arrived or not, contains:

- (i) a full account of statements made by the prisoner concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her;**
- (ii) a full account of objective medical findings based on a thorough examination;**
- (iii) the doctor's conclusions in the light of (i) and (ii). In his/her conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings; a copy of the conclusions should be made available to the prisoner concerned and to his/her lawyer, on request.**

Further, **if the prisoner refuses to reveal the cause of any signs of violence or gives reasons other than ill-treatment, his or her statement should also be accurately reported by the doctor.** Finally, when detained persons are found to show signs of ill treatment, doctors should be required immediately to bring the record of such injuries to the attention of the relevant prosecutor.

36. As regards forensic psychiatric patients in Judicial Psychiatric Hospitals (OPGs), the Italian authorities informed the delegation during the visit that the implications for OPGs of the transfer of prison health-care responsibility were not yet determined. It was not clear, for example, whether penitentiary regions in which no OPG was located would each have to establish their own forensic psychiatric hospital unit in order to cater for patients requiring forensic psychiatric observation or placement. The delegation was told that around 70 forensic patients from Abruzzo would soon have to leave the OPG in Campania where they were placed, but the Abruzzo regional penitentiary authorities had not yet made provision for how or where they would be managed or accommodated.

The CPT would like to receive confirmation that persons requiring forensic psychiatric care will continue to receive such specialist care in an appropriate setting.

Further, the Committee would like to receive comprehensive information as regards the Italian authorities' medium and long-term plans in relation to forensic psychiatric placements.

37. The delegation observed that medical confidentiality was not ensured in the prisons visited. Consultations between doctor and patient were often carried out in the presence of prison officers. Moreover, the prison health-care service is required to provide a prisoner's full medical history to the prison management and the relevant judicial authority before any transfer to hospital for examination or treatment may be authorised. This is not acceptable.

Medical confidentiality is a fundamental principle, which is enshrined in Italy's national health-care system and which needs to be equally respected within the prison environment. And yet, despite the transfer of responsibility for health-care services away from the prison administration, this requirement was still not being met.

The CPT recommends that the necessary steps be taken by the relevant authorities to ensure full respect for prisoners' medical confidentiality. In particular, medical examinations of prisoners should be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff. Further, whenever a prisoner needs to be hospitalised or examined by a specialist outside the prison, the medical information passed on by the doctor to the prison management or judicial authorities should be limited to that which is strictly necessary to facilitate the prisoner's transfer and supervision.

38. In the CPT's view, doctor-patient confidence in the wider sense is also undermined by the presence of the prison doctor on the panels of prisoner disciplinary proceedings. This practice was criticised by the Committee in past visit reports²⁰ and was noted once again in the prisons visited.

The CPT recommends that, in the interest of fostering doctor-patient trust, prison doctors do not sit on prisoner disciplinary panels.

²⁰ See, e.g. CPT/Inf (2010) 12, paragraph 117.

39. As with other aspects of deprivation of liberty, prison health-care services should be subject to adequate supervision. One practical difference since the transfer of responsibility has been that Ministry of Justice inspections no longer cover health-care services in prisons, as these services now fall within the remit of the Ministry of Health.

From the information gathered during the visit, it appeared that inspections carried out by the Ministry of Health focus largely on the clinical and hygiene aspects of health-care service performance, and are less concerned with other aspects of those services' tasks for which there might be greater awareness within an inspection carried out by the Ministry of Justice. One such aspect is the adequate recording of injuries, whether during medical screening on arrival or after a violent incident in prison.

In the light of the above remarks, the CPT recommends that the Italian authorities take appropriate measures to ensure that all aspects of the work of health-care services are supervised; if necessary, prison health-care services should be the subject of joint inspections by the Ministries of Health and Justice.

40. To sum up, the CPT welcomes the integration of prison health care within the national health-care system. Nevertheless, the transfer process is experiencing teething problems and a number of issues raised by the Committee – some of which it has already raised in previous visit reports concerning prison health care – need to be addressed. The CPT trusts that the Italian authorities will review the provision of health care to detained persons in the light of the remarks in this and previous reports.

The Committee recommends that the relevant health-care authorities be apprised of the contents of both chapters of this report, as each addresses prison health care.

APPENDIX

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Cooperation received

comments

- the Committee trusts that, in future, the credentials supplied by the Italian authorities to CPT visiting delegations will cover all places where persons may be deprived of their liberty by a public authority, including courthouse detention cells, and that delegations will be received with a level of courtesy which is in keeping with good cooperation (paragraph 6).

Prevention of suicide (and self-harm) in the prison context

Identification of prisoners who may be at risk of self-harm or suicide

recommendations

- the Italian authorities to introduce a standard screening algorithm to assess the risk of suicide (and self-harm) in prisons; such a tool should, in particular, ensure that drug and/or alcohol dependence are adequately taken into account in the screening process as factors potentially heightening the risk of suicide (paragraph 14);
- steps to be taken to ensure that information on an inmate at risk of suicide or self-harm is transmitted in full and promptly to all those who may have a role in caring for the prisoner, including when he or she is transferred to another establishment (paragraph 14);
- all prison staff in contact with inmates to be provided with practical training on the recognition of behaviour indicative of a risk of suicide; training should also be provided on basic resuscitation skills (paragraph 15).

Management of prisoners at risk

recommendations

- the respective roles of medical and custodial staff in the management of the risk of suicide or self-harm to be better defined and strengthened (paragraph 17);
- staff entrusted with the supervision of prisoners presenting a suicide risk to receive specific training on interpersonal communication skills (paragraph 18);

- persons who present a major suicide risk to be placed in a cell which does not contain any ligature points or other means which might facilitate an attempt to commit suicide (e.g. cell window bars, broken glass, belts or ties, etc), and kept under constant supervision by prison staff (paragraph 19);
- the Italian authorities to ensure that, when necessary, appropriate suicide-proof clothing is provided to inmates (paragraph 19);
- devices such as gas canisters never to be available in prison cells occupied by prisoners who present a risk of suicide (or self-harm); alternative cooking arrangements should be made in such cases (paragraph 20);
- the necessary steps to be taken to ensure that persons presenting an acute risk of suicide are immediately transferred, for appropriate care, to an acute mental health unit (paragraph 21);
- effective access to psychological or psychiatric care, for all prisoners who require it, to be ensured (paragraph 22);
- the Italian authorities to analyse the high suicide rate and its causes and to introduce alternative suicide prevention measures – instead of isolation – such as increased and varied activities, opportunities for association, contact with the outside world and effective, multidisciplinary addiction treatment. Active suicide prevention efforts are needed, through the provision of supportive monitoring and the development of trusting relationships between inmates and staff (paragraph 25);
- measures to be taken to ensure that prevention efforts are adequately coordinated, in particular by regular and frequent meetings of the multidisciplinary team and through an adequate level of input from specialist staff such as psychiatrists and educators (paragraph 25).

Measures taken in the event of death or self-harm in custody

recommendations

- the Italian authorities to introduce a clear policy and comprehensive procedure on the identification of the causes of death of detained persons – including when the death occurs in (or on the way to) hospital – and clear criteria on the classification of deaths as suicides. In particular, every death of a prisoner should be the subject of a thorough investigation to ascertain, inter alia, the cause of death, the facts leading up to the death, including any contributing factors, and whether the death might have been prevented (paragraph 28);
- an autopsy to be carried out whenever a person dies in prison (or soon after transfer from prison) and the prison's management and medical services to be informed of the outcome (paragraph 28);
- an analysis to be undertaken of each death in prison to consider what general lessons may be learned for the prison in which the death occurred and whether in the case of self-inflicted death there are any systemic, nationwide measures that need to be taken (paragraph 28).

comments

- the requirements described in paragraph 27 in relation to acts of self-harm were not being met to a satisfactory extent at the prisons visited (paragraph 27).

Transfer of responsibility for prison health care from the Ministry of Justice to the regional health-care authorities

recommendations

- the relevant authorities to take the necessary steps to ensure that the arrangements for providing specialist health-care services do not undermine other important aspects of prison life, such as the provision of an appropriate regime and sufficient numbers of staff present on the wings (paragraph 33);
- the Italian authorities to ensure that access to health care and, in particular, to consultations and care provided by specialists visiting prisons, is managed in a transparent, non-discriminatory manner (paragraph 34);
- steps to be taken to ensure, throughout the Italian prison system, that the record drawn up after a medical examination of a prisoner, whether newly-arrived or not, contains:
 - (i) a full account of statements made by the prisoner concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her;
 - (ii) a full account of objective medical findings based on a thorough examination;
 - (iii) the doctor's conclusions in the light of (i) and (ii). In his/her conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings; a copy of the conclusions should be made available to the prisoner concerned and to his/her lawyer, on request.(paragraph 35);
- if the prisoner refuses to reveal the cause of any signs of violence or gives reasons for the injuries other than ill-treatment, his or her statement also to be accurately reported by the doctor (paragraph 35);
- doctors to be required immediately to bring the record of injuries to the attention of the relevant prosecutor when detained persons are found to show signs of ill-treatment (paragraph 35);
- the necessary steps to be taken by the relevant authorities to ensure full respect for prisoners' medical confidentiality. In particular, medical examinations of prisoners should be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff (paragraph 37);

- the medical information passed on by the doctor to the prison management or judicial authorities to be limited to that which is strictly necessary to facilitate the prisoner's transfer and supervision, whenever a prisoner needs to be hospitalised or examined by a specialist outside the prison (paragraph 37);
- prison doctors not to sit on prisoner disciplinary panels (paragraph 38);
- the Italian authorities to take appropriate measures to ensure that all aspects of the work of health-care services are supervised; if necessary, prison health-care services should be the subject of joint inspections by the Ministries of Health and Justice (paragraph 39);
- the relevant health-care authorities to be apprised of the contents of both chapters of the visit report, as each addresses prison health care (paragraph 40).

requests for information

- the comments of the Italian authorities as regards the issues of effective equality and continuity of care mentioned in paragraph 31 (paragraph 31);
- regarding the budgetary difficulties described in paragraph 32, confirmation that they have now been resolved (paragraph 32);
- confirmation that persons requiring forensic psychiatric care will continue to receive such specialist care in an appropriate setting (paragraph 36);
- comprehensive information as regards the Italian authorities' medium and long-term plans in relation to forensic psychiatric placements (paragraph 36).

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Copy of the letter transmitting the CPT's report

Mr Diego Brasioli
Minister Plenipotentiary
President of the Inter-Ministerial Committee on
Human Rights
Ministry of Foreign Affairs
Piazzale della Farnesina 1
I – 00194 Rome

Strasbourg, 14 April 2011

Dear Mr Brasioli,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the supplementary report to the Government of Italy drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Italy from 14 to 18 June 2010. This supplementary report addresses the subject of accountability for ill-treatment of detained persons and was adopted by the CPT at its 74th meeting, held from 7 to 11 March 2011.

The recommendations, comments and requests for information formulated by the CPT are listed in the Appendix of the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the authorities of Italy to provide within **six months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the authorities of Italy to provide, in the above-mentioned response, reactions and replies to the comments and requests for information.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Lətif Hüseynov
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

cc. Mr Sergio Busetto, Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of Italy to the Council of Europe

I. INTRODUCTION

1. It is recalled that a delegation of the CPT carried out a visit to Italy from 14 to 18 June 2010. The visit was one which appeared to the Committee “to be required in the circumstances” (see Article 7, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).

The visit focused on two main issues, namely the prevention of suicides in prison and the ongoing transfer of responsibility for prison health care from the central penitentiary administration to the regional health-care authorities. The facts found in relation to these issues are set out in the report adopted by the CPT at its 73rd meeting (November 2010) and forwarded to the Italian authorities by letter of 3 December 2010.

2. This supplementary report deals with a third issue examined in the course of the June 2010 visit, namely the system of accountability for possible ill-treatment by law enforcement officials and prison staff as well as the effectiveness of investigations into such acts.

As was indicated in paragraph 3 of the visit report adopted in November 2010, the CPT decided that this third issue should be dealt with in a separate report to be transmitted at a later date, bearing in mind the extensive documentation on the issue which had recently been provided to the Committee by the Italian authorities.

3. As regards the composition of the CPT’s delegation, the establishments visited, the consultations held by the delegation and cooperation received, reference should be made to paragraphs 2 and 4 to 7 of the visit report adopted in November 2010.

II. ACCOUNTABILITY FOR ILL-TREATMENT OF PERSONS IN CUSTODY

1. Preliminary remarks

4. During its visit, the delegation examined three particular cases of alleged ill-treatment by law enforcement and/or prison personnel; the detailed facts relating to these cases are set out below.

5. The CPT must first emphasise that, if law enforcement officials and/or prison staff are not held to account for acts of ill-treatment – through appropriate supervision or criminal action – such abuse is likely to become an accepted feature of police or prison practice. It is therefore vital for the prosecution and investigation authorities to take effective measures when they are aware of the slightest indication that ill-treatment might have been inflicted.

The criteria which must be met by an investigation into suspected cases of ill-treatment in order for it to be described as "effective" have been established by abundant case-law of the European Court of Human Rights²¹. In particular, the investigation must be *thorough*, it must be conducted *promptly* and *expeditiously*, and the officials responsible for conducting it must be *independent* of those implicated in the events. The real efforts shown by the competent authorities to meet these requirements and to ensure that the rule of law is respected will have a significant deterrent effect on those inclined to ill-treat persons deprived of their liberty.

2. Case examples examined by the CPT delegation

a. case A

6. Mr X, aged 31, was apprehended at 11.30 p.m.²² on 15 October 2009 by Appia *Carabinieri* officers in Rome. He was taken to his family's residence for a search to be conducted, and then to Tor Sapienza *Carabinieri* station, where he was placed in a cell pending summary proceedings scheduled for the following morning. Shortly after 5 a.m. on 16 October, an ambulance was called to the station; according to the statements of *Carabinieri* officers, Mr X had complained that he was not feeling well. Nevertheless, Mr X apparently told the ambulance personnel that he needed no assistance, refused to be examined and covered himself in a blanket.

At 9.20 a.m. he was transferred to a cell in the basement of the Rome courthouse, and brought before a judge at around 1 p.m., in the presence of a duty lawyer. The judge adjourned the proceedings for four weeks and confirmed Mr X's remand in custody. Before his transfer, at around 2 p.m., the Rome courthouse doctor was called to the detention unit to examine Mr X. He observed "slight, reddish-purple ecchymotic lesions on both lower eyelids", and noted that the patient, refusing to be examined, reported "pain and lesions in the sacrum and lower limb area", and "evasively" mentioned having falling down the stairs the day before.

²¹ Also see paragraphs 25 to 42 of the 14th General Report on the Activities of the CPT.

²² By what appears to be a clerical error, the arrest form refers to the hour of 3.20 p.m.

After arriving at Regina Coeli Prison at 3.45 p.m. on 16 October, Mr X underwent medical screening at 4.35 p.m. The doctor on duty ordered his urgent transfer to hospital, noting that he presented with “ecchymoses of the sacrum and the coccyx, periorbital swelling on both sides of the face, pain on movement of the lower limbs” and spoke of nausea and of a feeling of general weakness; Mr X also spoke of a fall down the stairs the day before.

Mr X arrived at the emergency department of the nearby Fatebenefratelli Hospital at 8 p.m. The x-rays taken showed two spinal fractures: one of the left side of the L3 vertebra and the other of the first coccygeal bone. As he refused to be hospitalised, a prison doctor who examined him on his readmission to prison told him not to walk and placed him as a matter of urgency in the prison’s infirmary unit. On the following morning, Saturday 17 October, Mr X’s condition was again reviewed by two prison doctors, both of whom took the view that he should be transferred to hospital for further tests and appropriate treatment. At around 1.30 p.m. he was returned, on a stretcher, to the emergency department at Fatebenefratelli Hospital, where the previous day’s diagnosis was confirmed and, because of his difficulties urinating, a bladder catheter was inserted. There was no bed available, however, so he could not be admitted as an inpatient.

At 7.45 p.m. on 17 October, Mr X was admitted to the Sandro Pertini Prison Health Care Unit, a facility which is, however, not designed for patients in an acute condition requiring intensive care²³. The doctor registering his admission noted, inter alia, his “good” general condition and muscle apparatus (tonic-trophic), “fairly good” nutrition and “normal” decubitus²⁴ and urogenital apparatus. Mr X’s medical file (drawn up at the Sandro Pertini Prison Health Care Unit) shows that, during the following four days, he refused to undergo several medical interventions, including intravenous rehydration, and repeatedly asked to speak to his lawyer and a drug rehabilitation worker. This request, however, was not granted, the procedure relating to such requests not having been complied with. Finally, weighing 10 kg less than at the time of his arrest, he died in the early hours of 22 October as a result of kidney failure induced mainly by his dehydrated state²⁵.

Both the criminal investigation and the administrative investigation reports stated that, on several occasions, on his readmission to Regina Coeli Prison and his transfers to hospital, Mr X had given the prison staff to understand that the episode of the fall down the stairs had been imaginary and that he had been beaten, particularly during the night prior to his arrival in prison, and again during his time spent in the basement of the Rome courthouse. His appearance and physical condition on arrival at the Rome court, as observed by the *Carabinieri* in charge of his transfer and by other detainees, are consistent with the assumption that he had been hit even before his arrival at the court. Furthermore, a detainee placed in a neighbouring cell in the basement stated that he had heard the prison staff beating Mr X²⁶.

²³ This Unit offered secure detention conditions for prisoners requiring hospital treatment and care of a routine, non-emergency, nature. In particular, hospitalisation on the Unit did not require additional custodial staff to be mobilised. On 26 October 2010, the prison administration official responsible for Mr X’s extraordinary placement in the Unit was convicted of making a false statement (by a public official) and abuse of power.

²⁴ ‘Decubitus’ is Latin for the horizontal position of the body. A ‘normal’ decubitus means no medical problem is observed when the subject is lying horizontally.

²⁵ It should be noted that the extensive autopsy reports point mainly to the negligence of medical personnel at the Unit.

²⁶ The competent prosecutor’s investigations into the responsibility of medical personnel at the Unit and penitentiary staff at the court house cells had been concluded at the time of the visit; their trial was due to commence on 24 March 2011.

b. case B

7. At 11.30 p.m. on 5 May 2010, Mr Y (aged 25) was arrested near the Olympic Stadium in Rome, where clashes were taking place between the police and football fans. Video recordings, shown first on the Internet and then on Italian television as well, made using mobile telephones by eyewitnesses in nearby buildings, show Mr Y riding a scooter with a friend, being made to stop by a policeman in riot gear, who immediately punches him hard full in the face several times, for no apparent reason. While Mr Y utters a protest and tries to prevent these blows, several more police arrive on the scene. The films show some of them also striking Mr Y, including with a baton.

Mr Y was then taken to the Olympic Stadium police station. There he was dealt with by an ambulance service, which made the following observations: “alcohol breath odour – amputation of the upper right incisor – bruised laceration wound treated with six stitches – ‘steri-strip’ applied to wounds above the right eyebrow – upper and lower lip internal wounds – the patient is vigilant, can orient himself in time and space, reactive to sound, can stand straight – no neurological deficit and/or other symptoms reported. At the moment, after medical treatment and in the absence of neurological signs and/or other significant problems, the patient does not need to be taken to hospital”.

At the police station Mr Y nominated his lawyer, who was notified of the arrest by fax. Mr Y’s family was also informed of his arrest, but it is not clear whether this information was given to it directly by the police.

From the police station, he was transferred to Regina Coeli Prison in Rome in the early hours of the morning of 6 May, and placed in solitary confinement.

The judicial investigation states that Mr Y was arrested *in flagrante delicto* for aggravated resistance to a public official (Criminal Code (CC) Articles 337 and 339). The prosecutor applied for validation of the arrest and for remand in custody, which the judge responsible for the preliminary investigation granted on the morning of 8 May 2010.

Subsequently, on 10 May the case was sent to a different prosecutor, a member of the Specialised Group for Crimes against the State and Public Order, who opened a new file on a charge of grievous bodily harm (CC Articles 582 and 583) against Mr Y.

On 12 May the prosecutor filed for and was granted the provisional release of Mr Y, on the basis of the aforementioned video and a preliminary reconstruction of the facts which enabled Mr Y to be dissociated from the clashes between the police and the football fans²⁷.

²⁷ See paragraph 14.

c. case C

8. In a short audio recording – transcribed in print media and widely broadcast on television and via the Internet as of 29 October 2009 – a prison staff member (senior officer) at Teramo Prison expressed concern that an unruly inmate had been beaten within the sight and earshot of other inmates, which in his opinion could have led to a riot. In the recording, he admonishes another staff member, mentioning that recent incident, while acknowledging that the prisoner in question should not have misbehaved as he had. He also insists that, when it is in fact necessary, prisoners should be beaten downstairs²⁸ and not in the detention unit itself in front of other prisoners. Finally, he says that one inmate²⁹ saw the whole beating. He adds that, fortunately, it was possible to resolve the situation by laying the blame on the unruly prisoner.

On 2 November 2009, in a letter to the prison director, the senior officer concerned confirmed that the words in the broadcast recording were his own, specifying both the particular context in which he had spoken them and the persons involved. He denied that a prisoner had been beaten, that a practice of ill-treatment existed, and that he would turn a blind eye to any such acts by staff.

The investigation file specifies that the incident referred to in the recording occurred on 22 September 2009, the date on which the disciplinary registers show that the unruly inmate concerned assaulted the staff member, for which a disciplinary sanction of 10 days' exclusion from communal activities was imposed³⁰.

When defending himself before the disciplinary board, the inmate alleged that, having exited his cell when he was indeed not supposed to do so, he was kicked and punched by the staff member in front of other inmates. He said that another staff member then intervened to make his colleague stop. He further asserted that, barely five minutes after returning to his cell, he was escorted to the staff office. He claimed that, once he was there, around 10 prison staff punched and kicked him several times, with the result that six days later he still felt pain to the head and to the rear right side of his thorax, which was still bandaged at the time of his disciplinary hearing. Furthermore, when he was medically examined following the incident, the duty doctor noted a linear excoriation on the right and lower (*medio-basale*) rear of the hemithorax, and applied disinfection and medication.

Following the release of the above-mentioned recording, more than a month after the facts, the responsible prosecutor opened an investigation into the incident and ordered, inter alia, a more thorough medical examination of the inmate, who alleged that the ill-treatment had broken one of his ribs. Although x-rays showed a malunited previously fractured rib, it was impossible to determine whether the rib had indeed been broken at the time of the incident in question.

²⁸ The case documentation shows that the room referred to was room 516, a staff room close to the infirmary.

²⁹ This inmate died on 18 December 2009 as a result of an undiagnosed brain tumour.

³⁰ Decision taken on 28 September, notified to the prisoner on 13 October; sanction served 16-26 October 2009.

3. The effectiveness of investigations in the event of allegations/signs of ill-treatment in police custody or in prison

9. Following the visit, the Italian authorities sent the CPT statistics relating to criminal and disciplinary proceedings opened against law enforcement officials and prison staff, on charges of ill-treating detained persons. An examination of these statistics shows both that the number of allegations is low and that the investigations rarely conclude in a conviction.

10. An examination was made of the three specific cases in order to highlight, if necessary, any weaknesses in the system of accountability for ill-treatment, and this clearly does not call into question the independence of the investigating or judicial authorities. Indeed, as regards these three cases, the delegation noted the independence demonstrated by prosecutors and judges.

11. Where the finding and taking into consideration of any signs of ill-treatment are concerned, it is certain that, at his first court hearing, the prisoner in case B presented clearly visible signs of violence. As for the detained person concerned in case A, according to several accounts, signs of violence were also visible when he appeared at a first court hearing. In both cases, however, no forensic examination was requested at that stage, and in addition, in case A, the judge did not identify or record any sign of violence. As the delegation did not receive a copy of the judicial file concerning case B, the CPT is unaware if the judge had identified and/or noted any signs of violence.

The CPT recommends that the competent authorities take the necessary measures to ensure that, whenever a person is brought before a court and alleges ill-treatment or presents visible signs consistent with ill-treatment, such allegations or visible signs are recorded in writing, a forensic examination is immediately ordered, and the issue is the subject of a proper investigation.

12. The delegation noted that, when allegations of ill-treatment were forwarded to the prosecution, it had at its disposal the necessary legal means of taking action and enjoyed very broad autonomy in this respect. That said, the delegation was informed by the central authorities that investigations carried out into allegations of ill-treatment in a police or prison environment are usually entrusted to members of precisely the authorities concerned by those same allegations.

The delegation was nevertheless informed that, in very complex cases, the prosecution itself conducted investigations. This happened in case A, which concerned several agencies, and into which the prosecution carried out a very thorough investigation, particularly by collecting evidence from almost 80 people and requesting no fewer than three post-mortem forensic reports. Furthermore, in the prison environment, the responsible prosecutor may, although not required to do so, ask the central investigation service of the Prison Administration to carry out an investigation. This is what happened in case C.

13. In case A, for which the criminal investigation concluded in April 2010, the public prosecutor's department focused more on the responsibility of the prison staff on duty at the Rome court and that of the medical staff at the Sandro Pertini Prison Health Care Unit in Rome. At the end of its investigations, it excluded any involvement of *Carabinieri* in the ill-treatment to which the deceased prisoner was subjected. However, several elements in the judicial file nonetheless suggest possible involvement of the *Carabinieri*, particularly the very divergent evidence given by *Carabinieri* as to the physical condition of the prisoner and, more specifically, his ability to walk³¹. **The CPT wishes to be informed of the reasons for which the possibility that ill-treatment was inflicted before the prisoner in case A arrived at the Rome court was dismissed during this investigation.**

14. The investigation into case B was still in progress at the time of the CPT's visit. **The Committee wishes to receive full information as regards the progress and the findings of this investigation.**

15. As for case C, in March 2010, the prosecutor requested, notwithstanding the existence of the recording, that the case be closed for lack of sufficient testimony or other evidence to corroborate the inmate's allegations. Examination of the investigation file reveals the fact that, inside the prison, the prosecutor's efforts came up against a wall of silence from both staff and inmates. This silence, coupled with the impossibility of establishing, more than a month after the facts, a causal link between the injuries of the inmate concerned and the ill-treatment which he alleged, constituted, according to the prosecutor's explanations, insurmountable obstacles to the effectiveness of the procedure. **The CPT wishes to receive the comments of the Italian authorities on the measures to be taken to overcome the obstacles to the effectiveness of investigations into allegations of ill-treatment in prisons, particularly in respect of the collection of evidence.**

The CPT recommends that the Italian authorities reinforce their concrete initiatives, through training and the setting of good examples, so as to promote a working environment within which it is regarded as unprofessional to resort to ill-treatment and as correct and professionally rewarding to be a member of a team which abstains from such acts. An atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues³². This implies the existence of a clear reporting line as well as the adoption of whistle-blower protective measures.

³¹ See the judicial investigation file, for instance document 2850906.

³² See also paragraph 30.

16. In the three specific cases examined by the delegation, there were no suspensions from duty³³. Further, according to the information supplied by the Italian authorities, it would appear that law enforcement and prison officials are rarely suspended during criminal proceedings opened in respect of alleged ill-treatment. The CPT considers that the use of a suspension measure is sometimes necessary, particularly to send out a clear message of "zero tolerance" of ill-treatment. **The CPT wishes to receive the Italian authorities' comments on this subject, particularly on the criteria for applying provisional suspension in the event of criminal proceedings for ill-treatment.**

The Committee also wishes to be informed of the disciplinary measures taken following any conviction for ill-treatment in cases A and B³⁴.

4. Procedural safeguards against ill-treatment during detention by law enforcement agencies

17. The CPT has constantly reiterated that, in its experience, it is in the *period immediately following deprivation of liberty* that the risk of intimidation and physical ill-treatment is greatest. Consequently, particular vigilance is called for in the detection of possible ill-treatment throughout the period of arrest/custody by law enforcement officials. This is why the CPT attaches particular importance to three rights for persons deprived of their liberty by law enforcement agencies: the right to inform a relative or third person of their choice of their detention, the right of access to a lawyer and the right of access to a doctor.

The CPT considers that these three rights constitute fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should be applied from the very outset of their deprivation of liberty (i.e. from the moment when these persons are deprived of their freedom to come and go). In addition, persons detained by the police should be explicitly informed, without delay and in a language which they understand, of all their rights, including those referred to above.

18. As concerns effective and confidential contact with a lawyer (whether of the detained person's choice or a duty lawyer), the information sheet on detained persons' rights specifies that such a right exists as regards one's own lawyer, but not as regards a duty lawyer. According to the information gathered by the delegation, it is rare for a lawyer – even a trusted one – to go to a law enforcement establishment when notified of an arrest. Further, the delegation saw no interview rooms at the *Carabinieri* stations or courthouse detention facilities visited. Indeed, *Carabinieri* officers could not recall a lawyer ever having visited a detained person within their establishment; the officials on duty at the Rome court also stated that lawyers never came to visit detained persons at the detention facilities. Further, it would also seem that, in Italy in general, duty lawyers tend not to visit detained persons at police stations, because they receive neither adequate nor timely payment for their services.

³³ In case A, the three prison staff who were the subject of an investigation for aggravated intentional homicide were placed on leave for six days in November 2009, after which they were assigned to other duties. Provisional assignment to other duties was also ordered for the hierarchical superior in case C, as well as for the main member of the police identified on the video recording in case B.

³⁴ The delegation was informed that the prison officers involved in case C, which was dropped, were also not subject to any disciplinary measures.

In both cases A and B, *Carabinieri* officials notified the detention to the lawyer by fax sent to the lawyer's office late at night, which would appear to be common and accepted practice³⁵. In the CPT's view, notification by fax to a lawyer's office outside working hours can hardly afford the protection against ill-treatment which effective and prompt access to a lawyer should provide. The lawyer chosen by the person deprived of his liberty not being contactable or available, the effectiveness of this safeguard requires that, in the context of an on-call service, the duty lawyer or his or her deputy are able to be contacted directly by telephone.

The CPT recommends that the competent authorities, with the assistance of, among others, Bar associations, ensure that the lawyer effectively provides assistance during custody, whether this be the chosen lawyer or a duty lawyer.

19. In practice, the presence of the lawyer is effective only once the person concerned appears in court for validation of the arrest, and possibly for an order for placement in pre-trial detention³⁶. Before the actual hearing, the lawyer is not usually allowed time to hold a discussion with the detainee, either confidentially or otherwise. Thus the inmate concerned in case A did not have an opportunity to have a confidential consultation with the lawyer before appearing in court.

In the CPT's opinion, this confidential discussion is particularly important, for, in the event of allegations of ill-treatment, it enables the lawyer concerned to be informed thereof so that, at the earliest opportunity, an investigation into the facts can be first discussed, then requested and ordered, and subsequently carried out efficiently. **The CPT recommends that the Italian authorities take the necessary steps to ensure that all persons deprived of their liberty can have access to a lawyer – in particular, a confidential consultation – during the period immediately following their deprivation of liberty (and at all events before appearing in court).**

20. As regards confidential access to a doctor, detained persons appeared to be able to consult a doctor if needed in all the establishments visited. That said, medical consultations were still always carried out in the presence of law enforcement officials. Thus, the records regarding case A show that on two occasions when the detained person, even before being transferred to prison, came into contact with a health-care professional, the staff in charge of his supervision remained present. On the first occasion he refused to be examined, and on the second (at the courthouse cells) he spoke of having fallen down the stairs the previous day.

Further, detained persons are still not allowed to consult a doctor of their own choice while in custody in law enforcement establishments.

The Committee reiterates its recommendation that the Italian authorities take immediate steps to ensure that in law enforcement establishments as well as at courthouse detention facilities, all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of law enforcement officials.

³⁵ Notification of the lawyer by fax is acceptable according to the Italian Supreme Court (see *Corte di Cassazione - Sezioni Unite 30 October 2002*).

³⁶ See also the report on the periodic visit of 2008 (CPT/INF(2010)12), paragraph 16, concerning the restrictions on access to a lawyer ordered by a court.

Furthermore, **the CPT reiterates its recommendation that specific legal provisions be adopted governing the right of persons detained by law enforcement agencies to have access to a doctor of their own choice (at their own expense).**

21. As on previous occasions, the delegation observed shortcomings in the maintenance of custody registers at the law enforcement establishments visited, the entries often being incomplete (e.g. no systematic recording of the time of apprehension and the time of placement in a cell; no recording of notification to the public prosecutor, the family or a lawyer, although the register format included these items). No custody register at all was being kept at the end of 2009 at the Rome courthouse detention facilities, where inmates were in the custody of staff of the Prison Administration. Thus, in case A it was not possible, from the registers, to establish the exact times of all the detained person's movements during the first 24 hours of his arrest and detention.

The CPT recommends that the responsible authorities remind staff at all law enforcement establishments, as well as at courthouse detention facilities, to maintain custody/detention registers meticulously.

22. The use of closed-circuit video surveillance (CCTV) in the common areas of police, prison or courthouse detention facilities and in police interview rooms may act as a safeguard which helps to reduce the incidence of ill-treatment (as well as to confirm or refute allegations). Nevertheless, various issues need to be taken into consideration, in the context of a CCTV usage policy, including whether a recording is available, and whether such recordings are automatically kept for a period – such as 28 days – sufficient to be used as evidence if need be.

For example, in case A, a CCTV system which did not make a recording was operational in the common areas of the Rome courthouse detention facility. A recording of the events which occurred in the detention facility corridor on the morning of 16 October 2009 might have helped to detect any wrongdoing by custody officers.

The CPT recommends that the Italian authorities take the necessary steps in the light of the above remarks to ensure that an effective policy on the use of CCTV is introduced. In particular, the system in place should include security features, such as running time and date stamp, to counter any manipulation of recordings.

23. The CPT notes, once again, the lack of effective internal or external inspections of law enforcement establishments. **The Committee reiterates its recommendation that the detention facilities of all law enforcement agencies effectively be examined by the relevant judicial/prosecutorial authorities and that the possibility be considered of inspections being carried out by other independent bodies.**

5. Prevention of ill-treatment in prisons

24. The CPT promotes a number of initiatives to guarantee the detection and prevention of ill-treatment in prisons. The aims, more particularly, are to introduce effective medical monitoring, to guarantee medical confidentiality, to organise medical supervision of detainees in solitary confinement, to guarantee contact with the outside world, to allow confidential complaints to be filed or lodged and, lastly, to provide for independent inspections.

The delegation's observations during the visit show that certain mechanisms have been set up in the Italian prison system, but that these are not sufficiently effective to enable ill-treatment to be detected in practice. Some experienced public prosecutors also told the delegation that it proved particularly difficult to detect and establish ill-treatment in prisons.

25. In its main report on the visit in June 2010, the CPT made certain recommendations concerning medical examinations, medical confidentiality, and the relationship of trust between doctors and patients in custody³⁷; these will not be reiterated in this supplementary report. However, the examination of the above-mentioned three specific cases during the visit highlighted certain shortcomings, which no doubt increase the necessity to implement the Committee's recommendations in this respect.

As for the recording of injuries during medical examinations, in case A, the detained person's statement about the origin of his injuries was meticulously noted down. However, the same was not true for the prisoner concerned in case C, whose medical file contained no explanation of the injuries noted. Furthermore, in none of the medical files examined during the visit was the doctor's opinion recorded as to the consistency between the injuries noted and the prisoner's explanations on the subject. Lastly, and even more importantly, the delegation's findings and the examination of cases A, B and C show that prison doctors are not required to make systematic reports when they come across detained persons with injuries. On the contrary, the delegation, once again³⁸, noted the practice of systematically reporting to the judicial authorities only those injuries from which recovery would take 20 days or more.

As in the context of the law enforcement agencies (see paragraph 20), consultations between doctor and patient often took place in the presence of prison staff, i.e. without any guarantee of medical confidentiality. Examples of such presence were found in case A, during medical examinations conducted at Fatebenefratelli Hospital.

The relationship of trust between doctor and patient, an important element in the detection of ill-treatment, suffers, or is even called into question, if the doctor is present on disciplinary panels. This practice, which is in accordance with the regulations in force in Italy, was noted by the delegation in case C.

In the light of the above remarks, the CPT looks forward to receiving a full account of action taken by the Italian authorities to implement the recommendations in paragraphs 35, 37 and 38 of the main report on the June 2010 visit (see also the CPT President's letter of 3 December 2010 transmitting the main report).

³⁷ See document CPT(2010)84, paragraphs 35, 37 and 38.

³⁸ See, for example, the previous periodic visit report (CPT/Inf(2010)12, paragraph 91).

26. Opportunities for contacts with persons of trust not linked in any way to the establishment in which a person is held can also be an effective means of detecting ill-treatment.

In case A, from the very beginning of his stay in the Sandro Pertini Prison Health Care Unit, the prisoner insistently asked to see his lawyer and a person of trust (a drug rehabilitation worker) and went so far as to refuse to eat for this reason. This right was not, however, granted to him during his four days' presence in the establishment. It should be pointed out that the prisoner had had only very limited contacts with a duty lawyer on the morning after his arrest. In addition, his parents, who several times went to the entrance to the Unit requesting information about their son's health and the reasons for his urgent hospitalisation, were repeatedly turned away and invited to submit a request for judicial authorisation, which they finally obtained only after their son's death.

The CPT recommends that the necessary steps be taken to ensure that all prisoners, including those in hospital in a secure unit, are able to have effective access to a lawyer. Furthermore, sufficient contacts with the outside world, and particularly with close family members, should be facilitated as far as is possible; this is especially important when the prisoner's state of health is uncertain, or if he goes on hunger strike or refuses treatment which is nevertheless needed.

27. Italian prisons are subject to internal monitoring in the form of regular or ad hoc inspections by the Inspectorate of the Prison Administration, which could, in the CPT's view, be strengthened through additional resources and staff. **The Committee wishes to receive the Italian authorities' comments on this subject.**

The need for independent monitoring of prisons and the handling of complaints more effectively was already noted by the Committee during past visits³⁹. In particular, the inspecting judges have a role and a field of action which are too broad in scope to be effective: their workload makes it impossible for them to oversee prisons in a thorough and proactive manner. As their time is typically monopolised by the processing of written procedures, they often lack the time to meet prisoners and staff in detention facilities and carry out spot checks of practice and conditions.

Recently established *Garante* offices, akin to offices of the detained persons' ombudsman, are independent and may receive complaints and carry out inspections of prisons. In the CPT's view, the work of such bodies, which have regional competence, could be strengthened through greater co-ordination.

The CPT recommends that the Italian authorities establish a national, independent inspectorate mandated and adequately resourced to visit all places where people are deprived of their liberty and to receive complaints from such persons.

³⁹ See, for example, the previous periodic visit report (CPT/Inf (2010)12, paragraphs 85 and 118).

28. The CPT has also noted the important role played by ad hoc investigations established in response to particular issues or events, such as the death of the inmate in case A, in drawing up lessons learned and in raising awareness of detention-related issues.

The CPT would like to be informed of the concrete follow-up measures taken by the Italian authorities in the light of the parliamentary and administrative investigations into case A, in particular those measures designed to prevent ill-treatment of arrested/detained persons.

6. Final observations

29. In all three of the specific cases examined, elements indicative of ill-treatment by public officials from various bodies have been widely publicised. Moreover, in cases B and C, had it not been for video and/or audio material broadcast widely, the ill-treatment alleged would probably not have been detected or been the subject of an investigation.

The CPT recommends that the Italian authorities ensure that whenever a person is injured while under the supervision of public officials, the case is considered by the relevant authorities as one indicative of ill-treatment, until such time as a plausible alternative explanation for the injuries can be provided⁴⁰.

Furthermore, in the light of the findings made during the visit, **the Committee invites the Italian authorities to consider setting up a specialised service, under the authority of the public prosecutor's office, to deal with allegations of ill-treatment by law enforcement and/or prison officials.**

30. The CPT notes that, in pursuance of Italian law, the failure by an official to warn the responsible public prosecutor or court when he has knowledge of information giving reason to suppose that ill-treatment has been inflicted, is an offence (*inter alia* see CC Article 311). This is an important obligation which may not have been complied with on several occasions in the cases described above.

The delegation's findings during the visit show that, in case A, the prisoner concerned was ill-treated at least once, and that, nevertheless, no other official present reported his colleagues' acts. In case C, a member of prison staff chose to make public the ill-treatment inflicted on prisoners by his colleagues by making a surreptitious recording of a conversation between colleagues and sending it to the press, accompanied by a note purportedly written by a prisoner.

The CPT recommends that the necessary measures be taken to raise awareness among law enforcement, prison, medical and other staff at every hierarchical level of the important duty incumbent on them of reporting ill-treatment to the competent authorities.

⁴⁰ In this respect, according to the well-established case-law of the European Court of Human Rights (see, for example, *Ribitsch v. Austria*, 42/1994/989/571 of 4 December 1995), whenever a person is injured while under the supervision of officials, there is a strong presumption that the person concerned has been ill-treated, and the authorities have a duty to supply a satisfactory and convincing explanation of the way in which the injuries were caused.

31. No matter how effective an investigation may be, it will be of little avail if the sanctions imposed for ill-treatment are inadequate. Of course, judicial authorities are independent, and hence free to determine, within the parameters set by law, the sentence in any given case. However, the CPT wishes to emphasise that, in the interest of prevention of ill-treatment, the criminal justice system should demonstrate, through appropriate repressive measures, a firm attitude with regard to torture and other forms of ill-treatment.

An analysis of the accountability system in Italy would not be complete without mentioning, in this context, the so-called “Bolzaneto Barracks” and “Diaz School” cases, in which egregious acts were proven to have been committed by police, *Carabinieri* and prison officers during the Genoa G8 Summit in 2001. These events have been the subject of dialogue between the Committee and the Italian authorities⁴¹. In March and May 2010, almost 9 years after the facts, 69 officials – members of prison staff, the *Carabinieri*, the national police force and the medical service – were convicted by the Court of Appeal in Genoa of various acts of violence, some of which were classified as inhuman and degrading treatment, as well as of false statements and accusations. The combined effect of the statute of limitations and an amnesty law⁴² has meant that criminal sanctions have been imposed on only a small proportion of the persons involved in these acts.

In the CPT's view, this result calls into question the effectiveness of the system of accountability for ill-treatment by law enforcement and prison officials.

32. The CPT again notes that the plan to introduce the crime of torture into the Italian Criminal Code has made no progress. According to the prosecutors responsible for some of the cases relating to the G8 events in Genoa in 2001, it would seem that the availability of such a charge (not subject to the statute of limitations) would have produced more effective results.

The Committee reiterates⁴³ its invitation to the Italian authorities to increase their efforts to introduce the crime of torture into the Criminal Code, in accordance with the country's obligations under international law.

⁴¹ See *inter alia* the reports on the previous two periodic visits, in November 2004 (CPT/Inf(2006)16, paragraph 14) and in September 2008 (CPT/Inf(2010)12, paragraph 11).

⁴² Law 241/06 provides for three years' reduction in sentence for any crime committed before 2 May 2006, with the exception of certain violent crimes, but not including those for which persons were convicted following the events during the Genoa G8 Summit in July 2001.

⁴³ See, for example, the previous periodic visit report (CPT/Inf(2010)12), paragraph 12.

APPENDIX

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Accountability for ill-treatment of persons in custody

The effectiveness of investigations in the event of allegations/signs of ill-treatment in police custody or in prison

recommendations

- the competent authorities to take the necessary measures to ensure that, whenever a person is brought before a court and alleges ill-treatment or presents visible signs consistent with ill-treatment, such allegations or visible signs are recorded in writing, a forensic examination is immediately ordered, and the issue is the subject of a proper investigation (paragraph 11);
- the Italian authorities to reinforce their concrete initiatives, through training and example, so as to promote a working environment within which it is regarded as unprofessional to resort to ill-treatment and as correct and professionally rewarding to be a member of a team which abstains from such acts. An atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues. This implies the existence of a clear reporting line as well as the adoption of whistle-blower protective measures (paragraph 15).

requests for information

- the reasons for which, during the investigation into case A, the possibility that ill-treatment was inflicted before the detained person arrived at the Rome court was dismissed (paragraph 13);
- full information as regards the progress and the findings of the investigation into case B (paragraph 14);
- the comments of the Italian authorities on the measures to be taken to overcome the obstacles to the effectiveness of investigations into allegations of ill-treatment in prisons, particularly in respect of the collection of evidence (paragraph 15);
- the comments of the Italian authorities on the subject of the use of a measure of suspension from duty, particularly on the criteria for applying provisional suspension in the event of criminal proceedings for ill-treatment (paragraph 16);
- the disciplinary measures taken following any conviction for ill-treatment in cases A and B (paragraph 16).

Procedural safeguards against ill-treatment during detention by law enforcement agencies

recommendations

- the competent authorities, with the assistance of, among others, Bar associations, to ensure that a lawyer effectively provides assistance during custody, whether this be the chosen lawyer or a duty lawyer (paragraph 18);
- the Italian authorities to take the necessary steps to ensure that all persons deprived of their liberty can have access to a lawyer – in particular, a confidential consultation - during the period immediately following their deprivation of liberty (and at all events before appearing in court) (paragraph 19);
- the Italian authorities to take immediate steps to ensure that in law enforcement establishments as well as at courthouse detention facilities, all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of law enforcement officials (paragraph 20);
- specific legal provisions to be adopted governing the right of persons detained by law enforcement agencies to have access to a doctor of their own choice (at their own expense) (paragraph 20);
- the responsible authorities to remind staff at all law enforcement establishments, as well as at courthouse detention facilities, to maintain custody/detention registers meticulously (paragraph 21);
- the Italian authorities to take the necessary steps in the light of the remarks set out in paragraph 21 to ensure that an effective policy on the use of CCTV is introduced. In particular, the system in place should include security features, such as running time and date stamp, to counter any manipulation of recordings (paragraph 22);
- the detention facilities of all law enforcement agencies to be effectively examined by the relevant judicial/prosecutorial authorities and the possibility to be considered of inspections being carried out by other independent bodies (paragraph 23).

Prevention of ill-treatment in prisons

recommendations

- the necessary steps to be taken to ensure that all prisoners, including those in hospital in a secure unit, are able to have effective access to a lawyer. Furthermore, sufficient contacts with the outside world, and particularly with close family members, should be facilitated as far as is possible; this is especially important when the prisoner's state of health is uncertain, or if he goes on hunger strike or refuses treatment which is nevertheless needed (paragraph 26);

- the Italian authorities to establish a national, independent inspectorate mandated and adequately resourced to visit all places where people are deprived of their liberty and to receive complaints from such persons (paragraph 27).

requests for information

- the comments of the Italian authorities on the possibility of strengthening the monitoring capacity of the Inspectorate of the Prison Administration (paragraph 27);
- the concrete follow-up measures taken by the Italian authorities in the light of the parliamentary and administrative investigations into case A, in particular those measures designed to prevent ill-treatment of arrested/detained persons (paragraph 28).

Final observations

recommendations

- the Italian authorities to ensure that whenever a person is injured while under the supervision of public officials, the case is considered by the relevant authorities as one indicative of ill-treatment, until such time as a plausible alternative explanation for the injuries can be provided (paragraph 29);
- the necessary measures to be taken to raise awareness among law enforcement, prison, medical and other staff at every hierarchical level of the important duty incumbent on them of reporting ill-treatment to the competent authorities (paragraph 30).

comments

- the Committee invites the Italian authorities to consider setting up a specialised service, under the authority of the public prosecutor's office, to deal with allegations of ill-treatment by law enforcement and/or prison officials (paragraph 29);
- in the CPT's view, the fact that criminal sanctions have been imposed on only a small proportion of the persons involved in the acts committed in the so-called "Bolzaneto Barracks" and "Diaz School" cases during the Genoa G8 Summit of 2001, calls into question the effectiveness of the system of accountability for ill-treatment by law enforcement and prison officials (paragraph 31);
- the Committee invites the Italian authorities to increase their efforts to introduce the crime of torture into the Criminal Code, in accordance with the country's obligations under international law (paragraph 32).



CPT/Inf (2013) 31

Response

**of the Italian Government
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on the visit to Italy**

from 14 to 18 June 2010

The Italian Government has requested the publication of this response. The report of the CPT on its June 2010 visit to Italy is set out in document CPT/Inf (2013) 30.

Strasbourg, 19 November 2013

Note:

In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted. For the same reasons, the annexes mentioned in these responses are not published.

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**ITALIAN OBSERVATIONS ON THE REPORT
BY THE COMMITTEE FOR THE PREVENTION OF TORTURE,
FOLLOWING ITS AD HOC MISSION TO ITALY
(June 14 –18, 2010)**

April 5th, 2011

Italy is in a position to provide the following information:

**Cooperation
Paragraph 4.**

In what the CPT stated concerning the Viterbo prison, the Director of that establishment found some material mistakes, and namely:

- As far as the Governor knows, the original destination of the Viterbo prison was not “a high-security prison for men”. In particular, after the opening of the Mammagialla structure in 1993, during the first years of activity of the prison, the D1 Building (*Padiglione*), destined to “common” prisoners, and the Female Block were active. Only afterwards, after the opening of the D2 Building (in 1995) and the transformation of the Female Block into a Maximum Security Block for prisoners undergoing the special detention regime provided for by article 41-b of the Law 354/1975 – Penitentiary Act (in 1996-97), the structure was destined also to the management of “special detention circuits”.
- The prison is not composed of “three-storey blocks”, but by:
 - o Two big four-storey buildings (Buildings D1 and D2), in the part inside the surrounding walls (considering that the Ground Floors and the First floors include only rooms for interviews/visits, for treatment activities, for medical surgeries, offices and other services)
 - o One two-storey building (Maximum Security Wing for 41-b prisoners) in the part inside the surrounding walls
 - o One one-storey Building (for persons under the regime of Semi-liberty), in the part outside the surrounding walls.
- In the D1 and D2 Buildings, the prisoners belonging to the ordinary Medium Security circuit are accommodated in nine wings, 6 of which are situated in the D1 Building (2nd, 3rd and 4th floors, sides A and B) and 3 are situated in the D2 Building (2nd, 3rd and 4th floors, side C, dedicated to the circuit of “finally sentenced prisoners” (“*reclusione*”))
- The Circuit (and not the wing) of High Security includes three wings situated in the D2 Building (2nd, 3rd and 4th floors, side D). In the above-mentioned statement of CPT, it is wrongly said that among these three High Security wings there is one wing “for the so-called 41-b” (perhaps the CPT reports refers to the circumstance that in the High Security circuit there are some prisoners charged with or sentenced for crimes provided for by article 4-b of the Penitentiary Act – Law nr 354/1975)
- The Circuit for the 41-b prisoners is situated in a separated dedicated block composed of:

- Two wings (first floor and second floor)
- One “Restricted Area” (*Area Riservata*) including 3 cells (Ground floor), for a total capacity of 54 places.

Paragraph 6.

As far as the Penitentiary Administration is concerned, on the occasion of each CPT’s visit to Italy, all the structures existing in the Country are informed in good time about the visit details and about the mandate of the delegates, and all the staff is requested to ensure full cooperation and to treat the CPT delegation with due respect. Moreover, the CPT delegates are provided with individual credential letters, in order to ensure them unlimited access to the places where persons can be deprived of their liberty falling under the competence of the Penitentiary Administration; in those credential letters, the mandate of the delegates are summarised, in terms of article 8 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

In consequence of the CPT delegation’s observations, the top-level management of the Penitentiary Administration requested a formal written report from the penitentiary workers concerned about what occurred, and the staff concerned was reprimanded so that they behave in full respect of the said Department instructions and with courtesy and spirit of collaboration which are due to the CPT delegation and, anyway, to every person who is authorised to visit penitentiary structures.

Paragraph 7.

Please note that on 12th August 2010 the Department of Penitentiary Administration sent CIDU a wide documentation, requested by the CPT by a letter dated 21st July 2010, as for the aspects falling under its competence; said documentation was integrated by a subsequent letter, dated 9th September 2010, including the replies of the Department of Penitentiary Administration to the “Preliminary Observations”.

Paragraph 8 (through 25 from the Ministry of Health).

Prevention of suicide is listed among the health objectives that must be guaranteed to the prison population, be it adult or minor, as is clearly indicated in the policy documents annexed to the DPCM (Presidential Decree) dated 1 April 2008. In fact, suicide prevention programmes are listed among the objectives that can be achieved only with the involvement and the collaboration of health operators and prison staff. Given the importance of this matter, the Standing Consultative Group on prison health, within the Single Conference between State, Regions and local Authorities (which includes representatives of the ministries of Health, Justice, Economy and Finance, as well as the Regions and the associations of Municipalities and Provinces), which is in charge of monitoring the implementation of the reform law, is drawing up guidelines for the definition of uniform programmes for all correctional institutions. A summary of this document is proposed below:

..... Systemic action in the field of prevention of the risk of suicide must take into account the fact that each prison or juvenile facility is different according to the type of persons present in it (legal situation, length of stay, ethnic group, gender, socio-cultural conditions, etc.) and the environmental context (number of in-mates and overcrowding, hygiene conditions, access to health services, local resources, staff resources, etc.).

Based on these considerations, the Prison Authorities, the Juvenile Justice System and the Regions (through the ASLs or local health units), undertake to draft an operational programme on this specific subject, which is to increase the level of attention on this form of distress thanks to the mobilization, the collaboration and effective communication between all operators. This will be

achieved through the local structures concerned and will be completed within two months of the publication of this Agreement.

In fact, they undertake to have the Director of the Prison or Juvenile Facility and the General Director of the ASL (local health unit) with local jurisdiction, sign a detailed programme for the prevention of suicide, which includes specific operational and organizational instructions for action to combat this form of distress, taking into account the guidelines indicated by European bodies and the WHO (Preventing suicide in prisons and jails), by the National Committee for Bioethics in the 25.6.2010 opinion and by the respectively competent Administrations.

The programme must necessarily include the creation, by the date mentioned above, of an operational team, made up of prison staff and ASL staff, which will define the guidelines, decide how the operational protocol will be taken on board and drafted and how the various problematic situations are to be monitored collegially. The signed programme shall also identify the coordinator of the team to be created, as well as which other professions should be included (specialist physicians, representatives of voluntary associations, cultural mediators, etc.).

The organizational details of the team are covered by the programme mentioned above, whereas its general objectives are to:

- *identify and reduce the risk of suicide and self-harm during admission to the institution and during the subsequent period of custody, while strengthening the protective factors;*
- *ascertain and handle promptly all states of psychological distress and psychic disorder as well as other types of fragility;*
- *guarantee therapeutic continuity and a holistic approach, also from the mental health point of view, ensuring the psycho-physical wellbeing of detainees;*
- *suggest to the Judicial Authorities concerned the possibility of adopting measures that are less distressing for the detainee while meeting his/her needs better.*

The basic instruments the team must make use of, also to ensure a minimum level of uniformity throughout the country while still respecting specific local requirements are:

- *constant circulation of information*
- *monitoring the evolution of the phenomenon*
- *monitoring the effectiveness of the project, by way of a half-yearly report to be addressed to the regional Observatory for health in prisons*
- *joint training of the operators belonging to the various administrations involved, including the prison officers who are present on the premises 24 hours a day and are in constant contact with the detainees.*

The document will be promptly adopted definitively and will be binding for all prisons. Its results will be monitored.

Paragraph 9.

Even though it is true that each suicide is always one suicide too many, the Penitentiary Administration wishes to remark that the suicide rate in Italian prisons is in line with the rate in most European countries (source: Annual Penal Statistics of the Council of Europe – SPACE I 2008).

Nevertheless, the Department of Penitentiary Administration puts constant and great care on that problem, carrying out every possible intervention for preventing it.

Paragraph 10.

As for the statistics on suicides, the annexed Tables include details about those cases of gas inhalation for which it was not possible to ascertain the suicide intent. Should that hypothesis be confirmed, the table also include the relevant percentage variation.

Therefore, it does not seem that the statistics about suicides processed by the Department of Penitentiary Administration are not reliable.

Prevention of suicide (and self-harm) in the prison context

Identification of prisoners who may be at risk of self-harm or suicide

Paragraph 15.

The Department of Penitentiary Administration underlines what follows.

In 2010, 63 suicides occurred in prisons, against an average prison population of 67,822 persons present during the year 2010. For completeness sake, the statistics processed by the Directorate General for Prisoners and Treatment concerning prisoners' suicides since 1980 are enclosed.

With reference to the risen issues, during the last years, the Department of Penitentiary Administration issued several instructions, under the form of circular letters, given the constant increase in the prison population, which has overcome the so-called "necessity" capacity; the purpose of said instructions is to ensure the best living conditions – with the available resources – in prisons, by avoiding long periods of inactivity, by encouraging the so-called "open" management of the detention wings destined to ordinary prisoners, by facilitating the relations with family members since the offender's first entry into a penal establishment (even through the possibility of making telephone calls to mobile telephones, especially for foreign prisoners), by facilitating the contacts with the volunteers and the representatives of the Local Bodies, and also by establishing a constant access for prisoners to psychological and psychiatric support. Detailed instructions were given – in addition to the directions issued with a circular letter nr. 3233/5683 of 30th December 1987 – about the new arrivals service by the circular letter nr. 181045 dated 6th June 2007, which established careful guidelines for the procedures of reception and for the actions of the multi-disciplinary team, with the purpose of lessening the traumatic effects connected with the detention as well as of giving a stimulus to those interventions aimed at protecting the prisoners' physical and psychological health, under the perspective of preventing suicides.

The establishment of those experts' groups and the organisation of the relevant services have been carried out in different ways, all over the Country, due to the different choices made by the various Local Healthcare Authorities for tackling the uneasiness.

Indeed, in the regions where the transfer of the penitentiary healthcare to the National Healthcare Service already occurred, each intervention has to be a synergic one, in order to assure an effective continuity of care for the protection of prisoners' health.

In line with that guidance, the Penitentiary Administration actively shares, with all the other institutions involved, every project concerning the above-mentioned matter, at national, regional and local level¹. As it will be better specified below, a permanent Table of consultancy was established; within that Table, a specific working group, named "*New arrivals reception, prevention of suicide risk and/or self-harm, interactive organisational models*", took the charge of analysing in depth the matter of psychological and psychiatric uneasiness since the subject's entry into a prison,

¹ The Unified Conference State-Regions approved, by a provision dated 20th November 2008, the agreement adopted as enforcement of article 7 of the Decree of the President of the Council of Ministers of 1st April 2008, disseminated to the Penitentiary Administration structures by a circular letter nr. 3614/6064 dated 8th January 2009, which outlines the forms of collaboration relevant to the functions of security and the principles and criteria of collaboration between the healthcare system and the penitentiary system for adults and the Juvenile Justice.

On the 26th November 2009 the document named "Healthcare structures within the Italian penitentiary system" was approved, in line with the principles already included in the agreement of 20th November 2008.

In the same meeting of 26th November 2009 the agreement was signed "Healthcare data, information flow and case file, even computerised", thus enforcing letter e) and item 4) of the above-mentioned document of 20th November 2008, relevant to the communication of health data of prisoners and internees.

The directions included in the two acts of 26th November 2009 will be actually carried out through the agreements which will be signed at regional and local level between the Regions and the Regional Directorates of the Penitentiary Administrations and between the Local Healthcare Authorities and the Prison Governors, keeping into consideration the specific requirements as well as the types of imprisoned persons in the various places.

with the purpose of a better prevention and of the reduction of the self-harm behaviours and of suicides by the persons deprived from their liberty, according to the guidelines provided by the World Healthcare Organisation, and in particular with reference to the criteria according to which the so-called “screening of assessment of suicidal risk” has to be carried out.

The main points of that study can be summarised as follows:

- To ensure that in each penitentiary structure a specific project of suicide prevention is agreed between the Prison Governor and the Director General of the Local Healthcare Authority, including the organisation of an effective intervention service against the uneasiness, keeping into account the guidelines indicated by the European bodies, by the National Bioethics Committee, through its opinion of 25th June 2010, and by the relevant Administrations.
- To set an operational team, composed of penitentiary staff and of Healthcare Authority staff, for the identification of the lines of work, the ways of treatment, the setting of the operational protocol and the collective monitoring of the various difficult situations, in particular during the ten first days of detention or on the occasion of meaningful events in a prisoner’s life, such as, for instance, a transfer or a loss in his/her family.
- To ensure the continuity of care and a holistic treatment, also from the point of view of the mental health, ensuring the subject’s psychic and physical wellbeing.
- To submit in due time, to the competent judicial authorities, the possibility of adopting less afflictive measures, closer to the prisoners’ needs.
- To ensure minimum levels of homogeneity throughout our Country, through an adequate flow of information, the monitoring of the phenomenon trend, the monitoring of the project effectiveness, the joint training of the staff belonging to the different Administrations involved, including the Penitentiary Police staff, who works in the prison 24 hours a day and is constantly in contact with the prison population. Indeed, the need has been identified to provide staff with specific instruments for the identification of the uneasiness signs, in order to catch them and to intervene in case of critical events.

The above-mentioned initiatives and the direct observation of the persons imprisoned are the modalities through which a possible uneasiness can be identified and which can lead to the adoption of precautionary provisions, such as the High Surveillance or the Surveillance at Sight, by the prison governor, who is advised, in his prudent decision, by the security staff and by the experts. In both cases, as already specified in the above-mentioned guidelines of the WHO, it is highly inadvisable to isolate the subject at risk. This is why the so-called “smooth cell”, that is a cell deprived of any furnishings, is not used for the prisoners who show suicide intentions, but only for disciplinary purposes.

In some prisons, the so-called CONP (*Centri di Osservazione Neuropsichiatrici*, Neuropsychiatric Observation Centres) have already been established, which accommodate those subjects who have neuropsychiatric pathologies, in order to provide them with an adequate care.

As for paragraphs 22 and 25, reference can be made to the information in the paragraph above.

Management of prisoners at risk

Paragraph 17.

As far as the footnote nr. 13 of the CPT Observations text is concerned, it must be said that a definition of the “constant”, “high” or “very high” surveillance does not exist, with reference to the frequency of the visual checks carried out by the penitentiary staff on the prisoners concerned.

The only difference which exist is between “constant”, “high”, “very high” surveillance and surveillance “at sight”.

Paragraph 18.

With reference to the recommendations in matter of staff training (paragraphs 15 and 18 of the CPT Report), and as far as the Penitentiary Administration is concerned, it is important to underline what follows.

The training courses include interventions of both technical-professional and operational training, aimed also at the knowledge and the practice of the methods of penitentiary treatment which is inspired with the respect of human rights and of the rule of law, at the light of the national, European – including the specific *Recommendations* issued on that subject – and international legislation.

The objective of the basic training is to provide the newly recruited staff with proper professional skills as well as with a correct understanding of their workplace context and of the social phenomenon of crime, joining practical and theoretical aspects.

The training curricula, indeed, also include – besides dealing with juridical matters relevant to the job context and with the matters connected with the specific aspects of the working activity – the study of subjects concerning the observation and interpretation of prisoners’ behaviours, the communication processes focused on listening to and decoding of risk signals, or, more widely, on concrete situations in the penitentiary context, under the perspective of an integrated training of knowledge.

In particular, constant reference is made to the respect of human rights and of human dignity, which is highlighted also by the Italian Penitentiary Act; the trainees are provided with the knowledge necessary to an approach to the prison population based upon the acknowledgement of the ethnic, religious, cultural and language differences and upon the consequent differentiation of the staff interventions.

One of the aim of training is to provide the staff of the Penitentiary Police with personal and operational behaviours and models based upon the collaboration and cooperation with all the other professionals, upon a correct management of their relationships with the inmates, which is marked by the respect of the persons’ dignity, and upon their qualified participation in the rehabilitation treatment.

Last but not least, during the basic training some lessons are given of medical first-aid and, at decentralised level, training courses on the use of defibrillators are organised for the Penitentiary Police staff.

As for the training of the executives of the Department of Prison Administration, of the managing administrative staff and of the high-ranking officers of Prison Police Corps, it is important to underline what follows.

The Higher Institute of Penitentiary Studies has always showed a particular attention to the matters of the identification of prisoners and internees at suicide risk and to the effective management of prisoners at risk, both during the training courses for the newly recruited staff carried out at central level, and during the long-life training of staff at decentralized Regional level.

The aim of the Higher Institute is to identify and/or strengthen new intervention integrated practices which meet, as much as possible, the criteria of effectiveness of the intervention, to prevent possible risks of self-harm and suicide.

The training for the newly-employed concerning the subject-matters concerned, involved, respectively:

- In 2009/2020 about 300 units among educators
- In 2010/2011 150 deputy-Chief-constables of penitentiary police Corps

Penitentiary Police staff members too, in the framework of their duties (article 5, law 15 December 1990, n.395), are fully implied in the activity of the reception staff, together with other professionals, having specific technical skills (physicians, nurses, psychologists, psychiatrists, educators, possibly supplemented by other workers, such as SER.T. (drug-addiction service) workers, social workers, cultural mediators, volunteers, according to the problems expressed by prisoners).

The training addressed to newly recruited Penitentiary Police deputy-chief constables also focused on the topics concerning the daily management of difficulties and critical aspects which can characterize the detention of a person. To this regard, classrooms lessons deal with topics concerning the so-called precautionary measures which are provided for by the Penitentiary Act, to prevent possible self-harm or self-suppressive acts of prisoners (high or very high surveillance, surveillance at sight, etc.), in relation to particular events, which are very numerous (service of convictions, tragic events concerning relatives, non-access to alternative measures, etc.). Such topics have been dealt with in classrooms even by penitentiary police corps officers, Commanders of detachment, who could therefore put their experience acquired on the spot at the disposal of the trainees.

This training also concerned the macro-area of communication and interview techniques. The focus has been on communication techniques useful to provide penitentiary police officers with instruments for understanding crises situations (or situations of possible crises) degenerated (or which could degenerate) into self-harm events concerning prisoners.

Topics regarding “first aid” have also been dealt with by experts in that field, in order to provide useful practical advice to be used when critical events happen.

Long-life education at central level has concerned the possible integrated treatment for drug-addicts and was addressed to educators, to officers of the social service and to the officers of penitentiary police Corps, in order to ensure an integrated treatment for and with this typology of prisoners in synergy with the healthcare system, with the network of territorial services, local bodies and social private sector, in the full recognition of respective potentialities and weaknesses.

Similar subjects have been treated during the continuous training of staff at decentralised level.

In order to facilitate the above-mentioned staff training, guidelines for the prevention of suicide in prison are being published, totally inspired by the indications on the matter defined by the World Health Organization. The topics developed include: the definition of suicide profiles in the various situations of detention, the identification of particular cases, the burden of situations of physical and mental illness, how to identify situations of high/medium/low risk, how to have relationships with persons to verify suicide intentions and what to do to prevent the repetition of suicide gestures or the contamination of such gestures with other persons. Those topics also include a collection of excellent practices documented and documentable, spread in prisons.

All the indications and recommendations of CPT further strengthen the proper character of the initiative.

Paragraph 19.

As far as the Penitentiary Administration is concerned about item 19, it must be said what follows.

In terms of article 9 of the Decree of the President of the Republic nr 230 of 30th June 2000 (*“Regulations of Enforcement of the Penitentiary Act”*), taken for granted the possibility for the prisoners to use their own cloths and personal kit, the Penitentiary Administration must give the prisoners bed linen, items of clothing and personal underwear; the characteristics of such items are indicated in specific Tables established by ministerial decree.

The law currently in force, however, provides for the possibility for the prison physician to prescribe, with reference to specific needs of individual subjects, qualitative modifications of the bed linen and of personal underwear and clothes; such circumstance could legitimate, in the presence of prisoners classified “at suicide risk”, the provision of anti-suicide clothes, by prescription of the medical doctor.

Specific circular letters establish that only the objects which should be dangerous for themselves or for others can be taken away from prisoners, including belts, shoelaces and any other accessory which could be used for committing suicide. In some prisons, paper bed sheets are provided.

Paragraph 20.

As far as Prison Administration is concerned, the legislative framework relevant to the exam of the issues connected with the use of personal gas cookers by prisoners is provided for by art. 13. paragraphs 4 and 5, of the Decree of the President of the Republic 30 June 2000, n.320 which read as follows:

4. *Prisoners and internees are permitted to use personal cookers in their own rooms to heat liquids or food already cooked, as well as for drinks and food which are easy and quick to prepare.*
5. *The dimensions and characteristics of cookers must conform to ministerial provisions regulating the procedures of use and of recovery, even if nominal, of expenses.*

The possibility for prisoners to avail themselves of gas cookers to heat food and make drinks and/or food which can be quickly prepared is therefore explicitly provided for by the legislation in force; to that purpose, prisoners can purchase, upon request and at their own expenses, camping gas cookers, through the prison shop.

Considered the opportunity to identify useful alternatives in order to overcome the disadvantages connected with the possible improper use of such gas cookers, the competent Directorate General of the Department of Penitentiary Administration sought to verify the possibility both of finding on the market safer devices, and to examine solutions enabling to avoid the possession, in cells, of gas cookers.

As for the first aspect, the competent Directorate General of the Department of Prison Administration, once ascertained the availability on the market of gas cookers exclusively made of metal components, since 2008, issued to Regional Directorates specific Directives (letters n. 003754 of 30.01.2008, n. 012 6105 of 10.04.2008 and n. 0188177 of 30.05.2008) inviting them to order the prisons under their authority to forbid the sale to prisoners of cookers with plastic parts, easily subject to “softening” and which can well determine dangerous situations.

At the same time, an experiment is currently being assessed of a prototype of rechargeable gas canister, having greater safety guarantees than those presently on the market, as it cannot be tampered with and it is, anyway, not able to emit gas once the flame has extinguished.

The Advisory Study Commission in the matter of the Safety of persons, armaments, equipment, ammunitions and means of physical coercion with which the Penitentiary Police corps has been supplied with expressed itself about that proposal: after careful examination and discussions, such Commission has not deemed it opportune, for obvious security reasons, to carry out, in prisons, the experimentation of prototypes deprived of the expected certifications in compliance with the approved models (letter of the Study Commission n. 037/Vr/2010 of 07.05.2010).

The Commission also made the proposal of replacing gas-cookers with electric ones (so-called plates), a solution which has been currently considered not practicable, as it would be necessary to carry out huge works of wiring of entire prisons and of replacement of electric panels in order to support the considerable increase in the amount of power.

We do not have any information about the existence on the market of electric cookers to be battery-rechargeable.

As already indicated, the possibility of using camping gas cookers is provided for by the regulations currently in force for preparing hot drinks and for heating pre-cooked food. In the current situation of overcrowding of prisons, the prohibition of such items would risk to sharpen the sense of uneasiness of the prison population, who should feel it as a further vexation; the Penitentiary Administration is currently studying also the possibility of regulating the use of those gas canisters in the cells only in fixed times.

Paragraph 25.

See reply to Item “**2. Identification of prisoners who may be at risk of suicide or self-harm**”

4. Measures taken in the event of death or self-harm in custody

Paragraph 26 (from the Ministry of Health)

Italian Authorities commit to submitting this issue to the Standing Consultative Group on prison health, for the preparation of a protocol for the correct management of deaths and their causes.

Paragraph 28.

As far as the Penitentiary Administration is concerned, it must be said what follows.

In case of suicide, the competent Regional Director (*Provveditore*) is always entrusted with the task of performing the relevant internal administrative investigation. In any case, the local Public Prosecutor is always informed, without exception, in case of a death occurred in a prison. At the moment of the inspection assignment, the sending of the post-mortem examination outcomes is expressly requested. However, the decision whether to carry out said examination, and whether to subsequently forward the relevant documentation, is made by the judicial authority, at its own discretion.

The Headquarters of the Penitentiary Administration carry out the monitoring of the data relevant to suicides in prisons and those surveys are always taken into consideration for the issuing of the above-mentioned circular letters. During 2010, monthly meetings were held, involving volunteers, representatives of psychologists' Association, of medical doctors' Association and of various other associations in order to coordinate the interventions of support, also with reference to the serious suffering caused by overcrowding. Those meetings led to the issuing of the last circular letter, in April 2010, named “*new interventions to reduce the uneasiness deriving from the condition of deprivation of liberty and to prevent self-harm*”.

Transfer of responsibility for prison health care from the Ministry of Justice to the regional health-care authorities

Paragraph 38.

The participation of the physician as member in the disciplinary council is expressly provided for by the Law (articles 39 and 40 of the Penitentiary Act), with the purpose of protecting the health of the prisoner himself, since the physician has to assess whether he can bear the possible infliction of the most afflictive disciplinary sanction (confinement). In those circumstances, no violation of privacy can arise in the possible communication of health information concerning the prisoner. Indeed, not only that information is provided for and allowed by the law currently in force, but it is also fair in order to enable the making of decisions which do not put at risk the physical and psychic integrity of the person concerned.

Paragraph 40.

As far as the Penitentiary Administration is concerned, it must be said what follows.

On the 8th July 2010 the Unified Conference approved the Agreement providing for the monitoring of the state of enforcement of the Decree of the President of the Council of Ministers of 1st April 2008 (concerning the modalities and criteria for the transfer to the National Healthcare Service of the health functions, of the work relationships, of the financial resources and of instruments and equipments in matter of penitentiary healthcare). In this connection, it must be highlighted that in the Regions governed by Ordinary Statute the monitoring is carried out by the Regions and then is forwarded to the Ministry of Health to be put at the disposal of the permanent Table of consultancy established at the Unified Conference².

Within said meeting it was possible to carry out, as already mentioned, a further analysis of the specific subjects relevant to the identification of the psychological and psychiatric uneasiness since the subjects' first entry in the prison and in the following phases, as well as the strengthening of the penitentiary healthcare structures aiming at the identification and care of the psychic illness, through the establishment of dedicated working groups.

With reference to the request of information concerning alleged budget difficulties referred by the CPT document, the 1st October 2008, in the Regions governed by Ordinary Statute, the transfer of the penitentiary healthcare to the National Healthcare Service was completed; therefore the Penitentiary Administration does not have financial resources anymore for the penitentiary healthcare service to be provided there.

This was carried out in compliance with the Decree of the President of the Council of Ministers of 1st April 2008, which provided for that, in order for the National Healthcare Service to carry out the functions relevant to the penitentiary healthcare service, the financial resources for the healthcare assistance in the penitentiary structures, formerly assigned to the Ministry of Justice, had to be transferred to the National Healthcare Funds by 30th September 2008. The Ministerial Decree nr. 84912 of 6th August 2008, issued by the Ministry of Economics and Finances, as enforcement of what above, provided for the transfer to the National Healthcare Funds of the funding relevant to the last quarter of 2008, formerly assigned to the Ministry of Justice – Department of Penitentiary Administration.

² The Unified Conference State-Regions established, by deed nr. 81/CU dated 31st July 2008, the Table of Permanent consultancy, having the aim of ensuring the uniformity, throughout our Country, of the healthcare and treatment interventions and activities for prisoners, for internees and for minors undergoing a penal provision.

The Regional Directors and the prison Governors working in the Regions with Special Statute and in the Autonomous Provinces of Trento and Bolzano, since they are still competent in matter of organisation of the healthcare services in the prisons in those areas, directly filled the forms annexed to the said Agreement. Those forms duly filled were forwarded, through the Regional Directorates, to the Directorate General for Prisoners and Treatment, at the Administration Headquarters, which subsequently forwarded them to the Ministry of Health.

As it is known, with the transfer of the penitentiary healthcare service, also the competences concerning judicial psychiatric hospitals (OPG) were transferred to the Regions. That commitment, which is no doubt a tough one, intends to satisfy the need of ensuring a complete treatment from both the clinical-therapeutic and the social points of view. The basic principles of the action within that field can be summarised as follows:

- re-organisation of the modalities of intervention, identifying catchment areas including more than one Region for each OPG;
- assignment of internees to structures close to their places of residence, in order to facilitate contacts with their families;
- research of less and less coercive forms for the care of psychic diseases, in connection with the need of stemming a violent reaction connected with the increase in the needs of control;
- progressive reduction and overcoming of the OPG model.

The way taken has objective difficulties, but it should lead to a synergic action between the Local Health Authorities and the penal establishments, with the aim of providing continuity of care, treatment and therapy, while keeping the distinction in the responsibility between the need of rehabilitation and care strictly speaking and the need of security.

According to the model adopted by the Decree of the President of the Council of Ministers of 1st April 2008, two contextual strategic lines were set:

- 1) The OPGs are still structures of the Penitentiary Administration, where healthcare activities are carried out by the National Healthcare Service, and where a necessary dialogue has to be set between the healthcare authority and the security authority;
- 2) Progressive reduction of having recourse to the OPG, putting into effect coordinated plans of action between the Ministries concerned in order to achieve the OPG overcoming within a medium/long-term period (through the setting of local alternative healthcare solutions and by equipping prisons for the care and the control of mentally troubled prisoners).

The objective of such a process is a new way of offering services by the Departments of Mental Health, putting the Judiciary in the position of ordering the enforcement of security measures in normal healthcare contexts with adequate guarantees of security and assistance.

B. Transfer of responsibility for prison health care from the Ministry of Justice to the regional health-care authorities

Paragraph 31 (from the Ministry of Health).

The provisions in legislation and programmes on health assistance are valid for all Regions and therefore, for all the ASLs, which have at their disposal the funds of the National Health Fund, which are distributed among all the Regions according to shared and objective criteria. Care activities are monitored by the National Committee for the Monitoring of LEA (minimum care standards), through analysis and assessment of the National Health Information System.

As for the situation of care in detention facilities, it must be noted that the Ministry of Health, together with the Regions, has begun to set up a special Information System for Prison Health, which will supply information on all services delivered in detention facilities, which will be assessed, by using specific indicators.

The strong focus of the Ministry on Health on the assistance in the prison framework in terms of organization and of additional financial resources also stems from the inclusion of this matter in the national health plan for 2009-2010 as adopted by the State-Regions agreement, dated 25 March 2009, and the allocation of additional resources for the “promotion of integration activities between mental health departments and judicial psychiatric hospitals” achieved by including the issue amongst those to receive co-funding from the 23.12.2008 D.M. (Ministerial Decree).

Paragraph 32.

As for the allocation of funds specifically for prison health, which were previously managed by the Ministry of Justice, all the funds available have been allocated. The resources have been transferred to the ordinary regions (15 out of 20), while the Special Status Regions, including the autonomous Provinces of Trento and Bolzano have not approved yet the implementation rules laying down, as per Art. 8 of the 1 April 2008 DPCM, the transfer of the Prison Authorities and Juvenile Justice System functions and staff to the aforementioned SSRs and Autonomous Provinces. Pending this approval, the Ministry of Justice will continue to act as paying office for the staff of the regions and the provinces in question.

Paragraphs 33 to 35.

The right to health and health services is enshrined in the Italian Constitution (Art.32) and thus by law:

1. The common objective is to manage specialist doctors' visits specially inside the facilities and this objective is subject to monitoring.
2. The Teramo findings concerning the incorrect management of the waiting list to see a specialist according to "gravity" criteria, will be monitored by the Abruzzi Region.
3. Correct reporting in the medical records during the medical check-up, of all the elements necessary to describe the traumatic lesions, including the statements of the detainees, will be brought to the attention of the Standing Consultative Group on prison health in order to draft guidelines on the matter.

Paragraph 36.

Competency for health care in Judicial Psychiatric Hospitals has been transferred in to the ASLs, including obviously psychiatric treatment and rehabilitation, whereas competency for the administrative management lies with the Ministry of Justice.

For these structures (JPHs), a special plan is envisaged to make the Regions aware of their responsibility towards their patients.

The plan is described in a specific policy document dedicated to these structures (Annex C of the 1 April 2008 DPCM), a summary of which follows:

In the first phase, once competency has been transferred, the Regions will become fully responsible for the health management of the JPHs situated on their territory. *Indeed, the Lombardy Region becomes responsible for the Castiglione facility, the Emilia-Romagna Region for the Reggio Emilia facility, Tuscany for the Montelupo Fiorentino facility, Campania for the Naples and the Aversa facility and Sicily for the Pozzo di Gotto facility.*

Meanwhile, the Mental Health Departments of the territories where the JPHs are situated, along with the team in charge of the care and treatment of patients detained in the facilities, shall draft an operational programme that specifies:

- *discharging inmates who have completed their safety and security programme, with solutions agreed with the Regions concerned, which must include suitable social inclusion measures also involving the Local Bodies in the area of origin, the ASLs concerned and the social and health services of the area of origin or of destination of the inmates to be discharged.*
- *returning to their prison of origin inmates detained in JPHs because of psychic disorders occurred while serving their sentence. This action is only possible after having activated the treatment and rehabilitation sections inside the prisons.*
- *ensuring that the observations needed to ascertain insanity as per Art. 112 of 230/2000 D.P.R. be performed in the ordinary institutions.*

These initial provisions will lead to an primary advisable reduction in the number of detentions in the current JPHs, which will permit a better and more personalized management, more appropriate relations between operators and internees and will make it easier to plan the subsequent phases.

In the second phase, there is to be an initial distribution of current internees so that each JPH, without substantially modifying its capacity or consistency, becomes the institutional care facility for the inmates of the neighbouring or nearby Regions, so as to immediately strike up preliminary collaboration relations with a view to helping inmates to become better acquainted with their geographical areas of origin.

Programmes for the treatment, rehabilitation and social recovery of each internee must be prepared between the Region that has management competency for the JPH and the neighbouring and nearby regions. These must include relations between the various social and health services that may be useful or are needed to prepare a further decentralization programme for the Regions of origin. The areas of competence of the individual JPHs are thus redefined:

CASTIGLIONE DELLE STIVIERE

Lombardy

Piedmont

Aosta Valley

Female patients from the following regions: Piedmont, Aosta Valley, Lombardy, Autonomous Provinces of Trento and Bolzano, Veneto, Friuli Venezia Giulia, Emilia-Romagna, Tuscany, Umbria, Marche, Sardinia

REGGIO EMILIA

Emilia-Romagna

Autonomous Provinces of Trento and Bolzano

Friuli Venezia Giulia

Veneto

Marche

MONTELUPO FIORENTINO

Tuscany

Umbria

Liguria

Sardinia

CAMPANIA (NAPLES and AVERSA)

Campania

Abruzzi

Molise

Latium

BARCELLONA POZZO DI GOTTO

Sicily

Calabria

Basilicata

Apulia

Female patients from the following regions: Abruzzi, Molise, Campania, Apulia, Basilicata, Calabria, Sicily

The third phase will see the return to each Italian Region of the quota of JPH internees originating from that region with the related transfer of responsibility to be achieved through therapeutic and rehabilitation programmes to be carried out within the facility, also with a view to preparing for discharge and reinsertion into the social context of origin.

At present, phase II is under way.

Paragraphs 37 and 38.

It is agreed upon the need to maintain “the confidentiality in the physician-patient relationship”. It is also agreed that it is not advisable for the detainee’s general practitioner to participate as a member of the disciplinary committee. If it is necessary to acquire a forensic medical opinion on a disciplinary measure, it is advisable to contact an “outside” physician. The Ministry of Health commits itself to submitting this issue to the Standing Consultative Group on prison health.



**SUPPLEMENTARY OBSERVATIONS ON THE REPORT
BY THE COMMITTEE FOR THE PREVENTION OF TORTURE,
FOLLOWING ITS AD HOC MISSION TO ITALY
(June 14 –18, 2010)**

October 13th, 2011

Italy is in a position to provide the following information:

ACCOUNTABILITY FOR ILL-TREATMENT OF PERSONS IN CUSTODY

PARAS 5-11-15:

On a very general note, the relevant constitutional and normative framework envisages as follows: By the joint reading of **Art.112 of the Italian Constitution and Art.50** of the Italian criminal proceeding code: “The public attorney is obligated to initiate the penal action”. Under **Art. 112 of the Italian Constitution**, prosecution is compulsory and the public prosecutor is the body belonging to the judiciary that is autonomous and independent from any other power. Therefore, the public prosecutor, once received the notice of crime, is obliged to carry out investigations within six months and to exercise prosecution against the responsible persons - if there is any element. Besides, the public prosecutor is obliged to communicate to the relevant public Administration any proceeding carried out against a civil servant.

Art.13 of the Italian Constitution stipulates:” *Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise restricted in personal liberty, except by order of the judiciary stating a reason and only in such cases and in such manner as provided by law. As an exception, under the conditions of necessity and urgency strictly defined by law, the police may take provisional measures that must be reported within 48 hours to the judiciary and, if they are not ratified within another 48 hours, are considered revoked and remain without effect. Acts of physical and moral violence against persons subjected to restrictions of personal liberty are to be punished. The law establishes the maximum duration of preventive detention*”. Along these lines, Art. 27, para. 3, of the Italian Constitution lays down: “*Punishments may not contradict humanity and must aim at re-educating the convicted*”.

Accordingly Article 606 and other provisions, contained in the **criminal code**, safeguard the individual against illegal arrest, undue restriction of personal liberty, abuse of office against detainees and prisoners, illegal inspections and personal searches. These safeguards are supplemented by provisions under Article 581 (battery), Article 582 (bodily injury), Article 610 (duress, in cases where violence or threat are not considered as a different crime) and Article 612 (threat) of the criminal code. Even more so, the provisions under Article 575 (homicide) and Article 605 (kidnapping), to which general aggravating circumstances apply, regarding brutality and cruelty against individuals and the fact of having committed these crimes by abusing of power and violating the duties of a public office or public service, respectively (Article 61, paragraph 1, number 4 and 9 of the criminal code).

Moreover, the **code of criminal procedure** contains principles aiming at safeguarding the moral liberty of individuals: its Article 64, paragraph 2, and Article 188 set out that, “during interrogation and while collecting evidence, methods or techniques to influence the liberty of self-determination or to alter the ability to remember and to value facts cannot be used, not even with the consent of the person involved”.

The Italian legal system provides that a person may be placed under police custody when s/he is arrested in the act (*flagrante delicto*) or apprehended (Arts. 380 et seq. of the code of criminal procedure) or under enforcement of an order of preventive custody, as issued by the judge, upon request of the Public Prosecutor (Art. 272 et seq, Art. 285 et seq of the code of criminal procedure).

In implementing Article 13 of the Italian Constitution, Article 386 of the code of criminal procedure provides that “the judicial police officers and agents who have carried out the arrest or the apprehension, or to whom the arrested person has been surrendered, expeditiously inform the Public Prosecutor of the place where the arrest or the apprehension was carried out. **They must also inform the person put under arrest or apprehended of his/her right to appoint a defense counsel. The Judicial police must promptly inform the private defense counsel or the Court-appointed defense counsel**, as the latter being designated by the Public Prosecutor pursuant to Art.97 of the code of criminal procedure, of the occurred arrest or apprehension.”

Pursuant to Art.143 of the code of criminal procedure, **the defendant has the right to be assisted by an interpreterⁱ, free of charge.** Art. 387 of the code of criminal procedure provides that the Judicial police, with **the consent of the person arrested or apprehended, must inform without any delay a family’s member of said person’s arrest or apprehension.**ⁱⁱ

Art. 388 of the code of criminal procedure sets out the rules governing the questioning by the Public Prosecutor, of the person arrested or apprehended. S/he shall proceed with the questioning, in compliance with Art. 64 of the code of criminal procedure, and timely inform of the said questioning the person’s private or Court-appointed defense counsel (Arts. 96 and 97 of the code of criminal procedure). S/he shall also inform the person arrested or apprehended of the acts under investigation, the grounds on which the measure is based, the evidence gathered against him/her and – provided that this does not cause any prejudice to the investigations – the sources of said evidence.

As to the right to defense and the judicial safeguards, Art. 24 of the Italian Constitution stipulates that the right to defense is a fundamental right; and Art. 27 lays down the principle of the assumption of innocence, up to the final judgment.

According to Art. 111 of the Italian Constitution (as amended by Constitutional Law No. 2/1999), the law guarantees and considers the right of being assisted by a defense counsel as an inalienable right, as the principle is in force, according to which the technical defense is mandatory (Art. 97 and 98 of the code of criminal procedure). According to Art.24 of the Constitution and Art.98 of the code of criminal procedure which provides for the defense of the indigents, Presidential Decree No. 115/2002 provides for legal aid in criminal action (Art.74 et seq.). For being admitted to legal aid, no particular conditions or formalities are required (a mere self-certification is sufficient, pursuant to Art.79, para1, letter c).

Along these lines, the Prison Rules [Ordinamento Penitenziario] (Act No. 355/1975) and the relating Implementing Regulation [*Regolamento di esecuzione*] (Decree of the President of the Republic, D.P.R. No. 230/2000) contain specific provisions, aimed at ensuring that every person, as from his/her first contact with the prison, is granted the recognition of some fundamental rights. It is therefore provided that upon his/her first arrival (Art. 23, para.3, of the above Regulation), the

prisoner be given a medical examination and meet an expert in prison treatment, in order to “*verify whether, and should it be the case with what precautions, s/he can adequately cope with the state of restriction*”, and also in order to ascertain whether there are any situations of risk or other type of problems. Art. 23, para. 5, also provides that the Prison Warden, or his/her delegate, have a further talk with the prisoner “*in order to give him/her the information provided for in Art. 32, para.1, of the (cited)Act*”, and to also give him/her a copy of the regulations governing life in prison (Article 69 of the Regulation expressly provides that the regulations be made available in several languages).

Article 11 of the Act under reference and Art.17 of the relating Regulation provide that medical and pharmaceutical assistance be constantly provided through the presence in prison of specialist doctors and the possibility of being hospitalized either in the prison administration’s medical centres (*CDT: Centri Diagnostici e Terapeutici [centres for diagnosis and treatment]*) or in external health-care facilities.

Meetings with the defense counsel cannot be limited in any way and are possible since the very beginning of the imprisonment. The visual meetings with duly entitled family members also take place at fixed time and days, after having ascertained the actual family relationship – even by means of a self-declaration.

On a more specific note, Art. 104 of the code of criminal procedure lays down that the person who has been arrested while in the act of committing an offence or subject to provisional arrest (according to Art. 384 of the code of criminal procedure) and the accused under precautionary custody, have the right to talk to the defense counsel immediately after their arrest, or provisional arrest or the starting of the execution of the precautionary custody in prison.

According to the Supreme Court, “the illegitimate postponement of the talk with the defense counsel and hence the infringement of the right provided for under Art. 104 paras.1 and 2 of the code of criminal procedure, entails the infringement of the right to defense, to be considered within the framework of general nullity provided for under Art.178, letter c, of the code of criminal procedure; nullity, which, according to Art.185, para.1, of the code of criminal procedure, makes invalid the questioning rendered by the arrested person, who has been illegally denied the right to talk before the defense counsel, with the consequences provided for under Art.302 of the code of criminal procedure, i.e. the loss of efficacy of precautionary custody (judgement No.3025/1992, confirmed by judgment division VI- 04/20/2000 Memushi Refat).

In brief: 1. Warrants are required for arrests (Art.386 of the code of criminal procedure) unless there is a specific and immediate danger to which the police must respond without waiting for a warrant; 2. Detainees are allowed prompt and regular access to lawyers of their choosing and to family members; 3. The State provides a lawyer to indigents (Art. 97 of the code of criminal procedure). Art. 386 of the criminal proceeding code sets out, as a general provision, that the criminal investigation department officers executing the arrest measures or guarding the person arrested must give prompt notice about that to the competent public prosecutor. They also inform the person under arrest about the right to choose a legal counselling. Thus, the criminal investigation department officers must give prompt notice of the arrest to the legal counsel who may be appointed *ex officio* by the public prosecutor unless chosen by the person under arrest, pursuant to Art.97 of the code of criminal procedure. Besides, the Italian legal system includes a general provision on the basis of which no waiver of legal defense is allowed to those who are put under arrest; 4. The Act enforcing Article 111 of the Constitution provides, in its present wording, that any person, since his/her first contact with the judicial authorities, shall be informed of his/her rights in the language s/he knows. The Supreme Court (*Corte di Cassazione*) recently reaffirmed that any judicial act regarding the suspect (*indagato*) and/or the accused (*imputato*) shall be null and void if it has non

been translated in his/her mother-tongue. Article 143 of the code of criminal procedure envisages that the accused who does not understand the Italian language has the right to be assisted, free of charge, by an interpreter, in order to understand the accusations against him/her and to be able to follow the conclusions of the case in which s/he is involved. Besides, the competent Authority appoints an interpreter, when necessary, to translate a printed document in a foreign language, a dialect not easily comprehensible, or upon request of the person who want to make a declaration and does not understand the Italian language. The declaration can also be provided in writing. In such case it will be integrated in the report with the translation made by the interpreter. An interpreter is nominated even when the judge, the Public Prosecutor or the officer of the Criminal Investigations Police have personal knowledge of the language or of the dialect that are to be interpreted; 5. Along these lines, due attention is also paid to the institution of legal aid, the system of which was amended by Legislative Decree No.115/02, with the aim at ensuring adequate and effective legal defence (More specifically, this Decree simplifies and extends the access to legal aid in civil and administrative proceedings). As to the criminal proceedings, Act No.134/01 envisages the self-certification procedure for the income of the defendant. Such procedure is also extended to those foreigners who have an income abroad (In this regard, ad hoc information desks have been established at Bar Associations); 6. Art.387 of the criminal proceeding code envisages that upon agreement with the person under arrest or detained, the criminal investigation police must promptly inform his/her family members.

As to the detention precautionary measures, while recalling that Art. 27 of the Italian Basic Law sets forth the presumption of innocence until definitive verdict, Art.272 of the criminal proceeding code (c.p.p.) sets out the *ex lege* conditions to allow the adoption of preventive measures, such as the pre-trial detention. The following articles (Arts.273 - 274 c.p.p.), which have been recently amended, fix the circumstances to release the cited measures. The terms and the duration of the pre-trial detention are set by the recently amended Art.303 c.p.p..

As a general rule, the pre-trial detention may last up to a maximum of 24 months, while in case of crimes to be eventually punished with life detention sentence or with a 20-year prison penalty, the above measure can be fixed, up to 6 year.

Procedurally, preventive detention can be imposed only as a last resort when there is clear and convincing evidence of a serious offence (such as crimes involving the Mafia or those related to terrorism, drugs, arms, or subversion) with a maximum sentence of not less than 4 years or if there is a risk of an offence being repeated or of evidence being falsified. In these cases, a maximum of 2 years of preliminary investigation is permitted. Except in extraordinary situations, preventive custody is not permitted for pregnant women, single parents of children under the age of 3, for persons over the age of 70, or those who are seriously ill. Mention shall be made of Art. 657 of the code of criminal procedure, which sets out that when calculating the duration of the prison penalty term, the pre-trial detention must be included in.

As above recalled, in the Italian legal system, the principle of **respect for the moral freedom of all persons giving evidence is in force and laid down in Article 188 of the code of criminal procedure**. This Article sets forth that “methods or techniques apt to influence freedom of self-determination or alter the capacity to recall and evaluate facts may not be used, not even with the consent of the person concerned”. The same principle is also reaffirmed in **Article 64, para 2, of the code of criminal procedure** which stipulates some general rules for witness’ examination, according to which “methods or techniques apt to influence freedom of self-determination or alter the capacity to recall and evaluate facts may not be used, not even with the consent of the person concerned”. **Any violation of these prohibitions affects the admissibility of evidence - if gathered illegitimately in the proceedings -, in accordance with Article 191 of the code of criminal procedure**, which sets forth (its para.1) that evidence obtained in violation of the

prohibitions, established by law, may not be admitted and that such inadmissibility may be stated *ex-officio* at any state and stage of the proceedings. Complaints may be lodged against the violation of this last provision before Court of Cassation (Article 606. para.1, letter c, of the code of criminal procedure). Last, Art.314 of the c.p.p. provides for compensation if cases of unjust detention emerge.

With specific regard to ill-treatment by Police forces, it should be recalled that separate police forces, reporting to different ministerial or local authorities, effectively enforce public law and order. The State Police and the Financial Police fall under the jurisdiction of the Interior and Finance Ministries, respectively. The Ministry of Defence controls the Carabinieri, a military security force, that however falls within the Ministry of Interior responsibility when performing public security and public order duties. Under exceptional circumstances, the Government may call on the army to provide security in the form of police duty in certain local areas. In this specific regard, when carrying out police activity, Carabinieri perform their duties under the supervision of the Interior Ministry.

In case of violation of duties, including mistreatment of persons under arrest or of protesters, the relevant authorities apply disciplinary and judicial proceedings. In this regard, it is worth recalling the double track followed by the Italian institutions, namely the disciplinary and judicial proceedings in case of violations of the domestic codes, as well as of the internal codes of conduct.

Given the “repressive function of crimes (in accordance to which the judicial authorities, *ex officio* or upon complaint, must proceed with the evaluation of evidence; and once the evidence of the offence committed is detected (Arts.330 ss. c.p.p.), the public prosecutor applies Art.112 of the Italian Constitution concerning “the compulsory exercise of the penal action”), all Italian forces may undergo both disciplinary and judicial proceedings.

With specific regard to Carabinieri, they are exposed to two parallel proceedings, as follows:

- Penal or military penal proceedings, when their conduct triggers the violation of relevant codes’ provisions; and
- The Carabinieri disciplinary proceedings (D.P.R. No. 545/86).

With regard to the correction systemⁱⁱⁱ, Art. 21 of Act No. 395/90 enabled the Government to adopt Law Decree No. 449/92 mentioning the cases to which disciplinary proceedings must be applied. Such measures range from censorship to pecuniary penalty, from deploration and suspension from the service to dismissal^{iv}.

Along these lines, it is worth noting the increasing acknowledgement of the importance of training activities, including **Human Rights Education** courses, for the entire category of law and order enforcement officers. All Italian forces pay the utmost attention to humanitarian and human rights law within the framework of the vocational training and educational activities performed at ad hoc Institutes. In particular, the Inter-forces Institute of Advanced Studies under the umbrella of the Interior Ministry was established to train all the Police forces. In this regard, in all relevant courses specific attention is paid to humanitarian and human rights law.

On a more specific note, as an example of best practices, Carabinieri work on a daily basis with and on behalf of citizens. Therefore, there is the clear necessity to provide them with an in-depth knowledge of human rights law. There is an increasing focus on “victimology (*vittimologia*)”, so as to change approach towards the phenomenon of criminality, which is tackled by taking into account the position both of the victims and the perpetrator. In this context, specific guidelines have been prepared, *inter alia* by exchanging information with the academic world.

More generally, the Interior Ministry pays the utmost attention to educational, training and refresher courses to be attended by members of the Public Security Administration. In order to emphasize the importance to be attached to professional deontology, integrity, and more generally to the legal relevant framework when serving the State, several educational initiatives are undertaken by the cited Ministry. Along these lines several measures aimed at disseminating human rights have been adopted by the Department of the Penitentiary Administration (DAP) at the Justice Ministry.

Provided that relevant legislation is based upon Art.27 of the Italian Constitution (“the punishment system aims at the rehabilitation/correction of the convicted”), this also translates several relevant international provisions, particularly the UN Minimum Standards’ Rules on the Treatment of Prisoners (1955). Subsequently, additional programs and measures were envisaged by Act no. 395/90, in line with Universal Declaration of Human Rights. More recently the DAP has translated and circulated the throughout its system the so-called Istanbul Protocol, so did Carabinieri.

PARA 8.

In general, it is the Director of the health-care service in each prison who manages the requests for specialist examinations.

PARA.13

With specific regard to the information on Mr. X, to be provided by the Public Attorney’s Office in Rome, please refer to the document annexed to the Italian observations.

In addition to that, Italian Authorities would like to provide you with additional elements made available by the Carabinieri Corps. On October 15, 2009, at around 23:30 in Rome, a patrol of the Rome-Appian Carabinieri Station, caught *in flagrante delicto* Mr. X for possession of drug, for the purpose of selling drug.

Both the intervention and the apprehension phases, as well as all the other activities relating to the preparation of relevant documents and search were held regularly, since the apprehended person was particularly weak due to pre-existing pathologies. In particular he showed to be submissive and oriented to justify his legal position rather than challenge it.

The apprehended was detained in the Rome – Appian station of the Carabinieri Corps, for the time strictly necessary for the preparation of acts of police, and kept in sight by operators, up to the transfer to the security room in the Rome - Tor Sapienza Station where the military serviceman noted health conditions compatible with the temporary detention.

Before being introduced into the security room Mr. X was further searched; and his belt and the laces were removed, in accordance with internal regulations aimed at preventing acts of self harm.

The military serviceman provided to Mr. X various blankets to allow it to sit properly. Around 5.00 A.M. Mr. X rang a special bell for calling the military serviceman and represented a general state of indisposition, since he stressed to suffer from epilepsy. The military serviceman, even against the will of the person concerned, required the immediate intervention by the staff of emergency number 118. At the arrival of medical staff (Ambulance code, PICK 059), Mr. X refused either to undergo the examination or to be accompanied at a hospital, claiming the need to rest prior to the validation hearing the following day. However, medical staff remained about 10 minutes with the person concerned to monitor his health conditions, besides remaining another 20 minutes available within the station, also for the preparation of documentation relating to their intervention. Mr. X fell asleep, while being checked several times by military servicemen. Upon awakening, the

arrested complained of pain and showed redness on both cheeks. However again he rejected the intervention of medical personnel. Later, a patrol of the Carabinieri took the arrested to the court for the hearing, where the justice confirmed the arrest and decided for the remand. Therefore the Carabinieri personnel left the room with Mr. X to bring him to the security rooms being within the Tribunal in Rome, whereby all the normal formalities took place. Once concluded them, Mr. X was taken over by the Penitentiary Police at the Tribunal to lead him back to the temporary security rooms.

From the investigations carried out so far, no liability cases have emerged with regard to the Carabinieri personnel. For the sake of completeness, on the morning of November 13, the magistrates in charge with the relevant penal proceeding released the notification of warrant against, respectively, three officers of the Penitentiary Police, under investigation for "unintentional homicide", and three doctors in the hospital ward reserved for prisoners at the Pertini Hospital, for "negligent homicide".

With specific regard to the original sheet of detention (*foglio di fermo*) filled out by Carabinieri, please note that it is available in the PDF document herewith attached (p.8).

PARAS.14-16

With specific regard to the information on Mr. Y, the material by the General Attorney's Office in Rome is annexed to the present Document. In addition to that, we are in a position to provide you with brief pieces of information, including on the suspension from the duty, particularly for the members of the Police forces:

The criminal proceeding concerning 9 Police servicemen is ongoing. On April 16, 2001, the judicial Authorities have concluded the preliminary investigations.

At present, there is neither a measure concerning the suspension from the duty, nor specific disciplinary measures, as long as the suspension from the duty, in accordance with **Art. 9, of D.P.R. No. 737/81**, is compulsory when the judicial Authorities release a measure restricting the personal liberty of the person concerned; and subsequently can be decided, on a discretionary basis, when the charges are so serious that the proposal is submitted by the Head of the Office at which the person concerned works. As for the enforcement of the suspension measure, it is necessary that the person changes his/her juridical position from suspect (*indagato*) to defendant (**Art. 60 c.p.p.**).

On a more general note, **Art.9, para.1, of D.P.R. No.737/81 and Art.91 of D.P.R. No. 3/57**, the latter for the part being still in force, envisage the measure of the mandatory precautionary suspension from duty when the judicial authorities decide and request a measure restricting the personal liberty of the serviceman concerned, such as the pre-trial detention. Therefore during that specific lapse of time the policeman cannot be considered on duty.

On a more specific note, it should be stressed that the institute of the mandatory suspension does not primarily aim at removing the policeman concerned (on the contrary, this is the specific aim of the discretionary suspension, in accordance with para.2 of **Art. 9 of D.P.R. No.737/81**), since the policeman is already subjected to a jurisdictional measure. The mandatory suspension is thus aimed at defining the juridical situation and the subsequent economic treatment of the serviceman detained or for instance put under house arrest.

The mandatory suspension is decided by the superiors (head of office) of the policeman, whose motivation relies on the jurisdictional measure restricting the personal liberty: this suspension measure will be in force in parallel with the detention measure affecting the policeman. Once the

judicial authorities release the person on parole, the serviceman is immediately reintegrated, unless the Administration decides to adopt a discretionary suspension measure, to be duly motivated.

On a practical note, when the precautionary measure loses its effects (*ope legis* or *ope magistratus*), the Administration has to decide whether to revoke the suspension or to extend it. In particular the Administration has to ascertain if the policeman has changed his juridical status from suspect to defendant. If this is the case, the Administration will enforce **para.3 of the above-mentioned Art.9 of D.P.R. No. 737/81**: the precautionary suspension applies and is extended, as a general rule, unless the Administration decides otherwise.

If the policeman acquires the status of defendant, even when the judicial Authorities do not release a measure restricting the personal liberty, the Administration can decide for the precautionary suspension due to the seriousness of the crime. In this case the suspension is decided by Decree of the Chief of the Police, in accordance with para.2 of **Art. 9 of D.P.R. No.737/81 (the so-called discretionary suspension)**.

The suspension cannot take place when the mere complaint is lodged: practically, when the judicial Authorities receive *notitia criminis*.

Only when the process starts, the Administration has the duty to suspend the disciplinary proceeding to follow the judicial decision, in accordance with **Art.11, of the above-mentioned D.P.R. No. 737/81; and in parallel has the faculty to suspend from the duty the serviceman, in accordance with para.2 of Art.9 of D.P.R.No.737/81. The rationale behind this approach is two-fold: the results of some verdicts affect the disciplinary proceeding;** and the serviceman needs to focus on the judicial proceeding which will later affect the relating disciplinary proceeding.

As reported, the Administration may see the opportunity to temporarily remove the serviceman from the service (this is a discretionary power) when s/he becomes a defendant, since his/her presence at the work-place may be harmful (damages for the image of the Administration, violation of the correctness, and so forth).

The precautionary suspension is not a disciplinary sanction, although this is meant to remove the serviceman from his office, especially when the seriousness of the offence so requires even before the disciplinary proceeding starts. This is meant to protect the Administration.

If the judicial proceeding concludes with the acquittal, the suspension is immediately revoked and the serviceman gets back the salary arrears

PARA 15

The Penitentiary Administration takes note of what is highlighted by the CPT and will make any necessary effort towards the solutions of the problems concerning possible obstacles arising during the carrying out of the administrative inquiry. As for the criminal inquiry, the Judicial Authority has every legislative instrument at its own disposal for overcoming any obstacle which should arise.

The Italian Penitentiary Administration has two different training agencies: one set of structures for the training of staff belonging to operational (lower) ranks and levels (Training Schools) and one structure for the staff belonging to managing (upper) ranks and levels (Higher Institute of Penitentiary Studies).

The training courses focus on technical-operational interventions aiming at developing the respect of human rights and the rule of law, in compliance with the national, European and international law, including the specific Recommendations issued on those subjects.

The initial training aims at providing the newly recruited staff with the necessary professional skills as well as with a wide and deep comprehension of their workplace context and of the social aspects of crime. Both practical and technical aspects are included in the training courses, in the context of the specific role which the workers will play within their organization and in relation to the duty which they will perform, always keeping in mind basic ethical values.

The training curricula, indeed, also include the study of subjects concerning the observation and interpretation of prisoners' behaviour and the communication processes focussing on the detection and interpretation of the risks signals in the penitentiary context. In particular, the trainees are provided with the knowledge necessary for an approach to the prison population which is based upon the recognition of the ethnical, religious, cultural and language differences, which will lead to a differentiation of the rehabilitation interventions. They are also provided with some tools useful for facilitating their comprehension of the prisoners' psychic disease, in order to prevent self-injuries or assaults. The initial training courses aim at developing the sense of operational security, while respecting the rule of law and the ethical and professional values; courses intend to develop the individual's sense of responsibility with reference to the functions which the staff performs and to the image of the Penitentiary Police Corps.

The objective is to provide the Penitentiary Police staff with operational modalities and personal behaviours based upon inter-disciplinary collaboration and cooperation with all the penitentiary professionals, as well as to teach them a correct management of their inter-personal relations with the prisoners, characterized by the respect of the persons' dignity and by their qualified participation in the penitentiary rehabilitation treatment. The Penitentiary Administration underlines that it puts particular care in the training in matter of organisational and individual welfare of all the penitentiary workers – with particular focus on the penitentiary police staff – proposing to the participants in initial and continuous training some specific courses on stress management techniques within the work environment. Moreover, it must be noted that lessons on first-aid are included in the initial training, and that, at decentralised level, the staff of the penitentiary police is instructed on the use of defibrillators.

As for the managing staff, the subject highlighted by the CPT has always had great importance in the initial and continuous training courses. In particular, in the last training course for Deputy-Chief Constables of the Penitentiary Police, said subject was widely dealt with under the judicial point of view, within the lessons of criminal law, criminal procedure and penitentiary law, entrusted to the Law Faculty of the State University of Rome "La Sapienza".

A similar care was put, under the operational, ethical and professional point of view, in the in-depth analysis made during the following lessons, with the objective of promoting the culture of professional integration through the adoption of behavioural models aiming at the operational collaboration and sharing:

- Human rights, with special reference to the Universal Declaration of Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Convention on Human rights, the UN minimum Rules and the Council of Europe Prison Rules
- The code of ethics of the European police forces
- Forensic medicine
- Judicial and penitentiary psychology

- Sociology
- Professional ethics
- Elements of first-aid
- Modalities of treatment
- Treatment management
- Tasks and deeds of the criminal investigation police with particular reference to the duties of institutional loyalty of the Penitentiary Police

The 2011 Training Annual Plan of the Higher Institute of Penitentiary Studies is rich in references to the subject dealt with by the CPT.

PARA.16

For the members of the Penitentiary Police Corps, possible disciplinary measures in consequence of final sentences for ill-treatments in the case A or for the Genoa G8 events (paragraph 31 of this Supplementary Report) shall be imposed at the end of the respective penal procedures (suits No. 53892/09 R.G.N.R. Tribunal and No. 1313/09 R.G.C.A. Court of Appeal of Genoa), which are still pending and are not concluded by a final sentence.

For the same cases, no final sentence was issued towards administrative nor managing staff for conducts in direct connection with ill-treatments on prisoners. Only one Executive Manager of the Penitentiary Administration is under a penal proceeding, being indirectly implied in Mr. X's affair, but, for him, it was deemed opportune to postpone any disciplinary assessment at the end of the penal proceeding.

As for the facultative measure of the suspension from duty, which does not have a penalty characteristic, it is applied in the most serious cases, given that different precautionary measures exist, such as the transfer of the employee for incompatibility with his/her workplace, which are considered as less onerous for the penitentiary Administration.

With specific regard to the Carabinieri Corps, the ascertainment of liability can be initiated upon request of the citizen, presenting a complaint or on the initiative of the offices of the Carabinieri Corps, within the regular control exercises carried out, at every level, by the superiors.

As for the former, the complaint by the citizen is immediately transmitted to the judicial authority, through a communication of a *notitia criminis*^v, by which the competent attorney has to initiate the relevant judicial investigations.

As for the latter, when the superiors ascertain the *fumus* of alleged violations of human rights, the chief will initiate the procedure under D.P.R. No. 90/2010 (Unified Text on regulations concerning the military system), to verify the possible violations of the disciplinary duties. Such procedure can be concluded, as follows:

- by some forms of censorship (*Richiamo, Rimprovero, Consegnare e Consegnare di Rigore*);
- in the most serious cases, by a formal enquiry/disciplinary ascertainment which can lead to the suspension from the duty, or to the committal for a trial before a commission that is enabled to eventually decide the expulsion from the military force;
- in the event of elements referring to a possible offence, the superiors will transmit the *notitia criminis* to the judicial Authorities.

During the penal proceeding, the Carabinieri Corps can resort to ad hoc measures, such as the mandatory/discretionary suspension from the service. Even in the event of acquittal with a definitive verdict by the judicial authorities, the relevant facts are considered within an ad hoc disciplinary proceeding, in order to ascertain possible violations of the above-mentioned Regulations. In this case, it may be requested a formal enquiry, which can be concluded by a suspension from the service/duty; the conclusion of the job contract.

As reported, the system of regular control is also aimed at ascertaining that no serviceman abuses of his power during the performance of his duties. In particular when it is alleged a case of resistance to public officials, the investigations, particularly those concerning the position of the serviceman are stricter, in order to ensure that his/her conduct was *blameless and fully compliant with the relevant regulations*.

On a more general note, in all the events of crimes and arrests involving Carabinieri service-men, the chief has to draw up a specific report on the event, to be transmitted to the higher offices, besides estimating the opportunity to adopt ad hoc urgent measures (*Cambio di incarico, trasferimenti provvisori, etc.*). This system fully realizes the internal monitoring function relating to the hierarchy principle which is specifically meant for the military service (*for the number of Carabinieri members involved in relevant cases, please refer to the end of the present Document, under AoB*).

PROCEDURAL SAFEGUARDS AGAINST ILL-TREATMENT DURING DETENTION BY LAW ENFORCEMENT AGENCIES

PARA 18-19:

As previously recalled, the code of criminal procedure envisage specific safeguards. It should be stressed, on a general note, once again, that the presence of police personnel in the security rooms, during medical checks, relies on the request by the physician, for security purpose, it being understood the compliance with the privacy law, namely Legislative Decree No. 196/2003.

More importantly, oversight offices of the Police control the conditions of the security rooms, on a regular basis.

As for the correct maintenance of the “*Foglio dei diritti delle persone arrestate o fermate*” and of the “*Registro delle persone ristrette nelle camere di sicurezza*”, adequate measures have been devised. Such correctness was also ascertained by the UN Working Group on Arbitrary Detention during its mission to Italy, dated November 2008.

PARA. 20

As already communicated in September 2010 in reply to the CPT’s end-of-visit preliminary observations, the Department of Penitentiary Administration confirms that, as for the medical confidentiality, the penitentiary police staff is never present in prisoners’ medical examinations nor interviews, unless their presence is requested by the physician for specific security reasons.

In particular, as for the Viterbo prison, a group of agents suitably trained and with previous relevant experience was identified in order to cooperate with the healthcare sector, receiving also the full acceptance by the prisoners concerned.

As for the penitentiary police staff on duty at the Infirmary wing of Teramo prison, they perform their security task walking in the corridor or staying inside one specific room: therefore, they are not present at medical examination, unless their presence is expressly requested by the physician in particular situations, for instance in case of evident danger of assault. In that case, they ask for support from their colleagues of the Penitentiary Police. Moreover, in the Infirmary, very often various interventions are contemporarily carried out, and therefore the task of the Penitentiary Police officers is to manage the subdivision of prisoners into the various activities. The case of prisoners sent to hospitals for treatment or examinations is different. In such case, it is necessary that the staff in charge of security constantly assists the prisoner. The prisoner clinical diary, sealed in a closed envelope, is handed over to the Chief of escorts to be delivered to the physicians of the Hospital. The above-mentioned procedure is usually followed in all the Italian penitentiary structures.

On a more general note, it should be considered that medical wards are not available at all law enforcement stations. Therefore after a preliminary medical check, in the event of serious cases, such as pregnant women or drugged people in overdose, they are brought to the Hospital.

PARA.21

As for the recommendations made by the CPT in paragraph 21, the modalities and procedures carried out at the structure situated in the Building B of the Courthouse in the “Piazzale Clodio” Palace of Justice of Rome can be described as follows:

- The service is regulated by provisions issued on 1st October 2004 by the President of the Court of Rome;
- The duties and the functions assigned to the staff working in the Penitentiary Police Unit at the Court of the Palace of Justice are regulated by specific Tables of Instructions. Those provisions identify the specific duties assigned to the staff for the carrying out of the services which they have to perform;
- The service orders describe, in each service post, the tasks which the staff has to perform while on duty and at the end of their service, including the obligation to fill the specific Registers existing in each service post;
- The activity of surveillance and monitoring on the correct compliance of the staff with the instructions given is entrusted to the hierarchical and functional superiors of each service. In that case, the persons responsible are the Coordinator of the Operational Unit at the Courthouse, the coordinators who are responsible for the services and the person in charge of the general surveillance, as well as the Managing Officer, whose tasks and duties are regulated by a specific service order;
- The Register of the arrested and held persons who are brought to the detention rooms was introduced on the 14th November 2009. In this register, the staff assigned to the shift at the reception post of the detention rooms of the Building B of Rome Courthouse records the names of the arrested and held persons who are brought to the detention rooms, the names and ranks of the staff accompanying those persons, the times of entry in and exit from the structure. In a different register, the staff records the names, the times of entry and exit and the relevant reasons of the other persons who, on various grounds, access the detention rooms (for instance the physician, the cleaning staff, the volunteers of the drug-addiction rehabilitating service based in Villa Maraini, etc.);
- The register currently in use is situated in the service post, while the old registers are stocked in some rooms at the highest floor of the Courthouse building.

- The movements of the arrested and held persons in the detention rooms and their relevant assignment is recorded by the staff in charge of registering such movements; the staff fill the “movements paper”, containing, in chronological order, the names of the arrested and held persons, the rooms in which they are assigned, the time of assignment in the cell, the penitentiary police unit on duty at that time in charge of the surveillance (who keeps the responsibility for the subject’s surveillance during his/her stay in the detention rooms), as well as the time of exit to be brought before the Court for the hearing.
- The assignment of the arrested and held persons in the various cells is made according to the availability of the rooms by assigning one person per cell. When the number of arrested persons is higher than the rooms available, the assignment of more than one person per room is ordered. This shall be made after that the staff has made an assessment as to possible impedimental reasons.
- At the end of the service, the so-called “movements paper” is kept in one envelope, along with all the other deeds drafted by the staff during the day (proceedings of arrested persons livery, proceedings of searches, proceedings of livery of valuable objects, etc.); that
- envelope is sealed and filed in folders in chronological orders, subdivided per years and per months.

Para. 22

In general, the video-surveillance and recording systems which are installed in Italian prisons have the security characteristics which the CPT indicates. Following the CPT’s recommendation, the competent Directorate General for Goods and Services of the Department of Penitentiary Administration, issued a specific circular letter, last 18th August 2011, inviting the technicians of the Administration to ensure that the design and the carrying out of the video-surveillance plants are in compliance with the characteristics of security indicated by the CPT, as for the equipment and the modalities of recording.

The said Directorate General also underlines the amount of economic investments for the daily and extraordinary maintenance of those plants (equipped with more and more sophisticated technologies and electronic systems) by specialised staff and/or firms, in order to prevent and to repair in good time possible failures.

On a more general note, Italian Authorities take note of your recommendation on the use of CCTV.

PARA 23

Please refer to para.27

However, it should be recalled that for the first time, on March 3, 2011, the Italian Senate passed the Bill on the establishment of a National Independent Human Rights Institution, which is currently under the examination before the Chamber of Deputies. In the coming months, it is expected its adoption.

PARA 25

Reference is made to what was already stated in the reply to the previous CPT Report on its visit of 14-18 June 2010, and namely that "*The participation of the physician as member in the disciplinary council is expressly provided for by the Law (articles 39 and 40 of the Penitentiary Act), with the*

purpose of protecting the health of the prisoner himself, since the physician has to assess whether he can bear the possible infliction of the most afflictive disciplinary sanction (confinement). In those circumstances, no violation of privacy can arise in the possible communication of health information concerning the prisoner. Indeed, not only that information is provided for and allowed by the law currently in force, but it is also fair in order to enable the making of decisions which do not put at risk the physical and psychic integrity of the person concerned."

The Department of Penitentiary Administration is considering possible initiatives to be adopted at the light of the CPT indications.

PREVENTION OF ILL-TREATMENT IN PRISONS

PARA 26

Hospital Secure Units are governed by Law 12 August 1993, n.296, providing for the establishment in each provincial district of proper wards where patients in custody are held. The legislation – which, had previously provided that Regions should supply the Healthcare Service for the population and the transfer, by D.P.C.M. 1° April 2008, of such Service also to prison population – together with the high costs it implied, have brought to the building of a very limited number of structures throughout the national territory (Milan, Rome, Viterbo and Naples), notwithstanding the unquestionable advantages of the Healthcare Service quality provided for prisoners, of security and savings of prison police staff.

Consequently to case A, the Directorate General of Prisoners and Treatment has felt the need to improve the taking care of the patient in custody hospitalized in such structures, through an accurate re-examination of procedures agreed between Prison Administration and Local Health Units based on mutual knowledge and sharing of respective objectives. It has been established a working table, in which experts with experience both in the fields of National Health Service and Prison Administration have participated, aiming at implementing the Recommendations in order to manage the existing Hospital Units and those in the planning stage.

The result of said working table, sent – in January 2011 – to the Ministry of Health, to the Parliamentary Commission of Enquiry on the effectiveness and efficacy of the National Health Service and to all Prison Administration Regional Directorates, underlines the right of the patient in custody to receive during the hospitalization the visit of his own lawyer and of the authorized relatives and the duty, by medical staff, to receive the latter and to give them, upon agreement by the concerned person, information on the state of health of the prisoner.

Besides that, it has to be pointed out the importance of the role of supporting the patient in custody in the difficult period of hospitalization, by volunteers, by cultural mediators, by the Offices of the detained persons' Ombudsman for non Italian citizens.

Finally, it has to be pointed out that the Hospital Units of Milan, Viterbo and Naples can provide healthcare service even in emergency cases, as all the other wards, except in the cases when the hospitalization at crises units is requested (intensive care, coronary intensive care, neurosurgery).

With reference to the personal details of prisoners, it is worth mentioning the recent circular letter dated 26 April 2010, n.0177644, "New interventions to reduce the troubles deriving from the deprivation of liberty and to prevent self-aggressive phenomena, which provides for important provisions strengthening the contacts of prisoners with the external world, the relatives and the lawyer".

In particular, on one hand, prison Directorate has underlined the importance of the right to be informed on life rules in prison, on the other hand all the staff has been invited to apply meticulously the rules in force concerning the right to be defended by a lawyer in prisons and to establish the first contacts of the newly arrived prisoner with the lawyer. Besides, innovative provisions facilitating the contacts of the prisoner with his lawyer have been established. Therefore, the prison governor has been given the power to authorize, even exceeding the times provided for by art.39, para.2, D.P.R. No.230 of 2000, telephonic contacts between the prisoner and the lawyer, when it is not possible for the latter to go personally to visit his client.

Finally, overcoming a traditional prohibition, it has been decided, in particular cases, to allow not particularly dangerous prisoners to contact their families through mobile phones. To this purpose, it has been provided a significant streamlining of procedures of ascertainment of the legal ownership of the telephone number they want to call, to facilitate prisoners.

PARA. 27

The Department of Penitentiary Administration takes good note of the CPT opinion and will take into consideration what the Committee proposes.

The Department of Prison Administration points out that the supervisory functions are carried out by the Supervisory Judge, a body giving wide guarantees of independence, as per article 69 of the Penitentiary Act.

In Italy, moreover, even if the detained persons' Ombudsman has not already been established, regional, provincial and municipal *Garante* offices exist, whose functions are defined by the relevant constitutive acts.

Garante offices receive complaints on the non-compliance with prison law, on prisoners' rights, possibly infringed or partially implemented and address to the competent authority to ask explanations, urging the necessary actions.

Their work is completely different therefore, with respect to the nature and to the function, from that of the bodies carrying out internal administrative inspections and of the Supervisory Judge. *Garante* offices can carry out visits with prisoners and can visit prisons without authorization, as provided for by art. 18 and 67 of Prison Act (amended by Law n.14/2009).

As far as prisoners' complaints are concerned, please refer to what is provided for in article 35 of Prison Act.

PARA. 28

A change of existing procedures concerning the physical integrity of the persons brought by law enforcement officers to the security chambers of the building "B" of the Court of the Justice of "Piazzale Clodio" of Rome, has been carried out by the officer responsible for the service by issuing a work order No.1 of 23 November 2009 (annex 4), governing the practice and modalities of intervention of the staff towards persons arrested and stopped by law enforcement officers working to ascertain and check the conditions of persons brought there who "...have particular psychophysical pathologies, or apparent signs of injuries, ecchymosis, trauma, etc..., or declare to have said anomalies,...".

Such provision, before being implemented has been sent for the evaluation of the Central Bodies of Prison Administration. Such provision became effective on 29.01.2010 (annex 6).

By circular letter of 26 April 2010, all prisons have been invited to:

Take care of the choice of the accommodation of the prisoner, even to the purpose of avoiding assault events among prisoners; carry out in details the observation of the personality of the person arriving in prison, even to the purpose of measuring better the management of the most difficult or reactive persons; start diagnostic or therapeutic programmes, if necessary. Besides, the help of volunteers has been asked, allowed them to enter wings in a wider range of times.

In addition to said general interventions, the Directorate General of Prisoners and Treatment examines with attention all the complaints of ill-treatment by prisoners. In particular, it carries out the necessary studies in details and, if necessary, ascertains if the complaint has been forwarded to the competent judicial authority carrying out the investigations to detect possible crimes.

Finally, it has to be outlined that the prisoner, since his arrival in prison, can contact various workers, some of whom are not Prison Administration employees: penitentiary police staff, educators, social workers, physicians of the National Healthcare Service, Offices of the detained persons' Ombudsman belonging to local bodies, volunteers. For this reason, behaviours based on a conspiracy of silence in order to cover intentionally possible ill-treatment against prisoners should not be encouraged.

With specific reference to cells located in the basement of the Court of Rome, which the CPT mentions dealing with Case A (pag.5), the penitentiary police officer responsible for the structure has given very effective instructions for a meticulous maintenance of records and to ensure the quick intervention of the physician in the cases in which the arrested persons brought to trial by police forces have injuries.

FINAL OBSERVATIONS

PARA. 29

It should be recalled Art.27, para.2, of the Italian Constitution, which sets forth "A defendant shall be considered not guilty until a final sentence has been passed". The same principle is contained under Article 6, para.2, of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

In line with Art.102 of the Italian Constitution it is deemed that the jurisdictional function can be exercised by ordinary justices. More importantly, Art.3 of the Italian Constitution relating to the principle of non discrimination also applies as a criterion in the exercise of the jurisdictional function. Therefore there is no room to establish specialised sections to the requested end.

PARA.30

Ongoing training courses for executives, officers responsible for a department and commanders of wings and the training course for the person in charge of the organizational well-being aim at improving the knowledge of the prisoner and the organization and running of managerial structures, through methodologies and procedures contained in the Prison Act constituting also the requirement for the correct carrying out of the staff duties and of the participation in team work to attain

institutional objectives. Said training path could be not only preserved but even strengthened during the course for the newly employed vice chief constables belonging to the ordinary rank which will be held in January 2012. The subject-matters of said course could contain CPT recommendations within the field of European relationships, as well as of judicial police activities.

On a more general note, with regard to human rights education and training, please refer to the above relevant sections, as well as to the previous reply of the Italian Authorities to the CPT periodic report 2008.

PARA31.

As for the events occurred in Bolzaneto, in July 2001, the Tribunal of Genoa released an acquittal verdict for 12 members of Carabinieri Corps, which has been confirmed by the Court of Appeal, though the verdict of second instance has been challenged before the Court of Cassation by the General Attorney: the proceeding is ongoing; 12 more Carabinieri servicemen are still under investigations on the ground of perjury during the process.

On a more general note, on March 2010, the Court of Appeal of Genoa partially reformed the first instance verdict, dated July 14, 2008, concerning 44 defendants. In particular the Court of Appeal considered all the defendants liable, from a civil law standpoint, and thus compelled to compensate the victims, despite the occurred prescription, while seven defendants have been condemned, from a penal law standpoint, with detention penalties ranging from one to three years.

PARA.32

Notwithstanding the lack of a specific provision referring to the crime of torture, the Italian legal system provides sanctions for all conducts that can be considered to fall within the definition of torture, as set forth, for instance, under Article 1 of the UN Convention Against Torture, and that these sanctions are ensured, more extensively, even through a complex system of incriminating facts and aggravating circumstances: Therefore the Italian system considers the concept of torture within a wide range of conducts (for the offences, please refer to above-mentioned information provided with regard to paras.5 et sequitur).

The above-mentioned Bill concerning a National Independent Commission on Human Rights envisages an extensive mandate aimed at the promotion and protection of all human rights. Therefore it will also follow this issue, extensively.

AoB

1. Following the CPT mission of June 2010, the Senate Commission on the efficacy and effectiveness of the National Health System visited all the judicial psychiatric hospitals on the national territory. In the course of the second semester of 2010, Campania Region, being responsible for the health organization at the regional level, adopted a specific programme, by which it has: reduced the number of the patients (approx. 20%); eliminated the coercion rooms; closed down some divisions, while improving both the rehabilitation measures and the sanitation system.

2. With specific regard to cases of alleged ill-treatment by the Carabinieri Corps brought before the justice, it is worth-mentioning that in the period 2007-first semester 2010, the judicial Authorities have considered 88 cases relating to ill-treatment allegedly committed by 194 Carabinieri servicemen. At present, there have been decrees of dismissal of case (*decreto di archiviazione*) for 50 service-men, four members have been acquitted, while 139 more still undergo specific penal proceedings.

In conclusion, Italian Authorities would like to reiterate their firm willingness to extensively and fully cooperate with the CPT Committee.

ⁱ The Act enforcing Article 111 of the Constitution provides, in its present wording, that any person, since his/her first contact with the judicial authorities, shall be informed of his/her rights in the language s/he knows. The Supreme Court (*Corte di Cassazione*) recently reaffirmed that any judicial act regarding the suspect (*indagato*) and/or the accused (*imputato*) shall be null and void if it has not been translated in his/her mother-tongue. Article 143 of the code of criminal procedure envisages that the accused who does not understand the Italian language has the right to be assisted, free of charge, by an interpreter, in order to understand the accusations against him/her and to be able to follow the conclusions of the case in which s/he is involved. Besides, the competent Authority appoints an interpreter, when necessary, to translate a printed document in a foreign language, a dialect not easily comprehensible, or upon request of the person who wants to make a declaration and does not understand the Italian language. The declaration can also be in a written form. In such case it will be integrated in the report with the translation made by the interpreter. An interpreter is nominated even when the judge, the Public Prosecutor or the officer of the Criminal Investigations Police have personal knowledge of the language or of the dialect that are to be interpreted. Along these lines, due attention is also paid to the institution of legal aid, the system of which was amended by Legislative Decree No.115/02, with the aim at ensuring adequate and effective legal defence (More specifically, this Decree simplifies and extends the access to legal aid in civil and administrative proceedings). As to the criminal proceedings, Act No.134/01 envisages the self-certification procedure for the income of the defendant. Such procedure is also extended to those foreigners who have an income abroad (In this regard, ad hoc information desks have been established at Bar Associations).

ⁱⁱ More specifically, Art.387 of the criminal proceeding code envisages that upon agreement with the person under arrest or detained, the criminal investigation police must promptly inform his/her family members.

ⁱⁱⁱ This force - a civil force included among the State Police forces - was established by Act no. 395/1990.

^{iv} In particular, the authorities in charge with the relevant proceedings range in parallel with the seriousness of the offence, from the Director of the Penitentiary Institute, when minor offences are committed, to the Regional Commissions and to the Head of the Department of the Penitentiary Administration (DAP) when most serious cases occur (as envisaged by Art. 13 of the Law Decree under reference).

^v Art.347 of the code of criminal procedure.



CPT/Inf (2013) 32

Report

**to the Italian Government
on the visit to Italy
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 13 to 25 May 2012

The Italian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2013) 33.

Strasbourg, 19 November 2013

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Copy of the letter transmitting the CPT's report

Mr Diego Brasioli
Minister Plenipotentiary
Ministry of Foreign Affairs
Piazzale della Farnesina 1
I - 00194 Rome

Strasbourg, 12 December 2012

Dear Mr Brasioli,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Italian Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Italy from 13 to 25 May 2012. The report was adopted by the CPT at its 79th meeting, held from 5 to 9 November 2012.

The recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Italian authorities to provide within **six months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Italian authorities to provide, in that response, reactions to the comments formulated in this report as well as replies to the requests for information made.

The CPT would ask, in the event of the response being forwarded in Italian, that it be accompanied by an English or French translation.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Latif Hüseyinov
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

Copy: Mr Manuel Jacoangeli, Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of Italy to the Council of Europe

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a periodic visit to Italy from 13 to 25 May 2012. It was the Committee’s tenth visit to Italy.¹

2. The visit was carried out by the following members of the CPT:

- Jean-Pierre RESTELLINI, Acting 2nd Vice-President of the CPT (Head of delegation)
- Régis BERGONZI
- Alfred KOÇOBASHI
- Anna LAMPEROVA
- Vincent THEIS.

They were supported by Michael NEURAUTER, Head of Division, Christian LODA and Tobias BERGMANN of the CPT’s Secretariat and assisted by:

- Catherine PAULET, psychiatrist, Head of the Regional Medico-Psychological Service at Baumettes Prison, Marseille, France (expert)
- Christian-Nils ROBERT, Professor Emeritus of criminal law, University of Geneva, Switzerland (expert)
- Maria FITZGIBBON-ALARI (interpreter)
- Antonella LUCCARINI (interpreter)
- Ilaria MATTEI (interpreter)
- Anna-Lisa MORGANTI (interpreter)
- Beatrice SANTUCCI-FONTANELLI (interpreter).

¹ The CPT has carried out five other periodic visits (in 1992, 1995, 2000, 2004, and 2008) as well as four ad hoc visits (in 1996, 2006, 2009 and 2010) to Italy. Except for the report on the 2010 visit, all visit reports and related Government responses have been published on the CPT’s website:
<http://www.cpt.coe.int/en/states/ita.htm>

B. Establishments visited

3. The delegation visited the following places:

Law enforcement establishments

- Florence State Police Headquarters (*Questura*)
- Messina State Police Headquarters (*Questura*)
- Milan State Police Headquarters (*Questura*)
- Palermo State Police Headquarters (*Questura*)
- Rome State Police Headquarters (*Questura*)
- Messina Gazzi *Carabinieri* Station
- Milan Ponte di Magenta *Carabinieri* Station
- Milan Municipal Police Headquarters (*Ufficio Centrale Arresti e Fermi*)
- Messina Municipal Police Station - Caserma "Orazio di Maio"

Detention centres for foreigners

- Bologna Identification and Expulsion Centre (*Centro di Identificazione ed Espulsione*, via Mattei)

Prisons

- Bari Prison
- Florence-Sollicciano Prison
- Milan-San Vittore Prison (remand prisoners and Centre for Neuropsychiatric Observation – *CONP*)
- Palermo-Ucciardone Prison (health-care services and situation of remand prisoners)
- Terni Prison (Unit for « 41-bis » prisoners)
- Vicenza Prison

In addition, the delegation went to Messina Prison, in order to interview newly-arrived remand prisoners. It also paid a brief visit to Palermo-Pagliarielli Prison, in order to collect information on admission procedures.

Psychiatric establishments

- Barcellona Judicial Psychiatric Hospital (*OPG*) and Care and Surveillance Centre (*Casa di Cura e Custodia*)
- Psychiatric Service for Diagnosis and Care (*SPDC*) at the Milazzo General Hospital
- Naso Therapeutic Community Centre (*Comunità Terapeutica Assistita – CTA*).

C. Consultations held by the delegation and co-operation encountered

4. In the course of the visit, the delegation had fruitful consultations with Paola SEVERINO DI BENEDETTO, Minister of Justice, Renato BALDUZZI, Minister of Health, Saverio RUPERTO, Under-Secretary of State of the Ministry of the Interior, and Massimo RUSSO, Counsellor (*Assessore*) of Health of the Region of Sicily. It also held meetings with senior officials from the Ministries of Foreign Affairs, Justice, the Interior and Health, as well as with representatives of the *Carabinieri* and the *Guardia di Finanza*. Further, it met representatives of non-governmental organisations active in areas of concern to the CPT.

A list of the national and regional authorities as well as non-governmental organisations met by the delegation is set out in Appendix II to this report.

5. The co-operation received throughout the visit from both the national and regional authorities and the staff at the establishments visited was excellent; all staff met by the delegation made a genuine effort to be helpful and co-operative. The delegation enjoyed rapid access to all the places visited (including those which had not been notified in advance), was provided with the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty.

The delegation also wishes to express its appreciation for the assistance provided before and during the visit by the CPT's liaison officer, Mr Diego Brasioli, and his staff from the Ministry of Foreign Affairs and the other members of the Inter-ministerial Committee on Human Rights.

D. Introduction of the crime of torture in the Penal Code

6. Before setting out the delegation's findings, the CPT wishes to express its concern that, despite more than 20 years of discussions before Parliament and the elaboration of nine draft bills, the Italian Penal Code still does not contain a specific provision which penalises the crime of torture². The most recent draft bill (new Section 593bis), which had been submitted to the Senate for adoption, has recently been returned to the Commission of Legal Affairs for further deliberations, and it remains unclear as to when an amendment to the Penal Code will be enacted.

The Committee urges the Italian authorities to redouble their efforts to introduce as soon as possible the crime of torture into the Penal Code, in accordance with Italy's longstanding international obligations. Further, with a view to reinforcing the dissuasive force of such a specific offence, **the necessary steps should be taken to ensure that the crime of torture is never subject to a statute of limitations.**

² In 2002, the crime of torture was introduced into the Military Penal Code (Section 185bis).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police custody

1. Preliminary remarks

7. In the course of the visit, the CPT's delegation visited five State Police Headquarters (*Questure*), two *Carabinieri* Stations and two Municipal Police establishments in different parts of Italy.

8. As regards the legal framework, the general provisions on the legal grounds for the deprivation of liberty by law enforcement agencies of persons who are suspected of having committed a criminal offence remain unchanged since the 2008 visit.³

Criminal suspects who have been taken into custody (*arresto* or *fermo*) are normally held in a law enforcement establishment for no more than 24 hours before being transferred to a remand prison (pending the hearing before the judge and the subsequent court decision).

However, the Code of Criminal Procedure (CCP) provides for an accelerated judicial procedure⁴ (*giudizio direttissimo*) for persons apprehended *in flagrante* (*arresto*) and for criminal suspects who have confessed to an offence during their interrogation by a public prosecutor. Such persons may be tried within 48 hours of their *arresto* or *fermo*, whilst being detained in a law enforcement establishment.

Further, following a recent amendment to Section 558 CCP by the so-called "*Svuota Carceri*" Law⁵, persons who are suspected of having committed a criminal offence may be detained, upon the order of the competent public prosecutor, in a law enforcement establishment until the moment when the court reaches a decision on a possible remand detention, which can in principle last up to 96 hours as from the time of apprehension.

³ The Code of Criminal Procedure (CCP) provides for the following possible grounds for the deprivation of liberty by law enforcement agencies: (a) apprehension *in flagrante delicto*³ (*arresto in flagranza*) (Sections 380 and 381 CCP) and (b) provisional detention (*fermo*) when there is a suspicion that a person has committed a criminal offence of a certain gravity and a risk that the suspect will escape (Section 384 CCP).

Whenever a person is taken into custody (*arresto* or *fermo*), the law enforcement officials concerned must immediately inform the competent public prosecutor. The detained person must be "placed at the disposal" of the public prosecutor as soon as possible, and in all cases within 24 hours. The CCP stipulates that this measure shall involve the transfer of the person concerned to a remand prison. The prosecutor must then submit - within 48 hours from the time of *arresto* or *fermo* - a request for validation of the detention order to the judge responsible for the preliminary inquiry (Section 390 CCP). Within the following 48 hours, the judge must decide on whether to remand the person in custody or to release him/her.

In addition, a criminal suspect may be arrested on the basis of an arrest warrant issued by a judge (Section 285 CCP), in the case of which the person concerned must be transferred as soon as possible to a remand prison. According to Section 349 CCP, persons may also be deprived of their liberty by law enforcement agencies for identification purposes, for a period not exceeding 24 hours.

⁴ See Sections 449 *et seq.* and 558 CCP.

⁵ Law No. 9 of 17 February 2012.

The above-mentioned law was adopted in order to alleviate the widespread problem of prison overcrowding (see paragraphs 43 to 45). On the other hand, it gives rise to concern, since many detention facilities of law enforcement agencies are not suited to accommodate detained persons for periods of days (see paragraph 24).

2. Ill-treatment

9. As was the case during the two previous periodic visits (in 2004 and 2008), the great majority of detained persons met by the delegation indicated that they had been treated correctly whilst in the hands of law enforcement officials (State police, municipal police, *Carabinieri* or *Guardia di Finanza*).

However, the delegation did receive a number of allegations of physical ill-treatment and/or excessive use of force by State Police and *Carabinieri* officers. The alleged ill-treatment mainly consisted of punches, kicks or blows with batons, at the time of apprehension (after the persons concerned had been brought under control) and, on occasion, during their stay in a law enforcement establishment. In several cases, the delegation found medical evidence in relevant registers in prisons which was consistent with the allegations made⁶.

Most of the allegations were received from foreign nationals and, more specifically, from foreigners who had been apprehended by police and *Carabinieri* officers in the Milan area.

In addition, a number of foreign nationals met by the delegation – in different parts of Italy – claimed that they had been the victim of verbal abuse of a racist nature by law enforcement officials.

The CPT recommends that a formal message emanating from the relevant authorities be delivered to all law enforcement officials in the Milan area, reminding them that they should be respectful of the rights of persons in their custody and that the physical ill-treatment of such persons, whether at the time of apprehension or subsequently, will be the subject of severe sanctions.

Further, law enforcement officials throughout Italy should be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be punished accordingly.

10. The CPT recalls that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons by law enforcement officials through the systematic recording of injuries and the transmission of information to the relevant authorities (see also paragraphs 81 and 82).

⁶ By way of example, at Milan-San Vittore Prison, an examination of medical records revealed that, during the two months preceding the visit, 18 persons who had been admitted to the prison with visible injuries had indicated to the prison doctor that the injuries resulted from ill-treatment by law enforcement officials. In all cases, the doctor concluded that the injuries were (or may be) consistent with the allegations made; the prognosis for recovery estimated by prison doctors ranged from four to 14 days. That said, by the time of the visit, several of the persons concerned were no longer present in the prison.

In this regard, the CPT is very concerned about the action taken – or rather lack of action – by the relevant judicial authorities in potential cases of ill-treatment (even when supporting medical evidence was available). This is the result of a fundamental flaw in the current criminal justice system.

The Committee acknowledges the efforts made by medical staff and the management of the prisons visited to systematically communicate all cases of traumatic lesions which were indicative of ill-treatment by law enforcement officials in a timely manner to the competent judge (*i.e.* the judge who imposed remand detention or, in the case of sentenced prisoners, the supervisory judge). In cases where the estimated prognosis for recovery exceeded 20 days, the prosecutor's office was also notified systematically.

However, from the consultations which the delegation held in the course of the visit with the President of a Supervisory Court of Milan as well as with a prosecutor, it became clear that supervisory judges would forward the above-mentioned cases to the prosecutor's office only if the prognosis for recovery had been estimated by the prison doctor to *exceed 20 days*. In the same vein, the interviewed prosecutor affirmed to the delegation that even if he did receive reports of traumatic lesions which may have been the result of ill-treatment by law enforcement officials (or prison officers) but had an estimated prognosis for recovery of *20 days or less*, he would only be in the position to initiate a preliminary inquiry upon receipt of a formal complaint by the alleged victim. In other words, for as long as the victim him/herself or his/her lawyer does not submit any such complaint, no action will be taken by a prosecutor.

This highly unsatisfactory state of affairs stems from the fact that the (only) provision of the Penal Code which is in principle applicable in such cases (Section 582), stipulates that the offence of bodily harm (*lesione personale*) is only punishable upon request (*querela*) of the person concerned, when the recovery period does not exceed 20 days and when no aggravating circumstances as set out in Section 583 (e.g. invalidity, loss of a corporal sense or permanent facial disfigurement) or Section 585 (e.g. use of weapons) of the Penal Code apply.

11. It is a well-known fact that detained persons are often reluctant to take the initiative of lodging a formal complaint about ill-treatment by law enforcement officials (or prison officers), due to fear of reprisals or other negative consequences. In addition, a threshold of recovery of 20 days for a case of possible ill-treatment to be taken up by a prosecutor *ex officio* is far too high. The CPT's experience in various countries has shown all too often that severe physical ill-treatment or even torture can be inflicted on a person leaving injuries which heal in less than 20 days and that such methods can in some cases be applied without leaving any visible traces whatsoever.

Consequently, all information which is indicative of ill-treatment of detained persons should be followed up by the relevant judicial authorities, if need be, *ex officio*.

The introduction of the crime of "torture" in the Penal Code, which is currently under discussion before Parliament, will constitute a partial remedy in this regard (see paragraph 6). The CPT also notes that, in a recent judgment⁷, the Court of Cassation held that Section 572 of the Penal Code, which penalises the crime of "domestic violence" (*maltrattamento in famiglia o verso fanciulli*) and which is criminally prosecutable *ex officio*, may under certain circumstances be applicable in cases of ill-treatment of prisoners by staff in a carceral environment. However, the CPT understands that this extensive interpretation of the current criminal legislation is unlikely to extend to instances of ill-treatment of detained persons in a police custody context.

⁷ Judgment No. 30780 of 27 July 2012.

12. In the light of the above, it is clear that the current criminal legislation displays a major lacuna which undermines the prevention of ill-treatment by law enforcement officials and may well foster a climate of impunity.

The CPT recommends that the Italian authorities take the necessary steps to ensure that the physical ill-treatment of persons deprived of their liberty by law enforcement officials (or other persons acting on behalf of a public authority) becomes prosecutable *ex officio* irrespective of the prognosis of recovery. To this end, the criminal legislation should be amended so that the 20-day threshold set out in Section 582 of the Penal Code no longer applies in such cases.

Further, the Committee recommends that steps be taken by all relevant authorities to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned. If necessary, the relevant legal provisions should be amended accordingly.

3. Safeguards against ill-treatment

13. The CPT recalls that the fundamental safeguards against ill-treatment, namely the rights of detained persons to notify a close relative or another trusted person of their detention and to have access to a lawyer and a doctor should apply from the very outset of their deprivation of liberty (*i.e.* from the moment when the persons concerned are obliged to remain with a law enforcement agency). These rights should be enjoyed not only by criminal suspects, but also by all other categories of persons who are obliged to remain with law enforcement agencies for other reasons (e.g. for identification purposes).

14. As regards the provision of information on rights, the findings during the visit would suggest that, as in 2008, detained persons were in most cases informed of their rights verbally promptly upon their arrival at a law enforcement establishment and also received a copy in the relevant language of a standardised information sheet on the rights of detained persons.⁸

That said, it is regrettable that in several establishments visited and, in particular, in the establishments of the Municipal Police in Milan and Messina, no such information sheets were in use. In addition, at the Palermo Questura, the information sheet was only provided to foreign nationals in the relevant language but not to Italian-speaking detained persons.

Further, as far as the delegation could ascertain, persons who were deprived of their liberty for identification purposes, were normally not informed of the above-mentioned rights.

⁸ The information sheet was available in a wide range of languages.

The CPT reiterates its recommendation that steps be taken by the relevant authorities to ensure that, in all law enforcement agencies (including all municipal police services), persons who have been deprived of their liberty – for whatever reason – are fully informed of their rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with a law enforcement official). This should be ensured by provision of clear verbal information at the very outset, to be supplemented by provision of the above-mentioned information sheet immediately upon arrival at a law enforcement establishment. Further, the persons concerned should be requested to sign a statement attesting that they have been informed of their rights in a language which they understand.

15. As regards the rights of notification of custody and access to a lawyer it would appear that detained persons were usually allowed to contact a relative or another person of their choice and a lawyer without delay.

However, it is a matter of serious concern that, despite the specific recommendation repeatedly made by the Committee since its first visit to Italy in 1992, access to a lawyer – whether chosen by the detained person or appointed *ex officio* – may still be delayed by the competent judicial authorities under "exceptional and specific reasons of circumspection" for up to five days after the apprehension (in accordance with Section 104, paragraphs 3 and 4, of the CCP).

The arguments repeatedly put forward by the Italian authorities that, in the light of the jurisprudence of the Court of Cassation, the above-mentioned restriction would be applied only in highly exceptional cases and that the detained person could still benefit from the presence of a lawyer during the court hearing, are not convincing.⁹

The CPT has repeatedly stressed that the effective exercise of the right of confidential access to a lawyer from the very outset of deprivation of liberty constitutes an essential safeguard to prevent ill-treatment. In this connection, the Committee acknowledges that the legitimate interests of a criminal investigation may, exceptionally, justify a delay, for a certain period, in a detained person's access to a lawyer of his/her choice. However, there can be no reasonable justification for the right to talk to a lawyer in private and to have a lawyer present during questioning being totally denied during the period in question. In such cases, access to another, independent, lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be arranged.

The CPT once again calls upon the Italian authorities to take steps to ensure that all persons detained by law enforcement agencies have the right to talk in private with a lawyer, as from the very outset of deprivation of liberty, it being understood that when "exceptional and specific reasons of circumspection" are invoked, the lawyer will be appointed *ex officio*. To this end, the relevant provisions of the CCP should be amended accordingly.

16. Further, it remains the case that the presence of a lawyer usually only becomes effective once the detained person concerned is brought before a judge. Only in rare cases did lawyers (whether appointed by the detained person or *ex officio*) meet the person during the custody and talk to the person in private before the court hearing. **The CPT reiterates its recommendation that the Italian authorities take appropriate steps – in consultation with the Bar Associations – to ensure that lawyers effectively provide assistance during police custody, whether they are chosen by the detained person or appointed *ex officio*.**

⁹ Cf., for instance, page 15 of the Italian authorities' response to the report on the 2008 visit (CPT/Inf (2010) 13).

17. As was the case during the 2008 visit, the delegation received no complaints from detained persons regarding access to a doctor during custody in a law enforcement establishment. Upon request of the person concerned or at the initiative of law enforcement officials, emergency doctors were called or the person was transferred directly to a general hospital.

However, despite the specific recommendation repeatedly made by the CPT after previous visits, officers were still systematically present during medical examinations in most of the law enforcement establishments. Such a state of affairs is not acceptable.

The CPT calls upon the Italian authorities to take immediate steps to ensure that in all law enforcement establishments (including those of municipal police services), all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of law enforcement officials.

18. Further, it remains the case that detained persons are not guaranteed the right to consult a doctor of their own choice whilst being held in law enforcement establishments (as opposed to remand prisons). **The CPT reiterates its recommendation that specific legal provisions be adopted governing the right of persons detained by law enforcement agencies to have access to a doctor of their own choice (at their own expense). The information sheet referred to in paragraph 14 should be amended accordingly.**

19. In its reports on the 2004 and 2008 visits, the CPT had recommended that any deprivation of liberty of a person in a law enforcement establishment be recorded in a register.

That said, in virtually all the establishments visited, custody registers only existed for the recording of persons who were physically placed in a detention cell (*camera di sicurezza*). Thus, no record was usually kept of instances where a person had been deprived of his/her liberty without being formally detained (e.g. for identification purposes), or where a person had been formally detained and transferred to another establishment without being temporarily held in a detention cell.

The CPT must recommend once again that steps be taken to ensure that, whenever a person is deprived of his/her liberty by a law enforcement agency, for whatever reason, this fact is recorded without delay.

20. Finally, in several establishments visited, the delegation observed shortcomings in the maintenance of the custody register, the entries often being incomplete (e.g. no systematic recording of the time of apprehension and the time of placement in the cell; no recording of notification to the family or a lawyer).

The CPT recommends that officers in all law enforcement establishments visited be reminded to maintain custody registers meticulously.

4. Conditions of detention

21. Material conditions in detention cells (*camere di sicurezza*) varied from one establishment to another. In most of the law enforcement establishments visited, they were on the whole acceptable, bearing in mind the short time persons usually spent in such cells after their apprehension (normally a few hours and at most overnight).

However, conditions of detention were very poor at the Florence *Questura*. The cells were in an unacceptable state of repair and hygienic conditions were appalling. Further, access to natural light was very limited, artificial lighting inadequate and ventilation totally insufficient. In addition, the walls of the cells were painted in black, which rendered the cells unnecessarily oppressive.¹⁰ In the CPT's view, prolonged detention in such conditions could amount to inhuman and degrading treatment.

The Committee recommends that the Italian authorities take immediate steps to remedy the above-mentioned shortcomings at the Florence *Questura*.

22. Conditions of detention were also generally poor at the Palermo *Questura* in terms of state of repair, hygiene and access to natural light and artificial lighting. The delegation was informed that new police detention facilities which had recently been constructed at another location in Palermo (Caserma Longaro) would be brought into service shortly. As soon as these detention facilities were operational, the old custody cells at the *Questura* would be withdrawn from service. **The CPT wishes to receive confirmation that the custody cells at the Palermo *Questura* have now been withdrawn from service. Further, the Committee would like to receive detailed information on the capacity and design of the new detention facilities (access to natural light, outdoor exercise yard, etc.).**

23. Further, despite the specific recommendation repeatedly made by the Committee, no mattresses were provided to detained persons held in custody overnight at the Palermo *Questura* and the Messina-Gazzi *Carabinieri* Station¹¹. **The CPT once again calls upon the Italian authorities to take immediate steps to ensure that in all law enforcement establishments, persons detained overnight are provided with a clean mattress and clean blankets.**

24. Finally, the CPT must stress that many of the custody facilities seen by the delegation in the course of the visit were clearly unsuitable for prolonged detention of up to four days (as is now possible under the so-called "*Svuota Carceri*" Law; see paragraph 8). In particular, numerous cells had no or only very limited access to natural light and shower facilities were often nonexistent. In addition, none of the establishments visited was equipped with an outdoor exercise facility. **The CPT recommends that steps be taken to ensure that all persons who are held in custody in a law enforcement establishment for 24 hours or more are offered adequate washing facilities (including the possibility of taking a shower) and are provided with basic personal hygiene items.**

¹⁰ That said, the size of the cells was adequate.

¹¹ Mattresses were provided in the other establishments visited.

Further, the Committee recommends that the Italian authorities review the conditions of detention in all law enforcement establishments in Italy where persons may be held for 24 hours or more, in order to ensure that:

- custody cells have adequate access to natural light;
- the persons concerned are offered outdoor exercise every day.

B. Detention of foreign nationals under aliens legislation

1. Preliminary remarks

25. For a long time, the CPT has paid particular attention to the situation of foreign nationals deprived of their liberty under aliens legislation and, during most of its previous visits to Italy (including two ad hoc visits in 2006 and 2009), a large number of holding/detention centres were visited by the Committee in different parts of the country¹².

In the course of the 2012 visit, the CPT's delegation visited, for the first time, the Identification and Expulsion Centre (*Centro di Identificazione ed Espulsione* - CIE) in Bologna. The CIE is located on the premises of former military barracks on the western outskirts of Bologna (via Mattei) and comprises an administrative building (management, health-care unit, police command post) and two separate accommodation buildings for male and female foreign nationals. With an official capacity of 95 places (45 in the female and 50 in the male unit), the CIE was accommodating a total of 52 foreign nationals¹³ (24 female and 28 male) at the time of the visit. As a rule, unaccompanied minors and families are never held in the Centre. As in other CIEs in Italy, security was provided by police officers who were only allowed to enter the detention area at the request of the management and with the approval of the *Questura* (in case of serious incidents and for regular and ad hoc search operations)¹⁴. In addition, a contingent of the Armed Forces was exclusively in charge of perimeter security.

The centre was managed by the association *Confraternita della Misericordia* whose management contract was due to expire on 31 July 2012. Some time before the visit, a new tender for the extension of the day-to-day management of the centre for a three-year period had taken place and the Ministry of the Interior had decided to award the management contract to another association (*Oasi*). In this regard, the CPT notes that the above-mentioned tender provides for a lowering of the three-year budget by almost 60% (from 7.2 to 3.1 million Euros). Various interlocutors met by the delegation anticipated drastic reductions in particular as regards the presence of health-care staff and cultural mediators. The Committee will return to this issue later in the report (see paragraphs 31 and 33).

26. The legal framework governing detention pending deportation has undergone important changes since the 2008 visit. In particular, the maximum period of detention, previously set at 60 days, has been increased to six months and can be extended, under certain circumstances, to a maximum of 18 months¹⁵.

¹² Foreign nationals apprehended for administrative detention retain the right of access to a legal counsel, either *ex officio* or of one's choice in accordance with Section 4 of the Implementing Regulations of the Unified Immigration Act of 31 August 1999, as well as of being informed in their own language (or in a language they understand) of the reasons of detention (Section 3 of the Implementing Regulations of the Unified Immigration Act).

¹³ From 16 different countries.

¹⁴ Five State police officers were permanently present in a command post located at the entrance of the CIE.

¹⁵ Law No. 129 of 2 August 2011.

2. Ill-treatment

27. Some allegations were received from male foreign nationals that they had been the subject of excessive use of force by State police and/or *Carabinieri* officers during search operations which had taken place on 19 March and 14 May 2012, in the aftermath of a fire incident and a violent protest respectively. More specifically, the foreign nationals concerned – who had apparently tried to obstruct the police intervention – claimed that they had been hit with truncheons by State police and/or *Carabinieri* officers while on the ground after having been brought under control.

The CPT recognises that law enforcement officials will on occasion have to use force to control violent and/or recalcitrant inmates. However, as in the context of apprehensions of criminal suspects (see paragraph 9), no more force than is strictly necessary should be used, and, once the persons concerned have been brought under control, there can be no justification for striking them. In this regard, **the recommendation in paragraph 9 (last sub-paragraph) applies equally to law enforcement officials who are deployed to the Bologna CIE.**

28. A Tunisian national met by the delegation at the CIE claimed that, on 20 April 2012, he had been physically ill-treated by plain-clothes officers of the Bologna Immigration Department at Bologna Airport, in the context of a failed attempt to deport him by air on a commercial flight. After he had told the pilot that he had swallowed several batteries, the pilot refused to transport him and his deportation had to be cancelled. This allegedly prompted a violent reaction from the escorting police officers as soon as he was returned to the police van. He was allegedly punched in the face whilst handcuffed and kicked in the shoulder by four police officers. At his insistence, he was subsequently transferred to a hospital in Bologna, where a contusion of his shoulder was diagnosed. Through his lawyer, he lodged a formal complaint with the Prosecutor's Office, which was still pending at the time of the visit.

The CPT would like to be informed of the outcome of the above-mentioned case.

3. Conditions of detention

29. Material conditions at the Bologna CIE were adequate in terms of living space (some 50 m² per detention room accommodating five persons), access to natural light and ventilation. Every room had its own sanitary annexe (with a floor-level toilet, two sinks and two showers), and all foreign nationals received a daily allowance of 2.50 Euros with which they could purchase personal hygiene products.

However, detention rooms were generally very austere and prison-like. Further, in contrast to the female unit, the male unit was found to be in a poor state of repair with much of the furniture being damaged (see also paragraph 27). The delegation was informed by the management that existing equipment and furniture had repeatedly been destroyed by male inmates. For this reason, wooden beds had been replaced with concrete plinths covered with mattresses, and a decision had recently been taken by the Prefect of Bologna to no longer accommodate more than 30 male foreign nationals at a time.

The CPT trusts that the Italian authorities will take steps to ensure that the detention rooms and their equipment are kept in an acceptable state of repair.

30. As regards the regime, it is praiseworthy that all foreign nationals could move freely within their detention unit around the clock and had unrestricted access to an outdoor exercise yard attached to their unit throughout the day. In addition, foreign nationals were provided with reading material from a multi-language library.

That said, inmates had no possibility of engaging themselves in basic recreational activities such as board games nor was there a television set available. Further, access to the outdoor sports facilities (volleyball court and football pitch) was limited to one hour per week¹⁶ and – with the notable exception of an Italian language course provided by a trade union for one hour per week – no organised activities were on offer.

Clearly, the current arrangements were far from satisfactory, bearing in mind that foreign nationals may be held at the Centre for up to 18 months. As the management itself acknowledged, an impoverished regime was likely to exacerbate the general sense of frustration among foreign nationals about their destiny and further increase existing tensions within the CIE.

The CPT recommends that immediate steps be taken at the Bologna CIE to ensure that foreign nationals are provided with board games and a television set and have more frequent access to the existing sports facilities.

Further, bearing in mind that detention pending deportation may last up to 18 months, **the Committee recommends that the Italian authorities redouble their efforts to provide foreign nationals held at the Bologna CIE with a range of purposeful activities. The longer the period for which foreign nationals are detained, the more developed should be the activities which are offered to them.**

4. Staff

31. The Bologna CIE was managed by a team of the association *Confraternita della Misericordia*, which was composed of the director, a deputy director, one anthropologist and ten cultural mediators, as well as three administrative staff.

The delegation gained a very positive impression of the work performed by the cultural mediators. They were present in the CIE on all working days, for a total of 110 hours per week. Among other things, they provided relevant information to every newly-arrived foreign national and acted as interpreters (including for Chinese and Arabic-speaking inmates). More generally, they were effective in reducing existing tensions among the male inmate population.

Against this background, it would certainly be unwise for the presence of cultural mediators to be reduced under the new management of the Bologna CIE (see paragraph 25). In order to have an up-to-date picture of the situation, **the CPT would like to receive a detailed organigram of staff at the Bologna CIE, with an indication of the posts currently filled and the time of presence of the staff members concerned.**

¹⁶ According to the management, access to the sports facilities had been reduced for security reasons (*i.e.* risk of escape).

5. Health care

32. The delegation gained a favourable impression of the health-care services at the Bologna CIE. Further, the facilities of the medical unit were of a good standard and do not call for any particular comment.

33. Health care was provided by a pool of seven doctors and five nurses (all working part-time). As a rule, one doctor was present on a 24-hour basis seven days a week and one nurse for twelve hours per day (including at weekends). In case of need, foreign nationals were transferred to a hospital for specialist consultations (including to a psychiatric establishment, on the basis of a procedure for involuntary treatment – TSO).

According to the information available to the Committee, it would appear that in the future the presence of doctors is likely to be reduced under the new management to eight hours per day for six days a week and that instead there will be a twenty-four-hour presence of nursing staff. **The CPT would like to receive confirmation that a member of health-care staff is always present at the Bologna CIE (including at night and during weekends).**

34. All foreign nationals benefited from comprehensive medical screening, performed within 24 hours of admission (including tests for HIV/AIDS, tuberculosis and hepatitis on a voluntary basis), and an individual medical file was opened for every foreign national.

Injuries observed on foreign nationals at the time of admission (or during detention) were usually reported by the doctor to the management of the centre, but to no other outside authority. **In this regard, the recommendation made in paragraph 12 (third sub-paragraph) on the systematic transmission to the relevant prosecutor of information on injuries which is indicative of ill-treatment equally applies to the CIE of Bologna and all other CIEs in Italy.**

35. In the light of the information gathered by the delegation, **the CPT wishes to recall once again that all foreign nationals returning to a CIE following a failed deportation by air should undergo a proper medical examination.** Such a measure is important to protect both foreign nationals whose deportation has failed and law enforcement officials escorting them.

36. Psychological care was provided on a regular basis by the so-called “psychiatric team” which was composed of five part-time psychologists and several cultural mediators. Particular attention was paid to vulnerable persons (such as victims of human trafficking and former unaccompanied minors).

37. However, it is a matter of concern that individual medical files were accessible to non-medical staff (in particular, the management of the Centre). **The CPT recommends that steps be taken to ensure that the confidentiality of medical data is fully respected at the Bologna CIE.**

6. Other issues

38. The arrangements for allowing foreign nationals at the CIE of Bologna contact with the outside world were generally adequate. They could receive visits every day in the afternoon in rooms which were adequately equipped. It is particularly praiseworthy that every foreign national was provided each week with a telephone card free of charge (with a value of 5 Euros). In addition, foreign nationals were allowed to use mobile phones (except those with a photo or video recording function).

39. As was the case in 2008, the relevant legal framework does not contain any provision concerning the possible seclusion of a foreign national for disciplinary or security reasons.

That said, the delegation found a small cell (measuring some 4 m²) on the ground floor of the police command post, and police officers on duty acknowledged that foreign nationals who had tried to escape were occasionally placed in this cell for a few hours as a security measure¹⁷.

The CPT wishes to stress once again that it is in the interests of both detained persons and staff working at the CIE establishments for a proper legal basis and clear procedures (including appropriate safeguards such as the keeping of a dedicated register) to be established as regards the isolation of immigration detainees for reasons of good order or security¹⁸. **The CPT reiterates its recommendation that the aforementioned requirement be met at the Bologna CIE and, where appropriate, in other CIEs in Italy.**

40. Finally, from the perusal of individual administrative files, it became apparent that around 70% of all male foreign nationals held in the CIE arrived directly from a prison where they had served a prison sentence. In all these cases, the necessary expulsion and deportation procedures were initiated by the competent Immigration Department only after their transfer to the CIE.

With a view to reducing the immigration detention periods of convicted foreign nationals, **the CPT invites the relevant Italian authorities to take proactive steps to commence the necessary administrative procedures prior to the scheduled release from prison.**

¹⁷ One such case was recorded in the incidents logbook on 29 April 2012, when a foreign national had been placed in the above-mentioned cell for four hours after an escape attempt.

¹⁸ Cf. also paragraph 40 of the report on the 2008 visit (CPT/Inf (2010) 12).

C. Prisons

1. Preliminary remarks

41. The delegation carried out full visits to Bari, Florence-Sollicciano and Vicenza Prisons. In addition, it carried out several targeted visits, namely to Milan-San Vittore Prison, Terni Prison and Palermo-Ucciardone Prison. At San Vittore, the delegation focused mainly on interviews with recently-arrived remand prisoners as well as on the Centre for Neuropsychiatric Observation (*centro di osservazione neuro-psichiatrica* – CONP) within the prison, while, at Terni Prison, it focused exclusively on the “41-bis” Unit. At Palermo-Ucciardone Prison, the delegation examined in detail the health-care services and the situation of remand prisoners¹⁹.

42. **Bari Prison**, located in the proximity of the centre of Bari, was built in 1926 and has been renovated several times during the past 30 years. With an official capacity of 250 places at the time of the visit²⁰, the establishment was accommodating a total of 503 prisoners (480 male and 23 female), of whom 234 were sentenced and 269 on remand. The prison also contained a Centre for Diagnosis and Therapy²¹ (*centro diagnostico terapeutico* – CDT).

Florence-Sollicciano Prison was constructed in the early 1980s, on the basis of an architectural design mirroring the symbol of Florence (bourbon lily), on the western outskirts of the city. The prison contains a designated mother-and-child unit²² and the only “care and surveillance centre” (*casa di cura e custodia*) for female forensic patients in Italy²³. With an official capacity of 475 places, the establishment was accommodating a total of 1,001 prisoners (887 male and 114 female) at the time of the visit; 461 were sentenced and 540 on remand.

Palermo-Ucciardone Prison is located on the premises of a former fortress which was constructed in the 1840s. Due to their very poor state of repair, several detention blocks have been withdrawn from service and the establishment’s official capacity has been reduced from 721 to 281 places. At the time of the visit, the prison was accommodating 506 male prisoners (232 sentenced and 274 on remand).

Vicenza Prison was constructed in the 1980s and is located on the eastern outskirts of the city. The establishment has an official capacity of 146 places and was accommodating 360 male prisoners (including 70 on remand) at the time of the visit. Approximately two-thirds of the inmate population were foreign nationals.

¹⁹ Moreover, the delegation went briefly to Messina Prison in order to interview recently-arrived remand prisoners as well as to Palermo-Pagliarelli Prison in order to collect information on admission procedures.

²⁰ Due to the fact that Block 2 had been temporarily withdrawn from service, pending its renovation, the capacity of the prison (in principle 292 places) had been reduced.

²¹ See paragraph 63.

²² See paragraphs 85 to 88.

²³ See paragraph 63.

43. Prison overcrowding remains a persistent problem in Italy. The above-mentioned occupancy levels show that the four prisons referred to in paragraph 42 were affected by this problem, and the level of overcrowding observed in certain detention units (in particular, at Bari Prison) gives rise to serious concern. In each of the establishments, overcrowding was having a negative impact on various aspects of prison life for prisoners and staff alike.

In this connection, the CPT recalls that in its judgment *Sulejmanovic v. Italy*²⁴, the European Court of Human Rights held that the living space of 2.70 m² per person which was offered to six prisoners in a multi-occupancy cell measuring 16.20 m² was so limited that it constituted in itself inhuman or degrading treatment. The delegation found that many prisoners at Palermo-Ucciardone Prison were offered only a similar amount of living space and that, at Bari Prison, the amount of living space per prisoner was even lower and in some cells less than 2 m² per person.

44. Since the 2008 visit, the total prison population has increased from some 59,000 to 66,258 prisoners, while the official capacity had only increased from 43,012 to 45,584 places; thus the level of overcrowding had risen from 37% to 45%. During the same period, the proportion of remand prisoners among the total prisoner population had significantly decreased (from some 60% to 39%), but still remained at a high level.

The delegation was informed that the above-mentioned increase in the prison population results from recent changes to the criminal legislation²⁵ which, among other things, introduced more severe sanctions for drug-related offences and a reduction of non-custodial sanctions for recidivists.

In order to curb this negative trend, the Italian authorities have taken a series of measures in recent years²⁶. In particular, a major construction plan (so-called "*Piano Carceri*") was launched in 2010, aimed at enlarging the prison estate within two years by some 9,300 places (*i.e.* new prisons and additional detention blocks in existing prisons). In 2011, the authorities decided to expand the aforementioned construction plan to a total of 11,573 places. In addition, a new law²⁷ was adopted which provides for the imposition of house arrest on persons sentenced to less than one year of imprisonment, as well as on prisoners who still have to serve a prison-term of less than one year. The latter time limit was subsequently increased to 18 months by the so-called "*Svuota Carceri*" Decree-Law²⁸. At the end of May 2012, a total of 9,067 persons were subjected to various alternative measures (such as suspended sanctions or house arrest).

Moreover, Section 558 Code of the Criminal Procedure was amended by the above-mentioned Decree-Law, in order to reduce the accommodation in prison of persons who are formally still in police custody (pending the accelerated judicial procedure – *giudizio direttissimo*)²⁹.

The Minister of Justice expressed her determination to combat the problem of overcrowding and indicated to the delegation that she had initiated a draft bill in order to allow more extensive resort to non-custodial measures for remand prisoners. The latter bill is still pending before Parliament.

²⁴ Judgment of 15 July 2009 (Application no. 22635/03).

²⁵ Such as the Law No. 49/2006 (known also as "*Legge Fini-Giovanardi*").

²⁶ For further details, see the Communication of the Italian Government dated 29 June 2012 concerning the case of *Sulejmanovic v. Italy* (ref. DH-DD(2012)670).

²⁷ Law No. 199 of 26 November 2010.

²⁸ Decree-Law of 22 December 2011 which was transformed into Law No. 9 of 17 February 2012.

²⁹ See also paragraph 8.

45. The CPT acknowledges the efforts being made by the Italian authorities to tackle the problem of prison overcrowding. That said, according to the information available, the direct impact of the ongoing reforms on the level of overcrowding has thus far been somewhat limited. In particular, in the context of the above-mentioned “*Piano Carceri*”, only 1,323 additional detention places have to date been created. Further, from June 2010 until June 2012, the total number of prisoners has been reduced from 68,258 to 66,487, which represents a decrease of some 2.60% only.

The CPT recommends that the Italian authorities pursue vigorously their endeavours to combat prison overcrowding, including through increased application of non-custodial measures during the period before any imposition of a sentence. In this respect, the authorities should be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse and Recommendation Rec(2010)1 on the Council of Europe Probation Rules.

The Committee would like to receive updated information on progress made by the Italian authorities in this area.

2. Ill-treatment

46. With the exception of Vicenza Prison, the delegation received no allegations of ill-treatment by prison officers in any of the prisons visited. On the contrary, many prisoners spoke favourably about the manner in which they were treated by prison officers, and the delegation could observe for itself a humane and constructive attitude on the part of custodial staff.

At Vicenza Prison, the delegation received a number of allegations of physical ill-treatment and/or excessive use of force by prison officers, mostly in relation to disciplinary incidents where inmates had displayed aggressive behaviour. More specifically, the prisoners concerned claimed that they had been punched, kicked and hit with batons after they had already been brought under control. One prisoner even alleged that he had been beaten by several prison officers in an office in the presence of a senior prison officer.

The CPT recommends that:

- **a clear message be delivered to both the management and staff of Vicenza Prison that all forms of ill-treatment of prisoners (including threats to resort to violence as a punishment) are not acceptable and will be punished accordingly;**
- **outside bodies responsible for monitoring the situation at Vicenza Prison and, in particular, the competent supervisory judges be informed without delay of the allegations received by the delegation.**

As regards the follow-up at the criminal level of allegations of ill-treatment by prison officers, **the recommendation made in paragraph 12 (third sub-paragraph) equally applies to Vicenza Prison as well as to any other prison establishment in Italy.**

3. Conditions of detention of the general prison population

a. material conditions

47. Material conditions of detention varied considerably from one establishment to another and sometimes even within the same establishment from one detention unit to another.

At *Florence-Sollicciano and Vicenza Prisons*, material conditions in the cells were generally satisfactory in terms of state of repair, access to natural light and ventilation. However, at Florence-Sollicciano, many parts of the establishment were affected by major water infiltrations and, at Vicenza, the heating system appeared to be deficient (due to the erosion of one of the major water pipes).

At *Bari Prison*, material conditions were on the whole adequate in all renovated detention blocks, but left much to be desired in some unrenovated parts (in particular, in the unit for female prisoners). Regrettably, due to lack of funding, the renovation of the entire unit for female prisoners had repeatedly been postponed.

With the notable exception of Block 8 (which had recently been renovated), material conditions were poor, or even very poor, in most of the detention units at *Palermo-Ucciardone Prison*. Several blocks (*i.e.* Blocks Nos. 2, 5, 6) were so dilapidated that they had been withdrawn from service some time ago. In other accommodation areas, cells and sanitary facilities were in a poor state of repair and the level of hygiene left much to be desired. Another major shortcoming lies in the fact that, in a number of cells in Block No. 9³⁰, windows were covered with metal shutters which reduced access to natural light to a minimum. Further, throughout the prison, numerous complaints were received about the lack of heating in the cells. In addition, a number of prisoners complained about an insufficient supply of personal hygiene products. In this regard, the management indicated to the delegation that indigent prisoners were given from time to time a small allowance to purchase such products; at the same time, it was acknowledged that, due to the lack of specific budgetary allocations, it was difficult to meet the needs of all the prisoners concerned.

The CPT recommends that material conditions of detention be improved at Bari, Florence-Sollicciano, Palermo-Ucciardone and Vicenza Prisons, in the light of the above remarks.

Immediate steps should be taken at Palermo-Ucciardone Prison to:

- **remove metal shutters from cell windows in Block No. 9;**
- **ensure that prisoners are regularly provided with adequate quantities of essential personal hygiene products.**

Further, **the Italian authorities should either draw up a comprehensive renovation plan for Palermo-Ucciardone Prison or decommission the whole establishment.** In case it is decided to renovate the establishment, **the Committee would like to receive a timetable for the full implementation of the different stages.**

³⁰ The cells are located in the former “41-bis” and high-security units of the establishment.

48. As already indicated in paragraph 42, all the establishments visited were operating far above their official capacity at the time of the visit, the overall occupancy level being in the region of some 200%. As a result, most detention areas were affected, to varying degrees, by overcrowding.

The most severe overcrowding was observed at Bari Prison, where cells³¹ measuring 19.60 m²³² were accommodating up to eleven prisoners, the living space per prisoner thus being a mere 1.78 m². Further, cells measuring 20.10 m² were accommodating up to nine prisoners (*i.e.* 2.23 m² per person). Such a state of affairs is not acceptable. It should also be noted that the delegation found two women in the female unit who had to share a cell measuring only 6.30 m²; a cell of such a size is scarcely adequate for one person, let alone two.

The situation was more favourable but still far from satisfactory at Palermo-Ucciardone Prison, where it was not uncommon for cells measuring some 22 m² to accommodate up to eight prisoners.

Cramped conditions were also observed at Florence-Sollicciano and Vicenza Prisons, where cells measuring some 13 m² (including a fully-partitioned sanitary annexe) and initially designed for single occupancy only were accommodating up to three prisoners.

The CPT recommends that the Italian authorities take steps to reduce cell occupancy levels in all the prisons visited (and, in particular, at Bari Prison), so as to provide for at least 4 m² of living space per prisoner in multi-occupancy cells; for this purpose, the area taken up by in-cell sanitary facilities should not be taken into account. Further, any cells providing less than 8 m² of living space should be used for single occupancy only.

b. regime³³

49. The CPT welcomes the fact that, at Bari, Florence-Sollicciano and Vicenza Prisons, prisoners usually benefited from four hours³⁴ of outdoor exercise every day (as was the case in 2008), these exercise periods also including on occasion some sports activities. Further, efforts were clearly made by management to provide on a rota basis work and other activities (such as education) to prisoners within the limited resources available, the number of prisoners able to participate being increased by the sharing of places on a part-time basis.

At *Bari Prison*, 70 prisoners were employed at the time of the visit (including 47 *piantoni*³⁵ and 23 part-time workers (19 cleaners and ten food distributors all working for two hours per day and four barbers each working for two hours per week)). Further, eight prisoners attended a recycling workshop (four hours/day), four prisoners went to a writing workshop (*atelier narrativo*) for four hours per week, and 43 prisoners attended daily medium-level or high-school classes. In addition, external volunteers organised an Italian language course for nine foreign inmates (two hours/week) and a course on hygiene promotion for 13 prisoners (two hours/week). The management had elaborated a detailed plan for additional activities, but the funding was not yet secured.

³¹ Not counting the area taken up by the sanitary annexe.

³² The cells were equipped with two four-level bunk beds and three additional beds.

³³ Due to the targeted nature of the visit to Palermo-Ucciardone Prison, the delegation did not examine in detail the regime activities offered to prisoners in the establishment.

³⁴ Two hours in the morning and two hours in the afternoon.

³⁵ See, in this regard, paragraphs 74 and 75.

At *Florence-Sollicciano Prison*, a mere 239 prisoners (out of a total 1,001 prisoners) had been involved in some kind of remunerated activity (e.g. food distribution, clerk, gardening, kitchen work) in the course of 2012. At the time of the visit, 165 prisoners were attending classes or courses (secondary school, computer courses, painting workshops, drama and catholic religious classes).

At *Vicenza Prison*, an average of 40 prisoners (out of 360) were offered remunerated work (e.g. food distribution, maintenance work and cleaning, kitchen work). The number of prisoners (39 in total) who were enrolled in schooling (primary and secondary schools) remained unchanged since 2011, while the number of places in vocational courses (such as cultivation of aromatic herbs, bakery, welding) had been drastically decreased over the last year (from 80 to less than ten participants), due to the discontinuation of funding by the European Social Fund. It is also a matter of concern that certain sports facilities, such as a football pitch and a volleyball court, had not been used for almost a year, due to the lack of supervisory staff. The same holds true for the indoor gym.

50. The CPT notes that the Department of Prison Administration has recently adopted two circulars³⁶ aiming at relaxing the regime for medium-security prisoners by extending the period during which prisoners can remain outside their cells, on the basis of a more developed security classification. At the time of the visit, the aforementioned circulars were still at an early stage of implementation and were basically limited to pilot projects. For instance, at *Florence-Sollicciano Prison*, the management had recently decided to extend the period of out-of-cell time for specially selected remand prisoners in one particular unit, provided that the prisoners concerned had successfully completed a counter-addiction therapy.

51. That said, in all the establishments visited, it remained the case that for the vast majority of remand prisoners and the majority of sentenced prisoners, regular out-of-cell activities were limited to the four hours of outdoor exercise per day.

The CPT wishes to emphasise that a satisfactory programme of activities (such as work, vocational training, education, sport or recreation/association) is of crucial importance for the well-being of prisoners. This is the case for both sentenced prisoners and inmates awaiting trial. The objective should be to ensure that remand prisoners are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature. Regimes of sentenced prisoners should be even more favourable; this is the only way of giving a true sense to a term of imprisonment.

Therefore, the CPT calls upon the Italian authorities to redouble their efforts to improve the programme of activities, including work and vocational training opportunities, for prisoners at Bari, Florence-Sollicciano and Vicenza Prisons and, where appropriate, at other prisons in Italy.

³⁶ See Circulars No. 3594-6044 of 25 November 2011 and No. 0206745 of 30 May 2012.

4. Prisoners subjected to the “41-bis” regime at Terni Prison

52. For almost two decades, the CPT has paid particular attention to the situation of prisoners subjected to the special detention regime under Section “41-bis” of the Penitentiary Act³⁷ and has made a number of specific recommendations in this regard after previous visits³⁸.

Since the 2008 visit, the relevant legal framework has undergone significant changes with the adoption of an amendment³⁹ to Section 41-bis of the Penitentiary Law and the subsequent issuance of new circulars by the Department of Prison Administration⁴⁰ (for further details, see paragraph 55).

The main objective of the targeted visit to Terni Prison was to review the measures taken by the Italian authorities after the 2008 visit and to examine the implementation in practice of the detention regime, in the light of the above-mentioned legislative changes.

53. At the time of the visit, Terni Prison was accommodating a total of 26 “41-bis” prisoners⁴¹ in a sealed-off two-storey detention unit⁴². Material conditions in the single cells (measuring some 12 m² each) were generally of a good standard and do not call for any particular comment (see, however, paragraph 61). The unit was staffed by a total of 25 prison officers belonging to the GOM (*Gruppi Operativi Mobili*).

54. For the avoidance of doubt, the CPT does acknowledge that, for the purpose of effectively combating the persistent problem of organised crime, a special detention regime and special security measures may be required in individual cases (in particular, with regard to prisoners’ contact with the outside world).

That said, the CPT has repeatedly emphasised that a special security regime which entails severe restrictions on prisoners in terms of socialisation with other inmates and contact with the outside world may have harmful effects, and even more so when the prisoners concerned are held under such conditions for prolonged periods.

Therefore, in order to counteract potentially harmful effects it is essential that a balance be struck between the legitimate interests of society and the provision of a regime which offers adequate human contact to the prisoners concerned.

³⁷ The “41-bis” regime was introduced in 1992 as a temporary emergency measure and became institutionalised on a permanent basis in 2002, following an amendment to the Penitentiary Act. The regime exclusively applies to prisoners who have been convicted of or are suspected of having committed an offence in connection with mafia-type, terrorist or subversive organisations, and who are considered to maintain links with such organisations.

³⁸ Most recently, in paragraphs 63 to 86 of the report on the 2008 visit (CPT/Inf (2010) 12).

³⁹ By Law No. 94 on 15 July 2009 which forms part of the so-called “Security Package” (*Pacchetto di Sicurezza*).

⁴⁰ See, among others, Circular No. 592/6042 of 9 October 2003, Circular dated 4 August 2009, Circular No. 8845/2011 of 16 November 2011 and Circular dated 12 March 2003.

⁴¹ The total number of “41-bis” prisoners in the prison system was 681.

⁴² Two of the “41-bis” prisoners were segregated from all the other prisoners of the unit and were held in a so-called “reserved area” (*area riservata*); see paragraph 61.

55. Against this background, the CPT is very concerned by the fact that the Italian authorities have not only failed to implement most of the specific recommendations made by the Committee after the 2008 visit but have even imposed by law a number of additional restrictions on “41-bis” prisoners (see paragraph 52). The main changes can be described as follows:

- (1) The maximum number of persons per socialisation group has been reduced from five to four prisoners. Contacts with prisoners from another living unit remain strictly prohibited.
- (2) The *time* prisoners are allowed to spend *outside their cells* has been reduced from four to two hours per day (one hour of outdoor exercise and one hour in a communal room). During these two hours, prisoners are allowed to associate with the other inmates of the same living unit; for the remaining 22 hours, prisoners must be locked up alone in their cell.
- (3) The possibilities for prisoners to maintain *contact with the outside world* have been further curtailed. They are now only allowed to make one ten-minute telephone call⁴³ per month if they do not receive a visit from a family member during the same month (the entitlement of one one-hour visit per month, under closed conditions and with audio-surveillance and video-recording, as well as the prohibition of accumulation of unused visit entitlements remain unchanged). In addition, the frequency of contacts with a lawyer has been limited to a maximum of three contacts per week (one-hour visits or ten-minute telephone calls).

The only positive change in terms of prisoners’ regime is that they are now allowed to meet not only their children but also their grandchildren below the age of twelve under open conditions (*i.e.* without a glass partition) for ten minutes per visit.

56. At Terni Prison, the delegation observed that the above-mentioned rules were strictly adhered to in practice.

As regards the regime, all prisoners were offered one hour of outdoor exercise per day in a yard (measuring some 70 m²) where they could also play football or basketball with their fellow-inmates from the same living unit. In all other respects, the regime was very impoverished. During the one hour of association in the communal room, prisoners could only play cards or board games and use an indoor exercise bicycle. For the rest of the day (*i.e.* 22 hours), prisoners were confined to their cells, with the reinforced door open (but the grille closed) from 7 a.m. to 8 p.m. in winter (and to 10 p.m. in summer), their only occupation being reading, watching television or listening to the radio. It is of particular concern that, apart from one prisoner who was enrolled in a distance learning programme, none of the prisoners concerned was engaged in any regime activity.

57. The accumulation of such an impoverished regime and severe restrictions on contacts with the outside world as described in paragraph 55, constitutes a form of small-group isolation which may, if applied for prolonged periods, have harmful effects of a psychological and physical nature.

⁴³ As was the case before, “41-bis” prisoners can only have a telephone conversation with a family member if the latter uses a telephone of a law enforcement establishment or prison. In addition, telephone conversations continue to be systematically recorded.

58. In this connection, the CPT must stress that the argument frequently put forward by the Italian authorities – that the additional restrictions which had been introduced in 2009 were necessary in order to combat more effectively the phenomenon of organised crime and thus to enhance the protection of society – is scarcely convincing. The CPT is confident that the prison administration is able to maintain the same level of security irrespective of whether the “41-bis” prisoners of a given living unit are able to associate for two, four or more hours per day. In the same vein, allowing a prisoner to accumulate unused visit entitlements, for instance, by granting one two-hour visit instead of two one-hour visits during a period of two months would not compromise the legitimate interests of society, given that very strict security arrangements are being applied during every visit anyway (see paragraph 55).

Against this background, there are reasons to believe that the underlying goal of the most recent legislative changes is rather to use additional restrictions as a tool to increase the pressure on the prisoners concerned in order to induce them to co-operate with the justice system. As already mentioned by the Committee in the reports on the 2004 and 2008 visits, such a state of affairs would be highly questionable and also raise issues under Article 27, paragraph 3, of the Italian Constitution⁴⁴ and various international human rights instruments to which Italy is a Party.

59. The CPT calls upon the Italian authorities to review the current “41-bis” detention regime throughout the prison system, in the light of the remarks in paragraphs 54 to 58.

More specifically, **the Committee calls upon the Italian authorities to take the necessary steps to ensure that all prisoners subjected to the “41-bis” regime are:**

- **provided with a wider range of purposeful activities and are able to spend at least four hours per day outside their cells together with the other inmates of the same living unit;**
- **granted the right to accumulate unused visit entitlements;**
- **allowed to make telephone calls more frequently, irrespective of whether they receive a visit during the same month.**

60. Further, the CPT has misgivings about the fact that all “41-bis” prisoners at Terni Prison were subjected to permanent CCTV surveillance inside their cells. Such a systematic practice would appear to be disproportionate; it severely infringes upon the privacy of prisoners and also renders the whole regime even more oppressive, especially if applied for prolonged periods. It is also noteworthy that in other “41-bis” units visited by the Committee in the past, cells were not equipped with CCTV cameras.

The CPT acknowledges that CCTV surveillance inside cells may be justified in individual cases, for example when a person is considered to be at risk of self-harm or suicide or if there is a concrete suspicion that a prisoner is carrying out activities in the cell which could jeopardise security. The decision to impose CCTV surveillance on a particular prisoner should always be based on an individual risk assessment and should be reviewed on a regular basis.

⁴⁴ Article 27, paragraph 3, reads as follows: “Punishments may not be inhuman and shall aim at re-educating the convicted” (*Le pene non possono consistere in trattamenti contrari al senso di umanità e devono tendere alla rieducazione del condannato*).

The CPT recommends that the Italian authorities review the use of CCTV surveillance in prison cells at Terni Prison and, where appropriate, in other prisons in Italy, in the light of these remarks. Steps should also be taken to ensure that prisoners subject to CCTV surveillance are guaranteed reasonable privacy when using the toilet, wash basin and shower.

61. Finally, the CPT wishes to comment upon the conditions under which two “41-bis” prisoners were held in a so-called “reserved area”⁴⁵ (*area riservata*). The two prisoners concerned were accommodated in two single cells on the ground floor of the detention unit. They were allowed to associate with each other during the two hours of out-of-cell time granted to “41-bis” prisoners (see paragraph 55), but were strictly separated from all other “41-bis” prisoners who were accommodated on the first floor.

The windows of the two cells were covered with an opaque plexi-glass layer which restricted access to natural light and prevented the prisoners concerned from being able to see outside. **The CPT recommends that these layers be removed without delay.**

5. Health-care services

a. introduction

62. The delegation examined the health-care services at Bari, Florence-Sollicciano, Palermo-Ucciardone and Vicenza Prisons. As already indicated in paragraph 42, at Milan-San Vittore Prison, the delegation mainly focused on the Centre for Neuropsychiatric Observation (CONP) and reviewed the measures taken by the Italian authorities in the light of specific recommendations made by the Committee after the 2008 visit.

63. Some of the establishments visited offer a variety of specialised in-patient medical services for sick prisoners. In particular, the diagnostic and treatment centre (*centro diagnostico terapeutico* – CDT) at Bari Prison is specialised in internal medicine and in the care for chronically ill and/or physically disabled prisoners from all over Italy. The centre comprises a 16-bed hospital unit and a 17-bed care unit for prisoners with restricted mobility⁴⁶. At the time of the visit, the CDT was accommodating eleven patients in the hospital unit and seven in the care unit. Due to lack of space, a number of disabled prisoners were being held in ordinary cells outside the CDT⁴⁷.

At Florence-Sollicciano Prison, the health-care services include a 30-bed “clinical centre” (*centro clinico*) for prisoners suffering from various somatic and/or mental illnesses. At the time of the visit, the centre was accommodating 30 patients (including ten who were held there for psychiatric treatment or observation). As already indicated in paragraph 42, the prison also contains the only “care and surveillance centre” (*casa di cura e custodia*) for female forensic patients in Italy. The latter centre is attached to the female section of the prison and consists of seven single rooms and one five-bed room; at the time of the visit, it was accommodating twelve patients.

⁴⁵ According to Section 32 of Presidential Decree No. 230 of 30 June 2000, prisoners may be segregated from other prisoners for their own protection or for the protection of other inmates by being held in a “reserved area”.

⁴⁶ About 50% of the beds were reserved for prisoners who were employed as caretakers (*piantoni*); see also paragraphs 74 and 75.

⁴⁷ See paragraph 74.

Milan-San Vittore Prison contains one of the largest CDTs in the Italian prison system (capacity: 100 beds). The 16-bed CONP, which was visited by the Committee in 2008, is affiliated to the establishment's CDT and was operating at full capacity at the time of the visit.

64. In all regions visited (except for Sicily), the transfer of responsibility for prison health care from the Ministry of Justice to the Ministry of Health has been fully implemented, and all prison health-care services are now administered by the relevant regional health authorities (*Aziende Sanitarie Locali* - ASL). In Sicily, health care in prison is still provided exclusively by the Ministry of Justice (Department of Prison Administration). The delegation was informed that the transfer of competence to the regional health authority (*Assessorato della Salute*) and its financial implications were still the subject of protracted negotiations and it remained unclear as to when the *Assessorato* would become responsible for the provision of prison health care. **The CPT would like to receive updated information on this matter.**

b. health-care facilities

65. In all the establishments visited, the health-care facilities were on the whole of a good standard and the supply of medicines was adequate⁴⁸.

However, at Palermo-Ucciardone Prison, the central infirmary and all five infirmaries in the detention areas were found to be in a deplorable state of hygiene. **The CPT recommends that immediate steps be taken to remedy this shortcoming. If the cleaning continues to be performed by prisoners, they should receive adequate training for this purpose; ideally, this task should be fulfilled by qualified staff (as was the case in other establishments visited).**

66. Some shortcomings were also observed at Bari Prison. In particular, on the first floor of the establishment's CDT, the delegation saw one cell (no. 20), which had only limited access to natural light (through a very small window high up and close to the ceiling of the sanitary annexe). **The CPT recommends that appropriate steps be taken to ensure that prisoners are not accommodated in the aforementioned cell for prolonged periods (i.e. more than a few days). Preferably, the cell should be withdrawn from service.**

The technical equipment for physiotherapy in the above-mentioned CDT was rather old but still functional and well-maintained. That said, physiotherapists met by the delegation expressed concern that certain tools considered to be essential for the effective provision of physiotherapy had been banned from use, for security reasons, by the prison management. **The CPT invites the relevant health authorities to review the standard of the existing equipment, in consultation with the management of Bari Prison, and to provide, where appropriate, new equipment which meets all the necessary quality and security requirements.**

As regards the infrastructure for persons suffering from disabilities, reference is made to paragraphs 74 and 75.

⁴⁸ Following the transfer of the responsibility for prison health care from the Ministry of Justice to the regional health authorities, various outdated medical devices for diagnostic tests and specialised treatment have been withdrawn from service at Florence-Sollicciano Prison. Instead, such tests and treatment are now performed outside the prison. As regards the CONP at Milan-San Vittore Prison, see paragraph 78.

c. health-care staff

67. In all the prisons visited, the resources in terms of general practitioners were satisfactory. Bari Prison employed one full-time doctor and five doctors working part-time (50%), Florence-Sollicciano Prison had two full-time doctors and three part-time doctors (50%), Palermo-Ucciardone Prison four part-time doctors (50%) and Vicenza Prison one full-time doctor. Further, in each of the prisons, an additional pool of part-time duty doctors worked on rotation and thus ensured the 24-hour presence of one duty doctor (and two at Florence-Sollicciano Prison).

68. At Bari Prison, the health-care team included twelve full-time and 21 part-time nurses, with one nurse being present around the clock in the CDT and four nurses being present throughout the day and one at night in the other parts of the establishment. At Florence-Sollicciano Prison, seven nurses were usually present during the day and two at night. At Palermo-Ucciardone Prison, six nurses were present in the morning, two in the afternoon and one at night.

The above-mentioned nursing staffing levels appear to be generally adequate. However, **it would be desirable for the nursing cover at Bari Prison to be reinforced to ensure that, as a rule, two nurses are present during the day within the establishment's CDT.**

d. somatic health care

69. In all the establishments visited, the delegation gained a generally positive impression of the quality of somatic health care provided to prisoners (including the services of the relevant *Servizi Territoriali Tossicodipendenze* – SERT). Further, medical records were detailed and well-kept.

70. However, at Bari and Palermo-Ucciardone Prisons, the budget earmarked for specialist consultations was so limited that doctors were on occasion compelled to suspend their services (excepting emergencies) in the middle of the month, because the resources available for that month had been exhausted⁴⁹. **The CPT recommends that the Italian authorities take urgent steps to remedy this unacceptable state of affairs.**

71. Further, in particular at Bari Prison, the handling of requests for medical consultations appeared to be somewhat deficient. Prisoners who wanted to see a doctor had to inform a prison officer or nurse orally, and the latter entered all such requests in a register and transmitted them to the medical service. If the doctor was not able to meet all the requests on a given day, the prisoners not seen by the doctor were obliged to submit a new request. Moreover, the delegation received some complaints from prisoners that their requests for a medical appointment had not been responded to at all. Nursing staff met by the delegation did not rule out the possibility that such requests may on occasion have been “lost”.

⁴⁹ According to the registers of doctors' visits, medical interventions by the ENT specialist were suspended on 16 March 2012 until the end of the month; it was the same for dental interventions on 14 May 2012.

It would be desirable for a system to be introduced at Bari Prison and, where appropriate, in other prisons, whereby prisoners are given the possibility of requesting medical appointments by depositing a signed paper in a mailbox which is only accessible to health-care staff. Further, prisoners should not be required to make multiple requests for one and the same medical appointment.

72. Both at Bari and Palermo-Ucciardone Prisons⁵⁰, the delegation was informed that problems had repeatedly occurred in organising escorts of prison officers to transport prisoners to outside specialists, with the consequence that medical examinations/consultations had to be cancelled or postponed (excepting emergencies). **The CPT recommends that appropriate steps be taken to remedy this deficiency.**

73. Dental care was provided by a dentist at Bari Prison for two half-days per week, at Florence-Sollicciano from Mondays to Fridays for five hours per day, and at Palermo-Ucciardone and Vicenza Prisons for one half-day per week.

Given the long waiting lists (outside emergencies) observed at Bari and Palermo-Ucciardone Prisons, **the CPT invites the Italian authorities to increase the presence of a dentist in both establishments to at least three half-days per week.**

e. situation of disabled prisoners

74. During its visit to Bari Prison, the delegation paid particular attention to the specific situation of prisoners suffering from physical disabilities.

The special unit for this category of prisoner, located on the first floor of the CDT, offered generally satisfactory living conditions, which were adapted to the specific needs of the persons concerned. Most of the prisoners were accommodated in a double room together with another prisoner who acted as permanent caretaker (*piantone*). The bed of the *piantone* was attached to the wall above that of the disabled prisoner.

That said, it is regrettable that the establishment had no specialised hospital beds, despite the fact that three prisoners were bed-ridden or paraplegic. Further, due to lack of space in the CDT, a number of prisoners in wheelchairs had to be accommodated in ordinary cells outside the CDT. However, the latter cells were not adequately equipped for this purpose. **The CPT recommends that the aforementioned shortcomings be remedied.**

75. As regards the role of *piantoni* in general, the CPT calls for caution when involving fellow-inmates in the care of disabled prisoners, all the more so when the prisoners concerned require more specialised care (such as bed-ridden or paraplegic inmates).

⁵⁰ At Bari Prison, the delegation was informed that, on average, almost one-third of external consultations were affected by such logistical obstacles.

In the establishments visited, *piantoni* were selected by the management from among volunteer prisoners. They were employed by the prison and paid a monthly salary. As a rule, they shared the cell with the prisoner in need of care and *de facto* provided support on a 24-hour basis. Before taking up their duties, they underwent a mandatory medical check by an occupational health specialist.

However, in none of the establishments visited had *piantoni* received any training for the specific tasks they were supposed to perform as a caretaker.

The CPT recommends that steps be taken by the relevant authorities to ensure that *piantoni* employed at Bari Prison as well as in other prisons in Italy receive appropriate training.

Further, **the Committee wishes to stress that any involvement of *piantoni* in the care of disabled prisoners should never lead to a total delegation of staff responsibilities and that the work of *piantoni* should always be adequately supervised by a qualified member of staff.**

f. psychiatric and psychological care

76. The provision of psychiatric care appeared to be generally adequate in the establishments visited (including the *Casa di Cura e Custodia* for women at Florence-Sollicciano Prison). Bari Prison was attended by one full-time psychiatrist, Florence-Sollicciano Prison by eight full-time psychiatrists, Palermo-Ucciardone Prison by three part-time psychiatrists and Vicenza Prison by one part-time psychiatrist.

77. In case of need, mentally-ill prisoners were transferred to a specialised CDT in another prison, an OPG, a residential institution or a psychiatric department (SPDC) of a general hospital (on the basis of a TSO procedure).

However, at Palermo-Ucciardone Prison, the delegation was informed that, on several occasions, the management had encountered difficulties in transferring prisoners suffering from an acute mental disturbance to a specialised institution. Usually, the waiting periods for a free bed in the nearest CDT (located at Palermo-Pagliarelli Prison) ranged from several weeks to several months and for a transfer to the OPG in Barcellona they were even longer. At the same time, the SPDC in Palermo was said to be reluctant to accommodate mentally-ill prisoners. As a consequence, prisoners in need of hospitalisation often had to be treated inside the prison, while being held in a security cell under constant supervision by staff.

The CPT recommends that all necessary steps be taken by the relevant national and regional authorities to remedy this shortcoming.

78. The CPT welcomes the measures taken by the Italian authorities after the 2008 visit to improve the living conditions of psychiatric patients in the CONP at Milan-San Vittore Prison. Comparing the situation with what the Committee found in 2008 is like comparing day with night. The premises have been completely renovated and a “day centre” has been set up where patients are offered occupational activities on three days per week. In addition, patients have regular access to a small fitness room.

g. medical screening

79. In all the establishments visited, newly-arrived prisoners were examined within 24 hours by a duty doctor and a psychologist (who, among other things, assessed the risk of self-harm and/or suicide). In the context of the medical screening, prisoners were offered a urine and blood test, in order to detect transmissible diseases such as HIV/AIDS, hepatitis and syphilis. If it was deemed necessary, prisoners were also referred to a psychiatrist and, in the case of drug addiction, to the SERT.

80. The CPT welcomes the initiative of the medical service at Palermo-Ucciardone Prison to provide all newly-arrived prisoners with relevant information on the prevention of transmissible diseases. For this purpose, prisoners received a specific brochure as well as oral explanations by nursing staff. **The Committee encourages the relevant health authorities (including the SERT) to promote awareness-raising activities for the prevention of transmissible diseases in all Italian prisons.**

81. The CPT has repeatedly stressed that prison health-care services can make a significant contribution to the prevention of ill-treatment (by law enforcement officials and prison officers), through the systematic recording of injuries and the transmission of information to the relevant authorities.

In this connection, the delegation gained the impression that the situation had improved since the 2008 visit as regards the quality of the recording of detected injuries. In most of the establishments visited, it appeared to be standard practice for prisoners who displayed visible injuries upon arrival to be transferred to a local hospital for a medical examination before being formally admitted to the prison (provided that the hospital pronounced them fit for detention⁵¹). In addition, injuries were described in detail by the admitting duty doctors in the medical file of the prisoners concerned (together with the doctor's conclusion as to the consistency between allegations made and the medical findings).

That said, it is regrettable that, in most of the establishments visited, the so-called "Register 99", which had been introduced in the Italian prison system a long time before⁵² as a dedicated register for all injuries observed by medical staff on prisoners (both on admission and during imprisonment), was no longer kept at all or at least not for its intended purpose⁵³. As result, it would be very difficult and in some establishments even impossible for outside monitoring bodies to obtain rapidly a comprehensive picture of the situation as regards the frequency of arrival of prisoners with visible injuries and of lesions sustained during imprisonment.

The CPT recommends that steps be taken by all relevant authorities to ensure that a dedicated register for the recording of injuries observed on prisoners is kept in all Italian prisons.

⁵¹ The medical certificate issued by the hospital was kept in the medical file of the prisoner concerned.

⁵² Already prior to the CPT's first visit to Italy in 1992.

⁵³ For instance, at Palermo-Ucciardone Prison, all medical consultations of members of staff were recorded in the "Register 99".

82. As regards the reporting to the relevant judicial authorities of traumatic lesions and other information which are indicative of ill-treatment by law enforcement officials or prison officers, reference is made to the remarks and recommendations made in paragraphs 10 to 12.

h. medical confidentiality

83. The delegation was struck by the almost total lack of medical confidentiality in almost all the establishments visited.

Despite the assurances given to the contrary by the Italian authorities after the 2008 visit⁵⁴, prison officers were usually present during medical examinations (as well as during interventions by nurses and consultations with psychologists) at Bari, Palermo-Ucciardone and Vicenza Prisons; the only positive exception in this regard appeared to be Florence-Sollicciano Prison.

Further, the confidentiality of medical data was not respected at all at Palermo-Ucciardone Prison. Not only were medical data kept in administrative files (in particular, in a specific section of the multi-disciplinary admission form, the so-called “*cartella di primo ingresso*”), but individual medical files were also accessible to prison officers. In addition, all medical registers were regularly checked and, on occasion, even annotated by the establishment’s Director (or Deputy Director) with comments and/or questions addressed to medical staff.

In contrast, at Bari Prison, data of a medical nature (e.g. information on injuries or hunger strike) were communicated to the management only on a need-to-know basis by using a specially designed notification form, while fully respecting the confidentiality of all other medical data.

The CPT once again calls upon the Department of Prison Administration to take immediate steps - in co-operation with the relevant regional health authorities - to ensure that the principle of medical confidentiality is fully respected in all Italian prisons. More specifically, steps should be taken to ensure that:

- **all medical examinations of prisoners (whether upon arrival or at a later stage) are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers;**
- **medical data are, as a rule, not accessible to non-medical staff.**

i. medical seclusion rooms

84. Most of the establishments visited had one or more designated seclusion rooms to segregate prisoners from the rest of the prisoner population for medical reasons (*i.e.* risk of contagious disease). Material conditions in these rooms were generally adequate and do not call for any particular comments.

However, at Bari Prison, the delegation observed that a prisoner was being held in one such room within the establishment’s CDT exclusively for his own protection (due to his former professional background). **The CPT encourages the management of Bari Prison to strive to avoid accommodating prisoners in health-care facilities, if there is no medical reason for doing so.**

⁵⁴ Cf. CPT/Inf (2010) 13, page 58.

6. Other issues

a. mothers with children in prison

85. In the course of its visit to Florence-Sollicciano Prison, the delegation also visited the establishment's mother-and-child unit (so-called "*Nido*"), which is one out of 20 units of this kind in the Italian prison system. In accordance with the relevant legislation⁵⁵, mothers who were not (yet) eligible for house arrest on account of their motherhood were accommodated in that unit together with their children until the latter reached the age of three years.

86. With an official capacity of 16 places (for mothers), the mother-and-child unit at Florence-Sollicciano Prison was accommodating five mothers and five children at the time of the visit. As a rule, at least one female and one male officer were present in the unit every day.

87. Overall, the delegation gained a favourable impression of the living conditions in the unit. Material conditions were of a good standard in terms of living space, access to natural light and equipment. Throughout the day, mothers and children could move freely within the unit and had ready access to a garden with a playground. On workdays, children attended a kindergarten outside the establishment from 9 a.m. until 1 p.m., while their mothers performed some work (kitchen, cleaning, etc.).

88. The CPT notes with interest that, following an amendment of 2011, the Penitentiary Law⁵⁶ contains a legal basis for the granting of a "special house arrest" in protected family houses (*case famiglia protette*) where convicted mothers and their children up to the age of six years may be accommodated (with the approval of the competent supervisory judge). Such houses operate under the authority of the Department of Prison Administration and are guarded by plain clothes prison officers. The underlying goal is to allow mothers and their children to live, to the extent possible, in a non-carceral environment.

At Florence-Sollicciano Prison, the delegation was informed that plans were afoot to create such a protected family house in Florence, and it would appear that similar projects also exist in other parts of the country⁵⁷.

The CPT welcomes the above-mentioned initiatives **and would like to receive detailed information on their implementation.**

⁵⁵ Sections 21bis and 47ter of the Penitentiary Law set out the criteria under which convicted mothers of young children may be granted house arrest until their child(ren) reach(es) the age of ten; cf. also Section 19 of Presidential Decree No. 230 of 30 June 2000.

⁵⁶ Section 47quinquies, paragraph 1bis.

⁵⁷ Already in 2006, a similar institution (*Istituto di Custodia Attenuata per Madri*), affiliated to Milan-San Vittore Prison, was set up in the context of a pilot project.

b. staff

89. As already indicated in paragraph 43 all the prisons visited were severely overcrowded.

Against this background, it is of all the more concern that, in most of the establishments visited, a considerable number of posts of prison officers were vacant at the time of the visit. The situation was particularly problematic at Florence-Sollicciano Prison, where 215 posts (out of a total of 692) were vacant. Further, at Vicenza Prison, due the shortage of custodial staff (45 of 190 posts being vacant), the management had suspended various outdoor sports activities (see paragraph 49). Moreover, at Bari Prison, the delegation was informed that some 25 out of 394 posts were vacant and that approximately one third of all 375 prison officers were regularly involved in escorting prisoners. Thus, the number of custodial staff was insufficient; in some detention units, up to 100 prisoners were supervised by only one prison officer.

The CPT recommends that the Italian authorities pursue their efforts as a matter of priority to fill the vacant prison officers' posts at Bari, Florence-Sollicciano and Vicenza Prisons.

90. Further, in several of the establishments visited, it transpired from discussions with staff representatives and various prison officers that many prison officers felt a need to receive more continuous training in inter-personal skills and, more specifically, in the handling of inmates who display behavioural and/or mental disorders.

The CPT trusts that the Ministry of Justice will take the necessary steps to ensure that the aforementioned issues are adequately addressed in the continuous training of prison officers.

c. contact with the outside world

91. In all the establishments visited, prisoners were usually allowed to receive six one-hour visits per month and to make four ten-minute telephone calls per week, in compliance with the relevant legal provisions⁵⁸.

92. The delegation was particularly impressed by the visiting arrangements at Florence-Sollicciano Prison, where prisoners could in fine weather meet their relatives in a large park on the premises of the establishment, equipped with benches and a playground for children. Indoor visiting areas were also adequate.

⁵⁸ Section 18 of the Penitentiary Law and Sections 37 and 39 of Presidential Decree No. 230 of 30 June 2000. Prisoners subject to a high-security regime were allowed to receive four one-hour visits and to make two ten-minute telephone calls every month.

In contrast, at Bari Prison, the visiting area for male prisoners consisted of two rows of benches separated by a waist-level wall and a low glass partition on the upper side of the wall. Thus, prisoners could only have physical contact with their visitor if they remained standing by the wall, which was often practically impossible for the many prisoners in the establishment who suffered from physical disabilities.

The CPT invites the Italian authorities to review the layout of the visiting area for male prisoners at Bari Prison, in order to ensure that all prisoners, including those suffering from disabilities, are able to have physical contact with their visitors under decent conditions.

d. discipline

93. According to Section 39 of the Penitentiary Law, exclusion from association activities for 15 days constitutes the most severe disciplinary sanction.

94. None of the prisons visited had designated punishment cells. Instead, prisoners who were subjected to the sanction of exclusion from association activities were usually accommodated in ordinary cells (with slightly less furniture), the material conditions of which were generally satisfactory.

That said, at Bari Prison, the two cells located on the ground floor of the female section, which were used, among other things, for disciplinary purposes were dilapidated (especially the furniture) and were found to be in a deplorable state of hygiene. **The CPT recommends that immediate steps be taken to remedy these deficiencies.**

95. From an examination of various disciplinary files and consultations with staff in several of establishments visited, it transpired that, regrettably, none of the specific recommendations made by the Committee after the 2008 visit concerning disciplinary procedures had been implemented in practice.

In particular, disciplinary decisions often contained very little reasoning if any, and prisoners usually did not receive a copy of the decision itself but only a notification of the sanction pronounced by the disciplinary commission. In addition, prisoners were not allowed to have a lawyer present during disciplinary hearings, and they were often not informed in writing of the avenues to lodge an appeal. It also remains the case that supervisory judges examined appeals only on procedural grounds, but not on the merits.

Therefore, **the CPT must recommend once again that the current legislation and practice be revised, in order to ensure that prisoners facing disciplinary charges:**

- **are allowed to call witnesses on their behalf and to cross-examine evidence given against them;**
- **are allowed to have a lawyer present during hearings before the disciplinary commission;**
- **receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. The prisoners should confirm in writing that they have received a copy of the decision.**

Further, **the Committee reiterates its recommendation that all necessary steps be taken to ensure that appeals against disciplinary sanctions are also examined on the merits by supervisory judges.**

96. The CPT wishes to stress once again that medical practitioners in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners.

Against this background, it is unacceptable that, despite the specific recommendation repeatedly made by the Committee after previous visits, prison doctors were still members of disciplinary commissions and thus actively took part in disciplinary proceedings against prisoners⁵⁹. **The CPT calls upon the Italian authorities to take immediate steps to abolish this practice in the entire prison system.**

97. Further, before a disciplinary sanction of exclusion from association activities was implemented, prison doctors were still required, in accordance with the relevant legislation⁶⁰, to certify that the prisoner concerned was able to sustain the measure.

In the CPT's view, such a practice is scarcely conducive to a positive doctor-patient relationship. This point was recognised in the European Prison Rules; indeed, the rule in the previous version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, has now been removed.

On the other hand, health-care staff should be very attentive to the situation of prisoners subject to the disciplinary sanction of exclusion from association activities (or any other prisoner held under conditions of solitary confinement). The health-care staff should be informed of every such placement and should visit the prisoner immediately after placement and thereafter, on a regular basis, at least once per day, and provide them with prompt medical assistance and treatment as required. They should report to the prison director whenever a prisoner's health is being put seriously at risk by being held in disciplinary confinement.

The CPT reiterates its recommendation that the role of health-care staff in relation to disciplinary matters be reviewed, in the light of the above remarks. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the Committee in its 21st General Report (see paragraphs 62 and 63 of CPT/Inf (2011) 28).

⁵⁹ See Section 40 of the Penitentiary Law.

⁶⁰ Section 39 of the Penitentiary Law.

e. prisoners subject to Section 72 of the Penal Code

98. Already in the report on the 2004 visit⁶¹, the CPT expressed serious misgivings about the fact that, pursuant to Section 72 of the Penal Code, prisoners sentenced to life-imprisonment may, under certain circumstances⁶², be ordered by the criminal court (as part of the sentence) to serve a fixed period (ranging from two months to three years) in solitary confinement (so-called “*isolamento diurno*”).⁶³ The prisoners concerned are in principle entitled to work or to participate in educational activities (such as distance learning programmes), but they are not allowed to have any contact with other prisoners during the entire period of solitary confinement.

During the 2012 visit, the delegation did not come across any prisoner who was subject to such kind of confinement regime. However, as a matter of principle, the CPT wishes to stress once again that solitary confinement should never be imposed – or be imposable at the discretion of the court concerned – as part of a sentence. The generally accepted principle that offenders are sent to prison as a punishment, not to receive punishment, should be recalled in this context. Imprisonment is a punishment in its own right and potentially harmful aggravations of a prison sentence as part of the punishment are not acceptable. It may be necessary for a sentenced prisoner to be subject, for a certain period of time, to a solitary confinement regime; however, the imposition of such a regime should lie with the prison authorities and not be made part of the catalogue of criminal sanctions.

The CPT urges the Italian authorities to review the relevant criminal legislation, in the light of the above remarks.

⁶¹ See CPT (2006) 16, paragraph 91.

⁶² Commission of multiple crimes which are punishable with life imprisonment or commission of one crime punishable with life imprisonment and one or more crimes punishable with imprisonment of more than five years.

⁶³ During the 2008 visit, the delegation met a prisoner at Novara Prison who had been subjected to two consecutive periods of “*isolamento diurno*”, for a total of six years.

D. Psychiatric establishments

1. Preliminary remarks

99. The delegation carried out visits to the Barcellona Pozzo di Gotto Judicial Psychiatric Hospital (*Ospedale Psichiatrico Giudizario* – OPG) and Care and Surveillance Centre (*Casa di Cura e Custodia* – CCC) and the Psychiatric Service for Diagnosis and Care (*Servizio Psichiatrico Ospedaliero di Diagnosi e Cura* – SPDC) at Milazzo General Hospital. The main objective of these two visits was to examine the action taken by the Italian authorities in the light of various recommendations made by the Committee after its visits to several OPGs and SPDCs in 2004 and 2008.⁶⁴ Further, the delegation visited, for the first time in Italy, a residential institution for psychiatric patients, namely the Therapeutic Community Centre (*Comunità Terapeutica Assistita* – CTA) in Naso.⁶⁵

100. The relevant legal framework governing the involuntary placement of psychiatric patients in an OPG or CCC was already described in some detail in paragraphs 120 and 157 of the report on the 2008 visit and remains valid.⁶⁶ Involuntary placement of a civil nature (*accertamento e trattamento obbligatorio* – TSO) is regulated by Law No. 180 of 1978, the main provisions of which have not changed since the 2008 visit.

101. The CPT wishes to stress that its delegation received no allegations and found no other evidence of deliberate ill-treatment of patients by staff in any of the establishments visited. On the contrary, many patients interviewed by the delegation spoke favourably about the manner in which they were treated by staff. Further, the information gathered indicated that the level of inter-patient violence was not significant.

However, the CPT must express its serious concern about a patient of the Barcellona OPG who had been subjected to mechanical restraint (for almost three weeks) at the Milazzo SPDC. In the Committee's view, the conditions in which this measure was applied can easily be considered as amounting to inhuman and degrading treatment. The CPT will come back to this issue later in the report (see paragraph 127).

⁶⁴ See CPT/Inf (CPT/Inf (2006) 16, paragraphs 130 to 159, and CPT/Inf (2010) 12, paragraphs 119 to 171.

⁶⁵ All three establishments visited are located in the province of Messina (Sicily).

⁶⁶ Section 222 of the Penal Code (placement in an OPG of persons deemed not to be criminally responsible for their acts); Section 206 of the Penal Code (provisional placement in an OPG); Section 219 of the Penal Code (placement in a CCC of persons declared partially criminally irresponsible); Section 206 of the Penal Code (provisional placement in a CCC); Section 148 of the Penal Code (placement in an OPG of prisoners who have developed a mental illness during imprisonment); Section 286 of the CCP (placement of remand prisoners in an OPG).

2. Barcellona Pozzo di Gotto Judicial Psychiatric Hospital (OPG) and Care and Surveillance Centre (*Casa di Cura e Custodia*)

a. introduction

102. The visit to the Barcellona OPG took place during a period of transition. Following the transfer of the responsibility for the provision of prison health care from the Ministry of Justice to the regional health authorities (ASL), which became effective on 1 October 2008, the relevant ASL also became responsible for the provision of health care in OPGs. However, as already indicated in paragraph 64 above, this transfer has to date not been implemented in Sicily. Consequently, at the time of the visit, the Barcellona OPG was the only OPG in Italy which still operated under the sole responsibility of the Ministry of Justice.

103. On 11 June and 21 November 2010, a delegation of a parliamentary inquiry commission⁶⁷, headed by Senator Ignazio R. Marino, carried out two fact-finding missions to the Barcellona OPG. In its final report⁶⁸, the commission denounced “grave and unacceptable deficiencies” at the Barcellona OPG (as well as in most of the other OPGs in Italy) in terms of material conditions, health care and staffing levels, as well as regarding an inappropriate use of means of restraint which impinged upon the human dignity of the patients concerned. Following the report of the inquiry commission, a number of measures were taken by the management of the Barcellona OPG to improve the situation (see also paragraphs 105 and 106).

That said, the information gathered by the CPT’s delegation during the 2012 visit indicated that a number of major shortcomings still persisted, which are similar to those found at the Aversa OPG during the 2008 visit⁶⁹.

104. On 17 February 2012, a new law⁷⁰ was adopted by Parliament which stipulates that all existing OPGs shall be closed down by 31 March 2013 and that all patients held in OPGs shall be transferred to new health-care structures for the execution of security measures, which fall under the exclusive responsibility of the relevant ASL and, more specifically, the Departments of Mental Health (*Dipartimenti di Salute Mentale* - DSM). For this purpose, the aforementioned law provides for the allocation of 38 and 55 million Euros (for 2012 and 2013 respectively) as well as for an additional 180 million Euros in order to finance the closure of the OPGs and the construction of new health-care structures at regional level. In these structures, particular emphasis shall be put on the treatment and rehabilitation of psychiatric patients, outside a prison-like environment.

⁶⁷ The Parliamentary Inquiry Commission on the Effectiveness and Efficiency of the National Health System was set up in July 2008. Among others things, particular attention was paid to the living conditions and treatment of patients in OPGs.

⁶⁸ The final report of the inquiry commission was approved by the Senate of the Republic on 20 July 2011 and was published in Doc. XXII-bis no. 4 (XVI Legislature).

⁶⁹ See paragraphs 119 to 163 of the report on the 2008 visit (CPT/Inf (2010) 12).

⁷⁰ Law no. 9 of 17 February 2012 on the "Conversion into law, with certain amendments, of Decree-Law no. 211 of 22 December 2011, on ‘Urgent measures to counter tensions in prisons which result from overcrowding’”.

b. living conditions, staff and treatment

105. The Barcellona OPG was undergoing major refurbishment, with a view to transforming the premises into a prison after the closure of the psychiatric hospital. Due to the ongoing renovation works, several wards had been temporarily withdrawn from service and the official capacity of the OPG had been reduced from 450 to 261 beds.

Material conditions were generally good in all renovated wards, although they remained very austere and impersonal. At the time of the visit, the OPG was accommodating 251⁷¹ patients on the main premises⁷², and seven patients were being held under a less restrictive regime (*custodia attenuata*) in a detached unit (so-called “ORETO”; with a capacity of 12 places) in the centre of Barcellona Pozzo di Gotto.⁷³

106. Arrangements were being made to open a new therapeutic centre for female forensic psychiatric patients in one of the newly-renovated sections of the OPG. The delegation was informed that 18 women would be transferred there from the OPG in Castiglione delle Stiviere in the near future. **The CPT wishes to receive confirmation that this transfer has taken place; it would also like to receive more detailed information on this therapeutic centre (capacity, staffing levels, activities offered to patients, etc.).**

107. The delegation was struck by the extremely low health-care staffing levels in the Barcellona OPG⁷⁴. In particular, the presence of *psychiatrists* was totally insufficient with 11 part-time psychiatrists working the equivalent of a mere three full-time posts for a total of 251 patients⁷⁵. The contrast could hardly be greater with the situation of civil psychiatric patients observed at the Milazzo SPDC where three psychiatrists were employed on a full-time basis for a maximum of seven patients (see paragraph 121).

The team of *nurses* consisted of 23 full-time nurses and nine nurses working part-time (70%). Such a nursing cover is clearly insufficient for the needs of a psychiatric hospital with more than 250 patients. By way of example, in Ward No. 8, the largest ward of the OPG (with a total of 97 patients accommodated on two floors), three nurses were usually present on each floor in the morning and two in the afternoon. At night, there was usually only one nurse responsible for the care of all patients of the ward. Again, the contrast to the Milazzo SPDC is striking, where five nurses were present during the day for six patients (see paragraph 121).

Further, it beggars belief that, at the beginning of 2012, the presence of *psychologists* which had already been minimal in 2011 (two part-time psychologists both working seven hours per month) was downsized even more, due to budgetary cuts, to a total of six hours per month⁷⁶. The CPT wishes to recall that the involvement of a sufficient number of psychologists is essential for the provision of adequate treatment and rehabilitation programmes for patients (evaluations, psychotherapy, group therapies, etc.) as well as for continuous support to staff.

⁷¹ The number of patients used to be much higher in the past, but, following the visit of the above-mentioned parliamentary inquiry mission, it had been reduced.

⁷² On a temporary basis, the OPG was also accommodating 17 prisoners from the semi-open unit of Messina Prison who worked every day in the outside community.

⁷³ The detached unit was not visited by the delegation.

⁷⁴ At the time of the visit, the OPG also employed a total of 107 prison officers.

⁷⁵ The delegation was informed that the presence of psychiatrists had been reduced by 50% in recent years.

⁷⁶ Both psychologists were present for three hours per month.

108. The treatment provided to patients was based mainly on pharmacotherapy. In a number of cases, it involved the administration of psychotropic drugs in high dosages. In the light of the delegation's findings it may well be possible to reduce resort to sedative medication if the number of (qualified) health-care staff was increased and if a wider range of treatment programmes was provided to patients.

Further, there were no real individual treatment plans and hardly any occupational or other (socio)therapeutic activities, and, due to the almost total lack of psychological services, no psychotherapy was provided.

The delegation was informed that, in 2011, 56 patients had participated in various courses (computing, handicraft, gardening, cooking) and 64 had been offered some work. However, for 2012, the budget earmarked for the organisation of such activities had been reduced by 70% (due to budgetary cuts) and the number of patients involved had decreased accordingly.

109. Whilst acknowledging the efforts made by the management and staff of the Barcellona OPG to provide the best possible care for patients, the CPT cannot but conclude that the OPG suffers from a fundamental flaw. It lacks the necessary human resources and infrastructure to provide patients with an individualised treatment programme which is based on a multidisciplinary approach. In addition, the environment is scarcely therapeutic, with an overemphasis on security and containment and far too little attention being paid to the psycho-social rehabilitation of patients.

From various consultations held in the course of the visit, the delegation gained the impression that the relevant authorities were determined to turn the page and to embark on a complete overhaul of the existing forensic psychiatric services in Sicily as well as in all other regions in Italy. The Counselor (*Assessore*) of Health of Sicily, Mr Massimo Russo, and representatives of the DSM in Sicily affirmed to the delegation that all necessary measures would be taken in order to close down the Barcellona OPG as soon as possible and to transfer all patients to residential structures under the authority of the DSM, pending the outcome of the ongoing negotiations on the transfer of the responsibility for prison health care from the Ministry of Justice to the ASL of Sicily (see paragraph 64). The delegation was also informed that a technical commission had been set up and tasked with an individual needs assessment of all OPG patients, in order to identify a suitable residential structure for each of them. Any new institutions would provide the same level of care as existing structures for civil psychiatric patients.

The CPT urges all relevant regional and national authorities to implement the above-mentioned reform as a matter of priority and to take all necessary steps to ensure that forensic psychiatric patients throughout Italy are henceforth provided with a therapeutic environment and individualised treatment programme which is based on a multidisciplinary approach.

The Committee would also like to receive an account of the measures taken to transfer psychiatric patients from the Barcellona OPG to residential structures at regional level as well as detailed information on any new establishments which have been created for this purpose (official capacities, number of patients, staffing levels, activities offered to patients, etc.).

c. means of restraint

110. The delegation was informed by the management that restraint beds were no longer in use.⁷⁷ Instead, agitated and/or violent patients would be subjected to chemical restraint and/or placed in a seclusion room; in case such measures proved to be insufficient the patient concerned would be transferred to the Milazzo SPDC, on the basis of a TSO procedure. To date, only one such transfer has taken place (see paragraph 127).

111. The delegation noted that, in practice, chemical restraint and seclusion were only resorted to upon the order of a doctor and all such measures were recorded in the medical file of the patient concerned.

However, the OPG had no written policy on the conditions and modalities of seclusion and there was no specific register on the use of seclusion rooms.

As in the context of means of mechanical restraint (see paragraph 127), **the CPT recommends that steps be taken by the relevant authorities to ensure that:**

- **a clearly defined written policy on seclusion is established and effectively implemented in practice in all psychiatric structures in Italy;**
- **a specific register is established in every psychiatric structure to record all instances of seclusion;**
- **every patient subject to seclusion is continuously supervised by a qualified member of health-care staff.**⁷⁸

d. in-hospital deaths

112. When examining the mortality rate at the Barcellona OPG, the delegation was struck by the high number of in-hospital deaths observed in young patients. Since 2007, a total of 20 deaths occurred in the hospital. While the number of suicides remained relatively low (three cases), five patients below the age of 45 and twelve below the age of 60 reportedly died of natural causes.

In this connection, it is a matter of concern that autopsies were usually carried out only in apparent cases of suicide, but not in other death cases. In the CPT's view, just as is the case with other closed institutions, when an involuntary patient held in a psychiatric structure dies, an autopsy should follow, unless a medical authority independent of the hospital decides that an autopsy is unnecessary.

The CPT recommends that this approach be adopted and rigorously applied in all psychiatric structures in Italy. More generally, the Committee recommends that the relevant authorities institute a practice of carrying out a thorough inquiry into every death of a psychiatric patient, in particular with a view to ascertaining whether there are lessons to be learned as regards operating procedures.

⁷⁷ Previously, the OPG had some 20 restraint beds of the type found by the CPT in 2008 at the Aversa OPG. Following the report of the parliamentary inquiry commission referred to in paragraph 103, all but one restraint beds were decommissioned and the last bed was withdrawn from service in July 2011.

⁷⁸ The staff member may be outside the seclusion room, provided that the patient can fully see the staff member and the latter can continuously see and hear the patient.

e. review procedures

113. Thirdly, in accordance with the relevant legislation, the necessity of involuntary placement of forensic patients in the OPG was reviewed by the competent supervisory court at least once a year (in many cases, every six months).

In this connection, the CPT welcomes the fact that indigent patients were always provided free legal aid by an *ex officio* lawyer. The delegation was also informed that, in principle, the patients concerned were entitled to request a second expert opinion from another doctor who was independent of the hospital and, with the approval of the President of the Supervisory Court, indigent patients could be exempted from paying a court fee for the expert opinion.

However, as far as the delegation could ascertain, court decisions were usually taken only on the basis of the assessment provided by the patient's treating doctor from the OPG. In the interest of safeguarding the doctor-patient relationship, **the CPT recommends that this practice be discontinued at the Barcellona OPG and, where appropriate, in other psychiatric establishments in Italy.**

3. Naso Therapeutic Community Centre (*Comunità Terapeutica Assistita* – CTA)

114. The Therapeutic Community Centre (CTA) in Naso is one of four residential institutions of the same type in the province of Messina and is affiliated to the Department of Mental Health (DSM), under the overall authority of the ASL. The Centre was opened in 1998 and refurbished in 2005. With an official capacity of 20 beds, it was accommodating 13 patients (including one woman) at the time of the visit. Eight of them were held in the Centre on an involuntary basis, namely five forensic patients who had been transferred to the Centre by court order from the Barcellona OPG and three prisoners who had been "released" from prison and assigned to the Centre by the supervisory judge on the basis of a formal house arrest. Five civil patients had been admitted to the Centre on a voluntary basis (mostly former patients of the SPDCs in Messina and Milazzo). On average, patients were accommodated in the Centre for 12 to 18 months. The turnover was rather low (for instance, in 2011, there had been 13 admissions and ten discharges).

115. Staffing levels were generally satisfactory. The Centre employed two full-time psychiatrists (including the Director), two part-time general practitioners, 15 nurses, one part-time physiotherapist and ten auxiliaries (who acted as caretakers and cleaners). As a rule, at least one of the above-mentioned doctors was present during the day (from 8 a.m. to 8 p.m.) from Mondays to Saturdays, and, at night and on Sundays, a doctor from the ASL was on duty. In addition, three nurses and two auxiliaries were present on a 24-hour basis seven days a week.

116. Overall, the delegation gained a favourable impression of the living conditions and the treatment provided to patients.

Patients were accommodated in spacious bedrooms (with two to five beds⁷⁹), all of which were in a very good state of repair and well-equipped (including with individual lockers). The so-called “day area” comprised a fitness room (with a running machine, two indoor exercise bicycles and weight-lifting devices), and an activity room for handicrafts, as well as a dining room and a visiting room (both pleasantly decorated). Moreover, the level of hygiene was impeccable throughout the Centre.

All patients benefited from individualised psychiatric and somatic treatment. Further, every patient had a personal medical file which was well-maintained. Medical confidentiality was also fully respected.

That said, the delegation gained the impression that only little use was made of the above-mentioned activity room. **Steps should be taken by the relevant authorities to encourage nursing staff at the Naso CTA to be more proactive and also engage themselves in activities together with patients.**

117. Neither means of restraint nor seclusion were applied in the Centre. In case of need, patients were transferred (back) to the Barcellona OPG or to a SPDC.

118. As regards the legal safeguards surrounding judicial review procedures before the supervisory court, **the remarks and recommendation made in paragraph 113 apply equally to the Naso CTA.**

119. Finally, the arrangements made for allowing patients to have contact with the outside world were also satisfactory. In particular, they could receive visits every day and also receive and make telephone calls (usually free of charge) at any time.

⁷⁹ Due to the fact that the Centre was operating below its official capacity, no more than two patients were accommodated in any of the rooms.

4. Psychiatric Service for Diagnosis and Care (SPDC) at Milazzo General Hospital

120. The Psychiatric Service for Diagnosis and Care (SPDC) at Milazzo General Hospital was opened in 1978. Although located on the premises of a general hospital, the SPDC is totally independent from the hospital management and directly affiliated to the regional Department of Mental Health (DSM). With an official capacity of seven beds⁸⁰, it was accommodating six patients (one female and five male) at the time of the visit; two of them being subject to an involuntary placement order (TSO). On average, some 50% of all admissions were carried out on an involuntary basis⁸¹.

121. The health-care team of the SPDC was very well staffed with three full-time psychiatrists, 15 nurses and 15 auxiliaries. Nursing staff was present on a 24-hour basis and four during the day. One psychiatrist was on call at night as well as on Sundays and public holidays.

That said, from discussions with nursing staff, it transpired that nurses felt themselves inadequately trained and overburdened and were reluctant to deal with agitated patients. In the CPT's view, such a state of affairs is conducive to inappropriate behaviour on the part of staff and may eventually also lead to excessive resort to physical restraint of patients (see also paragraph 127). **The CPT recommends that steps be taken by the relevant authorities to ensure that nursing staff at the Milazzo SPDC are provided with adequate training and guidance to enable them to manage agitated and/or violent patients in an appropriate manner.**

122. As regards living conditions, the entire premises of the SPDC displayed clear signs of wear and tear, and patients' bedrooms (three double and one single room) were very austere in terms of equipment and decoration. Further, due to the lack of a communal room, patients could only associate and engage themselves in basic recreational activities in a dining area with two tables and several chairs located in the corridor of the SPDC (where a television set was also installed).

The delegation was informed by the management that plans were afoot to construct a larger SPDC outside the general hospital and to transfer the SPDCs of Milazzo and Taormina to the new location. **The CPT would like to receive up-to-date information on the implementation of the aforementioned plan as well as detailed information on the new SPDC (capacity, staffing levels, recreational and therapeutic activities, etc.).**

123. The psychiatric treatment provided to patients was mainly focussed on pharmacotherapy, based on an individualised treatment plan.

Notwithstanding the fact that patients usually stayed in the SPDC only for relatively short periods, it would be desirable for the management of the SPDC to develop other forms of treatment (such as individual and group therapies). For this purpose, the existing nursing staff should receive additional training and the SPDC should be attended on a regular basis by a psychologist and a social worker. **The CPT recommends that action be taken by the relevant authorities to diversify the treatment made available to patients at the Milazzo SPDC, in the light of the above remarks.**

⁸⁰ One bed was permanently reserved for patients from the Aeolian Islands.

⁸¹ 40 out of a total of 84 in 2011; 16 out of 28 during the first four months of 2012.

124. All patients had individual and confidential medical files, which were comprehensive and well-kept.

125. The SPDC had no seclusion rooms. Episodes of agitation were usually managed by resorting to chemical and/or mechanical restraint (i.e. four-point restraint).

126. The CPT recalls that resort to mechanical restraint of patients is only very rarely justified and must always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his/her approval. If, exceptionally, recourse is had to instruments of mechanical restraint, this should be for the shortest possible period of time (usually not more than a few minutes). The maximum period should generally not exceed six hours, and under no circumstances should patients continuously be subjected to mechanical restraint for more than 24 hours. The CPT must emphasise that applying instruments of mechanical restraint to patients for days at a time cannot have any therapeutic justification and, in its view, amounts to ill-treatment.

Whenever a patient is subject to means of mechanical restraint, a trained member of staff should be continuously present in order to maintain the therapeutic alliance and to provide assistance. Such assistance may include escorting the patient to a toilet facility or, in the exceptional case where the measure of restraint cannot be brought to an end in a matter of minutes, helping him/her to consume food. It is also essential to conduct an interview with the patient concerned at the end of the measure; this will provide an opportunity to explain the rationale behind the measure, thus reducing the psychological trauma of the experience as well as preserving/restoring the doctor-patient relationship.

Further, every instance of physical and/or chemical restraint should be recorded in a specific register established for that purpose, in addition to the patient's file. The entry should always include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by the patient or staff. This will greatly facilitate the management of such cases, the appropriate reporting of the extent of their occurrence and oversight by the competent authorities.

127. The delegation observed that, at the Milazzo SPDC, mechanical restraint was only applied upon the order of a doctor and every instance was recorded in a specific register (in addition to the patient's medical file). Further, nursing staff performed regular visual checks, but no nurse was continuously present in the room when a patient was being restrained.

That said, it is a matter of concern that patients were on occasion subjected to mechanical restraint for long or even very long periods. In this regard, the situation of a patient (P. R.), met by the delegation at the Barcellona OPG, gives rise to particular concern. The patient had been transferred to the Milazzo SPDC from the OPG in November 2011, on the basis of a TSO procedure, and was then continuously restrained to a bed for 17 days. Whenever food was provided, the restraints were partially removed, but, during the entire period, the patient was prevented from going to the toilet; instead, a catheter was placed in his penis and a bucket provided for defecation. According to his medical file, the patient was so weak when all the restraints were removed after 17 days that he was not able to stand up, he fell from the bed, sustaining a fracture of the nose; in addition, he displayed lesions which were indicative of decubitus and suffered from metabolic problems. Shortly after his return to the OPG, his somatic health condition deteriorated even further so that he had to be transferred to the emergency department of the general hospital in Catania.

With a view to preventing any such situations from re-occurring in the future, **the CPT recommends that immediate steps be taken by the relevant authorities to ensure that a clearly defined written policy on the use of means of restraint is established and effectively implemented in practice at the Milazzo SPDC and, where appropriate, in other psychiatric establishments in Italy, taking into account the requirements set out in paragraph 126.**

128. As regards the involuntary placement procedure of a civil nature, the relevant mental-health legislation⁸² stipulates that the placement order (TSO) must be formally issued by the Mayor (*Sindaco*) on the basis of two reasoned medical certificates (*proposte*) by two doctors, one of whom must be a public health official. Within 48 hours of the involuntary admission, the Mayor must inform the competent guardianship judge. The latter must then approve (“convalidate”) the TSO within 48 hours of receipt of the notification. The TSO remains valid for seven days and may be prolonged for renewable periods of seven days. For each prolongation, the same procedural steps have to be taken as during the initial placement.

129. In the reports on the 2004 and 2008 visits⁸³, the CPT had made a number of specific recommendations concerning the legal safeguards surrounding the TSO procedure.

That said, from the examination of a number of individual patients’ files and consultations with the Director of the Regional DSM and members of staff of the Milazzo SPDC, it transpired that hardly any of the specific recommendations previously made by the Committee had been implemented in practice. Such a state of affairs is not acceptable.

130. The main shortcomings can be summarised as follows:

First, it remains the case that a psychiatric patient can be admitted to a SPDC on the basis of two doctors who have no qualification in psychiatry (as was observed in one of the patients’ files). It was also not uncommon for the doctors providing treatment at the SPDC to draw up themselves a medical certificate for the Mayor/court in the context of a TSO procedure. For its part, the CPT considers that such a practice is questionable in terms of professional ethics, and may jeopardise the necessary relationship of trust between doctor and patients.

⁸² Section 33 of Law No. 180 of 1978 and Sections 33 to 35 of Law No. 833 of 1978.

⁸³ See paragraphs 147 to 154 of CPT/Inf (2006) 16 and paragraph 171 of CPT/Inf (2010) 12.

Further, medical certificates drawn up by doctors often contained hardly any reasoning (in one case, both certificates only contained the diagnosis “state of agitation”); in several cases, the first and second certificate were literally identical and, in one case, they were even drawn up in the same handwriting). Thus, it will inevitably be very difficult for the relevant administrative and judicial authorities effectively to assess the need for the imposition of a TSO.

A fundamental flaw lies in the fact that guardianship judges usually took a decision on the validation of the TSO order without ever having seen the patient concerned. In practice, the judges’ role was often simply to carry out a purely formal check of the documents submitted by the Mayor's office. Only in exceptional cases had the judge contacted the SPDC to inquire about the the situation of the patient concerned.

Moreover, the delegation observed that, in a number of cases, the court decision had been notified to the Mayor, but not to the patient concerned⁸⁴. In addition, patients were often not informed of existing legal remedies (against the decisions of the Mayor and the judge).

131. The CPT reiterates its recommendation that steps be taken by the relevant authorities (including at the legislative level) to ensure that, in the context of initial TSO procedures (and any prolongations of the placement order:

- **the formal decision to place a person in a SPDC is always based (except in emergency cases) on the opinion of at least one doctor with a professional qualification in psychiatry;**
- **doctors are reminded to draw up detailed medical certificates;**
- **as far as possible, a patient’s treating psychiatrist is not required to draw up the statutory detailed initial or "co-validation" certificate relating to the involuntary admission of his or her patient to a SPDC;**
- **patients are as a rule heard in person by the competent guardianship judge, preferably on the hospital premises.**

132. Finally, the existing arrangements for contact with the outside world were satisfactory. In particular, patients could receive visits every day (from 11.00 a.m. to 12.00 noon and 5.00 to 7.00 p.m.) and could receive and make telephone calls at any time. They were also allowed to keep a mobile phone with them.

⁸⁴ That said, the TSO orders issued by the Mayor had always been notified to the patients concerned.

APPENDIX I

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Introduction

recommendations

- the Italian authorities to redouble their efforts to introduce as soon as possible the crime of torture into the Penal Code and to take the necessary steps to ensure that the crime of torture is never subject to a statute of limitations (paragraph 6).

Police custody

Ill-treatment

recommendations

- a formal message to be delivered by the relevant authorities to all law enforcement officials in the Milan area, reminding them that they should be respectful of the rights of persons in their custody and that the physical ill-treatment of such persons, whether at the time of apprehension or subsequently, will be the subject of severe sanctions (paragraph 9);
- law enforcement officials throughout Italy to be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be punished accordingly (paragraphs 9 and 27);
- the Italian authorities to take the necessary steps to ensure that the physical ill-treatment of persons deprived of their liberty by law enforcement officials (or other persons acting on behalf of a public authority) becomes prosecutable *ex officio* irrespective of the prognosis of recovery. To this end, the criminal legislation should be amended so that the 20-day threshold of recovery for a case of possible ill-treatment to be taken up by a prosecutor *ex officio* set out in Section 582 of the Penal Code no longer applies (paragraph 12);
- steps to be taken by all relevant authorities, if necessary by amending the relevant legal provisions, to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned (paragraph 12).

Safeguards against ill-treatment

recommendations

- the relevant authorities to ensure that, in all law enforcement agencies (including all municipal police services), persons who have been deprived of their liberty – for whatever reason – are fully informed of their rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with a law enforcement official. This should be ensured by provision of clear verbal information at the very outset, to be supplemented by provision of the information sheet on the rights of detained persons immediately upon arrival at a law enforcement establishment. The persons concerned should also be requested to sign a statement attesting that they have been informed of their rights in a language which they understand (paragraph 14);
- the Italian authorities to take steps to ensure that all persons detained by law enforcement agencies have the right to talk in private with a lawyer, as from the very outset of deprivation of liberty, it being understood that when "exceptional and specific reasons of circumspection" are invoked, the lawyer will be appointed *ex officio*. To this end, the relevant provisions of the Code of Criminal Procedure should be amended accordingly (paragraph 15);
- the Italian authorities to take appropriate steps – in consultation with the Bar Associations – to ensure that lawyers effectively provide assistance during police custody, whether they are chosen by the detained person or appointed *ex officio* (paragraph 16);
- the Italian authorities to take immediate steps to ensure that in all law enforcement establishments (including those of municipal police services), all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of law enforcement officials (paragraph 17);
- specific legal provisions to be adopted governing the right of persons detained by law enforcement agencies to have access to a doctor of their own choice (at their own expense). The information sheet referred to in paragraph 14 should be amended accordingly (paragraph 18);
- steps to be taken to ensure that, whenever a person is deprived of his/her liberty by a law enforcement agency, for whatever reason, this fact is recorded without delay (paragraph 19);
- officers in all law enforcement establishments visited to be reminded to maintain custody registers meticulously (paragraph 20).

Conditions of detention

recommendations

- the Italian authorities to take immediate steps to improve the material conditions in the custody cells at the Florence *Questura*, in the light of the remarks in paragraph 21 (paragraph 21);
- the Italian authorities to take immediate steps to ensure that in all law enforcement establishments, persons detained overnight are provided with a clean mattress and clean blankets (paragraph 23);
- steps to be taken to ensure that all persons who are held in custody in a law enforcement establishment for 24 hours or more are offered adequate washing facilities (including the possibility of taking a shower) and are provided with basic personal hygiene items (paragraph 24);
- the Italian authorities to review the conditions of detention in all law enforcement establishments in Italy where persons may be held for 24 hours or more, in order to ensure that:
 - custody cells have adequate access to natural light;
 - the persons concerned are offered outdoor exercise every day (paragraph 24).

requests for information

- confirmation that the custody cells at the Palermo *Questura* have now been withdrawn from service (paragraph 22);
- detailed information on the capacity and design of the new police detention facilities in Palermo (access to natural light, outdoor exercise yard, etc.) (paragraph 22).

Detention of foreign nationals under aliens legislation

Ill-treatment

requests for information

- the outcome of the investigation related to the complaint lodged by a foreign national held at the Bologna Identification and Expulsion Centre (CIE) that he had been ill-treated by police officers on 20 April 2012 (paragraph 28).

Conditions of detention

recommendations

- immediate steps to be taken at the Bologna CIE to ensure that foreign nationals are provided with board games and a television set and have more frequent access to the existing sports facilities (paragraph 30);

- the Italian authorities to redouble their efforts to provide foreign nationals held at the Bologna CIE with a range of purposeful activities. The longer the period for which foreign nationals are detained, the more developed should be the activities which are offered to them (paragraph 30).

comments

- the CPT trusts that the Italian authorities will take steps to ensure that the detention rooms and their equipment at the Bologna CIE are kept in an acceptable state of repair (paragraph 29).

Staff

requests for information

- a detailed organigram of staff at the Bologna CIE, with an identification of the posts currently filled and the time of presence of the staff members concerned (paragraph 31).

Health care

recommendations

- steps to be taken at the Bologna CIE and all other CIEs in Italy to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a foreign national (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned (paragraph 34);
- steps to be taken to ensure that the confidentiality of medical data is fully respected at the Bologna CIE (paragraph 37).

comments

- all foreign nationals returning to a CIE following a failed deportation by air should undergo a proper medical examination (paragraph 35).

requests for information

- confirmation that a member of health-care staff is always present at the Bologna CIE (including at night and during weekends) (paragraph 33).

Other issues

recommendations

- as regards the isolation of immigration detainees for reasons of good order and security, a proper legal basis and clear procedures (including appropriate safeguards such as the keeping of a dedicated register) to be established at the Bologna CIE and, where appropriate, in other CIEs in Italy (paragraph 39).

comments

- as regards foreign nationals who shall be deported after having served a prison term, the relevant Italian authorities are invited to take proactive steps to commence the necessary expulsion and deportation procedures prior to the scheduled release from prison (paragraph 40).

Prisons

Preliminary remarks

recommendations

- the Italian authorities to pursue vigorously their endeavours to combat prison overcrowding, including through increased application of non-custodial measures during the period before any imposition of a sentence. In this respect, the authorities should be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse and Recommendation Rec(2010)1 on the Council of Europe Probation Rules (paragraph 45).

requests for information

- updated information on progress made by the Italian authorities in combating prison overcrowding (paragraph 45).

Ill-treatment

recommendations

- a clear message to be delivered to both the management and staff of Vicenza Prison that all forms of ill-treatment of prisoners (including threats to resort to violence as a punishment) are not acceptable and will be punished accordingly (paragraph 46);
- outside bodies responsible for monitoring the situation at Vicenza Prison and, in particular, the competent supervisory judges to be informed without delay of the allegations received by the delegation of physical ill-treatment and/or excessive use of force against prisoners by prison officers (paragraph 46);
- steps to be taken at Vicenza Prison and all other prisons in Italy to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned (paragraph 46).

Conditions of detention of the general prison population

recommendations

- material conditions of detention to be improved at Bari, Florence-Sollicciano, Palermo-Ucciardone and Vicenza Prisons, in the light of the remarks in paragraph 47 (paragraph 47);
- immediate steps to be taken at Palermo-Ucciardone Prison to:
 - remove metal shutters from cell windows in Block No. 9;
 - ensure that prisoners are regularly provided with adequate quantities of essential personal hygiene products (paragraph 47);
- the Italian authorities to draw up a comprehensive renovation plan for Palermo-Ucciardone Prison or to decommission the whole establishment (paragraph 47);
- the Italian authorities to take steps to reduce cell occupancy levels in all the prisons visited (and, in particular, at Bari Prison), so as to provide for at least 4 m² of living space per prisoner in multi-occupancy cells; for this purpose, the area taken up by in-cell sanitary facilities should not be taken into account. Further, any cells providing less than 8 m² of living space should be used for single occupancy only (paragraph 48);
- the Italian authorities to redouble their efforts to improve the programme of activities, including work and vocational training opportunities, for prisoners at Bari, Florence-Sollicciano and Vicenza Prisons and, where appropriate, at other prisons in Italy (paragraph 51).

requests for information

- in case it is decided to renovate Palermo-Ucciardone Prison, a timetable for the full implementation of the different stages of the works (paragraph 47).

Prisoners subjected to the “41-bis” regime at Terni Prison

recommendations

- the Italian authorities to review the current “41-bis” detention regime throughout the prison system, in the light of the remarks in paragraphs 54 to 58 and, more specifically, to take the necessary steps to ensure that all prisoners subjected to the “41-bis” regime are:
 - provided with a wider range of purposeful activities and are able to spend at least four hours per day outside their cells together with the other inmates of the same living unit;
 - granted the right to accumulate unused visit entitlements;
 - allowed to make at least one telephone call every month, irrespective of whether they receive a visit during the same month (paragraph 59);

- the Italian authorities to review the use of CCTV surveillance in prison cells at Terni Prison and, where appropriate, in other prisons in Italy, in the light of the remarks in paragraph 60. Steps should also be taken to ensure that prisoners subject to CCTV surveillance are guaranteed reasonable privacy when using the toilet, wash basin and shower (paragraph 60);
- steps to be taken without delay at Terni Prison to remove the opaque plexi-glass layer which covered the windows of the two cells of the establishment's "area riservata" (paragraph 61).

Health-care services

recommendations

- at Palermo-Ucciardone Prison, immediate steps to be taken to improve the state of hygiene in the central infirmary and all five infirmaries in the detention areas (paragraph 65);
- appropriate steps to be taken at Bari Prison to ensure that prisoners are not accommodated in cell N° 20 of the establishment's CDT (*centro diagnostico-terapeutico*) for prolonged periods (*i.e.* more than a few days). Preferably, this cell should be withdrawn from service (paragraph 66);
- the Italian authorities to take urgent steps to increase the budget for specialist consultations at Bari and Palermo-Ucciardone Prisons, in the light of the remarks in paragraph 70 (paragraph 70);
- appropriate steps to be taken at Bari and Palermo-Ucciardone Prisons to improve the organisation of escorts of prison officers to transport prisoners to outside specialists (paragraph 72);
- steps to be taken at Bari Prison to provide bed-ridden and paraplegic prisoners with specialised hospital beds and to ensure that cells accommodating prisoners suffering from physical disabilities are adequately equipped for this purpose (paragraph 74);
- steps to be taken by the relevant authorities to ensure that *piantoni* employed at Bari Prison as well as in other prisons in Italy for the care of disabled prisoners receive appropriate training (paragraph 75);
- the relevant national and regional authorities to take the necessary steps to resolve the problems encountered by the management of Palermo-Ucciardone Prison to transfer prisoners suffering from an acute mental disturbance to a specialised institution (paragraph 77);
- steps to be taken by all relevant authorities to ensure that a dedicated register for the recording of injuries observed on prisoners is kept in all Italian prisons (paragraph 81);
- the Department of Prison Administration to take immediate steps - in co-operation with the relevant regional health authorities - to ensure that the principle of medical confidentiality is fully respected in all Italian prisons. More specifically, steps should be taken to ensure that:

- all medical examinations of prisoners (whether upon arrival or at a later stage) are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers;
- medical data are, as a rule, not accessible to non-medical staff (paragraph 83).

comments

- if the cleaning of the health-care facilities at Palermo-Ucciardone Prison continues to be performed by prisoners, they should receive adequate training for this purpose; ideally, this task should be fulfilled by qualified staff (as was the case in other establishments visited) (paragraph 65);
- the relevant health authorities are invited to review the standard of the existing equipment for physiotherapy in the CDT of Bari Prison, in consultation with the establishment's management, and to provide, where appropriate, new equipment which meets all the necessary quality and security requirements (paragraph 66);
- it would be desirable for the nursing cover at Bari Prison to be reinforced to ensure that, as a rule, two nurses are present during the day within the establishment's CDT (paragraph 68);
- it would be desirable for a system to be introduced at Bari Prison and, where appropriate, in other prisons, whereby prisoners are given the possibility of requesting medical appointments by depositing a signed paper in a mailbox which is only accessible to health-care staff. Further, prisoners should not be required to make multiple requests for one and the same medical appointment (paragraph 71);
- the Italian authorities are invited to increase the presence of a dentist at Bari and Palermo-Ucciardone Prisons to at least three half-days per week (paragraph 73);
- any involvement of *piantoni* in the care of disabled prisoners should never lead to a total delegation of staff responsibilities and the work of *piantoni* should always be adequately supervised by a qualified member of staff (paragraph 75);
- the CPT encourages the relevant health authorities (including the SERT) to promote awareness-raising activities for the prevention of transmissible diseases in all Italian prisons (paragraph 80);
- the CPT encourages the management of Bari Prison to strive to avoid accommodating prisoners in health-care facilities, if there is no medical reason for doing so (paragraph 84).

requests for information

- updated information on the transfer of responsibility for the provision of health care in prisons in Sicily from the Ministry of Justice to the regional health authority (*Assessorato della Salute*) (paragraph 64).

Other issues

recommendations

- the Italian authorities to pursue their efforts as a matter of priority to fill the vacant prison officers' posts at Bari, Florence-Sollicciano and Vicenza Prisons (paragraph 89);
- immediate steps to be taken at Bari Prison to improve the state of repair and the level of hygiene in the two cells located on the ground floor of the female section, which were used, among other things, for disciplinary purposes (paragraph 94);
- current legislation and practice to be revised in order to ensure that prisoners facing disciplinary charges:
 - are allowed to call witnesses on their behalf and to cross-examine evidence given against them;
 - are allowed to have a lawyer present during hearings before the disciplinary commission;
 - receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. The prisoners should confirm in writing that they have received a copy of the decision (paragraph 95);
- all necessary steps to be taken to ensure that appeals against disciplinary sanctions are also examined on the merits by supervisory judges (paragraph 95);
- the Italian authorities to take immediate steps to abolish in the entire prison system the practice of involving prison doctors as members of disciplinary commissions in the entire prison (paragraph 96);
- the role of health-care staff in relation to disciplinary matters to be reviewed, in the light of the remarks in paragraph 97. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the CPT in its 21st General Report (see paragraphs 62 and 63 of CPT/Inf (2011) 28) (paragraph 97);
- the Italian authorities to review the relevant criminal legislation (Section 72 of the Penal Code) concerning the possible imposition of solitary confinement (so-called "*isolamento diurno*") on prisoners sentenced to life-imprisonment (as part of the sentence), in the light of the remarks in paragraph 98 (paragraph 98).

comments

- the CPT trusts that the Ministry of Justice will take the necessary steps to ensure that interpersonal skills and the handling of prisoners who display behavioural and/or mental disorders are adequately addressed in the continuous training of prison officers (paragraph 90);

- the Italian authorities are invited to review the layout of the visiting area for male prisoners at Bari Prison, in order to ensure that all prisoners, including those suffering from disabilities, are able to have physical contact with their visitors under decent conditions (paragraph 92).

requests for information

- detailed information on the implementation of the plans to create protected family houses for convicted mothers and their children in Florence and other parts of Italy (paragraph 88).

Psychiatric establishments

recommendations

- all relevant regional and national authorities to implement the reform of the existing forensic psychiatric services as a matter of priority and to take all necessary steps to ensure that forensic psychiatric patients throughout Italy are henceforth provided with a therapeutic environment and individualised treatment programme which is based on a multidisciplinary approach (paragraph 109);
- steps to be taken by the relevant authorities to ensure that:
 - a clearly defined written policy on seclusion is established and effectively implemented in practice in all psychiatric structures in Italy;
 - a specific register is established in every psychiatric structure to record all instances of seclusion;
 - every patient subject to seclusion is continuously supervised by a qualified member of health-care staff
(paragraph 111);
- steps to be taken by the relevant authorities to ensure that an autopsy is carried out in all psychiatric structures in Italy whenever an involuntary patient has died, unless a medical authority independent of the hospital decides that an autopsy is unnecessary (paragraph 112);
- the relevant authorities to institute a practice of carrying out a thorough inquiry into every death of a psychiatric patient, in particular with a view to ascertaining whether there are lessons to be learned as regards operating procedures (paragraph 112);
- the necessary steps to be taken to ensure that, in the context of judicial review procedures, court decisions are not taken only on the basis of the assessment provided by the forensic patient's treating doctor (paragraphs 113 and 118);
- steps to be taken by the relevant authorities to ensure that nursing staff at the Milazzo Psychiatric Service for Diagnosis and Care (SPDC) are provided with adequate training and guidance to enable them to manage agitated and/or violent patients in an appropriate manner (paragraph 121);

- action to be taken by the relevant authorities to diversify the treatment made available to patients at the Milazzo SPDC, in the light of the remarks in paragraph 123 (paragraph 123);
- immediate steps to be taken by the relevant authorities to ensure that a clearly defined written policy on the use of means of restraint is established and effectively implemented in practice at the Milazzo SPDC and, where appropriate, in other psychiatric establishments in Italy, taking into account the requirements set out in paragraph 126 (paragraph 127);
- steps to be taken by the relevant authorities (including at the legislative level) to ensure that, in the context of initial TSO procedures (and any prolongations of the placement order):
 - the formal decision to place a person in a SPDC is always based (except in emergency cases) on the opinion of at least one doctor with a professional qualification in psychiatry;
 - doctors are reminded to draw up detailed medical certificates;
 - as far as possible, a patient's treating psychiatrist is not required to draw up the statutory detailed initial or "co-validation" certificate relating to the involuntary admission of his or her patient to a SPDC;
 - patients are as a rule heard in person by the competent guardianship judge, preferably on the hospital premises
(paragraph 131).

comments

- steps should be taken by the relevant authorities to encourage nursing staff at the Naso Therapeutic Community Centre (CTA) to be more proactive and also engage themselves in activities together with patients (paragraph 116).

requests for information

- confirmation that the female patients referred to in paragraph 106 have been transferred from the Judicial Psychiatric Hospital (OPG) in Castiglione delle Stiviere to the new therapeutic centre for female forensic psychiatric patients on the premises of the Barcellona OPG and more detailed information on the aforementioned therapeutic centre (capacity, staffing levels, activities offered to patients, etc.) (paragraph 106);
- an account of the measures taken to transfer psychiatric patients from the Barcellona OPG to residential structures at regional level, as well as detailed information on any new establishments which have been created for this purpose (official capacities, number of patients, staffing levels, activities offered to patients, etc.) (paragraph 109);
- up-to-date information on the implementation of the plan to construct a larger SPDC outside the general hospital in Milazzo and to transfer the SPDCs of Milazzo and Taormina to the new location, as well as detailed information on the new SPDC (capacity, staffing levels, recreational and therapeutic activities, etc.) (paragraph 122).

APPENDIX II

**LIST OF THE NATIONAL AND REGIONAL AUTHORITIES,
NON-GOVERNMENTAL ORGANISATIONS AND PERSONS
WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS**

A. National authorities

Ministry of Justice

Paola SEVERINO DI BENEDETTO Minister

Filippo GRISOLIA Head of the Private Office of the Minister

Carlo PERROTTA Diplomatic Advisor to the Minister of Justice

Giovanni TAMBURINO Head of the Department of Penitentiary Administration

Eugenio SELVAGGI Head of Department of Justice Affairs

Ersilia CALVANESE Director General of Legal Office and Human Rights -
Department of Justice Affairs

Serenella PESARIN Director General for the Implementation of Legal Provisions -
Department of Juvenile Justice

Alessio SCARCELLA Head of the Office for the Coordination of International
Affairs

Emilia DE BELLIS Directorate General of Legal Office and Human Rights -
Department of Justice Affairs

Marco BOTTINO Office for Legislative matters

Francesco OTTAVIANO Director of the Office for Studies Research Legislation and
International Relations - Department of Penitentiary
Administration

Federico FALZONE Director of the Office for High-Security Prisoners -
Department of Penitentiary Administration

Alessandra BERNARDON Office for Studies, Research, Legislation and International
Relations - Department of Penitentiary Administration

Ministry of the Interior

Saverio RUPERTO	Undersecretary of State
Carlo DE STEFANO	Undersecretary of State
Michele MAIULLARI	Chief of the Private Office of the Undersecretary of State
Marco VILLANI	Diplomatic Counselor of the Minister of Interior
Francesco CIRILLO	Prefect, Deputy Director General of the Police
Nadia MINATI	Prefect, Director of the Central Directorate of Civil Services Immigration and Asylum
Maurizio FALCO	Vice-Prefect, member of the Office of the Director of the Department of Immigration and Civil Liberties
Paolo Maria POMPONIO	Director of the Police Immigration Service at the Department of Public Security

Ministry of Health

Renato BALDUZZI	Minister
Monica CAPASSO	Director of the IV Unit at Central Directorate for European and International Relations
Teresa DI FIANDRA	Officer at the General Directorate for Prevention
Silvia ARCA	Officer at the General Directorate for Planning

Ministry of Foreign Affairs

Diego BRASIOLI	Minister Plenipotentiary and President of the Inter-Ministerial Committee on Human Rights (CPT's liaison officer)
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B. Regional authorities

Massimo RUSSO	Counselor of Health of the Region of Sicily
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C. Non-governmental organisations

Associazione Cattolici contro la Tortura (ACAT)

Antigone

Associazione Differenza Donna

Confederazione Generale Italiana del Lavoro (CGIL)

Consiglio italiano per i rifugiati